

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 03:44 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 6

PAGES 1251-1500

DANIEL F. POLSENBERG (SBN 2376)

DAN R. WAITE (SBN 4078)

ABRAHAM G. SMITH (SBN 13,250)

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(702) 949-8200

Attorneys for Appellants

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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

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
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1880 CENTURY PARK EAST
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LOS ANGELES, CA 90067

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(310) 552-3400

File Number
4389-2
REH

Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

6/01/15
228262-001
Page 1

Date	Atty	Professional Services Rendered	Hours
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5/29/15	REH	telephone conference with Trudi Lytle re status of appeal	.2
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Summary of Services		Hours	Effective Rate	Fees
Richard Haskin	Partner	.2	330.00	66.00
Total		.2		66.00

Total Fees 66.00

Description of Disbursements	Amount
E-filing City National Bank Credit Card Processing Center errata to complaint	3.50

Total Fees	66.00
Total Disbursements	3.50

INVOICE TOTAL \$ 69.50

Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
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LOS ANGELES, CA 90067

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Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

July 1, 2015
Invoice No. 228897

Client No: 4389

Current Fees Through 06/30/15		363.00
INVOICE TOTAL	\$	363.00

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	363.00	.00	363.00
		363.00	.00	363.00

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

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File Number
REH

4389-2
Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

7/01/15
228897-001
Page 1

Date	Atty	Professional Services Rendered	Hours
6/05/15	REH	telephone conference with Trudi Lytle re finalizing reply brief	.3
6/11/15	REH	review Supreme Court website re status of 60b reply brief and motions for extension	.3
6/17/15	REH	telephone conference with Trudi Lytle re status of all appeals	.3
6/19/15	REH	telephone conference with Beau Sterling re appeal brief	.2

Summary of Services		Hours	Effective Rate	Fees
Richard Haskin	Partner	1.1	330.00	363.00
Total		1.1		363.00

Total Fees **363.00**

INVOICE TOTAL **\$ 363.00**

Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.: 54-0967784	1880 CENTURY PARK EAST 12TH FLOOR LOS ANGELES, CA 90067	TELEPHONE (310) 552-3400
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Trudi and John Lytle (Lytle Trust) 1600 River Birch Street Las Vegas, NV 89117	August 1, 2015 Invoice No. 229272
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Client No: 4389

Current Fees Through 07/31/15	99.00
INVOICE TOTAL	\$ 99.00

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	99.00	.00	99.00
		99.00	.00	99.00

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

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File **4389-2**
Number
REH

Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

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Date	Atty	Professional Services Rendered	Hours
7/17/15	REH	telephone conference with Trudi Lytle re status	.3

Summary of Services		Hours	Effective Rate	Fees
Richard Haskin	Partner	.3	330.00	99.00
Total		.3		99.00

Total Fees **99.00**

INVOICE TOTAL **\$ 99.00**

Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

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Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

January 1, 2016
Invoice No. 231247

Client No: 4389

Current Fees Through 12/31/15		924.00
INVOICE TOTAL	\$	924.00

Matter Summary	Fees	Disbursements	Total Billed
4389-2 Rosemere Estates Property Owners Association	924.00	.00	924.00
	924.00	.00	924.00

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

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File **4389-2**
Number
REH

Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

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Date	Atty	Professional Services Rendered	Hours
12/21/15	REH	telephone conference with Trudi Lytle re Supreme Court ruling	.5
12/22/15	REH	review appeal rulings; email to T. Lytle re same	.3
12/23/15	REH	review prior pleadings	.5
12/23/15	REH	meeting with clients to discuss status and strategy	1.5

Summary of Services		Hours	Effective Rate	Fees
Richard Haskin	Partner	2.8	330.00	924.00
Total		2.8		924.00

Total Fees **924.00**

INVOICE TOTAL **\$ 924.00**

Claim No. A-10-6311355-1

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GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
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TELEPHONE
(310) 552-3400

Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

March 1, 2016
Invoice No. 231829

Client No: 4389

Current Fees Through 02/29/16		3,060.00
INVOICE TOTAL	\$	3,060.00

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	3,060.00	.00	3,060.00
		3,060.00	.00	3,060.00

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
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(310) 552-3400

File Number
REH

4389-2

Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

3/01/16
231829-001
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Date	Atty	Professional Services Rendered	Hours
2/05/16	REH	draft ex parte motion and proposed order re return of bond	.7
2/09/16	REH	draft first amended complaint	4.3
2/10/16	REH	telephone conference with Trudi Lytle re revisions to first amended complaint	1.3
2/11/16	REH	further revisions to amended complaint	.7
2/12/16	REH	finish drafting amended complaint with prayers for relief; draft motion for leave to amend	1.5
2/23/16	REH	telephone conference with Trudi Lytle re revisions to first amended complaint	.5

Summary of Services		Hours	Effective Rate	Fees
Richard Haskin	Partner	9.0	340.00	3,060.00
Total		9.0		3,060.00

Total Fees **3,060.00**

INVOICE TOTAL **\$ 3,060.00**

Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
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GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

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(310) 552-3400

Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

April 1, 2016
Invoice No. 232142

Client No: 4389

Current Fees Through 03/31/16	293.00
Current Disbursements Through 03/31/16	40.73
INVOICE TOTAL	\$ 333.73

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	293.00	40.73	333.73
		293.00	40.73	333.73

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

File **4389-2**
Number
REH

Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

4/01/16
232142-001
Page **1**

Date	Atty	Professional Services Rendered	Hours
3/07/16	REH	finalize motion to leave to amend complaint	.7
3/08/16	TPE	review, finalize, and execute motion for leave to file amended complaint	.2

Summary of Services	Hours	Effective Rate	Fees
Richard Haskin	Partner .7	340.00	238.00
Timothy P. Elson	Associate .2	275.00	55.00
Total	.9		293.00

Total Fees **293.00**

Description of Disbursements	Amount
Reproduction Costs	4.65
Shipping Costs	2.08
Nationwide Legal, Inc. Nationwide Legal Nevada, LLC deliver courtesy copy of order releasing cash bond - Clark County DC - nw 2/29	10.00
Nationwide Legal, Inc. Nationwide Legal Nevada, LLC deliver order releasing cash bond for signature - Clark County DC - nw 2/15	10.00
E-Serve Litigation Documents City National Bank Credit Card Processing Center notice of entry of order releasing cash bond	3.50
E-Serve Litigation Documents City National Bank Credit Card Processing Center order releasing cash bond	3.50
E-Serve Litigation Documents City National Bank Credit Card Processing Center notice of errata re motion for release of bond	3.50
E-Serve Litigation Documents City National Bank Credit Card Processing Center ex parte motion for release of bond	3.50
Total Fees	293.00
Total Disbursements	40.73

INVOICE TOTAL **\$ 333.73**

Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

May 1, 2016
Invoice No. 232694

Client No: 4389

Current Fees Through 04/30/16	68.00
Current Disbursements Through 04/30/16	3.50
INVOICE TOTAL	\$ 71.50

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	68.00	3.50	71.50
		68.00	3.50	71.50

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

File Number
REH 4389-2

Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

5/01/16
232694-001
Page 1

Date	Atty	Professional Services Rendered	Hours
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4/25/16	REH	draft notice of non-opposition to motion for leave to amend	.2
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Summary of Services		Hours	Effective Rate	Fees
Richard Haskin	Partner	.2	340.00	68.00
Total		.2		68.00

Total Fees 68.00

Description of Disbursements	Amount
E-Serve Litigation Documents City National Bank Credit Card Processing Center motion for leave to file first amended complaint	3.50
Total Fees	68.00
Total Disbursements	3.50

INVOICE TOTAL \$ 71.50

Claim No. A-10-6311355-1

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

June 1, 2016
Invoice No. 233134

Client No: 4389

Current Fees Through 05/31/16	102.00
Current Disbursements Through 05/31/16	10.00
INVOICE TOTAL	\$ 112.00

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	102.00	10.00	112.00
		102.00	10.00	112.00

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-09677841880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067TELEPHONE
(310) 552-3400File Number
4389-2
REHLytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association6/01/16
233134-001
Page 1

Date	Atty	Professional Services Rendered	Hours
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5/25/16	REH	review minute order granting leave to amend; draft order	.3
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Summary of Services		Hours	Effective Rate	Fees
Richard Haskin	Partner	.3	340.00	102.00
Total		.3		102.00

Total Fees	102.00
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Description of Disbursements	Amount
Nationwide Legal, Inc. Nationwide Legal Nevada, LLC deliver courtesy copy of motion for leave to file first amended complaint - Clark County DC - nw 3/15	10.00
Total Fees	102.00
Total Disbursements	10.00

INVOICE TOTAL	\$ 112.00
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Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

July 1, 2016
Invoice No. 233634

Client No: 4389

Current Fees Through 06/30/16	1,190.00
Current Disbursements Through 06/30/16	57.30
INVOICE TOTAL	\$ 1,247.30

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	1,190.00	57.30	1,247.30
		1,190.00	57.30	1,247.30

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

File Number **4389-2** **Lytle, Trudi & John (Lytle Trust)**
REH **Rosemere Estates Property Owners Association**

7/01/16
233634-001
Page 1

Date	Atty	Professional Services Rendered	Hours
6/11/16	REH	begin drafting motion for summary judgment; legal research	2.0
6/30/16	REH	further drafting to motion for summary judgment	1.5

Summary of Services	Hours	Effective Rate	Fees
Richard Haskin	Partner	340.00	1,190.00
Total	3.5		1,190.00

Total Fees **1,190.00**

Description of Disbursements	Amount
On-line Research Charges	43.80
Nationwide Legal, Inc. Nationwide Legal Nevada, LLC deliver order granting motion for leave to file first amended complaint - Clark County DC - nw 5/31	10.00
E-Serve Litigation Documents City National Bank Credit Card Processing Center order granting motion for leave to file first amended complaint	3.50
Total Fees	1,190.00
Total Disbursements	57.30

INVOICE TOTAL **\$ 1,247.30**

Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

August 1, 2016
Invoice No. 233733

Client No: 4389

Current Fees Through 07/31/16	2,618.00
Current Disbursements Through 07/31/16	3.50
INVOICE TOTAL	\$ 2,621.50

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	2,618.00	3.50	2,621.50
		2,618.00	3.50	2,621.50

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
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LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

File Number
4389-2
REH

Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

8/01/16
233733-001
Page 1

Date	Atty	Professional Services Rendered	Hours
7/01/16	REH	draft motion for summary judgment	3.2
7/14/16	REH	draft Lytle declaration in support of motion for summary judgment	1.5
7/14/16	REH	meeting with Allen and Trudi Lytle re MSJ	1.5
7/29/16	REH	draft motion for summary judgment	1.5

Summary of Services	Hours	Effective Rate	Fees
Richard Haskin Partner	7.7	340.00	2,618.00
Total	7.7		2,618.00

Total Fees 2,618.00

Description of Disbursements	Amount
E-Serve Litigation Documents City National Bank Credit Card Processing Center notice of entry of order granting motion for leave to file first amended complaint	3.50
Total Fees	2,618.00
Total Disbursements	3.50

INVOICE TOTAL \$ 2,621.50

Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
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LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

September 1, 2016
Invoice No. 234317

Client No: 4389

Current Fees Through 08/31/16	1,530.00
Current Disbursements Through 08/31/16	20.70
INVOICE TOTAL	\$ 1,550.70

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	1,530.00	20.70	1,550.70
		1,530.00	20.70	1,550.70

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

File Number
REH

4389-2
Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

9/01/16
234317-001
Page 1

Date	Atty	Professional Services Rendered	Hours
8/11/16	REH	draft to motion for summary judgment	1.0
8/12/16	REH	finalize draft of motion for summary judgment	1.5
8/15/16	REH	meeting with Allen and Trudi re motion for summary judgment	1.0
8/29/16	REH	finalize motion for summary judgment; add section requesting punitive damages	1.0

Summary of Services	Hours	Effective Rate	Fees
Richard Haskin	Partner	4.5	340.00
Total	4.5		1,530.00

Total Fees 1,530.00

Description of Disbursements	Amount
Reproduction Costs	7.20
On-line Research Charges	13.50
Total Fees	1,530.00
Total Disbursements	20.70

INVOICE TOTAL \$ 1,550.70

Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

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54-0967784

1880 CENTURY PARK EAST
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LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

October 1, 2016
Invoice No. 234453

Client No: 4389

Current Fees Through 09/30/16	1,190.00
Current Disbursements Through 09/30/16	32.00
INVOICE TOTAL	\$ 1,222.00

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	1,190.00	32.00	1,222.00
		1,190.00	32.00	1,222.00

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

File Number
4389-2
REH

Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

10/01/16
234453-001
Page 1

Date	Atty	Professional Services Rendered	Hours
9/07/16	REH	telephone conference with Trudi Lytle re revisions to motion for summary judgment	1.5
9/13/16	REH	revise Lytle declaration; conference with T. Lytle re same	.5
9/13/16	REH	finalize motion for summary judgment; package exhibits; prepare for filing	1.5

Summary of Services		Hours	Effective Rate	Fees
Richard Haskin	Partner	3.5	340.00	1,190.00
Total		3.5		1,190.00

Total Fees **1,190.00**

Description of Disbursements	Amount
Reproduction Costs	25.20
Shipping Costs	6.80
Total Fees	1,190.00
Total Disbursements	32.00

INVOICE TOTAL **\$ 1,222.00**

Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

Trudi and John Lytle (Lytle Trust)
1600 River Birch Street
Las Vegas, NV 89117

November 1, 2016
Invoice No. 234887

Client No: 4389

Current Fees Through 10/31/16	238.00
Current Disbursements Through 10/31/16	209.50
INVOICE TOTAL	\$ 447.50

Matter Summary		Fees	Disbursements	Total Billed
4389-2	Rosemere Estates Property Owners Association	238.00	209.50	447.50
		238.00	209.50	447.50

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.

GIBBS GIDEN ATTORNEYS AT LAW

LOCHER TURNER SENET & WITTBRODT LLP

FEDERAL TAX I.D. NO.:
54-0967784

1880 CENTURY PARK EAST
12TH FLOOR
LOS ANGELES, CA 90067

TELEPHONE
(310) 552-3400

File Number
REH 4389-2

Lytle, Trudi & John (Lytle Trust)
Rosemere Estates Property Owners Association

11/01/16
234887-002
Page 1

Date	Atty	Professional Services Rendered	Hours
10/05/16	REH	telephone conference with Trudi Lytle re strategy for motion for summary judgment and prove up hearing	.5
10/07/16	REH	prepare notice of non-opposition	.2

Summary of Services	Hours	Effective Rate	Fees
Richard Haskin	Partner	.7	238.00
Total	.7		238.00

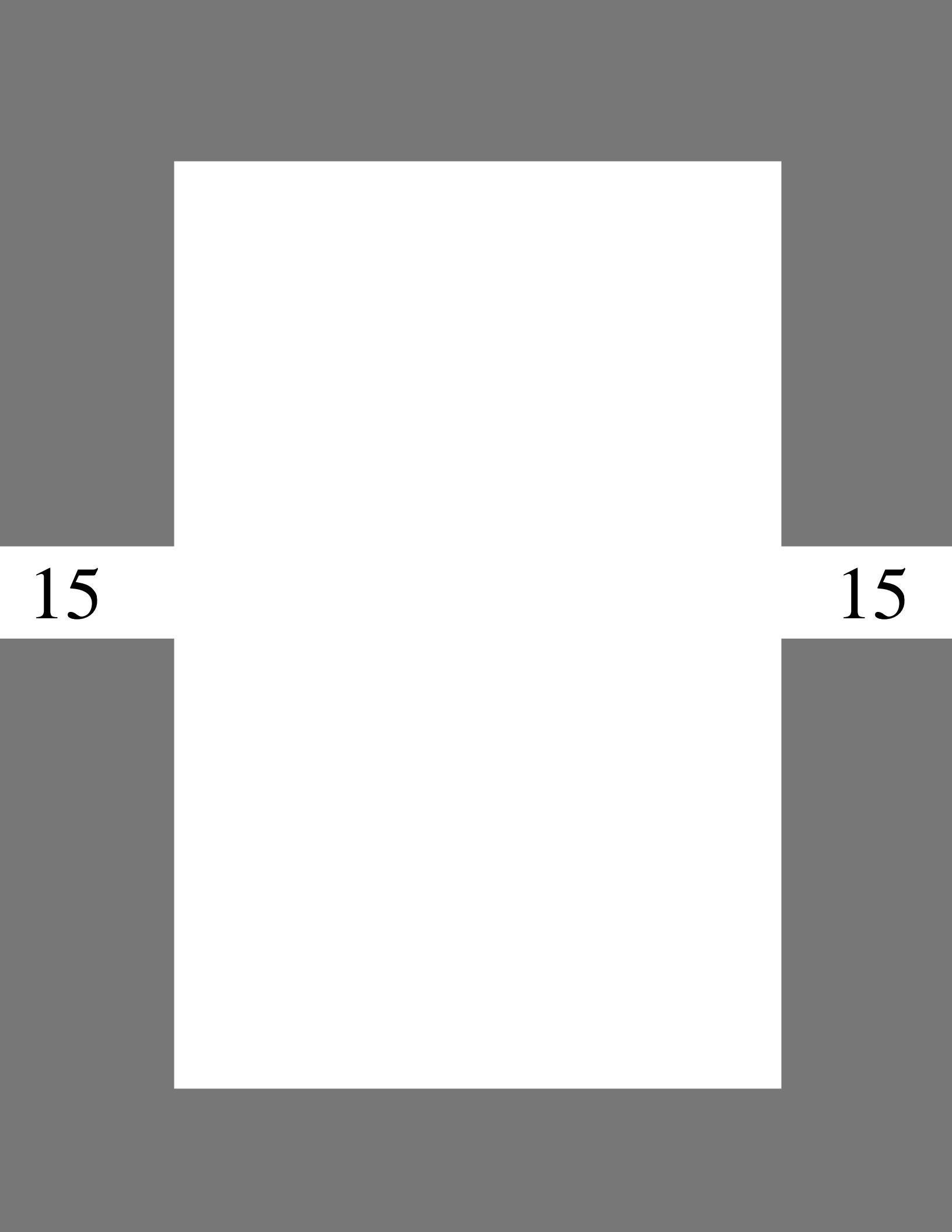
Total Fees 238.00

Description of Disbursements	Amount
Summary Judgment Motion City National Bank Credit Card Processing Center	200.00
E-Serve Litigation Documents City National Bank Credit Card Processing Center motion for summary judgment	9.50
Total Fees	238.00
Total Disbursements	209.50

INVOICE TOTAL \$ 447.50

Claim No. A-10-6311355-1

PAYMENT DUE UPON PRESENTATION.
PLEASE REFERENCE OUR INVOICE NUMBER ON YOUR REMITTANCE.



15

15

7/6/2020 5:02 PM

Steven D. Grierson

CLERK OF THE COURT



1 **NWM**
 2 CHRISTINA H. WANG, ESQ.
 3 Nevada Bar No. 9713
 4 FIDELITY NATIONAL LAW GROUP
 5 8363 W. Sunset Road, Suite 120
 6 Las Vegas, Nevada 89113
 7 Tel: (702) 667-3000
 8 Fax: (702) 938-8721
 9 Email: christina.wang@fnf.com
 10 *Attorneys for Counter-Defendants/Cross-Claimants*
 11 *Robert Z. Disman and Yvonne A. Disman*

DISTRICT COURT**CLARK COUNTY, NEVADA**

11 MARJORIE B. BOULDEN, TRUSTEE OF
 12 THE MARJORIE B. BOULDEN TRUST,
 13 LINDA LAMOTHE AND JACQUES
 14 LAMOTHE, TRUSTEES OF THE JACQUES
 15 & LINDA LAMOTHE LIVING TRUST,

16 Plaintiffs,

17 vs.

18 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
 19 THE LYTLE TRUST, DOES I through X, and
 20 ROE CORPORATIONS I through X,

21 Defendants.

22 AND ALL RELATED MATTERS

Case No.: A-16-747800-C

Dept. No.: XVI

**NOTICE OF WITHDRAWAL OF
 ROBERT Z. DISMAN AND YVONNE
 A. DISMAN'S MOTION FOR
 ATTORNEY'S FEES**

23 Notice is hereby given that Counter-Defendants/Cross-Claimants ROBERT Z. DISMAN
 24 and YVONNE A. DISMAN (collectively referred to herein as, the "Dismans") hereby withdraw
 25 their Motion for Attorney's Fees ("Motion"), filed on June 11, 2020. This withdrawal is with
 26 prejudice to the amounts requested in the Motion. Further, the Dismans respectfully request the

27 ///

28 ///

///

1 Court to vacate the hearing on the Motion, currently scheduled for July 16, 2020, at 9:00 a.m.

2 DATED this 6th day of July, 2020.

3 FIDELITY NATIONAL LAW GROUP

4
5 /s/ Christina H. Wang

6 CHRISTINA H. WANG, ESQ.

7 Nevada Bar No. 9713

8 8363 W. Sunset Road, Suite 120

9 Las Vegas, Nevada 89113

10 *Attorneys for Counter-Defendants/*

11 *Cross-Claimants Robert Z. Disman*

12 *and Yvonne A. Disman*

CERTIFICATE OF SERVICE

The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **NOTICE OF WITHDRAWAL OF ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR ATTORNEY'S FEES** upon the following parties on the date below entered (unless otherwise noted), at the fax numbers and/or addresses indicated below by: [] (i) placing said copy in an envelope, first class postage prepaid, in the United States Mail at Las Vegas, Nevada, [] (ii) via facsimile, [] (iii) via courier/hand delivery, [] (iv) via overnight mail, [] (v) via electronic delivery (email), and/or [X] (vi) via electronic service through the Court's Electronic File/Service Program.

Dan R. Waite, Esq.
LEWIS ROCA ROTHGERBER
CHRISTIE LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169
*Attorneys for Defendants/Counter-
Claimants Trudi Lee Lytle and John
Allen Lytle, Trustees of The Lytle Trust*

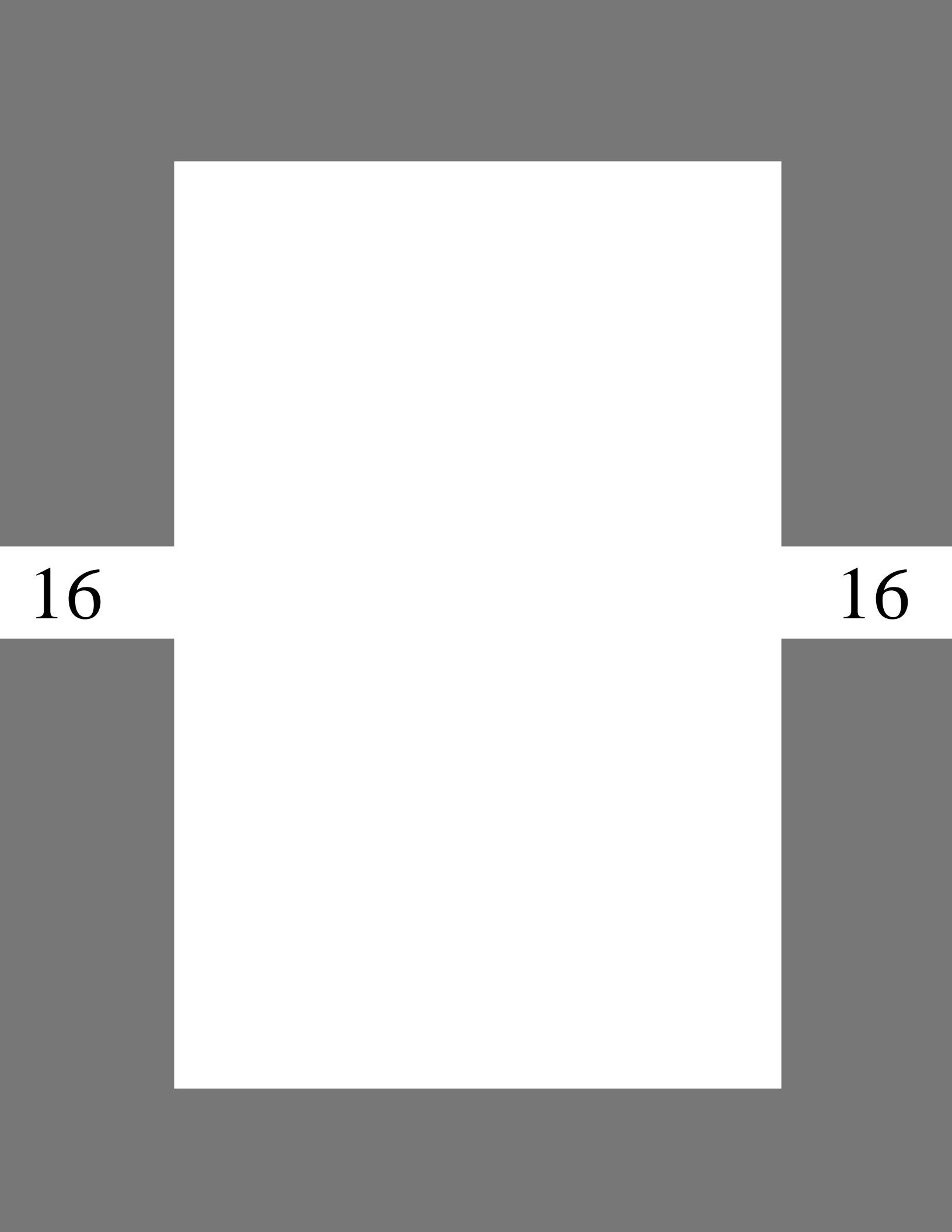
Kevin B. Christensen, Esq.
Wesley J. Smith, Esq.
Laura J. Wolff, Esq.
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
*Attorneys for September Trust, Zobrist
Trust, Sandoval Trust and Dennis & Julie
Gegen*

Daniel T. Foley, Esq.
Foley & Oakes, PC
626 S. 8th Street
Las Vegas, Nevada 89101
*Attorneys for Plaintiffs Marjorie B.
Boulden, Trustee of The Marjorie B.
Boulden Trust, amended and restated
dated July 17, 1996; and Linda
Lamothe and Jacques Lamothe,
Trustees of the Jacques and Linda
Lamothe Living Trust*

DATED: 07/06/2020

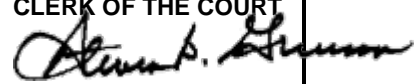
/s/ Lace Engelman

An employee of Fidelity National Law Group



16

16



1 CASE NO. A-16-747800-C

2 DOCKET U

3 DEPT. 16

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6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

* * * * *

9 MARJORIE B. BOULDEN TRUST,)

10 Plaintiff,)

11 vs.)

12 LYTLE TRUST,)

13 Defendant.)

14

15

REPORTER'S TRANSCRIPT
OF
HEARING

16

17

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED TUESDAY, JULY 7, 2020

22

23

24

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

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment. 001279

1 APPEARANCES:

2

3 FOR THE PLAINTIFF:

4

5 CHRISTENSEN JAMES & MARTIN

6 BY: WESLEY SMITH, ESQ.

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8 LAS VEGAS, NV 89117

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10 (702) 255-0871

11 WES@CJMLV.COM

12

13

14 FOR THE DEFENDANT:

15

16 LEWIS ROCA ROTHBERGER CHRISTIE

17 BY: DAN WAITE, ESQ.

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20 LAS VEGAS, NV 89169

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22 (702) 949-8398 Fax

23 DWAITE@LRRC.COM

24

25

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment. 001280

001280

001280

1 APPEARANCES CONTINUED:

2

FOR THE DISMANS:

3

4

FIDELITY NATIONAL LAW GROUP

5

BY: CHRISTINA WANG, ESQ.

6

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12

13

14

15

16

17

18

19

* * * * *

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22

23

24

25

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Pursuant to NRS 239.053, illegal to copy without payment.001281

001281

001281

1 LAS VEGAS, NEVADA, TUESDAY, JULY 7, 2020

2 9:36 A.M.

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

4 * * * * *

5

6 THE COURT: Okay. We're going to move on.

7 Next up page 9. We'll go back to the Marjorie B.

8 Boulden Trust versus Trudi Lytle matter. Let's go

9 ahead and place our appearances on the record. We'll

09:36:10 10 start first with the plaintiff and move to the defense.

11 MR. SMITH: Wesley Smith for the plaintiffs.

12 THE COURT: Who else?

13 THE COURT CLERK: We have Mr. Dan Waite.

14 MS. WANG: Christina Wang on behalf of Robert

09:36:26 15 and Yvonne Disman.

16 MR. WAITE: Good morning, your Honor. Your

17 Honor. Dan Waite on behalf of the defendants Lytle

18 Trust. I do have one matter before we get started,

19 your Honor, that I'd like to place on the record that

09:36:40 20 arises because of something that occurred at last

21 Thursday's hearing when I tried to make an objection

22 that because of the limitations of the BlueJeans

23 systems, I don't think I was ever heard and it was

24 never ruled upon. And in anticipation if the issue

09:36:58 25 comes up today, I'd like to make sure that my objection

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09:37:00 1 is on the record.

2 This is Mr. Smith's motion for attorney's
3 fees. He filed the motion. I opposed it. No one else
4 joined in that motion. No one else filed anything.

09:37:12 5 And so my objection, your Honor, would be that only
6 Mr. Smith and I be allowed to argue today. Anyone else
7 arguing would be essentially a double teaming, double
8 teaming me joining in on his motion. That's my
9 objection that I tried to make the other day but that
09:37:28 10 was not heard.

11 THE COURT: I understand, sir. We will
12 respect that.

13 And my next question would be this: Do we
14 want to have this matter reported?

09:37:38 15 MR. WAITE: Yes. I previously when we checked
16 in asked that it be reported.

17 THE COURT: And that's Mr. Waite. Did you get
18 that?

19 THE COURT REPORTER: Thank you.

09:37:47 20 THE COURT: Did you get his objection too?

21 THE COURT REPORTER: Yes.

22 THE COURT: All right. We got the objection
23 on the record too, sir.

24 All right.

09:37:53 25 MR. WAITE: Thank you, your Honor.

09:37:54 1

THE COURT: You're welcome.

2

And okay. So we'll go ahead and hear

3

plaintiff's motion for fees and costs.

4

And, sir, you have the floor.

09:38:10 5

MR. SMITH: Thank you, your Honor. This

6

Wesley Smith on behalf of the plaintiffs. Thank you

7

for allowing us to be heard this morning.

8

Obviously, we have before you our motion for

9

attorney's fees and costs. The motion explains that we

09:38:23 10

have both statutory and contractual basis for the

11

request. I can certainly go through each of those for

12

you, but just in summary, if you remember, you entered

13

a contempt order. And so we would be entitled to fees

14

and costs under NRS 22.100(3) as a result of that

09:38:41 15

contempt. And the defendants have not questioned our

16

award of fees and costs on that ground.

17

We also have another statutory basis that's

18

under NRS 18.010(2). And during the short time that

19

Judge Bayliss had this case, he entered a fee award for

09:39:01 20

the plaintiffs in 2018 on the basis of that statute.

21

And he ultimately concluded based upon the April 2015

22

order that the Lytle Trust had notice of that order and

23

had -- could have avoided all litigation with the

24

plaintiffs in this matter.

09:39:20 25

But because they chose not to take that

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09:39:23 1 reasonable opportunity, then their defense was
2 maintained without reasonable grounds. And so
3 Judge Bayliss awarded fees and costs to the plaintiffs
4 on that ground.

09:39:33 5 The third basis would be the CC&Rs. And you
6 probably recall that last year the Court awarded fees
7 and costs to other homeowners in this case, that would
8 be Boulden, Lamothe, and Dismans and under Section 25
9 of the CC&Rs.

09:39:51 10 And the Lytle Trust has argued that the
11 plaintiffs are somehow different than the other
12 homeowners in this case, that they are not enforcing or
13 restrained the violation of the CC&Rs.

09:40:07 14 But the Court already heard argument on that
15 and it ordered fees and costs for the other homeowners
16 and rejected that argument.

09:40:24 17 So we don't think that there was any reason to
18 distinguish between the various homeowners. If
19 Boulden, Lamothe, and Disman were entitled to fees and
20 costs under the CC&Rs so are the plaintiffs.

09:40:42 21 And certainly the Lytle Trust is the losing
22 party in this matter. They have lost at every stage of
23 this case. And the plaintiffs have prevailed. And so
24 we would be entitled to an award of fees and costs
25 under Section 25 of the original CC&Rs.

09:40:46 1 So as you can see, your Honor, there are
2 several grounds on which the Court may award fees to
3 the plaintiffs. Obviously, the amount of the award, as
4 the Court knows, is governed by Brunzell vs. Golden
09:40:59 5 Gate National Bank.

6 The Court looked at quality of the advocate,
7 character of the work to be done, work actually
8 performed, and the result. So I've addressed each of
9 these factors in my moving papers and declaration. I
09:41:12 10 believe that the amount requested is reasonable in
11 light of those factors.

12 I'm sure that the Lytle Trust is going to have
13 an argument about how our fees are unreasonable for
14 various reasons. We've addressed those in our reply
09:41:24 15 brief.

16 And I certainly would be willing to answer any
17 questions the Court may have on any of those issues.
18 But we think this has been adequately briefed, and we
19 would submit it for decision.

09:41:34 20 THE COURT: I just have one question. Are any
21 of the fees being requested, were any of those incurred
22 as a result of the companion case in front of
23 Judge Kishner?

24 MR. SMITH: Yes, your Honor. Some of the fees
09:41:50 25 requested are for work that was done to -- in the case

09:41:55 1 before Judge Kishner, sorry.

2 THE COURT: Yeah.

3 MR. SMITH: The reason why we requested them
4 here is because the Lytle Trust was held in contempt
09:42:04 5 for initiating that action. And at the time when we
6 got involved in that case, we did not have a contempt
7 order here. And we felt we needed to in order to
8 protect the plaintiff's rights.

9 So we moved to intervene in that case, and we
09:42:19 10 filed a motion to set aside or amend the receivership
11 order so it would be consistent with this Court's
12 orders. So we feel like it's part and parcel to this
13 case. It wasn't an attempt to multiply the
14 proceedings.

09:42:35 15 Certainly the plaintiff did not choose to
16 litigate in multiple forums. That was the result of
17 the Lytle Trust action. We think it all goes back to
18 the contempt, and that's why we've asked for them in
19 this case.

09:42:47 20 THE COURT: Okay. I understand, sir.

21 Okay. And Mr. Waite, sir.

22 And Ms. Wang. I don't want to ever overlook
23 you, ma'am, but I don't think your client filed a
24 joinder, is that correct?

09:43:00 25 MS. WANG: Your Honor, I'm simply attending

09:43:06 1 the hearing --

2 THE COURT: Okay.

3 MS. WANG: -- to listen to the Court's order
4 and observe the hearing. I'm not here to add any
09:43:16 5 arguments.

6 THE COURT: I understand. I just didn't want
7 to overlook you, ma'am. That's all.

8 MS. WANG: Thank you so much, your Honor.

9 THE COURT: All right.

09:43:23 10 Okay. Mr. Waite.

11 MR. SMITH: Thank you, your Honor. Dan Waite.

12 And I also appreciate the opportunity to appear
13 telephonically today.

14 Let me start with what the Lytle Trust does
09:43:38 15 not dispute. Mr. Smith is correct. You're -- we're
16 not disputing some entitlement to a fee associated with
17 the contempt motion that was filed. In context, your
18 Honor, your Honor, of course, recently granted the
19 plaintiff's contempt motion. And when I refer to the
09:43:58 20 plaintiffs, I'm just referring to Mr. Smiths' four
21 clients. You granted that motion and in the process
22 invited the plaintiffs to file a motion for their
23 associated fees.

24 But instead, your Honor, what we got was a
09:44:13 25 motion for fees that goes back for several years

09:44:17 1 including an appeal and including fees, as Mr. Smith
2 just indicated, incurred in the separate receivership
3 action in front of Judge Kishner, and a host of other
4 things amounting to a request in excess of \$155,000.

09:44:32 5 All post judgment in this -- in this case.

6 The issues have been briefed. I would like to
7 just highlight, your Honor, three general issues.

8 I'm not going to touch upon anything. So, for
9 example, although, I guess, I am at this moment, I
09:44:51 10 don't intend to spend any time addressing the last
11 request, which seems really strange to me that they
12 have a standing order going into the future for fees
13 not yet incurred that they somehow have an order in
14 perpetuity for the fees. That's been briefed. I'm
09:45:09 15 going to leave that in the briefs.

16 But I would like to highlight three general
17 issues, your Honor. Those three issues are: The
18 receivership action, the fees that are requested
19 associated with the receivership action. Two, the fees
09:45:22 20 requested associated with the appeal. And then three,
21 some just general billing problems such as block
22 billing, clerical tasks, those types of things.

23 So turning to the first issue, your Honor, the
24 receivership action. There are several problems with
09:45:39 25 that. Again, I'm not going to hit all of the problems,

09:45:42 1 but I want to address the contractual problems
2 associated with awarding fees in the receivership
3 action. The fees are sought in the receivership action
4 based on the original CC&Rs, attorney's fees provision
09:45:59 5 Section 25 which says, in any legal or equitable
6 proceeding the losing party or parties shall pay in
7 such amount as may be fixed by the Court in such
8 proceeding.

9 There are two separate and independently fatal
09:46:18 10 issues with the plaintiff's request. First of all,
11 your Honor, the Lytle Trust is not the losing party in
12 the receivership action. It filed its motion for the
13 appointment of a receiver and prevailed. The Court,
14 Judge Kishner, appointed a receiver.

09:46:37 15 While the plaintiffs here filed a motion there
16 to set aside that receivership order, Judge Kishner has
17 not yet fully ruled on that motion. And I emphasize
18 she hasn't fully ruled on that motion yet because she
19 has made some preliminary rulings.

09:46:54 20 For example, one of the big issues that showed
21 up there was the plaintiffs here, as intervenors there,
22 asserted that the Lytle Trust committed fraud on
23 Judge Kishner, committed fraud on the Court by not
24 alerting her to several things including this Court's
09:47:17 25 preliminary injunction. That was a big issue there.

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09:47:20 1 One of the preliminary rulings that
2 Judge Kishner has issued in her minute order that is on
3 the docket is she has not found any fraud on the court.
4 And so the Lytles prevailed in that issue.

09:47:35 5 Also on two separate occasions the receiver,
6 represented by Patty Lee from Hutchinson Steffen, the
7 receiver asked while this is going on in
8 Judge Williams' Court is the receiver to carry on or
9 not carry on. And on two occasions Judge Kishner said,
09:47:54 10 My order is my order until it's not my order, so the
11 receiver is to carry on.

001291 12 Now, I do want to make an important
13 distinction here, your Honor, that I don't think really
14 factors in today, but I think it's important for
09:48:07 15 context. The Lytle Trust brought the appointment of a
16 receiver in two different capacities, only one of which
17 is really at issue here.

18 The Lytle Trust of course is a judgment
19 creditor with the association being a judgment debtor,
09:48:27 20 its judgment debtor. And so the Lytle Trust brought
21 the appointment of a receiver to facilitate the
22 satisfaction of its judgment against the association.
23 That's the issue that's involved here. That's the
24 issue that this Court found the Lytle Trust in contempt
09:48:44 25 for.

09:48:44 1 But the Lytle Trust is also a member of the
2 Rosemere Estates property Homeowners Association, now a
3 member of the association. And as a member of the
4 association, they sought the appointment of the
09:48:58 5 receiver to facilitate some administrative functions
6 such as getting the association back in good standing
7 with the Secretary of State. Getting the association
8 back in good standing with the Nevada Real Estate
9 Division, and a few other administrative types of
09:49:16 10 things. That is not at issue here.

11 As far as I know and understand, the receiver
12 has not proceeded with any -- anything to collect the
13 judgment.

14 And, quite honestly, I'm not sure if the
09:49:32 15 receiver has done anything as it relates to the
16 administrative functions. But my point here is simply,
17 your Honor, that the -- if there is anyone who has
18 prevailed thus far in the receivership action, it is
19 the Lytle Trust. So the other contractual issue is is
09:49:53 20 that the contract Section 25 says that the fees will be
21 paid by the losing party fixed by the Court in such
22 proceeding.

23 The plaintiffs have argued that that
24 attorney's fees provision is clear and unambiguous, and
09:50:11 25 it is certainly in that respect. But what it says is

09:50:14 1 that if fees are going to be awarded, they must be
2 fixed by the Court in such proceeding. And
3 Judge Kishner is the judge in the receivership action.
4 She's the one to issue any fees in that case.

09:50:31 5 So, your Honor, there are some other arguments
6 I'm going to skip. Ask you if you were inclined to
7 award fees here --

8 THE COURT: And Mr. --

9 (Unreportable cross-talk)

09:50:41 10 MR. WAITE: -- contrary to a receivership
11 action you shouldn't award them at all.

12 THE COURT: Mr. -- I don't want to cut you
13 off, but --

14 MR. WAITE: I'm sorry?

09:50:50 15 THE COURT: I don't want to cut you off, and I
16 do really and truly appreciate everybody has a right to
17 make a record. But I'm looking at this more from a
18 legal logic perspective. Because if you look at
19 NRS 18.010 and/or you look at the contractual language
09:51:06 20 at issue in this case, I don't see as a matter of law
21 how I can award any fees and costs as it relates to the
22 receivership action. That's not a case in front of me.
23 I don't mind, because you've been in front of me. I'm
24 going to tell you what I think. I tell everybody what
09:51:22 25 I think. I'm looking at the statute; right?

09:51:24 1 And, for example --

2 MR. WAITE: Yes.

3 THE COURT: The award of fees under 18.010,
4 and it -- and this is paragraph (b). Or.

09:51:37 5 "Without regard to recovery sought, when
6 the Court finds that the claim,
7 counter-claimant, cross-claim, or third-party
8 complaint or the offense of the opposing party
9 was brought or maintained without reasonable
09:51:51 10 ground or to harass the prevailing party."

11 And so my point is this: I think my thrust,
12 focus, and examination would be limited solely to
13 what's in Department 16 and not what's going on in
14 another department.

09:52:04 15 And I realize we've had this discussion. But
16 I think it's actually very simple, even with the
17 contractual language. Whatever fee determination --
18 award I make in this case or award of costs, it has to
19 be in a Department 16 case and not in a case regarding
09:52:23 20 any litigation that occurs in front of Judge Kishner.

21 It would be her determination to decide
22 whether, for example, there should be an award of fees
23 and costs in her Department as it relates to the
24 receivership action. And that's my point. I was just
09:52:43 25 making it -- I see it so clearly.

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09:52:45 1 And I don't mind telling everybody this. If
2 you agree or disagree with me, that's okay. You can
3 just tell me why you agree or why you disagree for the
4 record. because like I indicated in the prior matter --
09:52:57 5 prior discussions last week, I realize there is a writ
6 in this case, maybe fees will be part of it. But the
7 bottom line is I know the Supreme Court, they review
8 these transcripts. I just know they do.

9 And one thing I'll do is this: I will let you
09:53:10 10 know what I'm considering and thinking about because I
11 think it's important to make a clear record. Because
12 from time to time it's been my experience and I've seen
13 this where from an appellate perspective, unless I let
14 the appellate court, or the reviewing court, the
09:53:27 15 Supreme Court, know exactly what I'm considering,
16 sometimes they might not appreciate what's going on at
17 the trial court level. And that's all I want to say.

18 But before you move on, you can respond to
19 that. And then when the plaintiff, they'll get a
09:53:42 20 chance to respond to that, but I think I see it as a
21 very simple issue, Mr. Waite.

22 Go ahead, sir.

23 MR. SMITH: Well, your Honor, I've--
24 (telephonic audio drop) - I don't mean to be quiet, and
09:53:54 25 so let me -- let me not add any additional argument to

09:53:58 1 that receivership, but instead just conclude that
2 section of my argument by putting the numbers on it.

3 If you look to the Lytle's Trust in going
4 through the billing statements that something just
09:54:10 5 under \$40,000 was incurred there in the receivership
6 action (indiscernible). In the reply, in plaintiff's
7 reply they acknowledge, they say the number is \$36,259.

8 Okay. Not sure how anyone can tell for
9 certain giving the block billing entries, but
09:54:30 10 plaintiffs admit that \$36,259 was incurred in the
11 receivership action. And, therefore, the request here
12 must be reduced by that amount right off the bat. Of
13 course, that's without prejudice. If, ultimately, they
14 prevail in front of Judge Kishner, they can bring the
09:54:47 15 request in front of her.

16 So let me go on to the second of my three
17 issues to highlight, your Honor. And that is the
18 request by plaintiffs for the fees on appeal.

19 They did win the appeal. But winning an
09:55:00 20 appeal, of course, does not automatically entitle the
21 prevailing party to their fees on the appeal. There
22 still must be a contract, statute, or rule that allows
23 the fees to be shifted to their opponent. Plaintiff's
24 importantly acknowledge and correctly acknowledged in
09:55:19 25 their briefs that they cannot recovery their fees on

09:55:21 1 appeal under NRS 18.

2 So they are forced to argue that they are
3 entitled to fees on appeal under the attorney's fees
4 provision of the original CC&R Section 25. However,
09:55:38 5 that provision applies only to proceedings where the
6 plaintiff seeks to enforce the CC&Rs or to restrain a
7 violation of the CC&Rs.

8 As Mr. Smith correctly noted, the plaintiffs
9 were previously awarded fees in this case during this
09:55:56 10 time with Judge Bayliss.

11 However, Judge Bayliss -- and Mr. Smith
12 mentioned this but I want to emphasize it.
13 Judge Bayliss even though the plaintiffs requested fees
14 under NRS 18 and the original CC&Rs, Judge Bayliss
09:56:15 15 declined to award them fees on the basis of the
16 original CC&Rs. Instead he awarded these very
17 plaintiffs fees only on the basis of NRS 18, which is
18 unavailable here to award fees on appeal. I'm not
19 talking about fees in other areas. I'm talking about
09:56:34 20 just the fees on appeal.

21 So if there's any law of the case, your Honor,
22 they want to point to what your Honor has awarded in
23 the consolidated but different case of the Lamothe--
24 (telephonic audio drop). If there is any controlling
09:56:50 25 authority, your Honor, it's what -- it's what

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1 previously occurred to the plaintiffs through
2 Mr. Smith's client in the award by Judge Bayliss in
3 this very case.

4 And as it relates to the original CC&Rs, you
5 know, prior to this action, I know that your Honor has
6 mentioned this several times, Judge Leavitt ruled that
7 the association was a limited -- is a limited purpose
8 association, an LPA. That determination was made and
9 was made by Judge Leavitt, both collateral estoppel
10 here. Here the issue is whether an LPA could record
11 its abstract of judgments against -- or excuse me.
12 Whether the Lytle Trust could record its abstract of
13 judgments against the homeowner's properties pursuant
14 to statute particularly NRS 116.3117 even though those
15 homeowners weren't parties to the judgment actions.

16 The controlling authority and rules of
17 decision here came from NRS 116, a constitutional due
18 process, not the CC&Rs.

19 And I note that before this action was
20 pending, there was no mothballed action that was
21 pending. The Court granted summary judgment in favor
22 of the Lamothe Boulden parties, which caused these
23 plaintiffs to file a demand upon the Lytle Trust. They
24 made big, big points about that. But nowhere in that
25 pre-lawsuit demand do they mention these original

09:58:19 1 CC&Rs.

2 The complaint that was filed here by these
3 plaintiffs mentions the original CC&Rs only a couple of
4 times and only in context or pathway, not as a force of
09:58:33 5 decision. When the Lamothe Boulden appeal was
6 favorable to the Lamothe Boulden parties, the
7 plaintiffs here filed -- or not filed, but sent a
8 second demand letter to the Lytle Trust. And nowhere
9 in the second demand letter do they mention these
09:58:53 10 provisional CC&Rs.

11 When the appeal in this matter from the
12 plaintiffs in this case, the order of affirmance that
13 was issued just this last March, nowhere in the order
14 of affirmance is there a mention of the original CC&Rs.
09:59:11 15 The only -- the only CC&Rs that were mentioned there
16 are the amended CC&Rs.

17 This case was about the application of statute
18 NRS 116 and due process rights. You can't record your
19 judgment against someone who wasn't a party to the
09:59:30 20 judgment action.

21 Ironically, it's now the plaintiffs who want
22 to deprive the Lytle Trust of its due process rights by
23 asking this Court to require the Lytle Trust to pay
24 more than \$150,000 in fees for an alleged restraint of
09:59:46 25 the CC&Rs where the plaintiffs failed to identify a

09:59:52 1 single provision of the CC&Rs that the Lytle Trust
2 violated that had to be restrained.

3 They just had never pointed out and can't
4 point out because this action was not about the
10:00:05 5 original CC&Rs. But that's what they have to argue in
6 order for get the award of fees for appeal.

7 Judge Bayliss awarded them fees under Section
8 NRS 18, but NRS 18 is unavailable to award fees on
9 appeal.

10:00:21 10 The best that I can tell your Honor in going
11 through the billing statements, Mr. Smith could address
12 this if he agrees, but the best I can tell
13 approximately \$12,577.50 is attributed to the
14 billing -- in the billing statements to the appeal
10:00:39 15 matter.

16 Now, I would add the caveat which takes me to
17 the third area, and it is difficult, very candidly, to
18 tell. And this is -- this gets us into the third area
19 with the block billing. It is difficult to tell with
10:00:53 20 precision how much was spent on various things because
21 of the plaintiff's block billing. Third problem here.

22 There was at least two problems with the block
23 billing. The most commonly known and referred to
24 problem with block billing is that it, of course,
10:01:11 25 hinders evaluation of whether time expended on each

10:01:16 1 block billed task was reasonable or not. Identifying
2 that problem assumes that everything within the block
3 billed entry is compensable. And the only question is
4 whether the amount of time expended is reasonable.

10:01:30 5 But what if, as the Lytle Trust contends here,
6 the block billing includes time that is compensable and
7 time not compensable? Even a reasonable amount of time
8 on non-compensable work is not compensable. When block
9 billing is employed, you can't distinguish between work
10:01:51 10 that is compensable and work in the same block billed
11 entry that is not compensable.

12 So plaintiffs submitted time entries that it
13 viewed also \$120,000 in block billings. \$120,000 out
14 of the \$155,000 request represents block billed
10:02:10 15 entries.

16 In the reply that plaintiffs attempt to
17 justify that block billing on the basis of an
18 unpublished Nevada Supreme Court decision that predates
19 2016. And the plaintiffs are, therefore, not even
10:02:25 20 allowed to cite that case, but they did. And they even
21 some of that unpublished case supports the Lytle Trust
22 position.

23 In our brief we submitted California Bar Study
24 and other cases indicating that it is customary to
10:02:44 25 reduce block billed entries by 10 to 30 percent. That

10:02:49 1 that is appropriate. The unpublished decision relied
2 upon by the plaintiff's interestingly cites a Ninth
3 Circuit case:

4 "Suggesting that a 10 to 30 percent
10:03:01 5 reduction might be reasonable for block billed
6 fees."

7 This is exactly what the Lytle Trust has
8 suggested. Therefore, because almost \$120,000 was
9 block billed, the reduction for block billing should be
10:03:16 10 \$12- to \$36,000.

11 Clerical tasks, your Honor, I -- plaintiffs
12 don't dispute that their motion includes an award for
13 clerical tasks such as calendaring, internal filing,
14 preparing tables of contents, rather they surprisingly
10:03:34 15 try to justify such. The reply actually includes a
16 heading of the section that I find shocking, but it's
17 entitled, "clerical task to be compensable in this
18 case."

19 Plaintiffs never do address the time entries
10:03:51 20 for things like internal filing and several other
21 tasks, clerical tasks. They do address the clerical
22 task of calendaring which shows that multiple times in
23 the billing statement including multiple attorneys
24 calendaring the exact same deadline. Plaintiffs offer
10:04:10 25 three reasons why the Lytle Trust should be forced to

10:04:15 1 pay up to, like, 520 bucks an hour combined rate for
2 plaintiff's counsel to perform these clerical tasks.
3 The first is they suggest that because they're -- it's
4 appropriate because the plaintiff's law firm is small.
10:04:31 5 They only have six attorneys, no paralegals, one law
6 clerk.

7 They essentially presumably argue for a novel,
8 what I'll call, a small law firm exception to perform
9 clerical tasks. And, of course, there is no such small
10:04:47 10 law firm exception for attorneys to perform clerical
11 tasks. The task is non-compensable not because of the
12 size of the law firm but because of the nature of the
13 task.

14 No one sharpens pencils these days, but
10:05:00 15 sharpen the pencil is just as non-compensable by
16 attorneys in small law firms as by secretaries in large
17 law firms. Clerical tasks are not compensable no
18 matter who performs them. They are not compensable at
19 any rate.

10:05:15 20 The second reason they give for being awarded
21 their clerical tasks function is that the malpractice
22 carrier requires all calendaring to be done by at least
23 two attorneys. So I've been doing this for 30 years.
24 And, quite honestly, your Honor, I've never heard of a
10:05:33 25 malpractice carrier requiring calendaring to be

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10:05:37 1 performed by the attorney.

2 I suppose the plaintiff's counsel was able to
3 get a reduced law practice rate by agreeing that at
4 least two attorneys will calendar all deadlines. But
10:05:48 5 that is an overhead item just like rent. That must be
6 absorbed by counsel.

7 If counsel is able to convince its clients to
8 pay their clerical tasks of calendaring, good for them.
9 More power to them. But they cannot shift that cost to
10:06:03 10 the Lytle Trust.

11 The Lytle Trust is not required to subsidize
12 counsel's malpractice premiums. A clerical task is a
13 clerical task no matter who performs it. And
14 calendaring is a clerical tasks.

10:06:17 15 Plaintiffs have not cited a single case
16 suggesting that any court has ever found calendaring to
17 be anything other than a non-compensable clerical task.

18 The third reason they suggest for compensating
19 them for clerical task is that their rates of \$260 an
10:06:35 20 hour is lower than most attorneys of equal experience.

21 However, what plaintiffs fail to appreciate and argue
22 with that is that clerical tasks are not compensable at
23 any rate. It's not an issue of performing the task at
24 a reasonable rate. It's that performing a clerical
10:06:53 25 task is not compensable at any billing rate. Not \$26

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10:06:58 1 an hour, certainly not \$260 an hour.

2 Duplicative efforts. I'm almost done here.

3 Your effort, the rule essential conferences, the
4 attorneys within the same law firm not just working on
10:07:14 5 different parts of pieces parts of a motion or
6 something like that, but performing the exact same
7 task, that kind of duplication is not compensable
8 either.

9 So, your Honor, in form, kind of put the
10:07:34 10 numbers together. The fee request must be reduced by
11 the \$36,259 admitted, which the admitted amount in the
12 receivership action \$12,577 for the appeal. Something
13 in the neighbor to \$12- to \$36,000 for block billing.
14 And some additional amount for the calendaring or other
10:07:59 15 clerical tasks, the duplicative work, the interoffice
16 conferences, the attorneys performing the same task, I
17 put a number at \$10,000 on that. That would reduce the
18 award, your Honor, to something in the range of \$61- to
19 \$85,000 that we suggest that that is the amount that
10:08:17 20 that -- the range that this Court should consider.

21 One final housekeeping matter. Your Honor
22 knows from the hearing the other day, and I know that
23 you've been doing this long enough, you don't get hot
24 or bothered by an appeal from your decision. That's
10:08:33 25 just part of what we do as representing clients. And

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10:08:37 1 you know that there is an appeal from the contempt
2 order.

3 I would ask that in any order that is
4 fashioned that it be allocated to the amount that is
10:08:48 5 being awarded for the contempt-associated task. And it
6 doesn't sound like you're going to award any fees for
7 the receiver action. If you changed your mind, I
8 believe that is specified. Because, of course, if we
9 are -- if we prevail in the appeal on the contempt,
10:09:08 10 then any fees associated with the contempt would fall
11 by the wayside as well. So those amounts need to be
12 identified. And then as well as if any amounts are
13 awarded for the appeal, we would like that amount
14 written off as well, so it can be identified.

10:09:24 15 And with that lengthy argument, your Honor, I
16 appreciate your patience. Otherwise, if you have any
17 other questions, I'm done. Thank you.

18 THE COURT: Thank you, sir.

19 Okay. Mr. Smith.

10:09:39 20 MR. SMITH: Thank you, your Honor. I just
21 have a couple of points that I want to make in
22 response, and then I'll yield the floor.

23 I'm going to go back to your comments that you
24 made about the natural view on NRS 8.010 and that the
10:09:54 25 fees that you can award in this case are limited to

10:09:57 1 what is in Department 16. The contempt order would be
2 under NRS 22.100. And that statute says that the Court
3 may require the person to pay the party seeking to
4 enforce the writ, or the rule, or process the
10:10:13 5 reasonable expenses, including, without limitation,
6 attorney's fees incurred by the party as a result of
7 the contempt.

8 Your Honor, if the receivership action itself,
9 if the process that the Lytles went through of seeking
10:10:31 10 a receiver in order to enforce the Rosemere judgments
11 against the homeowners to get them to pay that, if that
12 ends the contempt, then the attorney's fees incurred by
13 the plaintiffs to stop that process are a result of
14 that contempt. That's what we would base our request
10:10:50 15 for fees and costs incurred in the receivership action.

16 If the Court is not inclined to award those,
17 then we would stand with what the number is in our
18 reply brief, that \$36,000 number. That's the amount
19 that we incurred there. And that the order would be
10:11:06 20 without prejudice to be able to seek those in the other
21 department.

22 The other point I want to make is that
23 Judge Bayliss did not rule on the CC&Rs as far as --
24 (telephonic audio drop). The Lytle Trust argues that
10:11:23 25 there was some kind of order issued declining to award

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10:11:27 1 fees on that basis. There was actually no order on
2 that.

3 The only thing he ordered, we argued it in our
4 motion. The Court did not reach the issue and did not
10:11:36 5 address it in its order.

6 And going back to what this Court said in
7 May 2019 in hearing on the fees and costs award for the
8 other homeowners, the Court said that what they are --
9 what they were doing here was essentially they were
10:11:58 10 restraining your client, meaning the Lytle Trust, from
11 filing the abstract because they had no right pursuant
12 to the CC&Rs to do such a thing. I'll tell you, your
13 Honor, the plaintiffs were doing the same exact thing
14 here.

10:12:11 15 And finally, in that same hearing, the Court
16 said additionally the thrust, focus, and essence of all
17 this litigation stems from the original CC&Rs.

18 Your Honor, the plaintiffs are in the exact
19 same position as the other homeowners. It would be
10:12:28 20 entirely inconsistent to not award them fees and costs
21 under the CC&Rs when the other homeowners have been
22 awarded under that provision.

23 Finally, your Honor, the Lytle Trust's
24 arguments for reduction, I certainly understand them.
10:12:42 25 They're the same arguments that I would make, that I do

10:12:45 1 make, in opposing fees and costs awards. But it's
2 quite shocking to come from this particular defendant
3 considering the Rosemere judgments which contain over
4 \$500,000 worth of attorney's fees. Look at those fee
10:12:59 5 statements. They have all of the same aspects which
6 the Lytle Trust is describing as non-compensable tasks.

7 All of those same aspects were found in the
8 billing statement. So it's a little bit of the pot
9 calling the kettle black here. It's -- certainly, I
10:13:15 10 understand their concerns they raised, but I said it
11 before, I said it in my declaration, and I'll say it
12 again here on the record: I reviewed the billing
13 statements in this case. I have reviewed the work that
14 has been done. And all of the work that was done in
10:13:32 15 this case was entirely reasonable and necessary in
16 order to achieve the result that was obtained. And so
17 on that basis we ask that our fees and costs be
18 awarded.

19 Thank you, your Honor.

10:13:47 20 THE COURT: All right. And I just have a
21 couple comments regarding this matter. And I think
22 this is something that wasn't really addressed in the
23 prior hearing, but when it comes to issuing a contempt
24 order, I've been very tempered from a historical
10:14:09 25 perspective in making that ultimate determination.

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10:14:11 1 And I think you can look to this case as a
2 really good example. And understand, this case was
3 with me for some time, but I haven't looked at it in
4 great detail until -- in some detail until recently.

10:14:24 5 And I remember going back to, I guess it would
6 have been sometime in 2017. I was called upon to issue
7 a contempt order at that time. And from a factual
8 perspective, I think it's really set forth on page 4 of
9 the motion itself. And I remember this. And I
10:14:55 10 remember reviewing the points and authorities. And
11 this crystallized it for me.

12 Because at line 18, there's references to the
13 findings of fact conclusions of law and order granting
14 the Boulden and Lamothe Trust's motion for partial
10:15:13 15 summary judgment entered on April 26, 2017.

16 And I remember -- I remember after I entered
17 that order, which was somewhat amazing to me, counsel
18 that was representing the adverse party,
19 notwithstanding me granting a motion for partial
10:15:33 20 summary judgment, filed a lis pendens on the
21 properties.

22 And I can remember Mr. Foley and someone else
23 coming into court. And there was a motion filed to
24 cancel the lis pendens and also to hold defendants and
10:15:48 25 their counsel in contempt of court. Right? And so I

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10:15:53 1 thought about it. And at the end of the day,
2 ultimately, I did not grant the contempt request at
3 that time. And that's all part of the history of this
4 case. And those are some of the things I also
10:16:08 5 considered. And I think it's really important to point
6 that out. Because I just don't pull the trigger when
7 it comes to contempt issues.

8 Because I do understand, and I do believe in
9 creative lawyering. But at some point you just have to
10:16:21 10 make a decision and live by it. And that's what I did
11 as far as contempt is concerned in this matter.

12 Next, as it relates to the request for fees,
13 I'm going to grant the request for fees. I'm going to
14 deny it in part too.

10:16:37 15 I just from a legal perspective I don't see
16 how I can award fees and costs in a case regarding
17 litigation where some of the fees and costs have been
18 incurred in another department. I just can't do that.

19 I did take a look at, I think it was -- and we
10:16:56 20 discussed Chapter 18. But I think there was also a
21 reference made to Chapter 22. And I looked at that
22 too. But understand, it's my understanding when it
23 comes to penalties for contempt and under
24 subsection (3) it says:

10:17:10 25 "In addition to the penalties provided in

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1 subsection (2), if a person is found guilty of
2 contempt pursuant to subsection (3) of
3 NRS 22.010, the court may require the person to
4 pay the party seeking to enforce the writ,
5 order, rule, or process the reasonable
6 attorney's fees, including, without limitation,
7 attorney's fees incurred by the parties as a
8 result of the contempt."

9 And I look at it this way. And maybe I'm
10 narrowly construing that specific rule. But we do have
11 in notes to the decisions, there is a case cited. And
12 it's an old case. It's an 1883 case. Ex parte
13 Sweeney. 18 Nev. 74. 1 Pacific, 379. It's a 1883
14 case, but it -- but, you know what, I look at old cases
15 in this regard. They're kind of like fine wines.
16 They've been there for a long time, and they haven't
17 been disturbed, so they have significant value.

18 And this is what the note reflects. It
19 reflects strict construction of those statutes as it
20 relates to contempt.

21 And it says, quote, this is the note, it says:

22 "This statute relating to contempt and
23 punishments, like other statutes relating to
24 proceedings criminal in nature, is to be
25 strictly construed and no interpretation shall

10:18:42 1 be given beyond its obvious meaning."

2 Well, I realize the law has changed a lot in
3 over 100 years. But at the end of the day, it sets
4 forth two points as far as the application of the
10:18:56 5 statute is concerned.

6 First, if you read the plain meaning of the
7 language of the statute it says "may". That indicates
8 it's discretionary.

9 Just looking at that case it appears to me it
10:19:08 10 should be strictly construed.

11 And when I -- at the end of the day, it
12 appeared to me that the enforcement of my prior
13 decision occurred in Department 16 when the motion for
14 contempt was filed in this department. And so I feel
10:19:27 15 very much constrained that the only matters I can
16 consider would be the motions, the motion and/or
17 results of that motion based upon my contempt decision
18 in this case.

19 And so any decision I make, I'm not going to
10:19:42 20 consider. I just want to make sure the record is real
21 clear why I'm not going to consider the actions that
22 occurred in front of Judge Kishner in her department.
23 It's going to be up to her to decide whether there will
24 be an award of fees and costs at the end of the day.

10:20:01 25 And that will be her sole decision. And I'm not going

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10:20:05 1 to get involved in any way or regard. I'm only going
2 to make one decision, and that's regarding the fees in
3 this case.

4 And so what that leaves me with really two
10:20:17 5 issues. Because I'm not going to award fees as it
6 relates to the companion case.

7 Secondly, as far as fees are concerned, I will
8 award fees as it relates to the contempt motion that
9 was filed in this department. However, I'm going to go
10:20:36 10 back and take a look at those. It becomes very
11 difficult for me to do because I'm not a forensic
12 accountant. But at the end of the day I have to make a
13 determination I feel that's reasonable under the facts
14 of this case. And I'll look at that.

10:20:48 15 As far as the appeal itself, I guess, there's
16 two issues there. I don't see how I can award it under
17 Chapter 18. I guess at the end of the day it comes
18 down to the application of the provision under the
19 CC&Rs. I'm going to take one last quick look at it.

10:21:13 20 And so I am going to award fees. It's going
21 to be very limited. I'm not sure what I'm going to do
22 with the appeal. I'm going to take one last look at
23 it. I understand what my constraints are. But we'll
24 get you out a decision on that relatively quick.

10:21:31 25 All right. Anything else?

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10:21:32 1

MR. SMITH: Thank you.

2

THE COURT: Anything else?

3

MR. WAITE: Thank you, your Honor.

4

THE COURT: All right. You're welcome.

10:21:38 5

MR. SMITH: Thank you.

6

MS. WANG: Thank you, your Honor.

7

THE COURT: Everyone enjoy your day.

8

You're welcome, ma'am. Enjoy your day.

9

10

11

(Proceedings were concluded.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

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

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

/s/ Peggy Isom
PEGGY ISOM, RMR, CCR 541

Peggy Isom, CCR 541, RMR

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MR. SMITH: [9] 4/11 6/5 8/24 9/3 10/11 17/23 28/20 37/1 37/5 MR. WAITE: [7] 4/16 5/15 5/25 15/10 15/14 16/2 37/3 MS. WANG: [5] 4/14 9/25 10/3 10/8 37/6 THE COURT CLERK: [1] 4/13 THE COURT REPORTER: [2] 5/19 5/21 THE COURT: [22] 4/6 4/12 5/11 5/17 5/20 5/22 6/1 8/20 9/2 9/20 10/2 10/6 10/9 15/8 15/12 15/15 16/3 28/18 31/20 37/2 37/4 37/7	1 10 [2] 23/25 24/4 100 [1] 35/3 116 [2] 20/17 21/18 116.3117 [1] 20/14 120 [1] 3/7 16 [5] 1/3 16/13 16/19 29/1 35/13 1718 [1] 2/9 18 [9] 19/1 19/14 19/17 22/8 22/8 32/12 33/20 34/13 36/17 18.010 [3] 6/18 15/19 16/3 1883 [2] 34/12 34/13 2 2015 [1] 6/21 2016 [1] 23/19 2017 [2] 32/6 32/15 2018 [1] 6/20 2019 [1] 30/7 2020 [3] 1/21 3/10 4/1 22 [1] 33/21 22.010 [1] 34/3 22.100 [2] 6/14 29/2 25 [5] 7/8 7/25 12/5 14/20 19/4 255-0871 [1] 2/10 255-1718 [1] 2/9 26 [1] 32/15 3 30 [1] 25/23 30 percent [2] 23/25 24/4 3000 [1] 3/9 379 [1] 34/13 3993 [1] 2/18 5 520 [1] 25/1 541 [2] 1/25 38/18 6 600 [1] 2/19 667-3000 [1] 3/9 697-2020 [1] 3/10 7 702 [6] 2/9 2/10	2/21 2/22 3/9 3/10 74 [1] 34/13 7440 [1] 2/7 8 8.010 [1] 28/24 8200 [1] 2/21 8363 [1] 3/6 8398 [1] 2/22 89113 [1] 3/8 89117 [1] 2/8 89169 [1] 2/20 9 949-8200 [1] 2/21 949-8398 [1] 2/22 9:36 [1] 4/2 : :SS [1] 38/2 A A.M [1] 4/2 ABILITY [1] 38/11 able [3] 26/2 26/7 29/20 about [9] 8/13 17/10 19/19 19/19 20/24 21/17 22/4 28/24 33/1 absorbed [1] 26/6 abstract [3] 20/11 20/12 30/11 accountant [1] 36/12 ACCURATE [1] 38/11 achieve [1] 31/16 acknowledge [2] 18/7 18/24 acknowledged [1] 18/24 action [25] 9/5 9/17 11/3 11/18 11/19 11/24 12/3 12/3 12/12 14/18 15/3 15/11 15/22 16/24 18/6 18/11 20/5 20/19 20/20 21/20 22/4 27/12 28/7 29/8 29/15 actions [2] 20/15 35/21 actually [4] 8/7 16/16 24/15 30/1 add [3] 10/4 17/25 22/16 addition [1] 33/25 additional [2]	17/25 27/14 additionally [1] 30/16 address [5] 12/1 22/11 24/19 24/21 30/5 addressed [3] 8/8 8/14 31/22 addressing [1] 11/10 adequately [1] 8/18 administrative [3] 14/5 14/9 14/16 admit [1] 18/10 admitted [2] 27/11 27/11 adverse [1] 32/18 advocate [1] 8/6 affirmance [2] 21/12 21/14 after [1] 32/16 again [2] 11/25 31/12 against [5] 13/22 20/11 20/13 21/19 29/11 agree [2] 17/2 17/3 agreeing [1] 26/3 agrees [1] 22/12 ahead [3] 4/9 6/2 17/22 alerting [1] 12/24 all [22] 5/22 5/24 6/23 9/17 10/7 10/9 11/5 11/25 12/10 15/11 17/17 25/22 26/4 30/16 31/5 31/7 31/14 31/20 33/3 36/25 37/4 38/5 alleged [1] 21/24 allocated [1] 28/4 allowed [2] 5/6 23/20 allowing [1] 6/7 allows [1] 18/22 almost [2] 24/8 27/2 already [1] 7/14 also [8] 6/17 10/12 13/5 14/1 23/13 32/24 33/4 33/20 although [1] 11/9 am [2] 11/9 36/20 amazing [1] 32/17 amend [1] 9/10	amended [1] 21/16 amount [12] 8/3 8/10 12/7 18/12 23/4 23/7 27/11 27/14 27/19 28/4 28/13 29/18 amounting [1] 11/4 amounts [2] 28/11 28/12 another [3] 6/17 16/14 33/18 answer [1] 8/16 anticipation [1] 4/24 any [27] 7/17 8/16 8/17 8/20 8/21 10/4 11/10 12/5 13/3 14/12 15/4 15/21 16/20 17/25 19/21 19/24 25/19 26/16 26/23 26/25 28/3 28/6 28/10 28/12 28/16 35/19 36/1 anyone [3] 5/6 14/17 18/8 anything [7] 5/4 11/8 14/12 14/15 26/17 36/25 37/2 appeal [22] 11/1 11/20 18/18 18/19 18/20 18/21 19/1 19/3 19/18 19/20 21/5 21/11 22/6 22/9 22/14 27/12 27/24 28/1 28/9 28/13 36/15 36/22 appear [1] 10/12 appearances [3] 2/1 2/25 4/9 appeared [1] 35/12 appears [1] 35/9 appellate [2] 17/13 17/14 application [3] 21/17 35/4 36/18 applies [1] 19/5 appointed [1] 12/14 appointment [4] 12/13 13/15 13/21 14/4 appreciate [5] 10/12 15/16 17/16 26/21 28/16 appropriate [2]
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<p>A</p> <p>appropriate... [2] 24/1 25/4</p> <p>approximately [1] 22/13</p> <p>April [2] 6/21 32/15</p> <p>April 26 [1] 32/15</p> <p>are [30] 7/11 7/12 7/20 8/1 8/13 8/20 8/25 11/17 11/18 11/24 12/3 12/9 15/1 15/5 19/2 19/2 21/16 23/19 25/17 25/18 26/22 28/9 28/12 28/25 29/13 30/8 30/18 33/4 36/7 36/23</p> <p>area [2] 22/17 22/18</p> <p>areas [1] 19/19</p> <p>argue [5] 5/6 19/2 22/5 25/7 26/21</p> <p>argued [3] 7/10 14/23 30/3</p> <p>argues [1] 29/24</p> <p>arguing [1] 5/7</p> <p>argument [6] 7/14 7/16 8/13 17/25 18/2 28/15</p> <p>arguments [4] 10/5 15/5 30/24 30/25</p> <p>arises [1] 4/20</p> <p>as [48]</p> <p>aside [2] 9/10 12/16</p> <p>ask [3] 15/6 28/3 31/17</p> <p>asked [3] 5/16 9/18 13/7</p> <p>asking [1] 21/23</p> <p>aspects [2] 31/5 31/7</p> <p>asserted [1] 12/22</p> <p>associated [7] 10/16 10/23 11/19 11/20 12/2 28/5 28/10</p> <p>association [9] 13/19 13/22 14/2 14/3 14/4 14/6 14/7 20/7 20/8</p> <p>assumes [1] 23/2</p> <p>at [45]</p> <p>attempt [2] 9/13 23/16</p> <p>attending [1] 9/25</p>	<p>attorney [1] 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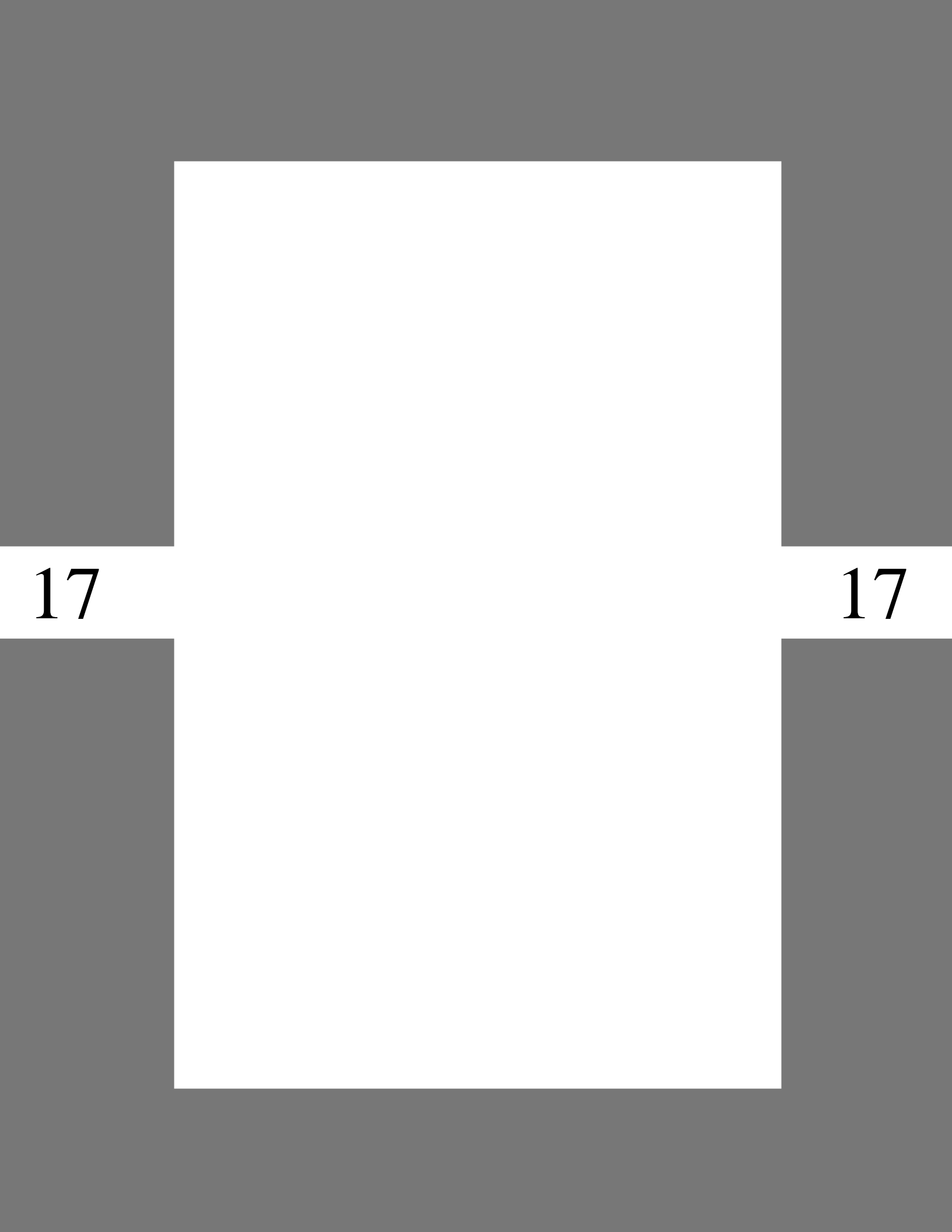
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NEOJ
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR ATTORNEY'S
FEES AND COSTS**

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

Case No.: A-17-765372-C
Dept. No.: XVI

CONSOLIDATED

NOTICE IS HEREBY GIVEN, that an Order Granting in Part and Denying in Part
Plaintiffs' Motion for Attorney's Fees and Costs was entered in the above-captioned matter on
August 11, 2020. A copy of the Order is attached hereto.

1 DATED this 11th day of August 2020.

CHRISTENSEN JAMES & MARTIN

2
3 By: /s/ Wesley J. Smith
4 Wesley J. Smith, Esq.
5 Nevada Bar No. 11871
6 *Attorneys for September Trust, Zobrist*
7 *Trust, Sandoval Trust and Gegen*
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CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On August 11, 2020, I caused a true and correct copy of the foregoing Notice of Entry of Stipulation and Order to Release Cash Supersedeas Bond, to be served in the following manner:

☒ **ELECTRONIC SERVICE:** electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

Liz Gould (liz@foleyoakes.com)
 Daniel Foley (Dan@foleyoakes.com)
 Maren Foley (maren@foleyoakes.com)
 Jennifer Martinez (jennifer.martinez@fnf.com)
 Christina Wang (christina.wang@fnf.com)
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 Richard E. Haskin, Esq. (rhaskin@gibbsgiden.com)
 Robin Jackson (rjackson@gibbsgiden.com)
 Shara Berry (sberry@gibbsgiden.com)
 Daniel Hansen (dhansen@gibbsgiden.com)
 Joel D. Henriod (JHenriod@LRRC.com)
 Daniel F. Polsenberg (DPolsenberg@LRRC.com)
 Dan R. Waite (DWaite@LRRC.com)

☐ **UNITED STATES MAIL:** depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

☐ **FACSIMILE:** By sending the above-referenced document via facsimile as follows:

☐ **E-MAIL:** electronic transmission by email to the following address(es):

/s/ Natalie Saville
 Natalie Saville

ORDR
CHRISTENSEN JAMES & MARTIN

KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

WESLEY J. SMITH, ESQ.

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Attorneys for September Trust, Zobrist Trust, Sandoval Trust

and Dennis & Julie Gegen

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES
AND COSTS

Date: July 7, 2020

Time: 9:00 a.m.

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

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs ("Motion"),
13 Defendant's Opposition, and Plaintiffs' Reply, as well as the Plaintiffs' Memorandum of Costs and
14 Disbursements ("Memorandum"), which came on for hearing on July 7, 2020 at 9:00 a.m. in
15 Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

16 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of September Trust,
17 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
18 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
19 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
20 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
21 Husband and Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and
22 Gegens, collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group
23 appeared on behalf of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of
24 Lewis Roca Rothgerber Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as
25 Trustees of the Lytle Trust ("Lytle Trust").

26 The Court having considered the Motion and filings related thereto, having heard the arguments
27 of counsel, and with good cause appearing therefore, the Court hereby grants the Motion in part and
28 denies the Motion in part and enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1
2 1. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment
3 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
4 Judgment ("May 2018 Order") in favor of the September Trust, Zobrist Trust, Sandoval Trust, and
5 Gogens and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

6 2. On September 11, 2018, this Court signed an Order in favor of the Plaintiffs and against
7 the Lytle Trust for attorney's fees, litigation costs and expenses incurred through May 22, 2018 pursuant
8 to NRS 18.010(2) ("First Fees Order").

9 3. The Original CC&Rs provide a basis for attorney fee recovery. More specifically,
10 section 25 of the Original CC&Rs provides: "In any legal or equitable proceeding for the enforcement of
11 or to restrain the violation of the [CC&Rs] or any provision thereof, the losing party or parties shall pay
12 in such amount as may be fixed by the court in such proceeding."

13 4. The Court has also awarded attorney's fees and costs to other parties in these
14 consolidated Cases, including the Findings of Fact, Conclusions of Law and Order Granting Robert Z.
15 Disman and Yvonne A Disman's Motion for Attorney's Fees entered on September 6, 2019 ("Disman
16 Fees Order") in favor of the Dismans and the Order Granting Plaintiffs' Motion for Attorneys' Fees and
17 Costs and order Denying Defendants' Motion to Retax and Settle Costs entered on September 20, 2019
18 ("Boulden Lamothe Fees Order") in favor of Boulden and Lamothe. There, this Court awarded
19 attorney's fees and costs to the other parties under Section 25 of the Original CC&Rs.

20 5. Since May 23, 2018, the Plaintiffs have incurred additional attorney's fees and costs in
21 this action, including briefing and argument on the Lytle Trust's Motion to Stay and Motion for
22 Reconsideration, status hearings, and motions related to the other parties to the consolidated case.

23 6. On October 24, 2019, the Lytle Trust filed its Renewed Application for Appointment of
24 Receiver in *Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust v. Rosemere Estates*
25 *Property Owners' Association*, Case No. A-18-775843-C, Eighth Judicial District Court, Clark County,
26 Nevada, which case was assigned to Judge J. Kishner (the "Receivership Action").
27
28

1 7. On December 18, 2019, Judge Kishner entered her Order Appointing a Receiver of
2 Defendant Rosemere Property Owners Association (the "Order Appointing Receiver"). Among other
3 rights, powers, and duties, the Order Appointing Receiver instructed the receiver to "[i]ssue and collect a
4 special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against
5 the Association." (Order Appointing Receiver at 2:19-20).

6 8. Upon learning of the Lytle Trust's actions related to the Receivership Action, the
7 Plaintiffs incurred additional attorney's fees and costs both in this consolidated case and in the
8 Receivership Action, including filing a Motion for Order to Show Cause Why the Lytle Trust Should
9 Not Be Held in Contempt for Violation of Court Orders ("Contempt Motion") on March 4, 2020 in this
10 Case. The Lytle Trust opposed the Contempt Motion and the Plaintiffs incurred additional fees and costs
11 to respond to the Lytle Trust's arguments, present oral argument, and prepare proposed orders.

12 9. On May 22, 2020, this Court entered its Findings of Fact, Conclusions of Law, and Order
13 Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in
14 Contempt for Violation of Court Orders ("Contempt Order") against the Lytle Trust. The Contempt
15 Order is hereby incorporated by reference.

16 10. In the Contempt Order, the Court relevantly ruled that a party may be held in contempt
17 for violating its orders, and that the Court may impose fines and award "reasonable expenses, including,
18 without limitation, attorney's fees, incurred by the party as a result of the contempt." Contempt Order at
19 11:9-23 (quoting NRS 22.100(3)). The Court Ordered that the Lytle Trust violated the May 2018 Order,
20 is in contempt of the May 2018 Order, shall pay a fine of \$500 to each movant, and that the Plaintiffs
21 may file applications for their reasonable expenses, including, without limitation, attorney's fees,
22 incurred as a result of the contempt. The Court now finds that Plaintiffs are entitled to an award of their
23 reasonable expenses, including reasonable attorney's fees and costs, incurred as a result of obtaining the
24 Contempt Order.

25 11. Plaintiffs also seek additional attorney's fees and costs related to the Lytle Trust's
26 appeals of the May 2018 Order and First Fees Order, which were affirmed by the Nevada Supreme
27 Court, as well as attorney's fees and costs related to the Receivership Action.
28

12. The Plaintiffs filed the instant Motion requesting an award of all attorney's fees in the total amount of \$149,403.20 and costs in the total amount of \$4,145.08 that they have incurred from May 23, 2018 to the present date pursuant to the Original CC&Rs, NRS 18.020, 18.050 and 18.010(2)(b) and NRAP 39(e).

13. Plaintiffs have attached billing statements and a Declaration from their counsel to the Motion to support the request.

CONCLUSIONS OF LAW

1. NRS 18.010(1) provides that, "[t]he compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law."

2. Section 25 of the CC&Rs is a mandatory provision regarding the award of attorney's fees and costs being paid by the losing party in any legal equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof.

3. The legal disputes in this case were based on the parties' rights under the Original CC&Rs and whether the CC&Rs created a Limited Purpose Association which excluded most of NRS 116, especially NRS 116.3117, from having any application to the Rosemere Subdivision.

4. Throughout this litigation, the Plaintiffs sought to restrain the Lytle Trust from recording abstracts of judgment against their properties and collecting judgments by alternative means because the Lytle Trust had no right pursuant to the CC&Rs to do so

5. Applying the language of the CC&Rs, the Court concludes that the Plaintiffs are the winning or prevailing parties in this litigation, the Lytle Trust was the losing party in this litigation, and the assessment of attorney's fees against the losing party is mandatory under Section 25.

6. NRS 18.010(2)(b) provides that, "the court may make an allowance of attorney's fees to a prevailing party: . . . (b) Without regard to the recovery sought, when the court finds that the claim . . . or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." This Court based the First Fees Award on NRS 18.010(2) and does so again now as a basis for awarding additional fees.

1 7. NRS 22.100(3) provides a basis for awarding fees associated with the contempt
2 proceedings in this case.

3 8. The Court analyzed the Plaintiffs' attorney's fees utilizing the factors identified in
4 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), including the qualities of
5 the advocate, the character of the work to be done, the work actually performed by the lawyer, and the
6 result obtained.

7 9. The Plaintiffs have satisfied the *Brunzell* factors. More specifically, based on the record
8 and the Declaration of the Plaintiffs' counsel in support of the Motion, the Court finds that the qualities
9 of counsel, character of the work to be done and its difficulty, the work actually performed by Plaintiffs'
10 counsel, and the result obtained establish the reasonableness of the Plaintiffs' attorney's fees to the
11 extent awarded in this Order.

12 10. However, the Court finds that certain time and amounts billed are not compensable in this
13 matter and will reduce the award accordingly.

14 11. The Court has reviewed the Plaintiffs' submitted billing statements, which the fees
15 charged total \$149,403.20.

16 12. The Plaintiffs' fee statements include entries that are commonly defined as block billing
17 that make it difficult for the Court to determine the exact amount billed for each individual task and the
18 reasonableness of the request.

19 13. The Court denies an award of fees incurred in the Receivership Action before Judge
20 Kishner. Plaintiffs' counsel represented this amount was \$36,259.00, which the Court accepts. The
21 denial of fees incurred in the Receivership Action is without prejudice to either party's right to seek an
22 award of fees from Judge Kishner in the Receivership Action.

23 14. The Court also denies any charges related to the appeal and will not award fees for work
24 described in the briefing as clerical work, which the Court has determined total \$23,374.00.

25 15. In light of the findings above, the \$149,403.20 is reduced by \$36,259.00 and \$23,374.00,
26 which leaves a difference of \$89,770.20.

1 16. Further, as suggested by the Defendant, the Court will apply a 15% discount to the
2 \$89,770.20 to further account for the block billing in the fee statements. The difference after the
3 discount is \$76,304.67.

4 17. Consequently, the Court grants Plaintiffs' Motion for Attorney's Fees and Costs, but with
5 modifications, resulting in a total fee award of \$76,304.67.

6 18. Additionally, the Court grants costs in the sum of \$4,145.08.

7 **ORDER**

8 Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing
9 therefore,

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Findings of Fact shall be
11 treated as Conclusions of Law and the Conclusions of Law shall be treated as Findings of Fact to any
12 extent necessary to effectuate the intent of this Order.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion for
14 Attorney's Fees and Costs is GRANTED IN PART AND DENIED IN PART.

15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are
16 awarded in favor of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G.
17 Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval
18 and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living
19 and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife,
20 as Joint Tenants, in the total aggregate amount of \$76,304.67 against Trudi Lee Lytle and John Allen
21 Lytle, as Trustees of the Lytle Trust;

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are awarded in favor
23 of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G. Zobrist, as Trustees
24 of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie
25 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution
26 Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint
27
28

1 Tenants, in the total aggregate amount of \$4,145.08 against Trudi Lee Lytle and John Allen Lytle, as
 2 Trustees of the Lytle Trust.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is ordered
 4 to pay the attorney's fees and costs as ordered herein by certified check made payable to Christensen
 5 James & Martin Special Client Trust Account in the amount of \$80,449.75 and delivered to Christensen
 6 James & Martin within ten (10) days of the Notice of Entry of this Order.

7 **IT IS SO ORDERED.**

8 Dated this 10th day of August, 2020.

9 
 10 DISTRICT COURT JUDGE Cg

11 **Submitted by:**

12 **CHRISTENSEN JAMES & MARTIN**

13 /s/ Wesley J. Smith

14 Wesley J. Smith, Esq.

15 Nevada Bar No. 11871

16 Laura J. Wolff, Esq.

17 Nevada Bar No. 6869

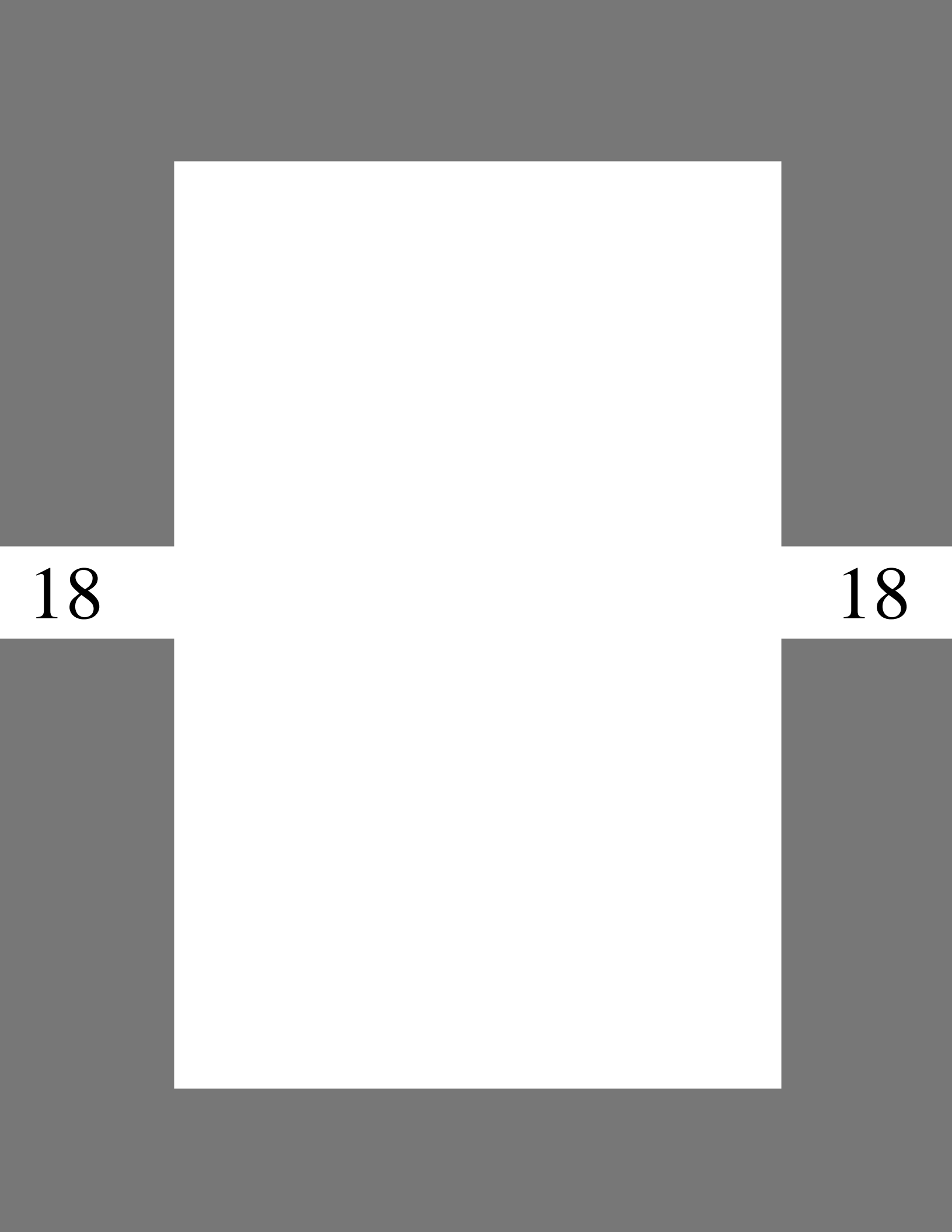
18 7440 W. Sahara Ave.

19 Las Vegas, NV 89117

20 *Attorneys for Plaintiffs September Trust,*

21 *Zobrist Trust, Sandoval Trust, and*

22 *Dennis & Julie Gegen*



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8/21/2020 2:13 PM

Steven D. Grierson

CLERK OF THE COURT

**NOAS**

JOEL D. HENRIOD

Nevada Bar No. 8492

DANIEL F. POLSENBERG

Nevada Bar No. 2376

DAN R. WAITE

Nevada Bar No. 4078

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JHenriod@LRRC.comDPolsenberg@LRRC.comDWaite@LRRC.com*Attorneys for Defendants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*DISTRICT COURT
CLARK COUNTY, NEVADAMARJORIE B. BOULDEN, trustee of the
Marjorie B. Boulden Trust; LINDA
LAMOTHE; and JACQUES LAMOTHE,
Trustees of the Jacques & Linda
Lamothe Living Trust,

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,
DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

Case No. A-16-747800-C

Dep't No. 16

NOTICE OF APPEALSEPTEMBER 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,

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

1 LYTLE, as trustees of the Lytle Trust,
 2 JOHN DOES I through V, inclusive, and
 3 ROE ENTITIES I through V, inclusive,
 4 Defendants.

5 Please take notice that defendants Trudi Lee Lytle and John Allen Lytle,
 6 as Trustees of the Lytle Trust hereby appeal to the Supreme Court of Nevada
 7 from:

8 1. "Order Granting in Part and Denying in Part Plaintiffs' Motion for
 9 Attorney's Fees and Costs," filed August 11, 2020, notice of entry of which was
 10 served electronically on August 11, 2020 (Exhibit A); and

11 2. All judgments, rulings and interlocutory orders made appealable by
 12 the foregoing.

13 Dated this 21st day of August, 2020.

14 LEWIS ROCA ROTHGERBER CHRISTIE LLP

15 By: /s/Joel D. Henriod

16 JOEL D. HENRIOD (SBN 8492)
 17 DANIEL F. POLSENBERG (SBN 2376)
 18 DAN R. WAITE (SBN 4078)
 19 3993 Howard Hughes Parkway, Suite 600
 Las Vegas, Nevada 89169
 (702) 949-8200

20 *Attorneys for Defendants Trudi Lee Lytle and*
 21 *John Allen Lytle, as Trustees of the Lytle*
 22 *Trust*

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2020, I served the foregoing "Notice of Appeal" on counsel by the Court's electronic filing system to the persons and addresses listed below:

KEVIN B. CHRISTENSEN
WESLEY J. SMITH
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
KBC@CJMLV.com
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*Attorneys for Robert Z. Disman and
Yvonne A. Disman*

*Attorneys for 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*

Daniel T. Foley
FOLEY & OAKES, PC
1210 South Valley View Boulevard
Suite 208
Las Vegas, Nevada 89102
Dan@FoleyOakes.com

*Attorneys for Marjorie B. Boulden, trustee
of the Marjorie B. Boulden Trust, and
Linda Lamothe and Jacques Lamothe,
trustees of the Jacques & Linda Lamothe
Living Trust*

/s/ Lisa M. Noltie
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT A

001341

EXHIBIT A

1 **NEOJ**
2 **CHRISTENSEN JAMES & MARTIN**
3 KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
4 WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
5 LAURA J. WOLFF, ESQ.
Nevada Bar No. 6869
6 7440 W. Sahara Avenue
Las Vegas, Nevada 89117
7 Tel.: (702) 255-1718
Facsimile: (702) 255-0871
8 Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
and Dennis & Julie Gegen

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 MARJORIE B. BOULDEN, TRUSTEE OF
12 THE MARJORIE B. BOULDEN TRUST, *et*
13 *al.*,

14 Plaintiffs,

15 vs.

16 TRUDI LEE LYTLE, *et al.*,

17 Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR ATTORNEY'S
FEES AND COSTS

18 SEPTEMBER TRUST, DATED MARCH 23,
19 1972, *et al.*,

20 Plaintiffs,

21 vs.

22 TRUDI LEE LYTLE AND JOHN ALLEN
23 LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

24 Defendants.

Case No.: A-17-765372-C
Dept. No.: XVI

25 CONSOLIDATED

26 NOTICE IS HEREBY GIVEN, that an Order Granting in Part and Denying in Part
27 Plaintiffs' Motion for Attorney's Fees and Costs was entered in the above-captioned matter on
28 August 11, 2020. A copy of the Order is attached hereto.

1 DATED this 11th day of August 2020.

CHRISTENSEN JAMES & MARTIN

2
3 By: /s/ Wesley J. Smith
4 Wesley J. Smith, Esq.
5 Nevada Bar No. 11871
6 *Attorneys for September Trust, Zobrist*
7 *Trust, Sandoval Trust and Gegen*
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CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On August 11, 2020, I caused a true and correct copy of the foregoing Notice of Entry of Stipulation and Order to Release Cash Supersedeas Bond, to be served in the following manner:

☒ **ELECTRONIC SERVICE:** electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

Liz Gould (liz@foleyoakes.com)
 Daniel Foley (Dan@foleyoakes.com)
 Maren Foley (maren@foleyoakes.com)
 Jennifer Martinez (jennifer.martinez@fnf.com)
 Christina Wang (christina.wang@fnf.com)
 Mia Hurtado (mia.hurtado@fnf.com)
 Richard E. Haskin, Esq. (rhaskin@gibbsgiden.com)
 Robin Jackson (rjackson@gibbsgiden.com)
 Shara Berry (sberry@gibbsgiden.com)
 Daniel Hansen (dhansen@gibbsgiden.com)
 Joel D. Henriod (JHenriod@LRRC.com)
 Daniel F. Polsenberg (DPolsenberg@LRRC.com)
 Dan R. Waite (DWaite@LRRC.com)

☐ **UNITED STATES MAIL:** depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

☐ **FACSIMILE:** By sending the above-referenced document via facsimile as follows:

☐ **E-MAIL:** electronic transmission by email to the following address(es):

/s/ Natalie Saville
 Natalie Saville

ORDR
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
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Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES
AND COSTS**

Date: July 7, 2020
Time: 9:00 a.m.

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

Case No.: A-17-765372-C
Dept. No.: XVI

CONSOLIDATED

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs ("Motion"),
13 Defendant's Opposition, and Plaintiffs' Reply, as well as the Plaintiffs' Memorandum of Costs and
14 Disbursements ("Memorandum"), which came on for hearing on July 7, 2020 at 9:00 a.m. in
15 Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

16 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of September Trust,
17 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
18 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
19 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
20 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
21 Husband and Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and
22 Gegens, collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group
23 appeared on behalf of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of
24 Lewis Roca Rothgerber Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as
25 Trustees of the Lytle Trust ("Lytle Trust").

26 The Court having considered the Motion and filings related thereto, having heard the arguments
27 of counsel, and with good cause appearing therefore, the Court hereby grants the Motion in part and
28 denies the Motion in part and enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1
2 1. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment
3 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
4 Judgment (“May 2018 Order”) in favor of the September Trust, Zobrist Trust, Sandoval Trust, and
5 Gogens and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

6 2. On September 11, 2018, this Court signed an Order in favor of the Plaintiffs and against
7 the Lytle Trust for attorney’s fees, litigation costs and expenses incurred through May 22, 2018 pursuant
8 to NRS 18.010(2) (“First Fees Order”).

9 3. The Original CC&Rs provide a basis for attorney fee recovery. More specifically,
10 section 25 of the Original CC&Rs provides: “In any legal or equitable proceeding for the enforcement of
11 or to restrain the violation of the [CC&Rs] or any provision thereof, the losing party or parties shall pay
12 in such amount as may be fixed by the court in such proceeding.”

13 4. The Court has also awarded attorney’s fees and costs to other parties in these
14 consolidated Cases, including the Findings of Fact, Conclusions of Law and Order Granting Robert Z.
15 Disman and Yvonne A Disman’s Motion for Attorney’s Fees entered on September 6, 2019 (“Disman
16 Fees Order”) in favor of the Dismans and the Order Granting Plaintiffs’ Motion for Attorneys’ Fees and
17 Costs and order Denying Defendants’ Motion to Retax and Settle Costs entered on September 20, 2019
18 (“Boulden Lamothe Fees Order”) in favor of Boulden and Lamothe. There, this Court awarded
19 attorney’s fees and costs to the other parties under Section 25 of the Original CC&Rs.

20 5. Since May 23, 2018, the Plaintiffs have incurred additional attorney’s fees and costs in
21 this action, including briefing and argument on the Lytle Trust’s Motion to Stay and Motion for
22 Reconsideration, status hearings, and motions related to the other parties to the consolidated case.

23 6. On October 24, 2019, the Lytle Trust filed its Renewed Application for Appointment of
24 Receiver in *Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust v. Rosemere Estates*
25 *Property Owners’ Association*, Case No. A-18-775843-C, Eighth Judicial District Court, Clark County,
26 Nevada, which case was assigned to Judge J. Kishner (the “Receivership Action”).
27
28

1 7. On December 18, 2019, Judge Kishner entered her Order Appointing a Receiver of
2 Defendant Rosemere Property Owners Association (the "Order Appointing Receiver"). Among other
3 rights, powers, and duties, the Order Appointing Receiver instructed the receiver to "[i]ssue and collect a
4 special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against
5 the Association." (Order Appointing Receiver at 2:19-20).

6 8. Upon learning of the Lytle Trust's actions related to the Receivership Action, the
7 Plaintiffs incurred additional attorney's fees and costs both in this consolidated case and in the
8 Receivership Action, including filing a Motion for Order to Show Cause Why the Lytle Trust Should
9 Not Be Held in Contempt for Violation of Court Orders ("Contempt Motion") on March 4, 2020 in this
10 Case. The Lytle Trust opposed the Contempt Motion and the Plaintiffs incurred additional fees and costs
11 to respond to the Lytle Trust's arguments, present oral argument, and prepare proposed orders.

12 9. On May 22, 2020, this Court entered its Findings of Fact, Conclusions of Law, and Order
13 Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in
14 Contempt for Violation of Court Orders ("Contempt Order") against the Lytle Trust. The Contempt
15 Order is hereby incorporated by reference.

16 10. In the Contempt Order, the Court relevantly ruled that a party may be held in contempt
17 for violating its orders, and that the Court may impose fines and award "reasonable expenses, including,
18 without limitation, attorney's fees, incurred by the party as a result of the contempt." Contempt Order at
19 11:9-23 (quoting NRS 22.100(3)). The Court Ordered that the Lytle Trust violated the May 2018 Order,
20 is in contempt of the May 2018 Order, shall pay a fine of \$500 to each movant, and that the Plaintiffs
21 may file applications for their reasonable expenses, including, without limitation, attorney's fees,
22 incurred as a result of the contempt. The Court now finds that Plaintiffs are entitled to an award of their
23 reasonable expenses, including reasonable attorney's fees and costs, incurred as a result of obtaining the
24 Contempt Order.

25 11. Plaintiffs also seek additional attorney's fees and costs related to the Lytle Trust's
26 appeals of the May 2018 Order and First Fees Order, which were affirmed by the Nevada Supreme
27 Court, as well as attorney's fees and costs related to the Receivership Action.
28

12. The Plaintiffs filed the instant Motion requesting an award of all attorney's fees in the total amount of \$149,403.20 and costs in the total amount of \$4,145.08 that they have incurred from May 23, 2018 to the present date pursuant to the Original CC&Rs, NRS 18.020, 18.050 and 18.010(2)(b) and NRAP 39(e).

13. Plaintiffs have attached billing statements and a Declaration from their counsel to the Motion to support the request.

CONCLUSIONS OF LAW

1. NRS 18.010(1) provides that, "[t]he compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law."

2. Section 25 of the CC&Rs is a mandatory provision regarding the award of attorney's fees and costs being paid by the losing party in any legal equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof.

3. The legal disputes in this case were based on the parties' rights under the Original CC&Rs and whether the CC&Rs created a Limited Purpose Association which excluded most of NRS 116, especially NRS 116.3117, from having any application to the Rosemere Subdivision.

4. Throughout this litigation, the Plaintiffs sought to restrain the Lytle Trust from recording abstracts of judgment against their properties and collecting judgments by alternative means because the Lytle Trust had no right pursuant to the CC&Rs to do so

5. Applying the language of the CC&Rs, the Court concludes that the Plaintiffs are the winning or prevailing parties in this litigation, the Lytle Trust was the losing party in this litigation, and the assessment of attorney's fees against the losing party is mandatory under Section 25.

6. NRS 18.010(2)(b) provides that, "the court may make an allowance of attorney's fees to a prevailing party: . . . (b) Without regard to the recovery sought, when the court finds that the claim . . . or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." This Court based the First Fees Award on NRS 18.010(2) and does so again now as a basis for awarding additional fees.

1 7. NRS 22.100(3) provides a basis for awarding fees associated with the contempt
2 proceedings in this case.

3 8. The Court analyzed the Plaintiffs' attorney's fees utilizing the factors identified in
4 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), including the qualities of
5 the advocate, the character of the work to be done, the work actually performed by the lawyer, and the
6 result obtained.

7 9. The Plaintiffs have satisfied the *Brunzell* factors. More specifically, based on the record
8 and the Declaration of the Plaintiffs' counsel in support of the Motion, the Court finds that the qualities
9 of counsel, character of the work to be done and its difficulty, the work actually performed by Plaintiffs'
10 counsel, and the result obtained establish the reasonableness of the Plaintiffs' attorney's fees to the
11 extent awarded in this Order.

12 10. However, the Court finds that certain time and amounts billed are not compensable in this
13 matter and will reduce the award accordingly.

14 11. The Court has reviewed the Plaintiffs' submitted billing statements, which the fees
15 charged total \$149,403.20.

16 12. The Plaintiffs' fee statements include entries that are commonly defined as block billing
17 that make it difficult for the Court to determine the exact amount billed for each individual task and the
18 reasonableness of the request.

19 13. The Court denies an award of fees incurred in the Receivership Action before Judge
20 Kishner. Plaintiffs' counsel represented this amount was \$36,259.00, which the Court accepts. The
21 denial of fees incurred in the Receivership Action is without prejudice to either party's right to seek an
22 award of fees from Judge Kishner in the Receivership Action.

23 14. The Court also denies any charges related to the appeal and will not award fees for work
24 described in the briefing as clerical work, which the Court has determined total \$23,374.00.

25 15. In light of the findings above, the \$149,403.20 is reduced by \$36,259.00 and \$23,374.00,
26 which leaves a difference of \$89,770.20.

1 16. Further, as suggested by the Defendant, the Court will apply a 15% discount to the
2 \$89,770.20 to further account for the block billing in the fee statements. The difference after the
3 discount is \$76,304.67.

4 17. Consequently, the Court grants Plaintiffs' Motion for Attorney's Fees and Costs, but with
5 modifications, resulting in a total fee award of \$76,304.67.

6 18. Additionally, the Court grants costs in the sum of \$4,145.08.

7 **ORDER**

8 Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing
9 therefore,

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Findings of Fact shall be
11 treated as Conclusions of Law and the Conclusions of Law shall be treated as Findings of Fact to any
12 extent necessary to effectuate the intent of this Order.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion for
14 Attorney's Fees and Costs is GRANTED IN PART AND DENIED IN PART.

15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are
16 awarded in favor of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G.
17 Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval
18 and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living
19 and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife,
20 as Joint Tenants, in the total aggregate amount of \$76,304.67 against Trudi Lee Lytle and John Allen
21 Lytle, as Trustees of the Lytle Trust;

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are awarded in favor
23 of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G. Zobrist, as Trustees
24 of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie
25 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution
26 Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint
27
28

1 Tenants, in the total aggregate amount of \$4,145.08 against Trudi Lee Lytle and John Allen Lytle, as
 2 Trustees of the Lytle Trust.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is ordered
 4 to pay the attorney's fees and costs as ordered herein by certified check made payable to Christensen
 5 James & Martin Special Client Trust Account in the amount of \$80,449.75 and delivered to Christensen
 6 James & Martin within ten (10) days of the Notice of Entry of this Order.

7 **IT IS SO ORDERED.**

8 Dated this 10th day of August, 2020.

9 
 10 DISTRICT COURT JUDGE Cg

11 **Submitted by:**

12 **CHRISTENSEN JAMES & MARTIN**

13 /s/ Wesley J. Smith

14 Wesley J. Smith, Esq.

15 Nevada Bar No. 11871

16 Laura J. Wolff, Esq.

17 Nevada Bar No. 6869

18 7440 W. Sahara Ave.

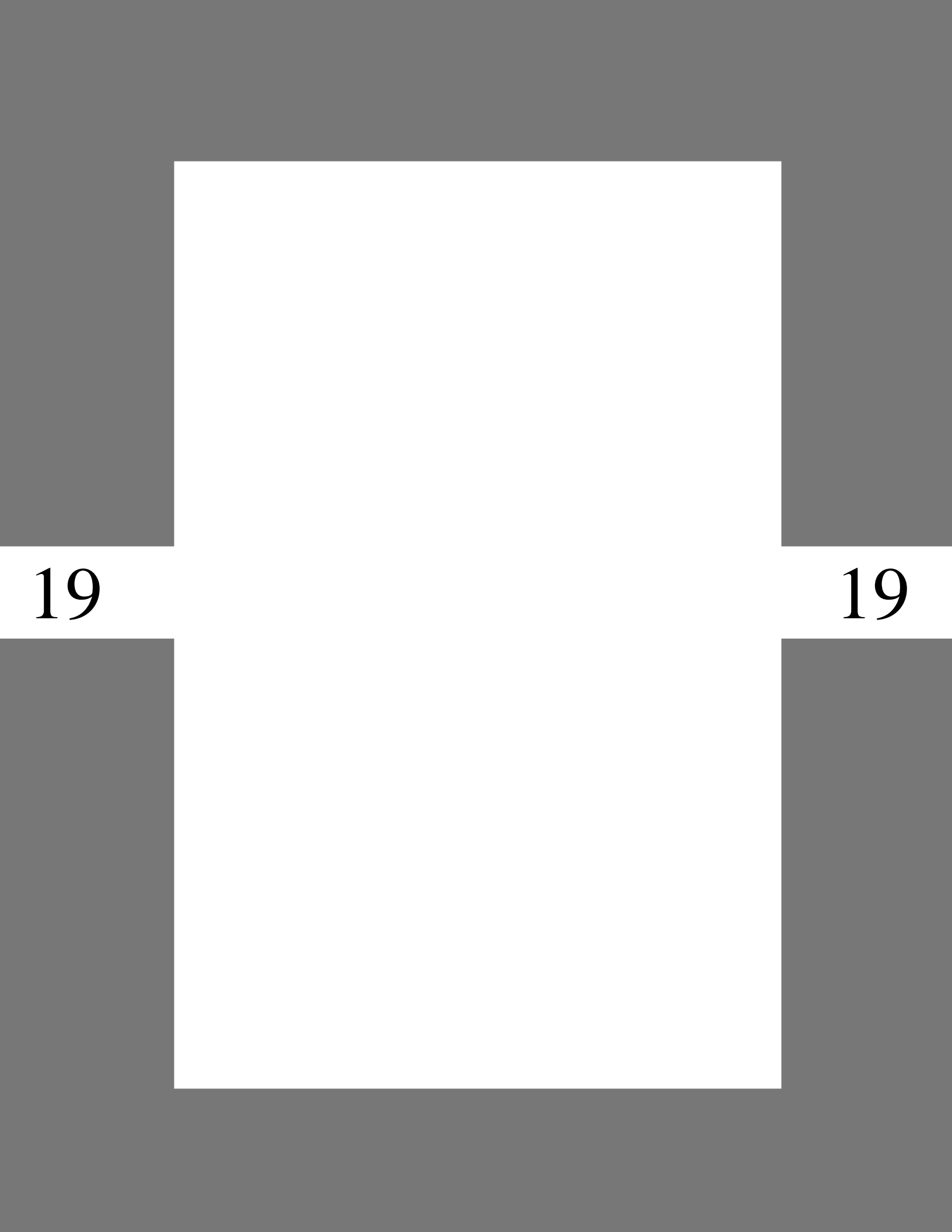
19 Las Vegas, NV 89117

20 *Attorneys for Plaintiffs September Trust,*

21 *Zobrist Trust, Sandoval Trust, and*

22 *Dennis & Julie Gegen*

CHRISTENSEN JAMES & MARTIN
 7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
 PH: (702) 255-1718 § FAX: (702) 255-0871



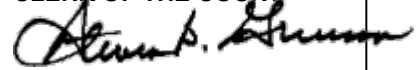
19

19

8/21/2020 2:17 PM

Steven D. Grierson

CLERK OF THE COURT



ASTA

JOEL D. HENRIOD

Nevada Bar No. 8492

DANIEL F. POLSENBERG

Nevada Bar No. 2376

DAN R. WAITE

Nevada Bar No. 4078

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Parkway, Suite 600

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JHenriod@LRRC.comDPolsenberg@LRRC.comDWaite@LRRC.com*Attorneys for Defendants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*DISTRICT COURT
CLARK COUNTY, NEVADAMARJORIE B. BOULDEN, trustee of the
Marjorie B. Boulden Trust; LINDA
LAMOTHE; and JACQUES LAMOTHE,
Trustees of the Jacques & Linda
Lamothe Living Trust,

Plaintiffs,

v.

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,
DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

Case No. A-16-747800-C

Dep't No. 16

CASE APPEAL STATEMENT

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,

Plaintiffs,

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

v.

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,
JOHN DOES I through V, inclusive, and
ROE ENTITIES I through V, inclusive,

Defendants.

1. Name of appellants filing this case appeal statement:

Defendants Trudi Lee Lytle and John Allen Lytle, as trustees
of the Lytle Trust

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Timothy C. Williams

3. Identify each appellant and the name and address of counsel for each appellant:

*Attorneys for Appellants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*

JOEL D. HENRIOD
DANIEL F. POLSENBERG
DAN R. WAITE
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

*Attorneys for 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*

KEVIN B. CHRISTENSEN
WESLEY J. SMITH
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
(702) 255-1718

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court, *e.g.*, date complaint, indictment, information, or petition was filed:

"Complaint," filed December 8, 2016 in case no. A-16-7476800-C.

"Complaint," filed November 30, 2017 in case no. A-17-765372-C.

Case no. A-17-765372-C was consolidated with case no. A-16-7476800-C on February 28, 2018.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

In other lawsuits, the defendant Lytle Trust obtained three judgments (totaling approx. \$1.8 million) against the Rosemere Estate Property Owners Association ("Association"). The Lytle Trust is a member of the Association. This action stems from a dispute over the validity and legal effect of abstracts of judgments the Lytle Trust recorded against certain residential property owned by other Association members. The district court (Judge T. Williams) granted summary judgment in favor of plaintiffs and entered a permanent injunction against the Lytle Trust precluding action to enforce their judgments directly against the other Association members (the "May 2018 order"). The Dismans were added as parties to the litigation when they purchased the Boulden property. The district court awarded fees and costs to plaintiffs on September 20, 2019.

Following affirmance of the May 2018 order by this Court on July 15, 2020, Plaintiffs moved the district for an additional award

of fees incurred post-judgment. The district court granted the majority of fees requested. Defendants now appeal from that order granting fees.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

Lytle v. Boulden, Case No. 73039

Lytle v. September Trust, Dated March 23, 1972, Case No. 76198

Lytle v. September Trust, Dated March 23, 1972, Case No. 77007

Lytle v. Disman, Case No. 79753

Lytle v. Boulden, Case No. 79776

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

No. The related appeal already has been removed from the Court's settlement program.

Dated this 21st day of August, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/Joel D. Henriod

JOEL D. HENRIOD (SBN 8492)

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Attorneys for Defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of August, 2020, I served the foregoing "Case Appeal Statement" on counsel by the Court's electronic filing system to the persons and addresses listed below:

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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,
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Linda Lamothe and Jacques Lamothe,
trustees of the Jacques & Linda Lamothe
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/s/ Lisa M. Noltie
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

20

20

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**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)**

Hearing Requested

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

Case No.: A-17-765372-C
Dept. No.: XVI

Consolidated

Plaintiffs September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist 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

1 (“Sandoval Trust”), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint
 2 Tenants (“Gegen”) (collectively the “Plaintiffs”), by and through their attorneys, Christensen
 3 James & Martin, hereby move this Court to Amend the Order Granting in Part and Denying in
 4 Part Plaintiffs’ Motion for Attorney’s Fees and Costs pursuant to NRCP 52(b)(“Motion”). This
 5 Motion is based upon the following Memorandum of Points and Authorities, Declaration and
 6 Exhibits filed herewith and the pleadings and papers on file.

7 DATED this 8th day of September, 2020. CHRISTENSEN JAMES & MARTIN

8 By: /s/ Wesley J. Smith, Esq.
 9 Wesley J. Smith, Esq.
 10 Nevada Bar No. 11871
 11 *Attorneys for September Trust, Zobrist*
 12 *Trust, Sandoval Trust and Gegen*

13 NOTICE OF MOTION

14 You will please take Notice that September Trust, Zobrist Trust, Sandoval Trust and
 15 Gegen shall bring the above and foregoing Plaintiffs’ Motion to Amend Order Granting in Part
 16 and Denying in Part Plaintiffs’ Motion for Attorney’s Fees and Costs Pursuant to NRCP 52(b)
 17 before Department XVI on the date and time to be set by the Court. Plaintiffs have requested a
 18 hearing. Should a hearing be set by the Court, the parties registered for service will receive
 19 notice through the “Clerk’s Notice of Hearing.”

20 DATED this 8th day of September, 2020. CHRISTENSEN JAMES & MARTIN

21 By: /s/ Wesley J. Smith, Esq.
 22 Wesley J. Smith, Esq.
 23 Nevada Bar No. 11871
 24 *Attorneys for September Trust, Zobrist*
 25 *Trust, Sandoval Trust and Gegen*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiffs seek the Court's Order amending the Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs ("Second Fees Order"),¹ entered on August 11, 2020, in one of two ways. First, the Plaintiffs request that the Court amend the Second Fees Order to state that "The Court also grants an award of fees and costs related to the appeal..." instead of "The Court also denies any charges related to the appeal..." See Second Fees Order at 6, ¶ 14. Second, and alternatively, the Plaintiffs request that the Court make additional findings of fact and conclusions of law as to why the Court denied an award of fees and costs incurred by the Plaintiffs related to the previous appeals. If the Court is inclined to grant the relief requested herein, the Court may so certify under the procedures outlined in *Foster v. Dingwall*, 126 Nev. 49, 52–53, 228 P.3d 453, 455 (2010). See discussion *infra* Part III.B.

II.

STATEMENT OF FACTS

On May 26, 2020, Plaintiffs filed their Motion for Attorney's Fees and Costs. The Motion was opposed by the Lytle Trust on June 9, 2020 and Plaintiffs filed a Reply in support on June 29, 2020. In the Motion, Plaintiffs requested an award of attorney's fees and costs for, among other things, amounts incurred by the Plaintiffs successfully defending this Court's Orders on appeal in Nevada Supreme Court case nos. 76198 and 77007, consolidated, *Trudi Lee Lytle v. September Trust, Dated March 23, 1972*. See Motion at 16:24-17:25. The basis for this request was the fee shifting provision of the Original CC&Rs. *Id.* at 17:11-25.

¹ This Order is denoted as the "Second" Order to avoid confusion with the previous Fees Order entered in favor of Plaintiffs on September 11, 2018.

1 A hearing was held on the Motion and Court Minutes were entered on July 7, 2020
 2 wherein the Court stated “The Court also denies any charges related to the appeal.” Court
 3 Minutes at 1. Consistent with this express conclusion in the Minute Order, Plaintiffs drafted the
 4 Second Order with the following Conclusion of Law: “The Court also denies any charges related
 5 to the appeal...” See Second Fees Order at 6, ¶ 14. The Second Fees Order, and Notice of Entry
 6 of the Order, were entered on August 11, 2020. On August 21, 2020, ten (10) day later, the
 7 Defendants filed their Case Appeal Statement and their Notice of Appeal of the Second Fees
 8 Order (“Appeal”). *Id.*

9 III. 10 ARGUMENT

11 The Plaintiffs bring the instant Motion pursuant to NRCP 52(b), requesting that the court
 12 amend its findings or make additional findings in its Second Fees Order with regard to the appeal
 13 fees.² NRCP 52(b) provides that “on a party’s motion filed no later than 28 days after service of
 14 written notice of entry of judgment, the court may amend its findings – or make additional
 15 findings – and may amend the judgment accordingly.” Plaintiffs served the Notice of Entry of
 16 the Second Fees Order on August 11, 2020 and this Motion is being filed no later than 28 days
 17 later on September 8, 2020, so the Motion is timely.

18 A. The Court should amend or make additional findings.

19 The Second Fees Order granted attorney’s fees and costs to the Plaintiffs pursuant to,
 20 among other bases, Section 25 of the CC&Rs. Second Fees Order at 5, ¶¶ 1-5. Plaintiffs have
 21 brought this Motion to request that the Court grant instead of deny fees and costs incurred on
 22 appeal or, in the alternative, to provide findings of fact and conclusions of law to support the
 23

24 ² Plaintiffs acknowledge that they drafted the Second Fees Order, with revisions and input from
 25 Defendants’ counsel. However, anything the Plaintiffs could have added about the fees and costs
 26 on appeal would have been based on assumptions or would have directly contradicted what was
 27 in the Minutes. Therefore, Plaintiffs submitted the Second Fees Order consistent with the
 28 Minutes.

denial of the appeal fees so that Plaintiffs may preserve their rights on appeal. *See Solar, Inc. v. Electric Smith Const. & Equipment Co.*, 88 Nev. 457, 459, 499 P.2d 649, 650 (1972) (“Appellant failed to move to amend the findings or judgment (NRCP 52(b)) regarding privity. Therefore, the question was not preserved for appellate consideration.”). To be clear, Plaintiffs are requesting that either the Second Fees Order be amended to state that the attorney’s fees on appeal are granted, or to give some detailed reasons behind the denial so that the Plaintiffs have a clear record on appeal.

In its Minute Order, the only direction the Court gave with regard to the appeal fees was that, “The Court also denies any charges related to the appeal.” *See* Minute Order at 1, ¶ 2. The Second Fees Order mimics this statement in the Conclusions of Law section: “The Court also denies any charges related to the appeal . . .” Second Fees Order at 6, ¶ 14.

The Second Fees Order contains the following Findings of Fact:

3. The Original CC&Rs provide a basis for attorney fee recovery. More specifically, section 25 of the Original CC&Rs provides: “In any legal or equitable proceeding for the enforcement of or to restrain the violation of the [CC&Rs] or any provision thereof, the losing party or parties shall pay in such amount as may be fixed by the court in such proceeding.”
4. The Court has also awarded attorney’s fees and costs to other parties in these consolidated Cases, including the Findings of Fact, Conclusions of Law and Order Granting Robert Z. Disman and Yvonne A Disman’s Motion for Attorney’s Fees entered on September 6, 2019 (“Disman Fees Order”) in favor of the Dismans and the Order Granting Plaintiffs’ Motion for Attorneys’ Fees and Costs and order Denying Defendants’ Motion to Retax and Settle Costs entered on September 20, 2019 (“Boulden Lamothe Fees Order”) in favor of Boulden and Lamothe. There, this Court awarded attorney’s fees and costs to the other parties under Section 25 of the Original CC&Rs.

Id. at 3, ¶¶ 3-4. It also contains these Conclusions of Law:

1. NRS 18.010(1) provides that, “[t]he compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.”
2. Section 25 of the CC&Rs is a mandatory provision regarding the award of attorney’s fees and costs being paid by the losing party in any legal equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof.

3. The legal disputes in this case were based on the parties' rights under the Original CC&Rs and whether the CC&Rs created a Limited Purpose Association which excluded most of NRS 116, especially NRS 116.3117, from having any application to the Rosemere Subdivision.
4. Throughout this litigation, the Plaintiffs sought to restrain the Lytle Trust from recording abstracts of judgment against their properties and collecting judgments by alternative means because the Lytle Trust had no right pursuant to the CC&Rs to do so.
5. Applying the language of the CC&Rs, the Court concludes that the Plaintiffs are the winning or prevailing parties in this litigation, the Lytle Trust was the losing party in this litigation, and the assessment of attorney's fees against the losing party is mandatory under Section 25. . . .

Id. at 5-6, ¶¶ 1-5, 14.

Additionally, case law supported an award of fees and costs incurred on appeal. The long-standing rule in Nevada is that attorney fees should be awarded when authorized by statute, rule, or agreement. *Elwardt v. Elwardt*, No. 69638, 2017 WL 2591349 *2 (Nev. Ct. App. June 9, 2017) (unpublished disposition) (citing *First Interstate Bank of Nev. v. Green*, 101 Nev. 113, 116, 694 P.2d 496, 498 (1985)). Contract provisions for attorney's fees include an award of fees for successfully bringing or defending an appeal. *See Musso v. Binick*, 104 Nev. 613, 614-15, 764 P.2d 477, 477 (1988) (holding that a contractual provision awarding attorney fees to a prevailing party in the event of litigation included appellate attorney fees); *See also WMCV Phase 3, LLC v. Shushok & McCoy, Inc.*, 2015 WL 1000373, (D. Nev. * 2) ("In *Musso v. Binick*, the Nevada Supreme Court unequivocally held that a respondent was entitled to attorneys' fees, pursuant to a contractual provision, for costs incurred in defending an appeal and filing post-appeal motions" (citations omitted)). "Parties are free to provide for attorney fees by express contractual provisions." *Davis v. Beling*, 278 P.3d 501, 515 (Nev. 2012) (citing *Musso v. Binick*, 764 P.2d at 477.) "The Nevada Supreme Court has acknowledged that attorney fees award made pursuant to contract includes fees incurred on appeal." *In re Estate & Living Trust of Miller*, 216 P.3d 239, 243 (Nev. 2009) (citing *Musso*, 764 P.2d at 477-78); *see also Mann v. Morgan Stanley Smith Barney, LLC*, 2016 WL 1254242 (D. Nev. * 2)(citing *Miller*, 216 P.3d at 243 and *Musso*,

1 764 P.2d at 477–78)(“The Nevada Supreme Court has acknowledged that attorney fees award
2 made pursuant to contract includes fees incurred on appeal”).

3 Consistent with this case law, this Court awarded Boulden, Lamothe and the Dismans
4 their attorney’s fees and costs, including their fees and costs on appeal, pursuant to Paragraph 25
5 of the Original CC&Rs. *See Id.* at 3, ¶ 4. It is unclear from either the Court Minutes or Second
6 Fees Order why the Court would change course and deny the Plaintiffs fees and costs incurred on
7 appeal. Given the Findings of Fact, Conclusions of Law, and case law set forth above, it is
8 unclear how or why the Court came to the conclusion that “The Court also denies any charges
9 related to the appeal . . .” *Id.* at 6, ¶ 14.

10 Thus, this Motion is necessary to either change the conclusion or provide the basis for the
11 Court’s ruling. In order to make the Second Fees Order internally consistent and to harmonize it
12 with controlling case law and this Court’s prior Orders, the Second Fees Order should be
13 amended to state that “The Court also grants an award of fees and costs related to the appeal...”
14 In the alternative, Plaintiffs request additional findings regarding why the attorney’s fees
15 incurred for appellate work were denied.

16 **B. The Appeal was filed prematurely and this Court may hear this Motion.**

17 Motions to amend or make additional findings of fact under NRCP 52(b) are considered a
18 tolling motion. *In re Duong*, 118 Nev. 920, 923, 59 P.3d 1210 (2002). NRAP 4(a)(4)(B) provides
19 that if a party timely files in the district court a motion under Rule 52(b), “the time to file a
20 notice of appeal runs for all parties from entry of an order disposing of the last such remaining
21 motion, and the notice of appeal must be filed no later than 30 days from the date of service of
22 written notice of entry of that order.” Timely motions filed pursuant to NRCP 52(b) toll the
23 running of the appeal period and “render ineffective all the notices of appeal which were filed
24 before the formal disposition of the timely post-judgment motions.” *Chapman Industries v.*
25 *United Ins. Co. of America*, 110 Nev. 454, 457, 874 P.2d 739 (1994). NRAP 4(a)(6) provides
26 that a premature notice of appeal does not divest the district court of jurisdiction and the “court
27
28

1 may dismiss as premature a notice of appeal filed before entry of the written disposition of the
2 last-remaining timely motion listed in Rule 4(a)(4).”

3 The Nevada Supreme Court clarified the procedure when a notice of appeal is filed
4 *before* a timely Rule 52(b) motion in *Foster v. Dingwall*, 126 Nev. 49, 52–53, 228 P.3d 453, 455
5 (2010). There, the Court held that “In considering such motions, the district court has jurisdiction
6 to direct briefing on the motion, hold a hearing regarding the motion, and enter an order denying
7 the motion, but lacks jurisdiction to enter an order granting such a motion.” *Id.* If the Court is
8 inclined to grant the 52(b) Motion, the Court may “certify its intent to do so.” 126 Nev. at 53,
9 228 P.3d at 455. “At that point, it would be appropriate for the moving party to file a motion (to
10 which the district court’s certification of its intent to grant relief is attached) with [the Nevada
11 Supreme Court] seeking a remand to the district court for entry of an order granting the requested
12 relief.” *Id.*; *see, e.g., Cottonwood Homeowners Ass’n, Inc. v. Holland*, 128 Nev. 890, 381 P.3d
13 604 (2012) (Table).

14 Even though the Lytle Trust already filed a Notice of Appeal of the Second Fees Order,
15 Plaintiffs have timely filed this Rule 52(b) Motion. The Notice of Appeal cannot be used to
16 circumvent the Plaintiffs’ rights to seek such relief. This Court is not divested of jurisdiction.
17 The Court may direct briefing, hold a hearing, and enter an order denying the motion or certify to
18 the Nevada Supreme Court that it would grant the motion should the Second Fees Order be
19 remanded. Plaintiffs respectfully request that the Court do so.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

IV.

CONCLUSION

Based upon the foregoing, the Second Fees Order should be amended to state that the attorney's fees on appeal are granted, or, in the alternative, additional findings of fact and conclusions of law should be provided regarding the denial so that the Plaintiffs have a clear record on appeal. If the Court is inclined to grant this relief, it may so certify in accordance with *Foster v. Dingwall*, 126 Nev. 49, 52–53, 228 P.3d 453, 455 (2010).

DATED this 8th day of September, 2020.

CHRISTENSEN JAMES & MARTIN

By: /s/ Wesley J. Smith, Esq.
Wesley J. Smith, Esq.
Nevada Bar No. 11871
*Attorneys for September Trust, Zobrist
Trust, Sandoval Trust and Gegen*

CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On September 8, 2020, I caused a true and correct copy of the foregoing 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), to be served in the following manner:

☒ **ELECTRONIC SERVICE**: electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

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/s/ Natalie Saville
 Natalie Saville

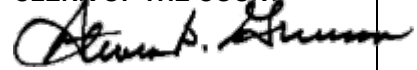
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9/22/2020 4:15 PM

Steven D. Grierson

CLERK OF THE COURT

**OPP**

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*Attorneys for Defendants***DISTRICT COURT
CLARK COUNTY, NEVADA**MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

**DEFENDANT LYTLE TRUST'S
OPPOSITION TO PLAINTIFFS'
MOTION TO AMEND ORDER
GRANTING IN PART AND DENYING
IN PART PLAINTIFF'S MOTION
FOR ATTORNEY'S FEES AND
COSTS PURSUANT TO NRCP 52(B)****DATE OF HEARING: October 13, 2020****TIME OF HEARING: 9:00 a.m.**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

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 I.

13 INTRODUCTION

14 Plaintiffs' Motion asks this Court to change its mind—i.e., instead of denying Plaintiffs'
15 request for fees incurred on appeal, Plaintiffs ask the Court to reconsider and grant those fees on
16 top of the \$76,304.67 the Court already granted. Such is just a disguised and untimely motion for
17 reconsideration regarding what Plaintiffs' defined as the Second Fees Order.

18 Alternatively, Plaintiffs ask the Court to explain its ruling more carefully even though
19 competing orders were submitted and the Court signed the exact order submitted by Plaintiffs. In
20 other words, Plaintiffs want the Court to clarify the order that Plaintiffs themselves drafted.

21 This Court's Second Fees Order is already on appeal. The Court no longer has jurisdiction
22 over the matter. As such, the only thing the Court can and should do with Plaintiffs' Motion
23 (under NRCP 62.1 and *Dingwall*) is deny it.

24 II.

25 LEGAL ARGUMENT

26 A. **Plaintiffs Rely On The Dissent In An Unpublished Opinion That Cannot Be Cited 27 "For Any Purpose" and, in Any Event, Misconstrue What The Unpublished Dissent 28 Says**

Plaintiffs' counsel is very competent and ethical. He just got this one wrong and he'll
likely be the first to acknowledge such in Plaintiffs' reply brief. In that case, the undersigned does
not wish to make a bigger deal of this issue than to ensure the Court is not misled.

1 Plaintiffs cite *Elwardt v. Elwardt*, No. 69638, 2017 WL 2591349, *2 (Nev. Ct. App. June
 2 9, 2017) and, to their credit, Plaintiffs identify it as an “(unpublished opinion).” (Mtn. at 6:11-12).
 3 Plaintiffs suggest *Elwardt* held that “[t]he long-standing rule in Nevada is that attorney fees should
 4 *be awarded* when authorized by statute, rule, or agreement.” (*Id.* at 6:9-11, emphases added).

5 In a trifecta of error, Plaintiffs:

6 (1) Cite to an unpublished disposition of the Nevada Court of Appeals even though
 7 NRAP 36(c)(3) provides that, except in very limited circumstances not present here, “unpublished
 8 dispositions issued by the Court of Appeals may not be cited in any Nevada court for any
 9 purpose,”

10 (2) Cite to the *dissenting* opinion in the unpublished disposition and do so without
 11 noting such, and

12 (3) Misstate what the dissenting opinion in the unpublished disposition said. More
 13 particularly, citing *Elwardt*, Plaintiffs assert that the “long-standing rule in Nevada” is that fees
 14 “should be awarded” when authorized by contract, statute, or rule; however, what the dissenting
 15 opinion in the unpublished disposition actually and correctly said was that “[t]he long-standing
 16 rule in Nevada is that attorney fees cannot be awarded” unless authorized by contract, statute, or
 17 rule.

18 Again, the undersigned believes Plaintiffs’ counsel will acknowledge the foregoing errors
 19 and the Lytle Trust does not seek anything other than to ensure the Court is not misled.

20 **B. Plaintiffs’ Motion To Amend Is A Disguised, Untimely Motion for Reconsideration**

21 Plaintiffs filed “a motion for reconsideration disguised as a motion to amend a non-existent
 22 judgment.” *Rosen v. Cross*, 2013 WL 12130007, at *2 (C.D. Cal. 2013). “It is well established
 23 that a party may not avoid both the filing deadlines of a motion for reconsideration and the legal
 24 requirements of such a motion by disguising such [as] . . . another motion.” *State Farm Mut. Auto.*
 25 *Ins. Co. v. Mallela*, 2002 WL 31946762, at *14 (E.D.N.Y. 2002).

26 The label a party places on its motion does not control. “A motion must be interpreted by
 27 its substance rather than by its style or form; that is, the court is required to look at the motion's
 28 nature, or substance or the relief sought, not the motion's title, label, or caption.” 56 Am. Jur. 2d

Motions, Rules, and Orders § 3; *see also*, *Nevada Power v. Eighth Judicial Dist. Ct.*, 120 Nev. 948, 960, 102 P.3d 578, 586 (2004) (“we must look to the substance of the claims, not just the labels used”).

Here, Plaintiffs clearly seek reconsideration of the Court’s ruling because they make the same arguments and cite the same cases as in their underlying motion for fees, apparently hoping that Judge Williams will find them more convincing the second time around:

From the Underlying Motion for Fees	From the Instant Motion to “Amend”
<p>“[C]ontract provisions for attorney’s fees include an award of fees for successfully bringing or defending an appeal. <i>See Musso v. Binick</i>, 104 Nev. 613, 614–15, 764 P.2d 477, 477 (1988) (holding that a contractual provision awarding attorney fees to a prevailing party in the event of litigation included appellate attorney fees); <i>See also WMCV Phase 3, LLC v. Shushok & McCoy, Inc.</i>, 2015 WL 1000373, (D. Nev. * 2) (“In <i>Musso v. Binick</i>, the Nevada Supreme Court unequivocally held that a respondent was entitled to attorneys’ fees, pursuant to a contractual provision, for costs incurred in defending an appeal and filing post-appeal motions” (citations omitted)). “Parties are free to provide for attorney fees by express contractual provisions.” <i>Davis v. Beling</i>, 278 P.3d 501, 515 (Nev. 2012) (<i>citing Musso v. Binick</i>, 764 P.2d at 477.) “The Nevada Supreme Court has acknowledged that attorney fees award made pursuant to contract includes fees incurred on appeal.” <i>In re Estate & Living Trust of Miller</i>, 216 P.3d 239, 243 (Nev. 2009) (<i>citing Musso</i>, 764 P.2d at 477–78).”</p> <p>Plaintiffs’ Motion for Attorney’s Fees and Costs (filed 5/26/20) at 17:4-15.</p>	<p>“Contract provisions for attorney’s fees include an award of fees for successfully bringing or defending an appeal. <i>See Musso v. Binick</i>, 104 Nev. 613, 614-15, 764 P.2d 477, 477 (1988) (holding that a contractual provision awarding attorney fees to a prevailing party in the event of litigation included appellate attorney fees); <i>See also WMCV Phase 3, LLC v. Shushok & McCoy, Inc.</i>, 2015 WL 1000373, (D. Nev. *2) (“In <i>Musso v. Binick</i>, the Nevada Supreme Court unequivocally held that a respondent was entitled to attorneys’ fees, pursuant to a contractual provision, for costs incurred in defending an appeal and filing post-appeal motions” (citations omitted)). “Parties are free to provide for attorney fees by express contractual provisions.” <i>Davis v. Beling</i>, 278 P.3d 501, 515 (Nev. 2012) (<i>citing Musso v. Binick</i>, 764 P.2d at 477.) “The Nevada Supreme Court has acknowledged that attorney fees award made pursuant to contract includes fees incurred on appeal.” <i>In re Estate & Living Trust of Miller</i>, 216 P.3d 239, 243 (Nev. 2009) (<i>citing Musso</i>, 764 P.2d at 477-78).”</p> <p>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) (filed 9/8/20) at 6:13-25.</p>

Additionally, Plaintiffs also offered the following argument then and now:

////

////

From the Underlying Motion for Fees	From the Instant Motion to “Amend”
<p>“This Court also awarded fees and costs to the Dismans, Boulden, and Lamothe in the Disman Fees Order and Boulden Lamothe Fees Order. There, this Court awarded attorney’s fees and costs under Section 25 of the Original CC&Rs.”</p> <p><i>Id.</i> at 6:20-22.</p>	<p>“[T]his Court awarded Boulden, Lamothe and the Dismans their attorney’s fees and costs, including their fees and costs on appeal, pursuant to Paragraph 25 of the Original CC&Rs.”</p> <p><i>Id.</i> at 7:3-5.</p>

“Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted.” *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). This is not such a case.

Here, Plaintiffs admit they brought their Motion “to request that the Court grant instead of deny fees and costs incurred on appeal.” (Mtn. at 4:21-22, emphases added). Indeed, Plaintiffs further admit that the order they drafted and the Court signed was “consistent with the [Court’s] Minutes” and that the relief they seek now “would have directly contradicted what was in the Minutes.” (Mtn. at n.2). In short, Plaintiffs’ don’t like this Court’s ruling and want the Court to reconsider the ruling and reverse itself, i.e., “grant instead of deny” the requested fees on appeal.

Plaintiffs’ remedy, if they didn’t like the ruling, was to appeal, not to ask the Court to reconsider under the guise of a Rule 52(b) motion to amend. However, Plaintiffs are no doubt forced to creatively characterize their Motion as one under Rule 52(b) because the mandatory 14-day deadline for a motion for reconsideration expired long ago. *See* EDCR 2.24(b). More specifically, Plaintiffs correctly note that *they* served the Notice of Entry of Order regarding the Second Fees Order on August 11. Thus, the deadline to file a motion for reconsideration expired on August 25. *See* NRCP 6(a)(1). Yet, Plaintiffs did not file their instant Motion until September 8—two weeks too late for a motion for reconsideration.

C. Plaintiffs’ Motion Is Not A Rule 52(b) Motion To Amend

The corollary to the conclusion that Plaintiffs’ Motion IS a motion for reconsideration is that it IS NOT a Rule 52(b) Motion to Amend. Case law construing the federal counterpart to NRCP 52(b) is clear.

“Rule 52(b) is not a vehicle for relitigating losing arguments” *Villalobos v. New York Div. of Parole*, 2012 WL 4040218, at *1 (S.D.N.Y. 2012); *accord*, *Borgwarner Diversified Transmission Prod., Inc. v. United Auto., Aerospace, & Agric. Implement Workers of Am., Local No. 287*, 2008 WL 4724283, at *1 (S.D. Ind. 2008) (“Rule 52(b) is not a vehicle to obtain a rehearing or to relitigate old matters.”); *Wound Care Centers, Inc. v. Catalane*, 2011 WL 3476612, at *2 (W.D. Pa. 2011) (“A Rule 52(b) motion is not a vehicle for relitigation of issues previously adjudicated.”).

Here, Plaintiffs offer the same arguments and the same authorities that the Court already heard and rejected. Changing now would be arbitrary and reward Plaintiffs’ “second bite at the apple.” Again, if Plaintiffs were not happy with this Court’s ruling, they could have filed a timely motion for reconsideration; but they didn’t—or, appeal; but they haven’t. What they cannot do, however, is file a fatally late motion asking this Court to reconsider and reverse itself under the guise of a Rule 52(b) motion.

D. The Lytle Trust’s Notice of Appeal Was Not Premature

Pursuant to NRAP 4(a)(1), a Notice of Appeal (“NOA”) “must be filed . . . no later than 30 days after the date that written notice of entry of the . . . order appealed from is served.” Plaintiffs provided Notice of Entry of this Court’s Order granting attorney fees and costs on August 11, 2020. Therefore, the Lytle Trust could file its NOA any time in the 30-day period between August 11 and September 10. The Lytle Trust filed its NOA on August 21, which is squarely within the authorized range, i.e., it was neither premature nor late.

E. The Court Has Very Limited Jurisdiction Under *Dingwall*

Plaintiffs rely on *Foster v. Dingwall*, 126 Nev. 49, 52-53, 228 P.3d 453, 455 (2010) for the unique procedure that must be followed when a NOA is filed before a timely Rule 52(b) motion. Coincidentally, the undersigned represented Terry Dingwall in that case. Under *Dingwall*, the timely filing of a NOA divests the district court of jurisdiction regarding most matters, including *all* matters related to the subject of the appeal:

[W]hen an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, *i.e.*, matters that in no way affect the appeal’s merits.

1 126 Nev. at 52, 228 P.3d at 455 (quoting *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d
2 525, 529-30 (2006)).

3 Here, there is no doubt that (1) the Lytle Trust timely perfected its appeal from the Second
4 Fees Order, and (2) the current Motion asks this Court to “revisit issues that are pending before”
5 the Nevada Supreme Court. Accordingly, under the *Dingwall* procedure, which the Nevada
6 Supreme Court subsequently codified in NRCP 62.1, this Court has three options: “(1) defer
7 considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the
8 appellate court remands for that purpose or that the motion raises a substantial issue.” *See* NRCP
9 62.1(a). Note, the Court has no jurisdiction to grant the Motion. And, if the Court states an intent
10 under (3) above, then “[t]he movant must promptly notify the clerk of the supreme court under
11 NRAP 12A if the district court states that it would grant the motion or that the motion raises a
12 substantial issue.” *See* NRCP 62.1(b).

13 For the reasons set forth above, the Court should deny the Motion. The purpose for the
14 unique procedure set forth in *Dingwall* (and NRCP 62.1) is presumably to eliminate an appeal by
15 allowing the district court to correct its alleged error. Here, the Lytle Trust has already appealed
16 the Second Fees Order—if this Court now changes its mind and awards *more* fees, such won’t
17 eliminate the existing appeal, it will instead *expand* the existing appeal. The Motion should be
18 denied.

19 **F. Plaintiffs’ Alleged Internal Inconsistency Within the Second Fees Order Is**
20 **Reconcilable**

21 Although the Lytle Trust is willing to give Plaintiffs a “pass” on their citation to and
22 reliance upon the dissenting opinion in the unpublished disposition of *Elwardt v. Elwardt*, the
23 Lytle Trust is not willing to overlook Plaintiffs’ intentional effort to dupe this Court into signing
24 the Order it signed. And, Plaintiffs did so for the very purpose of trying to now plateau bargain
25 the Court into awarding Plaintiffs more fees than the \$76,304.67 already awarded. The very
26 issues raised in Plaintiffs’ Motion were previously discussed by counsel before competing orders
27 were submitted.

28 Plaintiffs’ counsel and the undersigned worked to narrow the areas of disagreement on the
proposed order and, ultimately, the only remaining area of dispute was whether to include

1 Conclusions of Law 3-5. Plaintiffs insisted they be included. The undersigned suggested they
 2 were not necessary and that adding those Conclusions, in conjunction with the agreed-upon
 3 Conclusions, only served to insert confusion and ambiguity into the proposed order. Indeed, by
 4 way of email to Plaintiffs' counsel dated July 24, 2020, the undersigned suggested removing
 5 Conclusions 3-5:

6 Removing Conclusions 3-5 don't eliminate your ability to make any of your
 7 arguments [on appeal]. But it seems that your Conclusions 3-5 are an artful
 8 attempt to undermine Judge William's express denial of appellate fees and to set
 9 him up for reversal on that issue. I believe that judges trust drafting counsel to
 10 do otherwise. I respectfully believe your remedy lies in an appeal or
 11 reconsideration.

12 (See Email (7/24/20) from Dan R. Waite to Wesley Smith, attached hereto as **Ex. A**).

13 Even though Plaintiffs insisted that Conclusions 3-5 be included in their proposed Order
 14 (and these Conclusions were NOT included in the Lytle Trust's competing Order), the Plaintiffs
 15 now suggest the very Order they drafted and submitted (and induced Judge Williams to sign) is
 16 internally inconsistent. See Mtn. at 7:10-15. The Court should soak this in for a moment—
 17 Plaintiffs draft and submit a proposed order they believe is internally inconsistent (i.e., subject to
 18 reversal on appeal) and don't bring it to the Court's attention until after he signs it. That's a
 19 sandbag of the judge.¹

20 As predicted by the Lytle Trust's undersigned counsel, including Conclusions 3-5
 21 interjects potential confusion, ambiguity, and even *potential* inconsistency into the Second Fees
 22 Order. These were some of the very reasons the Lytle Trust suggested to Plaintiffs that
 23 Conclusions 3-5 should not be included in the Order, and were the reasons the Lytle Trust
 24 submitted a competing Order without Conclusions 3-5.

25 First, if the Court does anything in response to the Motion, it should amend the Second
 26 Fees Order to eliminate Conclusions 3-5 (or, under *Dingwall*/NRC 62.1, certify its intent to do so
 27
 28

¹ See *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994): "The doctrine of 'invited error' embodies the principle that a party will not be heard to complain on appeal of errors which he himself induced or provoked the court or the opposite party to commit. It has been held that for the doctrine of invited error to apply it is sufficient that the party who on appeal complains of the error has contributed to it. In most cases application of the doctrine has been based on affirmative conduct inducing the action complained of, but occasionally a failure to act has been referred to."

1 if the case were remanded). Second, however, the alleged inconsistencies within the Second Fees
2 Order are reconcilable.

3 Although it is undisputed that “[t]he Original CC&Rs provide a basis for attorney fee
4 recovery” (Finding of Fact No. 3 in Second Fees Order), such does not mean the Original CC&Rs
5 were the basis for awarding fees here. Indeed, the Second Fees Order includes the following:

6 Conclusion of Law #6: “NRS 18.010(2)(b) provides that [the statute is then
7 quoted]. This Court based the First Fees Award on NRS 18.010(2) and *does so*
8 *again now as a basis for awarding additional fees.*” (Emphasis added).

9 Conclusion of Law #7: “NRS 22.100(3) provides a basis for awarding fees
10 associated with the contempt proceedings *in this case.*” (Emphasis added).

11 In short, even though the Original CC&Rs contain an attorney fee provision and, thus, the
12 Court correctly found (Finding #3) that such provides a basis for an award of fees in the proper
13 case (like when the Court awarded fees to the Lamothe/Boulden and Disman parties in their
14 respective cases), this is not such a case. The Lytle Trust has previously detailed how this case
15 differs from the Lamothe/Boulden and Disman cases and such will not be repeated here, except to
16 note that those differences explain why an award of fees to them under the Original CC&Rs was
17 appropriate but that awarding fees under that same provision on the separate facts, separate claims,
18 and separate issues involved in this case is not appropriate. *See* Defendant Lytle Trust’s Opp. to
19 Plaintiffs’ Mtn for Attorney’s Fees & Costs (filed 6/9/20) at 8:1-12:13. It is also worth repeating
20 that when this Court (Judge Bailus) awarded fees to these Plaintiffs in 2018 (First Fees Order), he
21 did so only on the basis of NRS 18.010(2) and not on the basis of the Original CC&Rs, even
22 though Plaintiffs argued then, as now, that they should recover fees under the Original CC&Rs.

23 If this Court awarded fees in the Second Fees Award on the basis of NRS 18.010(2) and
24 NRS 22.100(3), as this Court expressly stated in the Second Fees Award at Conclusions Nos. 6
25 and 7, then such completely reconciles this Court’s award of fees to Plaintiffs in the total amount
26 of \$76,304.67, while contemporaneously “den[ying] any charges related to the appeal” *See*
27 Second Fees Award at Conclusion #14. More specifically, if the Court did not award fees on the
28 basis of the Original CC&Rs but instead awarded them on the basis of NRS 18.010(2), consistent
with Judge Bailus’s First Fee Award, then the denial of fees to Plaintiffs for the appeal was not

just proper, it was required. Indeed, the following argument from Plaintiffs' motion for fees (that resulted in the Second Fees Award) is revealing:

The decision to award attorneys' fees is left to the sound discretion of the district court. *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 879 P.2d 69, 73–74 (Nev. 1994). However, NRS 18.010(2) does not authorize an award of appellate attorney fees. *Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 288, 994 P.2d 1149, 1150 (2000) (holding that NRS 18.010(2) does not provide for an award of attorney fees on appeal); *Bobby Berosini*, 114 Nev. at 1356–57, 971 P.2d at 388 (same).

See Plaintiffs' Motion for Attorney's Fees and Costs (filed 5/26/20) at 16:25-17:4, emphasis added.

Based on the foregoing, there is no internal inconsistency within the Second Fees Order if the Court (1) awarded the contempt fees on the basis of the contempt statute (NRS 22.100(3)), as it undoubtedly did, and (2) awarded all other fees on the basis of NRS 18.010(2), and, not under the Original CC&Rs.

III.

CONCLUSION

For all the foregoing reasons, the Court should DENY the Motion.

Dated this 22nd day of September, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Dan R. Waite

DAN R. WAITE (SBN 4078)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

Attorneys for Defendant Lytle Trust

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this day, I caused a true and correct copy of the following “***DEFENDANT LYTLE TRUST’S 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)***” to be e-filed and served via the Court’s E-Filing System.

Kevin B. Christensen
Wesley J. Smith
Laura J. Wolff
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Ave.
Las Vegas, NV 89117
*Attorneys for Intervenors September Trust,
Zobrist Trust, Sandoval Trust and Dennis & Julie Gegen*

Christina H. Wang
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8363 W. Sunset Road, Suite 120
Las Vegas, NV 89113
christina.wang@fnf.com
Attorneys for Robert Z. Disman and Yvonne A. Disman

Dated this 22nd day of September, 2020

/s/ Luz Horvath
An Employee of Lewis Roca Rothgerber Christie LLP

Lewis Roca
ROTHGERBER CHRISTIE

3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV 89169-5996

EXHIBIT A

From: Waite, Dan R. <DWaite@lrrc.com>
Sent: Friday, July 24, 2020 9:28 AM
To: Wesley Smith
Cc: Laura Wolff
Subject: RE: A-16-747800-C - September v. Lytle - ORDR - Order Granting/Denying Plaintiffs' Motion for Attorney's Fees and Costs

Wes,

I too appreciate the effort and mutual attempt to resolve Judge Williams' Minute Order. The fact is that the Minute Order may be ambiguous or, at worst, inconsistent. As between those two choices, the law requires an interpretation that reconciles ambiguities and avoids an inconsistent result. Judge Williams made a general statement that "the Court finds the CC&Rs provide a basis for attorney fee recovery" and made a specific statement that "[t]he Court also denies any charges related to the appeal." I reconcile these statements in at least two ways. First, the Minute Order may have an omission and perhaps was intended to provide that "the Court finds the CC&Rs *do not* provide a basis for attorney fee recovery." You argued for an award under NRS 18 and the contempt statute and the fees you were awarded may have been awarded on those bases. I realize that you could say that, if there's a typo, the typo was in the Court's denial of your appellate fees, but the Court's math suggests otherwise, i.e., the Court's math is additional evidence that Judge Williams intended not to award fees for the appeal. Second, it is undisputed that the CC&RS do provide a basis for an attorney's fee recovery *in the appropriate case*, this just isn't one of them. Either of these interpretations remove the ambiguity and avoid an inconsistent ruling. Otherwise, the foregoing two statements from the Minute Order are at odds. Lastly, if ambiguity or inconsistency exists, I'm sure you're familiar with the rule that the specific controls over the general.

Let me turnabout and ask how you reconcile the Minute Order, i.e., how do you explain Judge Williams' clear denial of your appellate fees with his finding that the CC&Rs provide a basis for attorney fee recovery? And, for the CC&R fee provision to be applicable, what CC&R provision did this action seek to enforce or restrain a violation of? Indeed, the inability for anyone (you, me, or Judge Williams—three pretty smart fellows) to identify any CC&R provision that this action sought to enforce or restrain a violation of is itself a compelling argument that it wasn't. I believe Judge Williams recognized that and either misspoke in the Minute Order or stated a general proposition that cannot be denied.

Wes, I'm sure you were very disappointed and perhaps even surprised that Judge Williams denied your appellate fees (trust me, I was there following the contempt hearing). And, if you are disappointed enough and feel the ruling is erroneous enough (as we felt about the contempt order) then no one will fault you for filing an appeal where you can make all your arguments. Removing Conclusions 3-5 don't eliminate your ability to make any of your arguments. But it seems that your Conclusions 3-5 are an artful attempt to undermine Judge Williams' express denial of appellate fees and to set him up for reversal on that issue. I believe that judges trust drafting counsel to do otherwise. I respectfully believe your remedy lies in an appeal or reconsideration. Please reconsider. Thank Wes,

Dan

Dan R. Waite
 Partner
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 702.949.8398 fax
dwaite@lrrc.com

Lewis Roca
 ROTHGERBER CHRISTIE

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 3993 Howard Hughes Parkway, Suite 600
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From: Wesley Smith <wes@cjmlv.com>
Sent: Friday, July 24, 2020 8:32 AM
To: Waite, Dan R. <DWaite@lrrc.com>
Cc: Laura Wolff <ljwt@cjmlv.com>
Subject: Re: A-16-747800-C - September v. Lytle - ORDR - Order Granting/Denying Plaintiffs' Motion for Attorney's Fees and Costs

[EXTERNAL]

Dan,

I appreciate the effort here. Regarding the lengthy comment and Conclusions 3-5, you must agree that the Court expressly stated in its minute order that "As noted at the July 7, 2020 hearing, the Court finds the CC&Rs provide a basis for attorney fee recovery." How do you reconcile your comments with the Court's legal conclusion? In other words, if the Court did not determine that the CC&Rs were applicable to the fees question (and by extension, did not determine that this case involved enforcement or restraint of violation of the CC&Rs), and did not determine that the Lytle Trust was the losing party under the CC&Rs, then how could it reach the conclusion that the CC&Rs provide a basis for attorney fee recovery? Indeed, that is the only basis for fee recovery stated in the minute order. So you can't be saying that the Court is not awarding fees and costs under the CC&Rs. Declining to award fees for the appeal does not change this...that decision is not explained in any way, in the minute order or at the hearing, so it is impossible to infer the Court's reason for that decision.

Wes Smith

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From: Waite, Dan R. <DWaite@lrrc.com>
Sent: Friday, July 24, 2020 6:15 AM
To: Wesley Smith <wes@cjmlv.com>
Cc: Laura Wolff <ljwt@cjmlv.com>

Subject: RE: A-16-747800-C - September v. Lytle - ORDR - Order Granting/Denying Plaintiffs' Motion for Attorney's Fees and Costs

Good morning Wes,

Attached are my further comments. I agreed to all your revised Findings and some of your revised Conclusions. I'll apologize in advance for a very long comment associated with Conclusions 3-5, which I think is the only remaining area of disagreement (but I hope you'll agree with the rationale of my comment and we can submit this order to the court as a jointly proposed order). Thanks,

Dan

Dan R. Waite

Partner
702.474.2638 office
702.949.8398 fax
dwaite@lrrc.com

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From: Wesley Smith <wes@cjmlv.com>
Sent: Wednesday, July 22, 2020 3:36 PM
To: Waite, Dan R. <DWaite@lrrc.com>
Cc: Laura Wolff <ljw@cjmlv.com>
Subject: Re: A-16-747800-C - September v. Lytle - ORDR - Order Granting/Denying Plaintiffs' Motion for Attorney's Fees and Costs

[EXTERNAL]

Dan,

Attached are my responses to your revisions. If you no longer see your revision, it means I accepted the change. Otherwise, I've made further edits or provided an explanation.

Wes Smith

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Fax (702) 255-0871
wes@cjmlv.com

* Licensed in Nevada, Washington & Utah

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From: Waite, Dan R. <DWaite@lrrc.com>

Sent: Wednesday, July 22, 2020 1:20 PM

To: Wesley Smith <wes@cjmlv.com>

Cc: Laura Wolff <ljw@cjmlv.com>

Subject: RE: A-16-747800-C - September v. Lytle - ORDR - Order Granting/Denying Plaintiffs' Motion for Attorney's Fees and Costs

Hey Wes,

Attached is a redline with my proposed changes and comments. Please let me know if you want to jump on the phone to discuss anything. Thanks again,

Dan

Dan R. Waite

Partner

702.474.2638 office

702.949.8398 fax

dwaite@lrrc.com

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From: Waite, Dan R.

Sent: Tuesday, July 21, 2020 4:37 PM

To: Wesley Smith <wes@cjmlv.com>

Cc: Laura Wolff <ljw@cjmlv.com>

Subject: RE: A-16-747800-C - September v. Lytle - ORDR - Order Granting/Denying Plaintiffs' Motion for Attorney's Fees and Costs

Thanks Wes and will do.

Dan

Dan R. Waite

Partner

702.474.2638 office

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From: Wesley Smith <wes@cjmlv.com>
Sent: Tuesday, July 21, 2020 4:25 PM
To: Waite, Dan R. <DWaite@lrrc.com>
Cc: Laura Wolff <ljw@cjmlv.com>
Subject: A-16-747800-C - September v. Lytle - ORDR - Order Granting/Denying Plaintiffs' Motion for Attorney's Fees and Costs

[EXTERNAL]

Dan,

Attached is a draft proposed order on Plaintiffs' Motion for Fees and Costs. Please let me know if you approve or have proposed changes.

Wes Smith

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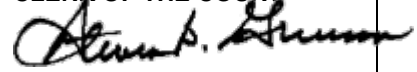
22

22

9/28/2020 3:25 PM

Steven D. Grierson

CLERK OF THE COURT



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10 *Attorneys for Defendants*11 **DISTRICT COURT**12 **CLARK COUNTY, NEVADA**13 MARJORIE B. BOULDEN, TRUSTEE OF
14 THE MARJORIE B. BOULDEN TRUST,
15 LINDA LAMOTHE AND JACQUES
16 LAMOTHE, TRUSTEES OF THE
17 JACQUES & LINDA LAMOTHE LIVING
18 TRUST,

19 Plaintiffs,

20 vs.

21 TRUDI LEE LYTLE, JOHN ALLEN
22 LYTLE, THE LYTLE TRUST, DOES I
23 through X, and ROE CORPORATIONS I
24 through X,

25 Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

26 **DEFENDANT LYTLE TRUST'S**
27 **SUPPLEMENT TO OPPOSITION TO**
28 **PLAINTIFFS' MOTION TO AMEND**
ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES
AND COSTS PURSUANT TO NRC
52(B)**DATE OF HEARING: October 13, 2020****TIME OF HEARING: 9:00 a.m.**29 SEPTEMBER TRUST, DATED MARCH 23,
30 1972; GERRY R. ZOBRIST AND JOLIN G.
31 ZOBRIST, AS TRUSTEES OF THE GERRY
32 R. ZOBRIST AND JOLIN G. ZOBRIST
33 FAMILY TRUST; RAYNALDO G.
34 SANDOVAL AND JULIE MARIE
35 SANDOVAL GEGEN, AS TRUSTEES OF
36 THE RAYNALDO G. AND EVELYN A.
37 SANDOVAL JOINT LIVING AND

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

DEVOLUTION TRUST DATED MAY 27,
1992; and DENNIS A. GEGEN AND JULIE
S. GEGEN, HUSBAND AND WIFE, AS
JOINT TENANTS,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST; JOHN DOES I through V; and ROE
ENTITIES I through V, inclusive,

Defendants.

After the Lytle Trust filed its Opposition to Plaintiffs' pending Motion to Amend, et al., on September 22, 2020, it received a copy of the transcript from the July 7, 2020, hearing where the Court resolved Plaintiffs' motion for fees. It is the Court's order resulting from that hearing that Plaintiffs now seek to amend. Based on that transcript, the Lytle Trust supplements Section II(F) of its previously filed Opposition. For continuity, Section F is reproduced below in its entirety, with the supplemented information reflected in ***bold italics***:

....

F. Plaintiffs' Alleged Internal Inconsistency Within the Second Fees Order Is Reconcilable

Although the Lytle Trust is willing to give Plaintiffs a "pass" on their citation to and reliance upon the dissenting opinion in the unpublished disposition of *Elwardt v. Elwardt*, the Lytle Trust is not willing to overlook Plaintiffs' intentional effort to dupe this Court into signing the Order it signed. And, Plaintiffs did so for the very purpose of trying to now plateau bargain the Court into awarding Plaintiffs more fees than the \$76,304.67 already awarded. The very issues raised in Plaintiffs' Motion were previously discussed by counsel before competing orders were submitted.

Plaintiffs' counsel and the undersigned worked to narrow the areas of disagreement on the proposed order and, ultimately, the only remaining area of dispute was whether to include Conclusions of Law 3-5. Plaintiffs insisted they be included. The undersigned suggested they

1 were not necessary and that adding those Conclusions, in conjunction with the agreed-upon
 2 Conclusions, only served to insert confusion and ambiguity into the proposed order. Indeed, by
 3 way of email to Plaintiffs' counsel dated July 24, 2020, the undersigned suggested removing
 4 Conclusions 3-5:

5 Removing Conclusions 3-5 don't eliminate your ability to make any of your
 6 arguments [on appeal]. But it seems that your Conclusions 3-5 are an artful
 7 attempt to undermine Judge William's express denial of appellate fees and to set
 8 him up for reversal on that issue. I believe that judges trust drafting counsel to
 do otherwise. I respectfully believe your remedy lies in an appeal or
 reconsideration.

9 (See Email (7/24/20) from Dan R. Waite to Wesley Smith, attached hereto as **Ex. A**).

10 Even though Plaintiffs insisted that Conclusions 3-5 be included in their proposed Order
 11 (and these Conclusions were NOT included in the Lytle Trust's competing Order), the Plaintiffs
 12 now suggest the very Order they drafted and submitted (and induced Judge Williams to sign) is
 13 internally inconsistent. See Mtn. at 7:10-15. The Court should soak this in for a moment—
 14 Plaintiffs draft and submit a proposed order they believe is internally inconsistent (i.e., subject to
 15 reversal on appeal) and don't bring it to the Court's attention until after he signs it. That's a
 16 sandbag of the judge.¹

17 As predicted by the Lytle Trust's undersigned counsel, including Conclusions 3-5
 18 interjects potential confusion, ambiguity, and even *potential* inconsistency into the Second Fees
 19 Order. These were some of the very reasons the Lytle Trust suggested to Plaintiffs that
 20 Conclusions 3-5 should not be included in the Order, and were the reasons the Lytle Trust
 21 submitted a competing Order without Conclusions 3-5.

22 First, if the Court does anything in response to the Motion, it should amend the Second
 23 Fees Order to eliminate Conclusions 3-5 (or, under *Dingwall*/NRC 62.1, certify its intent to do so
 24 if the case were remanded). Second, however, the alleged inconsistencies within the Second Fees
 25 Order are reconcilable.

26 ¹ See *Pearson v. Pearson*, 110 Nev. 293, 297, 871 P.2d 343, 345 (1994): "The doctrine of 'invited
 27 error' embodies the principle that a party will not be heard to complain on appeal of errors which he
 28 himself induced or provoked the court or the opposite party to commit. It has been held that for the doctrine
 of invited error to apply it is sufficient that the party who on appeal complains of the error has contributed
 to it. In most cases application of the doctrine has been based on affirmative conduct inducing the action
 complained of, but occasionally a failure to act has been referred to."

1 Although it is undisputed that “[t]he Original CC&Rs provide a basis for attorney fee
2 recovery” (Finding of Fact No. 3 in Second Fees Order), such does not mean the Original CC&Rs
3 were the basis for awarding fees here. Indeed, the Second Fees Order includes the following:

4 Conclusion of Law #6: “NRS 18.010(2)(b) provides that [the statute is then
5 quoted]. This Court based the First Fees Award on NRS 18.010(2) and *does so*
6 *again now as a basis for awarding additional fees.*” (Emphasis added).

7 Conclusion of Law #7: “NRS 22.100(3) provides a basis for awarding fees
8 associated with the contempt proceedings *in this case.*” (Emphasis added).

9 In short, even though the Original CC&Rs contain an attorney fee provision and, thus, the
10 Court correctly found (Finding #3) that such provides a basis for an award of fees in the proper
11 case (like when the Court awarded fees to the Lamothe/Boulden and Disman parties in their
12 respective cases), this is not such a case. The Lytle Trust has previously detailed how this case
13 differs from the Lamothe/Boulden and Disman cases and such will not be repeated here, except to
14 note that those differences explain why an award of fees to them under the Original CC&Rs was
15 appropriate but that awarding fees under that same provision on the separate facts, separate claims,
16 and separate issues involved in this case is not appropriate. *See* Defendant Lytle Trust’s Opp. to
17 Plaintiffs’ Mtn for Attorney’s Fees & Costs (filed 6/9/20) at 8:1-12:13. It is also worth repeating
18 that when this Court (Judge Bailus) awarded fees to these Plaintiffs in 2018 (First Fees Order), he
19 did so only on the basis of NRS 18.010(2) and not on the basis of the Original CC&Rs, even
20 though Plaintiffs argued then, as now, that they should recover fees under the Original CC&Rs.

21 If this Court awarded fees in the Second Fees Award on the basis of NRS 18.010(2) and
22 NRS 22.100(3), as this Court expressly stated in the Second Fees Award at Conclusions Nos. 6
23 and 7, then such completely reconciles this Court’s award of fees to Plaintiffs in the total amount
24 of \$76,304.67, while contemporaneously “den[ying] any charges related to the appeal” *See*
25 Second Fees Award at Conclusion #14. More specifically, if the Court did not award fees on the
26 basis of the Original CC&Rs but instead awarded them on the basis of NRS 18.010(2), consistent
27 with Judge Bailus’s First Fee Award, then the denial of fees to Plaintiffs for the appeal was not
28 just proper, it was required. Indeed, the following argument from Plaintiffs’ motion for fees (that
resulted in the Second Fees Award) is revealing:

The decision to award attorneys' fees is left to the sound discretion of the district court. *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 879 P.2d 69, 73–74 (Nev. 1994). However, NRS 18.010(2) does not authorize an award of appellate attorney fees. *Bd. of Gallery of History, Inc. v. Datecs Corp.*, 116 Nev. 286, 288, 994 P.2d 1149, 1150 (2000) (holding that NRS 18.010(2) does not provide for an award of attorney fees on appeal); *Bobby Berosini*, 114 Nev. at 1356–57, 971 P.2d at 388 (same).

See Plaintiffs' Motion for Attorney's Fees and Costs (filed 5/26/20) at 16:25-17:4, emphasis added.

Finally, there can be no doubt that this Court did NOT award fees on the basis of the original CC&Rs, as evidenced by the Court's comments at the end of the July 7, 2020, hearing. There, the Court heard Plaintiffs' underlying motion for fees, which its current Motion seeks to amend. More specifically, the Court stated:

As far as the appeal itself, I guess, there's two issues there. I don't see how I can award it under [NRS] Chapter 18. I guess at the end of the day it comes down to the application of the provision under the CC&Rs. I'm going to take one last quick look at it. . . . I'm not sure what I'm going to do with the appeal. I'm going to take one last look at it. I understand what my constraints are. But, we'll get you out a decision on that relatively quick.

(Trans. (7/17/20) at 36:15-24, emphasis added, attached hereto as Ex. A).

The Court expressly wanted to look at whether Plaintiffs' fees for the appeal could be awarded under the CC&Rs. So, the Court took the matter under advisement. Later that same day, the Court issued its Minute Order denying the Plaintiffs' request for fees on appeal. Presumably, the Court did exactly what it said it was going to do—i.e., look at the issue in light of the original CC&Rs—and determined that it could not award (or, would not award) fees under the original CC&Rs because the Minute Order stated: "The Court also denies any charges related to the appeal." Thus, even though the original CC&Rs could be the basis for awarding fees in a particular case, they were not the basis for the Court's award of fees here.

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1 Based on the foregoing, there is no internal inconsistency within the Second Fees Order if
2 the Court (1) awarded the contempt fees on the basis of the contempt statute (NRS 22.100(3)), as it
3 undoubtedly did, and (2) awarded all other fees on the basis of NRS 18.010(2), and, not under the
4 Original CC&Rs.

5 Dated this 28th day of September, 2020.

6
7 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

8
9 By: /s/ Dan R. Waite

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Lewis Roca
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this day, I caused a true and correct copy of the following ***“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)”*** to be e-filed and served via the Court’s E-Filing System.

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Attorneys for Robert Z. Disman and Yvonne A. Disman

Dated this 28th day of September, 2020

/s/ Luz Horvath
An Employee of Lewis Roca Rothgerber Christie LLP

Lewis Roca
ROTHGERBER CHRISTIE

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Las Vegas, NV 89169-5996

EXHIBIT A

EXHIBIT A

1 CASE NO. A-16-747800-C

2 DOCKET U

3 DEPT. 16

4

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
OF
HEARING

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17

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED TUESDAY, JULY 7, 2020

22

23

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

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1 LAS VEGAS, NEVADA, TUESDAY, JULY 7, 2020

2 9:36 A.M.

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

4 * * * * *

5

6 THE COURT: Okay. We're going to move on.

7 Next up page 9. We'll go back to the Marjorie B.

8 Boulden Trust versus Trudi Lytle matter. Let's go

9 ahead and place our appearances on the record. We'll

09:36:10 10 start first with the plaintiff and move to the defense.

11 MR. SMITH: Wesley Smith for the plaintiffs.

12 THE COURT: Who else?

13 THE COURT CLERK: We have Mr. Dan Waite.

14 MS. WANG: Christina Wang on behalf of Robert

09:36:26 15 and Yvonne Disman.

16 MR. WAITE: Good morning, your Honor. Your

17 Honor. Dan Waite on behalf of the defendants Lytle

18 Trust. I do have one matter before we get started,

19 your Honor, that I'd like to place on the record that

09:36:40 20 arises because of something that occurred at last

21 Thursday's hearing when I tried to make an objection

22 that because of the limitations of the BlueJeans

23 systems, I don't think I was ever heard and it was

24 never ruled upon. And in anticipation if the issue

09:36:58 25 comes up today, I'd like to make sure that my objection

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10:20:05 1 to get involved in any way or regard. I'm only going
2 to make one decision, and that's regarding the fees in
3 this case.

4 And so what that leaves me with really two
10:20:17 5 issues. Because I'm not going to award fees as it
6 relates to the companion case.

7 Secondly, as far as fees are concerned, I will
8 award fees as it relates to the contempt motion that
9 was filed in this department. However, I'm going to go
10:20:36 10 back and take a look at those. It becomes very
11 difficult for me to do because I'm not a forensic
12 accountant. But at the end of the day I have to make a
13 determination I feel that's reasonable under the facts
14 of this case. And I'll look at that.

10:20:48 15 As far as the appeal itself, I guess, there's
16 two issues there. I don't see how I can award it under
17 Chapter 18. I guess at the end of the day it comes
18 down to the application of the provision under the
19 CC&Rs. I'm going to take one last quick look at it.

10:21:13 20 And so I am going to award fees. It's going
21 to be very limited. I'm not sure what I'm going to do
22 with the appeal. I'm going to take one last look at
23 it. I understand what my constraints are. But we'll
24 get you out a decision on that relatively quick.

10:21:31 25 All right. Anything else?

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10:21:32 1

MR. SMITH: Thank you.

2

THE COURT: Anything else?

3

MR. WAITE: Thank you, your Honor.

4

THE COURT: All right. You're welcome.

10:21:38 5

MR. SMITH: Thank you.

6

MS. WANG: Thank you, your Honor.

7

THE COURT: Everyone enjoy your day.

8

You're welcome, ma'am. Enjoy your day.

9

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(Proceedings were concluded.)

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REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

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

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

/s/ Peggy Isom
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**PLAINTIFFS' REPLY IN
SUPPORT OF THEIR MOTION
TO AMEND ORDER GRANTING
IN PART AND DENYING IN PART
PLAINTIFFS' MOTION FOR
ATTORNEY'S FEES AND COSTS
PURSUANT TO NRCP 52(B)**

DATE: October 13, 2020

TIME: 9:00 a.m.

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

Case No.: A-17-765372-C
Dept. No.: XVI

Consolidated

Plaintiffs September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the

1 Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27, 1992
2 (“Sandoval Trust”), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint
3 Tenants (“Gegen”) (collectively the “Plaintiffs”), by and through their attorneys, Christensen
4 James & Martin, hereby submit this Reply in Support of their Motion to Amend Order Granting
5 In Part and Denying In Part Plaintiffs’ Motion For Attorney’s Fees and Costs Pursuant to NRC
6 52(B).

7 **A. Plaintiffs Requested the Court to Amend, Not Reconsider, its Order**

8 The Lytle Trust’s Opposition highlights why amendment of the Order is appropriate and
9 necessary here. The Lytle Trust acknowledges that there is at least room for different
10 interpretation, if not inconsistencies, which the Lytle Trust argues can be resolved by removing
11 certain conclusions of law. While we disagree on the Court’s intent and the appropriate
12 amendment, there is at least agreement that some amendment would go a long way to resolving
13 remaining disputes between the parties.

14 The purpose of the Motion was to request that the Court amend its Order Granting In Part
15 and Denying In Part Plaintiffs’ Motion For Attorney’s Fees and Costs in one of two possible
16 ways: 1) explain the reasons why the Court denied an award of fees and costs incurred by the
17 Plaintiffs on appeal; or 2) change the Order to “grant” instead of “deny” fees and costs incurred
18 on appeal. While Plaintiffs believe that granting fees and costs incurred on appeal is the more
19 appropriate result in light of the remainder of the Order, they are not asking the Court to
20 reconsider its prior decision.

21 NRC 52(b) expressly authorizes the Court to “amend its findings – or make additional
22 findings.” That is exactly what the Plaintiffs have requested the Court to do here. As explained in
23 the Motion, the Order does not contain any findings explaining or supporting the express denial
24 of fees and costs related to the appeal. Naturally, as the Order is now on appeal, every word will
25 be scrutinized. An amendment explaining the Court’s conclusion will promote judicial economy.
26 Further, there is case law stating that failing to move to amend in these circumstances would
27
28

1 have prejudiced the Plaintiffs right to appeal the denial. *See Solar, Inc. v. Electric Smith Const.*
2 *& Equipment Co.*, 88 Nev. 457, 459, 499 P.2d 649, 650 (1972) (“Appellant failed to move to
3 amend the findings or judgment (NRCp 52(b)) regarding privity. Therefore, the question was not
4 preserved for appellate consideration.”).

5 The Lytle Trust argues that amendment should not be necessary because the Plaintiffs
6 drafted the Order. However, there was nothing in the Minutes that would allow the Plaintiffs to
7 draft any findings on this issue. Plaintiffs’ counsel was unwilling to take liberties or make
8 assumptions about the Court’s intent. Plaintiffs’ counsel knows its role, and it is certainly not the
9 finder of fact or the arbiter of law. Counsel for the Lytle Trust obviously did not disagree.
10 Between the two competing orders, neither contained any findings or conclusions explaining the
11 Court’s reasoning.

12 Rather, the primary dispute between the parties while negotiating the contents of the
13 Order was whether the Court granted fees and costs under the CC&Rs *at all*. The impetus of this
14 dispute arose from the Minutes, which stated, “As noted at the July 7, 2020 hearing, the Court
15 finds the CC&Rs provide a basis for attorney fee recovery.” Since the Court did not end the
16 statement by stating “here” or “in this case,” the Lytle Trust argued that the Court must have
17 *denied* an award of fees and costs under the CC&Rs. There was no such express denial from the
18 Court during the hearing or in the Minutes.

19 Further, the Minutes do not expressly state any other basis for recovery of attorney’s fees
20 or costs. How then were Plaintiffs awarded fees and costs if not under the CC&Rs? The
21 Defendants argued while negotiating the Order and do so again in their Opposition that the
22 statement regarding the CC&Rs at the beginning of the minutes was a general statement of law,
23 only. *See* Opposition at 9:3-10:12. In other words, according to the Defendants, in the Minutes
24 the Court made a completely superfluous statement of law that had no bearing on its fees award,
25 did not provide any other legal basis for its award, and then awarded fees and costs to the
26 Plaintiffs. It is as unbelievable as it sounds.

1 This fundamental disagreement with the meaning of the Minutes shows that the issues
 2 presented by the Motion predated the drafting of the Order and are not the result of any nefarious
 3 scheme to sandbag the Court, as imagined by the Lytle Trust. As explained below, the Plaintiffs
 4 did their best to reconcile the issues and navigate competing views of how the Court actually
 5 decided the fees motion. There was no intent to mislead the Court.

6 The transcript of the hearing does nothing to resolve the issue. In its only statement about
 7 the fees on appeal, the Court stated at the end of the hearing:

8 As far as the appeal itself, I guess, there's two issues there. I don't see how I can
 9 award it under Chapter 18. I guess at the end of the day it comes down to the
 10 application of the provision under the CC&Rs. I'm going to take one last quick
 11 look at it. And so I am going to award fees. It's going to be very limited. **I'm not
 sure what I'm going to do with the appeal. I'm going to take one last look at
 it.** I understand what my constraints are. But we'll get you out a decision on that
 relatively quick.

12 See Defendant's Supplement, Exhibit A, Transcript of July 7, 2020 Hearing at 36:15-24
 13 (emphasis added). The Lytle Trust argues that this statement creates "no doubt that this Court did
 14 NOT award fees on the basis of the original CC&Rs." Supplement at 5:7-8. It is not clear how
 15 the Lytle Trust goes from the uncertainty from the Court's statement "I'm not sure what I'm
 16 going to do with the appeal" all the way to *their* conclusion that "no doubt the Court did NOT
 17 award fees on the basis of the original CC&Rs." Indeed, the reference by the Court to NRS
 18 Chapter 18 was likely to NRS 18.010(2), which has limitations on appeal fees that are separate
 19 from an award under the CC&Rs. As explained below, fees and costs incurred on appeal may be
 20 awarded under a contractual fee provision.

21 The Lytle Trust argues that the Court *only* awarded fees and costs under NRS
 22 18.010(2)(b) and NRS 22.100(3). In fact, Conclusions of Law 6-7 (awarding fees under NRS
 23 18.010(2)(b) and NRS 22.100(3)) were drafted by the Lytle Trust and included in the Order at
 24 their request, but there was no express statement in the Minutes or during the hearing in this
 25 regard. However, the Plaintiffs refused to remove Conclusions 3-5 because the Minutes directly
 26 referenced the CC&Rs and the Plaintiffs could see no basis for the Lytle Trust's argument that

1 the Court had denied fees and costs under the CC&Rs. The Plaintiffs could see no reason why
2 the Court's express and only statement of the basis for the fee award should be ignored by the
3 parties. The competing orders highlighted this dispute *and the Court resolved it* by entering the
4 Order with Conclusions of Law 3-5 stating that it was awarding fees and costs under the CC&Rs.
5 The Lytle Trust's arguments undermine the Court's clear selection of the competing Order that
6 the Court believed best reflected its ruling.

7 In any event, whether the Court decides that amendment is necessary to add findings to
8 explain the denial of fees and costs incurred on appeal, to deny fees and costs under the CC&Rs
9 as Defendants suggest, or to award fees and costs incurred on appeal, there is no question that an
10 amendment is necessary.

11 The Lytle Trust cannot convert the Plaintiffs' Motion simply by arguing that it is not a
12 Rule 52(b) motion. According to the Lytle Trust's own cases: "[t]he purpose of amendment
13 under Rule 52(b) is not to upset the finality of judgments but to ensure an adequate factual record
14 for appellate review." *Villalobos v. New York Div. of Parole*, No. 09-CV-8431-WHP, 2012 WL
15 4040218, at *1 (S.D.N.Y. Sept. 13, 2012). Further, one of the purposes of Rule 52(b) is to correct
16 manifest errors of law. *Borgwarner Diversified Transmission Prod., Inc. v. United Auto.,*
17 *Aerospace, & Agric. Implement Workers of Am., Local No. 287*, No. 1:06-CV-058-LJM-TAB,
18 2008 WL 4724283, at *1 (S.D. Ind. Oct. 24, 2008). "It is said that the motion must raise
19 questions of substance by seeking reconsideration of material findings of fact or conclusions of
20 law to prevent manifest injustice..." *Wound Care Centers, Inc. v. Catalane*, No. CIV. 10-336,
21 2011 WL 3476612, at *3 (W.D. Pa. Aug. 9, 2011). There is no doubt that the Order is going to
22 be reviewed on appeal. The purpose of the Motion is to ensure there is an adequate record for the
23 appellate court, particularly as to why fees incurred on appeal were denied. Without such
24 findings, there is no record to review that decision. In the alternative, Plaintiffs provided case law
25 showing why they believe it was a manifest error to deny fees and costs incurred on appeal. Both
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1 of these options provided to the Court are consistent with the purpose of Rule 52(b), as
2 confirmed by the very cases cited by the Lytle Trust.

3 **B. Fees and Costs Were Appropriate Under the CC&Rs**

4 The Lytle Trust argues that it was improper for Plaintiffs to cite *Elwardt v. Elwardt*, No.
5 69638, 2017 WL 2591349 *2 (Nev. Ct. App. June 9, 2017), because it is an unpublished opinion.
6 The Lytle Trust is correct that *Elwardt* is an unpublished opinion, as clearly noted by the
7 Plaintiffs in the Motion, and the undersigned counsel hereby withdraws the citation because it is
8 entirely unnecessary to support the point of law. The legal arguments remain the same and are
9 supported by the other binding case law that was cited immediately following *Elwardt*, which the
10 Defendants have not disputed. These citations include the following Nevada Supreme Court
11 opinions: *Musso v. Binick*, 104 Nev. 613, 764 P.2d 477 (1988) (per curiam); *Davis v. Beling*, 128
12 Nev. 301, 278 P.3d 501 (2012). These published Nevada Supreme Court cases are important
13 because they counsel against the solution offered by the Lytle Trust to expressly deny an award
14 of fees and costs under the CC&Rs. The Court made the correct decision when it awarded fees
15 and costs under the CC&Rs and the Plaintiffs do not advocate an amendment changing those
16 findings or conclusions because it is supported by these controlling precedents.

17 Nevada allows parties to freely provide for attorney's fees "by express contractual
18 provisions." *Davis*, 128 Nev. at 321, 278 P.3d at 515; *Musso*, 104 Nev. at 614, 764 P.2d at 477.
19 If the attorney fee provision in a contract "is clear and unambiguous [then it] will be enforced as
20 written." *Davis*, 128 Nev. at 321, 278 P.3d at 515. The fee provision of the CC&Rs is such an
21 express contractual provision that the Court has previously found it to be clear in awarding fees
22 and costs to the other homeowners, including fees and costs incurred on appeal.

23 If fees were awarded under the CC&Rs, they should have included an award of fees and
24 costs incurred on appeal. In *Musso*, pursuant to the attorney's fees provision of a sales
25 agreement, the respondent filed a motion for "an award of fees for services performed on appeal
26 and for services performed in the district court in pursuing post-appeal motions to enforce the
27

judgment.” 104 Nev. at 614-15, 764 P.2d at 477-78. In a per curiam opinion, the Nevada Supreme Court held that an award of fees under a contract should include fees incurred on appeal, stating:

Although some courts have construed general provisions for attorney's fees in contracts as not including an award of attorney's fees on appeal, the majority of states now recognize that a contract provision for attorney's fees includes an award of fees for successfully bringing or defending an appeal. **The purpose of such contractual provisions, to indemnify the prevailing party for the full amount of the obligation, is defeated and a party's contract rights are diminished if the party is forced to defend its rights on appeal at its own expense.** We therefore conclude that respondents are entitled to an award of attorney's fees pursuant to the contractual agreement of the parties.

Id. (citations omitted) (emphasis added). The Court went on to explain that the district court is the appropriate forum for seeking such fees. *Id.*, 104 Nev. at 615, n.1, 764 P.2d at 478 (“This court did not hold, however, that a litigant cannot seek by motion in the district court an award of attorney's fees on appeal based on a contractual provision for such fees after prevailing in the appeal. To the extent that *Cowgill* would appear to preclude the filing of such a motion in the district court following the issuance of this court's remittitur, it is expressly disapproved.”). Thus, an award of fees under a contract should include an award of fees incurred on appeal, subject to the district court's determinations of amount and reasonableness. *Id.*, 104 Nev. at 615, 764 P.2d at 478.

C. The Plaintiffs Do Not Request An Increase to the Fee Award

The Motion does not include any request to increase the monetary amount of the Plaintiffs' fee award. Even if the Court amends the Order to state that fees and costs incurred on appeal are included, the Plaintiffs are not requesting that the Court perform any additional analysis, calculations, or adjustments to the amount of fees. This limited issue is important to the Plaintiffs because the Court's decision will a) immediately direct whether the Plaintiffs need to file a cross-appeal of the Order and b) impact future fee applications in this case which are likely to occur following resolution of the current appeals. This is an issue that must be addressed now to avoid future litigation on the issue.

1 **CONCLUSION**

2 Based upon the foregoing, the Second Fees Order should be amended to state that the
3 attorney's fees on appeal are granted, or, in the alternative, additional findings of fact and
4 conclusions of law should be provided regarding the denial so that the Plaintiffs have a clear
5 record on appeal. If the Court is inclined to grant this relief, it may so certify in accordance with
6 *Foster v. Dingwall*, 126 Nev. 49, 52–53, 228 P.3d 453, 455 (2010).

7 DATED this 6th day of October, 2020.

8 CHRISTENSEN JAMES & MARTIN

9 By: /s/ Wesley J. Smith, Esq.
10 Wesley J. Smith, Esq.
11 Nevada Bar No. 11871
12 *Attorneys for September Trust, Zobrist*
13 *Trust, Sandoval Trust and Gegen*
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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On October 6, 2020, I caused a true and correct copy of the foregoing PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION TO AMEND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS PURSUANT TO NRCP 52(B), to be served in the following manner:

☒ **ELECTRONIC SERVICE**: electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

Liz Gould (liz@foleyoakes.com)
Daniel Foley (Dan@foleyoakes.com)
Jennifer Martinez (jennifer.martinez@fnf.com)
Christina Wang (christina.wang@fnf.com)
Mia Hurtado (mia.hurtado@fnf.com)
Joel D. Henriod (JHenriod@LRRC.com)
Daniel F. Polsenberg (DPolsenberg@LRRC.com)
Dan R. Waite (DWaite@LRRC.com)

/s/ Natalie Saville
Natalie Saville

24

24

NEOJ
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
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7440 W. Sahara Avenue
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Tel.: (702) 255-1718
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Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**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)**

Date: October 13, 2020
Time: 9:00 a.m.

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

Case No.: A-17-765372-C
Dept. No.: XVI
CONSOLIDATED

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 PLEASE TAKE NOTICE that on January 14, 2021, an Order Certifying to the Supreme
13 Court Pursuant to NRAP 12(A) and NRCp 62.1 That the District Court Would Grant Plaintiffs'
14 Motion to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's
15 Fees and Costs Pursuant to NRCp 52(B) was entered by the Court, a copy of which is attached
16 hereto.

17 DATED this 15th day of January, 2021.

18 **CHRISTENSEN JAMES & MARTIN**

19 By: /s/ Wesley J. Smith, Esq.

20 Wesley J. Smith, Esq.

21 Nevada Bar No. 11871

22 Laura J. Wolff, Esq.

23 Nevada Bar No. 6869

24 7440 W. Sahara Ave.

25 Las Vegas, NV 89117

26 *Attorneys for Plaintiffs September Trust,*

27 *Zobrist Trust, Sandoval Trust, and*

28 *Dennis & Julie Gegen*

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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On January 15, 2021, I caused a true and correct copy of the foregoing 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), to be served in the following manner:

☒ **ELECTRONIC SERVICE**: electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

Joel Henriod (JHenriod@LRRC.com)
Daniel Polsenberg (DPolsenberg@LRRC.com)
Dan Waite (DWaite@LRRC.com)
Luz Horvath (lhorvath@lrrc.com)
Lisa Noltie (lnoltie@lrrc.com)
Christina Wang (christina.wang@fnf.com)
FNLG Court Filings (FNLG-Court-Filings-NV@fnf.com)


/s/ Natalie Saville
Natalie Saville

001411

1/14/2021 11:09 AM

Steven D. Grierson

CLERK OF THE COURT

**ORDR****CHRISTENSEN JAMES & MARTIN**

KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

LAURA J. WOLFF, ESQ.

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7440 W. Sahara Avenue

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Tel.: (702) 255-1718

Facsimile: (702) 255-0871

Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com

*Attorneys for September Trust, Zobrist Trust, Sandoval Trust**and Dennis & Julie Gegen***EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

**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)**

Date: October 13, 2020

Time: 9:00 a.m.

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

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion to Amend Order Granting in
13 Part Plaintiffs' Motion for Attorney's Fees and Costs Pursuant to NRCP 52(B) ("Motion to Amend"),
14 Defendant's Opposition, and Plaintiffs' Reply, which came on for hearing on October 13, 2020 at 9:00
15 a.m. in Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

16 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of September Trust,
17 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
18 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
19 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
20 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
21 Husband and Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and
22 Gegens, collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group
23 appeared on behalf of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of
24 Lewis Roca Rothgerber Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as
25 Trustees of the Lytle Trust ("Lytle Trust").

26 The Court acknowledges that it does not currently have jurisdiction to grant the Motion to
27 Amend because the underlying Order has been appealed. *See* NRAP 12A; NRCP 62.1; *Foster v.*
28 *Dingwall*, 126 Nev. 49, 52-53, 228 P.3d 453, 455 (2010). The Court finds that good cause exists and
would grant the Motion to Amend to award attorney's fees stemming from appeals under paragraph 25
of the CC&Rs. Therefore, the Court hereby enters its Order as follows:

1 **ORDER**

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that this Court certifies that it
 3 intends to grant the Motion to Amend if the Nevada Supreme Court remands the pending appeal for the
 4 purpose of doing so pursuant to NRAP 12A and NRCP 62.1.

5 **IT IS SO ORDERED.**

6 Dated this 14 day of January, 2021

7 
 8 DISTRICT COURT JUDGE ZJ

9 **Submitted by:**

10 **CHRISTENSEN JAMES & MARTIN**

11 /s/ Wesley J. Smith

12 Wesley J. Smith, Esq.
 13 Nevada Bar No. 11871
 14 7440 W. Sahara Ave.
 15 Las Vegas, NV 89117
 16 *Attorneys for Plaintiffs September Trust,*
 17 *Zobrist Trust, Sandoval Trust, and*
 18 *Dennis & Julie Gegen*

9 **Approved by:**

10 **LEWIS ROCA ROTHBERGER CHRISTIE**
 11 **LLP**

12 /s/ Joel D. Henriod

13 Joel D. Henriod, Esq.
 14 Nevada Bar 8492
 15 3993 Howard Hughes Parkway, Suite 600
 16 Las Vegas, Nevada 89169
 17 *Attorneys for Lytle Trust*

RE: Case No. A-16-747800-C - September v. Lytle - ORDR - Proposed Order Certifying to the Supreme Court Pursuant to NRAP 12(A) and NRCP 62.1

Waite, Dan R. <DWaite@lrrc.com>

Thu 1/7/2021 5:38 AM

To: Wesley Smith <wes@cjmlv.com>; Henriod, Joel D. <JHenriod@lrrc.com>

Cc: Laura Wolff <ljwt@cjmlv.com>

Good morning Wes,

The proposed Order and cover letter are acceptable. You are authorized to include Joel or my e-signature on the proposed Order and submit the documents to the Court. Thanks,

Dan

Dan R. Waite

Partner

702.474.2638 office

702.949.8398 fax

dwaite@lrrc.com

Lewis Roca
ROTHGERBER CHRISTIE

Lewis Roca Rothgerber Christie LLP

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

lrrc.com

From: Wesley Smith <wes@cjmlv.com>

Sent: Wednesday, December 30, 2020 9:29 AM

To: Henriod, Joel D. <JHenriod@lrrc.com>

Cc: Waite, Dan R. <DWaite@lrrc.com>; Laura Wolff <ljwt@cjmlv.com>

Subject: Case No. A-16-747800-C - September v. Lytle - ORDR - Proposed Order Certifying to the Supreme Court Pursuant to NRAP 12(A) and NRCP 62.1

[EXTERNAL]

Joel,

Per our discussion yesterday, attached is a proposed Order titled 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). I've also attached a cover letter that I intend to submit with the proposed order. Please indicate whether you approve of the proposed Order and if I have your permission to use your e-signature.

Wes Smith

Christensen James & Martin
7440 W. Sahara Ave.
Las Vegas, NV 89117
Tel. (702) 255-1718
Fax (702) 255-0871
wes@cjmlv.com

** Licensed in Nevada, Washington & Utah*

Disclaimer - This email and any files transmitted are confidential and are intended solely for the use of the individual or entity to whom they are addressed.

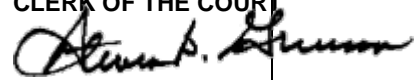
This message and any attachments are intended only for the use of the individual or entity to which they are addressed. If the reader of this message or an attachment is not the intended recipient or the employee or agent responsible for delivering the message or attachment to the intended recipient you are hereby notified that any dissemination, distribution or copying of this message or any attachment is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the sender. The information transmitted in this message and any attachments may be privileged, is intended only for the personal and confidential use of the intended recipients, and is covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521.

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NEOJ
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
Nevada Bar No. 11871
LAURA J. WOLFF, ESQ.
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7440 W. Sahara Avenue
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Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**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)**

Date: October 13, 2020
Time: 9:00 a.m.

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

Case No.: A-17-765372-C
Dept. No.: XVI

CONSOLIDATED

001417

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 PLEASE TAKE NOTICE that on April 30, 2021, an Order Granting Plaintiffs' Motion
13 to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and
14 Costs Pursuant to NRCP 52(b) was filed with the Court, a copy of which is attached hereto.

15 DATED this 4th day of May, 2021.

16 **CHRISTENSEN JAMES & MARTIN**

17 By: /s/ Wesley J. Smith, Esq.

18 Wesley J. Smith, Esq.

19 Nevada Bar No. 11871

20 Laura J. Wolff, Esq.

21 Nevada Bar No. 6869

22 7440 W. Sahara Ave.

23 Las Vegas, NV 89117

24 *Attorneys for Plaintiffs September Trust,*

25 *Zobrist Trust, Sandoval Trust, and*

26 *Dennis & Julie Gegen*

CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On May 4, 2021, I caused a true and correct copy of the foregoing 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), to be served in the following manner:

☒ **ELECTRONIC SERVICE**: electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

Joel Henriod (JHenriod@LRRC.com)
Daniel Polsenberg (DPolsenberg@LRRC.com)
Dan Waite (DWaite@LRRC.com)
Luz Horvath (lhorvath@lrrc.com)
Lisa Noltie (lnoltie@lrrc.com)
Christina Wang (christina.wang@fnf.com)
FNLG Court Filings (FNLG-Court-Filings-NV@fnf.com)

/s/ Natalie Saville
Natalie Saville

Heather S. Martin

CLERK OF THE COURT

ORDR

CHRISTENSEN JAMES & MARTIN

KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

LAURA J. WOLFF, ESQ.

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7440 W. Sahara Avenue

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Tel.: (702) 255-1718

Facsimile: (702) 255-0871

Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com

Attorneys for September Trust, Zobrist Trust, Sandoval Trust

and Dennis & Julie Gegen

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

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)

Date: October 13, 2020

Time: 9:00 a.m.

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

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

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6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
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10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion to Amend Order Granting in Part and Denying in
13 Part Plaintiffs' Motion for Attorney's Fees and Costs Pursuant to NRCP 52(B) ("Motion to Amend"),
14 Defendant's Opposition, and Plaintiffs' Reply, which came on for hearing on October 13, 2020 at 9:00
15 a.m. in Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

16 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of September Trust,
17 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry
18 R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie
19 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution
20 Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and
21 Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and Gegens,
22 collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf
23 of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of Lewis Roca Rothgerber
24 Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust
25 ("Lytle Trust").

26 The Court having considered the Motion to Amend and filings related thereto, having heard the
27 arguments of counsel, and with good cause appearing therefore, the Court hereby grants the Motion to
28 Amend. This Order shall amend and replace the Second Fees Order, defined below, and the Court hereby
enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1
2
3 1. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment
4 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
5 Judgment (“May 2018 Order”) in favor of the September Trust, Zobrist Trust, Sandoval Trust, and Gegens
6 and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

7 2. On September 11, 2018, this Court signed an Order in favor of the Plaintiffs and against
8 the Lytle Trust for attorney’s fees, litigation costs and expenses incurred through May 22, 2018 pursuant
9 to NRS 18.010(2) (“First Fees Order”).

10 3. The Original CC&Rs provide a basis for attorney fee recovery. More specifically, section
11 25 of the Original CC&Rs provides: “In any legal or equitable proceeding for the enforcement of or to
12 restrain the violation of the [CC&Rs] or any provision thereof, the losing party or parties shall pay in such
13 amount as may be fixed by the court in such proceeding.”

14 4. The Court has also awarded attorney’s fees and costs to other parties in these consolidated
15 Cases, including the Findings of Fact, Conclusions of Law and Order Granting Robert Z. Disman and
16 Yvonne A Disman’s Motion for Attorney’s Fees entered on September 6, 2019 (“Disman Fees Order”) in
17 favor of the Dismans and the Order Granting Plaintiffs’ Motion for Attorneys’ Fees and Costs and order
18 Denying Defendants’ Motion to Retax and Settle Costs entered on September 20, 2019 (“Boulden
19 Lamothe Fees Order”) in favor of Boulden and Lamothe. There, this Court awarded attorney’s fees and
20 costs to the other parties under Section 25 of the Original CC&Rs.

21 5. Since May 23, 2018, the Plaintiffs have incurred additional attorney’s fees and costs in this
22 action, including briefing and argument on the Lytle Trust’s Motion to Stay and Motion for
23 Reconsideration, status hearings, and motions related to the other parties to the consolidated case.

24 6. On October 24, 2019, the Lytle Trust filed its Renewed Application for Appointment of
25 Receiver in *Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust v. Rosemere Estates*
26 *Property Owners’ Association*, Case No. A-18-775843-C, Eighth Judicial District Court, Clark County,
27 Nevada, which case was assigned to Judge J. Kishner (the “Receivership Action”).
28

1 7. On December 18, 2019, Judge Kishner entered her Order Appointing a Receiver of
2 Defendant Rosemere Property Owners Association (the "Order Appointing Receiver"). Among other
3 rights, powers, and duties, the Order Appointing Receiver instructed the receiver to "[i]ssue and collect a
4 special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against
5 the Association." (Order Appointing Receiver at 2:19-20).

6 8. Upon learning of the Lytle Trust's actions related to the Receivership Action, the Plaintiffs
7 incurred additional attorney's fees and costs both in this consolidated case and in the Receivership Action,
8 including filing a Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt
9 for Violation of Court Orders ("Contempt Motion") on March 4, 2020 in this Case. The Lytle Trust
10 opposed the Contempt Motion and the Plaintiffs incurred additional fees and costs to respond to the Lytle
11 Trust's arguments, present oral argument, and prepare proposed orders.

12 9. On May 22, 2020, this Court entered its Findings of Fact, Conclusions of Law, and Order
13 Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in
14 Contempt for Violation of Court Orders ("Contempt Order") against the Lytle Trust. The Contempt Order
15 is hereby incorporated by reference.

16 10. In the Contempt Order, the Court relevantly ruled that a party may be held in contempt for
17 violating its orders, and that the Court may impose fines and award "reasonable expenses, including,
18 without limitation, attorney's fees, incurred by the party as a result of the contempt." Contempt Order at
19 11:9-23 (quoting NRS 22.100(3)). The Court Ordered that the Lytle Trust violated the May 2018 Order,
20 is in contempt of the May 2018 Order, shall pay a fine of \$500 to each movant, and that the Plaintiffs may
21 file applications for their reasonable expenses, including, without limitation, attorney's fees, incurred as a
22 result of the contempt.

23 11. On May 26, 2020, Plaintiffs filed their Motion for Attorney's Fees and Costs ("Attorney's
24 Fees Motion"). The Motion was opposed by the Lytle Trust on June 9, 2020 and Plaintiffs filed a Reply
25 in support on June 29, 2020.

26 12. In the Attorney's Fees Motion, Plaintiffs requested an award of their reasonable expenses,
27 including reasonable attorney's fees and costs, incurred as a result of obtaining the Contempt Order.
28

1 13. Plaintiffs also sought additional attorney's fees and costs related to the Lytle Trust's
2 appeals of the May 2018 Order and First Fees Order, which were affirmed by the Nevada Supreme Court,
3 as well as attorney's fees and costs related to the Receivership Action.

4 14. The Attorney's Fees Motion requested an award of all attorney's fees in the total amount
5 of \$149,403.20 and costs in the total amount of \$4,145.08 that they incurred from May 23, 2018 to the
6 present date pursuant to the Original CC&Rs, NRS 18.020, 18.050 and 18.010(2)(b) and NRAP 39(e).

7 15. Plaintiffs attached billing statements and a Declaration from their counsel to the Attorney's
8 Fees Motion to support the request.

9 16. On August 11, 2020, this Court entered its Order Granting in Part and Denying in Part
10 Plaintiffs' Motion for Attorney's Fees and Costs ("Second Fees Order").¹

11 17. Consistent with the Court's express conclusion in the Court Minutes entered on July 7,
12 2020, the Second Fees Order contained the following Conclusion of Law: "The Court also denies any
13 charges related to the appeal..." See Second Fees Order at 6, ¶ 14.

14 18. On August 21, 2020, the Lytle Trust filed its Notice of Appeal of the Second Fees Order
15 with the Supreme Court of Nevada, Case No. 81689 ("Appeal").

16 19. On September 8, 2020, the Plaintiffs filed their Motion to Amend, requesting that the Court
17 grant instead of deny fees and costs incurred on appeal or, in the alternative, to provide findings of fact
18 and conclusions of law to support the denial of the appeal fees.

19 20. The Motion to Amend was filed within 28 days of service of Notice of Entry of the Second
20 Fees Order. NRCP 52(b).

21 21. The Court found that good cause existed and would grant the Motion to Amend to award
22 attorney's fees stemming from appeals under paragraph 25 of the CC&Rs.

23 22. The Court acknowledged that it did not have jurisdiction to grant the Motion to Amend
24 because the underlying Order had been appealed. See NRAP 12A; NRCP 62.1; *Foster v. Dingwall*, 126
25 Nev. 49, 52-53, 228 P.3d 453, 455 (2010).

27 ¹ This Order is denoted as the "Second" Order to avoid confusion with the previous Fees Order entered
28 in favor of Plaintiffs on September 11, 2018.

23. On January 14, 2021, the Court entered its Order Certifying to the Supreme Court Pursuant to NRAP 12(A) and NRCPP 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 NRCPP 52(B) ("Certification Order"). The Certification Order is hereby incorporated by reference.

24. On April 12, 2021, the Supreme Court entered its Order of Limited Remand ("Remand Order") remanding the Appeal "to the district court for the limited purpose of resolving respondents' motion to amend the August 11, 2020, attorney fees and costs award." Remand Order at 1-2. The Remand Order is hereby incorporated by reference.

CONCLUSIONS OF LAW

1. Plaintiffs' Motion to Amend was timely filed pursuant to NRCPP 52(b).

2. Following entry of the Remand Order, the Court now has jurisdiction to grant the Motion to Amend, and consistent with its Certification Order hereby amends the Second Fees Order.

3. NRS 18.010(1) provides that, "[t]he compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law."

4. Section 25 of the CC&Rs is a mandatory provision regarding the award of attorney's fees and costs being paid by the losing party in any legal equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof.

5. Nevada allows parties to freely provide for attorney's fees "by express contractual provisions." *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012); *Musso v. Binick*, 104 Nev. 613, 614, 764 P.2d 477(1988) (per curiam). If the attorney fee provision in a contract "is clear and unambiguous [then it] will be enforced as written." *Davis*, 128 Nev. at 321, 278 P.3d at 515. Section 25 of the CC&Rs is such an express contractual provision that the Court has previously found it to be clear in awarding fees and costs to the other property owners, including fees and costs incurred on appeal.

6. The legal disputes in this case were based on the parties' rights under the Original CC&Rs and whether the CC&Rs created a Limited Purpose Association which excluded most of NRS 116, especially NRS 116.3117, from having any application to the Rosemere Subdivision.

1 7. Throughout this litigation, the Plaintiffs sought to restrain the Lytle Trust from recording
2 abstracts of judgment against their properties and collecting judgments by alternative means because the
3 Lytle Trust had no right pursuant to the CC&Rs to do so.

4 8. Applying the language of the CC&Rs, the Court concludes that the Plaintiffs are the
5 winning or prevailing parties in this litigation, the Lytle Trust was the losing party in this litigation, and
6 the assessment of attorney's fees against the losing party is mandatory under Section 25.

7 9. NRS 18.010(2)(b) provides that, "the court may make an allowance of attorney's fees to a
8 prevailing party: . . . (b) Without regard to the recovery sought, when the court finds that the claim . . . or
9 defense of the opposing party was brought or maintained without reasonable ground or to harass the
10 prevailing party." This Court based the First Fees Award on NRS 18.010(2) and does so again now as a
11 basis for awarding additional fees.

12 10. NRS 22.100(3) provides a basis for awarding fees associated with the contempt
13 proceedings in this case.

14 11. Section 25 of the CC&Rs provides a basis for awarding fees to Plaintiffs, including fees
15 and costs incurred for appeals.

16 12. The Court analyzed the Plaintiffs' attorney's fees utilizing the factors identified in *Brunzell*
17 *v. Golden Gate Nat'I Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), including the qualities of the
18 advocate, the character of the work to be done, the work actually performed by the lawyer, and the result
19 obtained.

20 13. The Plaintiffs have satisfied the *Brunzell* factors. More specifically, based on the record
21 and the Declaration of the Plaintiffs' counsel in support of the Motion, the Court finds that the qualities
22 of counsel, character of the work to be done and its difficulty, the work actually performed by Plaintiffs'
23 counsel, and the result obtained establish the reasonableness of the Plaintiffs' attorney's fees to the extent
24 awarded in this Order.

25 14. However, the Court finds that certain time and amounts billed are not compensable in this
26 matter and will reduce the award accordingly.

1 15. The Court has reviewed the Plaintiffs' submitted billing statements, which the fees charged
2 total \$149,403.20.

3 16. The Plaintiffs' fee statements include entries that are commonly defined as block billing
4 that make it difficult for the Court to determine the exact amount billed for each individual task and the
5 reasonableness of the request.

6 17. The Court denies an award of fees incurred in the Receivership Action before Judge
7 Kishner. Plaintiffs' counsel represented this amount was \$36,259.00, which the Court accepts. The denial
8 of fees incurred in the Receivership Action is without prejudice to either party's right to seek an award of
9 fees from Judge Kishner in the Receivership Action.

10 18. The Court will not award fees for work described in the briefing as clerical work, which
11 the Court has determined total \$23,374.00.

12 19. In light of the findings above, the \$149,403.20 is reduced by \$36,259.00 and \$23,374.00,
13 which leaves a difference of \$89,770.20.

14 20. Further, as suggested by the Defendant, the Court will apply a 15% discount to the
15 \$89,770.20 to further account for the block billing in the fee statements. The difference after the discount
16 is \$76,304.67.

17 21. Consequently, the Court grants Plaintiffs' Motion for Attorney's Fees and Costs, but with
18 modifications, resulting in a total fee award of \$76,304.67.

19 22. Additionally, the Court grants costs in the sum of \$4,145.08.

20 **ORDER**

21 Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing
22 therefore,

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion to Amend
24 Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs Pursuant to
25 NRCP 52(B) is GRANTED.

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Order shall amend and
2 replace the Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs
3 entered on August 11, 2020.

4 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Findings of Fact shall
5 be treated as Conclusions of Law and the Conclusions of Law shall be treated as Findings of Fact to any
6 extent necessary to effectuate the intent of this Order.

7 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion for
8 Attorney's Fees and Costs is GRANTED IN PART AND DENIED IN PART.

9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are awarded
10 in favor of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G. Zobrist, as
11 Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie
12 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution
13 Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants,
14 in the total aggregate amount of \$76,304.67 against Trudi Lee Lytle and John Allen Lytle, as Trustees of
15 the Lytle Trust;

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are awarded in favor
17 of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G. Zobrist, as Trustees
18 of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval
19 Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated
20 May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants, in the total
21 aggregate amount of \$4,145.08 against Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle
22 Trust.

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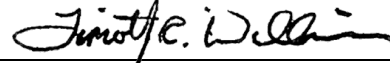
27 ///

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is ordered
 2 to pay the attorney's fees and costs as ordered herein by certified check made payable to Christensen
 3 James & Martin Special Client Trust Account in the amount of \$80,449.75 and delivered to Christensen
 4 James & Martin, or deposited with the Clerk of the Court pending resolution of the appeal from the Second
 5 Fee Order, within ten (10) days of the Notice of Entry of this Order.

6 **IT IS SO ORDERED.**

7 Dated this ____ day of _____, 2021.

Dated this 30th day of April, 2021



DISTRICT COURT JUDGE

ZJ

9
10 Submitted by:

11 **CHRISTENSEN JAMES & MARTIN**

/s/ Wesley J. Smith

12 Wesley J. Smith, Esq.

13 Nevada Bar No. 11871

14 Laura J. Wolff, Esq.

15 Nevada Bar No. 6869

16 7440 W. Sahara Ave.

Las Vegas, NV 89117

Attorneys for Plaintiffs September Trust,

Zobrist Trust, Sandoval Trust, and

Dennis & Julie Gegen

C9B 99D 318B E6BC
Timothy C. Williams
District Court Judge

CHRISTENSEN JAMES & MARTIN
 7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
 PH: (702) 255-1718 § FAX: (702) 255-0871

1 **CSERV**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Marjorie B. Boulden Trust,
7 Plaintiff(s)

CASE NO: A-16-747800-C

8 vs.

DEPT. NO. Department 16

9 Trudi Lytle, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/30/2021

16 "Daniel T. Foley, Esq." .	dan@foleyoakes.com
17 Maren Foley .	maren@foleyoakes.com
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20 Natalie Saville	nat@cjmlv.com
21 Wesley Smith	wes@cjmlv.com
22 Laura Wolff	ljw@cjmlv.com
23 Joel Henriod	JHenriod@LRRC.com
24 Daniel Polsenberg	DPolsenberg@LRRC.com
25 Dan Waite	DWaite@LRRC.com
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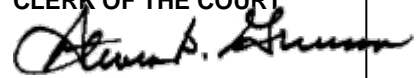
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14 DWaite@LewisRoca.com

15 *Attorneys for Defendants Trudi Lee Lytle and*
16 *John Allen Lytle, as Trustees of the Lytle Trust*

17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 MARJORIE B. BOULDEN, trustee of the
20 Marjorie B. Boulden Trust; LINDA
21 LAMOTHE; and JACQUES LAMOTHE,
22 Trustees of the Jacques & Linda
23 Lamothe Living Trust,

24 Plaintiffs,

25 v.

26 TRUDI LEE LYTLE; and JOHN ALLEN
27 LYTLE, as trustees of the Lytle Trust,
28 DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

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,

Plaintiffs,

v.

Case No. A-16-747800-C

Dep't No. 16

AMENDED NOTICE OF APPEAL

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

1 TRUDI LEE LYTLE; and JOHN ALLEN
2 LYTLE, as trustees of the Lytle Trust,
3 JOHN DOES I through V, inclusive, and
4 ROE ENTITIES I through V, inclusive,

Defendants.

5 Please take notice that defendants Trudi Lee Lytle and John Allen Lytle,
6 as Trustees of the Lytle Trust hereby appeal to the Supreme Court of Nevada
7 from:

8 1. "Order Granting in Part and Denying in Part Plaintiffs' Motion for
9 Attorney's Fees and Costs," filed August 11, 2020, notice of entry of which was
10 served electronically on August 11, 2020 (Exhibit A);

11 2. "Order Granting Plaintiffs' Motion to Amend Order Granting in
12 Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs
13 Pursuant to NRCP 52(b)," filed April 30, 2021, notice of entry of which was
14 served electronically on May 4, 2021 (Exhibit B); and

15 3. All judgments, rulings and interlocutory orders made appealable by
16 the foregoing.

17 Dated this 3rd day of June, 2021.

18 LEWIS ROCA ROTHGERBER CHRISTIE LLP

19
20 By: /s/Joel D. Henriod

21 JOEL D. HENRIOD (SBN 8492)
22 DANIEL F. POLSENBERG (SBN 2376)
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(702) 949-8200

24 *Attorneys for Defendants Trudi Lee Lytle and*
25 *John Allen Lytle, as Trustees of the Lytle*
26 *Trust*
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2021, I served the foregoing “Amended Notice of Appeal” on counsel by the Court’s electronic filing system to the persons and addresses listed below:

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*Attorneys for Robert Z. Disman and
Yvonne A. Disman*

*Attorneys for 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*

Daniel T. Foley
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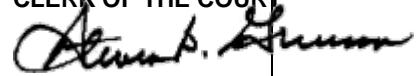
*Attorneys for Marjorie B. Boulden,
trustee of the Marjorie B. Boulden
Trust, and Linda Lamothe and
Jacques Lamothe, trustees of the
Jacques & Linda Lamothe Living
Trust*

/s/ Emily D. Kapolnai
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

EXHIBIT A

001435

EXHIBIT A



NEOJ
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR ATTORNEY'S
FEES AND COSTS**

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

Case No.: A-17-765372-C
Dept. No.: XVI

CONSOLIDATED

NOTICE IS HEREBY GIVEN, that an Order Granting in Part and Denying in Part
Plaintiffs' Motion for Attorney's Fees and Costs was entered in the above-captioned matter on
August 11, 2020. A copy of the Order is attached hereto.

001436

1 DATED this 11th day of August 2020.

CHRISTENSEN JAMES & MARTIN

2
3 By: /s/ Wesley J. Smith
4 Wesley J. Smith, Esq.
5 Nevada Bar No. 11871
6 *Attorneys for September Trust, Zobrist*
7 *Trust, Sandoval Trust and Gegen*
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CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

001437

CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On August 11, 2020, I caused a true and correct copy of the foregoing Notice of Entry of Stipulation and Order to Release Cash Supersedeas Bond, to be served in the following manner:

☒ **ELECTRONIC SERVICE:** electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

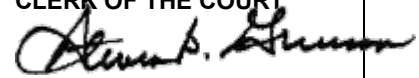
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☐ **UNITED STATES MAIL:** depositing a true and correct copy of the above-referenced document into the United States Mail with prepaid first-class postage, addressed to the parties at their last-known mailing address(es):

☐ **FACSIMILE:** By sending the above-referenced document via facsimile as follows:

☐ **E-MAIL:** electronic transmission by email to the following address(es):

/s/ Natalie Saville
 Natalie Saville



1 **ORDR**

2 **CHRISTENSEN JAMES & MARTIN**

3 KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

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Attorneys for September Trust, Zobrist Trust, Sandoval Trust

and Dennis & Julie Gegen

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 MARJORIE B. BOULDEN, TRUSTEE OF
12 THE MARJORIE B. BOULDEN TRUST,
13 LINDA LAMOTHE AND JACQUES
14 LAMOTHE, TRUSTEES OF THE
15 JACQUES & LINDA LAMOTHE LIVING
16 TRUST,

17 Plaintiffs,

18 vs.

19 TRUDI LEE LYTLE, JOHN ALLEN
20 LYTLE, THE LYTLE TRUST, DOES I
21 through X, and ROE CORPORATIONS I
22 through X,

23 Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
MOTION FOR ATTORNEY'S FEES
AND COSTS**

Date: July 7, 2020

Time: 9:00 a.m.

24 SEPTEMBER TRUST, DATED MARCH 23,
25 1972; GERRY R. ZOBRIST AND JOLIN G.
26 ZOBRIST, AS TRUSTEES OF THE GERRY
27 R. ZOBRIST AND JOLIN G. ZOBRIST
28 FAMILY TRUST; RAYNALDO G.
SANDOVAL AND JULIE MARIE
SANDOVAL GEGEN, AS TRUSTEES OF
THE RAYNALDO G. AND EVELYN A.
SANDOVAL JOINT LIVING AND

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs ("Motion"),
13 Defendant's Opposition, and Plaintiffs' Reply, as well as the Plaintiffs' Memorandum of Costs and
14 Disbursements ("Memorandum"), which came on for hearing on July 7, 2020 at 9:00 a.m. in
15 Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

16 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of September Trust,
17 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
18 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
19 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
20 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
21 Husband and Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and
22 Gegens, collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group
23 appeared on behalf of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of
24 Lewis Roca Rothgerber Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as
25 Trustees of the Lytle Trust ("Lytle Trust").

26 The Court having considered the Motion and filings related thereto, having heard the arguments
27 of counsel, and with good cause appearing therefore, the Court hereby grants the Motion in part and
28 denies the Motion in part and enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1
2 1. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment
3 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
4 Judgment (“May 2018 Order”) in favor of the September Trust, Zobrist Trust, Sandoval Trust, and
5 Gogens and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

6 2. On September 11, 2018, this Court signed an Order in favor of the Plaintiffs and against
7 the Lytle Trust for attorney’s fees, litigation costs and expenses incurred through May 22, 2018 pursuant
8 to NRS 18.010(2) (“First Fees Order”).

9 3. The Original CC&Rs provide a basis for attorney fee recovery. More specifically,
10 section 25 of the Original CC&Rs provides: “In any legal or equitable proceeding for the enforcement of
11 or to restrain the violation of the [CC&Rs] or any provision thereof, the losing party or parties shall pay
12 in such amount as may be fixed by the court in such proceeding.”

13 4. The Court has also awarded attorney’s fees and costs to other parties in these
14 consolidated Cases, including the Findings of Fact, Conclusions of Law and Order Granting Robert Z.
15 Disman and Yvonne A Disman’s Motion for Attorney’s Fees entered on September 6, 2019 (“Disman
16 Fees Order”) in favor of the Dismans and the Order Granting Plaintiffs’ Motion for Attorneys’ Fees and
17 Costs and order Denying Defendants’ Motion to Retax and Settle Costs entered on September 20, 2019
18 (“Boulden Lamothe Fees Order”) in favor of Boulden and Lamothe. There, this Court awarded
19 attorney’s fees and costs to the other parties under Section 25 of the Original CC&Rs.

20 5. Since May 23, 2018, the Plaintiffs have incurred additional attorney’s fees and costs in
21 this action, including briefing and argument on the Lytle Trust’s Motion to Stay and Motion for
22 Reconsideration, status hearings, and motions related to the other parties to the consolidated case.

23 6. On October 24, 2019, the Lytle Trust filed its Renewed Application for Appointment of
24 Receiver in *Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust v. Rosemere Estates*
25 *Property Owners’ Association*, Case No. A-18-775843-C, Eighth Judicial District Court, Clark County,
26 Nevada, which case was assigned to Judge J. Kishner (the “Receivership Action”).
27
28

1 7. On December 18, 2019, Judge Kishner entered her Order Appointing a Receiver of
2 Defendant Rosemere Property Owners Association (the "Order Appointing Receiver"). Among other
3 rights, powers, and duties, the Order Appointing Receiver instructed the receiver to "[i]ssue and collect a
4 special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against
5 the Association." (Order Appointing Receiver at 2:19-20).

6 8. Upon learning of the Lytle Trust's actions related to the Receivership Action, the
7 Plaintiffs incurred additional attorney's fees and costs both in this consolidated case and in the
8 Receivership Action, including filing a Motion for Order to Show Cause Why the Lytle Trust Should
9 Not Be Held in Contempt for Violation of Court Orders ("Contempt Motion") on March 4, 2020 in this
10 Case. The Lytle Trust opposed the Contempt Motion and the Plaintiffs incurred additional fees and costs
11 to respond to the Lytle Trust's arguments, present oral argument, and prepare proposed orders.

12 9. On May 22, 2020, this Court entered its Findings of Fact, Conclusions of Law, and Order
13 Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in
14 Contempt for Violation of Court Orders ("Contempt Order") against the Lytle Trust. The Contempt
15 Order is hereby incorporated by reference.

16 10. In the Contempt Order, the Court relevantly ruled that a party may be held in contempt
17 for violating its orders, and that the Court may impose fines and award "reasonable expenses, including,
18 without limitation, attorney's fees, incurred by the party as a result of the contempt." Contempt Order at
19 11:9-23 (quoting NRS 22.100(3)). The Court Ordered that the Lytle Trust violated the May 2018 Order,
20 is in contempt of the May 2018 Order, shall pay a fine of \$500 to each movant, and that the Plaintiffs
21 may file applications for their reasonable expenses, including, without limitation, attorney's fees,
22 incurred as a result of the contempt. The Court now finds that Plaintiffs are entitled to an award of their
23 reasonable expenses, including reasonable attorney's fees and costs, incurred as a result of obtaining the
24 Contempt Order.

25 11. Plaintiffs also seek additional attorney's fees and costs related to the Lytle Trust's
26 appeals of the May 2018 Order and First Fees Order, which were affirmed by the Nevada Supreme
27 Court, as well as attorney's fees and costs related to the Receivership Action.
28

12. The Plaintiffs filed the instant Motion requesting an award of all attorney's fees in the total amount of \$149,403.20 and costs in the total amount of \$4,145.08 that they have incurred from May 23, 2018 to the present date pursuant to the Original CC&Rs, NRS 18.020, 18.050 and 18.010(2)(b) and NRAP 39(e).

13. Plaintiffs have attached billing statements and a Declaration from their counsel to the Motion to support the request.

CONCLUSIONS OF LAW

1. NRS 18.010(1) provides that, "[t]he compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law."

2. Section 25 of the CC&Rs is a mandatory provision regarding the award of attorney's fees and costs being paid by the losing party in any legal equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof.

3. The legal disputes in this case were based on the parties' rights under the Original CC&Rs and whether the CC&Rs created a Limited Purpose Association which excluded most of NRS 116, especially NRS 116.3117, from having any application to the Rosemere Subdivision.

4. Throughout this litigation, the Plaintiffs sought to restrain the Lytle Trust from recording abstracts of judgment against their properties and collecting judgments by alternative means because the Lytle Trust had no right pursuant to the CC&Rs to do so.

5. Applying the language of the CC&Rs, the Court concludes that the Plaintiffs are the winning or prevailing parties in this litigation, the Lytle Trust was the losing party in this litigation, and the assessment of attorney's fees against the losing party is mandatory under Section 25.

6. NRS 18.010(2)(b) provides that, "the court may make an allowance of attorney's fees to a prevailing party: . . . (b) Without regard to the recovery sought, when the court finds that the claim . . . or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party." This Court based the First Fees Award on NRS 18.010(2) and does so again now as a basis for awarding additional fees.

1 7. NRS 22.100(3) provides a basis for awarding fees associated with the contempt
2 proceedings in this case.

3 8. The Court analyzed the Plaintiffs' attorney's fees utilizing the factors identified in
4 *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), including the qualities of
5 the advocate, the character of the work to be done, the work actually performed by the lawyer, and the
6 result obtained.

7 9. The Plaintiffs have satisfied the *Brunzell* factors. More specifically, based on the record
8 and the Declaration of the Plaintiffs' counsel in support of the Motion, the Court finds that the qualities
9 of counsel, character of the work to be done and its difficulty, the work actually performed by Plaintiffs'
10 counsel, and the result obtained establish the reasonableness of the Plaintiffs' attorney's fees to the
11 extent awarded in this Order.

12 10. However, the Court finds that certain time and amounts billed are not compensable in this
13 matter and will reduce the award accordingly.

14 11. The Court has reviewed the Plaintiffs' submitted billing statements, which the fees
15 charged total \$149,403.20.

16 12. The Plaintiffs' fee statements include entries that are commonly defined as block billing
17 that make it difficult for the Court to determine the exact amount billed for each individual task and the
18 reasonableness of the request.

19 13. The Court denies an award of fees incurred in the Receivership Action before Judge
20 Kishner. Plaintiffs' counsel represented this amount was \$36,259.00, which the Court accepts. The
21 denial of fees incurred in the Receivership Action is without prejudice to either party's right to seek an
22 award of fees from Judge Kishner in the Receivership Action.

23 14. The Court also denies any charges related to the appeal and will not award fees for work
24 described in the briefing as clerical work, which the Court has determined total \$23,374.00.

25 15. In light of the findings above, the \$149,403.20 is reduced by \$36,259.00 and \$23,374.00,
26 which leaves a difference of \$89,770.20.

CHRISTENSEN, JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

001445

ORDER

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that costs are awarded in favor of Plaintiffs 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

1 Tenants, in the total aggregate amount of \$4,145.08 against Trudi Lee Lytle and John Allen Lytle, as
 2 Trustees of the Lytle Trust.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is ordered
 4 to pay the attorney's fees and costs as ordered herein by certified check made payable to Christensen
 5 James & Martin Special Client Trust Account in the amount of \$80,449.75 and delivered to Christensen
 6 James & Martin within ten (10) days of the Notice of Entry of this Order.

7 **IT IS SO ORDERED.**

8 Dated this 10th day of August, 2020.

9 
 10 DISTRICT COURT JUDGE Cg

11 **Submitted by:**

12 **CHRISTENSEN JAMES & MARTIN**

13 /s/ Wesley J. Smith

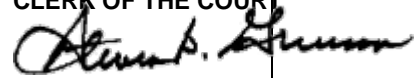
14 Wesley J. Smith, Esq.
 15 Nevada Bar No. 11871
 16 Laura J. Wolff, Esq.
 17 Nevada Bar No. 6869
 18 7440 W. Sahara Ave.
 19 Las Vegas, NV 89117
 20 *Attorneys for Plaintiffs September Trust,*
 21 *Zobrist Trust, Sandoval Trust, and*
 22 *Dennis & Julie Gegen*

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EXHIBIT B

001447

EXHIBIT B



NEOJ
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ.
Nevada Bar No. 175
WESLEY J. SMITH, ESQ.
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

**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)**

Date: October 13, 2020
Time: 9:00 a.m.

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

Case No.: A-17-765372-C
Dept. No.: XVI

CONSOLIDATED

001448

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 PLEASE TAKE NOTICE that on April 30, 2021, an Order Granting Plaintiffs' Motion
13 to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and
14 Costs Pursuant to NRCP 52(b) was filed with the Court, a copy of which is attached hereto.

15 DATED this 4th day of May, 2021.

16 **CHRISTENSEN JAMES & MARTIN**

17 By: /s/ Wesley J. Smith, Esq.

18 Wesley J. Smith, Esq.

19 Nevada Bar No. 11871

20 Laura J. Wolff, Esq.

21 Nevada Bar No. 6869

22 7440 W. Sahara Ave.

23 Las Vegas, NV 89117

24 *Attorneys for Plaintiffs September Trust,*

25 *Zobrist Trust, Sandoval Trust, and*

26 *Dennis & Julie Gegen*

CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On May 4, 2021, I caused a true and correct copy of the foregoing 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), to be served in the following manner:

☒ **ELECTRONIC SERVICE**: electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

Joel Henriod (JHenriod@LRRC.com)
Daniel Polsenberg (DPolsenberg@LRRC.com)
Dan Waite (DWaite@LRRC.com)
Luz Horvath (lhorvath@lrrc.com)
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Christina Wang (christina.wang@fnf.com)
FNLG Court Filings (FNLG-Court-Filings-NV@fnf.com)

/s/ Natalie Saville
Natalie Saville

Heather S. Martin

CLERK OF THE COURT

ORDR

CHRISTENSEN JAMES & MARTIN

KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

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Attorneys for September Trust, Zobrist Trust, Sandoval Trust

and Dennis & Julie Gegen

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST,
LINDA LAMOTHE AND JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE LIVING
TRUST,

Plaintiffs,

vs.

TRUDI LEE LYTLE, JOHN ALLEN
LYTLE, THE LYTLE TRUST, DOES I
through X, and ROE CORPORATIONS I
through X,

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

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)

Date: October 13, 2020

Time: 9:00 a.m.

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

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

1 DEVOLUTION TRUST DATED MAY 27,
2 1992; and DENNIS A. GEGEN AND JULIE
3 S. GEGEN, HUSBAND AND WIFE, AS
4 JOINT TENANTS,

5 Plaintiffs,

6 vs.

7 TRUDI LEE LYTLE AND JOHN ALLEN
8 LYTLE, AS TRUSTEES OF THE LYTLE
9 TRUST; JOHN DOES I through V; and ROE
10 ENTITIES I through V, inclusive,

11 Defendants.

12 Presently before the Court is Plaintiffs' Motion to Amend Order Granting in Part and Denying in
13 Part Plaintiffs' Motion for Attorney's Fees and Costs Pursuant to NRCP 52(B) ("Motion to Amend"),
14 Defendant's Opposition, and Plaintiffs' Reply, which came on for hearing on October 13, 2020 at 9:00
15 a.m. in Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

16 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of September Trust,
17 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry
18 R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie
19 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution
20 Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and
21 Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and Gegens,
22 collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf
23 of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of Lewis Roca Rothgerber
24 Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust
25 ("Lytle Trust").

26 The Court having considered the Motion to Amend and filings related thereto, having heard the
27 arguments of counsel, and with good cause appearing therefore, the Court hereby grants the Motion to
28 Amend. This Order shall amend and replace the Second Fees Order, defined below, and the Court hereby
enters the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1
2
3 1. On May 24, 2018, this Court entered its Order Granting Motion for Summary Judgment
4 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary
5 Judgment (“May 2018 Order”) in favor of the September Trust, Zobrist Trust, Sandoval Trust, and Gegens
6 and against the Lytle Trust. The May 2018 Order is hereby incorporated by reference.

7 2. On September 11, 2018, this Court signed an Order in favor of the Plaintiffs and against
8 the Lytle Trust for attorney’s fees, litigation costs and expenses incurred through May 22, 2018 pursuant
9 to NRS 18.010(2) (“First Fees Order”).

10 3. The Original CC&Rs provide a basis for attorney fee recovery. More specifically, section
11 25 of the Original CC&Rs provides: “In any legal or equitable proceeding for the enforcement of or to
12 restrain the violation of the [CC&Rs] or any provision thereof, the losing party or parties shall pay in such
13 amount as may be fixed by the court in such proceeding.”

14 4. The Court has also awarded attorney’s fees and costs to other parties in these consolidated
15 Cases, including the Findings of Fact, Conclusions of Law and Order Granting Robert Z. Disman and
16 Yvonne A Disman’s Motion for Attorney’s Fees entered on September 6, 2019 (“Disman Fees Order”) in
17 favor of the Dismans and the Order Granting Plaintiffs’ Motion for Attorneys’ Fees and Costs and order
18 Denying Defendants’ Motion to Retax and Settle Costs entered on September 20, 2019 (“Boulden
19 Lamothe Fees Order”) in favor of Boulden and Lamothe. There, this Court awarded attorney’s fees and
20 costs to the other parties under Section 25 of the Original CC&Rs.

21 5. Since May 23, 2018, the Plaintiffs have incurred additional attorney’s fees and costs in this
22 action, including briefing and argument on the Lytle Trust’s Motion to Stay and Motion for
23 Reconsideration, status hearings, and motions related to the other parties to the consolidated case.

24 6. On October 24, 2019, the Lytle Trust filed its Renewed Application for Appointment of
25 Receiver in *Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust v. Rosemere Estates*
26 *Property Owners’ Association*, Case No. A-18-775843-C, Eighth Judicial District Court, Clark County,
27 Nevada, which case was assigned to Judge J. Kishner (the “Receivership Action”).
28

1 7. On December 18, 2019, Judge Kishner entered her Order Appointing a Receiver of
2 Defendant Rosemere Property Owners Association (the "Order Appointing Receiver"). Among other
3 rights, powers, and duties, the Order Appointing Receiver instructed the receiver to "[i]ssue and collect a
4 special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against
5 the Association." (Order Appointing Receiver at 2:19-20).

6 8. Upon learning of the Lytle Trust's actions related to the Receivership Action, the Plaintiffs
7 incurred additional attorney's fees and costs both in this consolidated case and in the Receivership Action,
8 including filing a Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt
9 for Violation of Court Orders ("Contempt Motion") on March 4, 2020 in this Case. The Lytle Trust
10 opposed the Contempt Motion and the Plaintiffs incurred additional fees and costs to respond to the Lytle
11 Trust's arguments, present oral argument, and prepare proposed orders.

12 9. On May 22, 2020, this Court entered its Findings of Fact, Conclusions of Law, and Order
13 Granting Plaintiffs' Motion for Order to Show Cause Why the Lytle Trust Should Not Be Held in
14 Contempt for Violation of Court Orders ("Contempt Order") against the Lytle Trust. The Contempt Order
15 is hereby incorporated by reference.

16 10. In the Contempt Order, the Court relevantly ruled that a party may be held in contempt for
17 violating its orders, and that the Court may impose fines and award "reasonable expenses, including,
18 without limitation, attorney's fees, incurred by the party as a result of the contempt." Contempt Order at
19 11:9-23 (quoting NRS 22.100(3)). The Court Ordered that the Lytle Trust violated the May 2018 Order,
20 is in contempt of the May 2018 Order, shall pay a fine of \$500 to each movant, and that the Plaintiffs may
21 file applications for their reasonable expenses, including, without limitation, attorney's fees, incurred as a
22 result of the contempt.

23 11. On May 26, 2020, Plaintiffs filed their Motion for Attorney's Fees and Costs ("Attorney's
24 Fees Motion"). The Motion was opposed by the Lytle Trust on June 9, 2020 and Plaintiffs filed a Reply
25 in support on June 29, 2020.

26 12. In the Attorney's Fees Motion, Plaintiffs requested an award of their reasonable expenses,
27 including reasonable attorney's fees and costs, incurred as a result of obtaining the Contempt Order.
28

1 13. Plaintiffs also sought additional attorney's fees and costs related to the Lytle Trust's
2 appeals of the May 2018 Order and First Fees Order, which were affirmed by the Nevada Supreme Court,
3 as well as attorney's fees and costs related to the Receivership Action.

4 14. The Attorney's Fees Motion requested an award of all attorney's fees in the total amount
5 of \$149,403.20 and costs in the total amount of \$4,145.08 that they incurred from May 23, 2018 to the
6 present date pursuant to the Original CC&Rs, NRS 18.020, 18.050 and 18.010(2)(b) and NRAP 39(e).

7 15. Plaintiffs attached billing statements and a Declaration from their counsel to the Attorney's
8 Fees Motion to support the request.

9 16. On August 11, 2020, this Court entered its Order Granting in Part and Denying in Part
10 Plaintiffs' Motion for Attorney's Fees and Costs ("Second Fees Order").¹

11 17. Consistent with the Court's express conclusion in the Court Minutes entered on July 7,
12 2020, the Second Fees Order contained the following Conclusion of Law: "The Court also denies any
13 charges related to the appeal..." See Second Fees Order at 6, ¶ 14.

14 18. On August 21, 2020, the Lytle Trust filed its Notice of Appeal of the Second Fees Order
15 with the Supreme Court of Nevada, Case No. 81689 ("Appeal").

16 19. On September 8, 2020, the Plaintiffs filed their Motion to Amend, requesting that the Court
17 grant instead of deny fees and costs incurred on appeal or, in the alternative, to provide findings of fact
18 and conclusions of law to support the denial of the appeal fees.

19 20. The Motion to Amend was filed within 28 days of service of Notice of Entry of the Second
20 Fees Order. NRCP 52(b).

21 21. The Court found that good cause existed and would grant the Motion to Amend to award
22 attorney's fees stemming from appeals under paragraph 25 of the CC&Rs.

23 22. The Court acknowledged that it did not have jurisdiction to grant the Motion to Amend
24 because the underlying Order had been appealed. See NRAP 12A; NRCP 62.1; *Foster v. Dingwall*, 126
25 Nev. 49, 52-53, 228 P.3d 453, 455 (2010).

26
27 ¹ This Order is denoted as the "Second" Order to avoid confusion with the previous Fees Order entered
28 in favor of Plaintiffs on September 11, 2018.

23. On January 14, 2021, the Court entered its Order Certifying to the Supreme Court Pursuant to NRAP 12(A) and NRCPP 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 NRCPP 52(B) ("Certification Order"). The Certification Order is hereby incorporated by reference.

24. On April 12, 2021, the Supreme Court entered its Order of Limited Remand ("Remand Order") remanding the Appeal "to the district court for the limited purpose of resolving respondents' motion to amend the August 11, 2020, attorney fees and costs award." Remand Order at 1-2. The Remand Order is hereby incorporated by reference.

CONCLUSIONS OF LAW

1. Plaintiffs' Motion to Amend was timely filed pursuant to NRCPP 52(b).

2. Following entry of the Remand Order, the Court now has jurisdiction to grant the Motion to Amend, and consistent with its Certification Order hereby amends the Second Fees Order.

3. NRS 18.010(1) provides that, "[t]he compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law."

4. Section 25 of the CC&Rs is a mandatory provision regarding the award of attorney's fees and costs being paid by the losing party in any legal equitable proceeding for the enforcement of or to restrain the violation of the CC&Rs or any provision thereof.

5. Nevada allows parties to freely provide for attorney's fees "by express contractual provisions." *Davis v. Beling*, 128 Nev. 301, 321, 278 P.3d 501, 515 (2012); *Musso v. Binick*, 104 Nev. 613, 614, 764 P.2d 477(1988) (per curiam). If the attorney fee provision in a contract "is clear and unambiguous [then it] will be enforced as written." *Davis*, 128 Nev. at 321, 278 P.3d at 515. Section 25 of the CC&Rs is such an express contractual provision that the Court has previously found it to be clear in awarding fees and costs to the other property owners, including fees and costs incurred on appeal.

6. The legal disputes in this case were based on the parties' rights under the Original CC&Rs and whether the CC&Rs created a Limited Purpose Association which excluded most of NRS 116, especially NRS 116.3117, from having any application to the Rosemere Subdivision.

1 7. Throughout this litigation, the Plaintiffs sought to restrain the Lytle Trust from recording
2 abstracts of judgment against their properties and collecting judgments by alternative means because the
3 Lytle Trust had no right pursuant to the CC&Rs to do so.

4 8. Applying the language of the CC&Rs, the Court concludes that the Plaintiffs are the
5 winning or prevailing parties in this litigation, the Lytle Trust was the losing party in this litigation, and
6 the assessment of attorney's fees against the losing party is mandatory under Section 25.

7 9. NRS 18.010(2)(b) provides that, "the court may make an allowance of attorney's fees to a
8 prevailing party: . . . (b) Without regard to the recovery sought, when the court finds that the claim . . . or
9 defense of the opposing party was brought or maintained without reasonable ground or to harass the
10 prevailing party." This Court based the First Fees Award on NRS 18.010(2) and does so again now as a
11 basis for awarding additional fees.

12 10. NRS 22.100(3) provides a basis for awarding fees associated with the contempt
13 proceedings in this case.

14 11. Section 25 of the CC&Rs provides a basis for awarding fees to Plaintiffs, including fees
15 and costs incurred for appeals.

16 12. The Court analyzed the Plaintiffs' attorney's fees utilizing the factors identified in *Brunzell*
17 *v. Golden Gate Nat'I Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), including the qualities of the
18 advocate, the character of the work to be done, the work actually performed by the lawyer, and the result
19 obtained.

20 13. The Plaintiffs have satisfied the *Brunzell* factors. More specifically, based on the record
21 and the Declaration of the Plaintiffs' counsel in support of the Motion, the Court finds that the qualities
22 of counsel, character of the work to be done and its difficulty, the work actually performed by Plaintiffs'
23 counsel, and the result obtained establish the reasonableness of the Plaintiffs' attorney's fees to the extent
24 awarded in this Order.

25 14. However, the Court finds that certain time and amounts billed are not compensable in this
26 matter and will reduce the award accordingly.

1 15. The Court has reviewed the Plaintiffs' submitted billing statements, which the fees charged
2 total \$149,403.20.

3 16. The Plaintiffs' fee statements include entries that are commonly defined as block billing
4 that make it difficult for the Court to determine the exact amount billed for each individual task and the
5 reasonableness of the request.

6 17. The Court denies an award of fees incurred in the Receivership Action before Judge
7 Kishner. Plaintiffs' counsel represented this amount was \$36,259.00, which the Court accepts. The denial
8 of fees incurred in the Receivership Action is without prejudice to either party's right to seek an award of
9 fees from Judge Kishner in the Receivership Action.

10 18. The Court will not award fees for work described in the briefing as clerical work, which
11 the Court has determined total \$23,374.00.

12 19. In light of the findings above, the \$149,403.20 is reduced by \$36,259.00 and \$23,374.00,
13 which leaves a difference of \$89,770.20.

14 20. Further, as suggested by the Defendant, the Court will apply a 15% discount to the
15 \$89,770.20 to further account for the block billing in the fee statements. The difference after the discount
16 is \$76,304.67.

17 21. Consequently, the Court grants Plaintiffs' Motion for Attorney's Fees and Costs, but with
18 modifications, resulting in a total fee award of \$76,304.67.

19 22. Additionally, the Court grants costs in the sum of \$4,145.08.

20 **ORDER**

21 Based upon the Findings of Fact and Conclusions of Law above, and good cause appearing
22 therefore,

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion to Amend
24 Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs Pursuant to
25 NRCP 52(B) is GRANTED.

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that this Order shall amend and
2 replace the Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs
3 entered on August 11, 2020.

4 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Findings of Fact shall
5 be treated as Conclusions of Law and the Conclusions of Law shall be treated as Findings of Fact to any
6 extent necessary to effectuate the intent of this Order.

7 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion for
8 Attorney's Fees and Costs is GRANTED IN PART AND DENIED IN PART.

9 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are awarded
10 in favor of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G. Zobrist, as
11 Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie
12 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution
13 Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants,
14 in the total aggregate amount of \$76,304.67 against Trudi Lee Lytle and John Allen Lytle, as Trustees of
15 the Lytle Trust;

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are awarded in favor
17 of Plaintiffs September Trust, dated March 23, 1972 , Gerry R. Zobrist and Jolin G. Zobrist, as Trustees
18 of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval
19 Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated
20 May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants, in the total
21 aggregate amount of \$4,145.08 against Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle
22 Trust.

23 ///

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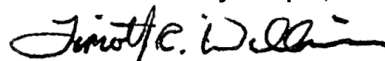
27 ///

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is ordered
 2 to pay the attorney's fees and costs as ordered herein by certified check made payable to Christensen
 3 James & Martin Special Client Trust Account in the amount of \$80,449.75 and delivered to Christensen
 4 James & Martin, or deposited with the Clerk of the Court pending resolution of the appeal from the Second
 5 Fee Order, within ten (10) days of the Notice of Entry of this Order.

6 **IT IS SO ORDERED.**

7 Dated this ____ day of _____, 2021.

Dated this 30th day of April, 2021



DISTRICT COURT JUDGE

ZJ

9
10 Submitted by:

C9B 99D 318B E6BC
 Timothy C. Williams
 District Court Judge

11 **CHRISTENSEN JAMES & MARTIN**

/s/ Wesley J. Smith

12 Wesley J. Smith, Esq.

13 Nevada Bar No. 11871

14 Laura J. Wolff, Esq.

Nevada Bar No. 6869

7440 W. Sahara Ave.

Las Vegas, NV 89117

Attorneys for Plaintiffs September Trust,

Zobrist Trust, Sandoval Trust, and

Dennis & Julie Gegen

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1 **CSERV**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Marjorie B. Boulden Trust,
7 Plaintiff(s)

CASE NO: A-16-747800-C

8 vs.

DEPT. NO. Department 16

9 Trudi Lytle, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 4/30/2021

16 "Daniel T. Foley, Esq." .	dan@foleyoakes.com
17 Maren Foley .	maren@foleyoakes.com
18 Liz Gould	liz@foleyoakes.com
19 Daniel Foley	Dan@foleyoakes.com
20 Natalie Saville	nat@cjmlv.com
21 Wesley Smith	wes@cjmlv.com
22 Laura Wolff	ljw@cjmlv.com
23 Joel Henriod	JHenriod@LRRC.com
24 Daniel Polsenberg	DPolsenberg@LRRC.com
25 Dan Waite	DWaite@LRRC.com
26 Luz Horvath	lhorvath@lrrc.com

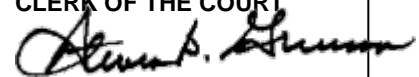
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27

27



1 **ANOA**
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4 DANIEL F. POLSENBERG
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15 *Attorneys for Defendants Trudi Lee Lytle and*
16 *John Allen Lytle, as Trustees of the Lytle Trust*

17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 MARJORIE B. BOULDEN, trustee of the
20 Marjorie B. Boulden Trust; LINDA
21 LAMOTHE; and JACQUES LAMOTHE,
22 Trustees of the Jacques & Linda
23 Lamothe Living Trust,

24 Plaintiffs,

25 v.

26 TRUDI LEE LYTLE; and JOHN ALLEN
27 LYTLE, as trustees of the Lytle Trust,
28 DOES I through X, inclusive, and ROE
CORPORATIONS I through X,

Defendants.

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,

Plaintiffs,

v.

Case No. A-16-747800-C

Dep't No. 16

AMENDED CASE
APPEAL STATEMENT

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

TRUDI LEE LYTLE; and JOHN ALLEN
LYTLE, as trustees of the Lytle Trust,
JOHN DOES I through V, inclusive, and
ROE ENTITIES I through V, inclusive,

Defendants.

1. Name of appellants filing this case appeal statement:

Defendants Trudi Lee Lytle and John Allen Lytle, as trustees of the
Lytle Trust

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Timothy C. Williams

3. Identify each appellant and the name and address of counsel for each
appellant:

*Attorneys for Appellants Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*

JOEL D. HENRIOD
DANIEL F. POLSENBERG
DAN R. WAITE
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

4. Identify each respondent and the name and address of appellate counsel,
if known, for each respondent (if the name of a respondent's appellate
counsel is unknown, indicate as much and provide the name and address
of that respondent's trial counsel):

*Attorneys for 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*

KEVIN B. CHRISTENSEN
WESLEY J. SMITH
CHRISTENSEN JAMES & MARTIN
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
(702) 255-1718

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

N/A

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Retained counsel

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Retained counsel

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

N/A

9. Indicate the date the proceedings commenced in the district court, *e.g.*, date complaint, indictment, information, or petition was filed:

"Complaint," filed December 8, 2016 in case no. A-16-7476800-C.

"Complaint," filed November 30, 2017 in case no. A-17-765372-C.

Case no. A-17-765372-C was consolidated with case no. A-16-7476800-C on February 28, 2018.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

In other lawsuits, the defendant Lytle Trust obtained three judgments (totaling approx. \$1.8 million) against the Rosemere Estate Property Owners Association ("Association"). The Lytle Trust is a member of the Association. This action stems from a dispute over the validity and legal effect of abstracts of judgments the Lytle Trust recorded against certain residential property owned by other Association members. The district court (Judge T. Williams) granted summary judgment in favor of plaintiffs and entered a permanent injunction against the Lytle Trust precluding action to enforce their judgments directly against the other Association members (the "May 2018 order"). The Dismans were added as parties to the litigation when they purchased the Boulden property. The district court awarded fees and costs to plaintiffs on September 20, 2019.

Following affirmance of the May 2018 order by this Court on July 15, 2020, Plaintiffs moved the district court for an additional

award of fees incurred post-judgment. The district court granted the majority of fees requested on August 11, 2020. Defendants timely appealed.

Defendants now formally amend the scope of that appeal to include the subsequent "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)," filed April 30, 2021, notice of entry of which was served electronically on May 4, 2021.

11. Indicate whether the case has previously been the subject of an appeal or an original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding.

Lytle v. Boulden, Case No. 73039

Lytle v. September Trust, Dated March 23, 1972, Case No. 76198

Lytle v. September Trust, Dated March 23, 1972, Case No. 77007

Lytle v. Disman, Case No. 79753

Lytle v. Boulden, Case No. 79776

Lytle v. September Trust, Dated March 23, 1972, Case No. 81390

Lytle v. September Trust, Dated March 23, 1972, Case No. 81689

12. Indicate whether this appeal involves child custody or visitation:

This case does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

No. The related appeal already has been removed from the Court's settlement program.

Dated this 3rd day of June, 2021.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/Joel D. Henriod

JOEL D. HENRIOD (SBN 8492)

DANIEL F. POLSENBERG (SBN 2376)

DAN R. WAITE (SBN 4078)

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(702) 949-8200

Attorneys for Defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2021, I served the foregoing “Amended Case Appeal Statement” on counsel by the Court’s electronic filing system to the persons and addresses listed below:

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*Attorneys for Robert Z. Disman and
Yvonne A. Disman*

*Attorneys for 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*

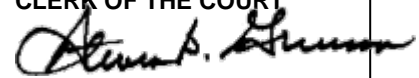
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*Attorneys for Marjorie B. Boulden,
trustee of the Marjorie B. Boulden
Trust, and Linda Lamothe and
Jacques Lamothe, trustees of the
Jacques & Linda Lamothe Living
Trust*

/s/ Emily D. Kapolnai
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

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NTSO
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DWaite@lewisroca.com
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Telephone: 702-949-8200
Facsimile: 702-949-8398

Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, et
al.,

Plaintiff,

v.

TRUDI LEE LYTLE, et al.,

Defendants,

Case No.: A-16-747800-C
Dept. No.: 16

Consolidated:

Case No.: A-17-765372-C
Dept. No.: 16

**NOTICE OF ENTRY OF STIPULATION
AND ORDER TO PARTIALLY
RELEASE AND DISTRIBUTE CASH
BOND**

SEPTEMBER TRUST, DATED MARCH 23,
1972, et al.,

Plaintiffs,

v.

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

Defendants.

Defendants.

PLEASE TAKE NOTICE that a Stipulation and Order to Partially Release and
Distribute Case Bond was entered in the above-captioned matter on June 8, 2022. A copy of said
Stipulation and Order is attached hereto.

1 Dated this 8th day of June, 2022.

2 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

3
4 By: /s/ Dan R. Waite

5 Dan R. Waite (SBN 4078)
6 Joel D. Henriod (SBN 8492)
7 3993 Howard Hughes Parkway, Suite 600
8 Las Vegas, Nevada 89169
9 (702) 949-8200

10 *Attorneys for Defendants, Trudi Lee Lytle, John Allen*
11 *Lytle as Trustees of the Lytle Trust*

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3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

LEWIS  **ROCA**

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this day, I caused a true and correct copy of the following ***“NOTICE OF ENTRY OF STIPULATION AND ORDER TO PARTIALLY RELEASE AND DISTRIBUTE CASH BOND”*** to be e-filed and served via the Court’s E-Filing System.

Wesley J. Smith
 Laura J. Wolff
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*Attorneys for Intervenors September Trust,
 Zobrist Trust, Sandoval Trust and Dennis & Julie Gegen*

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 dan@foleyoakes.com
*Attorneys for Marjorie Boulden Trust and Linda
 and Jacques Lamothe Trust*

Dated this 8th day of June, 2022

/s/ Luz Horvath
 An Employee of Lewis Roca Rothgerber Christie LLP

1 **SAO**
2 DAN R. WAITE, ESQ.
3 Nevada Bar No. 4078
4 DWaite@lewisroca.com
5 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**
6 3993 Howard Hughes Parkway, Suite 600
7 Las Vegas, Nevada 89169
8 Telephone: 702-949-8200
9 Facsimile: 702-949-8398
10 *Attorneys for Defendants*

11
12
13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 MARJORIE B. BOULDEN, TRUSTEE OF
16 THE MARJORIE B. BOULDEN TRUST, et
17 al.,

18 Plaintiff,

19 v.

20 TRUDI LEE LYTLE, et al.,

21 Defendants,

22
23 SEPTEMBER TRUST, DATED MARCH 23,
24 1972, et al.,

25 Plaintiffs,

26 v.

27 TRUDI LEE LYTLE AND JOHN ALLEN
28 LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, et al.,

Defendants.

Case No.: A-16-747800-C
Dept. No.: 16

Consolidated:

Case No.: A-17-765372-C
Dept. No.: 16

**STIPULATION AND ORDER TO
PARTIALLY RELEASE AND
DISTRIBUTE CASH BOND**

Plaintiffs September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist 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 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint

Tenants (“Gegens”) (September Trust, Zobrist Trust, Sandoval Trust and Gegens, collectively, the “Plaintiffs”), by and through their undersigned counsel, and Defendants Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust (the “Lytle Trust”), by and through their undersigned counsel, stipulate and request an order as follows:

STIPULATION

1. On or about May 22, 2020, this Court entered its “Order Granting Plaintiffs’ Motion for Order to Show Cause Why the Lytle Trust Should Not be Held in Contempt for Violation of Court Orders” (the “Contempt Order”).

2. On or about June 22, 2020, the Lytle Trust filed its Notice of Appeal from the Contempt Order.

3. On or about August 11, 2020, this Court entered its “Order Granting in Part and Denying in Part Plaintiffs’ Motion for Attorney’s Fees and Costs” (the “August 2020 Fee Order”).

4. On or about August 21, 2020, the Lytle Trust filed its Notice of Appeal from the August 2020 Fee Order.

5. On or about April 30, 2021, this Court entered its “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)” (the “April 2021 Amended Fee Order”). Pursuant to the April 2021 Amended Fee Order, the Lytle Trust (a) was ordered to pay Plaintiffs a total of \$80,449.75 in fees and costs, but (b) could deposit the \$80,449.75 with the Clerk of the Court pending the appeal from the August 2020 Fee Order. The April 2021 Amended Fee Order awarded fees and costs to the Plaintiffs in three general areas: (a) Plaintiffs’ fees and costs incurred obtaining the Contempt Order (“Contempt Proceeding Fees”), (b) Plaintiffs’ fees and costs incurred since May 23, 2018 whereby the Plaintiffs successfully defended prior appeals brought by the Lytle Trust (“Appeal Fees”), and (c) Plaintiffs’ fees and costs related to miscellaneous matters (“Miscellaneous Fees”).

6. On or about May 14, 2021, the Lytle Trust posted a cash bond with the Clerk of the Court in the amount of \$80,449.75 (“Cash Bond”) to secure payment of the Contempt

1 Proceeding Fees, the Appeal Fees, and the Miscellaneous Fees, as set forth in the April 2021
2 Amended Fee Order.

3 7. On or about June 3, 2021, the Lytle Trust filed its Amended Notice of Appeal
4 from the August 2020 Fee Order and the April 2021 Amended Fee Order.

5 8. Plaintiffs and the Lytle Trust have partially resolved some of the issues on appeal
6 (namely, the Appeal Fees and the Miscellaneous Fees, but not the Contempt Proceeding Fees)
7 and have accordingly agreed to a partial release and distribution of the Cash Bond.

8 9. Accordingly, Plaintiffs and the Lytle Trust stipulate and respectfully request the
9 Court to enter an order directing the Clerk of the Court, Court Administrator, or the Director of
10 Finance for the Eighth Judicial District Court (whichever the case may be) to partially release the
11 Cash Bond by issuing checks as follows:

12 a. In the amount of \$39,715.95 made payable to “Christensen James &
13 Martin Special Client Trust Account” and delivered to the attention of Wesley J. Smith, Esq.,
14 Christensen James & Martin, 7440 W. Sahara Avenue, Las Vegas, NV 89117.

15 b. In the amount of \$19,805.45 made payable to “John Allen Lytle or Trudi
16 Lee Lytle” and delivered to the attention of Dan R. Waite, Esq., Lewis Roca Rothgerber Christie
17 LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169.

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c. The balance of the Cash Bond—i.e., \$20,928.36—will remain on deposit with the Clerk of the Court as the cash bond to secure the Contempt Proceeding Fees, pending resolution of the appeal/writ petition from the Contempt Order and the April 2021 Amended Fee Order.

Dated this 2nd day of June, 2022.

Dated this 2nd day of June, 2022.

CHRISTENSEN JAMES & MARTIN

**LEWIS ROCA ROTHGERBER
CHRISTIE LLP**

By: /s/ Wesley J. Smith

Wesley J. Smith, Nevada Bar No. 11871
7440 W. Sahara Ave.
Las Vegas, NV 89117
(702) 255-1718

*Attorneys for Plaintiffs September Trust,
Zobrist Trust, Sandoval Trust and Dennis
& Julie Gegen*

By: /s/ Dan R. Waite

Dan R. Waite (SBN 4078)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

*Attorneys for Defendants, Trudi Lee Lytle and
John Allen Lytle, as Trustees of the Lytle Trust*

ORDER

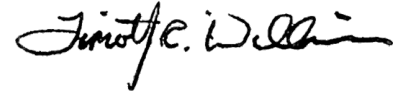
Based upon the foregoing Stipulation and good cause shown, it is hereby

ORDERED, ADJUDGED AND DECREED that the Clerk of the Court, Court Administrator, or the Director of Finance for the Eighth Judicial District Court (whichever the case may be) is directed to partially release the Cash Bond as follows:

1. The amount of \$39,715.95 made payable to “Christensen James & Martin Special Client Trust Account” and delivered to the attention of Wesley J. Smith, Esq., Christensen James & Martin, 7440 W. Sahara Avenue, Las Vegas, NV 89117.
2. The amount of \$19,805.45 made payable to “John Allen Lytle or Trudi Lee Lytle” and delivered to the attention of Dan R. Waite, Esq., Lewis Roca Rothgerber Christie LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169.
3. The balance of the Cash Bond—i.e., \$20,928.36—will remain on deposit with the

Clerk of the Court as the cash bond to secure the Contempt Proceeding Fees,
 pending resolution of the appeal/writ petition from the Contempt Order and the
 April 2021 Amended Fee Order.

Dated this 8th day of June, 2022



78B CAE 21B2 294A
 Timothy C. Williams
 District Court Judge

MH

Submitted by:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Dan R. Waite

Dan R. Waite (SBN 4078)
 3993 Howard Hughes Parkway, Suite 600
 Las Vegas, Nevada 89169
 (702) 949-8200

*Attorneys for Defendants, Trudi Lee Lytle, John Allen Lytle,
 as Trustees of the Lytle Trust*



Thu 6/2/2022 6:33 AM

Wesley Smith <wes@cjmlv.com>

Re: Case No. A-16-747800-C: Stip and Order to Partially Release and Distribute Cash Bond

To Waite, Dan R.

Cc Henriod, Joel D.; Horvath, Luz

Retention Policy LRRRC All Mail Items (365) (1 year)

Expires 6/2/2023

[Bing Maps](#)[Action Items](#)[+ Get more a](#)**[EXTERNAL]**

Dan, this looks good. You have my permission to file.

Joel, could you let me know about the stip for the appeal? I have tomorrow calendared as the deadline for the response brief.

I am boarding a plane to Seattle and will have meetings today, but may be able to find a moment if you want to discuss.

Wes Smith
Christensen James & Martin

Get [Outlook for Android](#)

From: Waite, Dan R. <DWaite@lewisroca.com>

Sent: Thursday, June 2, 2022 6:06:41 AM

To: Wesley Smith <wes@cjmlv.com>

Cc: Henriod, Joel D. <JHenriod@lewisroca.com>; Horvath, Luz <LHorvath@lewisroca.com>

Subject: Case No. A-16-747800-C: Stip and Order to Partially Release and Distribute Cash Bond

Good morning Wes,

Thank you for your redline changes. I accepted them all, as reflected on the attached finalized Stip and Order. Please advise if we are authorized to affix your e-signature and submit to the Court. Thanks,

Dan

Dan R. Waite
Partner

dwaite@lewisroca.com
D. 702.474.2638

1 **CSERV**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Marjorie B. Boulden Trust,
7 Plaintiff(s)

CASE NO: A-16-747800-C

8 vs.

DEPT. NO. Department 16

9 Trudi Lytle, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Stipulation and Order was served via the court's electronic eFile system
14 to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 6/8/2022

15 "Daniel T. Foley, Esq." .	dan@foleyoakes.com
16 Maren Foley .	maren@foleyoakes.com
17 Natalie Saville	nat@cjmlv.com
18 Wesley Smith	wes@cjmlv.com
19 Laura Wolff	ljw@cjmlv.com
20 Jessie Helm	jhelm@lewisroca.com
21 Joel Henriod	JHenriod@LRRC.com
22 Daniel Polsenberg	DPolsenberg@LRRC.com
23 Dan Waite	DWaite@LRRC.com
24 Luz Horvath	lhorvath@lewisroca.com
25 Christina Wang	christina.wang@fnf.com
26	
27	
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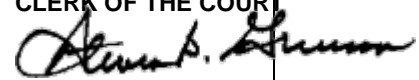
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FNLG Court Filings	FNLG-Court-Filings-NV@fnf.com
Cynthia Kelley	ckelley@lewisroca.com
Emily Kapolnai	ekapolnai@lewisroca.com
Jennifer Martinez	jennifer.martinez@fnf.com
Mia Hurtado	mia.hurtado@fnf.com

29

29



SR
CHRISTENSEN JAMES & MARTIN
KEVIN B. CHRISTENSEN, ESQ. (175)
WESLEY J. SMITH, ESQ. (11871)
LAURA J. WOLFF, ESQ. (6869)
7440 W. Sahara Avenue
Las Vegas, Nevada 89117
Tel.: (702) 255-1718
Facsimile: (702) 255-0871
Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,
and Dennis & Julie Gegen*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

Case No.: A-16-747800-C
Dept. No.: XVI

PLAINTIFFS' STATUS REPORT

Date of Hearing: October 13, 2022
Time of Hearing: 9:00 A.M.

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

Case No.: A-17-765372-C
Dept. No.: XVI

Consolidated

Plaintiffs September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist 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 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint

6/4/2022
CHRISTENSEN JAMES & MARTIN
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

001479

1 Tenants (“Gegen”) (collectively the “Plaintiffs”), hereby provide the following Status Report for
2 the “Status Check: Supreme Court Finality” currently scheduled for hearing on October 13, 2022
3 at 9:00 a.m.:

4 1) On June 22, 2020, the Lytle Trust filed a Notice of Appeal of the Court’s “Order
5 Granting Plaintiffs’ Motion for Order to Show Cause Why the Lytle Trust Should Not be Held in
6 Contempt for Violation of Court Orders” (the “Contempt Order”) entered on May 22, 2020.

7 2) The appeal of the Contempt Order was docketed with the Nevada Supreme Court
8 as Case No. 81390 (“Contempt Appeal”).

9 3) On July 31, 2020, the Lytle Trust amended the Contempt Appeal through an
10 Amended Notice of Appeal filed in this case, adding an appeal of the Court’s “Order Denying
11 Defendant Lytle Trust’s Motion for Clarification and Ex Parte Request for Order Shortening
12 Time” entered on July 15, 2020.

13 4) Following briefing on the merits, the Contempt Appeal was dismissed on
14 February 18, 2022 (*See* Order Dismissing Appeal, Case No. 81390, Doc. No. 22-05423).

15 5) Following dismissal of the Contempt Appeal, the Lytle Trust filed a “Petition for
16 Writ of Mandamus or, Alternatively, Prohibition” concerning the Contempt Order on April 11,
17 2022 (“Writ Petition”).

18 6) The Writ Petition was docketed at the Nevada Supreme Court as Case No. 84538.
19 Briefing was completed on the Writ Petition on July 7, 2022. Current status is “Screening
20 Completed.” The Writ Petition is awaiting either a decision or an order setting oral argument.

21 7) On August 21, 2020, the Lytle Trust filed a Notice of Appeal of the Court’s
22 “Order Granting in Part and Denying in Part Plaintiffs’ Motion for Attorney’s Fees and Costs”
23 entered on August 11, 2020 (“Fees Order”).

24 8) The appeal of the Fees Order was docketed with the Nevada Supreme Court as
25 Case No. 81689 (“Fees Appeal”).
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27
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1 9) On June 3, 2021, the Lytle Trust amended the Fees Appeal by filing an Amended
2 Notice of Appeal in this Case to add an appeal of the Court's "Order Granting Plaintiffs' Motion
3 to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and
4 Costs Pursuant to NRCP 52(b)" entered on April 30, 2021.

5 10) Briefing was completed on the Fees Appeal on September 1, 2022. Current status
6 is "Briefing Completed/To Screening." The Fees Appeal is awaiting either a decision or an order
7 setting oral argument.

8 11) Whereas the Writ Petition and the Fees Appeal remain pending before the Nevada
9 Supreme Court, there is no action currently necessary from the District Court.

10 DATED this 7th day of October, 2022.

CHRISTENSEN JAMES & MARTIN

11 By: /s/ Wesley J. Smith, Esq.

12 Wesley J. Smith, Esq.

13 Nevada Bar No. 11871

14 7440 W. Sahara Avenue

15 Las Vegas, NV 89117

16 Tel.: (702) 255-1718

17 Fax: (702) 255-0871

18 Attorneys for September Trust, Zobrist
19 Trust, Sandoval Trust and Gegen

20 **CERTIFICATE OF SERVICE**

21 I am an employee of Christensen James & Martin. On October 7, 2022, I caused a true
22 and correct copy of the foregoing Plaintiffs' Status Report, to be served in the following manner:

23 ☒ **ELECTRONIC SERVICE**: electronic transmission (E-Service) through the Court's
24 electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial
25 District Court of the State of Nevada.

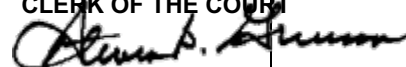
26 /s/ Wesley Smith

27 Wesley Smith

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Electronically Filed
2/8/2023 10:06 AM
Steven D. Grierson
CLERK OF THE COURT



SR

CHRISTENSEN JAMES & MARTIN

KEVIN B. CHRISTENSEN, ESQ. (175)

WESLEY J. SMITH, ESQ. (11871)

LAURA J. WOLFF, ESQ. (6869)

7440 W. Sahara Avenue

Las Vegas, Nevada 89117

Tel.: (702) 255-1718

Facsimile: (702) 255-0871

Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com

*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,**and Dennis & Julie Gegen***EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

PLAINTIFFS' STATUS REPORT**Date of Hearing: February 9, 2023****Time of Hearing: 9:00 A.M.**

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

Case No.: A-17-765372-C

Dept. No.: XVI

Consolidated

Plaintiffs September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist 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 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint

001482

1 Tenants (“Gegen”) (collectively the “Plaintiffs”), hereby provide the following Status Report for
2 the continued hearing “Status Check: Supreme Court Finality” currently scheduled for February
3 9, 2023 at 9:00 a.m.:

4 1) On May 22, 2020, the Court entered an Order Granting Plaintiffs’ Motion for
5 Order to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of
6 Court Orders (“Contempt Order”).

7 2) On June 22, 2020, the Lytle Trust filed a Notice of Appeal of the Contempt Order
8 entered on May 22, 2020, which was docketed with the Nevada Supreme Court as Case No.
9 81390 (“Contempt Appeal”).

10 3) On July 31, 2020, the Lytle Trust amended the Contempt Appeal through an
11 Amended Notice of Appeal filed in this case, adding an appeal of the Court’s “Order Denying
12 Defendant Lytle Trust’s Motion for Clarification and Ex Parte Request for Order Shortening
13 Time” entered on July 15, 2020.

14 4) Following briefing on the merits, the Contempt Appeal was dismissed on
15 February 18, 2022 (*See* Order Dismissing Appeal, Case No. 81390, Doc. No. 22-05423).

16 5) Following dismissal of the Contempt Appeal, the Lytle Trust filed a “Petition for
17 Writ of Mandamus or, Alternatively, Prohibition” concerning the Contempt Order on April 11,
18 2022 (“Writ Petition”).

19 6) The Writ Petition was docketed at the Nevada Supreme Court as Case No. 84538.

20 7) On August 21, 2020, the Lytle Trust filed a Notice of Appeal of the Court’s
21 “Order Granting in Part and Denying in Part Plaintiffs’ Motion for Attorney’s Fees and Costs”
22 entered on August 11, 2020 (“Fees Order”).

23 8) The appeal of the Fees Order was docketed with the Nevada Supreme Court as
24 Case No. 81689 (“Fees Appeal”).

25 9) On June 3, 2021, the Lytle Trust amended the Fees Appeal by filing an Amended
26 Notice of Appeal in this Case to add an appeal of the Court’s “Order Granting Plaintiffs’ Motion
27
28

1 to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and
2 Costs Pursuant to NRCPP 52(b)" entered on April 30, 2021.

3 10) Oral argument was held on December 6, 2022 before the Nevada Supreme Court
4 on the Lytle Trust's Writ Petition and Fees Appeal.

5 11) On December 29, 2022, the Nevada Supreme Court issued an "Order Affirming in
6 Docket No. 81689 and Denying Petition for Writ of Mandamus in Docket No. 84538"
7 (Document 2022-40891) (the "Writ Order"), attached hereto as Exhibit 1. In the Order, the
8 Supreme Court held as follows:

9 We further conclude that the Lytles disobeyed the order of the district court in the
10 resident actions when applying for the receiver in the receivership action by
11 arguing that under the Amended CC&Rs, "the Association has the power and
12 authority to assess each lot' or unit for the total amount of any judgments against
13 the Association in proportion to ownership within the Association." A district
14 court may hold a party in contempt for their "[d]isobedience or resistance to any
15 lawful... order . . . issued by the court." NRS 22.010(3). In holding the Lytles in
16 contempt, the district court relied, in part, on their having argued that the
17 Association, through the receiver, could make special assessments on the Property
18 Owners for the purpose of paying the judgments when the Association had no
19 power to do so under the original CC&Rs. Discerning no manifest abuse of
20 discretion in the district court's ruling, we deny the Lytles' petition for a writ of
21 mandamus.

22 Exhibit 1, Writ Order at 5-6. Because the Court denied the Writ Petition, it also necessarily
23 affirmed the attorney fees awarded as a result of the Contempt Order. *Id.* at 6.

24 12) On January 31, 2023, the Lytle Trust filed a Petition for Rehearing (Document
25 2023-03069) with the Nevada Supreme Court in Docket Nos. 81689 and 84538. The Supreme
26 Court has not requested a response from the Plaintiffs. *See* NRAP 40(d) ("No answer to a
27 petition for rehearing or reply to an answer shall be filed unless requested by the court.... A
28 petition for rehearing will ordinarily not be granted in the absence of a request for an answer.").

13) Plaintiffs anticipate issuance of a Remittitur following a decision on the Petition
for Rehearing. *See* NRAP 41(b)(1) (The timely filing of a petition for rehearing stays the
remittitur until disposition of the petition).

1 14) Assuming that the Writ Order stands, Plaintiffs anticipate filing a renewed motion
2 for fees and costs with the District Court following issuance of the Remittitur.

3 15) Until such time, there is no action currently necessary from the District Court.

4 DATED this 8th day of February, 2023. CHRISTENSEN JAMES & MARTIN

5 By: /s/ Wesley J. Smith, Esq.
6 Wesley J. Smith, Esq.
7 Nevada Bar No. 11871
8 7440 W. Sahara Avenue
9 Las Vegas, NV 89117
10 Tel.: (702) 255-1718
11 Fax: (702) 255-0871
12 Attorneys for September Trust, Zobrist
13 Trust, Sandoval Trust and Gegen
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CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On February 8, 2023, I caused a true and correct copy of the foregoing Plaintiffs' Status Report, to be served in the following manner:

☒ **ELECTRONIC SERVICE**: electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

/s/ Wesley Smith
Wesley Smith

Exhibit 1

IN THE SUPREME COURT OF THE STATE 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.

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

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
TIMOTHY C. WILLIAMS, DISTRICT
JUDGE,

Respondents,

and

SEPTEMBER TRUST, DATED MARCH
23, 1972; GERRY R. ZOBRIST AND

No. 81689

FILED

DEC 29 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 84538

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; ROBERT Z. DISMAN; AND
YVONNE A. DISMAN,
Real Parties in Interest.

*ORDER AFFIRMING IN DOCKET NO. 81689 AND DENYING
PETITION FOR A WRIT OF MANDAMUS IN DOCKET NO. 84538*

Docket No. 84538 is an original petition for a writ of mandamus or, alternatively, prohibition challenging a contempt order in a real property action. It is consolidated with Docket No. 81689, an appeal challenging an award of attorney fees and costs relating to the contempt order. Petitioners/appellants, Trudi and John Lytle as trustees of the Lytle Trust ("the Lytles"), and real parties in interest/respondents ("Property Owners") own homes that are part of non-party Rosemere Estates Property Owners Association ("Association"). After extensive litigation against the Association over assessments recorded against the Lytles' property under an amended version of the CC&Rs, the Amended CC&Rs were declared *void ab initio* and the Lytles were awarded judgments totaling more than \$1.4 million.¹ Importantly, the original CC&Rs do not allow for the Association to impose assessments on property owners. The Lytles' attempts to collect

¹The Property Owners were not parties to the cases awarding judgments against the Association.

led them to record abstracts of judgments and *lis pendens* against the Property Owners' homes. The Property Owners brought separate cases, which were later consolidated, seeking to strike the recorded judgments and enjoin future collection attempts against them (the "resident actions"). In May 2018, the district court in the resident actions permanently enjoined the Lytles from "recording or enforcing" judgments obtained against the Association against the Property Owners' homes or "taking any action in the future directly against" the Property Owners or their homes in relation to the judgments ("May 2018 Order").²

The Lytles then commenced a new action (the "receivership action") seeking the appointment of a receiver over the Association to facilitate payment of the prior judgments. The receivership action was randomly assigned to a different district court department than the one handling the resident actions. In the receivership action, the Lytles specifically requested that the receiver have the power to "[i]ssue a special assessment upon all owners within the Association, except the Lytle Trust, to satisfy (or, at least, partially satisfy) the Lytle Trust's judgments against the Association." The Lytles informed the district court in the receivership action that the Amended CC&Rs had been declared *void ab initio* in earlier litigation but nonetheless argued the Association had the authority to make assessments against individual homeowners under the Amended CC&Rs. The Lytles also did not inform the district court in the receivership action of the injunctions issued in the resident actions. Ultimately, the district

²This court affirmed that order on appeal. *Lytle v. September Trust*, Dated March 23, 1972, Nos. 76198, 77007, 2020 WL 1033050 (Nev. Mar. 2, 2020) (Order of Affirmance).

court in the receivership action appointed the receiver as requested and empowered the receiver to impose assessments on the Property Owners.

After learning of the receiver's appointment, the Property Owners filed a motion for an order to show cause in the resident actions why the Lytles should not be held in contempt for violating the May 2018 Order entered in those cases. The district court in the resident actions granted the motion, holding the Lytles in contempt and ordering the Lytles to pay attorney fees and costs to the Property Owners.

Because the district court did not manifestly abuse its discretion by holding the Lytles in contempt, we deny the requested writ relief.³ See *Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 650, 5 P.3d 569, 571 (2000) (providing that contempt orders may be challenged through a writ petition, but mandamus is typically only available to control a "manifest abuse of discretion" and "[w]hether a person is guilty of contempt is generally within the particular knowledge of the district court, and the district court's order should not lightly be overturned"). We conclude the May 2018 Order clearly and unambiguously prohibited the Lytles' future reliance on the Association's powers under the Amended CC&Rs.⁴ See *Mack-Manley v. Manley*, 122 Nev. 849, 858, 138

³While the Lytles alternatively seek a writ of prohibition, we conclude mandamus relief is proper because they do not assert that the district court exceeded its jurisdiction by entering the contempt order. See NRS 34.320.

⁴While we conclude that the Lytles were prohibited from enforcing the powers in the Amended CC&Rs, nothing in the plain text of the May 2018 Order prohibited them from seeking the appointment of a receiver over the Association. See *U.S. Bank Nat'l Ass'n v. Palmilla Dev. Co.*, 131 Nev. 72, 77, 343 P.3d 603, 606 (2015) (explaining that an appointed receiver is merely an officer of the court, with "no powers other than those conferred

P.3d 525, 532 (2006) (“An order on which a judgment of contempt is based must be clear and unambiguous.”). The May 2018 order enjoined the Lytles “from taking any action in the future directly against” the Property Owners or their homes, and included findings of fact noting that the Amended CC&Rs had no force and effect. Further, at various stages of the Lytles’ litigation, the district courts and this court issued orders that the Amended CC&Rs were *void ab initio* and the Association had no power through the original CC&Rs or NRS Chapter 116 to make assessments against the unit owners. See *Lytle v. September Trust, Dated March 23, 1972*, Nos. 76198, 77007, 2020 WL 1033050, at *2 (Nev. Mar. 2, 2020). That constitutes law of the case here. See *Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010) (stating that under the law-of-the-case doctrine when an appellate court decides a principle or rule of law either expressly or by necessary implication, “that decision governs the same issues in subsequent proceedings in that case”); *LoBue v. State ex rel. Dep’t of Highways*, 92 Nev. 529, 532, 554 P.2d 258, 260 (1976) (“The law of the first appeal is the law of the case on all subsequent appeals in which the facts are substantially the same.” (internal quotation marks omitted)).

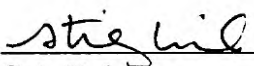
We further conclude that the Lytles disobeyed the order of the district court in the resident actions when applying for the receiver in the receivership action by arguing that under the Amended CC&Rs, “the Association has the power and authority to assess each ‘Lot’ or unit for the total amount of any judgments against the Association in proportion to ownership within the Association.” A district court may hold a party in contempt for their “[d]isobedience or resistance to any
upon him by the order of his appointment” (internal quotation marks omitted).

lawful . . . order . . . issued by the court.” NRS 22.010(3). In holding the Lytles in contempt, the district court relied, in part, on their having argued that the Association, through the receiver, could make special assessments on the Property Owners for the purpose of paying the judgments when the Association had no power to do so under the original CC&Rs. Discerning no manifest abuse of discretion in the district court’s ruling, we deny the Lytles’ petition for a writ of mandamus.

Additionally, the Lytles appeal of the attorney fee award was premised solely only on their argument that the fee award must be reversed if their petition was granted. Because we deny the petition, we necessarily affirm the attorney fees awarded as a result of the contempt order. *See, e.g., Bower v. Harrah’s Laughlin, Inc.*, 125 Nev. 470, 494-95, 215 P.3d 709, 726 (2009) (“[I]f we reverse the underlying decision of the district court that made the recipient of the costs the prevailing party, we will also reverse the costs award.”). Accordingly, we

DENY the petition in Docket No. 84538 and AFFIRM the district court order challenged in Docket No. 81689.

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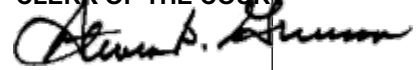
_____, J.
Herndon

cc: Hon. Timothy C. Williams, District Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Christensen James & Martin
Fidelity National Law Group/Las Vegas
Eighth District Court Clerk

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MEMO**CHRISTENSEN JAMES & MARTIN**

KEVIN B. CHRISTENSEN, ESQ. (175)

WESLEY J. SMITH, ESQ. (11871)

LAURA J. WOLFF, ESQ. (6869)

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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,**and Dennis & Julie Gegen***EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF
THE MARJORIE B. BOULDEN TRUST, *et*
al.,

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

**MEMORANDUM OF COSTS AND
DISBURSEMENTS**

SEPTEMBER TRUST, DATED MARCH 23,
1972, *et al.*,

Plaintiffs,

vs.

TRUDI LEE LYTLE AND JOHN ALLEN
LYTLE, AS TRUSTEES OF THE LYTLE
TRUST, *et al.*,

Defendants.

Case No.: A-17-765372-C

Dept. No.: XVI

Consolidated

Plaintiffs submit their verified memorandum of costs and disbursements pursuant to NRS 18.005 and NRS 18.110. The total amount of costs and disbursements sought to be taxed against the defendant is \$3,896.51, plus pre-judgment interest on allowed costs and disbursements at the legal rate from the date incurred up to and including the date the judgment in this action was

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entered on April 24, 2023¹, and post judgment interest, pursuant to NRS 17.130, from that date forward until paid.

MEMORANDUM OF COSTS AND DISBURSEMENTS

Copy Fees	\$ 775.20
Court Filing Fees	\$ 14.00
Computer Research Fees	\$3,071.01
Runner Fees	\$ 36.30
Total	\$.3,896.51

STATE OF NEVADA)

:ss.

COUNTY OF CLARK)

LAURA J. WOLFF, ESQ., being duly sworn, states:

1. That affiant is the attorney for Plaintiffs and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this affiant's knowledge and belief; and that the said disbursements have been actually, reasonably and necessarily incurred in this action.
2. That said Plaintiffs are submitting this Verified Memorandum of Costs and Disbursements for the time period of May 1, 2020 through March 31, 2023.
3. CJ&M has maintained a record of all costs for this case. The Plaintiffs' Verified Memorandum of Costs and Disbursements has been prepared from CJ&M's records and from invoices received from third-party vendors.
4. Attached as Exhibit 1 is the CJ&M Account Report showing that 3876 copies were made on December 6, 2022 in this case and particularly for oral argument at the

¹ The Supreme Court's Certificate of Judgment filed on April 24, 2024 is attached hereto as Exhibit 5.

Supreme Court in Case No. 81689, *Trudi Lee Lytle v. September Trust*, Dated March 23, 1972.

5. Attached as Exhibit 2 are four (4) receipts totaling \$14.00 for District Court filing fees in this case.
6. Attached as Exhibit 3 is a Runner Invoice dated February 10, 2023 from Junes Legal Service, Inc. for taking a courtesy copy of Plaintiffs' Status Report to this court.
7. Attached as Exhibit 4 are legal research fee invoices from Westlaw and Lexis Nexus that were billed to the Plaintiffs in this case.
8. Further your Affiant sayeth naught.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

By: Laura J. Wolff
Laura J. Wolff, Esq.

SUBSCRIBED AND SWORN to before me this
28 day of April, 2023

N. Saville

Notary Public



CERTIFICATE OF SERVICE

I am an employee of Christensen James & Martin. On April 28, 2023, I caused a true and correct copy of the foregoing Memorandum of Costs and Disbursements, to be served in the following manner:

☒ ELECTRONIC SERVICE: electronic transmission (E-Service) through the Court's electronic filing system pursuant to Rule 8.05 of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

/s/ Natalie Saville
Natalie Saville

CHRISTENSEN JAMES & MARTIN
963-1000
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117
PH: (702) 255-1718 § FAX: (702) 255-0871

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Exhibit 1

ACCOUNT. REPORT

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Account ID:	3300	Rosemere/Lytle	Case No.: A-16-747800-C
COPY		PRINT	Dept. No.: XVI
			SCAN
Total	0000000	Total	00003876
Color	0000000	Color	00000000
MonoColor	0000000	B&W	00003876
B &W	0000000		
		Total	0000000
		Copies	0000000
		Fax	0000000
		Other	0000000

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