

In the Supreme Court of Nevada

TRUDI LEE LYTLE; and JOHN ALLEN LYTLE, as
trustees of THE LYTLE TRUST,

Appellants,

vs.

SEPTEMBER TRUST, DATED MARCH 23, 1972;
GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, as
trustees of the GERRY R. ZOBRIST AND JOLIN G.
ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL
AND JULIE MARIE SANDOVAL GEGEN, as Trustees
of the RAYNALDO G. AND EVELYN A. SANDOVAL
JOINT LIVING AND DEVOLUTION TRUST DATED
MAY 27, 1992; DENNIS A. GEGEN AND JULIE S.
GEGEN, Husband and wife, as joint tenants,

Respondents.

Electronically Filed
Apr 08 2024 03:40 PM
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable TIMOTHY C. WILLIAMS, District Judge
District Court Case Nos. A-16-747800-C,
consolidated with A-17-765372-C

APPELLANTS' APPENDIX

VOLUME 4

PAGES 751-1000

DANIEL F. POLSENBERG (SBN 2376)

DAN R. WAITE (SBN 4078)

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Attorneys for Appellants

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4	Notice of Entry of Order Granting Motion to Consolidate Case No. A-16-747800-C with Case No. A-17-765372-C	03/05/18	1	32–40
5	Notice of Entry of Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment	05/25/18	1	41–57
6	Notice of Entry of Order Regarding Plaintiffs’ Motion for Attorney’s Fees and Costs and Memorandum of Costs and Disbursements and Defendants’ Motion to Retax and Settle Memorandum of Costs	09/13/18	1	58–69
7	Notice of Entry of Order Granting Plaintiffs’ Motion for Order to Show Cause Why the Lytle Trust Should Not be Held in Contempt for Violation of Court Orders	05/22/20	1	70–86
8	Plaintiffs’ Motion for Attorney’s Fees and Costs	05/26/20	1 2	87–250 251–293
9	Declaration of Counsel in Support of Plaintiffs’ Motion for Attorney’s Fees and Costs	05/26/20	2	294–300
10	Memorandum of Costs and Disbursements	05/26/20	2	301–303

11	Defendant Lytle Trust's Opposition to Plaintiffs' Motion for Attorney Fees and Costs	06/09/20	2	304–475
12	Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees	06/11/20	2	476–494
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14	Reply to Defendant Lytle Trust's Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	06/29/20	3 4 5 6	712–750 751–1000 1001–1250 1251–1275
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17	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs	08/11/20	6	1327–1337
18	Notice of Appeal	08/21/20	6	1338–1352
19	Case Appeal Statement	08/21/20	6	1353–1357
20	Plaintiffs' Motion to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs Pursuant to NRCP 52(B)	09/08/20	6	1358–1367
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24	Notice of Entry of Order Certifying to the Supreme Court Pursuant to NRAP 12(a) and NRCP 62.1 that the District Court Would Grant Plaintiffs' Motion to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs Pursuant to NRCP 52(b)	01/15/21	6	1409–1416
25	Notice of Entry of Order Granting Plaintiffs' Motion to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs Pursuant to NRCP 52(B)	05/04/21	6	1417–1431
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31	Memorandum of Costs and Disbursements	04/28/23	6 7	1495–1500 1501–1541
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35	Defendants' Opposition to Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees	06/13/23	8 9	1879–2000 2001–2003
36	Exhibit F to Defendants' Opposition to Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees	06/13/23	9	2004–2008
37	Defendants' Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	06/13/23	9	2009–2075
38	Exhibit B to Defendants' Opposition to Plaintiffs' Motion for Attorney's Fees and Costs	06/13/23	9	2076–2080
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40	Notice of Entry of Amended Stipulation and Order to Release and Distribute Cash Bond	06/30/23	9	2084–2095
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42	Reply in Support of Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees	07/06/23	9	2136–2234
43	Recorder's Transcript of Hearing: Plaintiff's Motion for Attorney's Fees and Costs; Counter-Defendants/Cross-Claimants' Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees	07/13/23	9 10	2235–2250 2251–2282
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50	Case Appeal Statement	09/18/23	10	2361–2366
51	Satisfaction of Judgment	10/19/23	10	2367–2369
52	Recorder's Transcript of Hearing: Defendant's Motion to (1) Approve Cash Supersedeas Bond and (2) Affirm Stay Pending Appeal	11/02/23	10	2370–2397
53	Notice of Entry of Order Granting Defendants' Motion to (1) Approve Cash Supersedeas Bond and (2) Affirm Stay Pending Appeal	11/15/23	10	2398–2406
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11	Defendant Lytle Trust’s Opposition to Plaintiffs’ Motion for Attorney Fees and Costs	06/09/20	2	304–475
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22	Defendant Lytle Trust’s Supplement to Opposition to Plaintiffs’ Motion to Amend Order Granting in Part and Denying in Part Plaintiffs’ Motion for Attorney’s Fees and Costs Pursuant to NRCP 52(B)	09/28/20	6	1385–1399
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	Lytle, Trustees of The Lytle Trust's Answer to Plaintiff's Second Amended Complaint and Counterclaim			
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39	Notice of Entry of Stipulation and Order to Release and Distribute Cash Bond	06/21/23	9	2081–2083
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16	Transcript of Proceedings	07/07/20	6	1279–1326

CERTIFICATE OF SERVICE

I certify that on April 8, 2024, I submitted the foregoing
“Appellants’ Appendix” for filing *via* the Court’s eFlex electronic filing
system. Electronic notification will be sent to the following:

Kevin B. Christensen
Wesley J. Smith
Laura J. Wolff
CHRISTENSEN JAMES & MARTIN
7740 W. Sahara Avenue
Las Vegas, Nevada 89117

Attorneys for Respondents

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

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10/23/2018	- KBC	Conference with W Smith regarding Hearing, Order and conference with opposing counsel	0.05 260.00/hr	13.00
	- LJW	Review Opposition to Motion to Consolidate Cases; preparation of Responses to Motion to Consolidate Cases; telephone call to W Smith regarding Hearing; Research Attorney's Fees	0.50 260.00/hr	130.00
10/24/2018	- WJS	Review Notices from Supreme Court; review Lytles' Reply Brief in Support of Consolidating Cases	0.05 260.00/hr	13.00
	- LJW	Review Pleadings in Appeal	0.03 260.00/hr	6.50
10/29/2018	- WJS	Emails to and from R Haskin regarding Extension of Briefing Dates and Joint Motion to Consolidate Cases; review draft Stipulations; review Notice from Supreme Court regarding Filings	0.10 260.00/hr	26.00
	- LJW	Review Pleadings in Appeal	0.03 260.00/hr	6.50
11/1/2018	- WJS	Review Notice from Supreme Court; review Order Denying Motion to Consolidate with Boulden Appeal	0.05 260.00/hr	13.00
11/5/2018	- LJW	Review Court Order	0.03 260.00/hr	6.50
11/7/2018	- WJS	Email from Counsel for Dismar; review letter to Court from Counsel for Dismar regarding proposed Summary Judgment Orders; telephone call from Counsel for Dismar	0.10 260.00/hr	26.00
11/15/2018	- LJW	Review Court Order regarding Jurisdiction	0.03 260.00/hr	6.50
11/16/2018	- DEM	Conference with W Smith; revise Stipulation to Extend Discovery; email from W Smith	0.08 260.00/hr	19.50
	- ELJ	Conference with W Smith and D Martin regarding Emergency Motion	0.15 260.00/hr	39.00
	- WJS	Review Notices from District Court regarding Motion to Reconsider and Order Shortening Time; review Motion; Research Caselaw, Reconsideration and Jurisdiction Issues; email to R Haskin regarding Hearing; conferences with E James and D Martin regarding preparation of Response and attending Hearing	0.53 260.00/hr	136.50
11/19/2018	- ELJ	Preparation of Opposition to Motion to Reconsider	0.95 260.00/hr	247.00
	- DEM	Research; email to W Smith; conference with E James	0.25 260.00/hr	65.00
	- KBC	Review Appeal Order and Order Shortening Time regarding Fees Hearing; conference with E James; email to L Wolff	0.05 260.00/hr	13.00

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11/19/2018	- LJW	Review Motion to Reconsider and Order Shortening Time; emails to and from Attorneys	0.10 260.00/hr	26.00
11/20/2018	- ELJ	Preparation of Opposition to Motion to Reconsider and review with L Wolff	0.53 260.00/hr	136.50
	- LJW	Preparation of Opposition to Motion to Reconsider; telephone call to E James	0.68 260.00/hr	175.50
11/21/2018	- LJW	Revisions to Opposition to Motion to Reconsider; emails to and from E James and Clerk	0.30 260.00/hr	78.00
11/26/2018	- LJW	Review filed document	0.10 260.00/hr	26.00
	- WJS	Review Notice from Court and Opposition; preparation for Hearing	0.38 260.00/hr	97.50
11/27/2018	- ELJ	Conference with W Smith regarding Motion to Reconsider Attorney's Fees and Finality of Appeal	0.15 260.00/hr	39.00
	- WJS	Preparation for Hearing; Appearance at Hearing on Motion to Reconsider Fees Order and present Arguments in Opposition; conferences with E James and D Martin re outcome and pending Appeal Issues; review Order to Show Cause from Supreme Court; Research Cases cited by Supreme Court; conferences with E James and D Martin; review possible Dismissal of Appeal; emails to and from R Haskin regarding Extension of Time for Briefing in 71698 Appeal; review draft Stipulation	1.08 260.00/hr	279.50
	- LJW	Telephone call with W Smith regarding Hearing and Appeal Issues	0.05 260.00/hr	13.00
11/28/2018	- LJW	Review Stipulation and Order; emails to and from W Smith	0.03 260.00/hr	6.50
12/4/2018	- KBC	Review Supreme Court Appeal Decision; conference with W Smith regarding Procedures and Recommendations	0.10 260.00/hr	26.00
	- LJW	Review Order from Appellate Court; telephone call to W Smith regarding Order; preparation of Response to Order to Show Cause	0.38 260.00/hr	97.50
	- WJS	Review Notice from Nevada Supreme Court regarding Boulden/Lamothe Appeal; review Order Affirming District Court; telephone call from Counsel for Dismans regarding Issues remaining in District Court; telephone call from L Wolff regarding Order, coordination and analysis of Actions to resolve remaining Appeals and Issues; conference with K Christensen	0.48 260.00/hr	123.50
12/5/2018	- LJW	Preparation of Response to Order to Show Cause; Research Consolidation and Appeals; preparation of Motion to Dismiss; emails to and from W Smith	0.40 260.00/hr	104.00

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12/5/2018	- WJS Research Attorney's Fees on Appeal; review Supreme Court's 12/4/18 Order and Arguments; file notes; email to L Wolff regarding Issues; emails to and from Haskin, Foley and Wang regarding Supreme Court Order; coordinate Conference Call; emails from L Wolff	0.45 260.00/hr	117.00
12/6/2018	- LJW Review Court Order regarding Extension	0.03 260.00/hr	6.50
	- WJS Emails to and from opposing counsel regarding Conference Call	0.025 260.00/hr	6.50
12/7/2018	- WJS Teleconference with Counsel (Haskin, Foley, Wang) regarding Supreme Court Decision and potential Resolution; conference with K Christensen; telephone call to L Wolff; review Supreme Court filing; review CC&Rs; draft letter to R Haskin regarding Dismissal of Appeal and Warning of Sanctions	0.60 260.00/hr	156.00
	- KBC Conference with W Smith; review Appeal and Trial Procedures; review Negotiations Issues	0.10 260.00/hr	26.00
	- LJW Telephone call with W Smith regarding Motions	0.08 260.00/hr	19.50
12/10/2018	- LJW Preparation of Response to Order to Show Cause; Research Consolidation and Appeal	0.50 260.00/hr	130.00
	- WJS Email from L Wolff; review and revise letter to Haskin; email from D Foley	0.15 260.00/hr	39.00
12/11/2018	- LJW Preparation of Response to Order to Show Cause; Research Consolidation and Appeal	0.60 260.00/hr	156.00
12/12/2018	- KBC Review rescheduled Pre-Trial Conference, Calendar Call and Trial Dates for related Case; review emails regarding Fees Brief and Continuance Request	0.05 260.00/hr	13.00
	- LJW Preparation of Response to Order to Show Cause; Research Federal and State Rules regarding Consolidation; emails to and from W Smith; calendar dates for Trial	0.50 260.00/hr	130.00
	- WJS Email to L Wolff; review and redline draft Response to Order to Show Cause	0.60 260.00/hr	156.00
12/13/2018	- LJW Review Response and Stipulation	0.03 260.00/hr	6.50
	- WJS Revise and draft Response to Order to Show Cause; prepare for filing	0.40 260.00/hr	104.00
12/14/2018	- WJS Review Notices from Supreme Court; email from D Foley	0.05 260.00/hr	13.00

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12/17/2018	- KBC	Conference with Client regarding Appeal Issues and Lytle's Health Extension Request	0.05 260.00/hr	13.00
	- WJS	Review Notice from Supreme Court; review Lytle Response to Order to Show Cause	0.05 260.00/hr	13.00
12/18/2018	- LJW	Preparation of Response to Opposition to Order to Show Cause	0.25 260.00/hr	65.00
	- WJS	Emails to and from L Wolff regarding Order to Show Cause; email to D Foley and C Wange regarding Attorney's Fee Appeal; email from D Foley; review Stipulation for Dismissal of Remaining Claims in District Court Case	0.18 260.00/hr	45.50
12/19/2018	- LJW	Preparation of Response to Lytle Reply to Order to Show Cause; Research on Hearing and on Frederic case	0.70 260.00/hr	182.00
	- WJS	Email from C Wang regarding Stipulation for District Court Case; email from R Haskin	0.05 260.00/hr	13.00
12/20/2018	- LJW	Preparation of Response to Lytle Reply to Order to Show Cause; Research 54(b) Certification	0.50 260.00/hr	130.00
12/21/2018	- LJW	Preparation of Response to Lytle's Reply to Order to Show Cause; emails to and from W Smith	0.30 260.00/hr	78.00
	- WJS	Review and revise Response to Lytle's Reply to Order to Show Cause; review docket in District Court Case; email to L Wolff	0.25 260.00/hr	65.00
12/27/2018	- LJW	Review Order and calendar Due Date	0.03 260.00/hr	6.50
	- WJS	Email from R Haskin; review proposed changes to Dismissal Stipulation; review Notice from Supreme Court regarding Briefing Schedule; calendar Deadlines; conference with D Martin regarding Pre-Trial Conference	0.08 260.00/hr	19.50
1/3/2019	- WJS	E-mails from opposing counsel; review Redlines to draft Stipulation	0.08 260.00/hr	19.50
1/7/2019	- DEM	E-mails from and to W Smith; telephone calls to and from W Smith; review file	0.13 260.00/hr	32.50
	- WJS	Review Notice of Hearing; emails to and from and telephone calls to and from D Martin regarding Pre-Trial Conference; emails to and from opposing counsel regarding Stipulation; review draft	0.08 260.00/hr	19.50
1/8/2019	- WJS	Prepare for Pretrial Conference; Meeting with D Foley regarding Stipulation; Appearance for Pre-Trial Conference in Department 9 (D Barker); conference with D Foley regarding Fees and Costs; telephone call from C Wang regarding Appeal Issues, Fees and Costs; conference with K Christensen	0.60 260.00/hr	156.00

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1/8/2019	- LJW	Review Court Order	0.03 260.00/hr	6.50
1/15/2019	- LJW	Review Stipulation and Order; telephone call to W Smith regarding Brief	0.08 260.00/hr	19.50
	- WJS	Review Notices from Supreme Court and Opening Brief filed by Lytle's in Case No. 76198; telephone call to L Wolff regarding Issues on Appeal, substance of Lytle's Brief; and preparation of Response Brief	0.18 260.00/hr	45.50
1/16/2019	- LJW	Preparation of Reply to Appellant's Brief	1.03 260.00/hr	266.50
	- WJS	Review Notices from District Court; review Boulden & Lamothe Memo of Costs and Motion for Fees	0.15 260.00/hr	39.00
1/17/2019	- WJS	Review and notate Lytle's Opening Brief	0.30 260.00/hr	78.00
1/18/2019	- LJW	Review Court Pleadings	0.03 260.00/hr	6.50
1/19/2019	- LJW	Preparation of Statement of Facts for Reply to Appellate Brief	0.55 260.00/hr	143.00
1/21/2019	- LJW	Preparation of Points and Authorities regarding Law of Case Doctrine	1.00 260.00/hr	260.00
1/22/2019	- LJW	Preparation of Points and Authorities regarding Equitable Orders	0.53 260.00/hr	136.50
1/23/2019	- LJW	Preparation of Points and Authorities regarding Macintosh Caselaw	0.50 260.00/hr	130.00
	- WJS	Review Notice from Court; review Disman's Motion for Fees and Costs; review Docket for Hearing Dates	0.10 260.00/hr	26.00
1/24/2019	- LJW	Preparation of Points and Authorities regarding Meaning of Statutes	0.48 260.00/hr	123.50
1/28/2019	- LJW	Preparation of Points and Authorities regarding Meaning of Statutes; Research "Plain Meaning Cases"	0.28 260.00/hr	71.50
	- WJS	Review Notice from Supreme Court regarding Order Consolidating Appeals; email to L Wolff regarding Response; calendar new Deadlines	0.08 260.00/hr	19.50
1/29/2019	- LJW	Review Court Notice regarding Consolidation; calendar new Due Dates	0.05 260.00/hr	13.00
	- WJS	Review Notice from District Court; review Lytle's Opposition to Boulden/Lamothe Motion for Fees and Costs	0.10 260.00/hr	26.00

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			Hrs/Rate	Amount
1/30/2019	- LJW	Review NRED 3 Litigation; review Opposition to Motion for Fees; preparation of Points and Authorities regarding "Plain Meaning" of Statutes	0.30 260.00/hr	78.00
2/1/2019	- LJW	Preparation of Points and Authorities on Plain Meaning of Statute	0.18 260.00/hr	45.50
2/4/2019	- LJW	Preparation of Points and Authorities on Statute; review Opposition to Motion to Retax Costs	0.18 260.00/hr	45.50
	- WJS	Review Notice from District Court; review Lamothe/Boulden Opposition to Motion to Retax Costs	0.05 260.00/hr	13.00
2/5/2019	- LJW	Preparation of Points and Authorities on Application of NRS 116.3117	0.33 260.00/hr	84.50
2/7/2019	- LJW	Research NRS 116.3117 and Judgment Liens	0.58 260.00/hr	149.50
2/8/2019	- LJW	Preparation of Points and Authorities regarding Application of NRS 116.3117	0.13 260.00/hr	32.50
2/11/2019	- WJS	E-mail from R Haskin regarding Order on Motion to Reconsider, Analysis and Order Issues	0.08 260.00/hr	19.50
	- LJW	Preparation of Points and Authorities regarding Application of NRS 116.3117	0.50 260.00/hr	130.00
2/12/2019	- ELJ	Conference with W Smith regarding Mootness of Order and Appeal Issues	0.08 260.00/hr	19.50
	- WJS	Conference with E James regarding Haskin's request; Research; emails to and from R Haskin regarding Motion to Reconsider and Extension Request; Notice from District Court and review Lytle Opposition to Disman Fee Motion; review Notice from Supreme Court and review Lytle Motion for Extension of Time to File Brief in Fees Case; emails to and from L Wolff regarding Extension Request	0.40 260.00/hr	104.00
	- LJW	Preparation of Summary of Facts on Answering Brief; Research Extension of Time to Answer Attorney's Argument Brief; email to W Smith; review Motion by Lytle regarding Extension of Time	0.55 260.00/hr	143.00
2/13/2019	- LJW	Preparation of Objections to Summary of Facts in Answering Brief; review Court Order regarding Extension of Time	0.20 260.00/hr	52.00
	- WJS	Review Notice and Order from Supreme Court Granting Extension; calendar new Deadlines	0.05 260.00/hr	13.00
2/14/2019	- LJW	Preparation of Objections to Summary of Facts in Answering Brief	0.45 260.00/hr	117.00
2/18/2019	- LJW	Review Reply to Opposition	0.08 260.00/hr	19.50

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			<u>Hrs/Rate</u>	<u>Amount</u>
2/20/2019	- LJW	Preparation of Statement of Facts for Appellate Response	0.25 260.00/hr	65.00
	- WJS	Review Notices from District Court; review Minute Order	0.03 260.00/hr	6.50
2/21/2019	- LJW	Preparation of Statement of Facts for Appellate Response	0.45 260.00/hr	117.00
2/27/2019	- WJS	Review Notice from District Court regarding Hearing on Motion for Fees and Costs; review Docket	0.08 260.00/hr	20.80
3/13/2019	- WJS	Review Notice from Supreme Court and Motion to Extend; conference with L Wolff; draft and file Response to Motion to Extend	0.35 260.00/hr	91.00
3/14/2019	- WJS	Review Notices from Supreme Court; Research Dockets and Court calendar regarding District Court scheduled Hearings; emails to and from D Foley and C Wang regarding Hearing on Fees Motion	0.13 260.00/hr	32.50
	- LJW	Review Motion to Extend Time; emails to and from W Smith; telephone call to W Smith regarding Motion	0.20 260.00/hr	52.00
3/15/2019	- LJW	Review Reply to Opposition; emails to and from W Smith	0.08 260.00/hr	19.50
	- WJS	Review from Supreme Court; review Reply filed by R Haskin; emails to and from L Wolff	0.08 260.00/hr	19.50
3/19/2019	- LJW	Review Notice from Court	0.03 260.00/hr	6.50
4/10/2019	- WJS	Preparation for and Appearance at Hearing of Fees and Costs Motions filed by other Plaintiffs; review Notice from Court regarding new Hearing Date before Judge Williams; emails to and from opposing counsel	0.35 260.00/hr	91.00
4/22/2019	- LJW	Review filings regarding Extensions of Time; emails to and from W Smith; calendar Due Dates	0.08 260.00/hr	19.50
	- WJS	Review Notice from District Court regarding Order on Stipulation to Continue Hearing; review Notice from Supreme Court regarding Lytle's 3rd Motion to Extend Briefing Schedule; emails to and from L Wolff; draft and file Opposition to Motion to Continue	0.20 260.00/hr	52.00
4/23/2019	- LJW	Review Motion and Opposition	0.03 260.00/hr	6.50
4/26/2019	- LJW	Review Reply to Opposition	0.03 260.00/hr	6.50
	- KBC	Conference with W Smith regarding Extension Motion and Opposition; calendar Hearing	0.05 260.00/hr	13.00

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			<u>Hrs/Rate</u>	<u>Amount</u>
4/26/2019	- WJS	Review Notice from Supreme Court regarding Lytle Reply Brief; email from D Foley regarding Issues for Hearing; conference with K Christensen regarding status of Case and Briefing Schedule	0.15 260.00/hr	39.00
5/2/2019	- LJW	Review Court Order regarding Extension; emails to and from W Smith	0.05 260.00/hr	13.00
	- WJS	Review Notice from Supreme Court; review Order Denying Lytle Motion for Extension of Briefing Deadlines; emails to and from L Wolff; email to D Foley and C Wang	0.05 260.00/hr	13.00
5/7/2019	- WJS	Review Notice from District Court; review Motion to Set Hearing filed by Lytles	0.08 260.00/hr	19.50
5/15/2019	- WJS	Review emails from R Haskin; emails to and from and telephone call from D Foley regarding Hearing; review Court Pleadings and papers and preparation for Hearing	0.15 260.00/hr	39.00
5/16/2019	- WJS	Prepare for and attend Hearing at RJC (Judge Williams) on Motions for Fees and Costs (other Plaintiffs); case notes; Notices from Supreme Court regarding Lytle Opening Brief on Fees Appeal; emails to and from L Wolff	0.88 260.00/hr	227.50
	- LJW	Review Opening Brief and Appendices	0.15 260.00/hr	39.00
5/17/2019	- WJS	Review Notice from District Court and Minute Order Granting Fee Motions	0.05 260.00/hr	13.00
5/20/2019	- LJW	Review Court Order	0.03 260.00/hr	6.50
	- WJS	Review and annotate Lytle Opening Brief on Fees	0.38 260.00/hr	97.50
5/21/2019	- LJW	Telephone call to W Smith regarding Answering Brief; email to Court Clerk regarding Transcript; preparation of Answering Brief	0.38 260.00/hr	97.50
5/22/2019	- LJW	E-mails to and from Court Clerk	0.03 260.00/hr	6.50
5/28/2019	- KBC	Review Judgment Renewal Notice; emails to and from Attorney	0.05 260.00/hr	13.00
6/3/2019	- LJW	Preparation of Reply Brief; Research Standard of Review for Attorney's Fees and Costs on Appeal	0.70 260.00/hr	182.00
6/4/2019	- LJW	Research Law of the Case	0.40 260.00/hr	104.00
6/5/2019	- LJW	Research Law of the Case in the District of Nevada and the 9th Circuit; preparation of Appellate Reply Brief regarding Law of the Case	1.00 260.00/hr	260.00

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			<u>Hrs/Rate</u>	<u>Amount</u>
6/6/2019	- LJW	Research Law of the Case in the District of Nevada and the 9th Circuit; preparation of Appellate Reply Brief regarding Law of the Case	0.88 260.00/hr	227.50
6/7/2019	- LJW	Preparation of Reply Brief; preparation of Reply Statement of Facts; preparation of Section regarding Reasonableness of Attorney's Fees	1.75 260.00/hr	455.00
6/10/2019	- LJW	Preparation of Reply Brief; preparation of Reply Statement of Facts; preparation of Section regarding Reasonableness of Attorney's Fees; telephone call to W Smith regarding Facts Section	1.25 260.00/hr	325.00
	- WJS	Telephone call from L Wolff regarding Arguments for Appeal Brief	0.15 260.00/hr	39.00
6/11/2019	- LJW	Preparation of Reply Brief; review and revise Citations to Law and Record; review Transcript and add to Brief; preparation of Exhibits for Appendix; revise Citations to Appendix	1.75 260.00/hr	455.00
6/12/2019	- LJW	Preparation of Reply Brief; preparation of Fact Section; preparation of Appendix	1.05 260.00/hr	273.00
	- WJS	Review and Redline draft Reply Brief; draft Answering Brief on Consolidated Appeals, Research	1.93 260.00/hr	500.50
6/13/2019	- LJW	Preparation of Appendix; Citations to Record; emails to and from W Smith	0.70 260.00/hr	182.00
	- WJS	Research and draft Answering Brief; review Documents for Respondents' Appendix, preparation of Appendix	1.63 260.00/hr	422.50
6/14/2019	- WJS	Preparation of Respondents' Appendix; review and revise Answering Brief	0.45 260.00/hr	117.00
	- LJW	Preparation of Appendix; revisions to Citations to Record; emails to and from W Smith; review Appellate Rules regarding Appendices and Documents	0.70 260.00/hr	182.00
6/17/2019	- WJS	Preparation of Table of Contents; review and revise Answering Brief; prepare Certifications; sign and prepare Brief and Appendix for filing	1.65 260.00/hr	429.00
6/18/2019	- WJS	Review Notice from Court; emails to and from L Wolff; review Notice form Court	0.05 260.00/hr	13.00
6/19/2019	- WJS	Review Order, make adjustments to Brief and prepare for filing; conference with Clerk regarding filing; review Court Notices regarding Acceptance of Filing	0.15 260.00/hr	39.00
	- LJW	Review Appellate Motion	0.05 260.00/hr	13.00
7/15/2019	- WJS	Emails to and from R Haskin; review Agreement and Appellant filings	0.10 260.00/hr	26.00

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			<u>Hrs/Rate</u>	<u>Amount</u>
7/17/2019	- WJS	Email from R Haskin; review draft Extension Stipulation; review Notices from Supreme Court	0.03 260.00/hr	6.50
8/5/2019	- WJS	Emails to and from R Haskin; review and approve Stipulation	0.03 260.00/hr	6.50
8/19/2019	- WJS	Review Notice from Supreme Court; review Motion and Lytle Reply Brief; email to L Wolff	0.15 260.00/hr	39.00
8/20/2019	- LJW	Review Motions and Research Brief and Opposition	0.28 260.00/hr	71.50
8/21/2019	- WJS	Emails to and from L Wolff regarding Response to Lytle Reply Brief	0.05 260.00/hr	13.00
	- LJW	Review Motions and Research Brief and Opposition; emails to and from W Smith	0.58 260.00/hr	149.50
8/22/2019	- LJW	Preparation of Motion and Countermotion to Reply Brief and Motion to Expand Page Limit	0.65 260.00/hr	169.00
8/23/2019	- LJW	Preparation of Motion and Countermotion to Reply Brief and Motion to Expand Page Limit	0.55 260.00/hr	143.00
8/26/2019	- LJW	Preparation of Motion and Countermotion to Reply Brief and Motion to Expand Page Limit; emails to and from W Smith	0.60 260.00/hr	156.00
	- WJS	Review and revise Opposition and Countermotion; review Notice from Court	0.10 260.00/hr	26.00
8/27/2019	- LJW	Review and download Court Order	0.03 260.00/hr	6.50
9/3/2019	- LJW	Review and download Pleading	0.03 260.00/hr	6.50
9/4/2019	- WJS	Review Supreme Court filings from Lytles; emails to and from Counsel for Dismar regarding Stay of Execution and Fees Order	0.08 260.00/hr	19.50
9/30/2019	- WJS	Review Notice from Court regarding Appeal of Attorneys Fee Order; review Supreme Court Docket regarding Appeal	0.08 260.00/hr	19.50
10/1/2019	- LJW	Review Notice of Appeal	0.03 260.00/hr	6.50
10/4/2019	- LJW	Review Notice of Appeal	0.03 260.00/hr	6.50
	- WJS	Review Notice from Court regarding Appeal of Boulden/Lamothe Fee Order	0.03 260.00/hr	6.50
10/22/2019	- WJS	Review Notice from District Court regarding Stipulation to Stay Execution, Posting on Bond; review Notice from Supreme court regarding Association of Counsel for Lytle	0.08 260.00/hr	19.50

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			<u>Hrs/Rate</u>	<u>Amount</u>
11/26/2019	- WJS	Review Notices from Court regarding Appearance for Lytle and request for Transcripts	0.03 260.00/hr	6.50
12/4/2019	- KBC	Conference with W Smith regarding Hearing and Order Appointing HOA Receiver	0.06 260.00/hr	16.25
	- WJS	Telephone call from K Christensen regarding Appointment of Receiver over Association, review Case History and Minutes of Proceedings; email to K Christensen and email to Clerk	0.20 260.00/hr	52.00
1/13/2020	- LJW	Review Court order regarding Lamothe	0.03 260.00/hr	6.50
1/21/2020	- WJS	Review Order from Supreme Court; Research; draft Response	0.35 260.00/hr	91.00
1/24/2020	- WJS	Conference with K Christensen and K Kearl regarding Receiver; review Case file; email to K Christensen with documents; conference with K Christensen	0.30 260.00/hr	78.00
	- KBC	Review Orders; Research; telephone call from Client regarding HOA Judgment and Receiver correspondence; conference with Client and W Smith; review CCRs, Receiver Documents and preparation for conference with Client	0.48 260.00/hr	123.50
1/27/2020	- WJS	Research; conference with K Christensen; preparation for conference with Clients; telephone call from C Wang; conference with Clients; draft letter to Receiver; email to L Wolff	0.75 260.00/hr	195.00
	- KBC	Review Receiver letter and Orders; review Injunction; Research; conference with W Smith regarding Contempt, Fees, Motion to Vacate and Sanctions; conference with Clients regarding Demand and Motions	0.63 260.00/hr	162.50
1/28/2020	- DEM	Conference with W Smith; review letter to Receiver	0.18 260.00/hr	45.50
	- WJS	Emails to and from L Wolff; draft letter to Receiver; Research; conference with D Martin regarding revisions; preparation of Exhibits; email to K Christensen; conference with K Christensen	0.60 260.00/hr	156.00
	- KBC	Review letter to Receiver and Attorney; email to Attorney; conference with W Smith	0.06 260.00/hr	16.25
	- LJW	Review letter to Client and Court filings; email to W Smith	0.13 260.00/hr	32.50
1/29/2020	- LJW	E-mails to and from W Smith	0.05 260.00/hr	13.00
	- WJS	Emails to and from D Foley regarding letter from Receiver; revise letter to Receiver; email from J Gegen; email to Clients	0.13 260.00/hr	32.50

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			<u>Hrs/Rate</u>	<u>Amount</u>
2/3/2020	- LJW	E-mails to and from W Smith; preparation of Motion for Order to Show Cause	0.50 260.00/hr	130.00
	- WJS	Review follow-up letter from Receiver; conference with K Christensen; email to L Wolff regarding drafting Motion	0.05 260.00/hr	13.00
	- KBC	Review letter from Receiver canceling Meeting; conference with W Smith; conference with Client	0.06 260.00/hr	16.25
2/4/2020	- KBC	Conference with W Smith regarding Motion for OTSC and Contempt; emails to and from Attorney regarding Motion; review Hearing Notice	0.06 260.00/hr	16.25
	- WJS	Review notification from Court; review Motion to Reduce to Judgment from old Case; conference with K Christensen; Research Dockets; conference with L Wolff regarding Motion	0.28 260.00/hr	71.50
	- LJW	Telephone call with W Smith; preparation of Motion for Order to Show Cause; Research Order to Show Cause	0.90 260.00/hr	234.00
2/5/2020	- WJS	E-mail from J Gegen; review letters	0.03 260.00/hr	6.50
	- LJW	Preparation of Motion for Order to Show Cause; Research Order to Show Cause	0.38 260.00/hr	97.50
2/6/2020	- LJW	Preparation of Motion for Order to Show Cause; Research Order to Show Cause	0.28 260.00/hr	71.50
2/10/2020	- WJS	E-mails to and from D Foley; review Renewed Motion to Appoint Receiver; messages to and from L Wolff; Research	0.40 260.00/hr	104.00
	- LJW	Preparation of Motion for Order to Show Cause; Research Order to Show Cause	0.53 260.00/hr	136.50
2/11/2020	- KBC	Calendar Hearing; conference with W Smith; review Motion	0.03 260.00/hr	6.50
	- WJS	Messages to and from L Wolff regarding Receiver Report	0.03 260.00/hr	6.50
	- LJW	Preparation of Motion for Order to Show Cause; Research Order to Show Cause	1.00 260.00/hr	260.00
2/12/2020	- LJW	Preparation of Motion for Order to Show Cause; preparation of Exhibits for Motion for Order to Show Cause; preparation of Affidavits for Kearl, Zobrist and Gegan; preparation of Affidavit for W Smith	1.93 260.00/hr	500.50
2/13/2020	- LJW	Preparation of Motion for Order to Show Cause; preparation of Exhibits for Motion for Order to Show Cause; preparation of Affidavits for Kearl, Zobrist and Gegan; preparation of Affidavit for W Smith	1.08 260.00/hr	279.50

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			<u>Hrs/Rate</u>	<u>Amount</u>
2/14/2020	- WJS	E-mail from L Wolff; review and revise Motion for Order to Show Cause	0.25 260.00/hr	65.00
	- LJW	Preparation of Motion to Intervene	1.03 260.00/hr	266.50
2/18/2020	- LJW	Preparation of Motion to Intervene; preparation of Affidavits	0.63 260.00/hr	162.50
2/19/2020	- LJW	Preparation of Motion to Intervene; preparation of Affidavits	0.80 260.00/hr	208.00
2/20/2020	- LJW	Preparation of Motion to Strike Order	0.80 260.00/hr	208.00
2/21/2020	- WJS	Drafting and revisions to Motion for Order to Show Cause	0.80 260.00/hr	208.00
	- LJW	Preparation of Motion to Intervene	0.55 260.00/hr	143.00
2/22/2020	- LJW	Preparation of Motion to Intervene	0.45 260.00/hr	117.00
2/24/2020	- WJS	Drafting and revisions to Motion for Order to Show Cause	1.05 260.00/hr	273.00
	- LJW	Preparation of Motion to Intervene	0.73 260.00/hr	188.50
2/25/2020	- WJS	Drafting and revisions to Motion for Order to Show Cause; Research; email to L Wolff	1.30 260.00/hr	338.00
	- LJW	Preparation of Motion to Intervene	0.45 260.00/hr	117.00
2/26/2020	- WJS	E-mails to and from L Wolff	0.03 260.00/hr	6.50
	- LJW	Preparation of Motion to Intervene	0.53 260.00/hr	136.50
3/2/2020	- WJS	Review and revise Motion to Intervene; Research; review Notice from Nevada Supreme Court; review Order Submitting for Decision; draft Affidavits; review Notice from NSC; review Order of Affirmance; conference with K Christensen; revisions to Motion for Order to Show Cause and Motion to Intervene	1.50 260.00/hr	390.00
3/3/2020	- WJS	E-mails to and from L Wolff; review and revise Motions and Affidavits; emails to Client regarding Affidavits; preparation of Exhibits; meet with Zobrist and Kearl; telephone call from L Wolff	0.70 260.00/hr	182.00
	- LJW	Review Affirmance Order from Supreme Court; telephone call to W Smith	0.10 260.00/hr	26.00

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			Hrs/Rate	Amount
3/4/2020	- WJS	Emails to and from D Foley and C Wang; Research Court Rules; draft Bill of Costs on Appeal; Research Supersedeas Bond; notes to file; meet with Julie Gegen regarding Affidavits; revisions to Motions; prepare Motions and Exhibits for filing	0.65 260.00/hr	169.00
3/5/2020	- WJS	Review Notices from Court regarding Hearings, calendar and send emails to Counsel; draft Bill of Costs; finalize and prepare for filing; review Notices from Supreme Court	0.18 260.00/hr	45.50
3/6/2020	- KBC	Conference with W Smith regarding proposed Motion and Hearing Stipulation and Issues; review email from new opposing counsel	0.09 260.00/hr	22.75
	- WJS	Review Notice; review Joinders filed by C Wang and D Foley; email to Clients; email from D Waite regarding Stipulation to Intervene; conference with K Christensen	0.20 260.00/hr	52.00
3/9/2020	- WJS	Research Intervention Rules; telephone call from D Waite regarding Stipulation to Intervene; telephone call from C Wang; telephone call from R Disman; email from D Waite and review and redline draft Stipulation; review Court Notices	0.60 260.00/hr	156.00
	- LJW	Review Pleadings; email to W Smith	0.03 260.00/hr	6.50
3/10/2020	- KBC	Conference with W Smith regarding requested Stipulation to Intervene, OTSC, Attorney's Fees and Receiver Issues; review Attorney emails	0.10 260.00/hr	26.00
	- WJS	E-mails from D Waite regarding Settlement Offer and Stipulation on Motion to Intervene; conference with K Christensen; draft revisions to Stipulation; emails to and from L Wolff; emails to and from D Waite; telephone call from D Foley; conference with Clerk regarding Fees Statements	0.35 260.00/hr	91.00
	- LJW	Review revised Stipulation and Order; emails to and from W Smith	0.05 260.00/hr	13.00
3/11/2020	- WJS	E-mails from D Waite; review and analysis of Stipulation redline; preparation for Status Hearing in Receiver Action; check Docket; email to Counsel for Receiver	0.40 260.00/hr	104.00
	- LJW	Preparation of Motion to Set Aside Order	0.78 260.00/hr	201.50
3/12/2020	- KBC	Conference with W Smith; preparation of Motion to Vacate Order; review D Waitz letter to Receiver	0.08 260.00/hr	19.50
	- ELJ	Meeting with W Smith regarding opposing Arguments (.7); Research Caselaw on Unclean Hands and Fraud on Court; email to W Smith and L Wolff with Caselaw and Arguments	0.65 260.00/hr	169.00
	- WJS	Preparation for Hearing; Appearance at Status Hearing in Receivership Case; telephone call to L Wolff regarding Motion; email from Receiver's Counsel, review January Status Report; letter from D Waite - analysis; conference with Clerk regarding	1.20 260.00/hr	312.00

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			<u>Hrs/Rate</u>	<u>Amount</u>
		Research; conference with E James and analysis of Lytle Trust Arguments from D Waite; review Cases; emails to and from L Wolff; conference with K Christensen		
3/12/2020	- LJW	Preparation of Motion to Set Aside Order; Research Association Powers	1.13 260.00/hr	292.50
	- DL	Research HOA Issue; email to W Smith	0.55 125.00/hr	68.75
3/13/2020	- WJS	E-mails to and from L Wolff; emails to and from Clerk; review Research notes	0.08 260.00/hr	19.50
	- LJW	Preparation of Motion to Set Aside Order; Research exceeding Authority of CC&Rs and Statutes; emails to and from W Smith	1.13 260.00/hr	292.50
	- DL	Research HOA Issues; email to W Smith	0.65 125.00/hr	81.25
3/16/2020	- WJS	Review Notice from Court; review Motion for Instruction filed by Receiver; emails to and from L Wolff; draft Opposition/Counter-motion	0.48 260.00/hr	123.50
3/17/2020	- WJS	Draft Opposition/Motion for Receivership Case	0.85 260.00/hr	221.00
	- LJW	Preparation of Opposition to Motion for Receiver Order	0.15 260.00/hr	39.00
3/18/2020	- LJW	Preparation of Opposition to Motion for Receiver Order	0.30 260.00/hr	78.00
3/19/2020	- WJS	Draft Opposition to Motion for Instruction in Receiver Case; emails to and from L Wolff	1.20 260.00/hr	312.00
	- LJW	Preparation of Opposition to Motion for Receiver Order	1.03 260.00/hr	266.50
3/20/2020	- WJS	E-mails to and from L Wolff regarding Arguments for Motion	0.05 260.00/hr	13.00
	- LJW	Preparation of Opposition to Motion for Receiver Order; email to W Smith; Research CC&Rs; implied powers for LPA's	1.25 260.00/hr	325.00
3/23/2020	- LJW	Preparation of Opposition to Motion for Receiver Order; email to W Smith; Research CC&Rs; implied powers for LPA's	1.50 260.00/hr	390.00
	- WJS	Review redline of Motion to Rescind Receiver Order; draft and revise Motion; Research for Motion	0.68 260.00/hr	175.50
3/24/2020	- LJW	Preparation of Reply to Opposition to Order to Show Cause	0.50 260.00/hr	130.00

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			<u>Hrs/Rate</u>	<u>Amount</u>
3/24/2020	- WJS	Research, draft and revise Motion to Rescind Receiver Order; email to L Wolff	2.15 260.00/hr	559.00
3/25/2020	- WJS	Emails to and from L Wolff; review and revise Declaration for Opposition and Countermotion; revisions of Opposition and Countermotion and prepare for filing	0.30 260.00/hr	78.00
	- LJW	Revisions to Opposition to Receivership Motion; preparation of Exhibits and Declarations	0.80 260.00/hr	208.00
3/26/2020	- LJW	Preparation of Reply to Opposition to Order to Show Cause	0.63 260.00/hr	162.50
3/27/2020	- WJS	Conference with L Wolff regarding Reply in Motion OSC	0.08 260.00/hr	19.50
	- LJW	Preparation of Reply to Opposition to Order to Show Cause; telephone call to W Smith regarding Arguments	0.48 260.00/hr	123.50
3/30/2020	- LJW	Preparation of Reply to Opposition to Order to Show Cause; telephone call to W Smith regarding Arguments	0.70 260.00/hr	182.00
3/31/2020	- LJW	Preparation of Reply to Order to Show Cause; Research Receiver and Contempt Orders	1.23 260.00/hr	318.50
4/2/2020	- LJW	Preparation of Reply to Opposition to Motion for Order to Show Cause	0.45 260.00/hr	117.00
	- WJS	Review draft Reply on Motion for Order to Show Cause; telephone calls to and from D Foley regarding Boulden and Lamothe	0.15 260.00/hr	39.00
4/3/2020	- LJW	Preparation of Reply to Opposition to Motion for Order to Show Cause	0.58 260.00/hr	149.50
4/6/2020	- LJW	Preparation of Reply to Opposition to Motion for Order to Show Cause	0.53 260.00/hr	136.50
4/7/2020	- LJW	Preparation of Reply to Opposition to Motion for Order to Show Cause; emails to and from W Smith; email to Clerk	0.55 260.00/hr	143.00
	- WJS	Review Notice from Receiver Court regarding Hearing Date and Telephonic Appearance; emails to and from L Wolff; emails to and from D Waite and P Lee; analysis of timing of Hearings between Cases	0.05 260.00/hr	13.00
4/8/2020	- LJW	Preparation of Reply to Opposition to Motion for Order to Show Cause	0.75 260.00/hr	195.00
4/9/2020	- LJW	Preparation of Reply to Opposition to Motion for Order to Show Cause; emails to and from W Smith; preparation of Reply to Lytle Trust Countermotion to Receiver Motion	0.85 260.00/hr	221.00
	- WJS	Review Notices from Court; emails to and from L Wolff regarding Reply and preparing for Hearing	0.05 260.00/hr	13.00

Gerry R. Zobrist and Jolin G. Zobrist Family Trust

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			<u>Hrs/Rate</u>	<u>Amount</u>
4/10/2020	- WJS	Telephone calls to and from L Wolff regarding substance of Oppositions; draft Reply Brief; emails to and from D Waite and P Lee regarding Hearing Date for Receiver Case; emails to and from and telephone calls to and from L Wolff regarding Motion to Move Hearing; review and revise draft Motion and Declaration; prepare for filing; review Notices from Court; review Opposition from Lytle; email to L Wolff	0.28 260.00/hr	71.50
	- LJW	Preparation of Reply to Opposition to Motion for Order to Show Cause; emails to and from W Smith; preparation of Reply to Lytle Trust Countermotion to Receiver Motion; preparation of Motion regarding Hearing Date; preparation of Stipulation and Order to reschedule Hearing Date	1.48 260.00/hr	383.50
4/11/2020	- LJW	Preparation of Reply to Lytle Trust Countermotion to Receiver Motion	0.38 260.00/hr	97.50
4/13/2020	- WJS	Preparation for Oral Argument in Receiver Case; prepare Argument outline, Research; review Court Notices; emails to and from L Wolff regarding Appearances; review Lytle Trust's Opposition in the Receiver Case; conference with L Wolff regarding Reply Briefs; review and redline Reply Brief for Motion for Order to Show Cause; emails to and from D Foley	2.38 260.00/hr	617.50
	- LJW	Preparation of Reply to Lytle Trust Countermotion to Receiver Motion; telephone call to W Smith; telephone call to Court; telephone call to CourtCall	1.75 260.00/hr	455.00
4/14/2020	- LJW	Preparation of Reply to Lytle Trust Countermotion to Receiver Motion; preparation of Reply to Receiver's Countermotion; emails to and from W Smith; preparation of Exhibits; preparation of Declarations; telephone call to Clerk	1.85 260.00/hr	481.00
	- WJS	Revise and draft (3) Reply Briefs, Supporting Declaration and Research in support; emails to and from L Wolff	1.25 260.00/hr	325.00
4/15/2020	- WJS	E-mails to and from Counsel for Lytle Trust and Receiver; emails to and from L Wolff; preparation for Hearing in Receiver Case; participate in Telephone Hearing in Receiver Case; participate in Telephone Hearing with Judge Kishner in Receiver Case, argue Motions; debrief with K Christensen and L Wolff	1.20 260.00/hr	312.00
	- LJW	Review filings and emails; email to W Smith	0.05 260.00/hr	13.00
4/16/2020	- DEM	Research recent Nevada HOA Caselaw; email to W Smith	0.25 260.00/hr	65.00
4/17/2020	- WJS	E-mail from D Martin and review new Supreme Court Opinion	0.10 260.00/hr	26.00
4/20/2020	- LJW	Preparation of Motion for Attorney's Fees; preparation of Motion to Exonerate Bond	0.30 260.00/hr	78.00

Gerry R. Zobrist and Jolin G. Zobrist Family Trust

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		<u>Hrs/Rate</u>	<u>Amount</u>
4/20/2020 - WJS	Review NRAP regarding Remittitur and Bill of Costs; emails to and from L Wolff regarding Fees and Costs on Appeal	0.10 260.00/hr	26.00
4/21/2020 - WJS	Emails to and from L Wolff regarding Remittitur and Fees Motion strategy (.3); Notices from Court; review Hearing Exhibits filed by Lytle Trust (.3); emails to and from P Lee, Counsel for Receiver regarding participation in Hearing, letter to Court and follow up emails (.2); prepare for Hearing on Motion for Order to Show Cause; review Motion, Opposition, and Reply (1.4); draft oral Argument Statement and notes (1.1); emails to and from L Wolff; revisions to oral Argument Statement and notes; telephone call from L Wolff (1.2); telephone call to C Wang (1.1); telephone calls to and from D Foley (.2), oral Argument practice; adjustments to statement, notes (.7)	1.63 260.00/hr	422.50
- LJW	Preparation of Motion for Attorney's Fees; preparation of Motion to Exonerate Bond; review outline of Hearing; telephone call to W Smith regarding Hearing	1.05 260.00/hr	273.00
4/22/2020 - KBC	Conference with Attorney regarding Court Order and Sanctions	0.06 260.00/hr	16.25
- WJS	Prepare for Hearing; attend telephonic Hearing before Judge Williams on Motion for Order to Show Cause and present Argument on Motion; file notes regarding Judge's Decision (granted Motion) for preparing Order; emails to and from C Wang and D Foley; telephone call to L Wolff; telephone call to K Christensen; review Docket for Minutes	1.30 260.00/hr	338.00
- LJW	Preparation of Motion for Attorney's Fees; telephone call to W Smith regarding Hearing	0.18 260.00/hr	45.50
4/23/2020 - LJW	Preparation of Motion for Attorney's Fees; emails to and from W Smith; review Notice	0.13 260.00/hr	32.50
- WJS	Review analysis of notes and structure of Proposed Order; review Notice from Receiver Court; review Notice of Decision filed by Lytle Trust; emails to and from D Foley and L Wolff; review prior Orders; review Motion and notes from oral Argument; draft Order Granting Motion for Order to Show Cause; emails to and from L Wolff	1.08 260.00/hr	279.50
4/24/2020 - WJS	Review and revise Order Granting Motion for Order to Show Cause; emails to and from L Wolff; emails to and from D Foley and C Wang	0.43 260.00/hr	110.50
- LJW	Review and revise Order on Motion to Show Cause; contact Court Clerk regarding Transcript; preparation of Motion to Release Bond	0.95 260.00/hr	247.00
4/27/2020 - WJS	E-mail from D Foley; review Redline and incorporate changes; email from C Wang; review Redline and incorporate changes; revisions to draft Order; email to R Haskins and D Waite	0.40 260.00/hr	104.00
4/28/2020 - LJW	Review emails and revised Order	0.05 260.00/hr	13.00

Gerry R. Zobrist and Jolin G. Zobrist Family Trust

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			<u>Hrs/Rate</u>	<u>Amount</u>
4/30/2020	- LJW	Preparation of Motion for Fees and Costs	0.25 260.00/hr	65.00
For professional services rendered			144.28	\$37,350.80
Additional Charges :				
			<u>Qty/Price</u>	
5/24/2018	- N	District Court Filing Fee - Order Granting Motion for Summary Judgment	0.25 3.50	0.88
5/25/2018	- LJW	District Court Filing Fee - Notice of Entry of Order Granting Motion for Summary Judgment	0.25 3.50	0.88
5/31/2018	- N	WestLaw Research 5/1-5/31/2018	0.25 200.54	50.14
6/4/2018	- N	District Court Filing Fee - Motion for Attorneys Fees and Costs, Memorandum and Declaration	0.25 3.50	0.88
6/6/2018	- N	District Court Filing Fee - Notice of Hearing on Plaintiffs' Motion for Attorney's Fees and Costs	0.25 3.50	0.88
6/11/2018	- N	Clark County District Court Document Downloads - 1. Defendant's Motion Regarding-Tax Costs (\$8.50); 2. Defendants' Reply in Support of Motion to Regarding-Tax Costs (\$9.50); 3. Defendants Motion Regarding-Tax Costs (7.5); 4. Plaintiffs John Allen Lytle and Trudi Lee Lytle's Opposition to Motion Regarding-Tax Costs (\$6.50); 5. Plaintiffs John Allen Lytle and Trudi Lee Lytle's Memorandum of Costs (\$4.00)	0.25 36.00	9.00
6/15/2018	- N	District Court Filing Fee - Plaintiffs' Opposition to Defendants' Motion to Retax and Settle Memorandum of Costs and Declaration	0.25 3.50	0.88
6/22/2018	- N	Clark County District Court Download Fee - Releases (4 - filed June 13, 2018) Case No. A-16-747800-C	0.25 8.00	2.00
6/30/2018	- N	WestLaw Research 6/1-6/30/18	0.25 121.91	30.48
7/5/2018	- N	District Court Filing Fee - (1.) Reply and (2.) Declaration	0.25 3.50	0.88
7/26/2018	- N	Court Parking Expense - Motion for Fees and Costs	0.25 6.00	1.50
7/31/2018	- N	WestLaw Research 7/1-7/31/18	0.25 149.96	37.49
8/7/2018	- N	Clark County District Court Download Fee	0.25 2.00	0.50

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			<u>Qty/Price</u>	<u>Amount</u>
8/31/2018 - N	WestLaw Research 8/1-8/31/18		0.25 32.85	8.21
9/12/2018 - N	Clark County District Court - Order Regarding Plaintiffs' Motion for Attorney's Fees and Costs		0.25 3.50	0.88
9/13/2018 - N	Clark County District Court - Notice of Entry of Order Regarding Plaintiffs' Motion for Attorney's Fees and Costs		0.25 3.50	0.88
9/24/2018 - N	Clark County District Court - Certified Copy Fee (Order Regarding Plaintiffs' Motion for Attorneys Fees and Costs)		0.25 5.00	1.25
- N	Recordation Fee - Order Regarding Plaintiffs' Motion for Attorneys Fees and Costs		0.25 50.00	12.50
9/30/2018 - N	WestLaw Research 9/1-9/30/18		0.25 37.06	9.27
10/1/2018 - N	District Court Filing Fee - Plaintiff's Response to Defendants' Motion to Stay		0.25 3.50	0.88
10/31/2018 - N	WestLaw Research 10/1-10/31/18		0.25 100.93	25.23
11/21/2018 - N	District Court Filing Fee - Opposition to Defendants' Motion to Reconsider		0.25 3.50	0.88
11/30/2018 - N	WestLaw Research 11/1-11/30/18		0.25 57.79	14.45
12/18/2018 - N	Clark County District Court Document Download Fee - Transcript of Hearing on Motion to Reconsider		0.25 12.50	3.13
12/31/2018 - N	WestLaw Research 12/1-12/31/18)		0.25 189.35	47.34
1/31/2019 - N	WestLaw Research (1/1-1/31/19)		0.25 37.27	9.32
2/28/2019 - N	WestLaw Research February 2019		0.25 119.41	29.85
6/10/2019 - N	Reporter's Transcript Fee on Appeal		0.25 443.54	110.89
6/30/2019 - N	WestLaw Research		0.25 301.54	75.39
8/31/2019 - N	WestLaw Research		0.25 138.53	34.63
1/31/2020 - N	WestLaw Research January 2020		0.25 31.81	7.95

Gerry R. Zobrist and Jolin G. Zobrist Family Trust

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			<u>Qty/Price</u>	<u>Amount</u>
2/4/2020 - N	Clark County District Court Document Download - Order on Receivership		0.25 5.50	1.38
2/5/2020 - N	Clark County District Court Document Download - Renewed Application for Appointment of Receiver		0.25 101.97	25.49
2/11/2020 - N	Clark County District Court Document Download - Initial Report and Notice of Intent to Pay Receivers Fees and Expenses		0.25 19.00	4.75
2/29/2020 - N	WestLaw Research - February 2020		0.25 528.58	132.15
3/4/2020 - N	District Court Filing Fee - Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders		0.25 3.50	0.88
- N	District Court Filing Fee - Motion to Intervene and Initial Appearance Fee Disclosure		0.25 356.79	89.20
3/11/2020 - N	Court Parking Expense at Hearing		0.25 6.00	1.50
3/26/2020 - N	District Court Filing Fee - Opposition to Receiver's Motion for Instructions and Countermotion to Set Aside or Amend Receivership Order		0.25 3.50	0.88
3/31/2020 - N	WestLaw Research (March 2020)		0.25 683.39	170.85
4/10/2020 - N	District Court Filing Fee - Interveners' Motion to Move Hearing Date on Receiver's Motion for Instructions, or in the Alternative, Request to File a Reply Brief Within Five Days of Hearing (A-18-775843-C)		0.25 3.50	0.88
4/13/2020 - N	District Court Filing Fee - Notice to Appear (A-18-775843-C)		0.25 3.50	0.88
4/14/2020 - N	District Court Filing Fee - Reply to Opposition to Plaintiffs' Motion for an Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders (A-16-747800-C)		0.25 3.50	0.88
- N	District Court Filing Fee - Interveners' Reply to Lytle Trust's Opposition to Countermotion to Set Aside or Amend Receivership Order (A-16-747800-C)		0.25 3.50	0.88
- N	District Court Filing Fee - Interveners' Reply to Receiver's Opposition to Countermotion to Set Aside or Amend Receivership Order (A-18-775843-C)		0.25 3.50	0.88
4/15/2020 - N	CourtCall Appearance Fee - Hearing on Motion (A-18-775843-C)		0.25 51.00	12.75
4/30/2020 - N	WestLaw Research April 2020		0.25 250.87	62.72

Gerry R. Zobrist and Jolin G. Zobrist Family Trust

		<u>Amount</u>
Total costs		\$1,036.27
		<u>Amount</u>
For professional services rendered	<u>144.28</u>	\$38,387.07

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Exhibit 10

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Exhibit 10

1 CASE NO. A-16-747800-C

2 DOCKET U

3 DEPT. 16

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5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9 MARJORIE B. BOULDEN TRUST,)

10 Plaintiff,)

11 vs.)

12 LYTTLE TRUST,)

13 Defendant.)

14

15

REPORTER'S TRANSCRIPT

16

OF

MOTION FOR ATTORNEY'S FEES AND COSTS

17

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED THURSDAY, MAY 16, 2019

22

23

24 REPORTED BY: PEGGY ISOM, RMR, NV CCR #541

25

Peggy Isom, CCR 541, RMR

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1 LAS VEGAS, NEVADA; THURSDAY, MAY 16, 2019

2 9:24 A.M.

3 P R O C E E D I N G S

4 * * * * *

5

6 THE COURT: All right. We're going to move on
7 to the contested calendar. Next up, page 10. Marjorie
8 B. Boulden Trust, plaintiffs, versus Trudi Lytle,
9 et al.

10 THE COURT REPORTER: Does either side want
11 this reported?

12 MR. HASKIN: Yes, please. Defense.

13 THE COURT: Okay. All right. Good morning.
14 Let's go ahead and note our appearances for the record.

09:25:03 15 MR. FOLEY: Dan Foley on behalf of the
16 plaintiffs, Boulden and Lamothe Trusts.

17 MS. WANG: Christina Wang on behalf of the
18 Dismans.

09:25:13 19 MR. SMITH: Wesley Smith on behalf of the
20 plaintiffs in the consolidated case. That's the
21 Sandoval Trust, September Trust, the Zobrist Trust and
22 Dennis and Julie Gegen.

23 MR. HASKIN: Good morning, your Honor.
24 Richard Haskin on behalf of the Lytle Trust defendants.

09:25:26 25 THE COURT: All right. Once again, good

09:25:27 1 morning.

2 And it seems like this case keeps coming back.

3 Anyway, I see we have -- let me see here what we have

4 on calendar this morning. We have -- it's my

09:25:39 5 recollection we have motion for attorney's fees,

6 plaintiffs' motion.

7 We have Robert J. Disman and Yvonne Disman's

8 motion for fees and costs, defendant's motion to retax

9 and settle memorandum of costs; is that correct?

09:25:57 10 MR. FOLEY: That's correct.

11 MR. HASKIN: That's correct.

12 THE COURT: Let's go ahead and start with the

13 first motion, the plaintiffs' motion for fees and

14 costs.

09:26:06 15 MR. FOLEY: Good morning, your Honor. Your

16 Honor, I appreciate you taking this case back. We --

17 obviously, it started here. And I think the last time

18 we were in here, you had granted my motion for partial

19 summary judgment on the merits of the case. It had

09:26:22 20 gone up on appeal.

21 I had a slander of title cause of action

22 remaining in the case. My client was actually able to

23 sell her house. We have since just dismissed that

24 slander of title cause of action which resolved in its

09:26:40 25 entirety my case against the other side. They

09:26:43 1 dismissed a later amended counterclaim, newer
2 counterclaim that they brought against my client so as
3 to resolve it all.

09:26:57 4 In selling the house, my client, the Bouldens
5 sold their house to the Dismans. And so upon that
6 sale, the Lytles then sued the Dismans and brought them
7 in. The Zobrists and the other trust represented by
8 Mr. Smith are other homeowners in that same association
9 that actually contacted me. I told them I couldn't
09:27:18 10 represent them because of a conflict.

11 So Mr. Smith came in, and then in front of
12 Judge Bayliss filed a similar motion for summary
13 judgment that you had granted, and Judge Bayliss
14 granted that.

09:27:34 15 My case -- your decision in my case went up on
16 appeal and has been affirmed by the Supreme Court. So
17 now I'm back asking for attorney's fees here, and
18 costs. The attorney's fees under 18.010 can be awarded
19 under two circumstances. One, if there's a contract
09:27:56 20 between the parties allowing for the same; or, two, if
21 the Court can find that the suit was brought or
22 maintained without reasonable ground or to harass the
23 prevailing party. We, I believe, prevail on this
24 motion under both bases.

09:28:13 25 The contract in this case is actually the

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09:28:15 1 CC&Rs which has a provision in it that allows for the
2 award of attorney's fees, which provides in any legal
3 or equitable proceeding --

4 THE COURT: For the record, that's paragraph
09:28:27 5 25?

6 MR. FOLEY: Correct.

7 THE COURT: Yes, okay.

8 MR. FOLEY:

9 In any legal or equitable proceeding for
09:28:30 10 the enforcement of or to restrain the violation
11 of the declaration of covenants, conditions,
12 and restrictions, or any provisions thereof,
13 the losing party or parties shall pay such
14 amount as may be fixed by the Court in such
09:28:45 15 proceeding.

16 In this case, the Lytles maintained that under
17 the CC&Rs they were entitled to attach this judgment
18 that they had obtained against the association against
19 my client's property.

09:29:05 20 Our position and in our complaint was that
21 under the CC&Rs, this judgment was not recordable
22 against my client's properties because under the CC&Rs
23 any action between homeowners had to be between
24 homeowners directly, not against an association. So
09:29:28 25 that, therefore, this judgment against the association

09:29:30 1 could not attach.

2 Also, both sides argued, that under the CC&Rs,
3 and it was found by this Court and by Judge Leavitt in
4 the underlying case, that this was not a regular
09:29:47 5 homeowners association. It was a limited purpose
6 association.

7 THE COURT: And I remember that.

8 MR. FOLEY: Right.

9 THE COURT: Because I remember -- this -- I
09:29:52 10 had this case, and I had another construction defect
11 case specifically dealing with a limited purpose
12 association. And you don't see it very often. It's
13 somewhat unique.

14 MR. FOLEY: Right.

09:30:03 15 THE COURT: But I felt it was a very
16 interesting issue. As you remember, I kind of dug down
17 a little deep into it. I wanted to make sure I had the
18 right answer.

19 MR. FOLEY: We had a couple of very extensive
09:30:14 20 hearings --

21 THE COURT: Yes.

22 MR. FOLEY: -- on this matter. Yes. And, of
23 course, under the limited -- the key under the limited
24 purpose association is that there's a provision that
09:30:20 25 says if it's a limited purpose association that the

09:30:25 1 other provisions within 116, only a few provisions
2 within 116 apply.

3 One of them that doesn't apply is subsection
4 .3117 which is the provision that they relied on that
09:30:37 5 says you can record a judgment against the association
6 against all of the individual homeowners.

7 THE COURT: Right.

8 MR. FOLEY: And it will attach. That didn't
9 work here.

09:30:47 10 So this action was an action to restrain their
11 violation of the CC&Rs, and an action on our part to
12 enjoin and to enforce the CC&Rs for those two reasons.
13 So on that basis, we're entitled to an award of
14 attorney's fees under that contract, the CC&Rs.

09:31:07 15 THE COURT: Now, here's my question. And I
16 guess I want to compare and contrast Chapter 18 as it
17 relates to prevailing party. And we kind of -- and I
18 think you talked about it earlier on. You said, Look,
19 Judge, there's no -- there's no reasonable grounds or
09:31:26 20 unreasonable grounds for a lawsuit. I understand that.
21 I know there's another factor I can consider too. But
22 it seems to me that when I read paragraph 25, there's
23 slightly different language there that it's not
24 prevailing party language. We talk about loser.

09:31:41 25 MR. FOLEY: Right.

09:31:42 1 THE COURT: That's what it says, right?

2 MR. FOLEY: Right.

3 THE COURT: I'm just -- you know, and so here
4 we have a contract that runs with the land. And it
09:31:47 5 says:

6 In any legal or equitable proceeding for
7 the enforcement of or to restrain the violation
8 of the declaration of covenants, conditions,
9 and restrictions, or any provision thereof --

09:32:02 10 And this is the language that's -- that is
11 different. And I just want to get your interpretation
12 of that. It says:

13 "The losing party or parties shall pay in
14 such amount as may be fixed by the Court in
09:32:20 15 such proceedings."

16 And what I find fascinating, number one, what
17 is losing party. We'll talk about that.

18 But, number two, it appears to me the language
19 is slightly different than Chapter 18 in this regard.

09:32:34 20 Because it says losing party shall pay, right? And
21 that's a slightly different analysis as to making a
22 determination as to whether a lawsuit was brought for
23 the purposes of harassment, or whatever, or whether
24 there was unreasonable grounds for the determination
09:32:52 25 after you determine who's a prevailing party. Much

09:32:55 1 different standard appears to me.

2 MR. FOLEY: It is. It is. And, again,
3 it's -- these are the two different bases that are
4 provided under 18.010 for an award of attorney's fees.

09:33:04 5 THE COURT: Right.

6 MR. FOLEY: And on this one, I just got to say
7 absolutely consistent with this case, someone drafts
8 language like this that instead of using prevailing
9 parties, which is the norm, they have to go to losing

09:33:17 10 party. I don't think there's any difference between
11 the two at the end of the day. You're either the
12 prevailing party or you're the losing party. And in
13 this case I don't think there's any question based on
14 your summary judgment and the Supreme Court's
09:33:34 15 affirmance that the Lytles are the losing party in this
16 battle over these CC&Rs.

17 THE COURT: And so once I -- and tell me if
18 I'm wrong on this, Mr. Foley. Once I make a
19 determination as to losing party, there's not
09:33:48 20 additional analysis, for example, whether there's
21 unreasonable grounds because the contract or the CC&Rs
22 says shall pay.

23 MR. FOLEY: Well, no. I think that --

24 THE COURT: Do I have to make that
09:34:00 25 determination?

09:34:01 1 MR. FOLEY: I think you can -- I think you can
2 award attorney's fees. And I ask you to award
3 attorney's fees on both bases. But you could stop it.
4 You could stop it with either one. You could find
09:34:12 5 unreasonableness, and say I don't even need to reach
6 the issue of the contract. Or you find it based on the
7 contract and say I don't need to go to
8 unreasonableness. Or I think you can say both. I'm
9 going to award attorney's fees on both bases that the
09:34:26 10 losing party needs to pay under the contract and the
11 Lytles were unreasonable in bringing and maintaining
12 this cause of action, or the defense of this case.

13 THE COURT: I understand.

14 MR. FOLEY: Okay.

09:34:38 15 So, and again, I've gone through fairly at
16 nauseam in the brief about the unreasonableness of this
17 position. But I want to point out just a couple of
18 things that when my clients discovered that the
19 judgments had been recorded against their property,
09:34:56 20 and, of course, the Bouldens were just in the process
21 of trying to sell their property, so they had a cloud
22 on the title, communications were initiated by counsel
23 prior to me on October 6, 2016, with the Lytles'
24 counsel. And said, Look, this is what you've done.
09:35:16 25 The .3117 limited purpose association, the whole brief,

09:35:22 1 if you want, was laid out, and then was ignored, and
2 then there was a claim of a conflict, so I got
3 involved.

4 I then wrote to counsel in November.

09:35:31 5 Basically repeated what Mr. Connaghan had previously
6 related to them. And the first response I got was,
7 Hold on. We have no intention of clouding title to
8 this property. We'll get this resolved by Monday.

9 So it's okay. In essence, you know, we're
09:35:53 10 wrong. Give us a minute, and we'll take care of this.
11 Then that didn't happen. And not only did it not
12 happen, my clients, because of the litigious history in
13 this case which goes back to 2006, offered up \$50,000
14 to settle the case.

09:36:12 15 And then I said I'm going to file a lawsuit if
16 we don't get this settled. The response was we
17 wouldn't settle it for 50. Actually, my clients didn't
18 offer 50, but he said they wouldn't even take 50. And
19 they said, and if you file a lawsuit, you will be met
09:36:29 20 with a counterclaim that includes a claim for
21 initiating judicial foreclosure proceedings to sell
22 your houses because of the judgment that we've recorded
23 against them.

24 So that's how this all starts. The complaint
09:36:46 25 gets filed in December. By February or March, this

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09:36:49 1 Court had granted summary judgment on that issue.

2 And it was -- it was complicated but, at the
3 end of the day, I don't think all that difficult. It's
4 complicated because the homeowners association statutes
09:37:05 5 are different and we had to wade through the limited
6 purpose association thing here.

7 But when you look back at the underlying case
8 that was the Lytles' case where they got the judgment,
9 they have in the order they prepared for Judge Leavitt
09:37:19 10 that this was strictly a limited purpose association.

11 THE COURT: Well, and I don't mind bringing
12 this up because I read the points and authorities. And
13 one of the issues I found somewhat fascinating in this
14 regard is the fact that, wasn't it Judge Leavitt that
09:37:38 15 had NRED Two -- NRED One litigation, right?

16 MR. FOLEY: Yes.

17 THE COURT: And it appeared to me she awarded
18 attorney's fees and costs in that litigation based upon
19 the original CC&Rs and the amended CC&Rs.

09:37:51 20 And the reason why I'm bringing it up, I'm
21 wondering I have a question for defense counsel, but if
22 fees and costs could have been awarded pursuant to
23 those CC&Rs, why wouldn't I award them pursuant to the
24 CC&Rs in this case?

09:38:03 25 Because at the end of the day I think what

09:38:05 1 you're doing, it appeared to me, and, I guess, this
2 could be argued, but what you were attempting to do is
3 essentially enforce the original declaration of
4 covenants, conditions, and restrictions as set forth.

09:38:19 5 And, consequently, this was a limited purpose
6 association. And as a matter of law under Chapter 116,
7 the fees and costs that were awarded in the prior
8 litigation could not attach to your client's home.

9 MR. FOLEY: Correct. And that's -- and that's
09:38:36 10 exactly what happened. The Lytles in that underlying
11 case were maintaining that the original CC&Rs were the
12 ones that were applicable, and they won.

13 And the Court declared it was a limited
14 purpose association. Which, again, that's their
09:38:50 15 judgment that says effectively then .3117 doesn't
16 apply, but they ignore that and record against us.

17 And then even beyond that, if you'll recall,
18 your Honor, you granted the summary judgment which
19 expunged the recorded abstracts of judgment. At the
09:39:13 20 moment that a release of these abstracts was -- were
21 recorded with the Court, with the recorders' office,
22 the Lytles recorded a lis pendens regarding this case
23 within a minute after releasing the abstracts, so that
24 my client still could not sell their house.

09:39:36 25 Spoke with counsel. Wrote with counsel and

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09:39:39 1 said get rid of these. This is nonsense. You've
2 absolutely violated the spirit of this order and
3 everything we were trying to accomplish. Refused to do
4 it. I had to bring another motion, which your Honor
09:39:51 5 summarily granted and struck the lis pendens.

6 After that, they bring in the Dismans. After
7 that they refuse to recognize your Honor's order in
8 this case with respect to the Zobrists. And they have
9 to go through and file all their motions for summary
09:40:09 10 judgments. And so some -- there is NRED Two litigation
11 that's involved, so there's additional issues. But, in
12 essence, it's all still the same. It's all still the
13 same as far as the merits of this case.

14 So I think that there is more than sufficient
09:40:24 15 basis for this Court to find that the Lytles throughout
16 the entirety of the case, even prior to my filing the
17 complaint, have acted unreasonable, unreasonably with
18 respect to maintaining their defense in this case and
19 filing their counterclaim against my clients.

09:40:43 20 For those reasons, your Honor, and I think
21 my -- there was a -- with respect to my attorney's
22 fees, the only thing that I think counsel really said
23 Well, there's a couple of things he said he thought
24 were unreasonable. One, there was some duplication,
09:40:57 25 but there's not. At a point in time in the case

09:40:59 1 between the Bouldens and Lamothes, I started dividing
2 my time so that you'll see -- you'll see duplicative
3 bills, but they're all for half the hourly rate.

4 That's my full rate. Half goes to the Dismans --
09:41:14 5 excuse me to the Bouldens and half going to the
6 Lamothes.

7 And then otherwise counsel complains about
8 some things that got filed that maybe had to be redone,
9 but everything was done in good faith. Nothing was
09:41:28 10 ever started from scratch. I think I filed a motion to
11 strike the judgments to begin with. And then kind of
12 after a short hearing with your Honor, turned it into a
13 motion for summary judgment. But all of the fees were
14 reasonable. All of them were necessary.

09:41:46 15 The total of my fees are \$74,320. The total
16 of my costs are \$1,413 and, I believe, 80 cents.

17 THE COURT: What is that figure again,
18 1,000 --

19 MR. FOLEY: -- 413- --

09:42:02 20 THE COURT: -- 413- --

21 MR. FOLEY: I can't even read my notes. It's
22 either 80 or 60 cents.

23 And, you know, there is quarrel by counsel
24 about the language with respect to costs and whether
09:42:24 25 they're awardable.

09:42:28 1 Language being, is this an action for the
2 recovery of real property or adjustment right thereto.
3 Contend that it is, especially based on the Lytles'
4 threat to judicially foreclose and dispossess my
09:42:46 5 clients of their property.

6 Otherwise, I rely on the remainder of my brief
7 on that point. Not spending any more of the Court's
8 time on a \$1400 cost bill.

9 THE COURT: Okay. Thank you, sir.

09:43:01 10 MR. FOLEY: Thank you, your Honor.

11 MR. HASKIN: Good morning, your Honor. I
12 think the best place to start is probably in addressing
13 some of the Court's points that were made during
14 Mr. Foley's arguing and then address some of the
09:43:18 15 additional arguments.

16 I would start with the premise that this is
17 not an action that was brought by Boulden and Lamothe
18 to enforce the original CC&Rs. It's just not.

19 In fact, if you read their complaint, their
09:43:28 20 first amended complaint, there may be even a second
21 amended complaint, there's not even a mention of the
22 CC&Rs in there. This is an action for quiet title,
23 declaratory relief, and slander of title. That's it.
24 There was no mention of the CC&Rs, period.

09:43:42 25 And I think that's evidenced by the fact that

09:43:44 1 they did not go through the mandatory process of
2 Chapter 38 arbitration. If this were an action to
3 enforce CC&Rs or even an action to enforce some
4 provision of 116, they would have had to go through
09:43:56 5 Chapter 38 ADR. It's mandatory.

6 And, your Honor, if you look at the McKnight
7 case, the Supreme Court case --

8 THE COURT: Well, tell me this. I understand
9 it's mandatory, but at the end of the day it would be
09:44:07 10 up to you to make a determination as to whether motion
11 to dismiss should be filed because they failed to meet
12 the condition precedent as it relates to NRED.

13 MR. HASKIN: Correct, your Honor. We didn't
14 file such a motion because there's no mention of the
09:44:20 15 CC&Rs anywhere in their operative pleadings.

16 Not only that, had I filed such a motion, your
17 Honor, under McKnight, you would have -- you would have
18 denied the motion to dismiss because the McKnight
19 ruling by the Supreme Court stands for the proposition
09:44:31 20 that a homeowner can bring a quiet title action because
21 it's not an action to enforce CC&Rs. It's not an
22 action under Chapter 116.

23 THE COURT: Here's my question. At the end of
24 the day what was my decision based upon?

09:44:49 25 MR. HASKIN: Your decision, your Honor, in the

09:44:50 1 partial summary judgment motion?

2 THE COURT: Yes.

3 MR. HASKIN: Your decision was based on the
4 fact that we did not have any right to record the
09:44:59 5 abstracts of judgment pursuant to Chapter 116.

6 THE COURT: Right.

7 MR. HASKIN: But that was our defense this was
8 not an action to enforce or to restrain a violation of
9 the CC&Rs.

09:45:08 10 In other words, it puts -- if you look at the
11 language, your Honor, it puts the -- it reads from the
12 plaintiffs' state of mind. An action to enforce or the
13 restrain the violation were they -- were the plaintiffs
14 seeking to enforce some provision of the CC&Rs? No,
09:45:26 15 they weren't. Were they seeking to restrain a
16 violation of the CC&Rs? No, they weren't.

17 We recorded an abstract of judgment against
18 their property.

19 THE COURT: I understand that. But they --
09:45:37 20 but the position that was taken by Mr. Foley, I guess,
21 from day one was essentially this: Look, Judge,
22 pursuant to the CC&Rs, this was a limited purpose
23 association. This was not a Chapter 116 association.
24 And, Judge -- and the only way I could make that
09:45:57 25 determination I had to review the CC&Rs in this case.

09:46:01 1 Then when I reviewed the CC&Rs, ultimately, I came to
2 the conclusion of a couple of things. Number one, I
3 realize there was a decision, ultimately, by
4 Judge Leavitt, right? That's controlling.

09:46:14 5 But just as important too, I read the CC&Rs.
6 And I say, Well, after digging a little deep and
7 becoming acquainted with Chapter 116 and some of the
8 exceptions, that's what I'll call it, I said, yeah,
9 relying upon the CC&Rs, this is a limited purpose
09:46:33 10 association. As a result it would be improper as a
11 matter of law to file the abstract on the homes.

000794 12 MR. HASKIN: Your Honor, with due respect, I
13 don't think that was your decision. And you can
14 revisit your order. Your decision, your Honor, was
09:46:46 15 with respect to Judge Leavitt due to our successful
16 action and the Supreme Court's ultimate affirmance of
17 that. Your -- you didn't have to make that decision.
18 You did have to review the CC&Rs.

19 THE COURT: But didn't I --

09:46:58 20 MR. HASKIN: You -- Judge Leavitt had already
21 determined this was a limited purpose association, and
22 that's where your Honor went straight to.

23 THE COURT: I understand. I respect what
24 you're saying. But it's my recollection that I
09:47:07 25 reviewed the CC&Rs in this case as part of my

09:47:11 1 decision-making process. Because one of the things I
2 do is this, and I -- and I just don't rely upon what
3 other trial judges do. I'm pretty much an independent
4 thinker. And I realize that was the ruling. But here
09:47:24 5 we had a case that came up in front of me. And I
6 looked. Yeah, I looked at the case history. But I
7 didn't make my decision like a robot, or automaton, or
8 whatever. I think.

9 And maybe -- it's been a while but counsel can
09:47:41 10 probably refresh my recollection on this. But it's my
11 understanding this wasn't a scenario where we had very
12 limited discussion in open court. I think we had
13 vigorous discussion on these issues. You can tell me
14 if I'm wrong on that in my recollection. I mean, I'm
09:47:56 15 getting a little older.

16 MR. HASKIN: Your Honor, my suggestion wasn't
17 that you didn't review everything.

18 THE COURT: Right.

19 MR. HASKIN: Again, the original CC&Rs, just
09:48:03 20 the plain reading in paragraph 25, doesn't take into
21 account your Honor's perspective in your Honor's
22 analysis of the case. It looks at what the plaintiffs
23 were seeking to do.

24 Were the plaintiffs seeking to enforce the
09:48:16 25 CC&Rs? No. They weren't.

09:48:18 1 Were the plaintiffs seeking to restrain some
2 offense to the CC&Rs? No, they weren't.

3 They were doing neither of those things, and
4 it's evidenced by a few things. One, there is no
09:48:30 5 reference to any of these things in any of the
6 operative pleadings from plaintiff.

7 The second thing is, in your Honor's order
8 that you signed granting partial summary judgment, it
9 reflects a ruling by Judge Leavitt that found that this
09:48:43 10 was a limbed purpose association.

11 And your Honor may have reviewed everything.
12 And I don't discount that one bit. But the provision,
13 your Honor, looks simply at the plaintiffs' state of
14 mind as to what they were trying to do. What were they
09:48:59 15 trying to do? Were they seeking to -- and they
16 weren't. They clearly weren't. This was a quiet title
17 action, and that's it. And a slander of title action.
18 That's it.

19 THE COURT: Okay. Now, my next question is
09:49:10 20 this. In light of Judge Leavitt's ruling in this case
21 where she made the determination as a matter of law
22 that this was a limited purpose homeowners
23 association -- and I do remember. It's just really
24 coming back to me now because it's my recollection that
09:49:27 25 the limited purpose specifically focused on the

09:49:32 1 entryway. And I think it dealt specifically with
2 plants and flowers and gardening, right?

3 MR. HASKIN: Yes.

4 THE COURT: It's coming back to me. It is.
09:49:40 5 But here's my point. In light of her ruling that this
6 was a limited purpose association, how could a lien or
7 abstract be filed on the homeowners that were part of
8 this limited association? Because this wasn't -- and
9 we can all agree now. The law is pretty clear because
09:50:04 10 Nevada Supreme Court has basically come down in this
11 matter a couple of times, right, that this was a
12 limited purpose association.

13 And when I reviewed the law, and I understand
14 maybe I was looking at it from an issue preclusion
09:50:19 15 claim preclusion standpoint. But nonetheless, if that
16 determination is made, my next question is this: How
17 could there be reasonable grounds for bringing a
18 lawsuit -- I'm sorry, for filing abstracts on the
19 individual homeowners' property? How would that be
09:50:41 20 reasonable in light of the statutory scheme?

21 MR. HASKIN: Well, your Honor, let me refresh
22 your recollection a little bit more with respect to the
23 Leavitt ruling, your Honor.

24 Leavitt granted attorney's fees pursuant to
09:50:52 25 three things. One, the original CC&Rs. But more

09:50:55 1 importantly, she granted it pursuant to Chapter 116.

2 And she granted it pursuant to the amended CC&Rs. And

3 in her ruling, your Honor, she found a few things. But

4 what she, ultimately, found was that for a period

09:51:07 5 between, I forget, 1997 -- or I'm sorry 2007 and about

6 2013, for this almost seven-year period of time this

7 association acted as a full-blown unit association

8 pursuant to all the provisions of Chapter 116.

9 And in her ruling she made an equitable

09:51:27 10 decision, your Honor. She made an equitable decision

11 that here you had an homeowners association saying we

12 are a full-blown homeowners association.

13 My clients brought suit to make sure this was

14 a limited purpose association. Ultimately prevailed.

09:51:40 15 Judge Leavitt ruled that because you acted as a

16 full-blown homeowners association during this entire

17 time, that the plaintiffs in that case, the Lytles,

18 should be afforded equitable relief of the attorney

19 fees provision that the association would have been

09:51:58 20 entitled to had it prevailed in the same case.

21 It said, Look, had the association prevailed

22 in this case, it would have been entitled to attorney's

23 fees pursuant to the amended CC&Rs in Chapter 116.

24 The Lytles should be afforded that same

09:52:13 25 relief. And, your Honor, when we brought -- when we

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09:52:16 1 recorded the abstracts and maintained our defenses in
2 this case, it was under that same equitable reasoning
3 that Judge Leavitt applied in the underlying case.
4 That here you had a Court that awarded my clients
09:52:27 5 attorney's fees pursuant to the amended CC&Rs in
6 Chapter 116, but now we're not going to entitle them to
7 enforce or collect the attorney's fees pursuant to the
8 same provisions that we awarded the attorney's fees.
9 That was the question in this case. And, your Honor, I
09:52:42 10 recognize --

11 THE COURT: Here's my question, though. And
12 I'm going to take another step. Because at the end of
13 the day it wasn't equitable -- it wasn't an equitable
14 decision I made regarding --

09:52:52 15 MR. HASKIN: It was not, your Honor.

16 THE COURT: You know, and so -- and the reason
17 why I say that is this because I thought. I was
18 listening to you. And I don't -- the only way --
19 because understand this, and I think the law is really
09:53:03 20 clear when it comes to the formation of covenants,
21 conditions, and restrictions as they run with land.
22 And we all know how that has to be done vis-à-vis the
23 declarant and so on. So I don't have to go into that
24 history. We know that.

09:53:22 25 But here's my next question because without

09:53:27 1 the agreement of all of the homeowners, which could be
2 an exception, they all could say, Look -- everyone that
3 owned the property said, Look, we want to be an
4 association. We all sign off. We agree to have those
09:53:37 5 covenants that run with the land. And understand,
6 number one, that didn't happen. But just as important
7 too, and I thought this was a very, very important
8 point I considered, was the fact that the plaintiffs,
9 Mr. Foley's clients, specifically opted out of the
09:53:53 10 litigation. That's my recollection.

11 And is that correct, Mr. Foley? Didn't they
12 opt out? Didn't they opt out or didn't want to
13 participate in the litigation?

14 MR. FOLEY: They did not support the other
09:54:08 15 homeowners when they were asked to do so on behalf of
16 the association.

17 THE COURT: Right.

18 MR. FOLEY: That's correct. There really
19 wasn't an opting in or out of the litigation per se.

09:54:17 20 THE COURT: And I realize this isn't Rule
21 23(a) and (b). I get that. Opt in, opt out.

22 MR. FOLEY: Right.

23 THE COURT: This isn't a class action. But I
24 thought some of the testimony was essentially this.

09:54:26 25 They didn't want to participate in the --

09:54:28 1 MR. FOLEY: They did not support it. That's
2 correct.

3 MR. HASKIN: Your Honor, that's incorrect.
4 What happened was -- that's absolutely incorrect. What
09:54:33 5 happened, your Honor, was they passed around the
6 amended CC&Rs to all the homeowners after a meeting
7 they had and asked everybody to sign them.

8 Ms. Boulden and Ms. Lamothe elected not to
9 sign. However, during the underlying litigation and
09:54:46 10 during depositions of both Ms. Lamothe and Ms. Boulden,
11 they both ratified the CC&Rs and said during their
12 depositions they fully supported them. They had
13 initial reservation. That's why they, ultimately,
14 didn't sign in the first place, but later on they did
09:55:00 15 sign on to the CC&Rs.

16 With respect to the litigation, your Honor,
17 the litigation was never against the individual
18 homeowners. And they were never asked to opt in or opt
19 out. However, Ms. Boulden and Ms. Lamothe both
09:55:14 20 voluntarily gave money to the fund to the association
21 to prosecute claims against the Lytles.

22 So they were willing participants in this
23 association. They took place in it. They ratified the
24 actions of the association as a full-blown homeowners
09:55:29 25 association. Had Ms. Lamothe and Ms. Boulden refused

09:55:33 1 to sign on, the amended CC&Rs never would have
2 happened. They wouldn't have had enough votes.

3 THE COURT: But they didn't sign on, right?

4 MR. HASKIN: No. They ultimately did. They
09:55:42 5 ratified it.

6 MR. FOLEY: I don't believe that's the case.

7 MR. HASKIN: That's absolutely the case.

8 THE COURT: I'm talking about Ms. -- the
9 plaintiff in this case signed off on the CC&Rs?

09:55:50 10 MR. HASKIN: Your Honor, during deposition
11 they said We came around to support the CC&Rs.

12 THE COURT: But that's a different issue. I
13 mean.

14 MR. HASKIN: No. It really isn't, your Honor.

09:55:58 15 THE COURT: Well, it is. Well, I mean, I
16 don't think that's an issue for me to decide today.

17 MR. HASKIN: No, it's not.

18 THE COURT: But unless they signed the CC&Rs,
19 every homeowner, it would not convert to a Chapter 116
09:56:10 20 full-blown homeowners association. And I feel -- just
21 like I felt comfortable in my prior decision in this
22 matter, I feel fairly comfortable that that's what the
23 law would provide. They would have to sign off on it.
24 It would have to be recorded, et cetera, et cetera.

09:56:23 25 But let's move on from that. Tell me -- so

09:56:26 1 you're saying -- you're saying, Look, Judge, at the end
2 of the day, this case wasn't about the original CC&Rs,
3 right? And you're saying, number two, Judge, the acts
4 in filing the abstracts resulting in the, I guess,
09:56:43 5 phase three of the litigation was not unreasonable.

6 MR. HASKIN: Okay. So phase three, this being
7 phase three, your Honor? I'm sorry.

8 THE COURT: Yes.

9 MR. HASKIN: Yeah. I don't think it was
09:56:56 10 unreasonable. And I think, your Honor, when you look
11 at the Frederic and Barbara Rosenberg Trust case that
12 was recently handed down by the Supreme Court with
13 respect to this very issue, I think you can draw
14 parallels.

09:57:07 15 In that case the plaintiff was denied summary
16 judgment. Ultimately, lost the case fairly early on.
17 Similar to this case. And in that case the district --
18 the Supreme Court actually held that it -- the
19 plaintiffs in that case didn't have a, you know, very
09:57:21 20 good basis for maintaining the action, but the Court --
21 Supreme Court recognized the fact that what they were
22 trying to do was they were trying to look into Nevada
23 law and possibly expand Nevada law with respect to the
24 legal issues that were involved in that case. And so
09:57:37 25 it would recognize that. I think there are parallels

09:57:39 1 to that, your Honor, in this case.

2 Your Honor, I'm around Chapter 116 all the
3 time because our firm does a lot of homeowners
4 association law. It is a very -- with all due respect
09:57:49 5 to the legislature, it's a very poorly drafted statute.
6 And there are holes in that statute all over the place.

7 For instance, we brought another action in
8 NRED, referred to in this case as NRED Three, where we
9 asked the Court to enforce an election because the
09:58:04 10 homeowners association had not maintained an election,
11 I think, in over five or six years. In that case
12 Chapter 116 requires a limited purpose association have
13 a board, but it doesn't have any provisions with
14 respect to the election of that board.

09:58:18 15 So you have to have one, but you can't
16 theoretically elect one. So we brought an action
17 under -- we brought an action before the district
18 court. And the district court, ultimately, looked to
19 other statutes and found that an election had to be had
09:58:33 20 and ordered an election to take place. It did so
21 outside of Chapter 116. In essence, it fashioned a
22 statutory remedy after -- out of several different
23 statutes recognizing the hole in Chapter 116.

24 There's other holes. For instance, you have
09:58:47 25 to have a reserve budget, but you can't legally assess

09:58:51 1 anybody fees as a limited purpose association because
2 there's no assessment provision. But somehow you're
3 supposed to get money for reserves. There are holes
4 all over the place in the statute. And really what
09:59:00 5 our -- what our defense in this action was based on was
6 that.

7 And number two was the fact that Judge Leavitt
8 in her prior ruling, and also Judge Bare in his prior
9 ruling, recognized that the homeowners association had
09:59:15 10 acted as a full-blown homeowners association for about
11 six years, over six years, and had awarded the Lytles
12 fees pursuant to the amended CC&Rs and Chapter 116,
13 which theoretically were not applicable because they
14 are now a limited purpose association. And the Lytles
09:59:33 15 were merely trying to seek out the remedies afforded
16 under those same -- that same statute and the same
17 amended CC&Rs and enforcing the judgment it had been
18 granted. That, ultimately, was the defense. I don't
19 think that's unreasonable. It's certainly not brought
09:59:48 20 to harass or annoy.

21 THE COURT: Well, you notice I didn't discuss
22 that.

23 MR. HASKIN: Excuse me?

24 THE COURT: I didn't discuss that.

09:59:54 25 MR. HASKIN: I understand, your Honor.

09:59:55 1

THE COURT: I didn't discuss that.

2

MR. HASKIN: Yeah. I think your Honor's focus

3

is on reasonableness. And I think there were

4

reasonable grounds to do that. And that's -- that's

10:00:05 5

really -- was the focus of the case.

6

And, your Honor, I think in the initial

7

hearing, if I could take your Honor back to the first

8

hearing we ever had in this action was for a

9

preliminary injunction brought by Boulden and Lamothe.

10:00:19 10

And at that hearing, that hearing was briefed. They

11

submitted briefs. We submitted briefs. We came before

12

your Honor.

13

And your Honor recognized that this was a

14

complex issue. So much so that the preliminary

10:00:30 15

injunction motion was withdrawn by plaintiffs' counsel,

16

and a summary judgment was put on -- put into calendar

17

some -- later because your Honor wanted additional and

18

further and more substantial briefing on the matter.

19

Your Honor took a look at the briefing on the

10:00:44 20

preliminary injunction and said, you know what, this is

21

an interesting issue. Reading the briefs I have before

22

me I don't know which way to go. I want more briefing

23

on the subject.

24

And, your Honor, we sat here and I think had

10:00:55 25

oral argument for over an hour and a half on the issue.

10:00:58 1 I don't think if the position were so unreasonable, if
2 the Lytle Trust was so out of their gourde, I don't
3 think, your Honor, would have made such a comment that
4 this was an interesting issue and it required
10:01:12 5 substantial briefing. And that's exactly what we did.

6 THE COURT: Well, there's a lot of reasons I
7 do that. And the reason for it is, first and foremost,
8 I realize the importance of having a significant record
9 in making a decision. Because at the end of the day
10:01:28 10 what guides me is this: I want to be on the right
11 side. That's really what it comes down to. So I make
12 sure that we have a significant record.

13 So what do I do with this? And this is out of
14 the decision by the Nevada Supreme Court. And this on
10:01:45 15 page 2 of the order of affirmance that came down dated
16 December 4, 2018. And this is what our Nevada Supreme
17 Court said. And this is, I think, five lines down on
18 page 2. It said:

19 The district court granted summary judgment
10:01:59 20 in favor of the Lytles finding that: The
21 original CC&Rs did not form a homeowners
22 association under Chapter 116, but a limited
23 purpose association.

24 And so understand this, I can't look back
10:02:23 25 because this case was on appeal. The decision didn't

10:02:28 1 come down in 2008. But it seems to me the Nevada
2 Supreme Court recognized that when I made my decision
3 in this case that the first thing I did was this: I
4 made a determination. And they say it right here.

10:02:41 5 Finding that the original CC&Rs did not
6 form a limited purpose association under
7 Chapter 116.

8 So I would think just based upon that language
9 alone, paragraph 25 of the CC&Rs as it relates to
10 attorney's fees would control ultimately my decision.

11 Now, if you disagree with that, that's okay.
12 But I always like to put my analysis on -- what I'm
13 thinking about on the record because it always serves
14 me very well, I think.

10:03:17 15 So what do I do with that?

16 MR. HASKIN: I think, your Honor -- I think
17 you go back to the fact -- your Honor, you and I just
18 may butt heads on this, but again --

19 THE COURT: It's not the first time.

10:03:25 20 MR. HASKIN: No.

21 THE COURT: That's okay.

22 MR. HASKIN: There will be more.

23 Paragraph 25, your Honor, looks at the
24 standpoint from the claimant. What were they seeking
10:03:32 25 to do? Were they seeking to enforce? And I really

10:03:35 1 think, your Honor, it comes down to this. And I
2 understand the analysis by Leavitt and our defenses.
3 But what your Honor is really talking about are
4 defenses in this case.

10:03:45 5 That's what -- that's what your analysis
6 focused on. Your Honor, when they came to you, they
7 said they have no right to record an abstract of
8 judgment on this property. We're seeking to quiet
9 title. We're seeking declaratory relief.

10:03:58 10 THE COURT: Why did they have no right?

11 MR. HASKIN: But, your Honor, here's the
12 point.

13 THE COURT: Why?

14 MR. HASKIN: The paragraph 25 looks at their
10:04:06 15 subjective intent. It doesn't look at mine.

16 THE COURT: I don't --

17 MR. HASKIN: It's an action to --

18 THE COURT: I don't -- but here's the thing.

19 I don't think paragraph 25 looks at any intent.

10:04:18 20 Because this is what it says. It says:

21 In any legal or equitable proceeding for
22 the enforcement of or to restrain violation of
23 the declarations of covenants, conditions, and
24 restrictions or any provision thereof.

10:04:38 25 And this is what I quoted when Mr. Foley was

10:04:41 1 up here.

2 The losing party or parties shall pay in
3 such an amount as they may -- as may be fixed
4 by the Court in such proceeding.

10:04:53 5 And so it says if you lose, the Court is going
6 to pay attorney's fees.

7 MR. HASKIN: Your Honor, two things. One, I
8 hadn't got to the losing provision. But I haven't
9 forgot it. I got my notes.

10:05:02 10 THE COURT: You got to come back to that.

11 MR. HASKIN: But we'll come back to that. But
12 let me start with the first part. Okay. In an
13 action ... Who's action is this? Theirs. They
14 brought it. They sought it.

10:05:10 15 THE COURT: But it doesn't say that, though.

16 MR. HASKIN: It's in any --

17 THE COURT: It says in any -- in any legal or
18 equitable proceeding.

19 MR. HASKIN: Correct.

10:05:17 20 THE COURT: That's what it says.

21 MR. HASKIN: Seeking to enforce. Were they
22 seeking to enforce the original CC&Rs or amended CC&Rs?

23 THE COURT: Well, actually --

24 MR. HASKIN: No.

10:05:25 25 THE COURT: No, no, no, no. It says more than

10:05:26 1 that. It says to enforce or restrain. Right?

2 MR. HASKIN: Correct.

3 THE COURT: And so that -- to me that covers
4 everything as far as -- you could enforce the CC&Rs or
10:05:38 5 you can restrain somebody under the CC&Rs. What they
6 were doing here was essentially this, they were
7 restraining your client from filing the abstract
8 because they had no right pursuant to the CC&Rs to do
9 such a thing. Because this was a limited purpose

10:05:54 10 homeowners association, it wasn't a full-blown
11 homeowners association, there was no right to do it.

12 MR. HASKIN: Your Honor, we were seeking to
13 enforce a judgment. That's what they were seeking to
14 stop -- that's what they were seeking to restrain.

10:06:06 15 Your Honor, and to play a dangerous game of
16 hypotheticals, or ask an opposing question to the
17 judge. How would you reconciled that with the McKnight
18 case which provided that in a quiet title action it has
19 nothing to do with the enforcement of the CC&Rs?

10:06:21 20 That's what the -- this really comes down to that.

21 They filed declaratory relief and quiet title.
22 Had I brought -- had I brought a motion to dismiss
23 based on Chapter 38, that would have been denied
24 because your Honor would have correctly found that
10:06:36 25 under McKnight it has nothing to do with the CC&Rs.

10:06:39 1 They have a right to quiet title -- quiet titles of
2 their property. That has nothing to do with the CC&Rs.

3 THE COURT: But once again, is a quiet title
4 action -- does it come under any legal or equitable
10:07:01 5 proceeding for the enforcement of or to restrain
6 violation of the CC&Rs. And that's really what it -- I
7 mean, that's a fairly broad provision. That's why I
8 brought it up, first and foremost, to Mr. Foley without
9 even going to the Chapter 118, which has a different
10:07:20 10 condition. I get that.

11 Because remember Chapter 118 does two things.
12 It says by contract. Here we have a contract that runs
13 with the land. Or you can look at other factors. And
14 so it seems to me we have a very broad attorneys fee
10:07:37 15 provision here. I mean, it really is. And it runs
16 with the land. And it controls, I think, the award of
17 attorney's fees and costs in this case.

18 And I'm trying to figure out why what's in
19 front of me today would not fit under paragraph 28 of
10:07:57 20 the original CC&Rs or declarations of covenants,
21 conditions, and restrictions that were filed at the
22 time of declaration back in -- back on the 4th of
23 January, 1994. That's what I'm trying to figure out.

24 MR. HASKIN: Your Honor, your Honor. I think
10:08:16 25 your Honor has already figured it out. I think it's

10:08:18 1 just a point of disagreement at this point.

2 THE COURT: I understand.

3 MR. HASKIN: Yeah.

4 THE COURT: But that's okay.

10:08:23 5 MR. HASKIN: Yeah, I. -- your Honor, our
6 position remains unchanged. Their action doesn't even
7 mention the original CC&Rs. Never does. It never --
8 it -- declaratory relief action has nothing to do with
9 the CC&Rs. The quiet title, nothing.

10:08:37 10 They merely say this is a limited purpose
11 association, and that's it. And they have no right to
12 enforce an abstract of judgment against our property.
13 Your Honor, with respect to the second part of
14 it, the losing party, I think there is an important
10:08:52 15 aspect of that. I think that this action, ultimately,
16 the parties stipulated to dismiss. If your Honor
17 recalls --

18 THE COURT: No. I understand that's a
19 different issue.

10:09:01 20 MR. HASKIN: And I'm traversing to the next
21 issue.

22 THE COURT: Yeah.

23 MR. HASKIN: Because I think we've beaten the
24 one previously to death. I think with respect to the
10:09:09 25 losing party, your Honor, they brought an action for

10:09:11 1 two things. Well, three things. Declaratory relief
2 and quiet title, which really can be combined together.
3 The third one was slander of title.

4 Your Honor recalls he -- you initially granted
10:09:22 5 summary judgment, and I think in what was a scrivener's
6 error, granted summary judgment as to all causes of
7 action. We brought a motion to reconsider. Your Honor
8 granted our motion to reconsider and made summary
9 judgment a partial summary judgment only as to the
10:09:40 10 quiet title cause of action leaving the slander of
11 title open in this matter.

12 The slander of title, we feel, the Lytle Trust
13 feels would have been defeated at trial. But once the
14 Supreme Court decision came down, your Honor, affirming
10:09:54 15 your prior decision on partial summary judgment with
16 respect to the quiet title action, your Honor, we were
17 left in a posture to try a slander of title claim which
18 I think we would have prevailed on. However, it would
19 have been, quite frankly, a waste of judicial
10:10:14 20 resources. And they were willing to dismiss the claim
21 in exchange for us dismissing our counterclaim which
22 really had been effectively dealt with once the Supreme
23 Court handed down its decision.

24 We, ultimately -- all the parties stipulated
10:10:28 25 to dismiss the case, and on pretty much the eve of

10:10:33 1 trial. I think it was about a month before trial,
2 which I think was, ultimately, the right decision.

3 However, does that leave us a losing party in
4 this action? And, hypothetically speaking, had we
10:10:44 5 pursued this matter to trial and had we prevailed on a
6 slander of title cause of action, which I think, quite
7 frankly, we would have because there was never a
8 development of any facts through discovery as to
9 slander of title, I think, quite frankly, the
10:10:57 10 plaintiffs would have to admit they really, in theory,
11 abandoned that claim long before, we would have
12 prevailed on the slander of title cause of action.

13 Then, your Honor, would have been posed with a
14 question they won on their quiet title but lost on
10:11:11 15 their slander of title, how do I address this matter.
16 Does that make us, your Honor, the Lytle Trust, a
17 losing party in this case because we stipulated to
18 dismiss the case at the point in which we did? I don't
19 think your Honor can determine we were losing party in
10:11:25 20 this action any more than your Honor can determine they
21 were a prevailing party under law in this action. I
22 don't think they are. I think the Court's
23 recognized --

24 THE COURT: But why can't I? And the reason
10:11:36 25 for it is this is a fairly simple concept. Say,

10:11:40 1 hypothetically, I have a tort-based case that goes to
2 trial. Plaintiff prevails on the negligence claim but
3 not on the intentional tort claim. At the end of the
4 day wouldn't the plaintiff -- and they're awarded a
10:11:49 5 half a million dollars. Yeah, they don't get punitive
6 damages in the intentional torts. Wouldn't they be the
7 prevailing party for the purposes of litigation?

8 Because you don't have to prevail on all
9 claims, right? We can all agree. But if you prevail
10:12:04 10 on a significant claim that -- and I think the quiet
11 title is probably one of the most significant claims in
12 this case, why wouldn't I consider that in ultimately
13 making my decision?

14 Because it's not uncommon in jury trials where
10:12:20 15 plaintiffs prevail on one, two, or three claims for
16 relief, and they don't prevail on them all. It happens
17 all the time.

18 MR. HASKIN: There's a distinction to be made,
19 your Honor. And in those claims and specifically the
10:12:30 20 one you just mentioned that you're looking at now,
21 there are other grounds for monetary awards. In other
22 words, you can prevail on negligence and not prevail on
23 your punitive damages award and still be awarded
24 monetary -- in fact, significant monetary damages. In
10:12:47 25 this case, there were no monetary damages afforded to

10:12:51 1 plaintiffs at all with respect to the quiet title or
2 declaratory relief cause of action. Whereas, the
3 slander of title carried both monetary damages and
4 punitive damages.

10:12:58 5 THE COURT: But, I mean, ultimately, didn't
6 the quiet title action result in the expungement of a
7 significant abstract lien on the property. Because
8 what was the amount of that lien?

9 MR. HASKIN: Your Honor, I forget the exact
10:13:16 10 amount. I think it was a few hundred thousand dollars.

11 THE COURT: That's a lot of money.

12 MR. HASKIN: There's no question.

13 THE COURT: Right?

14 MR. HASKIN: That is a lot of money. And I
10:13:24 15 understand your Honor's point that it resulted in the
16 release of an abstract of judgment. But, again, an
17 abstract of judgment is not money, your Honor. It's a
18 claim or a lien on property.

19 And, your Honor, with respect to, again, a --

10:13:38 20 THE COURT: That would be a significant
21 benefit, though, we can all agree, right, to have the
22 abstract of judgment released. That would be a
23 tremendous benefit, I would think, to a homeowner.

24 MR. HASKIN: I would agree, your Honor.

10:13:53 25 Your Honor, with respect to some of the other

10:13:57 1 issues involved here, I think, your Honor, counsel
2 brought you the lis pendens matter. We did admittedly
3 record a lis pendens. Lis pendens is different from an
4 abstract of judgment. It's not a lien on property.

10:14:10 5 It's not an effective abstract of judgment. It's not
6 even a claim on title. It's notice of pendency of an
7 action, your Honor.

8 And that resulted because under NRS 116, I
9 think it's 3109, there's a requirement that a homeowner
10 advise a potential buyer of property of any lawsuit
11 involving either the association or the property.
12 Plaintiff's counsel, we asked -- we reached out to him
13 and asked him for some assurances that he would inform
14 potential buyers of a lawsuit. He declined that
15 request, so we recorded a lis pendens.

16 The lis pendens was, ultimately, released
17 pursuant to your Honor's ruling. However, they asked
18 for attorney's fees in that motion for lis pendens.
19 Your Honor denied them, and didn't believe that the lis
20 pendens were recorded in bad faith. I think, frankly,
21 the lis pendens may have prevented the ultimate sale on
22 the property to the Dismans.

23 The Dismans came into this action as a result
24 of them being subsequent purchasers of the property.

10:15:12 25 And had a lis pendens been recorded, I think they may

10:15:18 1 not have purchased the property, but they wouldn't have
2 filed a counterclaim against Boulden for not informing
3 them of the lawsuit in the first place.

4 And that was, of course, our purpose in
10:15:27 5 recording the lis pendens was to inform subsequent
6 purchasers of the property that there was an action
7 involving that property.

8 And with respect to any other issues, your
9 Honor, I'll take questions, but rely on the briefing.

10:15:40 10 I would -- one more thing, your Honor, with
11 respect to the fees, we actually did not dispute
12 duplicative fees. That wasn't a ground for anything.
13 We parsed out fees for the appeal. We don't believe
14 those can be included. They total \$11,240 for the
10:16:00 15 appeal.

16 They, Boulden and Lamothe, brought an initial
17 motion for attorney's fees, if your Honor may recall
18 which was, I think, withdrawn because it was about to
19 be denied. That was \$6,080.

10:16:15 20 We also had to bring the motion to reconsider
21 due to the fact that there was this error in the award,
22 or the order granting summary judgment that plaintiffs
23 drafted that we objected to. And that motion to
24 reconsider their opposition totaled \$4,480. Those were
10:16:33 25 our points with respect to the attorney's fees, your

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10:16:35 1 Honor. We had -- we were able to decipher his split
2 fees between the parties.

3 THE COURT: Okay, sir. Thank you.

4 Mr. Foley.

10:16:49 5 MR. FOLEY: Your Honor, just a couple quick
6 points. This argument that the amended complaint or
7 the complaint that we filed didn't have anything to do
8 with the CC&Rs is just false.

9 If you look at our amended complaint that was
10:17:14 10 filed on March 10th, 2017, in allegations No. 6 through
11 11, it recites that there was the original CC&Rs that
12 controlled this property that was recorded in 1994;

13 That pursuant to those CC&Rs this was a
14 limited purpose association under 116.1201;

10:17:40 15 That it had been judicially declared already
16 by Judge Leavitt to be a limited purpose association;

17 And that under 116.1201 subsection .3117,
18 whereby a judgment can be recorded against the
19 individual lots does not apply.

10:18:03 20 That's the entire basis of the complaint. All
21 of those allegations are repeated before each cause of
22 action, and it's the basis for the slander of title
23 cause of action, the injunction, the quiet title and
24 the declaratory relief cause of action.

10:18:20 25 So even though it's not asking for declaratory

1 relief regarding a particular provision of the CC&Rs,
2 the declaratory relief that we're asking for is based
3 entirely on the CC&Rs that prevents them from recording
4 these abstracts of judgment.

5 Similarly, I mentioned this briefly in my
6 opening, it was the Lytles who in their countermotion
7 for summary judgment that they filed, that argued that
8 pursuant to the original CC&Rs, a lien or judgment
9 against the association established under the original
10 CC&Rs attaches to each lot. So their defense was based
11 on the original CC&Rs. Our cause of action was based
12 on the original CC&Rs.

13 As far as this dismissal or the preliminary
14 injunction that we filed, your Honor, what had happened
15 in that hearing, I started out the hearing. I remember
16 telling the Court I talked to the title officer before
17 the hearing and said if I get a preliminary injunction
18 striking these abstracts of judgment will that suffice?
19 Will you give a title policy? They said no. It's
20 interim relief.

21 So I told the Court there's no really sense in
22 going forward with this. Let me reconstruct this
23 motion for preliminary injunction and put it in the
24 form of a motion for summary judgment so we can get on
25 our way to a final relief that will do some good with

1 the title company. That was the reason that that was
2 modified.

3 As far as dismissing the slander of title
4 action, as we said, there was only Mrs. -- the Bouldens
5 that had the slander of title cause. They -- once
6 summary judgment was granted, they were able to sell
7 the property to the Dismans.

8 I think there was about a \$10,000 difference
9 between the sales price that they originally had with
10 the prior buyers that went away, so we were facing the
11 prospect of going to trial for \$10,000. It was on that
12 basis that we simply dismissed that cause of action
13 once the Supreme Court had ruled.

14 There's, you know, there's never any
15 evaluation or even discussion between counsel and I as
16 to the merits of that case. No discovery was done on
17 that because we didn't do discovery while the case was
18 up on appeal. So this idea that somehow they became a
19 prevailing party because we dismissed the slander of
20 title cause of action that is at best disingenuous,
21 your Honor.

22 That's all I have.

23 THE COURT: Okay. And we have one other
24 matter, is that right?

25 MS. WANG: Yes. That's correct, your Honor.

10:21:14 1

THE COURT: Okay.

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Thereafter, the Lytles appealed the Court's

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10:23:03 1 decision in May of 2017.

2 In August of 2017, the property sold to my
3 clients, the Dismans.

4 After that, on August 17, 2017, the Lytles
10:23:16 5 brought my clients into the litigation through the
6 filing of a counterclaim which was -- actually should
7 have been asserted as a third-party complaint because
8 my clients had been previously uninvolved in the
9 litigation.

10:23:29 10 This time, not only did they assert in their
11 counterclaim that they -- they -- that the Court
12 declared that they had a right to record the abstracts
13 of judgment in the Rosemere 1 litigation against my
14 client's property, but that they also had a right to
10:23:48 15 record additional abstracts of judgment with respect to
16 a judgment they obtained on what we call the Rosemere 2
17 litigation.

18 Nothing had changed. The Court had already
19 rendered a decision that the Lytles could not do what
10:24:05 20 they were purporting to do, that they could not rely
21 upon the provision of NRS Chapter 116 that they sought
22 to rely on in recording the abstracts of judgment.

23 Nevertheless, they continued with their course
24 of action, their wrongful course of action not only
10:24:27 25 against the plaintiffs in this case, but drug my

10:24:29 1 clients in. At that time there was no need to expand
2 the scope of the litigation. If they disagree with the
3 Court's decision, they -- you know, they had already
4 appealed it to the Nevada Supreme Court. The correct
10:24:47 5 course of conduct at that point was to await a
6 determination by the Nevada Supreme Court and further
7 direction.

8 But to go against what the Court had already
9 decided, and then expand the scope of the litigation
10:25:00 10 unnecessarily by bringing my clients in on an issue
11 that had already been adjudicated was absolutely
12 unreasonable.

13 And in this case, they argue that we were not
14 the prevailing parties because Judge Bayliss, when he
10:25:17 15 took up the issue of my motion for summary judgment,
16 you know, this was a quirky procedural -- the order
17 that resulted from Judge Bayliss's decision was
18 interesting in that it granted the relief that we
19 sought in the motion for summary judgment, but denied
10:25:38 20 the motion as being moot saying that the Court had
21 already decided in our favor.

22 So the Nevada Supreme Court has stated that --
23 has qualified a prevailing party as a party that
24 succeeds on any significant issue in litigation which
10:25:59 25 achieves some of the benefit is sought to -- and bring

10:26:03 1 a lawsuit. And they also say prevailing party, the
2 term is a broad one encompassing plaintiffs,
3 counter-claimants, defendants, et cetera.

4 So we absolutely had to file a motion for
10:26:14 5 summary judgment in order to defend my client's
6 position in the case. And the Court did determine that
7 they were not entitled to be doing what they were
8 seeking to do in their counterclaim, but did it in the
9 way that stated that the issue had already been mooted
10:26:31 10 because your Honor had already decided in April of 2015
11 on the issue that this was a limited purpose
12 association. And that they were not permitted to
13 record those abstracts of judgment.

14 So the Court piggybacked off of this Court's
10:26:48 15 decision as the case -- as the law of the case saying
16 that the decision had already -- well, I respectfully,
17 your Honor, disagree that the way that Judge Bayliss
18 approached his decision because the counterclaim was
19 brought after your Honor's decision. If your Honor's
10:27:09 20 decision had -- I mean, at that time, I believe that
21 Judge Bayliss was a little confused as to the timing of
22 everything. But that being said, nevertheless, he
23 determined that your Honor's prior decision controlled
24 the subsequent counterclaim, which begs the question of
10:27:28 25 why did they even bring the counterclaim?

1 Judge Bayliss's decision was specific in that regard,
2 was that your Honor had already rendered a decision
3 which mooted their claims against my clients.

4 Again, I want to emphasize the point what was
5 the reason for bringing the action against my clients?
6 I say, at best, they did so without reasonable grounds.
7 At worse, they did so to harass. I know that those are
8 two separate grounds that the Court can use to analyze
9 a proper award of attorney's fees. But in this case,
10 your Honor, I believe, that not only did they not have
11 reasonable grounds for what they did, but the timing of
12 what they did was -- appeared punitive in nature.

13 As far as whether or not the original CC&Rs
14 control, if -- on -- whether the Court can award
15 attorney's fees I submit that the -- this action was
16 absolutely about either the enforcement of or an effort
17 to restrain the violation of the original CC&Rs.

18 The Lytles commenced this -- the initial
19 action called Rosemere 1 in 2007 to enforce the terms
20 of the original CC&Rs. They obtained a decision from
21 Judge Leavitt enforcing the original terms of the CC&Rs
22 and finding that this was a limited purpose
23 association.

24 Thereafter, they decided to glob on to
25 provisions of NRS 116 that they felt beneficial to

10:29:24 1 their current position. And they, in effect, went
2 against Judge Leavitt's initial determination prompting
3 plaintiffs in this case to seek their -- to restrain
4 them from violating the original CC&Rs and
10:29:42 5 Judge Leavitt's decision with respect to her findings.

6 So, yes, that forced this Court to again
7 revisit the issue of the nature of this association as
8 provided by the original CC&Rs. So, yes, the original
9 CC&Rs controlled the entirety of this litigation as
10:30:06 10 well as all of the previous litigations that have been
11 brought in up to this point.

12 So, with that, I would submit this on my
13 briefs, your Honor. Thank you.

14 THE COURT: Thank you, ma'am.

15 Sir.

16 MR. HASKIN: Your Honor, I'll choose to
17 incorporate my arguments prior to this one and just
18 address some of the points brought by Ms. Wang.

19 Your Honor, with respect to adding the Dismans
10:30:32 20 they -- again, taking us back. They were a necessary
21 party. So we filed the actions, and your Honor granted
22 the motion for partial summary judgment. That
23 ultimately was appealed. The house was then sold to
24 the Dismans.

10:30:45 25 The Dismans were brought into the case. And

10:30:48 1 let's play out the hypothetical, your Honor. Let's say
2 we had prevailed before the Nevada Supreme Court, and
3 the Nevada Supreme Court came back and said the
4 abstracts are, indeed, enforceable against this
10:31:02 5 property. Ms. Boulden did not own the property after
6 she sold it. The Dismans did. The Dismans needed to
7 be added.

8 And with respect to the ongoing case, your
9 Honor, we had several conversations with the Dismans
10:31:15 10 leading up to their motion for summary judgment. And
11 during those conversations, Ms. Wang called me, said,
12 Hey, I'm going to file a motion for summary judgment.
13 And we met and conferred. And in the meet and confer,
14 I said the motion is moot. I said Judge Williams had
10:31:29 15 already made a determination. Don't file the motion
16 for summary judgment. There's no point. And,
17 ultimately, Judge Bayliss correctly agreed.

18 He said, Look, this motion for summary
19 judgment is moot. Judge Williams had already made a
10:31:41 20 determination. And that was -- that was the order of
21 the Court as we expected it to be, and that was the
22 thrust of our opposition. That it didn't -- that they
23 were brought because they were subsequent owners of the
24 property.

10:31:52 25 And if you are a subsequent purchaser of a

10:31:55 1 property that is involved in litigation, whether there
2 is an abstract, or lis pendens, or anything, you're
3 going to be added to that litigation. You have to.

4 The owner -- the owner of title has to be
10:32:06 5 involved in the property or in the litigation in order
6 to be affected by the outcome of that litigation.

7 That's why they were added. They weren't added to
8 harass, or annoy, or without reasonable grounds.

9 Ultimately, we did not prevail, and the Dismans were
10:32:21 10 dismissed from the case. And it really is as simple as
11 that from our perspective.

12 The Dismans chose to file the motion for
13 summary judgment despite our urging not to. Our urging
14 was correct. That motion cost them \$11,894 in fees.

10:32:37 15 We feel those are unreasonable and should not be
16 awarded to the extent your Honor is going to award
17 fees.

18 The Dismans, like the Boulden and Lamothe
19 parties included their appeal work which was \$5,286.

10:32:52 20 That should not be included in any fee award. There is
21 also an additional \$4,000 with respect to a motion they
22 filed to continue the trial in this matter because they
23 delayed at the outset of this litigation. As is
24 explained in our brief.

10:33:07 25 Your Honor, we'll adopt the other arguments

10:33:09 1 that we made with respect to Boulden and Lamothe for
2 the rest. I'll spare the Court's time. Thank you.

3 THE COURT: Thank you, sir.

4 Anything else, ma'am?

10:33:17 5 MS. WANG: Yes, your Honor. I'm glad that
6 counsel brought up the issue of the meet and confer
7 that we had before I brought my motion for summary
8 judgment. I reached out to counsel before filing the
9 motion for summary judgment. And that was after the
10:33:40 10 Court, Judge Bayliss, had already granted summary
11 judgment in favor of the consolidated case plaintiffs.

12 And I said based upon Judge Bayliss's
13 decision, the Court is following, your Honor,
14 Department 16's original decision saying that the
10:34:03 15 recording of the abstracts of judgment were wrongful.
16 Can we agree through a stipulation that your Honor's
17 decision as well as Judge Bayliss's decision granting
18 summary judgment controls in this case so as to avoid
19 me having to bring a motion for summary judgment? That
10:34:25 20 was me reaching out to the Lytles' counsel offering to
21 forego having to bring the motion for summary judgment
22 and the expenses and the hearing and all of the things
23 associated therewith.

24 Mr. Haskin never responded to me in my
10:34:50 25 proposal. If the Court -- if this is an issue that is

10:34:53 1 going to impact the Court's decision, Mr. Haskin's
2 representation with respect to our meet and confer, I
3 will submit, your Honor, that I would -- I would -- I
4 ask permission of leave of court to submit all the
10:35:10 5 correspondences in which I sought Mr. Haskin's approval
6 that we enter into a stipulation simply saying that
7 your Honor's decision as well as Judge Bayliss's
8 decision saying that your Honor's decision is the law
9 of the case applies with equal force and measure to my
10:35:27 10 clients as far as the counterclaim is concerned so as
11 to obviate the need for me to spend additional of my
12 client's money in having to bring a motion for summary
13 judgment. When Mr. Haskin never got back to me, that
14 is when I filed my motion for summary judgment, your
10:35:47 15 Honor.

16 So it's utterly disingenuous to say that we --
17 we didn't have any need to even file the motion. At
18 that time there was a pending counterclaim against my
19 clients, and we were on the eve of trial. So, yes, we
10:36:02 20 had -- I had to protect my clients' position by
21 bringing the motion for summary judgment even though I
22 agree wholeheartedly there was no reason for us to have
23 even had to do that.

24 There was absolutely no reason also for them
10:36:16 25 to have brought my clients into this case in the first

1 place. They say that they did so because my clients
2 were indispensable parties. Again, that's disingenuous
3 on the basis that by the time that they brought my
4 clients into this case, they had already appealed your
5 Honor's decision to the Nevada Supreme Court. They
6 brought my clients into that by doing a motion with the
7 Nevada Supreme Court to add them as necessary parties.
8 I consented to the addition.

9 We participated in the appeal. So to start a
10 new case with respect to another judgment that they had
11 obtained against the HOA was absolutely unnecessary.
12 And they should have abided by this Court's decision at
13 the time and waited on the Nevada Supreme Court if they
14 felt that further instruction was necessary.

15 But to, again, expand the scope of the
16 litigation unnecessarily and then blame us for
17 expending the necessary attorney's fees and costs to
18 defend against this brand-new litigation, I think the
19 argument, frankly, is absurd.

20 All of the money that was spent in defending
21 the Dismans were reasonable and necessary in the course
22 of a two-year litigation, again, that should have never
23 been brought in the first place.

24 Thank you, your Honor.

25 THE COURT: Okay, ma'am. And thank you.

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10:37:38 1 I just have a couple of comments, and I think
2 it's important to really point this out.

3 Number one, in this case I granted summary
4 judgment, and it was reviewed by the Nevada Supreme
10:37:48 5 Court. And prior to -- I remember when this case first
6 came to me. And there's no doubt I thought it was
7 quite interesting. But I wanted to make sure that a
8 full record was developed prior to granting any summary
9 judgment motion.

10:38:01 10 Secondly, I think it's important to point out
11 that when I look at summary judgment motions, I'm very
12 cautious. I always want to make sure we have a
13 complete record. I want to take any issues regarding
14 the procedural potential problems in the case off the
10:38:15 15 record, or I want to take them out of play.

16 And so under very limited circumstances, and I
17 don't mind saying this, I do grant summary judgment
18 motions, but I only do under a circumstance where I
19 have a high degree of confidence, right? And so, yes,
10:38:33 20 this wasn't routine. This isn't something I saw every
21 day.

22 For example, I have a tort-based case in front
23 of me. There is a lot of issues that are so routine to
24 me, sometimes I feel I don't even have to review the
10:38:46 25 briefing. But in this case I had to dig a little deep.

10:38:49 1 But once I got a handle and got my arms around the law,
2 I thought it was fairly straightforward; right?

3 We had a limited purpose association, and as a
4 result, there's limited statutory rights under Nevada
10:38:59 5 law. And that, ultimately, guided my decision.

6 I think it's important to point out too that
7 the application of the CC&Rs and Chapter 116 in this
8 case are not mutually exclusive. In fact, I have to
9 conduct -- first before I make a determination as to
10:39:15 10 the application of the CC&Rs -- I mean, the application
11 of Chapter 116, I got to look at the CC&Rs. I really
12 and truly do. And any case involving Chapter 116 I am
13 mandated or required for the most part reviewing the
14 CC&Rs. And that's important to point out.

10:39:37 15 Additionally, the thrust, focus, and essence
16 of all this litigation stemmed from the original CC&Rs,
17 I mean, they did, and going back to Judge Leavitt and
18 her determination, what I did, the comments by the
19 Nevada Supreme Court, and the affirmance. And so what
10:40:02 20 I'm going to do is this. There's two things.

21 Number one, I feel fairly clear in this regard
22 that paragraph 25 of the CC&Rs control, and
23 specifically as it relate to the award of attorney's
24 fees. And I've read it in the record, but I'll just do
10:40:23 25 it one more time. It provides as follows:

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10:40:26 1 In any legal or equitable proceeding for
2 the enforcement of or to restrain the
3 violations of the declaration of covenants,
4 conditions, and restrictions, or any provision
10:40:41 5 thereof, the losing party or parties shall pay
6 in such amounts as may be fixed by the Court in
7 such proceeding.

8 And this is a continuation of such presenting.

9 I'm going to rule as a matter of law that
10:40:58 10 based upon the current posture of the case and the
11 decisions by this Court, that the -- I just want to
12 make sure I get the proper parties here. That the
13 Dismans -- and let me make sure I got it -- and the
14 plaintiff Marjorie Boulden B. -- I'm sorry, Marjorie B.
10:41:47 15 Boulden, Trustee of the Marjorie B. Boulden Trust,
16 they're the prevailing -- not the prevailing party.
17 They're the winners under the statute.

18 MR. FOLEY: And the Lamothe Trust.

19 THE COURT: Yes. Absolutely. And I want to
10:42:00 20 make sure I get them all.

21 And based upon my application of the CC&Rs,
22 because the losing party --

23 -- sorry, sir, would be your clients. I just
24 want to tell you that.

10:42:13 25 And just as important, the language says shall

10:42:18 1 pay; right. Mandatory. I don't have to conduct an
2 analysis as it relates to whether the lawsuit was filed
3 to harass, and the like, or I don't have to make a
4 determination as to whether the actions were
10:42:36 5 unreasonable. I don't have to go there. So that's
6 going to be the basis for the award of attorney's fees.

7 Secondly, what I'm going to do is this: I'm
8 going to go back and just perform a routine review of
9 the amounts and just as important, any award of
10:42:57 10 attorney's fees will be based upon the application of
11 Nevada law as it relates to that specific issue. And
12 it will -- I will look at the reputation of the law
13 firm and all those things that I am required to do
14 under Nevada law.

10:43:17 15 What's the name of the case, again, counsel?
16 I can't think of it.

17 MR. HASKIN: Brunzell?

18 THE COURT: I'm going to apply the Brunzell
19 factors and look at the hours. And that's important to
10:43:26 20 place on the record.

21 Last, but not least, I haven't made a
22 determination as to -- I'm not going to say this was
23 vexatious or anything like that, sir. I don't mind
24 telling you.

10:43:37 25 I haven't made a determination as to whether

10:43:38 1 the actions were unreasonable. I'll think about it.
2 I'm not sure I'm going to go that far. Do you
3 understand, sir, what I'm saying?

4 MR. HASKIN: Yes, I do.

10:43:48 5 THE COURT: I just want to tell you that. But
6 I'm going to look at it one last time.

7 Does that cover everything?

8 MS. WANG: Yes, your Honor.

9 THE COURT CLERK: Motion to retax.

10:43:55 10 MR. FOLEY: Well, there's the costs.

11 THE COURT: What about the motion to retax?
12 What about the cost issue? The costs were \$1400.

13 MR. HASKIN: \$1100, I think.

14 THE COURT: \$1100. Any issue on that?

10:44:04 15 MR. HASKIN: Well, your Honor, the Dismans
16 didn't even file a memorandum of costs.

17 THE COURT: Okay.

18 MS. WANG: We didn't seek costs. Our motion
19 is just for attorney's fees.

10:44:10 20 THE COURT: Okay. So all I have to do -- I'll
21 give you your \$1400.

22 MS. WANG: Thank you.

23 THE COURT: Anything else?

24 MR. HASKIN: No, your Honor.

10:44:16 25 MR. FOLEY: That's it, your Honor. Thank you.

10:44:18 1

THE COURT: Everyone, enjoy your day.

2

MS. WANG: Thank you, your Honor.

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(Proceedings were concluded.)

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1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)

:SS

3 COUNTY OF CLARK)

4 I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO
5 HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE
6 PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE
7 TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID
8 STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT
9 AND UNDER MY DIRECTION AND SUPERVISION AND THE
10 FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND
11 ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE
12 PROCEEDINGS HAD.

13 IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED
14 MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF
15 NEVADA.

16
17
18
19 /s/ Peggy Isom
20 PEGGY ISOM, RMR, CCR 541
21
22
23
24
25

Peggy Isom, CCR 541, RMR

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MR. FOLEY: [31] 4/15 5/10 5/15 7/6 7/8 8/8 8/14 8/19 8/22 9/8 9/25 10/2 11/2 11/6 11/23 12/1 12/14 14/16 15/9 17/19 17/21 18/10 27/14 27/18 27/22 28/1 29/6 47/5 63/18 65/10 65/25 MR. HASKIN: [56] 4/12 4/23 5/11 18/11 19/13 19/25 20/3 20/7 21/12 21/20 22/16 22/19 24/3 24/21 26/15 28/3 29/4 29/7 29/10 29/14 29/17 30/6 30/9 32/23 32/25 33/2 35/16 35/20 35/22 36/11 36/14 36/17 37/7 37/11 37/16 37/19 37/21 37/24 38/2 38/12 39/24 40/3 40/5 40/20 40/23 43/18 44/9 44/12 44/14 44/24 55/16 64/17 65/4 65/13 65/15 65/24 MR. SMITH: [1] 4/19 MS. WANG: [8] 4/17 49/25 50/2 58/5 65/8 65/18 65/22 66/2 THE COURT CLERK: [1] 65/9 THE COURT REPORTER: [1] 4/10 THE COURT: [86] \$ \$1,413 [1] 17/16 \$10,000 [2] 49/8 49/11 \$11,240 [1] 46/14 \$11,894 [1] 57/14 \$1100 [2] 65/13 65/14 \$1400 [3] 18/8 65/12 65/21 \$4,000 [1] 57/21 \$4,480 [1] 46/24 \$5,286 [1] 57/19	\$50,000 [1] 13/13 \$6,080 [1] 46/19 \$74,320 [1] 17/15 . .3117 [4] 9/4 12/25 15/15 47/17 / /s [1] 67/19 0 0871 [1] 3/9 1 1,000 [1] 17/18 10 [1] 4/7 10th [1] 47/10 11 [1] 47/11 110 [1] 2/15 116 [26] 9/1 9/2 15/6 19/4 19/22 20/5 20/23 21/7 25/1 25/8 25/23 26/6 29/19 31/2 31/12 31/21 31/23 32/12 34/22 35/7 45/8 51/21 54/25 62/7 62/11 62/12 116.1201 [2] 47/14 47/17 118 [2] 39/9 39/11 16 [3] 1/3 1/21 4/1 16's [1] 58/14 17 [1] 51/4 1701 [1] 2/14 1718 [1] 3/8 18 [2] 9/16 10/19 18.010 [3] 6/18 11/4 50/6 1994 [2] 39/23 47/12 1997 [1] 25/5 2 2006 [1] 13/13 2007 [2] 25/5 54/19 2008 [1] 35/1 2013 [2] 25/6 50/10 2015 [1] 53/10 2016 [1] 12/23 2017 [5] 47/10 50/20 51/1 51/2 51/4 2018 [1] 34/16 2019 [2] 1/21 4/1 2020 [1] 2/18	2070 [1] 2/7 2128 [1] 2/8 23 [1] 27/21 25 [8] 7/5 9/22 22/20 35/9 35/23 36/14 36/19 62/22 255-0871 [1] 3/9 255-1718 [1] 3/8 270 [1] 3/18 28 [1] 39/19 3 3000 [1] 2/17 3109 [1] 45/9 38 [3] 19/2 19/5 38/23 384-2070 [1] 2/7 384-2128 [1] 2/8 4 413 [2] 17/19 17/20 4th [1] 39/22 5 50 [3] 13/17 13/18 13/18 541 [2] 1/24 67/19 6 60 [1] 17/22 626 [1] 2/5 667-3000 [1] 2/17 697-2020 [1] 2/18 7 702 [8] 2/7 2/8 2/17 2/18 3/8 3/9 3/20 3/21 7440 [1] 3/6 7450 [1] 3/17 8 80 [2] 17/16 17/22 836-9800 [1] 3/20 836-9802 [1] 3/21 89101 [1] 2/6 89113 [1] 3/19 89117 [1] 3/7 89134 [1] 2/16 8th [1] 2/5 9 9800 [1] 3/20 9802 [1] 3/21 9:24 [1] 4/2 : :SS [1] 67/2	A A.M [1] 4/2 abandoned [1] 42/11 abided [1] 60/12 ABILITY [1] 67/11 able [3] 5/22 47/1 49/6 about [19] 9/18 9/24 10/17 12/16 17/7 17/24 25/5 29/8 30/2 32/10 35/13 36/3 42/1 46/18 49/8 54/16 65/1 65/11 65/12 absolutely [11] 11/7 16/2 28/4 29/7 50/8 52/11 53/4 54/16 59/24 60/11 63/19 abstract [13] 20/17 21/11 24/7 36/7 38/7 40/12 44/7 44/16 44/17 44/22 45/4 45/5 57/2 abstracts [19] 15/19 15/20 15/23 20/5 24/18 26/1 30/4 48/4 48/18 50/9 50/17 50/23 50/24 51/12 51/15 51/22 53/13 56/4 58/15 absurd [1] 60/19 accomplish [1] 16/3 account [1] 22/21 ACCURATE [1] 67/11 achieves [1] 52/25 acquainted [1] 21/7 acted [4] 16/17 25/7 25/15 32/10 action [62] 5/21 5/24 7/23 9/10 9/10 9/11 12/12 18/1 18/17 18/22 19/2 19/3 19/20 19/21 19/22 20/8 20/12 21/16 23/17 23/17 27/23 30/20 31/7 31/16 31/17 32/5 33/8 36/17 37/13 37/13 38/18 39/4 40/6 40/8 40/15 40/25 41/7 41/10	41/16 42/4 42/6 42/12 42/20 42/21 44/2 44/6 45/7 45/23 46/6 47/22 47/23 47/24 48/11 49/4 49/12 49/20 50/11 51/24 51/24 54/5 54/15 54/19 actions [4] 28/24 55/21 64/4 65/1 acts [1] 30/3 actually [8] 5/22 6/9 6/25 13/17 30/18 37/23 46/11 51/6 add [1] 60/7 added [4] 56/7 57/3 57/7 57/7 adding [1] 55/19 addition [1] 60/8 additional [7] 11/20 16/11 18/15 33/17 51/15 57/21 59/11 Additionally [1] 62/15 address [3] 18/14 42/15 55/18 addressed [1] 50/3 addressing [1] 18/12 adjudicated [1] 52/11 adjustment [1] 18/2 admit [1] 42/10 admittedly [1] 45/2 adopt [1] 57/25 ADR [1] 19/5 advise [1] 45/10 affected [1] 57/6 affirmance [4] 11/15 21/16 34/15 62/19 affirmed [1] 6/16 affirming [1] 41/14 afforded [4] 25/18 25/24 32/15 43/25 after [12] 10/25 15/23 16/6 16/6 17/12 21/6 28/6 31/22 51/4 53/19 56/5 58/9 again [17] 4/25 11/2 12/15 15/14 17/17 22/19 35/18
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Peggy Isom, CCR 541, RMR

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Exhibit 11

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Exhibit 11

IN THE SUPREME COURT OF THE STATE OF NEVADA

TRUDI LEE LYTLE; AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST,

Appellant ,

v.

SEPTEMBER TRUST, DATED MARCH
23, 1972; GERRY R. ZOBRIST AND
JOLIN G. ZOBRIST, AS TRUSTEES OF
THE GERRY R. ZOBRIST AND JOLIN G.
ZOBRIST FAMILY TRUST; RAYNALDO
G. SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND
DEVOLUTION TRUST DATED MAY 27,
1992; and DENNIS A. GEGEN AND
JULIE S. GEGEN, HUSBAND AND
WIFE, AS JOINT TENANTS,

Respondents .

Supreme Court No.: 76198

District Court Case No.: A-17-765372-C

APPELLANTS' OPENING BRIEF
Electronically Filed
Jan 15 2019 01:39 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal

From the Eighth Judicial District Court, Clark County
Honorable Mark Bailus

Appellants' Opening Brief

(Docket 76198)

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Disclosure Statement

Pursuant to NRAP 26.1, Appellants TRUDI LEE LYTLE; AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST ("Appellants") state that there is no parent corporation or publicly held company that owns ten percent (10%) or more of any stock in Appellants. Appellants are the Trustees for a trust and are not a corporation.

The attorneys and law firm that have appeared and expected to appear on behalf of Appellants are Richard E. Haskin of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt, LLP.

DATED this 14th day of January, 2018.

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Appellant's Opening Brief**Jurisdictional Statement**

The Supreme Court has jurisdiction via NRAP 3A(b)(1) and 3A(b)(3). On May 24, 2018, the district court granted Respondents SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST AND JOLIN G. ZOBRIST, AS TRUSTEES OF THE GERRY R. ZOBRIST AND JOLIN G. ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL AND JULIE MARIE SANDOVAL GEGEN, AS TRUSTEES OF THE RAYNALDO G. AND EVELYN A. SANDOVAL JOINT LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and DENNIS A. GEGEN AND JULIE S. GEGEN, HUSBAND AND WIFE, AS JOINT TENANTS' (collectively "Respondents") Motion for Summary Judgment or, in the Alternative, for Judgment on the Pleadings and Denying Countermotion for Summary Judgment, whereby the district court, in substantial part, prohibited Trudi Lee Lytle, John Allen Lytle, as Trustees of the Lytle Trust ("Appellants"), from enforcing a judgement obtained in civil litigation against Respondents' real properties. The foregoing Order also granted a permanent injunction in favor of Respondents prohibiting Appellants from recording judgments and liens against Respondents' properties.

Routing Statement

Pursuant to NRAP 17(b)(7), the case is presumptively assigned to the Court of Appeals because it is an appeal from an order granting injunctive relief. However,

Appellants contend the case should be heard by the Supreme Court due to its familiarity with the issues and matters at hand. *See* Dockets 60657, 61308, 65721, 63942, 65294, 73039.

Issues Presented

1. Whether the district court erred in granting summary judgment in favor of Respondents based on the district court's finding that the Order Granting Summary Judgment in consolidated Case No. A-16-747800-C was "law of the case" and, therefore, bound the district court to find in favor of Respondents in this matter?
2. Whether the district court erred in granting summary judgment in favor of Respondents and granting a permanent injunction after finding that Appellants clouded title to Respondents' properties when Appellants recorded abstracts of judgment awarded to Appellants in a separate civil action against Respondents' homeowners' association, Rosemere Estates Property Owners' Association (the "Association")?

Statement of the Case

Appellants appeal the district court's Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment (the "Order") whereby the district court issued a permanent injunction prohibiting Appellants from recording an abstract of judgment or other judgment lien against Respondents' real property. Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and

Denying Countermotion for Summary Judgment, Appellants' Index ("AA")

AA000780 - 793.

Statement of Facts

A. The Association

On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants, Conditions, and Restrictions ("Original CC&Rs"). Original CC&Rs, AA000147 - 150. Appellants purchased their property, Lot 163-03-313-009 ("Appellants' Property"), on November 6, 1996, from the original buyer who first purchased it from the Developer on August 25, 1995. Respondents each own property within the Association. Complaint, AA000066 - 74.

The Original CC&Rs, in the first paragraph, defines Rosemere Estates as "Lots 1 through 9 of Rosemere Court, a subdivision..." Original CC&Rs, AA000147. The document adds:

"it is the desire and intention of the Subdivider to sell the land described above and to impose on it mutual, beneficial, covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all of the land described above and the future owners of the lots comprising said land."

WHEREAS, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated, and encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions and restrictions...

Id. Thus, the Association includes each lot, or unit, therein, and each owner within the community is bound by the Original CC&Rs and the Association.

Sometime after Appellants purchased their property, a group of homeowners formalized the “owners committee” specified in the Original CC&Rs by creating a legal entity. Articles of Incorporation, AA000359; *see also* Order Granting Motion for Summary Judgment, Finding of Fact (“FOF”) Nos. 14, 15, AA000408 - 409. This legal formation is consistent with the Original CC&Rs which requires all owners to establish the committee. Original CC&Rs, AA000149.

B. The Unlawful Amendment of the CC&Rs

Without warning or consult with the homeowners, the Board for the Association, on July 2, 2007, presented the Amended and Restated Covenants, Conditions and Restrictions (the “Amended CC&Rs”) to the Association membership. Order Granting Summary Judgment in NRED 1 Litigation, FOF Nos. 23, 24, AA000404 - 405. The Amended CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the powers, rights, and duties of the Association, a section entitled “Restrictions on Use, Alienation, and Occupancy,” pet restrictions, parking restrictions, lease restrictions, the establishment of a Design Review Committee with unfettered discretion, and a new and expansive definition of “nuisance.” *Id.* The Amended CC&Rs also contained a morality provision. *Id.* at FOF No. 26, AA000405. Finally, the Amended CC&Rs contained a construction timeline that would require Appellants, and only Appellants, to complete the

construction of a custom home on the lot within a mere *60 days* of receipt of approval from the proposed *Design Review Committee*—something never envisioned in the Original CC&Rs and impossible to adhere to. *Id.* at FOF No. 28, AA405. Failure to comply would cost Appellants \$50.00 per day. *Id.* at 30, AA000405. Despite failure to obtain the consent of all homeowners, the Board unilaterally recorded the Amended CC&Rs on July 3, 2007, with the Office of the Recorder for Clark County, Nevada. *Id.* at FOF Nos. 34, 35, *see also* Amended CC&Rs AA000361 - 399.

Important to the case at hand, the Amended CC&Rs provide as follows:

Section 1.1. “‘Act’ shall mean and refer to the State of Nevada’s version of the Uniform Common-Interest Ownership Act, codified in NRS Chapter 116, as it may be amended from time to time, or any portion thereof.”

Section 1.14(e). “...the Property is a common interest community pursuant to the Act.”

Section 1.38. “‘Property’ shall refer to the Property as a whole, including the Lots and Common Elements, as restricted by and marketed and sold to third parties in accordance with this Declaration.”

Section 1.24. “‘Governing Documents includes the Amended CC&Rs.

Article 2: “The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents.”

Section 10.2(c). “An Assessment to pay a judgment against the Association may be made only against the lots in the Property at the time the judgment was entered, in proportion to the respective Liability for Common Expense.”

Amended CC&Rs, AA000367, 368, 370 – 371, 381.

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C. The Underlying Litigation

After the Amended CC&Rs were adopted, the Association's membership voted to approve a Board proposal that, first, each member of the Association should be assessed \$10,000.00 "in conjunction with [Appellants'] actions" in bringing the NRED 1 litigation and in pursuing litigation against Appellants for unarticulated and nebulous reasons, and, second, that "the Association should bring foreclosure proceedings against any lots with outstanding assessments due the Association." Order Granting Summary Judgment in NRED 2 Litigation, FOF No. 10, AA000466. The Association initiated non-judicial foreclosure proceedings against Appellants. *Id.* at FOF Nos. 11, 20, AA000466, 468. In addition to instituting the non-judicial foreclosure process afforded to it by NRS Chapter 116 and the Amended CC&Rs, the Board recorded additional, unlawful liens without right against Appellants. *Id.* at FOF Nos. 12 – 18, 22, AA000466 - 467. The total of the three (3) unlawfully recorded liens was \$209,883.19. *Id.* at FOF Nos. 25, 26, AA000468.

A. NRED 1 Litigation

In 2007, Appellants filed an NRS 38.310 mandated non-binding arbitration before the Nevada Real Estate Division ("NRED"), naming the Association as respondent. Appellants sought a declaration that the Amended CC&Rs were unlawfully adopted, recorded and enforced by the Association against Appellants.

After the arbitrator found in favor of the Association, Appellants filed for a trial de novo in this District Court, case number A-09-593497-C, which was assigned to

Judge Michelle Leavitt in Department XII. The district court initially dismissed the case and affirmed the arbitrator's decisions, thereby affirming that the Amended CC&Rs were valid and the Association was a full-blown unit owners' association, subject to the entirety of Chapter 116. *See* Supreme Court Order, Docket No. 54886. Appellants had to post a \$53,054.52 to appeal the case.

The Supreme Court ultimately reversed the district court's order and remanded the case back to district court. *See generally* Order of Reversal and Remand, Supreme Court Order, Docket No. 54886. After remand, Appellants ultimately prevailed, entirely, in the litigation, and the Court granted Appellants summary judgment on July 29, 2013. Order Granting Summary Judgment in NRED 1 Litigation, COL No. 11, AA000408. The court made the following pertinent findings:

- The Association is a limited purpose association as defined by NRS 116.1201. *Id.* at COL Nos. 13, 19, AA000408 - 409.
- The Amended CC&Rs were improperly recorded, were invalid, and the Amended CC&Rs were ordered released. *Id.* at COL Nos. 25, 26, AA000411.
- Most importantly, from July 3, 2007, through July 29, 2013, the Amended CC&Rs governed the Association and its members. *See generally id.*

The last finding is consistent with the district court's original dismissal of the case and affirmance of the arbitrator's decision whereby the district court, in effect,

ratified the Amended CC&Rs and status of the Association as a full-blown unit owners' association, subject to the entirety of Chapter 116.

The matter was once again appealed, and the Nevada Supreme Court affirmed the district court's Order granting Appellants summary judgment. The Supreme Court remanded the case to the District Court for redetermination of costs, attorneys' fees and damages on October 19, 2015. Supreme Court Order, AA000525 – 529.

On May 25, 2016, after hearing Appellants' motion for attorneys' fees, the Court awarded Appellants \$297,072.66 in attorneys' fees pursuant to the Original CC&Rs, the Amended CC&Rs and NRS 116.4117, recognizing that during the entirety of the NRED 1 Litigation, the Association as well as Respondents were governed by the Amended CC&Rs and entirety of Chapter 116. Order Awarding Attorneys' Fees in NRED 1 Litigation, AA000414 - 471.

On June 17, 2016, the Court awarded Appellants damages, after a prove-up hearing, in the amount of \$63,566.93. Order Awarding Damages in NRED 1 Litigation, AA000419 - 420. These damages included amounts expended by Appellants in the design, engineering, and other costs associated with the construction of their home for Rosemere Estates, all of which were now stale and useless.

Finally, on July 22, 2016, the Court awarded Appellants costs in the amount of \$599.00. Order Awarding Costs in NRED 1 Litigation, AA000422 - 423. Previously, the Court had awarded \$1,962.80 in costs.

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On September 2, 2016, Appellants recorded Abstracts of Judgment against each property within the Association pursuant to the law set forth herein. Abstracts of Judgment from NRED 1 Litigation, AA000174 - 179.

B. NRED 2 Litigation

On March 16, 2010, Appellants initiated another NRS 38.310 mandated non-binding arbitration before NRED, naming the Association as respondent (the “NRED 2 Litigation”). The purpose of the NRED 2 Litigation was to halt non-judicial foreclosure proceedings initiated by the Association against Appellants pursuant to NRS, Chapter 116 and the Amended CC&Rs. *See* Complaint in NRED 2 Litigation, AA000434 - 448. Appellants also sought an order from the Court directing the Association to comply with NRS Chapter 116 and the Amended CC&Rs where the Association had failed to comply, e.g. approval of budgets, conduct of meetings, etc. *Id.* In that arbitration, all parties stipulated the Amended CC&Rs were valid and enforceable for the purpose of the NRED 2 Litigation. Stipulation, AA000425 - 430.

After the Association prevailed in the Arbitration (in November 2010), Appellants promptly and timely filed a lawsuit (for trial de novo) on December 13, 2010. Complaint in NRED 2 Litigation, AA000434 - 448. The Association filed a counterclaim, seeking to enforce the assessments the Association levied against Appellants’ property.

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Appellants included the following language in their Complaint:

Pursuant to a stipulation and/or agreement between the Plaintiff TRUST and the Defendant ASSOCIATION in the NRED action, the parties to the NRED action agreed that the Amended CC and R's and Bylaws of the Defendant ASSOCIATION [were] valid and enforceable only for the purpose of the NRED action and because this is a trial de novo of the NRED action the Plaintiff TRUST once again agrees that for the purpose of this litigation only that the Amended CC and R's and bylaws of the Defendant ASSOCIATION are valid and enforceable.

Complaint in NRED 2 Litigation, ¶ 11, AA000436 - 437.

On November 14, 2011, the Court granted the Association's Motion for Summary Judgment. The Court also awarded the Association's Motion for Attorneys' Fees pursuant to NRS Chapter 116 and the Amended CC&Rs, with an amount to be determined at a subsequent hearing. The Court then entered two orders granting the Association's attorneys' fees pursuant to NRS 116.4117 and Section 16 of the Amended CC&Rs. Order Granting Association Fees in NRED 2 Litigation AA000453 – 457, *see also* Supplement Award of Attorneys' Fees in NRED 2 Litigation, AA000459 - 462. Therein, the district court held that the Association was "entitled to recover its attorneys' fees and costs pursuant to NRS 116.4117 and Section 16 of the Amended Covenants, Conditions and Restrictions." Order Granting Association Fees in NRED 2 Litigation AA000455 – 456. The district court then awarded the Association \$23,409.32 in damages (for the liens recorded by the Association against Appellants' property), \$79,483.65 in attorneys' fees, and \$1,130.77 in costs. *Id.* at AA000456. Thereafter, the district court awarded an

additional \$7,068.00 in attorneys' fees and \$117.45 in costs against Appellants. *See* Supplement Award of Attorneys' Fees in NRED 2 Litigation, AA000461, 462.

The district court's order essentially found the provisions of the Amended CC&Rs and assessment and foreclosure statutes included in Chapter 116 provided the Association with the right to assess and, indeed, foreclose for failure to pay the assessment. Once again, the district court, in effect, sanctioned the Amended CC&Rs and status of the Association as a full-blown unit owners' association, subject to the entirety of Chapter 116. More importantly from a practical measure to Appellants, the district court's ruling coupled with the Association's vitriolic thirst to expel Appellants from the Association, compelled Appellants to post a \$123,000.00 bond and incur years of additional litigation.

On July 16, 2012, Appellants filed a Notice of Appeal. On December 21, 2015, the Nevada Supreme Court vacated the Order Granting Summary Judgment and remanded this case back to this Court for determination. Supreme Court Order Re: NRED 2 Litigation, AA000521 – 522. Specifically, the Supreme Court held that the

[Appellants'] actions during the NRED arbitration were sufficient to 'submit' their slander of title claim to the NRED arbitrator for the purposes of NRS 38.330(5). We also conclude that [Appellants] did not need to establish that they suffered monetary damages for their remaining claims to be viable.

Id. The Supreme Court also vacated the order awarding attorneys' fees, costs, and damages to the Association. *Id.* In the second footnote of the foregoing Supreme Court Order, and an item of importance to the present case, the Court noted that its

ruling was “premised in part on [Appellants’] stipulation as to the amended CC&Rs validity.” *Id.*

Upon remand, the case was essentially thrust back to the beginning. On November 14, 2016, the Court granted Appellants’ Motion for Summary Judgment as to each and every cause of action in Appellants’ First Amended Complaint and against the Association’s Counterclaim. *See* Order Granting Summary Judgment in NRED 2 Litigation, AA000464 - 478.

The district court then awarded Appellants the following: \$274,608.28 in attorneys’ fees, \$4,725.00 in costs, and \$823,824.84 in punitive damages pursuant to NRS 42.005. *See* Order Granting Attorneys’ Fees and Costs in NRED 2 Litigation, AA000480 - 483; *see also* Order Granting Punitive Damages in NRED 2 Litigation, AA000485 - 488. Pursuant to the foregoing, the total amount of the judgment against the Association and in favor of Appellants in the NRED 2 Litigation, including attorneys’ fees and costs, is \$1,103,158.12.

C. NRED 3 Litigation

On April 2, 2015, Appellants filed an action against the Association in the Eighth Judicial District, Case No. A-15-716420-C, seeking an order from the Court that the Association hold an election, as it had not held such an election since March 24, 2010. *See* Complaint in NRED 3 Litigation, AA000490 - 497. On September 13, 2017, the Court granted Appellants’ Motion for Summary Judgment in the NRED 3 Litigation, and ordered that election take place before a neutral third party. *See* Order

Granting Summary Judgment in NRED 3 Litigation, AA000499 - 506.

On November 7, 2017, the Court awarded Appellants \$14,807.50 in attorneys' fees and \$655.10 in costs. Order Granting Attorneys' Fees and Costs in NRED 3 Litigation, AA000508 - 511.

All of the foregoing orders in NRED 1, 2 and 3 Litigations are final and not subject to appeal, and all monetary orders are accruing interest.

D. Recording Of The Abstracts

Appellants recorded abstracts of judgment all stemming from the judgment issued in the NRED 1 Litigation against each unit (property) within the Association, including Respondents' properties. See Abstracts of Judgment from NRED 1 Litigation, AA000513 - 519. Appellants obtained an Abstract of Judgment in the NRED 2 Litigation as well, but at this time have only recorded that Abstract against the Association.

E. District Court Case No. A-16-747800-C (Supreme Court Dockets 73039)

Two homeowners, The Marjorie B. Boulden Trust ("Boulden Trust") and Jacques and Linda Lamothe Living Trust ("Lamothe Trust"), filed a lawsuit against Appellants on December 8, 2016, seeking to quiet title to their respective properties and setting forth claims for quiet title, cloud on title, and slander of title. Complaint, AA000001 – 000009, *see also* First Amended Complaint, AA000019 - 25, Second Amended Complaint, AA000026 - 34. The Complaint and amendments thereto only

dealt with abstracts of judgment related to the NRED 1 Litigation. *See general id.*

On April 26, 2017, after a hearing, the Honorable Judge Timothy C. Williams, district court judge, granted the Boulden Trust and Lamothe Trust's Motion for Partial Summary Judgment on all claims. *See Findings of Fact and Conclusions of Law and Order Granting Motion for Partial Summary Judgment, AA000051 - 58.* Therein, the district court granted a permanent injunction against Appellants. *Id.* The district court also mistakenly entered an order granting summary judgment as to Respondents' slander of title claim. *Id.*

On May 16, 2017, Appellants filed a Motion for Reconsideration as to the slander of title claim, arguing that the district court made no findings with respect to malice, oppression, or fraud, and, therefore, a finding of slander of title was unwarranted. That Motion for Reconsideration was heard on June 29, 2017, and was granted, and the district court entered Amended Findings of Fact and Conclusions of Law ("Amended Order"), withdrawing any findings related to Respondents' slander of title claim. Amended Order, AA000059 - 65.

Appellants appealed the district court's Amended Order in Supreme Court Docket No. 73039. On December 4, 2018, the Supreme Court entered an Order of Affirmance.

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F. Respondents' Lawsuit, District Court Case No. A-17-765372-C

Respondents filed a lawsuit on November 30, 2017, seeking to quiet title to their respective properties and setting forth claims for quiet title and declaratory relief. Complaint in District Court Case No. A-17-765372-C, AA000066 - 75. Respondents' claims address the same abstracts of judgment recorded by Appellants on Respondents' respective properties located within the Association. *See id generally.* The Complaint also addresses the judgments obtained by Appellants against the Association in NRED 2 and NRED 3 Litigation, for which abstracts of judgment were not recorded. *See id.* at ¶¶ 31 – 39, AA000071 - 72. Respondents' complaint sought declaratory relief as to whether Appellants could enforce the judgments in these cases against Respondents, even though no abstracts of judgment had been recorded. *See id.*

On February 27, 2018, the district court, Department XVIII, consolidated Case No. A-17-765372-C with Case No. A-16-747800-C. *See* Order Consolidating Cases, AA000081 - 86.

The parties each filed motions for summary judgment. The district court heard oral argument on the foregoing motions, initially on March 21, 2018. *See generally* March 21, 2018 Transcript of Proceedings ("March 21, 2018 Tran."), AA000751 - 770. Respondents, in both their briefs and during oral argument, urged the district court to apply the Amended Order in Case No. A-16-747800-C to the present case as "law of the case." *See* Respondents' Motion for Summary Judgment, AA000095 - 96; *see also* March 21, 2018 Tran. 8:9 – 22, 9:8 - 15 AA000758, 759. Initially, the district

court found that the Judge Williams' Amended Order was not law of the case. *Id.* at 12:22 – 13:2, AA000762 - 763 (“Obviously, another district court’s ruling is not binding. There was a lot of briefing on the issue of preclusion, res judicata, law of the case. I don’t think it’s law of the case, it hasn’t gone up to the Supreme Court and then been decided.”)

On May 22, 2018, the district court granted Respondents’ Motion for Summary Judgment, or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment. *See* Order Granting Motion, AA000780 - 793. The Order Granting Motion (at issue) holds Judge Williams’ Amended Order in Case No. A-16-747900-C is “law of the case.” Order Granting Motion, Conclusions of Law (“COL”) No. 1, AA000786; *see also* Transcript from May 2, 2018 Hearing (“May 2, 2018 Tran.”), 4:23 – 24, AA000774 (“I found that Judge Williams’ Order was law of the case.”) Hence, the Order Granting Motion mirrors Judge Williams’ Amended Order per the district court’s instruction to counsel. *Id.* at 5:12 – 20, AA000775.

Summary of Argument

The district court erred in granting Respondents Motion for Summary Judgment and, with it, a permanent injunction when the district court erroneously concluded that Judge Williams’ prior Amended Order in Case No. A-16-747900-C was *law of the case*. Further, the district court erred in applying Judge Williams’ prior order to the present matter with respect to the NRED 2 Litigation because in that litigation, the

parties stipulated that the Amended CC&Rs and the entirety of Chapter 116 applied to the NRED 2 Litigation.

Finally, principles of equity and fairness should guide this Court in its determination in this matter. Specifically, Appellants should be afforded the very same rights and remedies that were available to the Association during the course of the NRED 2 Litigation as set forth in the Amended CC&Rs and entirety of Chapter 116. The district court awarded damages, attorneys' fees and costs to Appellants citing the Amended CC&Rs and Chapter 116, but then strip Appellants of the collection rights included therein. Had the Association prevailed, it would have a plethora of oppressive remedies available to it, including the right to lien and foreclose on Appellants' property. To divest Appellants of collection rights afforded to creditors of unit owners' association is an inequitable, if not absurd, result.

Argument

I. THE COURT SHOULD APPLY A DE NOVO STANDARD OF REVIEW TO THE DISTRICT COURT'S GRANTING OF PERMANENT INJUNCTIONS

Where injunctive relief is granted by way of summary judgment, the Court applies a de novo standard of review. *A.L.M.N., Inc. v. Rowsoff*, 104 Nev 274, 277, 757 P.2d 1319, 1321 (1988); *Wood v. Safeway, Inc.*, 121 Nev 724, 729, 121 P.3d 1026, 1029 (2005).

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II. THE DISTRICT COURT ERRED IN FINDING THE PRIOR DISTRICT COURT ORDER WAS “LAW OF THE CASE”

Fundamental to the district court’s granting of summary judgment and Order is its initial finding that “the Court’s prior Order with respect to the Boulden Trust’s and Lamothe Trust’s Motion for Partial Summary Judgment, Case No. A-16-747900-C, is the law of the case, to the extent applicable to [Respondents’] claims.” Order Granting Motion, COL N0. 1, AA000786; May 2, 2018 Tran., 4:23-24, AA000774 (“I found that Judge Williams’ order was law of the case.”) Consistent with this finding, the district court merely ordered Respondents’ counsel to mirror Judge Williams’ prior order in drafting the Order in this matter. *Id.*, AA 5:12 - 20. In fact, this was the district court’s only substantive finding. *See generally id.*

Judge Williams’ Amended Order in Case A-16-747800-C is not binding on the district court. Judge Williams’ Amended Order, at the time of the district court’s hearing and determination of this matter, was not final, rather it was partial and interlocutory. The Order Granting Motion was entered on May 22, 2018. See Order Granting Motion, AA000780. The Supreme Court’s Order of Affirmance related to Judge Williams’ Amended Order was entered nearly six (6) months later on December 4, 2018.

The doctrines of res judicata and issue preclusion are “triggered when judgment is entered.” *Univ. of Nev. v. Tarkanian*, 1110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). There must be a final determination by a court of competent jurisdiction. *Id.*

An order granting partial summary judgment is not a final order or judgment where issues of damages remain. *Mid-Century Ins. Co. v. Pavilkowski*, 94 Nev. 162, 576 P.2d 748 (1978), *see also Hallicrafters Co. v. Moore*, 102 Nev. 526, 528, 728 P.2d 441, 442 (1986). Further, there was no certification by the court that this was a final judgment under NRCP 54(b).

A “final order” resolves all claims against all parties, leaving nothing for further consideration except for post-judgment issues, *i.e.* attorneys’ fees. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000); *see also Cox v. Gilcrease Well Corp.*, 2014 WL 2466229 (2014). The Order Granting Partial Summary Judgment was not a final order as claims remained in that case.

The law of the case doctrine “refers to a family of rules embodying the general concept that a court involved in later phases of a lawsuit should not re-open questions decided (*i.e.*, established as law of the case) by that court or a higher one in earlier phases.” *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735, 739 (D.C.Cir.1995).

“Normally, ‘for the law-of-the-case doctrine to apply, the appellate court must actually address and decide the issue explicitly or by necessary implication.’”

Reconstruct Co. v Zhang, 317 P.3d 814, 818 (2014) (quoting *Dictor v. Creative Mgmt. Servs., L.L.C.*, 126 Nev. —, —, 223 P.3d 332, 334 (2010)), *see also Dictor v. Creative Management Services, LLC*, 126 Nev. 41, 44-46, 223 P.2d 332, 335 (2010) (holding that in order for the law-of-the-case doctrine to apply, the appellate court must specifically and actually address and decide the issue). A trial court’s ruling

does not constitute law of the case. *Byford v. State* 116 Nev. 215, 232, 994 P.2d 700, 711-12 (2000). The issue must be adjudicated on appeal. *Id.*

Indeed, a court has the discretion to revisit prior rulings in the same case, provided such rulings and issues decided therein have not been decided by the appeal or Supreme Court. *Bejarano v. State*, 122 Nev. 1066, 1074-75, 146 P.3d 265, 271-72 (2006). Thus, in *Dictor*, supra, the Supreme Court held that a district court could entertain a renewed motion for summary judgment based on new and alternative statutory defenses that were not raised in a prior summary judgment motion.

In the present case, the district court had the jurisdiction and discretion to revisit all prior rulings, specifically Judge Williams' Amended Order. And initially, the district court indicated as much. March 21, 2018 Tran. 12:22 – 13:2, AA000762 – 763. However, without question, Judge Williams' Amended Order was not law of the case and not binding on the district court in this matter because the Order of Affirmance related to the Amended Order was not entered (and the appeal not decided by this Supreme Court) until December 4, 2018.

The district court made no independent substantive findings. Rather, it instructed Respondents to mirror Judge Williams' Amended Order (while deleting any parts that did not apply to this case). May 2, 2018 Tran., 5:12 – 20, AA000775.

Further, the district court's incorrect application of the law of the case doctrine is not *harmless error*. Misapplication of the rule prevented the district court from analyzing the factual distinction with the NRED 2 Litigation – specifically the

Stipulation entered into therein whereby Appellants and the Association agreed the Amended CC&Rs (and therefore Chapter 116) governed the legal issues in the case.

III. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT AND ORDERING A PERMANENT INJUNCTION AS TO THE NRED 2 LITIGATION

A. The Supreme Court's Order Of Affirmance In Docket 73039 Settles All Legal Issues Applicable To The NRED 1 And NRED 3 Litigation

Appellants will not address herein the matters already determined by the Supreme Court in Docket 73039. As set forth above, this docket applies to the NRED 1 Litigation, but the reasoning can equally apply to the NRED 3 Litigation.

However, there is an important factual and legal distinction with respect to the NRED 2 Litigation that distinguishes that case and provides Appellants with the right to enforce its judgment obtained therein pursuant to NRS 116.3117. Specifically, in that matter, Appellants and the Association stipulated at the outset of the litigation that the Amended CC&Rs and entirety of Chapter 116 applied throughout the course of the litigation. Indeed, the district court initially granted summary judgment in favor of the Association based substantially upon the Stipulation.

This is contrasted by the NRED 1 and NRED 3 Litigation wherein Appellants vehemently contended (1) the Amended CC&Rs were *void ab initio* as they were unlawfully adopted, and/or (2) the Association was a limited purpose association, whereby only limited provisions of Chapter 116 applied.

**B. The Stipulation In NRED 2 Litigation Distinguishes That Case From
The NRED 1 And NRED 3 Litigation**

In the NRED 2 Litigation (and underlying Chapter 38 arbitration), Appellants and the Association stipulated the Amended CC&Rs were valid and enforceable for the purpose of the NRED 2 Litigation. Stipulation, AA000425 - 430. Indeed, in the Complaint in that action, Appellants included the following language in their Complaint:

Pursuant to a stipulation and/or agreement between the Plaintiff TRUST and the Defendant ASSOCIATION in the NRED action, the parties to the NRED action agreed that the Amended CC and R's and Bylaws of the Defendant ASSOCIATION was valid and enforceable only for the purpose of the NRED action and because this is a trail de novo of the NRED action the Plaintiff TRUST once again agrees for the purpose of this litigation only that the Amended CC and R's and Bylaws of the Defendant ASSOCIATION are valid and enforceable.

Complaint in NRED 2 Litigation, ¶ 11, AA000436.

Indeed, for the purposes of that litigation only, the Amended CC&Rs unquestionably define the rights, liabilities and obligations of the parties. Appellants obtained a judgment in the NRED 2 Litigation in the total amount of \$1,103,158.12, which amount was awarded pursuant to the Amended CC&Rs and NRS, Chapter 116.

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When this litigation was before the Supreme Court (after Appellants appealed an adverse ruling), the Supreme Court noted the importance of the foregoing Stipulation, stating that its ruling was “premised in part on [Appellants’] stipulation as to the Amended CC&Rs validity.” Supreme Court Order Re: NRED 2 Litigation, AA000521 - 522.

C. The Amended CC&Rs Incorporate The Entirety Of Chapter 116 And Apply The Same To The Association And Every Unit Therein

The Amended CC&Rs provide, in pertinent part, as follows:

Section 1.1. “‘Act’ shall mean and refer to the State of Nevada’s version of the Uniform Common-Interest Ownership Act, codified in NRS Chapter 116, as it may be amended from time to time, or any portion thereof.”

Section 1.14(e). “...the Property is a common interest community pursuant to the Act.”

Section 1.38. “‘Property’ shall refer to the Property as a whole, including the Lots and Common Elements, as restricted by and marketed and sold to third parties in accordance with this Declaration.”

Section 1.24. “‘Governing Documents includes the Amended CC&Rs.

Article 2: “The Association is charged with the duties and vested with the powers prescribed by law and set forth in the Governing Documents.”

Amended CC&Rs, AA000366, 367 – 368, 370 - 371.

Thus, the Amended CC&Rs, which were, without question, the document governing the rights, duties and liabilities of Appellants and the Association in the NRED 2 Litigation, incorporate and apply the entirety of Chapter 116, including NRS 116.3117. And, indeed, the district court therein awarded attorneys’ fees pursuant to

the Amended CC&Rs and Chapter 116. Order Granting Attorneys' Fees in NRED 2 Litigation, AA000480 - 483.

D. Equity Demands Appellants Be Afforded The Same Rights And Liabilities Imposed Against Them By The Amended CC&Rs And Chapter 116

Bouvier Law Dictionary defines “equity” as follows:

A power in the legal system to craft special remedies in appropriate disputes, or the prudence that should govern such remedies. Equity, in general, is the use of rightness, fairness, and equality to adjudicate a dispute. In the legal system, equity is both the determination of a legal dispute through general principles of right and the use of these principles to prevent overly strict applications of general laws in specific circumstances.

Equity relies less on precedent and more on principle, and equity jurisprudence, now an arcane but still vital art, has broader principles for standing and for relief than are available in law, governed by flexible principles of decision, especially maxims.

“Undoubtedly in its earlier usage, equity brought to mind a fairness sought by the chancery courts that transcended statutory law and ‘good conscience’ referred to an interior moral arbiter regarded as the voice of God. As the phrase has become domesticated and invoked in modern times, the distinction of its two elements has blurred, and it has a secular rather than religious cast. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. ENC Corp.*, 464 F.3d 885, 891 (9th Cir. 2006) (finding that the court has flexible discretion to apply Federal rule of Civil Procedure 19 for the sake of equity, to achieve an appropriate, fair and equitable result) (citing, in part, *Montana v.*

Crow Tribe of Indians, 523 U.S. 696, 707, 118 S. Ct. 1650, 140 L. Ed. 2d 898 (1998).)

As stated by the United States Supreme Court, “[e]quity fashions a trust with flexible adaptation to call of the occasion.” *Adams v. Champion*, 294 U.S. 231, 237 (1935).

When a court considers a case in equity, it “must consider the equity of the circumstances that bear upon the equity,” giving consideration to the totality of the circumstances. *Shadow Wood Homeowners Ass’n v. New Your Comty. Bancorp., Inc.* 366 P.3d 1105, 1114 (citing *In re Petition of Nelson*, 495 N.W.2d 200, 203 (Minn. 1993).)

Such was the case in *Mackintosh v. California Federal Sav. & Loan Ass’n* (1997) 113 Nev. 393, 405-406, 935 P.2d 1154, 1162, where the Nevada Supreme Court applied equity to determine that a party who successfully defended a breach of contract action and ultimately led to the determination that such contract was void ab initio could enforce the attorney fee provision contained therein. In *Mackintosh*, the purchasers of real property sued a savings and loan association for rescission of a residential property purchase agreement. *Id.*, 113 Nev. at 396-397, 935 P.2d at 1157. The Supreme Court upheld a district court’s granting of summary judgment and determination that the purchasers had rescinded the purchase agreement. *Id.* 113 Nev. at 405-406, 935 P.2d at 1162. However, the Supreme Court held the district court improperly denied the purchasers’ request for attorneys’ fees, which request was based on the attorney fee provision in the rescinded agreement. *Id.* The district court, in denying attorneys’ fees stated that the rescinded agreement was “void from its date

of inception, just as if the contract had never existed.” *Id.* The Supreme Court disagreed and cited a Florida Supreme Court case, *Katz v. Van Der Noord*, 546 So.2d 1047 (Fla. 1989), which held:

We hold that when parties enter into a contract and litigation later ensues over that contract, attorney's fees may be recovered under a prevailing-party attorney's fee provision contained therein even though the contract is rescinded or held to be unenforceable. The legal fictions which accompany a judgment of rescission do not change the fact that a contract did exist. It would be unjust to preclude the prevailing party to the dispute over the contract which led to its rescission from recovering the very attorney's fees which were contemplated by that contract.

Id. at 1049.

Although the contract was declared to, essentially, have never existed, the Court in *Mackintosh* determined that it would be inequitable for only the party seeking to enforce the contract to be afforded an award of attorneys' fees. Out of fairness, the remedy had to be mutual.

Appellants admittedly come to this Court contending with the Court's prior order in Docket 73039, whereby the Court found Appellants did not have a right to record a judgment lien derived from the NRED 1 Litigation on units within the Association because the Association is now a limited purpose association, whereby NRS 116.3117 does not apply. The fact that sets this matter apart, however, and demands a remedy in equity, is that Appellants and the Association stipulated the Amended CC&Rs, and entirety of Chapter 116 which is incorporated therein, were the governing documents by which those parties submitted the issues for adjudication.

Further, the district court initially granted the Association summary judgment, holding the assessment, foreclosure and attorney fee provisions all provided substantial relief to the Association. The district court's order left Appellants with an unenviable choice, post a substantial bond or lose their property to the Association via its foreclosure.

Appellants posted a \$123,000.00 bond and spared their property (as well as other assets held by Appellants), ultimately prevailing in the matter after the Supreme Court reversed the district court's ruling. While the definitive rulings in the NRED 2 Litigation favored Appellants, the journey to achieve this result was arduous and costly. Now, the district court's Order at issue leaves Appellants with a meaningless remedy. While the district court afforded the Association all of the benefits of assessment, foreclosure and collection pursuant to the Amended CC&Rs and Chapter 116, it now blocks Appellants from the remedies provided by the Amended CC&Rs and Chapter 116 simply because Appellants were successful in voiding the governing document used by the Association to financially oppress them. The result is, at the very least, inequitable, and perhaps even absurd. While the district court in the NRED 2 Litigation awarded fees pursuant to the Amended CC&Rs and 116.4117, the district court now says Appellants cannot collect those fees using the very same Amended CC&Rs and NRS 116.3117. This is, frankly, an absurd result. It truly is as simple as understanding that had the Association prevailed, it could have, and indeed would have, exercised every right and remedy provided by the Amended CC&Rs and

Chapter 116. But because Appellants prevailed, the district court states they are without those very same rights and remedies.

Appellants contend few cases come before this Court more suited for the Court's sound, reasoned, and just determination based on principles of fairness and equity. Appellants simply seek an equal application of the rules – specifically, that the Amended CC&Rs and Chapter 116 be open to Appellants to utilize in enforcing the judgment in the NRED 2 Litigation.

E. THE PLAIN MEANING RULE SHOULD NOT APPLY TO THE COURT'S ANALYSIS OF CHAPTER 116

The Supreme Court, in its recent ruling in Docket 73039, states "the plain language of Chapter 116 cannot be expanded in the way Appellants urge." However, Chapter 116 is an incomplete and ambiguous statute with respect to limited purpose associations. Respectfully, this Court should not solely rely on the plain meaning of the statute because it fails to address obvious necessities. Where a statute is not clear or is ambiguous, the plain meaning rule has no application. *Thompson v. District Court*, 100 Nev. 352, 354, 683 P.2d 17, 19 (1984); *Robert E. v. Justice Court*, 99 Nev. 443, 664 P.2d 957 (1983); *see also McKay v. Board of Supervisors*, 102 Nev. 644, 648, 730 P.2d 438, 441, 1986 Nev. LEXIS 1609, *5, 13 Media L. Rep. 2066. An ambiguous statute can be construed "in line with what reason and public policy would indicate the legislature intended." *Robert E. v Justice Court of Ren Township*, 99 Nev.443, 445 (1983).

With due respect to the Nevada legislature, Chapter 116 is incomplete, ambiguous and often confusing with respect to the inclusion (or exclusion) of limited purpose associations. For example, while a limited purpose association must have a Board of Directors, there is no statutory mechanism for elections. NRS 116.1201, 116.31083, 116.31152. Pursuant to the provisions of Chapter 116 applicable to limited purpose associations, the Board must conduct noticed meetings at least once every quarter, review pertinent financial information, discuss civil actions, revise and review assessments for the common area expenses, establish adequate reserves, conduct and publish a reserve study, and maintain the common areas as required. NRS 116.31083 – 116.31152, 116.31073. But electing this Board is not dealt with anywhere in Chapter 116.

A limited purpose association is not required by Chapter 116 to obtain insurance for the common elements (NRS 116.3113, et. seq.), but a limited purpose association only stands to benefit from procuring such insurance. A limited purpose association is required to complete a reserve study and maintain adequate reserves (NRS 116.31152), but there are no provisions related to the funding of the reserves. Simply stated, Chapter 116 is, in some respects, poorly drafted and incomplete as it relates to limited purpose associations.

Because the plain meaning does not apply, the Court may use its discretion to interpret and apply the statute in line with equitable public policy. *Robert E.*, 99 Nev. at 445. *Mackintosh, supra*, tells us the Nevada Supreme Court is concerned with

equity, fairness, and equal application of contractual provisions even when the party asserting the invalidity of the contract prevails.

As set forth above, equity, and indeed public policy, should provide Appellants with the same rights and remedies available to the Association in the NRED 2 Litigation. The Association took full advantage of its powers to assess, lien, and foreclose as provided in both the Amended CC&Rs and Chapter 116 beginning in July 2007 and through July 2013. To illustrate the absurdity of a contrary holding, the district court awarded Appellants attorneys' fees pursuant to the Amended CC&Rs and NRS 116.4117. The district court did so citing *Mackintosh*. Order Granting Attorneys' Fees in NRED 2 Litigation, AA000480 - 483. Yet, the district court now strips Appellants of the right to collect the attorneys' fees in a manner provided in the Amended CC&Rs and Chapter 116. Principles of equity and application of public policy should enable Appellants to utilize the Amended CC&Rs and Chapter 116 to collect just as they were awarded damages, attorneys' fees and costs.

F. NRS 116.3117 Permits A Judgment Creditor To Record A Lien Against All Units Within An Association

Should the Court determine that equity must apply and Appellants should be afforded the very rights and remedies available to the Association had it prevailed, Appellants seek to enforce the judgment against Respondents pursuant to NRS 116.3117.

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NRS 116.3117 provides, in pertinent part:

1. In a condominium or planned community:

Except as otherwise provided in paragraph (b), **a judgment for money against the association**, if a copy of the docket or an abstract or copy of the judgment is recorded, is not a lien on the common elements, but **is a lien in favor of the judgment lienholder against all of the other real property of the association and all of the units in the common-interest community at the time the judgment was entered**. No other property of a unit's owner is subject to the claims of creditors of the association.

[Emphasis added.] Quite succinctly, Nevada's Common-Interest Ownership Act, set forth in Chapter 116, provides a judgment creditor has a lien "against all of the units in the common-interest community at the time the judgment was entered." NRS 116.3117(1)(a).

Moreover, to the extent there can be any doubt as to the operation of NRS 116.3117, the comments to Section 3-117 of the Uniform Common Interest Ownership Act (1982) — the uniform act upon which NRS Chapter 116 is based — reinforce that which is already clear from the plain language of the statute: "the Act makes the judgment lien a direct lien against each individual unit . . ." *See* UCIOA § 3-117, cmt. 2, *see also, e.g., Ensberg v. Nelson*, 320 P.3d 97, 102 (Wash. Ct. App. 2013) ("[B]y statute, a condominium association is a lien in favor of the judgment lienholder against all of the units in the condominium."); *Summit House Condominium v. Com.*, 523 A.2d 333, 336 (Pa. 1987) ("[A] judgment against the Council would have constituted a lien against each individual condominium unit

owner.”); *Interlaken Service Corp. v. Interlaken Condominium Ass’n, Inc.*, 588 N.W.2d 262, 266 (Wisc. 1998) (“[A]ny money judgment obtained by [the plaintiff as against the association] would result in a lien against each of the condominium units.”).

Conclusion

For the reasons set forth above, Appellants Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust, request this Court reverse the district court’s order granting Respondents’ Motion for Summary Judgment, or in the Alternative, for Judgment on the Pleadings and the permanent injunction and remand that case back to the district court.

DATED this 14th day of January, 2019.

GIBBS, GIDEN, LOCHER, TURNER, SENET &
WITTBRODT, LLP

By: 

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Certificate of Compliance

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using **Microsoft Word 2010 Times New Roman 14—point font.**

2. I further certify that this Brief complies with the page or type—volume limitations of NRAP 32(a)(7). Excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[] Does not exceed 30 pages; or

[X] Proportionately spaced, has a typeface of 14 points or more and contains **8,171** words.

3. I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14th day of January 2019.



Richard E. Haskin
Counsel for Appellants

CERTIFICATE OF SERVICE

1. **Electronic Service:**

I hereby certify that on this date, the 14th day of January 2019, I submitted the foregoing **Appellant's Opening Brief (Docket 76198)** for filing and service through the Court's eFlex electronic filing service. According to the system, electronic notification will automatically be sent to the following:

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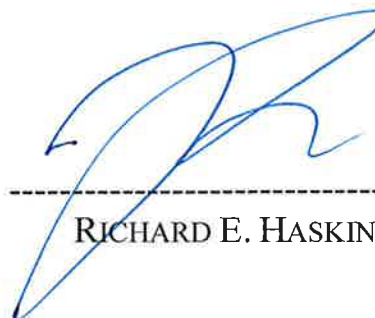
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RICHARD E. HASKIN

Exhibit 12

000897

Exhibit 12

10/24/2019 1:57 PM

Steven D. Grierson

CLERK OF THE COURT

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LYTLE, AS TRUSTEES OF THE LYTLE
TRUST**DISTRICT COURT****CLARK COUNTY, NEVADA**TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST,

Plaintiff,

v.

ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; DOES 1 through 20, inclusive;
and ROE CORPORATIONS 1 through 80,
inclusive,

Defendants.

CASE NO.: A-18-775843-C
DEPT.: XXXI**RENEWED APPLICATION FOR
APPOINTMENT OF RECEIVER**Date:
Time:**[HEARING REQUESTED]**

Plaintiff TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (hereinafter the "Lytle Trust"), hereby apply for an Appointment of a Receiver to preserve Defendant ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION (the "Association"), to pay for mandatory maintenance of the common area expenses, and to compel an assessment of the Association members to pay a judgment against the Association.

This Motion is brought pursuant to NRS 32.010, 78.600, 78.650, and 82.471, and is made upon the grounds that the Lytle Trust—which is both (a) a property owner in Rosemere Estates and thus a member of the Association, and (b) a creditor with judgments against the Association exceeding \$1.4 million—seeks the assistance of a Receiver pursuant to:

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1 (1) NRS 32.010(1) (“A receiver may be appointed . . . by a creditor to subject any property or
2 fund to the creditor’s claim . . .”),

3 (2) NRS 32.010(3) (“A receiver may be appointed . . . [a]fter judgment, to carry the judgment
4 into effect”),

5 (3) NRS 32.010(4) (“A receiver may be appointed . . . [a]fter judgment . . . when the
6 judgment debtor refuses to apply the judgment debtor’s property in satisfaction of the judgment”),

7 (4) NRS 32.010(5) (“A receiver may be appointed . . . when a corporation . . . has forfeited
8 its corporate rights”),

9 (5) NRS 32.010(6) (“A receiver may be appointed . . . [i]n all other cases where receivers
10 have heretofore been appointed by the usages of the courts of equity”),

11 (6) by analogy, NRS 78.600 (receiver may be appointed when entity “cease[s] to exist in any
12 manner whatever”),

13 (7) by analogy, NRS 78.650(1)(c) (a receiver may be appointed when entity’s “trustees or
14 directors have been guilty of . . . nonfeasance”),

15 (8) by analogy, NRS 78.650(1)(d) (a receiver may be appointed when entity “is unable to
16 conduct the business . . . by reason of the . . . refusal to function of any of the directors or trustees”),

17 (9) by analogy, NRS 78.650(1)(f) (a receiver may be appointed when entity “has abandoned
18 its business”),

19 (10) by analogy, NRS 78.650(1)(h) (a receiver may be appointed when entity “has become
20 insolvent”),

21 (11) by analogy and alternatively, NRS 78.650(1)(i) (a receiver may be appointed when
22 entity “although not insolvent, is for any cause not able to pay its debts or other obligations as they
23 mature”), and

24 (12) because the Association is a nonprofit corporation, NRS 82.471(1) (a receiver may be
25 appointed when entity “becomes insolvent or suspends its ordinary business for want of funds to
26 carry on the business, or if its business has been and is being conducted at a great loss and greatly
27 prejudicial to the interests of its creditors or members”).

28 ///

1 Without the appointment of a Receiver, the common Association expenses, such as the
2 NRED and Secretary of State fees, will continue to go unpaid. Additional grounds exist because the
3 Association is refusing to pay and refusing to assess Association members related to various
4 monetary judgments awarded to the Lytles against the Association. This Motion is based upon this
5 Notice, the attached Memorandum of Points and Authorities, the Affidavit of Trudi Lee Lytle, the
6 Request for Judicial Notice and attached exhibits thereto, all of the pleadings and papers on file in
7 this action, and such other oral and documentary evidence as may be presented at the hearing on this
8 Motion.

9
10 DATED: October 24, 2019

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

11
12 By: _____

Richard E. Haskin, Esq.
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Attorneys for Plaintiff

TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS
TRUSTEES OF THE LYTLE TRUST

NOTICE OF MOTION

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on the _____ day of _____, 2019, at _____ a.m., in Dept. XXXI of the above referenced Court, or as soon thereafter as counsel may be heard, the law firm of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt, LLP, will bring the instant RENEWED APPLICATION FOR APPOINTMENT OF RECEIVER.

DATED: October 24, 2019

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: _____

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TRUSTEES OF THE LYTLE TRUST

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND PROCEDURAL BACKGROUND

Plaintiff TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (hereinafter the "Lytle Trust"), hereby apply for an Appointment of a Receiver to reconstitute the Defendant ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION (the "Association"), to pay for mandatory maintenance of the common area expenses, and to compel a special assessment of the Association members to partially pay judgments entered against the Association in favor of the Lytle Trust. The Association, due to its defunct status, failed to answer the Complaint in this matter and is in default.

In a series of lawsuits stoked by the Association's vengeful conduct towards the Lytle Trust, and specifically its trustees, Allen and Trudi Lytle, the Lytle Trust thwarted the Association's efforts to unlawfully foreclose on the Lytle Trust's property within the Association. As an additional result, the Lytle Trust was awarded compensatory damages, punitive damages, attorneys' fees, and costs in a series of three (3) separate judgments, the total of which is \$1,481,822.11. The judgments are accruing interest at the legal rate, and the Association has failed to pay any amount against the judgments, although the Lytle Trust garnished \$2,622.27 from the Association's bank account. Once more, the Association has refused to specially assess the Association members to satisfy the judgments. No additional funds are available to garnish.

The Association's failures to take action likely is the result of a united abandonment of the Association's Board when, in 2014, each of the three (3) Board members simply resigned from the Board after the Lytle Trust prevailed in two (2) separate Supreme Court appeals. Since 2014, the Board has not conducted any business, including those matters statutorily required of it, *i.e.*, payment of registration fees, conducting elections for the Board, and adopting a budget.¹ As it stands today, the Lytle Trust is uncertain as to who has the Association's checkbook, access to its bank accounts, and all of the Association's records and documents. Normally, these are safeguarded

¹ While some work or services to common area elements continues (such as repair of the entrance gate, water service and other utilities associated with the common areas), it is unclear who is authorizing such work and/or paying for such services. Clearly, something surreptitiously is occurring to the exclusion of the Lytle Trust and without the formality of a Board.

1 and entrusted to the Board. Here, there is no Board. Further, there is uncertainty as to what, if any,
2 insurance coverage exists for the Association and its membership (which potentially could put all
3 Association members at substantial risk of liability).

4 In addition to failing to pay the Lytle Trust judgments, the Association's status with the
5 Secretary of State is currently revoked, and the Association failed to pay mandatory fees to the
6 Nevada Real Estate Division ("NRED") or update its registration with the Ombudsman. Simply
7 stated, the Association is not operating as it must and the appointment of a receiver is necessary to
8 pay creditors, ensure that the Association has insurance, maintain control over the books and records
9 of the Association, as well as operate the most basic day-to-day Association activities until a Board
10 is in place.

11 This action commenced on June 8, 2018. The defendant Association failed to appear or
12 otherwise answer and was defaulted on August 30, 2018. On November 20, 2018, this Court granted
13 the Lytle Trust's Application for Appointment of a Receiver (the "Receiver Order"). A specific
14 receiver was neither identified in the Application nor specified in the resulting Order. Despite
15 counsel's efforts, the task of locating a Receiver with experience and expertise to run an NRS 116
16 "limited purpose association" proved much more difficult than anticipated. After court-ordered
17 status check hearings in September and October 2019, including a show-cause hearing, the Court, on
18 October 17, 2019, rescinded its Receiver Order, but did so without prejudice. In ruling, the Court
19 noted that a proper demonstration of the relevant criteria had originally been made to obtain the
20 Receiver Order; however, the Court felt compelled to rescind the Receiver Order due to the passage
21 of time without a receiver in place.

22 Counsel takes this opportunity to again apologize for the prior delay and the additional work
23 and concern such caused the Court. The Lytle Trust recently identified a competent receiver
24 candidate—Kevin Singer, who has been appointed receiver in more than 380 cases and whom the
25 Court met at the October 17, 2019 hearing—and files this Renewed Application for Appointment of
26 a Receiver. This Renewed Application is based, substantially, on the same criteria this Court already
27 found proper and seeks the appointment of Kevin Singer as the Receiver, pursuant to the proposed
28 order attached hereto as Exhibit 16.

II. STATEMENT OF FACTS

A. The Rosemere Estates Community And Defunct Board

At all relevant times, the Lytle Trust has owned property located at 1930 Rosemere Court, Las Vegas, Nevada, Assessor Parcel No. 163-03-313-009, which was and is part of Rosemere Estates ("Rosemere Estates"). Declaration of Trudi Lee Lytle ("Lytle Decl."), ¶ 2. Rosemere Estates consists of nine (9) properties, which originally were sold as undeveloped lots. *Id.* at ¶ 3.

Rosemere Estates is governed by the community's CC&Rs, which were drafted by the Developer, and dated January 4, 1994 (the "CC&Rs"). Lytle Decl., ¶ 4, *see also* CC&Rs, **Exhibit 1**. The CC&Rs created a "property owners' committee" ("Owners Committee"), tasked to maintain the common areas of the community, including the four (4) exterior wall planters, entrance way planters, perimeter wall and frontage, the entrance gate, and the private driveway. All of the common area expenses are shared equally between the owners. *Id.*

On February 25, 1997, the homeowners unanimously formed the Association, i.e., "Rosemere Estates Property Owners' Association," a NRS 82 non-profit corporation, which took the place of the Owners Committee in the Original CC&Rs, in order to hold a bank account and perform the actions required pursuant to the Original CC&Rs. Lytle Decl., ¶ 6, *see also* Articles of Incorporation, **Exhibit 2**. The Association consists of all properties within the community. Other than the first two to three years, the Association's Board has always had three members, consisting of a President, Secretary, and Treasurer. Lytle Decl., ¶ 7.

The Association held Board elections every three (3) years through March 2010. Lytle Decl., ¶ 8. Each election cycle, homeowners were invited to submit applications to run for the Board. *Id.* Thereafter, election forms were distributed, and an election occurred wherein three (3) Board members were elected. *Id.* However, it has been over nine (9) years since the Board last held an election on March 24, 2010. *Id.* at ¶ 9. The Board members in place from 2010 through July 2013 were Ray Sandoval (President), Orville McCumber (Secretary), and Johnnie McCumber (Treasurer). *Id.* There has been no Board in place for at least six (6) years.

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1 On January 27, 2014, during a court hearing involving the Lytle Trust and the Association in
2 a separate action related to the Board's unlawful adoption and recordation of Amended CC&Rs,
3 Orville McCumber, former Board Secretary, testified under oath that he no longer sat on the
4 Association's Board. Lytle Decl., ¶ 10, *see also* Transcript of Hearing, **Exhibit 3**. Public records
5 reveal the McCumbers moved more than two years ago and ceased to be Association members at
6 that time.²

7 In September 2014, Ray Sandoval, former Board President, and Trudi Lee Lytle had a
8 telephone conversation during which Mr. Sandoval stated that the Board "dissolved" and had not
9 conducted any business since July 29, 2013. Lytle Decl., ¶ 11. Further, Mr. Sandoval stated that
10 the Board had not conducted any meetings since July 2013, and did not intend to conduct any future
11 meetings or any future Association business. *Id.* It was abundantly clear from this conversation that
12 the Board simply does not exist, and all former officers abandoned their positions. *Id.*

13 Presently, there is no sitting and acting Board for the Association. The Board has not
14 conducted any meetings since 2013. Lytle Decl., ¶ 12. As a result of not having a Board, the
15 Association cannot conduct business. *Id.* at ¶ 13. Further, the Association has not paid its annual
16 dues to the Nevada Secretary of State, NRED or filed any of the required forms with these agencies.
17 As it stands, the Association is in "revoked" status with the Nevada Secretary of State. Nevada
18 Secretary of State Status, **Exhibit 4**.

19 **B. Adoption of the Amended CC&Rs in 2007**

20 At a July 2, 2007 Board meeting, the Board purportedly adopted a set of Amended and
21 Restated Covenants, Conditions and Restrictions ("Amended CC&Rs"), which vastly expanded the
22 Board and Association's powers and adopted the entirety of NRS Chapter 116. *See* Order Granting
23 Summary Judgment, Findings of Fact ("FOF") Nos. 23 – 35, **Exhibit 5**. The Amended CC&Rs
24 were in full force and effect at all times during the first two lawsuits commenced by the Lytle Trust
25 against the Association.

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28 ² *See* <http://www.clarkcountynv.gov/assessor/Pages/PropertyRecords.aspx?H=redrock&P=assrrealprop/pcl.aspx> (last accessed on
October 18, 2019).

1 C. **Judgments Entered In Favor Of The Lytle Trust And Against The Association**

2 1. **Rosemere 1 Litigation (2007-2016)**

3 In 2007, the Lytle Trust filed an NRS 38.310 mandated non-binding arbitration before the
4 NRED, naming the Association as respondent. The Lytle Trust sought a declaration that the
5 Amended CC&Rs were unlawfully adopted, recorded and enforced by the Association against the
6 Lytle Trust.

7 After the arbitrator found in favor of the Association, the Lytle Trust filed for a trial de novo
8 in this District Court, case number A-09-593497-C, which was assigned to Judge Michelle Leavitt
9 (the “Rosemere 1 Litigation”). The Lytle Trust entirely prevailed in the litigation, and the Court
10 granted the Lytle Trust’s summary judgment on July 29, 2013. *Id.*, COL No. 11, **Exhibit 5**. Indeed,
11 the Court determined that “the Amended CC&Rs were not properly adopted or recorded, that the
12 Amended CC&Rs are invalid, and that the Amended CC&Rs have no force and effect.” *Id.*, COL
13 No. 25.

14 On May 25, 2016, after hearing the Lytle Trust’s motion for attorneys’ fees, the Court
15 awarded the Lytle Trust \$297,072.66 in attorneys’ fees. Order Awarding Attorneys’ Fees in
16 Rosemere 1 Litigation, **Exhibit 6**. On June 17, 2016, the Court awarded the Lytle Trust damages,
17 after a prove-up hearing, in the amount of \$63,566.93. Order Awarding Damages in Rosemere 1
18 Litigation, **Exhibit 7**. Finally, the Court awarded the Lytle Trust costs in the amount of \$2,561.80.
19 Orders Awarding Costs in Rosemere 1 Litigation, **Exhibit 8**. Thus, the total amount the Association
20 owes the Lytle Trust arising from Rosemere 1 Litigation is \$363,201.39, plus accruing interest.

21 2. **Rosemere 2 Litigation (2010-2017)**

22 On March 16, 2010, the Lytle Trust initiated another NRS 38.310 mandated non-binding
23 arbitration before NRED, naming the Association as respondent (the “Rosemere 2 Litigation”). The
24 purpose of the Rosemere 2 Litigation was to halt non-judicial foreclosure proceedings initiated by
25 the Association against the Lytle Trust pursuant to NRS Chapter 116 and the Amended CC&Rs.³
26 *See*, Complaint in Rosemere 2 Litigation, **Exhibit 9**. The Lytle Trust also sought an order directing
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28 ³ Note, Rosemere 2 Litigation commenced more than six years *before* the Court in Rosemere 1 Litigation ruled that the Amended CC&Rs were invalid. Indeed, for purposes of Rosemere 2 Litigation, the parties stipulated that the Amended CC&Rs were valid and that NRS Chapter 116 fully applied to the Association.

1 the Association to comply with NRS Chapter 116 and the Amended CC&Rs where the Association
2 had failed to comply, e.g. approval of budgets, conduct of meetings, etc. *Id.* After the Association
3 prevailed in the arbitration (in November 2010), the Lytle Trust promptly filed a lawsuit (for trial de
4 novo) on December 13, 2010. *See*, Complaint in Rosemere 2 Litigation, **Exhibit 9**. The Association
5 filed a counterclaim, seeking to enforce assessments the Association levied against the Lytle Trust's
6 property.

7 On November 14, 2016, the Court granted the Lytle Trust's Motion for Summary Judgment
8 as to each and every cause of action and against the Association's Counterclaim. *See*, Order
9 Granting Summary Judgment in Rosemere 2 Litigation, **Exhibit 10**. The District Court then
10 awarded the Lytles the following: \$274,608.28 in attorneys' fees, \$4,725.00 in costs, and
11 \$823,824.84 in punitive damages pursuant to NRS 42.005. *See*, Order Granting Attorneys' Fees and
12 Costs in Rosemere 2 Litigation, **Exhibit 11**; *see also* Order Granting Punitive Damages in NRED 2
13 Litigation, **Exhibit 12**. Pursuant to the foregoing, the total amount of the judgment against the
14 Association and in favor of the Lytle Trust in the Rosemere 2 Litigation, including attorneys' fees
15 and costs, is \$1,103,158.12.

16 **3. Rosemere 3 Litigation (2015-2017)**

17 On April 2, 2015, the Lytle Trust filed an action against the Association in the Eighth
18 Judicial District, Case No. A-15-716420-C, seeking to compel the Association to hold an election, as
19 it had not conducted an election since March 24, 2010, despite the legal obligation to do so (the
20 "Rosemere 3 Litigation"). *See* Complaint in Rosemere 3 Litigation, **Exhibit 13**. On September 13,
21 2017, the Court granted the Lytle Trust's Motion for Summary Judgment, and ordered that election
22 take place before a neutral third party. *See* Order Granting Summary Judgment in Rosemere 3
23 Litigation, **Exhibit 14**.

24 On November 7, 2017, the Court awarded the Lytle Trust \$14,807.50 in attorneys' fees and
25 \$655.10 in costs. Order Granting Attorneys' Fees and Costs in Rosemere 3 Litigation, **Exhibit 15**.

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All of the foregoing orders in Rosemere 1, 2 and 3 Litigations are final and not subject to appeal, and all monetary orders are accruing interest. Aside from two garnishments netting a combined \$2,622.27, no amount has been paid on any of the judgments. Lytle Decl., ¶ 15.

4. The Amended CC&Rs Grant The Association Authority To Assess Each Unit For Payment Of Judgments Against The Association

The Amended CC&Rs, which were in full force and effect during the entirety of the Rosemere 1 and 2 Litigation matters, provide, in pertinent part:

10.1 Liability for Common Expenses: The percentage of liability for Common Expenses allocated to each Lot ...is a fraction, the numerator being one (1) and the denominator being the total number of lots within the Property. Nothing contained in this Section shall prohibit certain Common Expenses from being apportioned to particular Lots under this Declaration.

10.2 Common Expenses Attributable to Fewer than all Lots; Exempt Property

(c) An Assessment to pay a judgment against the Association may be made only against the Lots in the Property at the time the judgment was entered, in proportion to the respective Liability for Common Expense.

10.11 Personal Liability of Owners: The Owner of a Lot, at the time a Common Expense Assessment or portion thereof is due and payable, is personally liable for the Common Expense Assessment. Additionally, the Owner of a Lot...is deemed to covenant and agree to pay to the Association: (a) annual Common Expense Assessments; (b) Capital Improvement Assessments; and (c) Special Assessments...All Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot against which such Assessment is made.

Pursuant to the Amended CC&Rs, the Association has the power and authority to assess each "Lot" or unit for the total amount of any judgments against the Association in proportion to ownership within the Association. In the present case, there are nine (9) lots; therefore, each lot may be assessed one-ninth (1/9th) of the total judgment amounts.⁴

The Court must take note that the Amended CC&Rs were in full force and effect during the entirety of the Rosemere 1 and 2 Litigation matters. Further, as set forth in the next Section, the Courts in both matters awarded attorneys' fees and costs pursuant to the Amended CC&Rs.

⁴ However, as argued herein, *infra*, because the Lytle Trust is the prevailing party and judgment creditor, it makes no sense to require the Lytle Trust to pay any portion of its own judgments. Instead, the judgments should be assessed against the remaining eight (8) lots.

1 5. The Rosemere 1 and Rosemere 2 Judgments Were Awarded Pursuant To
2 The Amended CC&Rs

3 The Amended CC&Rs were recorded on July 3, 2007, in the office of the Recorder for Clark
4 County, Nevada. From that date, the Association deemed itself a full-blown unit owners'
5 association, subject to and taking advantage of all rights, privileges and remedies afforded by the
6 entirety of Chapter 116, including the right to assess and initiate Chapter 116 foreclosure
7 proceedings for failure to pay assessments, which is exactly what the Association did to the Lytle
8 Trust. *See generally*, Order Granting Summary Judgment, **Exhibit 5**. The Amended CC&Rs adopt
9 Chapter 116 of the Nevada Revised Statutes. Amended CC&Rs, at Article I, **Exhibit 1**. The
10 Amended CC&Rs define the Association pursuant to the Uniform Common-Interest Ownership Act.
11 *Id.* at 1.1. The Amended CC&Rs routinely reference Chapter 116 of the Nevada Revised Statutes.
12 *See, e.g., id.* at 1.13, 1.14, 1.30, 8.1, 10.3 (referring to the lien statutes codified in Chapter 116).

13 In granting the Lytle Trust's Motion for Attorneys' Fees, the district court in the Rosemere 1
14 and 2 Litigations cited *Mackintosh v. Cal. Fed. S&L Ass'n*, 113 Nev. 393, 405-406, 935 P.2d 1154,
15 1162 (1997), and held that the Lytle Trust could recover attorneys' fees under the Amended CC&Rs
16 because that document, while declared *void ab initio* by the district court, was in effect and enforced
17 by the Association against the Lytle Trust at all times during the underlying litigation. *See*
18 *generally*, Orders Granting Attorneys' Fees, **Exhibits 6, 11**.

19 In *Mackintosh, supra*, the purchasers of real property sued a savings and loan association for
20 rescission of a residential property purchase agreement. *Mackintosh*, 113 Nev. at 396-397, 935 P.2d
21 at 1157. The district court granted summary judgment in favor of the purchasers, finding the
22 purchase agreement was properly rescinded and *void ab initio*. However, the district court denied
23 the purchasers' request for attorney fees because the entire agreement, including the attorneys' fee
24 provision, was "void from its date of inception, just as if the contract had never existed." *Id.* 113
25 Nev. at 405-406, 935 P.2d at 1162.

26 The Supreme Court upheld the district court's summary judgment determination that the
27 purchasers had rescinded the purchase agreement. *Id.* However, the Supreme Court held the district
28 court improperly denied the purchasers' request for attorneys' fees. *Id.* Holding that an attorney fee

1 provision in a void agreement *could* support an award of fees, the Supreme Court relied on a Florida
2 Supreme Court case, *Katz v. Van Der Noord*, 546 So.2d 1047 (Fla. 1989), which held:

3 We hold that when parties enter into a contract and litigation later ensues over
4 that contract, attorney's fees may be recovered under a prevailing-party
5 attorney's fee provision contained therein even though the contract is
6 rescinded or held to be unenforceable. The legal fictions which accompany a
7 judgment of rescission do not change the fact that a contract did exist. It
8 would be unjust to preclude the prevailing party to the dispute over the
9 contract which led to its rescission from recovering the very attorney's fees
10 which were contemplated by that contract.

11 *Id.* at 1049.

12 Finally, in the Rosemere 2 Litigation, the Court cited the Amended CC&Rs and provisions of
13 NRS Chapter 116 repeatedly in finding that the Association violated its own governing documents.
14 For example, the Court found that the Association failed to notify the Lytle Trust of the intent to lien
15 as required by NRS 116.31162(1)(a). Order Granting Summary Judgment, FOF No. 13, COL Nos.
16 31, 32, **Exhibit 5**. The Association failed to adopt an annual budget as required by NRS 116.3115
17 and the Association's Amended CC&Rs and Bylaws. *Id.* at COL No. 28 - 30. The Association
18 failed to take bids before hiring a collection agency as required by NRS 116.31086 (*Id.* at COL No.
19 34) and unlawfully suspended the Lytle Trust's membership privileges without complying with the
20 Amended CC&Rs. *Id.* at COL No. 42.

21 **III. ARGUMENT**

22 **A. Several Provisions of NRS 32.010 Authorize The Appointment Of A Receiver**

23 NRS 32.010 relevantly provides as follows:

24 A receiver may be appointed by the court in which an action is pending, or
25 by the judge thereof:

26 **1. In an action... by a creditor to subject any property or fund to the
27 creditor's claim . . . on application of the plaintiff**, or of any party
28 whose right to or interest in the property or fund, or the proceeds thereof,
is probable, and where it is shown that the property or fund is in danger of
being lost, removed or materially injured.

* * *

3. After judgment, to carry the judgment into effect.

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1 **4. After judgment, . . . in proceedings in aid of execution, . . . or when**
2 **the judgment debtor refuses to apply the judgment debtor's property**
3 **in satisfaction of the judgment.**

4 **5. In the cases when a corporation . . . is insolvent, or in imminent**
5 **danger of insolvency, or has foreited its corporate rights.**

6 **6. In all other cases where receivers have heretofore been appointed**
7 **by the usages of the courts of equity.**

8 [Emphasis added.]

9 Customarily, a receiver is a neutral party appointed by the court to take possession of
10 property and preserve its value for the benefit of the person or entity subsequently determined to be
11 entitled to the property. *Anes v. Crown Partnership*, 113 Nev. 195; 932 P.2d 1067, 1069 (1997)
12 (citation omitted). At least two things are essential to the appointment of a receiver under the
13 statute: 1) there must be an action pending in which the application is made; and, 2) the petition
14 must state sufficient facts under one of the subdivisions of the statute to justify such action. *See*
15 *State v. Second Judicial Dist. Court in and for Washoe County*, 49 Nev. 145, 241 P. 317 (1925).

16 The first requirement was satisfied when the Lytles filed their Complaint here against the
17 Association on June 8, 2018.

18 The second requirement for the appointment of a receiver similarly is met under each of
19 subsections 1, and 3-6, only one of which is needed to warrant the appointment of a receiver.
20 Indeed, it is worth noting that the original Application for Appointment of a Receiver (which this
21 Court granted on November 15, 2018, but then revoked on October 17, 2019, due to the passage of
22 time without a receiver being empaneled) was based only on subsection 1 of NRS 32.010, and this
23 Court found such sufficient. Additionally, however, the Lytle Trust obtained judgments against the
24 Association and a Receiver is needed to carry those judgments into effect. *See* NRS 32.010(3).
25 Further, a Receiver is warranted because the Association, as the judgment debtor, refuses to satisfy
26 the judgments and shows no intention of paying any amount against any of these judgments. NRS
27 32.010(4), Lytle Decl. at ¶ 15. Indeed, immediately after the Lytle Trust prevailed in its first action
28 against the Association, the Board members all abandoned their positions in an effort to avoid
paying the judgments and being put into the unenviable position of levying a special assessment on
the owners. A receiver is independently warranted under NRS 32.010(5) because the Association is

1 “insolvent, or in imminent danger of insolvency,” as evidenced by its failure to collect any dues or
2 make any assessments in many years while more than \$1,400,000 in judgments against it remain
3 outstanding, and, alternatively, because the Association “has forfeited its corporate rights,” at least
4 temporarily so, as evidenced by its “revoked” status with the Nevada Secretary of State. **Exhibit 4.**
5 Finally, the “catchall” provision of NRS 32.010(6) also applies because courts of equity have
6 historically appointed receivers when, for example, “in view of all the circumstances of the case,
7 [appointment of a receiver is needed] for the promotion of justice where no other adequate remedy
8 exists.” *Bowler v. Leonard*, 70 Nev. 370, 383, 269 P.2d 833, 839 (1954). Here, the Lytle Trust has
9 substantial judgments against the Association, whose Board members abandoned their duties when
10 the judgments were entered and no other adequate remedy exists to reconstitute the Board and assess
11 the Association members to pay the judgments, to the extent permitted by law, and to otherwise keep
12 the Association in good standing.

13 **B. By Analogy, NRS 78.600 and 78.650 Authorize The Appointment of a Receiver**

14 NRS Chapter 78 regards private corporations. While the Association is formed as a Chapter
15 82 nonprofit corporation, the principles underlying the appointment of a receiver for a for-profit
16 entity under Chapter 78 are equally applicable regarding a nonprofit entity under Chapter 82.

17 Under NRS 78.600, a receiver may be appointed when the corporate entity “cease[s] to exist
18 in any manner whatever.” Here, the Association ceased to conduct any business many years ago and
19 is in “revoked” status with the Nevada Secretary of State. **Exhibit 4.**

20 Additionally, pursuant to NRS 78.650(1)(c), a receiver may be appointed when the corporate
21 entity’s “trustees or directors have been guilty of . . . nonfeasance.” “Nonfeasance” is the “[t]he
22 failure to act when a duty to act exists.” BLACK’S LAW DICTIONARY 1216 (10th ed. 2014). Here, the
23 Association has a duty to elect a functioning Board, to preserve its legal status, to pay its debts,
24 including the judgments obtained by the Lytle Trust, etc.—it has done none of these things (i.e.,
25 nonfeasance).

26 Further, pursuant to NRS 78.650(1)(d), a receiver may be appointed when the corporate
27 entity “is unable to conduct the business . . . by reason of the . . . neglect or refusal to function of any
28 of the directors or trustees.” Clearly, this applies here. Indeed, without repeating the applicable

1 facts, each of NRS 78.650(1)(f) (authorizing a receiver when the entity “has abandoned its
2 business”), 78.650(1)(h) (authorizing a receiver when the entity “has become insolvent”), and
3 78.650(1)(i) (authorizing a receiver when the entity, even if “not insolvent, is for any cause not able
4 to pay its debts or other obligations as they mature”—at a minimum, the Lytle Trust judgments are
5 all matured and unpaid), are clearly satisfied here.

6 Any one of the foregoing authorize and justify the appointment of a receiver here.

7 **C. NRS 82.471(1) Authorizes The Appointment of A Receiver**

8 NRS Chapter 82 applies to nonprofit corporations, like the Association. NRS 82.471(1)
9 authorizes the appointment of a receiver when the entity “becomes insolvent or suspends its ordinary
10 business for want of funds to carry on the business, or if its business has been and is being conducted
11 at a great loss and greatly prejudicial to the interest of its creditors or members.”

12 A receiver may be requested by a creditor holding at least 10% of the outstanding
13 indebtedness or by a member holding at least 10% of the voting power. *Id.* Here, the 10% threshold
14 is satisfied by the Lytle Trust both as a creditor (with judgments totaling in excess of \$1.4 million)
15 and as an Association member (as one of nine members, the Lytle Trust holds an 11.11% voting
16 right).

17 In the present case, a receiver should be appointed because the Association is indebted to the
18 Lytle Trust in the amount of \$1,481,822.11 (plus accrued post-judgment interest), the Association’s
19 Board disbanded shortly before the first of three judgments was awarded, likely in an effort to make
20 it more cumbersome for the Lytle Trust to recover, and the Association is without any governing
21 body to assess the homeowners and pay the judgments. Further, the Association is currently in
22 default with the NRED and Nevada Secretary of State and risks permanently losing its right to exist
23 and operate. In short, the Lytle Trust is “greatly prejudic[ed]” because the Association’s
24 abandonment of its duties deprives the Lytle Trust, as a creditor, any ability to be paid its judgments,
25 and, deprives the Lytle Trust, as a member, the benefits of an existing, functioning Association in
26 good standing.

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D. NRS 82 Provides The Association With The Authority To Assess Members To Pay The Judgments

NRS 82.241 provides that, while a member of a corporation is not personally liable for the debts, liabilities or obligations of a corporation, the corporation may levy assessments upon its members. NRS 82.131(5), *see also* NRS 82.241(3)(a).

In the present case, the District Court already ruled that the Association is liable for attorneys' fees, costs and damages pursuant to the Amended CC&Rs, which provide the Association with the ability to specially assess each property (unit) for the costs of judgments. Amended CC&Rs, ¶ 10.11, **Exhibit 16**.

E. The Lytle Trust, As Judgment Creditor, Should Not Receive Any Assessment to Pay Its Own Judgments

The current balance of the judgments the Lytle Trust obtained against the Association, with interest, exceeds \$1,500,000. Divided nine ways (for the nine members in the Association) results in a pro rata share of approximately \$167,000 per member. However, such allocation would absurdly require the Lytle Trust to pay a substantial part of its own judgments. Stated differently, the Lytle Trust was wrongfully required to engage in litigation (three times) with the Association. That litigation resulted in numerous proceedings at the NRED, District Court, Nevada Supreme Court, and further proceedings in the District Court on remand. The Lytle Trust expended its trustees' (Allen and Trudi Lytle's) life savings embroiled in litigation. The Lytle Trust prevailed and, *to make it whole*, was awarded in excess of \$1,400,000; mostly in legal fees, costs, and punitive damages. If the Lytle Trust, the judgment creditor, is required to absorb \$167,000 of the awards against the Association, the Lytle Trust will not be whole and, absurdly, it would be required to shoulder some liability for the punitive damage award even though it (the Lytle Trust) was the one who was harassed and subjected to the Association's judicially-determined oppressive conduct.

Assessing any part of the Lytle Trust's judgments against the Lytle Trust will, to that same extent, render the judgments "moot because [the Lytle Trust] would, in affect [sic], pay [its] own judgement." *J&J Timber Co. v. Broome*, 932 So.2d 1, 7 (Miss. 2006); *see also, Goldsmith v. Sachs*, 17 F. 726, 727 (D. Cal. 1882) ("The plaintiff does not contribute to pay his own judgment . . ."),

1 Nevada has a strong policy that “[s]tatutes should be construed so as to avoid absurd results,” and no
 2 reason exists to exclude receivership statutes. *See e.g., Tate v. Board of Medical Examiners*, 131
 3 Nev. 675, 678, 356 P.3d 506, 508 (2015); *General Motors v. Jackson*, 111 Nev. 1026, 1029, 900
 4 P.2d 345, 348 (1995) (“A statute should always be construed to avoid absurd results.”).

5 In short, the Receiver’s power to assess the judgments against the Association’s members
 6 must exclude the judgment creditor—the Lytle Trust—and, instead, render any assessment against
 7 the remaining eight members.

8 **F. The Receiver Should Be Provided With A Directive To Exercise The Receiver’s**
 9 **Power and Authority Pursuant to NRS 32.295**

10 NRS 32.255 provides the court, when appointing a receiver, “has exclusive jurisdiction to
 11 direct the receiver and determine any controversy related to the receivership or receivership
 12 property.” The powers of the receiver include, in pertinent part, the power to (1) “collect, control
 13 conserve and protect receivership property,” (2) operate the business that is part of the receivership
 14 property, including preservation of status and licensure, (3) exercise any power conferred by this
 15 Court upon the receiver. NRS 32.295(1).

16 In the present case, the Lytle Trust requests the Court appoint Kevin A. Singer, as receiver.
 17 The Court should further empower and direct the receiver as set forth in the proposed Order
 18 Appointing Receiver, including, but not limited to, as follows:

- 19 1. Take possession and control of the Association’s bank accounts, including locating all
 20 checkbooks, and ledgers, and other Association records and documents including, but not limited to,
 21 budgets, reserve studies, insurance policies and other effects of the Association.
- 22 2. Issue a special assessment upon all owners within the Association, except the Lytle
 23 Trust, to satisfy (or, at least, partially satisfy⁵) the Lytle Trust’s judgments against the Association.
- 24 3. Pay NRED for mandatory registration pursuant to NRS 116.31155, and if there is
 25 insufficient funds within the Association’s accounts to pay such fees, issue a special assessment
 26 upon all owners within the Association to satisfy any amounts due to NRED.

27
 28 ⁵ The Lytle Trust is evaluating whether any of the judgments preclude enforcement, even in small
 part, against any or all of the Association’s other members. If such cannot be resolved with the
 Receiver, either the Receiver and/or the Lytle Trust may seek future instructions from the Court.

1 4. Update registration with the ombudsman pursuant to NRS 116.31158.

2 5. Pay the Secretary of State for the State of Nevada all past due and presently due
3 amounts to amend the Association's status from "revoked" status, and if there are insufficient funds
4 within the Association's accounts to pay such fees, issue a special assessment upon all owners within
5 the Association to satisfy any amounts due to Secretary of State.

6 6. Conduct an election for the Board of Directors for the Association.

7 7. Make any necessary repairs to the common areas, and if there are insufficient funds
8 within the Association's account to pay for such repairs, issue a special assessment upon all owners
9 within the Association to pay for said repairs.

10 8. Issue a special assessment upon all members of the Association to pay the receiver's
11 fees and costs.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the Lytle Trust, an Association creditor and member, requests this
14 Court appoint a receiver pursuant to the foregoing authority. The Lytle Trust provides a proposed
15 Order for this Court to sign concurrently with the filing of this Application.

16 DATED: October 24, 2019

17 GIBBS GIDEN LOCHER TURNER
18 SENET & WITTBRODT LLP

19 By: 

20 Richard E. Haskin, Esq.
21 Nevada State Bar # 11592
22 1140 N. Town Center Drive, Suite 300
23 Las Vegas, Nevada 89144
24 Attorneys for Plaintiff

25 TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS
26 TRUSTEES OF THE LYTLE TRUST
27
28

EXHIBIT “1”

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
(CC and R's)

This Declaration of Covenants, Conditions and Restrictions made this 11th Day of July, 1974 by Baughman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

Lots 1 through 9 of Rosemere Court, a subdivision, recorded in Book 59 of Plats, Page 58, Clark County Records, Nevada.

WHEREAS, it is the desire and intention of Subdivider to sell the land described above and to impose on it mutual, beneficial covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit of all the land described above and the future owners of the lots comprising said land.

NOW, THEREFORE, Subdivider hereby declares that all of the land described above is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, sold, occupied and improved subject to the following covenants, conditions and restrictions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of said land and are established and agreed upon for the attractiveness of said land and lots and every part thereof. All of such covenants, conditions and restrictions shall run with the land and shall be binding on the Subdivider and on all of its heirs, successors and assigns and on all other parties having or occupying any right, title, or interest in the described land or any part thereof, and on all of their heirs, successors and assigns.

A breach or violation of these CC & R's or any re-entry by reason of such breach or any liens established hereunder shall not defeat or render invalid or modify in any way the lien of any mortgage or deed of trust made in good faith and for value as to said lots or PROPERTY or any part thereof; that these CC & R's shall be binding and effective against any owner of said PROPERTY whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

1. Lots shall be used for private one-family residential purposes exclusively. Customary out-buildings including guest house, hobby house, private garages or carports may be erected or maintained therein, consistent with City of Las Vegas Zoning Ordinance.

2. All lavatories and toilets shall be built indoors and be connected with the existing sewer system.

3. No antennas or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained on the roof of any structure within subdivision. In addition, no cooling or heating units shall be visible on the roof of any structure within subdivision.

4. No rubbish, weeds, undergrowth or debris of any kind or character shall be placed or permitted to accumulate upon said lots so as to render said premises a fire hazard, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity of the occupants thereof. Trash containers shall be visible on days of trash pick-up only. The Owner of the lot, for himself, his successors and assigns agrees to care for, cultivate, prune and maintain in good condition any and all trees, lawns and shrubs.

5. No odors shall be permitted to arise therefrom so as to render any such lot unsanitary, unsightly, offensive or detrimental to any other lot and no nuisance shall be permitted to exist or operate upon any lot so as to be offensive or detrimental to any other lot or to the occupants thereof; and without limiting the generality of any of the foregoing provisions, no horns, whistles, bells or other sound devices, except devices used exclusively for security purposes, shall be located, used or placed upon any lots. Stereo speakers may be used at reasonable volume levels.

6. No structure (including but not limited to dwelling units, garages, carports, walls and fences) shall be permitted to fall into disrepair and all structures shall at all times be kept in good condition and repair and adequately painted or otherwise finished. Any and all repairs, redecorations, modifications or additions, interior and exterior, shall fully comply with all restrictions.

7. No owner shall permit any thing or condition to exist upon any lot which shall induce, breed or harbor infectious plant disease or noxious insects.

8. For continuity of the neighborhood appearance, every single-family dwelling erected shall be of Spanish, Moorish, Mediterranean or similar style architecture, and shall have a tile roof, face into the cul-de-sac and contain not less than 3,000 square feet of floor space for one-story homes and 2,500 square feet of floor space for two-story homes, exclusive of basements, porches, patios, garages, carports, guest or hobby houses.

9. Driveways for Lots 1 and 9 must enter the cul-de-sac and not the entrance street.

10. Building plans of residences to be erected shall be approved by Subdivider prior to start of construction.

11. Easements for installation and maintenance of utilities and drainage facilities have been conveyed as shown on the recorded subdivision plat and otherwise of record.

12. No billboards, signs, or advertising of any kind excepting a conventional "for sale" or "for rent" sign not larger than two feet by two feet shall be erected or maintained upon any of said lots without the written consent of Subdivider.

13. No animals or fowl, other than household pets, shall be kept or maintained on said property or any portion thereof. At any one time the total number of household pets shall not exceed four. No horses shall be allowed within the subdivision at any time.

14. Each Owner of a lot agrees for himself and his successors and assigns that he will not in any way interfere with the natural or established drainage of water over his lot from adjoining or other lots in said subdivision, or that he will make adequate provisions for proper drainage in the event it is necessary to change the natural or established flow of water drainage over his lot. For the purpose hereof, "natural" drainage is defined as the drainage which occurred or which would occur at the time the overall grading of said subdivision, including the finish grading of each lot in said parcel was completed by the Subdivider.

15. Landscaping () of a residence shall be completed within () months from completion of construction of that residence. Landscaping shall meet or surpass VA and FHA standards.

16. No clotheslines shall be placed nor shall any clothes be hung in any manner whatsoever on any lot in a location visible from a public street.

16. No boat, trailer, mobile home, camper or commercial vehicles may be parked at any time within the private drive (street) area. In addition, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled on any lot in an area visible from an adjoining property or the street area.

17. No boat, trailer, mobile home, camper, or commercial vehicle may be parked or stored at any time on any lot in an area visible from adjoining properties or streets. Additionally, no automobile, camper, mobile home, commercial vehicle, truck, boat or other equipment may be dismantled or stored on any lot in an area visible from adjoining properties or streets.

18. No commercial tools, equipment, commercial vehicles, structures or other commercial appurtenances shall be stored at any time on any lot.

19. Purchasers/Owners shall on an equal share basis, assume responsibility to maintain any and all off-site improvements which have been installed by Subdivider.

20. Purchasers/Owners or their successors in interest shall assume responsibility to maintain walls erected by Subdivider. Side and front walls shall be of the same type and color as presently installed and shall be erected within three months from completion of construction of house on said lot. Cost of side walls shall be agreed upon and equally shared by adjoining property owners. In the event side walls are already erected at time of purchase of lot, the Purchaser of that lot shall pay the adjoining lot owner who previously erected said wall one half (1/2) the cost as proven by his paid receipts. Payment shall be made within sixty (60) days from date of purchase of said lot.

21. A property owners committee shall be established by all owners of lots within the subdivision.

a. The committee shall determine the type and cost of landscaping on the four (4) exterior wall planters, and the entrance-way planters. The committee shall also determine the method and cost of watering and maintaining planters. All costs shall be equally shared by all owners of lots within the subdivision. In the event of any disagreement, the majority shall rule.

b. The exterior perimeter wall along the Oakley, Tenaya and El Parque frontage shall be maintained and/or repaired when appropriate, under the direction of the property owners committee. The costs to be equally shared by all 9 lot owners.

c. The Entrance Gate and its related mechanical and electrical systems shall be maintained and/or repaired on an equal share basis by all lot owners.

d. The Private Drive (the interior street) used for ingress and egress purposes by all lot owners and the private sewer system within the Private Drive and easement area shall be maintained and/or repaired on an equal share basis by all owners of lots within the subdivision.

22. Construction trailers or mobile homes will not be permitted on any lot within the subdivision.

23. Each of the provisions of these covenants, conditions and restrictions shall be deemed independent and severable and the invalidity or partial invalidity of any provision or portion thereof, shall not effect validity or enforceability of any other provision.

24. Except as otherwise provided herein, Subdivider or any owner or owners of any of the lots shall have the right to enforce any or all of the provisions of the covenants, conditions and restrictions upon any other owner or owners. In order to enforce said provision or provisions, any appropriate judicial proceeding in law or in equity may be initiated and prosecuted by any such lot owner or owners against any other owner or owners.

25. Attorney's Fees: In any legal or equitable proceeding for the enforcement of or to restrain the violation of the Declaration of Covenants, Conditions and Restrictions to any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.

IN WITNESS WHEREOF, said Owner/Subdivider **Baughman & Turner Pension Trust** of Nevada, has hereunto affixed their signatures.

Date: 1/4/94 Stephen F. Turner
Owner/Subdivider/Trustee Stephen F. Turner

Date: 1-4-94 Richard J. Baughman
Owner/Subdivider/Trustee Richard J. Baughman

On this 4th day of JANUARY, 1994,
before me, the undersigned, a Notary Public in
and for said County and State, Personally appeared

Stephen F. Turner & Richard J. Baughman



(this area for official use)

Diana Lyn Schultz
Notary Public in and for said County and State

When Recorded Mail To:

Baughman & Turner, Inc.
1210 Hinson Street
Las Vegas, NV 89102

CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF
BOUGHMAN & TURNER, INC.
01-04-94 14100 PDR
OFFICIAL RECORDS
BOOK 148154 PAGE 01241
FEE 10.00 PPTT

000004

EXHIBIT “2”

FILED
IN THE OFFICE OF THE
SECRETARY OF STATE OF THE
STATE OF NEVADA

FEB 25 1997

C3724 97

**Non-Profit
Articles of Incorporation
(PURSUANT TO NRS 82)**

Filing Fee: \$25.00

Receipt #:

By:

2-14-97 9:50 AM
Paid
25.00

STATE OF NEVADA
Secretary of State
For filing office use
IMPORTANT: Read instructions on reverse side before completing this form.

1. NAMES OF CORPORATION: ROSEMEERE ESTATES PROPERTY OWNERS ASSOCIATION
2. RESIDENT AGENT: MARTHA B. BOULDER (Resident agent must be a resident of Nevada and his first address in Nevada where papers may be served)

Name of Resident Agent: MARTHA B. BOULDER
Street Address: 1960 ROSEMEERE COURT LAS VEGAS NV 89117

3. PURPOSE: HOMEOWNERS ASSOCIATION
4. GOVERNING BOARD: 2 members. The names and addresses are as follows (attached additional pages if necessary):

The FIRST BOARD OF DIRECTORS shall consist of 2 members. The names and addresses are as follows (attached additional pages if necessary):
LINDA LAMOTHE 1930 ROSEMEERE COURT LAS VEGAS, NV 89117
Address: 1960 ROSEMEERE COURT LAS VEGAS, NV 89117

MARTHA B. BOULDER 1960 ROSEMEERE COURT LAS VEGAS, NV 89117
Address: 1960 ROSEMEERE COURT LAS VEGAS, NV 89117

5. OTHER MATTERS: This form includes the minimal statutory requirements for incorporation under NRS 82. You may attach additional information as permitted in NRS 82.091 or any other information you deem appropriate. If any of the additional information is necessary to this form, it must be filed and will be returned to you for completion. Number of pages attached: 0
6. SIGNATURES OF INCORPORATORS: Indicate the names and addresses of each incorporator signing the articles. (Signatures must be on separate sheets, attached and signed by each incorporator.)

LINDA LAMOTHE
Address: 1930 ROSEMEERE COURT LAS VEGAS, NV 89117
City: LAS VEGAS

MARTHA B. BOULDER
Address: 1960 ROSEMEERE COURT LAS VEGAS, NV 89117
City: LAS VEGAS

State of: NEVADA County of: CLARK

This instrument was acknowledged before me on Feb 14, 1997 at 6:15 PM.

MARTHA B. BOULDER
Name of Person

as incorporator
of ROSEMEERE ESTATES PROPERTY OWNERS ASSOCIATION

County of party or in behalf of whom instrument was executed:
Clark Notary Public Signature

(This entry is required on all instruments)
NOTARY PUBLIC
STATE OF NEVADA
County of Clark
Todd Fiskland
My Appointment Expires July 2, 1997

7. CERTIFICATE OF ACCEPTANCE OF APPOINTMENT OF RESIDENT AGENT
MARTHA B. BOULDER
Signature of Resident Agent
Martina B. Boulder

Date: 2/14/97

LINDA LAMOTHE
Name (Print)
1930 ROSEMEERE CT
Address

Linda Lamothe
Signature

State of: NEVADA County of: CLARK

This instrument was acknowledged before me on Feb 14, 1997 at 11:00 AM.

Linda Lamothe
Name of Person

as incorporator
of ROSEMEERE ESTATES PROPERTY OWNERS ASSOCIATION

County of party or in behalf of whom instrument was executed:
Clark Notary Public Signature

(This entry is required on all instruments)
NOTARY PUBLIC
STATE OF NEVADA
County of Clark
Peter L. Greany
My Appointment Expires July 2, 1997

7. CERTIFICATE OF ACCEPTANCE OF APPOINTMENT OF RESIDENT AGENT
MARTHA B. BOULDER
Signature of Resident Agent
Martina B. Boulder

Date: 2/14/97

000920

EXHIBIT “3”

Electronically Filed
02/04/2014 12:42:37 PM



CLERK OF THE COURT

1 TRAN

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

4

* * * * *

5

6

7

JOHN ALLEN LYTLE, TRUDI LEE }

8

LYTLE, LYTLE TRUST, }

CASE NO. A593497

9

Plaintiffs, }

DEPT. NO. XII

10

vs. }

11

ROSEMERE ESTATES PROPERTY }

Transcript of Proceedings

12

OWNERS ASSOCIATION, et al., }

13

Defendants. }

14

BEFORE THE HONORABLE MICHELLE LEAVITT, DISTRICT COURT JUDGE

15

PROVE UP

16

MONDAY, JANUARY 27, 2014

17

APPEARANCES:

18

For the Plaintiffs: RICHARD E. HASKIN, ESQ.

19

20

For the Defendants: SEAN L. ANDERSON, ESQ.
RYAN REED, ESQ.

21

22

RECORDED BY: KRISTINE CORNELIUS,
District Court

23

TRANSCRIBED BY: KRISTEN LUNKWITZ

24

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

25

1 witness.

2 MR. HASKIN: Your Honor, I'd like to call Orville
3 McCumber who is sitting in the audience today.

4 THE CLERK: Please remain standing, sir, and
5 please raise your right hand.

6 ORVILLE MCCUMBER

7 [having been first duly sworn, testifies as follows:]

8 THE CLERK: Thank you. Please be seated. And
9 could you please state your full name, spelling your first
10 and last name for the record?

11 THE WITNESS: My full name, Orville L. McCumber,
12 Jr.

13 THE CLERK: Please spell it.

14 THE WITNESS: First name O-R-V-I-L-L-E, last name
15 M-C-capital C-U-M-B-E-R.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION OF WITNESS MCCUMBER

18 BY MR. HASKIN:

19 Q Good morning, Mr. McCumber.

20 A Good morning.

21 Q Mr. McCumber, do you currently sit on the Board
22 for the Rosemere Property Owners' Association?

23 A No.

24 Q Did you sit on -- well, let me ask you this. When
25 was the last time you sat on the Board?

1 A I was on the Board from 2010 to 2012.

2 Q 2012. And --

3 A Excuse me, '13.

4 Q Okay. It's easy to confuse years now. And what
5 was your position on the Board?

6 A Secretary.

7 Q Okay. And what were some of your duties as
8 Secretary of the Board for the Association?

9 A To give notices of meetings, to write minutes of
10 the meetings, to organize and hold all the documents
11 pertaining to the Association.

12 Q And you're familiar with the litigation we're
13 sitting here --

14 A Yes.

15 Q -- today for. Correct?

16 And were you -- don't want to get into privileged
17 communications, but did you assist your attorneys in any
18 way with responding to discovery in this case?

19 A Yes.

20 MR. HASKIN: Okay. Permission to approach, Your
21 Honor?

22 THE COURT: Sure.

23 MR. HASKIN: I'm going to hand you two documents.
24 Just keep those [indiscernible].

25 THE COURT: Thank you.

CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER

EXHIBIT “4”

ENTITY INFORMATION**ENTITY INFORMATION****Entity Name:**

ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION

Entity Number:

C3724-1997

Entity Type:

Domestic Nonprofit Corporation (82)

Entity Status:

Revoked

Formation Date:

02/25/1997

NV Business ID:

NV19971112707

Termination Date:

Perpetual

Annual Report Due Date:

2/28/2015

Solicits Charitable Contribution:

No

REGISTERED AGENT INFORMATION**Name of Individual or Legal Entity:**

ORVILLE MCCUMBER

Status:

Active

CRA Agent Entity Type:

Registered Agent Type:

Non-Commercial Registered Agent

NV Business ID:

Office or Position:

Jurisdiction:

Street Address:

1961 ROSEMERE CT, LAS VEGAS, NV, 89117, USA

Email Address:

Mailing Address:

Individual with Authority to Act:

Contact Phone Number:

Fictitious Website or Domain Name:

PRINCIPAL OFFICE ADDRESS

Address:

Mailing Address:

OFFICER INFORMATION

☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
President	RAY SANDOVAL	1860 ROSEMERE CT, LAS VEGAS, NV, 89117, USA	02/24/2014	Active

Title	Name	Address	Last Updated	Status
Secretary	ORVILLE MCCUMBER	1961 ROSEMERE CT, LAS VEGAS, NV, 89117, USA	02/24/2014	Active
Treasurer	JOHNNIE MCCUMBER	1961 ROSEMERE CT, LAS VEGAS, NV, 89117, USA	02/24/2014	Active
Director	ORVILLE MCCUMBER	1961 ROSEMERE CT, LAS VEGAS, NV, 89117, USA	02/24/2014	Active

Page 1 of 1, records 1 to 4 of 4

CURRENT SHARES

Class/Series	Type	Share Number	Value
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No records to view.

Number of No Par Value Shares:

0

Total Authorized Capital:

[Filing History](#)

[Name History](#)

[Mergers/Conversions](#)

[Return to Search](#)

[Return to Results](#)

EXHIBIT “5”

Electronically Filed
07/30/2013 10:15:58 AM



CLERK OF THE COURT

1 **OGSJ**
Richard E. Haskin, Esq.
2 Nevada State Bar # 11592
GIBBS GIDEN LOCHER TURNER
3 **SENET & WITTBRODT LLP**
7450 Arroyo Crossing Parkway, Suite 270
4 Las Vegas, Nevada 89113-4059
(702) 836-9800

5 Attorneys for Plaintiff
6 JOHN ALLEN LYTLE and
TRUDI LEE LYTLE
7 as Trustees of the Lytle Trust

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10
11 JOHN ALLEN LYTLE and TRUDI LEE LYTLE,
as Trustees of the Lytle Trust,

12 Plaintiffs,

13 v.

14 ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES 1 through 10,
15 inclusive,

16 Defendants.

CASE NO. A-09-593497-C
Dept.: XII

**ORDER GRANTING PLAINTIFFS JOHN
ALLEN LYTLE AND TRUDI LEE
LYTLE'S MOTION FOR SUMMARY
JUDGMENT**

17
18 PLEASE TAKE NOTICE that on April 1, 2013, the Court heard Plaintiffs JOHN ALLEN
19 LYTLE and TRUDI LYTLE, as TRUSTEES OF THE LYTLE TRUST's ("Plaintiff"), Motion for
20 Summary Judgment, and ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's (the
21 "Association") Motion for Summary Judgment. After considering the motions, oppositions and
22 replies thereto, the declarations, affidavits, and evidence submitted therewith, and hearing oral
23 argument thereon, the Court grants Plaintiffs JOHN ALLEN LYTLE AND TRUDI LEE LYTLE, as
24 TRUSTEES OF THE LYTLE TRUST's Motion for Summary Judgment. The Court further denies
25 ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION's Motion for Summary
26 Judgment.

27 ///

28 ///

JUL 25 2013

1 Pursuant to NRCP 56(c), the Court's findings with respect to the undisputed material facts
2 and legal determinations on which the court granted summary judgment are set forth herein and as
3 follows:

4 **I. FINDINGS OF UNDISPUTED MATERIAL FACTS**

5 1. On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the
6 subdivider of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere
7 Court in Las Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of
8 Covenants, Conditions, and Restrictions ("Original CC&Rs.")

9 2. The Original CC&Rs consist of four (4) pages and 25 paragraphs, with no bylaws
10 annexed, no amendment provision, and no homeowners association, as defined by Chapter 116.

11 3. The Original CC&Rs create a "property owners' committee" with very limited
12 maintenance duties over specific common area items (exterior walls and planters, entrance way and
13 planters, entrance gate, and the private street), which are specifically set forth in Paragraph 21 of the
14 Original CC&Rs.

15 4. The Original CC&Rs then grant each homeowner, and not any homeowners'
16 association, the power to enforce the Original CC&Rs against one another.

17 5. Among other things, there are no rental or pet restrictions or construction deadline in
18 the Original CC&Rs.

19 6. The Developer then sold the nine (9) undeveloped lots between May 1994 and July
20 1996.

21 7. The first of the lots was conveyed by the Developer under the Original CC&Rs on
22 May 19, 1994.

23 8. Plaintiff's trustees, John Allen Lytle and Trudi Lee Lytle (the "Lytles"), purchased a
24 Rosemere Estates property, assessor's parcel number ("APN") 163-03-313-009 ("Plaintiff's
25 Property"), on November 6, 1996, from the original buyer who first purchased it from the
26 Developer on August 25, 1995.

27 9. The Lytles later transferred Plaintiff's Property to Plaintiff.

28 ///

1 10. The Lytles purchased the property with the sole purpose of building a custom home
2 thereon.

3 11. The primary reasons that the Lytles selected the property were the limited restrictions
4 contained in the Original CC&Rs and the lack of a "unit-owners association," as that term is legally
5 defined by Chapter 116 of the Nevada Revised Statutes ("NRS").

6 12. Further, the Lytles could not meet any restrictive deadline on construction, so
7 Plaintiff purposefully selected in a community with no construction deadline.

8 13. Plaintiff undertook the design of the new custom built home, and by 2006, Plaintiff
9 had developed preliminary plans that were approved by the Developer.

10 14. Sometime after Plaintiff purchased its property, a group of property owners formed
11 the Rosemere Estates Property Owners Association (the "Association"), with the sole purpose of
12 maintaining those common areas designated by Paragraph 21 of the Original CC&Rs.

13 15. In 1997, two owners, acting on behalf of all owners, filed Non-Profit Articles of
14 Incorporation (the "Articles") pursuant to NRS 82, which formalized the property owners'
15 committee and named it "Rosemere Estates Property Owners Association."

16 16. The property owners recognized that the Association did not have powers granted to
17 it other than those granted by the Original CC&Rs. For example, the Association had no power to
18 assess, fine, issue rules and regulations, or undertake other actions commonly reserved for
19 homeowners' associations.

20 17. In 1997, some of the property owners prepared and distributed a proposed set of
21 amended CC&Rs, which proposed to empower the Association and drastically increase the scope of
22 the Original CC&Rs.

23 18. The property owners determined that unanimous consent was required to amend the
24 Original CC&Rs. Due to a failure to obtain unanimous consent, as required, the proposed CC&Rs
25 were not adopted.

26 ///

27 ///

28 ///

1 19. At a February 23, 2004 Association meeting, two Board members presented a set of
2 proposed, amended CC&Rs. The newly proposed CC&Rs included various restrictions not within
3 the Original CC&Rs, including animal restrictions, exterior maintenance and repair obligations,
4 prohibitions against "unsightly articles," and other use restrictions and obligations.

5 20. The proposed amended CC&Rs were not unanimously approved at the February 23,
6 2004 meeting and, therefore, not adopted.

7 21. Without warning, consultation or advisement to the Rosemere property owners, on or
8 about July 2, 2007, Amended and Restated CC&Rs were again proposed to the property owners by
9 the Board.

10 22. This third set of proposed amended CC&Rs increased the complexity, scope, and size
11 of the CC&Rs, from 4 pages to 36 pages, and contained numerous additional restrictions upon the
12 property owners.

13 23. At the July 2, 2007 homeowners' meeting, the Association's Board presented the
14 property owners with a binder that contained the following: (1) new Articles of Incorporation, dated
15 June 6, 2007, which articles were never filed although represented to be as set forth herein; (2) a
16 letter from the Board to the Association members; (3) a Corporate Charter referencing the February
17 25, 1997 and June 6, 2007 Articles of Incorporation; (4) a section entitled "Governing Documents"
18 referencing the June 6, 2007 Articles of Incorporation; (5) the "First Statutorily Mandated
19 Amendment to the Bylaws of the Rosemere Estates Homeowners Association," containing the
20 recital "WHEREAS, the Declaration was recorded in the Office of Clark County Recorder on
21 January 4, 1994, which Declaration provides for a method to make amendments to the Declaration
22 and Bylaws...;" (6) the proposed Amended and Restated Covenants, Conditions and Restrictions
23 ("Amended CC&Rs"). Bylaws did not exist prior to 2007.

24 24. The binders containing all of the foregoing documents were presented to each
25 homeowner together with the following misrepresentations: (1) the June 6, 2007 Articles of
26 Incorporation were filed with the Secretary of State, (2) the original CC&Rs provided a method for
27 amendment, (3) the CC&Rs could be amended without unanimous consent, (4) the 1999 Nevada
28 Legislature, through adoption of Senate Bill 451, "mandated" that the original CC&Rs be changed

1 to conform to NRS Chapter 116 "without complying with the procedural requirements generally
2 applicable to the adoption of an amendment..." and (5) all of the changes made were under NRS
3 116.2117.

4 25. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs
5 and changed the very nature of property ownership within Rosemere Estates. The Amended
6 CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the
7 powers, rights, and duties of the Association, a section entitled "Restrictions on Use, Alienation,
8 and Occupancy," pet restrictions, parking restrictions, lease restrictions, the establishment of a
9 Design Review Committee with unfettered discretion, and a new and expansive definition of
10 "nuisance."

11 26. The Amended CC&Rs also contained a morality clause, providing as follows:

12 No use that is reasonably deemed immoral, improper,
13 offensive, or unlawful by the Board of Directors may be
14 made of the Property or any portion thereof.

15 27. The Amended CC&Rs also contained a pet restriction that permits any animal found
16 off a leash to immediately be turned over to animal control, and any animal causing a "nuisance," a
17 vague and undefined term, to be permanently removed from Rosemere Estates upon three days
18 written notice and hearing before the Board.

19 28. Finally, the proposed Amended CC&Rs contained a construction timeline that would
20 require Plaintiff to complete the construction of the custom home on the lot within a mere *60 days*
21 of receipt of approval from the proposed Design Review Committee—something never envisioned
22 in the Original CC&Rs and impossible to adhere to.

23 29. Plaintiff's property is the only Property subject to this restriction as Plaintiff's
24 Property was the only undeveloped lot at the time of amendment.

25 30. Further, the 60 day deadline is impossible to satisfy, and the homeowner is fined
26 \$50.00 per day for failure to comply with this impossible deadline.

27 ///

28 ///

31. Pursuant to the Amended CC&Rs, approval for a home design was (1) entirely within the Board's discretion, (2) based on Design Review Guidelines that have never been published, and (3) not subject "to any objective standards of reasonableness."

32. After the Board presented the proposed Amended CC&Rs to the owners, together with the written misrepresentations set forth above, the Board did not provide the owners with a reasonable time to review or discuss the lengthy pack of legal documents, or to seek legal advice. Rather, the Board insisted that the amendment was "a done deal."

33. Despite the misrepresentations introducing the governing documents, the vast expansion of the Original CC&Rs, the lack of any review time or discussion, and the insistence that the amendment was a "done deal," the Board asked the property owners to sign documents acknowledging their approval, with a notary retained by the Board present to verify signatures.

34. The Amended CC&Rs were not agreed to by all property owners at the July 2, 2007 meeting. In fact, only five of the property owners approved, with three property owners who refused to sign the amendment. A fourth homeowner submitted a disputed proxy that was not counted by the Board.

35. Despite the failure to obtain the required unanimous approval for amending the Original CC&Rs, the Association proceeded, on July 3, 2007, to record the Amended CC&Rs in the office of the Recorder for Clark County, Nevada.

II. LEGAL DETERMINATIONS

A. Summary Judgment Standard

1. Summary judgment shall be rendered in favor of a moving party if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. NRCP Rule 56(c).

2. "Summary Judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (quoting NRCP 56(c).)

3. The Nevada Supreme Court held that "Rule 56 should not be regarded as a disfavored procedural shortcut" but instead as an integral important procedure which is designed "to secure just, speedy and inexpensive determination in every action." *Wood*, 121 Nev. at 730, 121 P.3d at 1030 (internal citation omitted).

B. Plaintiff Is Entitled To Summary Judgment In Its Favor

4. A declaratory relief cause of action is proper where a conflict has arisen between the litigating parties, and the action is brought to establish the rights of the parties. 26 C.J.S. Declaratory Judgments § 1.

5. Plaintiff's Cause of Action for Declaratory Relief seeks (1) a declaration from the Court that the Amended CC&Rs were not properly adopted by the members of the Association and were improperly recorded against Plaintiff's Property, and (2) a permanent injunction against the Association from adopting further amendments without unanimous consent.

6. Summary judgment as to the Declaratory Relief Cause of Action is warranted based on the Court's finding that the Amended CC&Rs were not adopted with unanimous consent, as required, and were, therefore, improperly recorded against Plaintiff's Property.

C. Rosemere Is A Limited Purpose Association Under NRS 116.1201 And Not A Unit-Owners' Association Within The Meaning Of NRS, Chapter 116

7. In order to create a valid unit-owners' association, as defined by Chapter 116, certain formalities "must" be followed. NRS 116.3101 provides, in pertinent part,

Organization of unit-owners' association.

1. A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed. . . .

8. The purpose of Section 3101 is to provide the purchaser record notice that he/she/it is purchasing a property that is governed by a homeowners association and will be bound by Chapter 116, *et seq.*

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1 9. There is a strong public policy in protecting property owners in common-interest
2 communities against any alteration of the burdens of character of the community. Rest. 3d,
3 Property – Servitudes, § 6.10, Comments.¹

4 10. A buyer is said to have “record notice” of the recorded covenants, conditions and
5 restrictions on the property, thus the mandate that the homeowners’ association be formed prior to
6 conveyance of the first unit in the community, together with the requirement that the CC&Rs be
7 recorded. NRS 116.3101.

8 11. Here, no Chapter 116 unit-owners’ association was formed because no association
9 was organized prior to the date the first unit was conveyed. The Association was not formed until
10 February 25, 1997, more than three years after Rosemere Estates was formed and the Original
11 CC&Rs were recorded.

12 12. Further, the Association did not have any powers beyond those of the “property
13 owners committee” designated in the Original CC&Rs—simply to care for the landscaping and
14 other common elements of Rosemere Estates as set forth in Paragraph 21 of the Original CC&Rs.

15 13. The Original CC&Rs provide for the creation of a “property owners’ committee,”
16 which is a “limited purpose association,” as defined by the 1994 version of NRS 116.1201, then in
17 effect. That provision provided that Chapter 116 did not apply to “Associations created for the
18 limited purpose of maintaining. . . “[t]he landscape of the common elements of a common interest
19 community. . . .”

20 14. In 1997, Rosemere Estates’ owners formed the Association for the express and
21 limited purpose of (1) tending to the limited matters set forth in Paragraph 21 of the Original
22 CC&Rs, (2) holding a bank account in which to deposit and withdraw funds for the payment of the
23 limited common area expenses assigned to the Owners Committee, and (3) purchasing liability
24 insurance. The intent was never to form a unit-owners’ association within the meaning of Chapter
25 116.

26 ///

27
28 ¹ “Property owners in common-interest communities are protected against amendments that unfairly
change the allocation of burdens in the community or change the character of the community.” Rest.
Law 3d, Property – Servitudes, § 6.10, Comments.

1 15. A limited purpose association cannot enforce "any restrictions concerning the use of
2 units by the units' owners, unless the limited-purpose association is created for a rural agricultural
3 residential common-interest community." NRS 116.1201(2)(a)(5). There is no question that
4 Rosemere Estates was not "created for a rural agricultural residential common-interest community,"
5 hence the Association cannot enforce "any restrictions concerning the use of units by the units'
6 owners...."

7 16. In reviewing the language of the Original CC&Rs, the Court must strictly construe
8 the covenants thereto and any "doubt will be resolved in favor of the unrestricted use of the
9 property...." *Dickstein v. Williams*, 93 Nev. 605, 608, 571 P.2d 1169 (1977); *see also, e.g., South*
10 *Shore Homes Ass'n v. Holland Holidays*, 549 P.2d 1035, 1043 (Kan. 1976); *Duffy v. Sunburst*
11 *Farms East Mutual Water & Agricultural Company, Inc.*, 604 P.2d 1124 (Ariz. 1980); *Bordleon v.*
12 *Homeowners Ass'n of Lake Ramsey*, 916 So.2d 179, 183 (La. Ct. App. 2005); *Cummings v. Dosam*,
13 159 S.E.2d 513, 517 (N.C. 1968); *Long v. Branham*, 156 S.E.2d 235, 236 (N.C. 1967).

14 17. In keeping with this well-settled and general principle, the Court construes the
15 Original CC&Rs pursuant to the plain meaning of the language therein. Nowhere is there reference
16 in the Original CC&Rs to a "unit-owners' association" or "homeowners association." Rather, the
17 Developer created a 116.1201 *limited purpose association* termed a "property owners' committee,"
18 and the Developer provided that committee with limited, rather than comprehensive, duties and
19 powers.

20 18. Consistent with the absence of a governing body, *e.g.* unit-owners' association,
21 delegated with the duty to enforce the Original CC&Rs, the Developer provided each homeowner
22 the right to independently enforce the Original CC&Rs against one another.

23 19. The Association is a limited purpose association under NRS 116.1201, is not a
24 Chapter 116 "unit-owners' association," and is relegated to only those specific duties and powers
25 set forth in Paragraph 21 of the Original CC&Rs and NRS 116.1201.

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28 ///

1 D. The CC&Rs Can Only Be Amended By Unanimous Consent of All Property
 2 Owners

3 20. Because Rosemere Estates is a limited purpose association under NRS 116.1201,
 4 NRS 116.2117, the statutory provision typically governing amendments to the CC&R's, does not
 5 apply here.

6 21. The Original CC&Rs are mutual and reciprocal among all of the Rosemere Estates
 7 property owners. The Original CC&Rs "touch and concern" (and thus "run with") the land.
 8 Accordingly, under long-standing and well-established common law, the Original CC&Rs are
 9 binding, and not subject to amendment, absent a new conveyance properly executed by all
 10 Rosemere property owners and in conformance with all of the other legal requirements for a valid
 11 transfer of an interest in real property. In short, there can be no valid amendment of the Original
 12 CC&Rs absent, at a minimum, the unanimous consent of all Rosemere property owners.

13 22. There has never been unanimous consent to amend the Original CC&Rs and there has
 14 never been a valid conveyance of Plaintiff's interest in the Original CC&Rs. Specifically,
 15 unanimous consent was not received in 2007, when the invalid Amended CC&Rs were wrongfully
 16 recorded by the Association.

17 23. Even if the provisions related to amendment within Chapter 116 were to apply, the
 18 Amended CC&Rs would still be invalid, and wrongly recorded, because NRS 116.2117 required
 19 unanimous consent under these circumstances. NRS 116.2117 specifies the kinds of amendments
 20 that require unanimous unit owner approval (as opposed to majority or supermajority approval). In
 21 particular, a "change of use" always requires unanimous approval.

22 NRS 116.2117 provides, in pertinent part:

23 1. . . .the declaration, including any plats, may be amended only by vote or agreement of
 24 units' owners of units to which at least a majority of the votes in the association are
 25 allocated, unless the declaration specifies a different percentage for all amendments or for
 26 specified subjects of amendment. If the declaration requires the approval of another
 27 person as a condition of its effectiveness, the amendment is not valid without that
 28 approval.

* * *

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1 4. Except to the extent expressly permitted or required by other provisions of this
 2 chapter, no amendment may change the boundaries of any unit, change the allocated
 3 interests of a unit or change the uses to which any unit is restricted, in the absence of
 4 unanimous consent of only those units' owners whose units are affected and the
 5 consent of a majority of the owners of the remaining units.

6 (Emphasis added.)

7 24. For the reasons set forth above, the Association's counter-motion for summary
 8 judgment is without merit.

9 **III. JUDGMENT**

10 IT IS HEREBY ADJUDGED AND DECREED:

11 **A. Declaration**

12 25. Pursuant to the foregoing, this Court declares and orders that the Amended CC&Rs
 13 were not properly adopted or recorded, that the Amended CC&Rs are invalid, and that the Amended
 14 CC&Rs have no force and effect. This Order, may be recorded in the Office of the Clark County
 15 Recorder's Office by any party and, once recorded, shall be sufficient notice of same.

16 **B. Injunctive Relief**

17 26. The Association is permanently enjoined from recording and enforcing the Amended
 18 CC&Rs. The Association is hereby ordered to release the Amended CC&Rs, Document Number
 19 20070703-0001934, recorded with the Clark County Recorder on July 3, 2007, within ten (10) court
 20 days after the date of Notice of Entry of this Order.

21 **C. Plaintiff's Monetary Damages**

22 27. Plaintiff's monetary damages are subject to a prove-up hearing, and Plaintiff is to
 23 submit a separate motion regarding the same.

24 **D. The Association's Motion For Summary Judgment**

25 28. The Association's Motion for Summary Judgment is denied.

26 **E. Costs**

27 29. Plaintiff is deemed the prevailing party in this action. Plaintiff is directed to prepare,
 28 file and serve a Memorandum of Costs.

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GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT

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Dated this 21 day of July, 2013.


MICHELLE LEAVITT, DISTRICT COURT JUDGE

Prepared and submitted by:

Richard E. Haskin, Esq.
Gibbs, Giden, Locher, Turner, Senet & Wittbrodt LLP
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113
Attorney for Plaintiff
JOHN ALLEN LYTLE and TRUDI LEE LYTLE
as Trustees of the Lytle Trust

EXHIBIT “6”

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CLERK OF THE COURT

1 **ORDER**
2 Richard E. Haskin, Esq.
3 Nevada State Bar # 11592
4 Bryan M. Gragg, Esq.
5 Nevada State Bar # 13134
6 **GIBBS GIDEN LOCHER TURNER**
7 **SENET & WITTBRODT LLP**
8 7450 Arroyo Crossing Parkway, Suite 270
9 Las Vegas, Nevada 89113-4059
10 (702) 836-9800

11 Attorneys for Plaintiff
12 JOHN ALLEN LYTLE and
13 TRUDI LEE LYTLE

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 JOHN ALLEN LYTLE and TRUDI LEE LYTLE,
17 as Trustees of the Lytle Trust,

18 Plaintiffs,

19 v.

20 ROSEMERE ESTATES PROPERTY OWNERS'
21 ASSOCIATION; and DOES 1 through 10,
22 inclusive,

23 Defendants.

CASE NO. A-09-593497-C
Dept.: XII

**ORDER ON PLAINTIFFS JOHN ALLEN
LYTLE AND TRUDI LEE LYTLE'S
MOTION FOR ATTORNEYS' FEES**

24 On May 2, 2016, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion for
25 Attorneys' Fees came on regularly for hearing, the Honorable Michelle Leavitt presiding. Plaintiffs
26 appeared through counsel, Richard E. Haskin of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt,
27 LLP. There was no appearance for Defendant Rosemere Estates Property Owners' Association
28 ("Defendant"). Defendant did not file an opposition to the Motion and did not make an appearance
at the hearing.

Having considered the moving papers, the affidavits and declarations filed concurrently
therewith, and the exhibits attached thereto, the Court finds that as the prevailing party, Plaintiffs are
entitled to an award of attorney fees under the Original CC&Rs, the Amended CC&Rs and NRS
§ 116.4117.

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CLERK OF COURT

1 The plain terms of the Original CC&Rs authorize an award of fees in favor of Plaintiffs. As
 2 the Original CC&Rs provide, in pertinent part:

3 24. Except as otherwise provided herein, Subdivider or any owner or
 4 owners of any of the lots shall have the right to enforce any or all of the
 5 provisions of the covenants, conditions, and restrictions upon any other
 6 owner or owners. In order to enforce said provision or provisions, any
 appropriate judicial proceeding in law or in equity may be initiated and
 prosecuted by any lot owners or owners against any other owner or
 owners.

7 25. Attorney's Fees: In any legal or equitable proceeding for the
 8 enforcement of or to restrain the violation of the Declaration of Covenants,
 Conditions and Restrictions or any provision thereof, the losing party or
 9 parties shall pay in such amount as may be fixed by the court in such
 proceeding.

10 See Original CC&Rs, ¶¶ 24, 25. Plaintiffs prevailed in enforcing the Original CC&Rs (by
 11 obtaining a declaration from this Court that that the Amended CC&Rs are invalid and that Defendant
 12 did not have the powers it claimed to have) and prevailed in restraining the violation of the Original
 13 CC&Rs (by obtaining injunctive relief prohibiting Defendant from enforcing the Amended CC&Rs
 14 and requiring public notice of their revocation). According, Plaintiffs are entitled to an award of
 15 attorney fees, pursuant to the terms of the Original CC&Rs.

16 Further, the Amended CC&Rs also contain a mandatory fee shifting provision entitling
 17 Plaintiffs to an award of attorney fees. As provided in the Amended CC&Rs, Section 16.1(a):

18 16.1(a) In the event the Association, or any Owner shall commence
 19 litigation or arbitration to enforce any of the covenants, conditions,
 20 restrictions or reservations contained in the Governing Documents, the
 21 prevailing party in such litigation or arbitration shall be entitled to
 costs of suit and such attorney's fees as the Court or arbitrator may
 adjudge reasonable and proper.

22 See Amended CC&Rs. § 16.1(a).

23 A litigant can recover attorneys' fees when a contract, such as the Amended CC&Rs, is held
 24 unenforceable. *Mackintosh v. California Federal Sav. & Loan Ass'n* (1997) 113 Nev. 393, 405-406,
 25 935 P.2d 1154, 1162.

26 ///

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1 Finally, Plaintiff are also entitled to an award of attorney fees pursuant to NRS 116.4117.
 2 NRS 116.4117 provides as follows:

3 1. Subject to the requirements set forth in subsection 2, if a declarant,
 4 community manager or any other person subject to this chapter fails to
 5 comply with any of its provisions or any provision of the declaration
 6 or bylaws, any person or class of persons suffering actual damages
 7 from the failure to comply may bring a civil action for damages or
 8 other appropriate relief. . .

9 4. The court may award reasonable attorney's fees to the prevailing
 10 party.

11 The term "damages" in the phrase "suffering actual damages" refers to *damages* in the
 12 general sense of specifically provable injury, loss, or harm rather than the specific sense of economic
 13 damages. Whether quantifiable as a monetary loss or not, Plaintiffs suffered an injury, loss or harm
 14 as a result of the Association's actions. Accordingly, under the statute they had the right to bring a
 15 civil action for damages or other appropriate relief and, having, prevailed thereon may be awarded
 16 their reasonable attorney fees as the prevailing party.

17 Plaintiffs' attorneys' fees, as set forth in the Motion, satisfy the factors set forth in *Brunzell v.*
 18 *Golden gate Nat'l Bank* (1969) 85 Nev. 345, 349, 455 P.2d 31, 33. The Court considered all of the
 19 factors and applied them to Plaintiffs' request for attorneys' fees. Specifically, the Court considered
 20 and applied:

- 21 1. The qualities of the advocate, i.e. his ability, training and experience;
- 22 2. The character of the work done, it's difficulty, intricacy, importance, time and
 23 skill required,;
- 24 3. The work actually performed by the attorneys;
- 25 4. The result, i.e. whether the attorney was successful in achieving a result of the
 26 client.

27 The Court applied each of the foregoing *Brunzell* factors to the work performed by Plaintiffs'
 28 attorneys, as set forth in the various affidavits and declarations presented to this Court with the
 moving papers. The Court finds that Plaintiffs are entitled to an award of \$297,072.66 in attorneys'
 fees as the prevailing party in this action, having achieved the revocation of the Amended CC&Rs
 and removing the cloud on title to their property.


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1 Therefore, the Court orders as follows:

2 IT IS ORDERED that Plaintiffs' Motion for Attorneys' Fees is granted, and Plaintiffs are
 3 awarded \$297,072.66 in attorneys' fees.

4
 5
 6 IT IS SO ORDERED this 25 day of May, 2016.

7
 8
 9 
 10 HONORABLE MICHELLE LEAVITT
 11 District Court Judge, Dept. XII
 12 PL

13 DATED: May 19, 2016

14 GIBBS GIDEN LOCHER TURNER
 15 SENET & WILTBRODT LLP

16 By: 

Richard E. Haskin, Esq.
 Nevada State Bar # 11592
 7450 Arroyo Crossing Parkway, Suite 270
 Las Vegas, Nevada 89113-4059
 Attorneys for Plaintiff
 JOHN ALLEN LYTTLE and TRUDI LEE LYTTLE

GIBBS GIDEN LOCHER TURNER SENET & WILTBRODT

EXHIBIT “7”

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Alvin D. Lohman
CLERK OF THE COURT

ORDER

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Bryan M. Gragg, Esq.
Nevada State Bar # 13134
**GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP**
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
(702) 836-9800

Attorneys for Plaintiff
JOHN ALLEN LYTLE and
TRUDI LEE LYTLE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JOHN ALLEN LYTLE and TRUDI LEE LYTLE,
as Trustees of the Lytle Trust,

Plaintiffs,

v.

ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. A-09-593497-C
Dept.: XII

**ORDER AWARDING PLAINTIFFS
DAMAGES FOLLOWING PROVE-UP
HEARING**

On June 6, 2016, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") Motion to Prove-Up Damages came on regularly for an evidentiary hearing, the Honorable Michelle Leavitt presiding. Plaintiffs were represented by counsel, Richard E. Haskin of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt, LLP. There was no appearance for Defendant Rosemere Estates Property Owners' Association ("Defendant").

During the hearing, John Allen Lytle testified on behalf of Plaintiffs. The Court heard the testimony of Mr. Lytle and considered evidence submitted during his examination.

Having considered the testimony of Mr. Lytle and the exhibits admitted during the examination, the Court finds that Plaintiffs are entitled to damages as requested.

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<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
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<input type="checkbox"/> Stipulated Dismissal	<input checked="" type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Court	<input type="checkbox"/> Judgment of Arbitration

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GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT

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1 Therefore, the Court orders as follows:

2 IT IS ORDERED that Plaintiffs are awarded damages in the amount of \$63,566.93.

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4 IT IS SO ORDERED this 17 day of June, 2016.

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7 
8 HONORABLE MICHELLE LEAVITT
9 District Court Judge, Dept. XII
P.L.

10 DATED: June 6, 2016

11 GIBBS GIDEN LOCHER TURNER
12 SENET & WITTBRODT LLP

13 By: 

14 Richard M. Huskin, Esq.
15 Nevada State Bar # 11592
16 7450 Arroyo Crossing Parkway, Suite 270
17 Las Vegas, Nevada 89113-4059
18 Attorneys for Plaintiff
19 JOHN ALLEN LYTLE and TRUDI LEE LYTLE

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT

EXHIBIT “8”

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CLERK OF THE COURT

ORDR

Richard E. Haskin, Esq.

Nevada State Bar # 11592

Bryan M. Gragg, Esq.

Nevada State Bar # 13134

GIBBS GIDEN LOCHER TURNER

SENET & WITTBRODT LLP

7450 Arroyo Crossing Parkway, Suite 270

Las Vegas, Nevada 89113-4059

(702) 836-9800

Attorneys for Plaintiff

JOHN ALLEN LYTLE and

TRUDI LEE LYTLE

DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN ALLEN LYTLE and TRUDI LEE LYTLE,
as Trustees of the Lytle Trust,

Plaintiffs,

v.

ROSEMERE ESTATES PROPERTY OWNERS'
ASSOCIATION; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO. A-09-593497-C
Dept.: XII

ORDER AWARDING COSTS

On February 29, 2016, Plaintiffs John Allen Lytle and Trudi Lee Lytle ("Plaintiffs") filed a Verified Memorandum of Costs with this Court. Defendant Rosemere Estates Property Owners' Association ("Defendant") did not file any Motion to Re-tax Costs or other objection to the Verified Memorandum.

Having considered the Verified Memorandum of Costs, Plaintiffs, as the prevailing party in this action, are entitled to an award of costs as sought in the Verified Memorandum. Therefore, the Court orders as follows:

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1 IT IS ORDERED that Plaintiffs' Verified Memorandum of Costs is approved by the Court,
 2 and Plaintiffs are awarded \$599.00 in costs and disbursements.

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 5 IT IS SO ORDERED this 22 day of July, 2016.

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 9 HONORABLE MICHELLE LEAVITT
 10 District Court Judge, Dept. XII
 11 R L

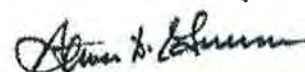
12 DATED: May 3, 2016

13 GIBBS GIDEN LOCHER TURNER
 14 SENET & WITTBRODT LLP

15 By: 

16 Richard E. Haskin, Esq.
 17 Nevada State Bar # 11592
 18 7450 Arroyo Crossing Parkway, Suite 270
 19 Las Vegas, Nevada 89113-4059
 20 Attorneys for Plaintiff
 21 JOHN ALLEN LYTLE and TRUDI LEE LYTLE

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CLERK OF THE COURT

1 **MEMC**
2 Richard E. Haskin, Esq.
3 Nevada State Bar # 11592
4 **GIBBS GIDEN LOCHER TURNER**
5 **SENET & WITTBRODT LLP**
6 7450 Arroyo Crossing Parkway, Suite 270
7 Las Vegas, Nevada 89113-4059
8 (702) 836-9800

9 Attorneys for Plaintiff
10 JOHN ALLEN LYTLE and
11 TRUDI LEE LYTLE

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 JOHN ALLEN LYTLE and TRUDI LEE LYTLE,
15 as Trustees of the Lytle Trust,

16 Plaintiff,

17 v.

18 ROSEMERE ESTATES PROPERTY OWNERS'
19 ASSOCIATION; and DOES 1 through 10,
20 inclusive,

21 Defendants.

CASE NO. A-09-593497-C
Dept.: XII

**PLAINTIFFS JOHN ALLEN LYTLE AND
TRUDI LEE LYTLE'S VERIFIED
MEMORANDUM OF COSTS**

22 Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE hereby submit their Verified
23 Memorandum of Costs as follows:

TOTAL COSTS AND DISBURSEMENTS: \$599.00

See attached Affidavit of Richard E. Haskin, Esq. in Support of Memorandum of Costs

24 DATED: February 26, 2016

**GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP**

By: 

Richard E. Haskin, Esq.
Nevada State Bar # 11592
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
Attorneys for Plaintiff
JOHN ALLEN LYTLE and TRUDI LEE LYTLE

AFFIDAVIT OF RICHARD E. HASKIN, ESQ. IN SUPPORT OF
MEMORANDUM OF COSTS AND FEES

Richard E. Haskin, Esq. being duly sworn states:

1. I am an attorney at law, duly licensed to practice before all Courts of the State of Nevada and I am a Partner with the law firm of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt, LLP ("GGLTSW"). GGLTSW served as attorneys of record for Plaintiffs JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as Trustees of the Lytle Trust ("Plaintiffs") in the litigation captioned *John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust v. Rosemere Estates Property Owners Association. et al.*, Case No. A-09-593497-C.

2. Prior to GGLTSW serving as counsel, Plaintiffs employed three (3) other law firms to handle the initial arbitration, as required by NRS Chapter 38, a Supreme Court appeal, and the instant litigation. Initially, Plaintiffs retained Thomas D. Harper, LTD in July 2007 to handle the required non-binding arbitration before Ara Shirinian, captioned *Lytle Trust v. Rosemere Estates Property Owners Association. et al.*, NRED Control No. 09-33 (the "Arbitration").

3. Plaintiffs then retained Michael Lemcool of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP ("Wolf Rifkin") in this litigation. Mr. Lemcool prepared and filed the Complaint. The case was dismissed by this Court, and Plaintiffs retained Beau Sterling, of Sterling Law, LLC ("Sterling"), an appeal specialist, to handle the appeal before the Supreme Court. While the matter was on appeal, Plaintiffs retained Robert Sullivan, albeit briefly. After the case was remanded by the Supreme Court, Mr. Sullivan briefly served as counsel before he moved to Oregon. Plaintiffs then retained GGLTSW to handle the rest of the litigation.

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GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

1 4. Plaintiffs incurred \$599.00 in additional allowable costs in this litigation. The costs
2 included herein were necessarily incurred in this matter. These costs are detailed in the cost bills
3 from Thomas Harper, Wolf Rifkin and GGLTSW, attached as Exhibits A, B and C, respectively, and
4 incorporated by referenced.

5 5. Plaintiffs are submitting this Verified Memorandum of Costs pursuant to the Court's
6 Order Granting Plaintiffs' Motion for Summary Judgment in which the Court determined that
7 Plaintiff was the prevailing party in this action and was to submit a Memorandum of Costs.

8 7. On February 6, 2014, this Court awarded Plaintiffs \$1,926.80 for the dispositions
9 taken by Plaintiffs, including the reporter fees related to those depositions. The Court re-taxed the
10 other remaining cost items.

11 8. On October 19, 2015, the Nevada Supreme Court in Docket No. 65294 reversed the
12 Court's February 13, 2014 order to the extent that it denied Plaintiffs' requests for costs relating to
13 filing fees and e-filing charges.

14 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
15 true and correct.

16
17 **FURTHER, AFFIANT SAYETH NAUGHT:**

18
19 _____
 RICHARD HASKIN, ESQ.

20
21 STATE OF NEVADA
22 COUNTY OF CLARK

23
24 Subscribed and sworn to (or affirmed) before me on this 26th day of February, 2016, by
25 Richard Haskin, proved to me on the basis of satisfactory evidence to be the person(s) who
 appeared before me.

26
27 (seal)



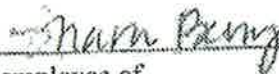
28
Signature

Shara Berry

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP, hereby certifies that on February 29, 2016, she served a copy of the
foregoing **PLAINTIFFS JOHN ALLEN LYTLE AND TRUDI LEE LYTLE'S VERIFIED**
MEMORANDUM OF COSTS by placing said copy in an envelope, postage fully prepaid, in the
U.S. Mail at Las Vegas, Nevada, said envelope(s) addressed to:

ROSEMERE ESTATES PROPERTY OWNERS
ASSOCIATION
Board of Directors
c/o Ray Sandoval
1860 Rosemere Court
Las Vegas, Nevada 89117


An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

EXHIBIT “A”

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 - Facsimile (702) 538-9113

NEOJ
LEACH JOHNSON SONG & GRUCHOW
SEAN L. ANDERSON
Nevada Bar No. 7259
RYAN W. REED
Nevada Bar No. 11695
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148
sanderson@leachjohnson.com
reed@leachjohnson.com
Telephone: (702) 538-9074
Facsimile: (702) 538-9113
*Attorneys for Rosemere Estates Property
Owners Association*

DISTRICT COURT
CLARK COUNTY, NEVADA

JOHN ALLEN LYTLE and TRUDI LEE
LYTLE, as Trustees of the Lytle Trust,

Plaintiff,

vs.

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION; and DOES 1
through 10, inclusive,

Defendants.

Case No.: A-09-593497-C


Dept. No.: XII

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING
IN PART DEFENDANT'S MOTION TO
RETAX COSTS**

PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part
Defendant's Motion to Retax Costs, a true and correct copy of which is attached hereto, was
entered on the 13th day of February, 2014.

DATED this 19th day of February, 2014.

LEACH JOHNSON SONG & GRUCHOW

By: 
Sean L. Anderson
Nevada Bar No. 7259
Ryan W. Reed
Nevada Bar No. 11695
8945 West Russell Road, Suite 300
Las Vegas, Nevada 89148
*Attorneys for Rosemere Estates Property
Owners Association*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH JOHNSON SONG & GRUCHOW, hereby certified that on the 19th day of February, 2014, she served a true and correct copy of the foregoing, **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO RETAX COSTS** by:

XXXXXX Depositing for mailing, in a sealed envelope, U.S. postage prepaid, at Las Vegas, Nevada

 Personal Delivery

 Facsimile

 Federal Express/Airborne Express/Other Overnight Delivery

 Las Vegas Messenger Service

addressed as follows:

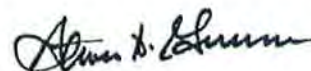
Richard E. Haskin
Gibbs, Giden, Locher, Turner
& Senet LLP
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113
RHASKIN@GGLTS.COM
Attorney for Plaintiff



An Employee of LEACH JOHNSON SONG & GRUCHOW

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

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CLERK OF THE COURT

ORDER
LEACH JOHNSON SONG & GRUCHOW
SEAN L. ANDERSON
Nevada Bar No. 7259
RYAN W. REED
Nevada Bar No. 11695
8945 West Russell Road, Suite 330
Las Vegas, Nevada 89148
sanderson@leachjohnson.com
rreed@leachjohnson.com
Telephone: (702) 538-9074
Facsimile: (702) 538-9113
Attorneys for Rosemere Estates Property
Owners Association

DISTRICT COURT

CLARK COUNTY, NEVADA

JOHN ALLEN LYTLE and TRUDI LEE
LYTLE, as Trustees of the Lytle Trust,

Plaintiff,

vs.

ROSEMERE ESTATES PROPERTY
OWNERS ASSOCIATION; and DOES 1
thought 10, inclusive,

Defendants.

Case No.: A-09-593497-C

Dept. No.: XII

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT'S
MOTION TO RETAX COSTS

On October 24, 2013, Defendant Rosemere Estates Property Owners Association (the "Association") filed its Motion to Re-Tax Plaintiffs First Amended Memorandum of Costs. On November 13, 2013, Plaintiffs John Allen Lytle and Trudi Lee Lytle as Trustees of the Lytle Trust ("Plaintiffs") filed their Opposition to Defendant's Motion to Re-Tax Costs. On November 25, 2013, the Association filed its Reply in Support of Motion to Re-Tax Costs.

This matter came on for hearing on December 2, 2013 at 8:30 a.m., the Honorable Michelle Leavitt presiding. The Association appeared by and through its counsel, Sean L. Anderson and Ryan W. Reed, and Plaintiffs appeared by and through their counsel, Richard E. Haskin. The Court, having considered all of the pleadings and papers on file and considering the oral argument of counsel, finds and orders as follows:

IT IS SO ORDERED, that the Association's Motion to Re-Tax is GRANTED in part and

-1-

RECEIVED
JAN 30 2014
DEPARTMENT 12

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 - Facsimile (702) 538-9113

1 DENIED in part.

2 1. This Court ~~retaxes~~ ^{finds} the following costs as the Court ~~finds~~ ^{finds} that Plaintiffs did not
3 provide sufficient justifying documentation for this Court to determine whether Plaintiffs' costs
4 were reasonable and necessarily incurred in this action:

5	Filing Arbitration Demand	\$50.00
6	Arbitrator's Fee	\$750.00
7	Postage Costs	\$74.13
8	Photocopy Costs	\$2,217.90
9	Telecopy Costs	\$0.33
10	Filing Fees	\$549.00
11	Process Server Costs	\$874.50
12	Court Reporter Fees	\$143.54
13	Postage Costs	\$110.61
14	Photocopy Costs	\$2,716.60
15	Telecopy Costs	\$84.71
16	E-Filing/Wiznet/Filing Costs	\$291.00
17	Witness Fees	\$27.00

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 - Facsimile (702) 538-9113

18 ...
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28 ...

2. Costs totaling \$1,962.80 for the depositions taken by plaintiffs, including the reporter fees related to those depositions are not retaxed and are awarded.

IT IS SO ORDERED this 6 day of January, 2014.

Belmont,

Michelle Leavitt
HONORABLE MICHELLE LEAVITT
District Court Judge, Dept. XII
MK

Submitted by:

LEACH JOHNSON SONG & GRUCHOW

By:

Sean L. Anderson
Sean L. Anderson
Nevada Bar No. 7259
Ryan W. Reed
Nevada Bar No. 11695
8945 West Russell Road, Suite 300
Las Vegas, Nevada 89148

Approved as to form and content by:

GIBBS, GIDEN, LOCHER, TURNER SENET & WITTBRODT LLP

By:

Richard E. Maskin
Richard E. Maskin
Nevada Bar No. 11592
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113
Attorney for Plaintiff

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, Nevada 89148
Telephone: (702) 538-9074 - Facsimile (702) 538-9113

EXHIBIT “9”

CIVIL COVER SHEET

A-10-631355-C

XXIV

County, Nevada

Case No.

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Lytle Trust	Defendant(s) (name/address/phone): Rosemere Estates Property Owners Association
Attorney (name/address/phone): Thomas D. Harper, Esq. 606 S. Ninth St. Las Vegas NV 89101	Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Negligence	Torts
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence - Auto <input type="checkbox"/> Negligence - Medical/Dental <input type="checkbox"/> Negligence - Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence - Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Agmt/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	
	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input checked="" type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input checked="" type="checkbox"/> Other Civil Matters	

III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only)

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
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12/10/10
Date

Signature of initiating party or representative

See other side for family-related case filings.

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CLERK OF THE COURT

1 COMP
2 THOMAS D. HARPER, LTD.
3 THOMAS D. HARPER, ESQ.
4 Nevada Bar No. 001878
5 606 South Ninth Street
6 Las Vegas, Nevada 89101
7 Telephone: (702) 383-9744
8 Fax: (702) 383-9765
9 Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

-0-

A-10-631355-C

13 JOHN ALLEN LYTLE and TRUDI LEE LYTLE, as
14 Trustees of the LYTLE TRUST,

CASE NO.
DEPT. NO. XXIV

Plaintiff,

COMPLAINT FOR TRIAL DE NOVO
PURSUANT TO NRS 38.330;
DECLARATORY RELIEF;
PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF; AND MONEY
DAMAGES

v.

16 ROSEMERE ESTATES PROPERTY OWNERS
17 ASSOCIATION, a Nevada non-profit
18 corporation; and DOES I through X, inclusive,

Arbitration Exemption Claimed:
(Appeal from Arbitration;
Declaratory Relief Requested)

Defendants.

21 COMES NOW Plaintiff, LYTLE TRUST and its Trustees JOHN ALLEN LYTLE and TRUDI
22 LEE LYTLE and for its causes of action against Defendants complains, asserts and alleges as
23 follows:

24 GENERAL ALLEGATIONS

25 1. At all times herein mentioned, Plaintiff LYTLE TRUST (hereinafter "TRUST") was,
26 and still is, a Trust and the owner of that certain undeveloped residential property located at
27 1930 Rosemere Court, Las Vegas, Nevada 89117 (hereinafter the "Property") and its Trustees
28 are JOHN ALLEN LYTLE and TRUDI LEE LYTLE who are husband and wife.

1 2. Defendant ROSEMERIE ESTATES PROPERTY OWNERS ASSOCIATION
2 (hereinafter "ASSOCIATION") is, and at all times herein mentioned was, a Nevada non profit
3 corporation qualified and operating in the County of Clark, State of Nevada.

4 3. The true names and capacities whether individual, corporate, associate or
5 otherwise of Defendants DOES, I through X, are unknown to Plaintiff TRUST, who therefore
6 sues said Defendants by such fictitious names. Plaintiff TRUST is informed and believes and
7 thereon alleges that each of the Defendants designated herein as a DOE is responsible in some
8 manner for the happenings and events referred to herein and caused damages legally and
9 proximately to Plaintiff TRUST as alleged herein. Plaintiff TRUST will ask leave of this Court
10 to amend this Complaint to insert the true names and capacities of said Defendants, DOES I
11 through X, when the same have been ascertained by Plaintiff TRUST.

12 4. At all times herein mentioned, the Defendant ASSOCIATION was and still is
13 comprised of nine (9) owners of single family lots all as more particularly described in the
14 original Declaration of Covenants, Conditions and Restrictions hereinafter the "Original CC
15 and R's") which was recorded on or about January 4, 1994 in Book Number 940104 as
16 Instrument Number 01241 in the Official Records, Clark County, Nevada and the Property is
17 located within the boundaries of the Association. A copy of the Original CC and R's of the
18 Defendant ASSOCIATION is attached hereto as Exhibit "1" and incorporated herein by
19 reference.

20 5. On or about July 2, 2007, the Board of Directors of the Defendant
21 ASSOCIATION amended the Original CC and R's by adopting Amended CC and R's which
22 was recorded on July 3, 2007 in Book Number 20070703 as Instrument Number 0001934 of
23 the Official Records, Clark County, Nevada (hereinafter the "Amended CC and R's"). A copy
24 of the Amended CC and R's is attached hereto as Exhibit "2" and incorporated herein by
25 reference.

26 6. On or about the time that the Board of Directors of the Defendant
27 ASSOCIATION adopted and recorded the Amended CC and R's, the Board of Directors of the
28 Defendant ASSOCIATION also adopted Bylaws of the Defendant ASSOCIATION. A copy of

1 the Bylaws of the Defendant ASSOCIATION is attached hereto as Exhibit "3" and incorporated
2 herein by reference.

3 7. The Amended CC and R's and Bylaws of the Defendant ASSOCIATION
4 significantly changed and increased the governance responsibilities of the Defendant
5 ASSOCIATION and its Board members by requiring the Defendant ASSOCIATION and its
6 Board members to comply with NRS Chapter 116, et seq.

7 8. Specifically, while the Original CC and R's made no references to the provisions
8 of NRS Chapter 116, et seq., the Amended CC and R's made several specific references to the
9 provisions of NRS Chapter 116, et seq. and the Recitals in the Amended CC and R's provide,
10 in pertinent part, as follows:

11 WHEREAS, The Board of Directors (the "Board") has made certain changes to
12 the Original Declaration in order to bring the same into compliance with the
provisions of Nevada Revised Statutes ("NRS") Chapter 116. . . .

13 9. Further, Article 16, Section 16.7 of the Amended CC and R's provide, in
14 pertinent part, as follows:

15 Conflict: This Declaration is intended to comply with the requirements of the
16 Act [i.e. NRS Chapter 116] applicable to common-interest communities and the
17 Declaration shall be interpreted, if at all possible, so as to be consistent with the
Act. If there is any conflict between this Declaration and the provisions of the
Act, the provisions of the Act shall control. . . .

18 10. The Plaintiff TRUST brought an Alternative Dispute Resolution (hereinafter
19 "ADR") action against the Defendant ASSOCIATION regarding the interpretation, application
20 and enforcement of the governing documents of the Defendant ASSOCIATION and
21 specifically the Amended CC and R's and Bylaws of the Defendant ASSOCIATION with the
22 Nevada Real Estate Division (hereinafter "NRED") as required by NRS 38.310 (hereinafter the
23 "NRED action").

24 11. Pursuant to a stipulation and/or agreement between the Plaintiff TRUST and the
25 Defendant ASSOCIATION in the NRED action, the parties to the NRED action agreed that the
26 Amended CC and R's and Bylaws of the Defendant ASSOCIATION was valid and enforceable
27 only for the purpose of the NRED action and because this is a trial de novo of the NRED action
28 the Plaintiff TRUST once again agrees for the purpose of this litigation only that the Amended

1 CC and R's and Bylaws of the Defendant ASSOCIATION are valid and enforceable.

2 12. The Plaintiff TRUST's claim against the Defendant ASSOCIATION was arbitrated
3 in the NRED action with the non-binding decision by the Arbitrator being issued on or about
4 November 18, 2010 and the Completion Certificate being issued by NRED on November 18,
5 2010. A true copy of the Completion Certificate issued on November 18, 2010 is attached
6 hereto as Exhibit "4" and incorporated herein by reference.

7 13. The decision issued by the Arbitrator in the NRED action was erroneous in that,
8 *inter alia*, it is contrary to Nevada law regarding the interpretation, application and
9 enforcement of the governing documents of the Defendant ASSOCIATION and is further
10 contrary to Nevada law regarding the governance responsibilities of the Defendant
11 ASSOCIATION under the said governing documents including the Amended CC and R's and
12 Bylaws.

13 14. Article 16, Section 16.1 of the Amended CC and R's provides that any member
14 of the Defendant ASSOCIATION shall have the right to enforce by any proceedings at law or
15 in equity, each covenant, condition and reservation imposed by the provisions of the
16 governing documents of the Defendant ASSOCIATION and that each such member of the
17 Defendant ASSOCIATION shall have a right of action against the Defendant ASSOCIATION
18 for any failure by the Defendant ASSOCIATION to comply with the provisions of the
19 governing documents of the Defendant ASSOCIATION.

20 15. Article 16, Section 16.1 of the Amended CC and R's further provides that in the
21 event any member of the Defendant ASSOCIATION shall commence litigation to enforce any
22 of the covenants, conditions, restrictions or reservations contained in the governing documents
23 that the prevailing party in such litigation shall be entitled to an award of reasonable attorney's
24 fees and legal costs.

25 **FIRST CLAIM FOR RELIEF**

26 **(Declaratory Relief – Breach of Amended CC and R's** 27 **and Bylaws and Violations of NRS §§116.3115 and 116.31085(2))**

28 16. Plaintiff TRUST repeats and realleges all allegations contained in its General

1 Allegations and incorporates the same as though fully set forth at length.

2 17. This claim for relief is brought pursuant to the provisions of NRS 30.010, et seq.
3 of the Uniform Declaratory Judgments Act in order to obtain a judgment declaring the rights,
4 duties and legal relations of the parties with regards to the facts and matters set forth herein.

5 18. Subsequent to the adoption and recodation of the Amended CC and R's, the
6 Defendant ASSOCIATION and its Board members breached and failed to comply with their
7 governance responsibilities under the governing documents of the Defendant ASSOCIATION
8 and violated provisions of NRS Chapter 116 which resulted in invalid assessments being
9 levied against the Plaintiff TRUST and two (2) invalid liens based on those assessments being
10 recorded by the Defendant ASSOCIATION on the Property, one on July 20, 2009 and a
11 second one on March 22, 2010.

12 19. The Defendant ASSOCIATION and its Board members breached and failed to
13 comply with their governance responsibilities under the Amended CC and R's and Bylaws of
14 the Defendant ASSOCIATION and violated provisions of NRS Chapter 116 in issuing
15 assessments to the Plaintiff TRUST and recording two (2) liens against the Property as follows:

16 A. By imposing invalid assessments that were not based on an annual budget in
17 violation of NRS 116.3115;

18 B. By imposing invalid assessments based on the breach by the Defendant
19 ASSOCIATION and its Board members to adopt a budget for the fiscal years 2009 and
20 2010 as required under Article 10, Section 10.4 of the Amended CC and R's and
21 Article VIII, Sections 8.1 and 8.2 of the Bylaws;

22 C. By failing to obtain bids for work to be performed on behalf of the Defendant
23 ASSOCIATION and to approve contracts on behalf of the Defendant ASSOCIATION
24 including the contract of the collection company who recorded the first lien on the
25 Property at a duly noticed Board meeting in violation of NRS 116.31085(2); and

26 D. By refusing to release the above referenced first lien on the Property even
27 though the Plaintiff TRUST bonded around the said lien and the Defendant
28 ASSOCIATION agreed that the said bond was good and sufficient to cover the

1 Defendant ASSOCIATION's lien on the Property.

2 20. Pursuant to the provisions of NRS 30.010 of the Uniform Declaratory Judgments
3 Act, this Court should declare the rights, duties and legal relations of the parties with regards
4 to the Amended CC and R's and the Bylaws of the Defendant ASSOCIATION as well the
5 above-referenced provisions of NRS Chapter 116, et seq. and in so doing declare that the
6 Defendant ASSOCIATION breached the Amended CC and R's and Bylaws and violated the
7 above-referenced provisions of NRS Chapter 116 and declare the assessments issued by the
8 Defendant ASSOCIATION as well as the liens recorded against the Property to be null and
9 void and/or expunged and released because of the bond posted by the Plaintiff TRUST which
10 was approved as a good and sufficient bond by the Defendant ASSOCIATION.

11 21. It has been necessary for the Plaintiff TRUST to retain the services of an attorney
12 to prosecute this action, and the Plaintiff TRUST is entitled to an award of reasonable
13 attorney's fees and costs of suit incurred herein.

14 **SECOND CLAIM FOR RELIEF**

15 **(Slander of Title)**

16 22. Plaintiff TRUST repeats and realleges all allegations contained in its General
17 Allegations and First Claim for Relief and incorporates the same as though fully set forth at
18 length.

19 23. The recordation by the Defendant ASSOCIATION of the first lien on the
20 Property on July 20, 2009 and its continued refusal to date to remove the lien on the Property
21 constitutes slander of title of that Property as the Defendant ASSOCIATION knew or should
22 have known that it had no right to issue assessments against the Plaintiff TRUST and knew or
23 should have known that the bond posted by the Plaintiff TRUST adequately covered the
24 Defendant ASSOCIATION's lien on the Property and therefore the Defendant ASSOCIATION
25 acted maliciously or in reckless disregard of the falsity of the lien by recording the lien on the
26 Property and refusing to remove the same up through the present date.

27 24. The recordation by the Defendant ASSOCIATION of the second lien on the
28 Property on March 22, 2010 constitutes slander of title of the Property as the Defendant

ASSOCIATION and its Board members knew or should have known that they had no legal right to record the lien as the amount of lien had not been adjudicated by any court, arbitrator or arbiter and therefore the Defendant ASSOCIATION and/or its Board members acted with malice and/or with reckless disregard of the falsity of the lien.

25. Despite numerous demands made by the Plaintiff TRUST to the Defendant ASSOCIATION to remove the first lien from the Property, the Defendant ASSOCIATION and its Board members refused and continue to refuse to remove the lien which has resulted in the Plaintiff TRUST suffering damages in the form of attorney's fees and legal costs incurred in attempting to remove the first lien as a cloud on title to the Property.

26. Based on the slander of title by the Defendant ASSOCIATION on the Property, this Court should award damages to the Plaintiff TRUST including, but not limited to, attorney's fees and legal costs incurred by the Plaintiff TRUST in attempting to remove the first lien as a cloud on title on the Property in an amount in excess of Ten Thousand Dollars (\$10,000.00) and according to proof adduced at the time of the trial in this matter, together with pre-judgment and post-judgment interest at the highest legal rate.

27. It has been necessary for the Plaintiff TRUST to retain the services of an attorney to prosecute this action, and the Plaintiff TRUST is entitled to an award of reasonable attorney's fees and costs of suit incurred herein.

THIRD CLAIM FOR RELIEF

(Injunctive Relief)

28. Plaintiff TRUST repeats and realleges all allegations contained in its General Allegations and its First and Second Claims for Relief and incorporates the same as though fully set forth at length.

29. The Defendant ASSOCIATION and its Board members have threatened and continue to threaten to foreclose on the first lien that was invalidly and unlawfully recorded on the Property on July 20, 2009.

30. The threat by the Defendant ASSOCIATION to foreclose on the said first lien on the Property has caused and will continue to cause the Plaintiff TRUST immediate

1 irreparable harm in that the foreclosure of the lien will deprive the Plaintiff TRUST the unique
2 proprietary interest it has in the Property.

3 31. The Plaintiff TRUST is entitled to a preliminary and permanent mandatory
4 injunction ordering the Defendant ASSOCIATION not to foreclose on the first lien recorded
5 on the Property on July 20, 2009 pending final resolution of the within litigation.

6 32. It has been necessary for the Plaintiff TRUST to retain the services of an attorney
7 to prosecute this action, and the Plaintiff TRUST is entitled to an award of reasonable
8 attorney's fees and costs of suit incurred herein.

9 **FOURTH CLAIM FOR RELIEF**

10 **(Declaratory Relief – Breach of Amended CC and R's and Violations of NRS**
11 **§§116.31031, 116.31034, 116.31065, 116.3108, 116.31083, 116.31085, 116.31144**
12 **116.3115, 116.31151, 116.31152, and 116.3117)**

13 33. Plaintiff TRUST repeats and realleges all allegations contained in its General
14 Allegations and its First, Second and Third Claims for Relief and incorporates the same as
15 though fully set forth at length.

16 34. This claim for relief is brought pursuant to the provisions of NRS 30.010, et seq.
17 of the Uniform Declaratory Judgments Act in order to obtain a judgment declaring the rights,
18 duties and legal relations of the parties with regards to the facts and matters set forth herein.

19 35. Subsequent to the adoption and rec ordation by the Defendant ASSOCIATION
20 of the Amended CC and R's and Bylaws, the Defendant ASSOCIATION and its Board
21 members breached and failed to comply with several governance responsibilities under the
22 governing documents of the Defendant ASSOCIATION and violated various provisions of NRS
23 Chapter 116, et seq.

24 36. The Defendant ASSOCIATION and its Board members breached and failed to
25 comply with their governance responsibilities under the governing documents of the
26 Defendant ASSOCIATION and violated various provisions of NRS Chapter 116, et seq. as
27 follows:

28 A. By imposing invalid assessments against the Plaintiff TRUST because the
assessments were not based on an annual budget in violation of NRS 116.3115 and in

000977

1 Minutes from the July 2, 2007 meeting (which were falsified by creating three different
2 versions of the same);

3 K. By violating NRS 116.31083(7) by failing to audio record the Defendant
4 ASSOCIATION's meeting of July 27, 2010;

5 L. By violating NRS 116.31031 and NRS 116.31085 by failing to allow the Plaintiff
6 TRUST and its Trustees to attend meetings of the membership of the Defendant
7 ASSOCIATION or meetings of the executive board of the Defendant ASSOCIATION
8 and speak at such meetings;

9 M. By violating NRS 116.31034(2) by failing to allow either one of the Trustees of
10 the Plaintiff TRUST to serve as a member of the Board of the Defendant
11 ASSOCIATION;

12 N. By breaching Article 5, Section 5.1(a) of the Amended CC and R's that provides
13 that unless the rights of a member of the Defendant ASSOCIATION have been properly
14 suspended by the Defendant ASSOCIATION, a member may attend any meeting of the
15 Board of the Defendant ASSOCIATION and speak at any such meeting;

16 O. By breaching Article 5, Section 5.1(a) of the Amended CC and R's that provides
17 that the Board of the Defendant ASSOCIATION may only establish reasonable
18 limitations on the time that a member may speak at any meeting of the Defendant
19 ASSOCIATION;

20 P. By violating NRS 116.3117(1) by failing to make available to the Plaintiff TRUST
21 records and other papers of the Defendant ASSOCIATION including, but not limited
22 to, contracts entered into between the Defendant ASSOCIATION and legal counsel and
23 collection companies;

24 Q. By violating NRS 116.318(3), NRS 116.3108(4)(b) and NRS 116.31083(2)(a), (b)
25 and (b) by failing to provide proper notices and agendas to the Plaintiff TRUST of
26 membership and executive board meetings of the Defendant ASSOCIATION;

27 R. By violating NRS 116.31034(2) by allowing the term of office of a member of
28 an executive board to exceed three years;

S. By violating NRS 116.31034(4), (5)(a)(1) and (2) requiring notice to be given to all members of the Defendant ASSOCIATION of their right to serve as a member of the executive board of the Defendant ASSOCIATION; and

T. By breaching Article V, Section 5.1(b) of the Bylaws and violating NRS 116.31083(1) by failing to conduct executive board meetings not less than once every one hundred days.

37. Pursuant to the provisions of NRS 30.010 of the Uniform Declaratory Judgments Act, this Court should declare the rights, duties and legal relations of the parties with regards to the Amended CC and R's of the Defendant ASSOCIATION and the above-referenced provision of NRS Chapter 116, et seq. and in so doing declare that the Defendant ASSOCIATION breached the Amended CC and R's and violated the above-referenced provision of NRS Chapter 116, et seq. and order the Defendant ASSOCIATION immediately comply with the Amended CC and R's and the provisions of NRS Chapter 116, et seq. including the restoration of any rights the Plaintiff TRUST and its Trustees were denied as a result of the Defendant ASSOCIATION's breach of the Amended CC and R's and violations of NRS Chapter 116, et seq. and further to award any damages to the Plaintiff TRUST as a result of the deprivation of the Plaintiff TRUST's rights under the governing documents including, but not limited to, damages incurred as a result of the Defendant ASSOCIATION's falsifying the minutes of the July 2, 2007 meeting.

38. It has been necessary for the Plaintiff TRUST to retain the services of an attorney to prosecute this action, and the Plaintiff TRUST is entitled to an award of reasonable attorney's fees and costs of suit incurred herein.

FIFTH CLAIM FOR RELIEF

(Declaratory Relief – Amended CC and R's)

39. Plaintiff TRUST repeats and realleges all allegations contained in its General Allegations and the First, Second, Third and Fourth Claims for Relief and incorporates the same as though fully set forth at length.

40. This claim for relief is brought pursuant to the provisions of NRS 30.010, et seq.

1 of the Uniform Declaratory Judgments Act in order to obtain a judgment declaring the rights,
2 duties and legal relations of the parties with regards to the facts and matters set forth herein.

3 41. The Recitals in the Amended CC and R's provide that the Amended CC and R's
4 were adopted and recorded to bring the same into compliance with the provisions of NRS
5 Chapter 116.

6 42. Further, Article 16, Section 16.7 of the Amended CC and R's provide that the
7 Amended CC and R's were intended to comply with NRS Chapter 116 so as to be consistent
8 with NRS Chapter 116.

9 43. Subsequent to the adoption and recodification of the Amended CC and R's and
10 Bylaws of the Defendant ASSOCIATION, the Defendant ASSOCIATION and its Board
11 members have failed to comply with their governance responsibilities under the governing
12 documents of the Defendant ASSOCIATION and NRS Chapter 116, et seq. and as an excuse
13 for failing to comply with the said governing documents and NRS Chapter 116 the Defendant
14 ASSOCIATION claims that it is a "small planned community" pursuant to NRS 116.1203 and
15 is therefore subject only to NRS 116.1106 and NRS 116.1107.

16 44. The Defendant ASSOCIATION claims it was justified in believing it was a "small
17 planned community" pursuant to NRS 116.1203 because of a letter that was issued by NREID
18 and the Ombudsman's Office dated August 28, 2008 and addressed solely to the Trustees of
19 the Plaintiff TRUST.

20 45. The Plaintiff TRUST believes and therefore alleges that the Defendant
21 ASSOCIATION could not have relied upon the letter from NREID and the Ombudsman's
22 Office dated August 28, 2008 as it was not addressed to the Defendant ASSOCIATION and
23 came into the possession of the Defendant ASSOCIATION only as a result of the Plaintiff
24 TRUST's production of that letter in a prior ADR action.

25 46. Pursuant to the provisions of NRS 30.010 of the Uniform Declaratory Judgments
26 Act, this Court should declare the rights, duties and legal relations of the parties with regards
27 to the Amended CC and R's and of NRS Chapter 116, et seq. and in doing so declare that
28 pursuant to the Recitals of the Amended CC and R's and other provisions of the Amended CC

1 and R's that the Defendant ASSOCIATION must comply with all provisions of NRS Chapter
2 116, et seq. and that the Defendant ASSOCIATION cannot be considered a "small planned
3 community" based on the letter that was issued by NRI D and the Ombudsman's Office dated
4 August 28, 2008 and addressed solely to the Trustees of the Plaintiff TRUST.

5 47. It has been necessary for the Plaintiff TRUST to retain the services of an attorney
6 to prosecute this action, and the Plaintiff TRUST is entitled to an award of reasonable
7 attorney's fees and costs of suit incurred herein.

8 WHEREFORE, Plaintiff TRUST prays for Judgment against Defendants, and each of
9 them, as follows:

10 1. As and for the First Claim for Relief, that this Court grant declaratory relief to the
11 parties and declare the rights, duties and legal relations of the parties with regards to the
12 Amended CC and R's and Bylaws of the Defendant ASSOCIATION and the relevant provision
13 of NRS Chapter 116, et seq., and in so doing declare that the Defendant ASSOCIATION
14 breached the Amended CC and R's and Bylaws and violated the above-referenced provisions
15 of NRS Chapter 116 and declare the assessments issued by the Defendant ASSOCIATION as
16 well as the liens recorded against the Property to be null and void and/or expunged and
17 released because of the bond posted by the Plaintiff TRUST which was approved as a good
18 and sufficient bond by the Defendant ASSOCIATION;

19 2. As and for the Second Claim for Relief, that this Court award damages to the
20 Plaintiff TRUST including damages for attorney's fees incurred in attempting to remove the first
21 lien on the Property in an amount in excess of Ten Thousand Dollars (\$10,000.00) and
22 according to proof adduced at the time of the trial in this matter together with pre-judgment
23 and post-judgment interest at the highest legal rate;

24 3. As and for the Third Claim for Relief, that the Defendant ASSOCIATION be
25 preliminarily and permanently restrained and enjoined from foreclosing on the first lien
26 recorded on the Property on July 20, 2007 pending formal resolution of this litigation;

27 4. As and for the Fourth Claim for Relief, that this Court grant declaratory relief to
28 the parties and declare the rights, duties and legal relations of the parties with regards to the

1 relevant provision of the Amended CC and R's and the relevant provisions of NRS Chapter
 2 116, et seq., and in so doing declare that the Defendant ASSOCIATION breached the
 3 Amended CC and R's and violated the above referenced provision of NRS Chapter 116, et seq.
 4 and order the Defendant ASSOCIATION immediately comply with the Amended CC and R's
 5 and the provisions of NRS Chapter 116, et seq. including the restoration of any rights the
 6 Plaintiff TRUST and its Trustees were denied as a result of the Defendant ASSOCIATION's
 7 breach of the Amended CC and R's and violations of NRS Chapter 116, et seq. and further to
 8 award any damages to the Plaintiff TRUST as a result of the deprivation of the Plaintiff TRUST's
 9 rights under the governing documents including, but not limited to, damages incurred as a
 10 result of the Defendant ASSOCIATION's falsifying the minutes of the July 2, 2007 meeting;

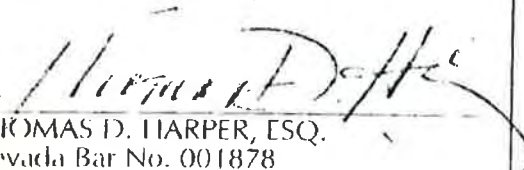
11 5. As and for the Fifth Claim for Relief, that this Court grant declaratory relief to the
 12 parties and declare the rights, duties and legal relations of the parties with regards to the
 13 Amended CC and R's, and in so doing declare that pursuant to the Recitals of the Amended
 14 CC and R's and other provisions of the Amended CC and R's that the Defendant
 15 ASSOCIATION must comply with all provisions of NRS Chapter 116, et seq. and that the
 16 Defendant ASSOCIATION cannot be considered a "small planned community" based on the
 17 letter that was issued by NRED and the Ombudsman's Office dated August 28, 2008 and
 18 addressed solely to the Trustees of the Plaintiff TRUST;

19 6. An award of reasonable attorney's fees and costs of suit incurred herein; and

20 7. For such other and further relief as the Court may deem just and proper.

21 DATED this 10th day of December, 2010.

22 THOMAS D. HARPER, LTD.

23
 24 By 
 25 THOMAS D. HARPER, ESQ.
 Nevada Bar No. 001878
 606 South Ninth Street
 Las Vegas NV 89101
 Attorney for Plaintiff TRUST
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this

Thomas J. Deane
Notary Public



1 VERIFICATION

2 STATE OF NEVADA)
 3) ss
 4 COUNTY OF CLARK)

5 TRUDI LEE LYTLF, under penalties of perjury, being first duly sworn, deposes and says:

6 That she is the Trustee of the LYTLF TRUST and is familiar with the books and records
 7 of said Trust; that she has read the foregoing Complaint, and knows the contents thereof; that
 8 the same is true of her own knowledge except for those matters stated therein on information
 9 and belief, and as to those matter she believes them to be true.

10 *Trudi Lee Lytle*
 11 TRUDI LEE LYTLF

12 Subscribed and sworn to before me

13 this 10th day of December, 2010.

14 *Thomas D. Harper*
 15 Notary Public

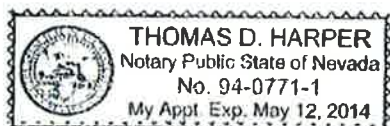
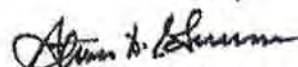


EXHIBIT “10”

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CLERK OF THE COURT

1 **ORD**

2 Richard E. Haskin, Esq.

3 Nevada State Bar # 11592

4 **GIBBS GIDEN LOCHER TURNER**

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6 1140 N. Town Center Drive, Suite 300

7 Las Vegas, Nevada 89144-0596

8 (702) 836-9800

9 Attorneys for Plaintiffs and Counterdefendants

10 JOHN ALLEN LYTLE and TRUDI LYTLE

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JOHN ALLEN LYTLE and TRUDI LYTLE, as
14 Trustees of the Lytle Trust,

15 Plaintiffs,

16 v.

17 ROSEMERE ESTATES PROPERTY OWNERS
18 ASSOCIATION, a Nevada non-profit corporation;
19 and DOES I through X, inclusive,

20 Defendants.

21 ROSEMERE ESTATES PROPERTY OWNERS
22 ASSOCIATION, a Nevada non-profit corporation;
23 and DOES I through X, inclusive,

24 Counterclaimants,

25 v.

26 JOHN ALLEN LYTLE and TRUDI LYTLE, as
27 Trustees of the Lytle Trust,

28 Counterdefendants.

CASE NO. A-10-631355-C
Dept.: XXXII

**ORDER GRANTING PLAINTIFF JOHN
ALLEN LYTLE AND TRUDI LEE
LYTLE'S, AS TRUSTEES OF THE LYTLE
TRUST, MOTION FOR SUMMARY
JUDGMENT**

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NOV 10 2016

1 PLEASE TAKE NOTICE that on November 8, 2016, the Court heard Plaintiffs JOHN
2 ALLEN LYTLE and TRUDI LYTLE, as Trustees of the Lytle Trust (hereinafter "Plaintiff" or the
3 "Lyttles") MOTION FOR SUMMARY JUDGMENT in the above-captioned matter, filed on
4 September 14, 2016. After considering the First Amended Complaint, deemed filed by Order of this
5 Court on June 1, 2016, the Motion for Summary Judgment, the Declaration of Trudi Lytle, and
6 evidence submitted therewith, and hearing oral argument, and no opposition having been filed by
7 Defendant and Counterclaimant ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION
8 ("Defendant"), the Court grants Plaintiffs' Motion for Summary Judgment.

9 **I. FINDINGS OF FACT**

10 1. On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the
11 subdivider of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere
12 Court in Las Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of
13 Covenants, Conditions, and Restrictions ("Original CC&Rs").

14 2. The Original CC&Rs consist of four (4) pages and 25 paragraphs, with no bylaws
15 annexed, no amendment provision, and no homeowners association, as defined by Chapter 116.

16 3. The Original CC&Rs create a "property owners' committee" with very limited
17 maintenance duties over specific common area items (exterior walls and planters, entrance way and
18 planters, entrance gate, and the private street), which are specifically set forth in Paragraph 21 of the
19 Original CC&Rs.

20 4. The Developer then sold the nine (9) undeveloped lots between May 1994 and July
21 1996.

22 5. The first of the lots was conveyed by the Developer under the Original CC&Rs on
23 May 19, 1994.

24 6. Plaintiff's trustees, John Allen Lytle and Trudi Lee Lytle (the "Lyttles"), purchased a
25 Rosemere Estates property, assessor's parcel number ("APN") 163-03-313-009 ("Plaintiff's
26 Property"), on November 6, 1996, from the original buyer who first purchased it from the Developer
27 on August 25, 1995.

28 7. The Lyttles later transferred Plaintiff's Property to Plaintiff.

1 8. In another action by Plaintiff against the Association before this Court, the Court
2 found, as a matter of law, as follows:

3 a. The Association is a limited purpose association under NRS 116.1201 and not
4 a unit-owners' association, as that term is defined by Chapter 116. In making this finding,
5 the District Court specifically found: (1) "the Association did not have any powers beyond
6 those of the "property owners committee" designated in the Original CC&Rs—simply to cure
7 for the landscaping and other common elements of Rosemere Estates as set forth in
8 Paragraph 21 of the Original CC&Rs;" (2) that the Association was "created for the limited
9 purpose of maintaining. . . "[t]he landscape of the common elements of a common interest
10 community. . .;" and (3) the Association "cannot enforce "any restrictions concerning the use
11 of units by the units' owners . . ."

12 b. The Amended CC&Rs were not properly adopted or recorded, that the
13 Amended CC&Rs are invalid, and that the Amended CC&Rs have no force and effect.

14 9. The Court's Judgment was affirmed by the Nevada Supreme Court, Docket No.
15 63942.

16 10. On September 15, 2008, at an Executive Board meeting of the Association, on a 5-3
17 vote, the membership voted to approve an Executive Board proposal that, first, each member of the
18 Association should be assessed \$10,000.00 "in conjunction with [Plaintiff's] actions" in bringing the
19 NRED 1 litigation and in pursuing litigation against Plaintiff for unarticulated and nebulous reasons,
20 and, second, that "the Association should bring foreclosure proceedings against any lots with
21 outstanding assessments due the Association."

22 11. On July 20, 2009, the Association, through a collection agency, NAS, caused to be
23 recorded a Notice of Delinquent Assessment Lien in the Clark County Recorder's Office in the
24 amount of \$12,500.00 (stated as including late fees, collection fees and interest in the amount of
25 \$2,379.00) against Plaintiff's property within Rosemere Estates. The July 20, 2009 lien shall be
26 referred to herein as the "First Lien."

27 ///

28 ///

1 12. Plaintiff immediately objected to validity of the First Lien and assessments to the
2 Association and the collection agency because the validity of the Amended CC&Rs was the subject
3 of litigation and the fact that Plaintiff had bonded around the lien. Further, the assessment, at least in
4 substantial part, is for legal fees that Plaintiff would have to pay to sue itself. This lien remains
5 recorded against Plaintiff's Property.

6 13. Plaintiff never received notice of the assessment or notice of an intent to lien as
7 required by NRS 116.31162(1)(a), which requires a notice of the delinquent assessment stating the
8 amount of the assessment and additional costs. This must be mailed by the Association, or its agent,
9 to Plaintiff prior to recording any lien. And this was not done.

10 14. On or about November 19, 2009, the Association (through its collection agency)
11 notified Plaintiff that the payoff amount had increased to \$21,045.00. Lytle Decl., ¶ 26. Plaintiff
12 objected at every instance to the First Lien. *Id.* at ¶ 27.

13 15. After a Nevada Real Estate Division ("NRED") arbitration of the validity of the
14 Amended CC&RS, the arbitrator wrongfully ruled in favor of the Association and awarded the
15 Association \$45,000.00 in legal fees and \$7,255.19 in costs. Plaintiff immediately filed a trial de
16 novo in District Court, the NRED 1 case, and posted a supersedeas bond with the Clerk in the
17 amount of \$52,255.19, covering the foregoing fees and costs.

18 16. On November 18, 2009, the Association, through its attorney Gerry G. Zobrist, the
19 son of Board President Gerry Zobrist, recorded a Judgment dismissing the NRED 1 case against
20 Plaintiff's Property, which also included a \$52,255.19 attorney fee and cost award, against Plaintiffs'
21 Property. The recorded Judgment shall be referred to herein as the "Second Lien."

22 17. The Association recorded the Second Lien ten (10) days after Plaintiff posted a bond
23 to cover the \$52,255.19 monetary judgment which the Association deemed good and sufficient.

24 18. The purpose for recording the Second Lien (Judgment) was simply to slander title to
25 Plaintiff's Property. The NRED 1 dismissal and monetary award was overturned by the Nevada
26 Supreme Court on September 29, 2011 in Docket No. 54886.

27 19. The Second Lien was released on November 14, 2012.

28 ///

1 20. On or about November 19, 2009, the Association (through its collection agency)
 2 notified Plaintiff that the payoff amount on the First Lien had increased to \$21,045.00 and that the
 3 Association was going to foreclose on the property. The increase in the lien amount included a
 4 \$1,000.00 late fee, when only \$10.00 was permissible pursuant to the Amended CC&Rs. Also, the
 5 Association demanded a special assessment interest amount of \$900.00 at 12% interest per annum,
 6 when the allowable interest rate is 3.25% per NRS 99.040(1) on this date.

7 21. On or about March 16, 2010, Plaintiff filed a second arbitration action with NRED
 8 against the Association disputing the validity of the assessment and related penalties, interest and
 9 collection fees.

10 22. While the arbitration matter was pending and five (5) days after the Complaint was
 11 filed in this action, the Association recorded yet another lien against Plaintiff's property on March
 12 22, 2010, in the amount of \$136,583.00, without any justification for doing so. The March 22, 2010
 13 lien shall be referred to as the "Third Lien."

14 23. The Third Lien was released by the Association on September 27, 2010, only after
 15 Plaintiff discovered it had been recorded.

16 24. The Third Lien includes the amounts from the First and Second Liens, which already
 17 were recorded against Plaintiff's Property.

18 25. The three liens, which were all recorded at the same time, totaled \$209,883.19. The
 19 only amount that had been adjudicated was \$52,255.19, and there was a bond posted in that amount
 20 which was deemed, by the Association, as good and sufficient.

21 26. For the reasons set forth in this Order, the Association did not have a right to have
 22 any of these liens recorded against Plaintiff's Property.

23 **II. CONCLUSIONS OF LAW**

24 **A. Summary Judgment Standard**

25 1. Summary judgment shall be rendered in favor of a moving party if the pleadings,
 26 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
 27 show that there is no genuine issue as to any material fact and that the moving party is entitled to
 28 judgment as a matter of law. NRCR Rule 56(c).

2. "Summary Judgment is appropriate and shall be rendered forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains]' and that the moving party is entitled to judgment as a matter of law." Wood v. Safeway, 121 Nev. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005)(quoting NRCP 56(c)).

3. In Wood, the Nevada Supreme Court rejected the "slightest doubt" standard from Nevada's prior summary judgment jurisprudence, Id. at 1037, and adopted the summary judgment standard which had been articulated by the United States Supreme Court in its 1986 Trilogy: Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986); and Matsushita Electrical Industrial Company v. Zenith Radio Corporation, 475 U.S. 574 (1986). The application of the standard requires the non-moving party to respond to the motion by "Set[ting] forth specific facts demonstrating existence of a genuine issue for trial." Wood, 121 p.3d at 1031. This obligation extends to every element of every claim made, and where there is a failure as to any element of a claim, summary judgment is proper. Barmettler v. Reno Air, Inc., 114 Nevada 441, 447, 956, P2d. 1382, 1386 (1998). In this case, the Association failed to oppose the Motion for Summary Judgment and failed to appear for the hearing thereon, which was a general failing to present any facts demonstrating the existence of a genuine issue for trial.

4. The Nevada Supreme Court held that "Rule 56 should not be regarded as a 'disfavored procedural shortcut' but instead as an integral important procedure which is designed 'to secure just, speedy and inexpensive determination in every action.'" Wood, 121, p.3d at 1030 (quoting Celotex, 477 U.S. at 327). In Liberty Lobby, the U.S. Supreme Court noted that:

"Only disputes over facts that might affect the outcome of the suit under governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.

Id. (quoting Liberty Lobby, 477 U.S. at 247-48)

B. Summary Judgment Is Proper As To Plaintiff's Declaratory Relief Cause of Action

5. A declaratory relief cause of action is proper where a conflict has arisen between the litigating parties, and the action is brought to establish the rights of the parties. 26 C.J.S. Declaratory Judgments § 1.

6. The Lytles' Seventh Cause of Action seeks Declaratory Relief and assumes, therein, that the Amended CC&Rs are void ab initio, as they indeed are.¹ See First Amended Complaint ("FAC"), ¶¶ 32 - 39. Specifically, the Lytles seek this Court to declare that the Liens based on the assessments at issue are invalid because they were based on the Amended CC&Rs, which were void ab initio -- meaning that there was never any right prescribed by the Amended CC&Rs as they were void from their inception and recording.

7. Void ab initio means that the documents are of no force and effect, i.e. it does not legally exist. Washoe Medical Center v. Second Judicial Dist. Court of State of Nev., 122 Nev. 1298, 1304, 148 P.3d 790, 794 (2006); see also Black's Law Dictionary, 2d ed.. The phrase ab initio comes from Latin and has the literal translation "from the start" or "from the beginning." If a court declares something void ab initio, it typically means that the court's ruling applies from the very beginning, from when the act occurred. In other words, the court declares the documents, in this case, the Amended CC&Rs, invalid from the very inception.

8. Here, this Court has declared the Amended CC&Rs void ab initio, meaning that they never had any force and effect. The liens in questions are all based on assessments that were levied pursuant to the Amended CC&Rs. As a result, the assessments and resulting liens are invalid and must be similarly declared void ab initio.

C. Summary Judgment Is Granted As To The Quiet Title Cause Of Action

9. A plaintiff may bring a quiet title cause of action and must allege (1) the plaintiff has an interest in real property, and (2) the defendant claims an interest adverse to that of plaintiff. Twain Harte Homeowners Assn. v. Patterson, 239 Cal.Rptr. 316 (1987), South Shore Land Co. v. Petersen, 38 Cal.Rptr. 392 (1964), Thornton v. Stevenson, 8 Cal.Rptr. 603 (1960).

10. The Plaintiff's Fourth Cause of Action is for Quiet Title and alleges that the liens described herein "were recorded without any right and for invalid reasons as set forth herein, and the lien presently recorded against the property impairs and clouds Plaintiff's title to Plaintiff's Property."

¹ Plaintiff believes that a determination as to the Seventh Cause of Action first, which alleges that the liens are void ab initio and must be revoked because the District Court already has determined that the Amended CC&Rs are void ab initio is the appropriate starting point for the Court's determination of this matter.

11. "A cloud on title is described as any outstanding instrument, record, claim, or encumbrance which is actually invalid or inoperative but which may nevertheless impair the title to property." 53 Cal. Jur. 3d Quieting Title § 15. "Actions to determine the continuing validity of a restrictive covenant are normally brought either as an action for a declaratory judgment or an action to quiet title.

12. Where the action is one to quiet title, it is necessary to show that the plaintiff holds title to the property in question and that there is 'cloud' upon the title, or, in other words, that a hostile claim is outstanding. 27 Causes of Action 203, §§ 5, 25 (2012), see also Cortese v United States, 782 F.2d 845 (9th Cir Cal 1986); Garnick v Serewitch, 39 NJ Super 486, 121 A.2d 423 (1956); 65 Am. Jur. 2d, *Quieting Title and Determination of Adverse Claims* §§ 9-17; C.J.S., Quieting Title §§ 58-66.

13. As set forth above in this Order, the Amended CC&Rs and the liens based thereon are all void *ab initio*. The recording of the Amended CC&Rs and the liens all were a cloud on title, and summary judgment granting Plaintiff's Quiet Title cause of action is warranted and granted.

D. Summary Judgment Is Granted As To The Injunctive Relief Cause Of Action

14. Plaintiff's Fifth Cause of Action alleges that "Plaintiff is entitled to a preliminary and permanent mandatory injunction ordering the Association not to foreclose on the first lien recorded on Plaintiff's Property on July 20, 2009, pending final resolution of the within litigation."

15. As set forth above, all liens, including the first lien, are void ab initio and are illegitimate. Therefore, no foreclosure action may be pursued to enforce the liens, and summary judgment is proper as to Fifth Cause of Action for injunctive relief.

E. Summary Judgment Is Granted As To The Slander Of Title Cause Of Action

16. "Slander of title involves false and malicious communications that disparage a person's title in land and cause special damages." Higgins v. Higgins, 103 Nev. 443, 445, 744 P.2d 530, 531 (1987).

17. An award of expenses, including attorneys' fees, incurred in removing a cloud on title is proper. Summa Corp. v. Greenspun, 98 Nev. 528, 532, 655 P.2d 513, 515 (1982).

///

1 18. "Malice" has been defined as "knowledge that it [a statement] was false or with
2 reckless disregard of whether it was false or not." New York Times Co. v. Sullivan, 376 U.S. 254,
3 279-80 (1964). Reckless disregard means that the publisher of the statement acted with a "high
4 degree of awareness of ... [the] probable falsity" of the statement or had serious doubts as to the
5 publication's truth." *Id.* at 280.

6 19. Plaintiff's Third Cause of Action alleges slander of title against the Association as a
7 result of the Association's recording the First and Second Liens.

8 20. The Association knew or should have known that it had no right to issue assessments
9 against Plaintiff and knew or should have known that the bond posted by Plaintiff adequately
10 covered the Association's lien on Plaintiff's Property and therefore the Association acted
11 maliciously or in reckless disregard of the falsity of the lien by recording the lien on the Property and
12 refusing to remove the same up through the present date.

13 21. Further, the recordation by the Association of the Third Lien constitutes slander of
14 title to Plaintiff's Property as the Association and its Board members knew or should have known
15 that they had no legal right to record the lien as the amount of lien had not been adjudicated by any
16 court, arbitrator or arbiter and therefore the Association and/or its Board members acted with malice
17 and/or with reckless disregard of the falsity of the lien.

18 22. This Court already found that the Association had no lawful right to record and
19 enforce the Amended CC&Rs. As such, the Amended CC&Rs were declared void *ab initio*.
20 Similarly, the First and Second Liens, and all other liens recorded against Plaintiff's Property are
21 void *ab initio* because they were born from the Amended CC&Rs. Thus, the falsity of the liens is
22 clearly established.

23 23. In addition to being false, the Association's actions were malicious because the
24 Association recorded the liens with reckless disregard for the integrity of those liens.

25 24. The July 2007 amendment meeting and the actions that preceded that meeting to
26 perpetrate the fraud of the Amended CC&Rs and post-meeting actions in recording the Amended
27 CC&Rs were fraudulent. The Association's Board, at that time, pushed the Amended CC&Rs
28 through an improperly noticed meeting wherein homeowners were provided with written

1 misrepresentations, insufficient time to consider and debate the proposed amendment, and then,
 2 despite all of these problems, the Association's Board still recorded the Amended CC&RS without
 3 the required unanimous consent. The process was reckless and malicious and aimed at the Lyles,
 4 who were the only undeveloped lot at the time, from building their dream home.

5 25. Once the Amended CC&Rs were improperly recorded, the Association, again acting
 6 in disregard for Plaintiff's rights, recorded liens against Plaintiff's Property and swiftly moved to
 7 foreclose against the First Lien.

8 26. As a result of the Association's actions, as set forth herein and as established by the
 9 record in Case No. A-09-593497-C, the Association's actions were malicious.

10 27. Therefore, summary judgment as to Plaintiff's Third Cause of Action for Slander of
 11 Title is appropriate.

12 **F. The Liens Are Invalid Because The Association Did Not Adopt An Annual Budget**

13 28. The Association's Board failed to adopt an annual budget in violation of NRS §
 14 116.3115. Assessments may not be imposed if they are not done so based on an annual budget
 15 prepared by the Board. NRS 116.3115, see also Bylaws, Sections 8.1 and 8.2.

16 29. The Association failed to adopt a budget in either 2009 or 2010, as required under
 17 Article 10, Section 10.4 of the Amended CC&Rs and Article VIII, Section 8.1 and 8.2 of the
 18 Bylaws.

19 30. As set forth in NRS 116.3115 and in the Association's own amended governing
 20 documents (since revoked but in place at the time of the assessments in question), an annual budget
 21 is required in order to impose assessments.

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G. The Liens Are Invalid Because The Association Failed To Provide Requisite Notice And A Hearing Prior To Levying The Assessments And Recording The Liens Against The Property

31. NRS 116.31162(1)(2) provides as follows:

1. Except as otherwise provided in subsection 5, 6 or 7, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:

(a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

32. Plaintiff never received any required statutory notice from the Association or anyone acting on its behalf of the delinquent assessment and other sums allegedly due that served as the basis for the First Lien.

33. Thus, the First Lien, even if the basis for that lien were valid, which they are not, is procedurally defective.

H. The Association's Collection Agency Was Never Properly Authorized

34. NRS 116.31086 requires the Association to obtain three (3) bids before hiring a collection agent, in this case NAS.

35. No bids were collected, and no meeting took place during which NAS was appointed as the Association's collection agent.

36. Yet, despite not being lawfully engaged and authorized, NAS recorded the First Lien on the Lytle Property and pursued collection and foreclosure. This was improper.

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1 **I. Plaintiff Suffered Damages**

2 37. NRS 116.1183 provides as follows:

3 1. An executive board, a member of an executive board, a community
4 manager or an officer, employee or agent of an association shall not take,
or direct or encourage another person to take, any retaliatory action against
5 a unit's owner because the unit's owner has:

6 (a) Complained in good faith about any alleged violation of any
7 provision of this chapter or the governing documents of the
8 association;

9 (b) Recommended the selection or replacement of an attorney,
community manager or vendor; or

10 (c) Requested in good faith to review the books, records or other
11 papers of the association.

12 2. In addition to any other remedy provided by law, upon a violation of
13 this section, a unit's owner may bring a separate action to recover:

14 (a) Compensatory damages; and

15 (b) Attorney's fees and costs of bringing the separate action.

16 [Emphasis added].

17 38. Plaintiff presented adequate evidence that it suffered damages as a result of the
18 Board's retaliatory actions.

19 39. Plaintiff planned to build a dream home in the community, and the actions taken by
20 the Board were intentionally and directly targeted at Allen and Trudi Lytle in order to prevent them
21 from ever moving into the community.

22 40. Once more, Plaintiff underwent financial hardship in posting the various bonds in
23 order to appeal this action (and other actions).

24 41. This matter commenced with the unlawful amendment in July 2007 and did not
25 conclude until the Supreme Court affirmed the District Court's ruling that the Association's conduct
26 was, indeed, unlawful and in violation of the Lyles' rights as homeowners.

27 42. Finally, the Association suspended the Plaintiff's voting rights, the right to run for the
28 Board, blocked Plaintiff's attendance at meetings, and suspended membership privileges, all without
complying with Article 12, Section 1.2(d) of the Amended CC&Rs and NRS 116.31041(2).

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43. The Association's retaliatory actions cost the Lytles their dream home. These actions further entitle Plaintiff to attorneys' fees incurred in this action, the underlying arbitration, and appeal in this action.

J. Plaintiff Is Entitled To Punitive Damages

44. A wronged plaintiff may recover punitive damages in an action for slander of title. Summa Corp. v. Greenspun, 98 Nev. 528, 655 P.2d 513 (1982).

45. Once more, the plaintiff need not show that the land was adversely affected. Id. at 531. Actual damages in the form of costs to remove the cloud on title, such as attorneys' fees, is sufficient. Id.

46. The Association, through its Board, recorded three (3) improper and unlawful liens against Plaintiff's Property. Once more, each lien incorporated the prior lien amount, reaching a total of \$209,883.19, when the only amount that had been adjudicated was \$52,255.19, when there was a bond posted in that amount which was deemed, by the Association, as good and sufficient.

47. The Court finds that the Association did not have a right to have any of these liens recorded against Plaintiff's Property.

48. The totality of the liens made it impossible for Plaintiff to sell the Property, even though a good and sufficient bond had been deposited.

49. The Association's actions were taken in order to prevent the Lytles from building their dream home in the community.

50. Pursuant to the foregoing, Plaintiff is entitled to punitive damages in an amount to be determined after a prove-up hearing on damages.

K. Plaintiff Is Entitled To An Award Of Damages Equal To Its Costs And Attorneys'

Fees Incurred In Removing The Cloud On Title

51. A plaintiff can recover its costs and attorneys' fees as damages in an action for slander of title. See generally Summa Corp., 98 Nev. 528, 655 P.2d 513.

52. Plaintiff is directed to submit a memorandum of costs and application for attorneys' fees.

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1 **L. Summary Judgment Is Granted Against The Associations' Counterclaim**

2 53. The Association's Counterclaim merely seeks to enforce actions taken against the
3 Lytles via the Amended CC&Rs, which are *void ab initio* as set forth herein. For the reasons set
4 forth herein and the legal authority cited, all fines, assessments and liens are *void ab initio* and
5 should be declared as such.

6 **III. JUDGMENT**

7 **IT IS HEREBY ADJUDGED AND DECREED:**

8 1. All liens recorded by the Association against Plaintiff's Property are invalid and have
9 no force and effect. This Order may be recorded in the Office of the Clark County Recorder's
10 Office by any party, and, once recorded, shall be sufficient notice of the same.

11 2. The Association is hereby ordered to release any and all liens recorded against the
12 Property within sixty (60) days of the date of service of this Order on the Association, including (a)
13 the Notice of Delinquent Assessment Lien, Book/Instr. No. 20090720-001631, and (b) the
14 Judgment, Book/Instr. No. 200911180005345.

15 3. The Association's Counterclaim is dismissed.

16 4. Plaintiff is the prevailing party in this action. Plaintiff is directed to prepare, file and
17 serve a Memorandum of Costs.

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1 5. Plaintiff is deemed the prevailing party in this action. Any motion for attorneys' fees
2 will be addressed separately by the Court.


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4 IT IS SO ORDERED this 14 day of November, 2016.

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7 HONORABLE ROB BARE
8 District Court Judge, Dept. XXXII

9 ROB BARE
10 JUDGE, DISTRICT COURT, DEPARTMENT 32

11 DATED: November 10, 2016

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