

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 03:47 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 7

PAGES 1501-1750

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DAN R. WAITE (SBN 4078)

ABRAHAM G. SMITH (SBN 13,250)

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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

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Exhibit 2

001501

001501

Case # A-16-747800-C - Marjorie B. Boulden Trust, Plaintiff(s)vs.Trudi Lytle,...**Envelope Information****Envelope Id**

9505564

Submitted Date

3/11/2022 2:46 PM PST

Submitted User Name

wes@cjmlv.com

Filings**Filing Type**

EFileAndServe

Filing Code

Motion for Attorney Fees and Costs - MAFC (CIV)

Filing Description

Plaintiffs' Motion for Attorney's Fees and Costs

Related to Appeal of Contempt Order

Client Reference Number

zobrist lytle (contempt)

Courtesy Copies

mia.hurtado@fnf.com; jennifer.martinez@fnf.com;
rhaskin@gibbsgiden.com; telson@gibbsgiden.com;
rjackson@gibbsgiden.com; sberry@gibbsgiden.com

Filing on Behalf of

September Trust Dated March 23, 1972, Gerry R.
Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G
and Evelyn A Sandoval Joint Living and Devolution
Trust Dated, Julie S Gegen, Dennis A Gegen

Fees**Motion for Attorney Fees and Costs - MAFC (CIV)****Description**

Filing Fee

Amount

\$0.00

Filing Total: \$0.00

Total Filing Fee

\$0.00

E-File Fee

\$3.50

Envelope Total: \$3.50

Transaction Amount

\$3.50

Transaction Id

10535161

Filing Attorney

Wesley Smith

Case # A-16-747800-C - Marjorie B. Boulden Trust, Plaintiff(s)vs.Trudi Lytle,...**Envelope Information**

Envelope Id	Submitted Date	Submitted User Name
9618972	3/31/2022 10:29 AM PST	ljw@cjmlv.com

Filings

Filing Type	Filing Code
EFileAndServe	Memorandum - MEMO (CIV)

Filing Description
Memorandum of Costs and Disbursements

Client Reference Number
zobrist lytle contmpt appeal

Fees**Memorandum - MEMO (CIV)**

Description	Amount
Filing Fee	\$0.00
Filing Total:	\$0.00

Total Filing Fee	\$0.00
E-File Fee	\$3.50
Envelope Total:	\$3.50

Transaction Amount	\$3.50
Transaction Id	10646547



Case # A-16-747800-C - Marjorie B. Boulden Trust, Plaintiff(s)vs.Trudi Lytle,...**Envelope Information****Envelope Id**
9629217**Submitted Date**
4/1/2022 3:15 PM PST**Submitted User Name**
ljw@cjmlv.com**Case Information****Location**
Department 16**Category**
Civil**Case Type**
Other Title to Property**Case Initiation Date**
12/8/2016**Case #**
A-16-747800-C**Filings****Filing Type**
EFileAndServe**Filing Code**
Reply - RPLY (CIV)**Filing Description**Reply to Defendants Lytle Trust's Opposition to
Plaintiffs' Motion for Attorney's Fees and Costs
Related to Appeal of Contempt Order**Filing on Behalf of**September Trust Dated March 23, 1972, Gerry R.
Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G
and Evelyn A Sandoval Joint Living and Devolution
Trust Dated, Julie S Gegen, Dennis A Gegen**Fees****Reply - RPLY (CIV)****Description**
Filing Fee**Amount**
\$0.00**Filing Total: \$0.00****Total Filing Fee**
E-File Fee\$0.00
\$3.50**Envelope Total: \$3.50****Transaction Amount** \$3.50
Transaction Id 10657040

Case # A-16-747800-C - Marjorie B. Boulden Trust, Plaintiff(s)vs.Trudi Lytle,...

Envelope Information

Envelope Id
11284584

Submitted Date
2/8/2023 10:06 AM PST

Submitted User Name
wes@cjmlv.com

Filings

Filing Type
EFileAndServe

Filing Code
Status Report - SR (CIV)

Filing Description
Plaintiffs' Status Report

Fees

Status Report - SR (CIV)

Description

Amount

Filing Fee

\$0.00

Filing Total: \$0.00

Total Filing Fee

\$0.00

E-File Fee

\$3.50

Envelope Total: \$3.50

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Exhibit 3



Junes Legal Service, Inc.
 630 South Tenth St. Suite B
 Las Vegas, NV 89101
 Federal ID#27-0626741

RUNNER INVOICE

2/10/2023

DR346132

INVOICE DATE

INVOICE #

CLIENT
CHRISTENSEN, JAMES & MARTIN KEVIN B. CHRISTENSEN, CHTD 7440 W SAHARA AVE LAS VEGAS, NEVADA 89117

BILLING INFORMATION
ATTN: NAT - WES

	Runner	Date of Completion	File #:
Due upon receipt or by end of month.	HH	2/8/2023	ZOBRIST LYTLE
Description	QTY	Amount	
RUSH		25.00	
DOCUMENT PRINTING	13	1.30	
DOCUMENT PREP		10.00	
RE: ZOBRIST LYTLE; A-16-747800		0.00	
COURTESY COPY - PLAINTIFFS' STATUS REPORT; DEPT 16			

24/7 STATUS ON LINE
 PAYMENT OPTIONS ON OUR WEBSITE

Sales Tax (8.25%)	\$0.00
Total	\$36.30
Payments/Credits	\$0.00
Balance Due	\$36.30

NV - Process Servers License # 1068

Phone #	Fax:	E-Mail	Web Site
(702) 579-6300	(702) 259-6249	court@JunesLegal.com	https://juneslegal.com

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Exhibit 4

Account Number

42525SXBC
CHRISTENSEN JAMES &
MARTIN



Date Range

03/01/2022 - 03/31/2022

Report Date

04/04/2022

Currency

UNITED STATES
DOLLAR

Billing data reports include estimated taxes. The official invoice includes taxes based on actual usage for usage-based services or/and default location for non-usage-based services at invoice period end.

SUMMARY BY CLIENT

	CONTRACT USE			TRANSACTIONAL USE					
CLIENT	GROSS AMOUNT	ADJUSTMENT	NET AMOUNT	TRANSACTIONAL GROSS AMOUNT	TRANSACTIONAL ADJUSTMENT	TRANSACTIONAL NET AMOUNT	TOTAL BEFORE TAX	TAX*	TOTAL CHARGES
Lytle-Rosemere Estates	\$2,841.00	(\$1,530.85)	\$55.35	\$0.00	\$0.00	\$0.00	\$55.35	\$0.00	\$55.35

Date Range
06/01/2022 - 06/30/2022

Report Date
07/08/2022

SUMMARY BY CLIENT

CLIENT	CONTRACT USE			TRANSACTIONAL USE			TOTAL BEFORE TAX	TAX*	TOTAL CHARGES
	GROSS AMOUNT	ADJUSTMENT	NET AMOUNT	TRANSACTIONAL GROSS AMOUNT	TRANSACTIONAL ADJUSTMENT	TRANSACTIONAL NET AMOUNT			
****NO CLIENT ID SPECIFIED****	\$2,767.00	(\$2,704.77)	\$62.23	\$0.00	\$0.00	\$0.00	\$62.23	\$0.00	\$62.23
ROSEMERE - LYTL	\$735.00	(\$718.47)	\$16.53	\$0.00	\$0.00	\$0.00	\$16.53	\$0.00	\$16.53

Account Number

42525SXBC
CHRISTENSEN JAMES &
MARTIN



Date Range
04/01/2022 - 04/30/2022

Report Date
05/05/2022

Currency
UNITED STATES
DOLLAR

Billing data reports include estimated taxes. The official invoice includes taxes based on actual usage for usage-based services or/and default location for non-usage-based services at invoice period end.

SUMMARY BY CLIENT

CLIENT	CONTRACT USE			TRANSACTIONAL USE			TOTAL BEFORE TAX	TAX*	TOTAL CHARGES
	GROSS AMOUNT	ADJUSTMENT	NET AMOUNT	TRANSACTIONAL GROSS AMOUNT	TRANSACTIONAL ADJUSTMENT	TRANSACTIONAL NET AMOUNT			
ROSEMERE - WRIT PETITION	\$24.00	(\$23.55)	\$0.45	\$0.00	\$0.00	\$0.00	\$0.45	\$0.00	\$0.45

001511

001511

Account Number

42525SXBC
CHRISTENSEN JAMES &
MARTIN



Date Range

08/01/2022 - 08/31/2022

Report Date

09/08/2022

Currency

UNITED STATES
DOLLAR

Billing data reports include estimated taxes. The official invoice includes taxes based on actual usage for usage-based services or/and default location for non-usage-based services at invoice period end.

SUMMARY BY CLIENT

CLIENT	CONTRACT USE			TRANSACTIONAL USE			TOTAL BEFORE TAX	TAX*	TOTAL CHARGES
	GROSS AMOUNT	ADJUSTMENT	NET AMOUNT	TRANSACTIONAL GROSS AMOUNT	TRANSACTIONAL ADJUSTMENT	TRANSACTIONAL NET AMOUNT			
LYTLE-ROSEMERE	\$1,518.00	(\$1,489.42)	\$28.58	\$0.00	\$0.00	\$0.00	\$28.58	\$0.00	\$28.58

SUMMARY BY CLIENT

CONTRACT LINE	TRANSACTIONAL LINE		TOTAL REBATE TAX	TAX	TOTAL CHARGE
	GROSS AMOUNT	NET AMOUNT			
CLIENT	ADJUSTMENT	TRANSACTIONAL GROSS AMOUNT	TRANSACTIONAL ADJUSTMENT	TRANSACTIONAL NET AMOUNT	
***** END OF THE PRINT *****					
ROSEHIRE - WHITE PETITION	*	\$969.00	(\$951.88)	\$17.12	\$0.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
			\$0.00	\$0.00	\$0.00
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EXCHANGE RATE TO United States Dollar

Date	Rate	From Currency	Base Currency
01/01/2022 - 11/30/2022		UNITED STATES DOLLAR	UNITED STATES DOLLAR

Billing data reports include estimated taxes. The official invoice includes taxes based on actual usage for usage-based services and/or default location for non-usage-based services at invoice period end.

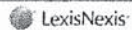


Date Range
11/01/2022 - 11/30/2022

SUMMARY BY CLIENT/USER/USER ID

Report Date
12/08/2022

CONTRACT LINE		TRANSACTIONAL LINE	
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PowerInvoice™

Date Range
01/01/2023 - 01/31/2023

Report Date
02/02/2023

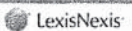
SUMMARY BY CLIENT

CLIENT	CONTRACT USE			TRANSACTIONAL USE			TOTAL BEFORE TAX	TAX*	TOTAL CHARGES
	GROSS AMOUNT	ADJUSTMENT	NET AMOUNT	TRANSACTIONAL GROSS AMOUNT	TRANSACTIONAL ADJUSTMENT	TRANSACTIONAL NET AMOUNT			
ROSEMERE ESTATES - CONTEMPT APPEAL	\$927.00	(\$870.72)	\$56.28	\$0.00	\$0.00	\$0.00	\$56.28	\$0.00	\$56.28

EXCHANGE RATE TO United States Dollar

Date	Rate	From Currency	Base Currency
FEB-02-2023	1	UNITED STATES DOLLAR	UNITED STATES DOLLAR

Billing data reports include estimated taxes. The official invoice includes taxes based on actual usage for usage-based services and default location for non-usage-based services at invoice period end.



PowerInvoice™

Date Range
01/01/2023 - 01/31/2023

Report Date
02/02/2023

DETAIL BY CLIENT/USER/DATE/ACTIVITY DESCRIPTION/TYPE OF CHARGE

CLIENT	USER NAME	USER ID	PLACE OF BUSINESS	TIMEKEEPER ID	MASTER FEATURE NAME	USER GROUP	MEMBER PROFILE NAME	DATE	PRICING CATEGORY	ACTIVITY DESCRIPTION	TYPE OF CHARGE	QUANTITY	CONTRACT USE			TRANSACTIONAL USE			TOTAL BEFORE TAX	TAX*	TOTAL CHARGES	BILLABLE WORK	NON-BILLABLE ZONE NAME	HIGH LEVEL CONTEXT
													GROSS AMOUNT	ADJUSTMENT	NET AMOUNT	TRANSACTIONAL GROSS AMOUNT	TRANSACTIONAL ADJUSTMENT	TRANSACTIONAL NET AMOUNT						

Account: KEVIN B CHRISTENSEN, LAS VEGAS NV (1000601463)
Date Range: July 01, 2020 - July 31, 2020
Report Format: Summary-Account by Client (**Targeted**)
Products: Westlaw, Westlaw Retired
Content Families: All Content Families

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Amount of Discount	Special Pricing Charge	Tax Amount	Total Charge
Account: 1000601463									
Client ROSEMERE V. LYTL									
Totals for Included		8			426.00 USD	402.78 USD	23.22 USD	0.00 USD	23.22 USD
Totals for Client ROSEMERE V. LYTL		8			426.00 USD	402.78 USD	23.22 USD	0.00 USD	23.22 USD
Client ZOBRIST V. LYTL									
Totals for Included		4			250.00 USD	236.37 USD	13.63 USD	0.00 USD	13.63 USD
Totals for Client ZOBRIST V. LYTL		4			250.00 USD	236.37 USD	13.63 USD	0.00 USD	13.63 USD
Totals for Account: 1000601463		12			676.00 USD	639.16 USD	36.84 USD	0.00 USD	36.84 USD
Report Totals - Included		12			676.00 USD	639.16 USD	36.84 USD	0.00 USD	36.84 USD
Report Totals		12			676.00 USD	639.16 USD	36.84 USD	0.00 USD	36.84 USD

Account: KEVIN B CHRISTENSEN, LAS VEGAS NV (1000601463)
Date Range: August 01, 2020 - August 31, 2020
Report Format: Summary-Account by Client (**Targeted**)
Products: Westlaw, Westlaw Retired
Content Families: All Content Families

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Amount of Discount	Special Pricing Charge	Tax Amount	Total Charge
Account: 1000601463									
Client ROSEMERE V. LYTL									
Totals for Included		8			426.00 USD	416.99 USD	9.01 USD	0.00 USD	9.01 USD
Totals for Client ROSEMERE V. LYTL		8			426.00 USD	416.99 USD	9.01 USD	0.00 USD	9.01 USD
Client ZOBRIST V. LYTL									
Totals for Included		70			3,554.00 USD	3,478.82 USD	75.18 USD	0.00 USD	75.18 USD
Totals for Client ZOBRIST V. LYTL		70			3,554.00 USD	3,478.82 USD	75.18 USD	0.00 USD	75.18 USD
Totals for Account: 1000601463		78			3,980.00 USD	3,895.80 USD	84.20 USD	0.00 USD	84.20 USD
Report Totals - Included		78			3,980.00 USD	3,895.80 USD	84.20 USD	0.00 USD	84.20 USD
Report Totals		78			3,980.00 USD	3,895.80 USD	84.20 USD	0.00 USD	84.20 USD

Account: KEVIN B CHRISTENSEN, LAS VEGAS NV (1000601463)
Date Range: September 01, 2020 - September 30, 2020
Report Format: Summary-Account by Client (**Targeted**)
Products: Westlaw, Westlaw Retired
Content Families: All Content Families

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Amount of Discount	Special Pricing Charge	Tax Amount	Total Charge
Account: 1000601463									
Client ROSEMERE									
Totals for Included		11			780.00 USD	764.83 USD	15.17 USD	0.00 USD	15.17 USD
Totals for Client ROSEMERE		11			780.00 USD	764.83 USD	15.17 USD	0.00 USD	15.17 USD
Client ROSEMERE V. LYTLE									
Totals for Included		144			7,224.00 USD	7,083.51 USD	140.49 USD	0.00 USD	140.49 USD
Totals for Client ROSEMERE V. LYTLE		144			7,224.00 USD	7,083.51 USD	140.49 USD	0.00 USD	140.49 USD
Client ZOBRIST V. LYTLE									
Totals for Included		105			5,464.00 USD	5,357.74 USD	106.26 USD	0.00 USD	106.26 USD
Totals for Client ZOBRIST V. LYTLE		105			5,464.00 USD	5,357.74 USD	106.26 USD	0.00 USD	106.26 USD
Totals for Account: 1000601463		260			13,468.00 USD	13,206.08 USD	261.92 USD	0.00 USD	261.92 USD
Report Totals - Included		260			13,468.00 USD	13,206.08 USD	261.92 USD	0.00 USD	261.92 USD
Report Totals		260			13,468.00 USD	13,206.08 USD	261.92 USD	0.00 USD	261.92 USD

Account: KEVIN B CHRISTENSEN, LAS VEGAS NV (1000601463)
Date Range: November 01, 2020 - November 30, 2020
Report Format: Summary-Account by Client (**Targeted**)
Products: Westlaw, Westlaw Retired
Content Families: All Content Families

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Amount of Discount	Special Pricing Charge	Tax Amount	Total Charge
Account: 1000601463									
Client ROSEMERE V. LYTLE									
Totals for Included		6			338.00 USD	329.95 USD	8.05 USD	0.00 USD	8.05 USD
Totals for Client ROSEMERE V. LYTLE		6			338.00 USD	329.95 USD	8.05 USD	0.00 USD	8.05 USD
Client ZOBRIST V. LYTLE									
Totals for Included		91			4,982.00 USD	4,863.37 USD	118.63 USD	0.00 USD	118.63 USD
Totals for Client ZOBRIST V. LYTLE		91			4,982.00 USD	4,863.37 USD	118.63 USD	0.00 USD	118.63 USD
Totals for Account: 1000601463		97			5,320.00 USD	5,193.32 USD	126.68 USD	0.00 USD	126.68 USD
Report Totals - Included		97			5,320.00 USD	5,193.32 USD	126.68 USD	0.00 USD	126.68 USD
Report Totals		97			5,320.00 USD	5,193.32 USD	126.68 USD	0.00 USD	126.68 USD

Account: KEVIN B CHRISTENSEN, LAS VEGAS NV (1000601463)
Date Range: December 01, 2020 - December 31, 2020
Report Format: Summary-Account by Client (**Targeted**)
Products: Westlaw, Westlaw Retired
Content Families: All Content Families

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Amount of Discount	Special Pricing Charge	Tax Amount	Total Charge
Account: 1000601463									
Client ROSEMERE V. LYTLE									
Totals for Included		12			602.00 USD	577.63 USD	24.37 USD	0.00 USD	24.37 USD
Totals for Client ROSEMERE V. LYTLE		12			602.00 USD	577.63 USD	24.37 USD	0.00 USD	24.37 USD
Client ZOBRIST V. LYTLE									
Totals for Included		64			3,926.00 USD	3,767.06 USD	158.94 USD	0.00 USD	158.94 USD
Totals for Client ZOBRIST V. LYTLE		64			3,926.00 USD	3,767.06 USD	158.94 USD	0.00 USD	158.94 USD
Totals for Account: 1000601463		76			4,528.00 USD	4,344.68 USD	183.32 USD	0.00 USD	183.32 USD
Report Totals - Included		76			4,528.00 USD	4,344.68 USD	183.32 USD	0.00 USD	183.32 USD
Report Totals		76			4,528.00 USD	4,344.68 USD	183.32 USD	0.00 USD	183.32 USD

Account: KEVIN B CHRISTENSEN, LAS VEGAS NV (1000601463)
Date Range: January 01, 2021 - January 31, 2021
Report Format: Summary-Account by Client (**Targeted**)
Products: Westlaw, Westlaw Retired
Content Families: All Content Families

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Amount of Discount	Special Pricing Charge	Tax Amount	Total Charge
<hr/>									
Account: 1000601463									
Client ZOBRIST V. LYTL									
Totals for Included		33			2,942.00 USD	2,851.32 USD	90.68 USD	0.00 USD	90.68 USD
Totals for Client ZOBRIST V. LYTL		33			2,942.00 USD	2,851.32 USD	90.68 USD	0.00 USD	90.68 USD
Totals for Account: 1000601463		33			2,942.00 USD	2,851.32 USD	90.68 USD	0.00 USD	90.68 USD
Report Totals - Included		33			2,942.00 USD	2,851.32 USD	90.68 USD	0.00 USD	90.68 USD
Report Totals		33			2,942.00 USD	2,851.32 USD	90.68 USD	0.00 USD	90.68 USD

Account: KEVIN B CHRISTENSEN, LAS VEGAS NV (1000601463)
Date Range: February 01, 2021 - February 28, 2021
Report Format: Summary-Account by Client (**Targeted**)
Products: Westlaw, Westlaw Retired
Content Families: All Content Families

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Amount of Discount	Special Pricing Charge	Tax Amount	Total Charge
Account: 1000601463									
Client ROSEMERE V. LYTLE									
Totals for Included		1			53.00 USD	51.38 USD	1.62 USD	0.00 USD	1.62 USD
Totals for Client ROSEMERE V. LYTLE		1			53.00 USD	51.38 USD	1.62 USD	0.00 USD	1.62 USD
Client ZOBRIST V. LYTLE									
Totals for Included		71			4,564.00 USD	4,424.58 USD	139.42 USD	0.00 USD	139.42 USD
Totals for Client ZOBRIST V. LYTLE		71			4,564.00 USD	4,424.58 USD	139.42 USD	0.00 USD	139.42 USD
Totals for Account: 1000601463		72			4,617.00 USD	4,475.96 USD	141.04 USD	0.00 USD	141.04 USD
Report Totals - Included		72			4,617.00 USD	4,475.96 USD	141.04 USD	0.00 USD	141.04 USD
Report Totals		72			4,617.00 USD	4,475.96 USD	141.04 USD	0.00 USD	141.04 USD

Account: KEVIN B CHRISTENSEN, LAS VEGAS NV (1000601463)
Date Range: March 01, 2021 - March 31, 2021
Report Format: Summary-Account by Client (**Targeted**)
Products: Westlaw, Westlaw Retired
Content Families: All Content Families

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Amount of Discount	Special Pricing Charge	Tax Amount	Total Charge
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Account: 1000601463									
Client LYTLE									
Totals for Included		106			6,152.00 USD	5,960.11 USD	191.89 USD	0.00 USD	191.89 USD
Totals for Client LYTLE		106			6,152.00 USD	5,960.11 USD	191.89 USD	0.00 USD	191.89 USD
Client ROSEMERE V. LYTLE									
Totals for Included		25			1,859.00 USD	1,801.01 USD	57.99 USD	0.00 USD	57.99 USD
Totals for Client ROSEMERE V. LYTLE		25			1,859.00 USD	1,801.01 USD	57.99 USD	0.00 USD	57.99 USD
Totals for Account: 1000601463		131			8,011.00 USD	7,761.12 USD	249.88 USD	0.00 USD	249.88 USD
Report Totals - Included		131			8,011.00 USD	7,761.12 USD	249.88 USD	0.00 USD	249.88 USD
Report Totals		131			8,011.00 USD	7,761.12 USD	249.88 USD	0.00 USD	249.88 USD

Account: KEVIN B CHRISTENSEN, LAS VEGAS NV (1000601463)
Date Range: April 01, 2021 - April 30, 2021
Report Format: Summary-Account by Client **(Targeted)**
Products: Westlaw, Westlaw Retired
Content Families: All Content Families

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Amount of Discount	Special Pricing Charge	Tax Amount	Total Charge
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Account: 1000601463									
Client LYTLE									
Totals for Included		314			17,250.00 USD	16,696.68 USD	553.32 USD	0.00 USD	553.32 USD
Totals for Client LYTLE		314			17,250.00 USD	16,696.68 USD	553.32 USD	0.00 USD	553.32 USD
Totals for Account: 1000601463		314			17,250.00 USD	16,696.68 USD	553.32 USD	0.00 USD	553.32 USD
Report Totals - Included		314			17,250.00 USD	16,696.68 USD	553.32 USD	0.00 USD	553.32 USD
Report Totals		314			17,250.00 USD	16,696.68 USD	553.32 USD	0.00 USD	553.32 USD

Account: KEVIN B CHRISTENSEN, LAS VEGAS NV (1000601463)
Date Range: May 01, 2021 - May 31, 2021
Report Format: Summary-Account by Client (**Targeted**)
Products: Westlaw, Westlaw Retired
Content Families: All Content Families

Account by Client	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Amount of Discount	Special Pricing Charge	Tax Amount	Total Charge
Account: 1000601463									
Client LYTLE									
Totals for Included		239			14,466.00 USD	13,743.11 USD	722.89 USD	0.00 USD	722.89 USD
Totals for Client LYTLE		239			14,466.00 USD	13,743.11 USD	722.89 USD	0.00 USD	722.89 USD
Client ROSEMERE V. LYTLE									
Totals for Included		136			8,009.00 USD	7,608.77 USD	400.23 USD	0.00 USD	400.23 USD
Totals for Client ROSEMERE V. LYTLE		136			8,009.00 USD	7,608.77 USD	400.23 USD	0.00 USD	400.23 USD
Totals for Account: 1000601463		375			22,475.00 USD	21,351.88 USD	1,123.12 USD	0.00 USD	1,123.12 USD
Report Totals - Included		375			22,475.00 USD	21,351.88 USD	1,123.12 USD	0.00 USD	1,123.12 USD
Report Totals		375			22,475.00 USD	21,351.88 USD	1,123.12 USD	0.00 USD	1,123.12 USD

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Exhibit 5

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 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.

Supreme Court No. 81689
District Court Case No. A747800

FILED

APR 24 2023

Sharon A. Shinn
CLERK OF COURT

A-16-747800-C
CCJA
NV Supreme Court Clerks Certificate/Judg
6030694



CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"We DENY the petition in Docket No. 84538 and AFFIRM the district court order challenged in Docket No. 81689."

Judgment, as quoted above, entered this 29th day of December, 2022.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"Rehearing Denied."

Judgment, as quoted above, entered this 13th day of February, 2023.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the petition DENIED."

Judgment, as quoted above, entered this 27th day of March, 2023.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this April 21, 2023.

Elizabeth A. Brown, Supreme Court Clerk

By: Elyse Hooper
Administrative Assistant

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

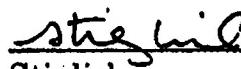
upon him by the order of his appointment" (internal quotation marks omitted).


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.


_____, J.
Hardesty


_____, J.
Stiglich


_____, 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

001534

001534

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
JOLIN G. ZOBRIST, AS TRUSTEES OF
THE GERRY R. ZOBRIST AND JOLIN
G. ZOBRIST FAMILY TRUST;

No. 81689

FILED

FEB 13 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 84538

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 DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.¹

Stiglich, C.J.
Stiglich
Herndon, J.
Herndon

cc: Hon. Timothy C. Williams, District Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Christensen James & Martin
Eighth District Court Clerk

¹The Honorable Justice Hardesty having retired did not participate in the decision on rehearing.

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
JOLIN G. ZOBRIST, AS TRUSTEES OF
THE GERRY R. ZOBRIST AND JOLIN
G. ZOBRIST FAMILY TRUST;

No. 81689

FILED

MAR 27 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

No. 84538

23-09242

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 DENYING EN BANC RECONSIDERATION

Having considered the petition on file herein, we have
concluded that en banc reconsideration is not warranted. NRAP 40A.
Accordingly, we

ORDER the petition DENIED.¹

Stiglich, C.J.
Stiglich

Cadish, J.
Cadish

Pickering, J.
Pickering

Herndon, J.
Herndon

Parraguirre, J.
Parraguirre

Bell, J.
Bell

¹The Honorable Patricia Lee, Justice, did not participate in the
decision in this matter

cc: Hon. Timothy C. Williams, District Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas
Christensen James & Martin
Eighth District Court Clerk

001539

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.

Supreme Court No. 81689

District Court Case No. A747800

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 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.

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: April 21, 2023

Elizabeth A. Brown, Clerk of Court

By: Elyse Hooper
Administrative Assistant

cc (without enclosures):

Hon. Timothy C. Williams, District Judge
Lewis Roca Rothgerber Christie LLP/Las Vegas \ Joel D. Henriod\ Daniel F.
Polenberg\ Dan R. Waite
Christensen James & Martin \ Kevin B. Christensen\ Wesley J. Smith\ Laura J.
Wolff
Fidelity National Law Group/Las Vegas \ Christina H. Wang

RECEIPT FOR REMITTITUR

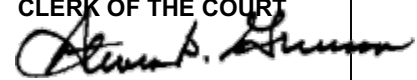
Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on APR 24 2023.

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED
APPEALS
APR 24 2023

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32



MATF
CHRISTINA H. WANG, ESQ.
Nevada Bar No. 9713
FIDELITY NATIONAL LAW GROUP
8363 W. Sunset Road, Suite 120
Las Vegas, Nevada 89113
Tel: (702) 667-3000
Fax: (702) 938-8721
Email: christina.wang@fnf.com
Attorneys for Counter-Defendants/Cross-Claimants
Robert Z. Disman and Yvonne A. Disman

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,

Case No.: A-16-747800-C

Dept. No.: XVI

HEARING REQUESTED

Plaintiffs,

vs.

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

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

Defendants.

AND ALL RELATED MATTERS

Counter-Defendants/Cross-Claimants ROBERT Z. DISMAN and YVONNE A. DISMAN (collectively referred to herein as, the "Dismans"), by and through their attorneys of record, the Fidelity National Law Group, hereby move this Honorable Court for an award of attorney's fees against Defendants/Counter-Claimants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, TRUSTEES OF THE LYTLE TRUST (collectively referred to herein as, the "Lyttles").

///

///

1 This Motion is made and based upon the following Memorandum of Points and
2 Authorities, all pleadings, exhibits and documents on file with the Court in this action, such
3 further documentary evidence as the Court deems appropriate, and any arguments of counsel at
4 the hearing of this matter.

5 DATED this 12th day of May, 2023.

6 FIDELITY NATIONAL LAW GROUP

7
8 /s/ Christina H. Wang

9 CHRISTINA H. WANG, ESQ.

10 Nevada Bar No. 9713

11 8363 W. Sunset Road, Suite 120

12 Las Vegas, Nevada 89113

13 *Attorneys for Counter-Defendants/*

14 *Cross-Claimants Robert Z. Disman*

15 *and Yvonne A. Disman*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case arises from the Lytles' wrongful and relentless attempts to enforce judgments
4 that they obtained against their property owners association against the property owners and
5 properties within their residential subdivision. *More than five (5) years ago*, this Court
6 enjoined the Lytles from doing so and from "taking any action in the future against" those
7 property owners or their properties based upon the judgements. The Lytles undertook
8 successive appeals of the injunctions to the Nevada Supreme Court, which is the proper method
9 to voice their disagreement with this Court's orders. The Nevada Supreme Court ultimately
10 affirmed the injunctions in their entirety.

11 However, rather than abide by the injunctions, the Lytles took an alternate route to
12 enforce their judgments against the property owners within the subdivision. They commenced
13 an action in another department of the district court through which they obtained the
14 appointment of a receiver to issue and collect a special assessment from the property owners to
15 satisfy the judgments. The Dismans, property owners in the subdivision who have never been
16 parties to any of the Lytles' actions against the association, first learned of the receiver action
17 when the receiver sent them correspondence asking for ideas on how they propose to pay the
18 Lytles' judgments in excess of \$1 million.

19 This Court found the Lytles' actions to be violative of its orders and properly held them
20 in contempt. The Lytles then engaged in two (2) years and two (2) appeals of the contempt
21 order, which the Nevada Supreme Court recently affirmed. The Lytles' continued efforts to
22 obtain payment of their judgments against the association from the individual property owners
23 by any means necessary has resulted in substantial distress as well as attorney's fees to the
24 Dismans. While the Court cannot compensate the Dismans for the cumulative emotional toll of
25 being embroiled in years of unnecessary litigation, it should award them all of the attorney's
26 fees to which they are entitled.

27 Attached hereto as **Exhibit A** are time sheets which detail the tasks performed by the
28 Dismans' attorney and the fees incurred. The time sheets are supported by the concurrently

1 filed affidavit of the Dismans' attorney, attached hereto as **Exhibit B**, which affirms that the
2 fees were actually and necessarily incurred and are reasonable. The Dismans note that they will
3 continue to incur fees in this matter and specifically request that they also be awarded their fees
4 for any additional briefing, hearing and proceedings.

5 **II. FACTUAL AND PROCEDURAL BACKGROUND¹**

6 **A. The Rosemere Subdivision**

7 Rosemere Court ("Rosemere" or "subdivision") is a residential subdivision located in
8 Clark County, Nevada, comprised of nine (9) lots. *See* Decl. of Covenants, Conditions and
9 Restrictions, attached hereto as **Exhibit C**. On January 4, 1994, the owner and subdivider of
10 Rosemere recorded a Declaration of Covenants, Conditions and Restrictions governing the
11 subdivision ("Original CC&Rs"). *See id.* The Original CC&Rs did not provide for the
12 organization of a unit-owners' association as defined by NRS Chapter 116; rather, it called for
13 the establishment of a "property owners committee" for the limited purpose of maintaining
14 specific elements of the subdivision. *See id.*

15 On July 3, 2007, an Amended and Restated Declaration of Covenants, Conditions, and
16 Restrictions for Rosemere ("Amended CC&Rs") was recorded, purportedly by the Rosemere
17 Estates Property Owners Association ("Rosemere Association" or "Association"). The
18 Amended CC&Rs set forth new requirements for the subdivision and provided that the changes
19 were made in order to bring the same into compliance with the provisions of NRS Chapter 116.

20 **B. The Rosemere Litigation I**

21 On June 26, 2009, the Lytles, owners of the Rosemere property identified as APN: 163-
22 03-313-009, filed a lawsuit in district court against the Rosemere Association seeking, among
23 other things, a declaratory judgment that the Amended CC&Rs were not properly adopted and,
24 therefore, void (Case No. A-09-593497-C) (referred to herein as, the "Rosemere Litigation I").
25 The Dismans were not parties to the Rosemere Litigation I.²

26 _____
27 ¹ The following factual and procedural background omits, for the most part, related exhibits in order to reduce the
volume of this submission. It includes only those exhibits that directly bear on the issues at hand.

28 ² As set forth below, the Dismans did not acquire their Rosemere property until August 2017.

On or about July 30, 2013, the court granted summary judgment in the Lytles' favor, and in an order prepared by the Lytles' counsel, the court made the following legal determinations.

11. *Here, no Chapter 116 unit-owners' association was formed* because no association was organized prior to the date the first unit was conveyed. The Association was not formed until February 25, 1997, more than three years after Rosemere Estates was formed and the Original CC&Rs were recorded.

13. The Original CC&Rs provide for the creation of a "property owners committee," *which is a "limited purpose association,"* as defined by the 1994 version of NRS 116.1201, then in effect. That provision provided that Chapter 116 did not apply to "Associations created for the limited purpose of maintaining . . . "[t]he landscape of the common elements of a common interest community. . . ."

See Order Granting the Lytles' Mot. for Summ. J., attached hereto as **Exhibit D**, at pp. 6-8 (emphasis added). The court thus invalidated the Amended CC&Rs. See *id.* It also awarded the Lytles a monetary judgment against the Association, consisting of attorneys' fees and costs and other damages in the total amount of \$361,238.59 plus post-judgment interest (the "Rosemere Judgment I").

On August 18, 2016, and purportedly relying upon NRS 116.3117,³ the Lytles caused to be recorded an abstract of the Rosemere Judgment I against all of the properties in Rosemere, aside from their own property. On September 2, 2016, they caused to be recorded an abstract of the judgment against the property in Rosemere known as 1960 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-008 ("1960 Rosemere Court"). On September 2, 2016, they also caused to be recorded an abstract of the judgment against the property in Rosemere known as 1830 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-002 ("1830 Rosemere Court"). At the time, Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust ("Boulden") was the owner of 1960 Rosemere Court, and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda Lamothe Living

³ NRS 116.3117 is entitled "Liens against association," and provides in relevant part:

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

1 Trust (collectively referred to herein as, “Lamothe”) was the owner of 1830 Rosemere Court.
2 Neither Boulden nor Lamothe Trust were parties to Rosemere Litigation I.

3 **C. The Rosemere Litigation II**

4 On December 13, 2010, the Lytles filed a second lawsuit in district court against the
5 Rosemere Association alleging claims for declaratory relief, slander of title, and injunctive
6 relief (Case No. A-10-631355-C) (referred to herein as, the “Rosemere Litigation II”). The
7 Dismans were not parties to the Rosemere Litigation II. The court ultimately granted summary
8 judgment in the Lytles’ favor and awarded them a monetary judgment against the Association,
9 consisting of attorneys’ fees and costs and other damages, in the total amount of \$1,103,158.12
10 plus post-judgment interest (the “Rosemere Judgment II”).

11 **D. The Rosemere Litigation III**

12 On or about April 2, 2015, the Lytles filed a third lawsuit in district court against the
13 Rosemere Association, Sherman L. Kearl, and Gerry G. Zobrist, alleging a claim for declaratory
14 relief (Case No. A-15-716420-C) (referred to herein as, the “Rosemere Litigation III”). The
15 Dismans were not parties to the Rosemere Litigation III. The court ultimately granted summary
16 judgment in favor of the Lytles and awarded them attorney’s fees and costs in the total amount
17 of \$15,462.60 (the “Rosemere Judgment III”).

18 **E. The Instant Action**

19 On December 8, 2016, Boulden and Lamothe commenced the instant action against the
20 Lytles alleging claims for slander of title, injunctive relief, quiet title, and declaratory relief with
21 respect to the Lytles’ recording of abstracts of the Rosemere Judgment I against their properties.
22 On February 24, 2017, Boulden and Lamothe moved for partial summary judgment on all of
23 their claims for relief, with the issue of damages and attorneys’ fees to be determined at a
24 separate evidentiary hearing. This Court granted summary judgment in their favor and entered
25 the following legal conclusions:

26 **CONCLUSIONS OF LAW**

27 1. The Association is a “limited purpose association” as referenced
28 in NRS 116.1201(2).

1 2. As a limited purpose association, NRS 116.3117 is not applicable
2 to the Association.

3 3. As a result of the Rosemere [] Litigation [I], the Amended
4 CC&Rs were judicially declared to have been improperly adopted and recorded,
5 the Amended CC&Rs are invalid and have no force and effect and were declared
6 void ab initio.

7 4. The Plaintiffs were not parties to the Rosemere [] Litigation [I].

8 5. The Final Judgment against the Association is not an obligation or
9 debt owed by the Plaintiffs.

10 See Order Granting Mot. to Alter or Amend Findings of Fact and Conclusions of Law (referred
11 to herein as, the “July 2017 Order”), attached hereto as **Exhibit E**, at 4:12-23. The Court thus
12 held that the Lytles improperly clouded title to Boulden and Lamothe’s properties by recording
13 abstracts of the Rosemere Judgment I against them; that those abstracts of judgment should be
14 released; and that the Lytles are permanently enjoined from recording and enforcing the
15 Rosemere Judgment I or any abstracts related thereto against Boulden and Lamothe’s properties
16 and from “taking any action in the future against” those properties. *See id.* at pp. 5-7.

17 The Lytles appealed the July 2017 Order to the Nevada Supreme Court. And although
18 they released their abstracts of the Rosemere Judgment I against Boulden and Lamothe’s
19 properties, they advised them of the Rosemere Judgment II that they had obtained. This
20 prompted Boulden and Lamothe to file an amended complaint against the Lytles that sought,
21 *inter alia*, to enjoin the Lytles from recording or enforcing the Rosemere Judgment II against
22 Boulden and Lamothe’s properties.

23 On or about August 4, 2017, Boulden sold 1960 Rosemere Court to the Dismans. On
24 August 11, 2017, the Lytles filed a Counterclaim against Lamothe and the Dismans seeking a
25 declaration that an abstract of the Rosemere Judgment II can be recorded against Lamothe and
26 the Dismans’ properties. *See* the Lytles’ Answer to Pls.’ Second Am. Compl. and Countercl.,
27 attached hereto as **Exhibit F**.

28 On or about June 28, 2018, the Dismans moved for summary judgment or judgment on
the pleadings against the Lytles on the basis that this Court’s July 2017 Order regarding the
Rosemere Judgment I rendered the Lytles’ Counterclaim regarding the Rosemere II Judgment

1 unsustainable. The Lytles opposed the motion, arguing as follows with respect to why the
2 Court should deny the judgment sought:

3 The Dismans lack any standing to bring the instant Motion for Summary
4 Judgment. There is but a single claim by and between the Lytles and the
5 Dismans, and that claim already was adjudicated by Judge Timothy Williams.
6 The matter is now on appeal before the Nevada Supreme Court, and the matter
has been fully briefed by the parties, including the Dismans.... ***There is simply
nothing for this Court now to consider as all claims between these parties
already were adjudicated.***

7 *See*, the Lytles' Opp'n to Mot. for Summ. J. or, in the Alternative, Mot. for J. on the Pleadings,
8 attached hereto as **Exhibit G**, at 2:9-24 (emphasis added).⁴ The Lytles' argument was utterly
9 disingenuous as they brought their Counterclaim against the Dismans after and in spite of the
10 Court's July 2017 Order. *See* Exhibit F.

11 On or about December 27, 2018, the Court (Judge Mark B. Bailus) denied the Dismans'
12 motion as moot, holding that this Court's July 2017 Order encompasses the Lytles'
13 Counterclaim and prevents the Lytles from recording an abstract of the Rosemere Judgment II
14 against the Dismans' property. *See* Notice of Entry of Order Den. the Dismans' Mot. for
15 Summ. J. or, in the Alternative, Mot. for J. on the Pleadings, attached hereto as **Exhibit H**. The
16 Court's holding, as well as the Lytles' argument in opposition to the Dismans' motion, begged
17 the question of why did the Lytles bring the Counterclaim against the Dismans at all. In the
18 meantime, on or about December 4, 2018, the Nevada Supreme Court affirmed this Court's July
19 2017 Order in its entirety. *See* Order of Affirmance, attached hereto as **Exhibit I**. As a result,
20 the Lytles agreed to dismiss the Counterclaim against the Dismans.

21 On January 23, 2019, the Dismans filed a motion against the Lytles for attorney's fees
22 incurred through January 22, 2019, including fees incurred in connection with the Lytles'
23 appeal of the July 2017 Order. On or about September 4, 2019, this Court granted the Dismans'
24 motion and awarded them fees pursuant to the terms of the Original CC&Rs. *See* Findings of
25 Fact, Conclusions of Law and Order Granting the Dismans' Mot. for Attorney's Fees, attached
26 hereto as **Exhibit J**. On September 30, 2019, the Lytles appealed the fee award to the Nevada
27

28 ⁴ The opposition is attached hereto without its accompanying exhibits to reduce the volume of this submission.

1 Supreme Court (“Attorney’s Fee Appeal”). Thereafter, the Dismans and the Lytles reached a
2 settlement of the Attorney’s Fee Appeal and the appeal was dismissed.

3 **F. The Consolidated Action**

4 On November 30, 2017, a complaint was filed against the Lytles in district court (Case
5 No. A-17-765372-C) by other Rosemere property owners September Trust, dated March 23,
6 1972; Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R. Zobrist and Jolin G.
7 Zobrist Family Trust; Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of
8 the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust Dated May 27,
9 1992; and Dennis A. Gegen and Julie S. Gegen (collectively referred to herein as, the
10 “September Trust Plaintiffs”). The complaint stated claims for quiet title and declaratory relief
11 and sought, *inter alia*, a declaration that the Lytles cannot record or enforce the judgments that
12 they obtained in the Rosemere Litigation I, II or III against the September Trust Plaintiffs or
13 their properties within the subdivision.

14 Case No. A-17-765372-C was consolidated with this case, and the September Trust
15 Plaintiffs moved for summary judgment on their claims for relief. Based upon its July 2017
16 Order, the Court granted summary judgment in their favor, holding that the Lytles improperly
17 clouded title to the September Trust Plaintiffs’ properties by recording abstracts of the
18 Rosemere Judgment I against them; that those abstracts of judgment should be released; and
19 that the Lytles are permanently enjoined from recording and enforcing any of the judgments that
20 they obtained in the Rosemere Litigation I, II or III against those plaintiffs’ properties and from
21 taking any action in the future directly against those plaintiffs or their properties based upon the
22 Rosemere Litigation I, II or III. *See* Order Granting Mot. for Summ. J or, in the Alternative,
23 Mot. for J. on the Pleadings and Denying Countermotion for Summ. J. (referred to herein as, the
24 “May 2018 Order”), attached hereto as **Exhibit K**, at pp. 9-10.

25 **G. The Receiver Action and Contempt Order**

26 On June 8, 2018, and in direct violation of this Court’s orders, the Lytles commenced an
27 action in another department of the district court in an effort to enforce their judgments against
28 the Association against the property owners within the subdivision (Case No. A-18-775843-C)

1 (at times referred to herein as, the “receiver action”). *See* Compl. for Declaratory Relief and
2 Preliminary Injunction, attached hereto as **Exhibit L**. Through the receiver action, the Lytles
3 obtained the appointment of a receiver over the Association to, among other things, “[i]ssue and
4 collect a special assessment upon all owners within the Association to satisfy the Lytle[s] ...
5 judgments against the Association.” *See* January 22, 2020, Correspondence from Kevin Singer
6 to the Dismans, attached hereto as **Exhibit M**, at its Exhibit 1, p. 2, ¶ 2. The Lytles maintained
7 the receiver action even though shortly after its commencement, the Nevada Supreme Court
8 affirmed this Court’s injunction. *See* Exhibit I.

9 The Dismans first learned of the receiver action on or about January 22, 2020, when the
10 receiver sent them correspondence inviting them to a meeting to share ideas on how they
11 propose to pay the Lytles’ judgments. *See* Exhibit M. In response to similar correspondences
12 that the receiver sent them, the September Trust Plaintiffs filed a motion with this Court for an
13 order to show cause why the Lytles should not be held in contempt for violating this Court’s
14 orders and the injunctions contained therein (“Contempt Motion”). The Dismans joined in the
15 Contempt Motion.

16 On May 22, 2020, this Court entered an order granting the Contempt Motion and the
17 Dismans’ joinder thereto. *See* Order Granting Contempt Mot., attached hereto as **Exhibit N**
18 (the “Contempt Order”). Based upon their violation, the Court ordered the Lytles to, among
19 other things, pay a \$500 fine to the Dismans. *Id.* at 12:9-12. Additionally, the Court provided
20 that the Dismans “may file applications for their reasonable expenses, including, without
21 limitation, attorney’s fees, incurred by the party as a result of the contempt.” *Id.* at 13:1-3.

22 On June 11, 2020, the Dismans filed a motion against the Lytles for various attorney’s
23 fees incurred through June 9, 2020, as a result of the Lytles’ contempt. The Dismans and the
24 Lytles subsequently reached a settlement regarding the fine imposed and fees sought and the
25 Dismans withdrew the motion. *See* Settlement Agreement Re. Fees, Costs, and Penalty,
26 attached hereto as **Exhibit O**. The parties’ settlement agreement, however, expressly provides
27 that it does not affect the parties’ rights to seek fees or costs incurred after the date of the
28 settlement, or July 6, 2020. *See id.*

H. Appeal of the Contempt Order

On or about June 22, 2020, the Lytles appealed the Contempt Order to the Nevada Supreme Court, which appeal was designated as No. 81390. Following full briefing by all the parties, including the Dismans, the Nevada Supreme Court dismissed the appeal on the basis of “a jurisdictional defect, as no statute or rule appears to authorize an appeal from a district court contempt order.” *See* Order Dismissing Appeal, attached hereto as **Exhibit P**.

On April 11, 2022, the Lytles once again appealed the Contempt Order to the Nevada Supreme Court, this time through a Petition for Writ of Mandamus or, alternatively, Prohibition (“Writ Petition”). All of the parties subsequently briefed the Writ Petition and attended oral arguments before the Nevada Supreme Court. On December 29, 2022, the Nevada Supreme Court entered an order affirming the Contempt Order and denying the Writ Petition. *See* Order Affirming in Docket No. 81689 and Den. Writ Pet., attached hereto as **Exhibit Q**.

On January 31, 2023, the Lytles filed a Petition for Rehearing, which the Nevada Supreme Court denied through an order dated February 13, 2023. *See* Order Den. Rehearing, attached hereto as **Exhibit R**. On March 13, 2023, the Lytles filed a Petition for En Banc Reconsideration, which the Nevada Supreme Court also denied. *See* Order Den. En Banc Recons., attached hereto as **Exhibit S**. On or about April 21, 2023, the Nevada Supreme Court issued a Remittitur. *See* Remittitur, attached hereto as **Exhibit T**.

III. LEGAL ARGUMENT

Rule 54(d)(2)(B) of the Nevada Rules of Civil Procedure provides that a motion for attorney’s fees must:

- (i) be filed no later than 21 days after written notice of entry of judgment is served;
- (ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;
- (iii) state the amount sought or provide a fair estimate of it;
- (iv) disclose, if the court so orders, the nonprivileged financial terms of any agreement about fees for the services for which the claim is made; and
- (v) be supported by:

- (a) counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable;
- (b) documentation concerning the amount of fees claimed; and
- (c) points and authorities addressing the appropriate factors to be considered by the court in deciding the motion.

The Dismans have complied with each of these requirements by bringing this Motion within 21 days after service of the Remittitur, *see* Exhibit T, and attaching their attorney's time sheets and affidavit.

"The decision whether to award attorney's fees is within the sound discretion of the district court." *Thomas v. City of N. Las Vegas*, 122 Nev. 82, 90, 127 P.3d 1057, 1063 (2006). The long-standing rule in Nevada is that attorney's fees should be awarded when authorized by statute, rule, or agreement. *First Interstate Bank of Nev. v. Green*, 101 Nev. 113, 116, 694 P.2d 496, 498 (1985). This Court should exercise its discretion and award the requested attorney's fees to the Dismans because it is authorized to do so pursuant to the terms of the Original CC&Rs, NRS 22.100, and NRS 18.010(2)(b).

A. The Terms of the Original CC&RS Provide for an Award of Attorney's Fees to the Dismans.

Under NRS 18.010(1), "[t]he compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law." Section 25 of the Original CC&Rs governing Rosemere provides:

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

See Exhibit C.

This Court previously awarded the Dismans their attorney's fees under Section 25 of the Original CC&Rs. *See* Exhibit J. Specifically, the Court found that the Lytles brought the Counterclaim against the Dismans seeking to enforce, among other things, their alleged rights under the Original CC&Rs against the Dismans. *See id.* at p. 7, ¶ 3. It noted that the Counterclaim alleges in pertinent part:

28. There exists a controversy between the Lytles and the Counter-defendants

1 and Third-Party Defendants regarding the interpretation, application and
2 **enforcement** of NRS, Chapter 116 as well as the application of the Original
3 CC&Rs and Amended CC&Rs to the controversy at hand, requiring a
4 determination by this Court and entry of declaratory relief.

5 *See id.* (Emphasis in the original). Given the nature of the Counterclaim, as well as the overall
6 case in which the parties sought to enforce their alleged rights under the Original CC&Rs, the
7 Court concluded that Section 25 of the Original CC&Rs applied to control the award of
8 attorney's fees. *See id.* at ¶ 4. Further, the Court concluded that in applying the language of
9 Section 25, the Dismans were the winning parties and the Lytles were the losing parties, such
10 that the assessment of attorney's fees against the Lytles was mandatory under Section 25,
11 including fees that the Dismans incurred in connection with the Lytles' appeal. *See id.*

12 Section 25 the Original CC&Rs likewise applies to the Dismans' instant request for
13 attorney's fees. Indeed, the Nevada Supreme Court has confirmed that a contractual provision
14 awarding attorney's fees to a prevailing party in the event of litigation includes appellate
15 attorney's fees. *See Musso v. Binick*, 104 Nev. 613, 614-15, 764 P.2d 477, 477 (1988); *see also*
16 *WMCV Phase 3, LLC v. Shushok & McCoy, Inc.*, No. 2:10-CV-0661-GMN-NJK, 2015 WL
17 1000373, at *2 (D. Nev. Mar. 5, 2015) ("In *Musso v. Binick*, the Nevada Supreme Court
18 unequivocally held that a respondent was entitled to attorneys' fees, pursuant to a contractual
19 provision, for costs incurred in defending an appeal and filing post-appeal motions.") (citation
20 omitted); *In re Estate & Living Trust of Miller*, 216 P.3d 239, 243 (Nev. 2009) ("The Nevada
21 Supreme Court has acknowledged that attorney fees award made pursuant to contract includes
22 fees incurred on appeal." (citing *Musso*, 104 Nev. at 615, 764 P.2d at 477-78)).

23 Here, the Dismans were forced to defend the Contempt Order through more than two (2)
24 years of appeals, participate in continued proceedings in this Court, and monitor the receiver
25 action. All of this was done to uphold this Court's orders and the injunctions contained therein.
26 The Court's orders resulted from its enforcement of the Original CC&Rs which established the
27 Rosemere Association as a limited-purpose association to which NRS 116.3117 does not apply.
28 The Dismans ultimately prevailed in the appeals, *see* Exhibits P and Q; as such, they are entitled
to recover the attorney's fees sought as winning parties under the terms of the Original CC&Rs.

B. NRS 22.100 Further Provides a Basis for the Award of Attorney's Fees to the Dismans.

NRS 22.010(3) defines an act constituting contempt as including "[d]isobedience or resistance to any lawful writ, order, rule or process issued by the court or judge at chambers."

NRS 22.100 provides the following penalties for contempt:

1. Upon the answer and evidence taken, the court or judge or jury, as the case may be, shall determine whether the person proceeded against is guilty of the contempt charged.
2. Except as otherwise provided in NRS 22.110, if a person is found guilty of contempt, a fine may be imposed on the person not exceeding \$500 or the person may be imprisoned not exceeding 25 days, or both.
3. In addition to the penalties provided in subsection 2, *if a person is found guilty of contempt pursuant to subsection 3 of NRS 22.010, the court may require the person to pay to the party seeking to enforce the writ, order, rule or process the reasonable expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.*

(Emphasis added). The Nevada Supreme Court instructs that a district court has "inherent power to protect the dignity and decency of its proceedings and to enforce its decrees, and thus it may issue contempt orders and sanction or dismiss an action for litigation abuses." *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428, 440 (2007).

As this Court found in issuing the Contempt Order, what the Lytles sought to accomplish through the receiver action was in direct violation of the Court's orders and the injunctions contained therein. *See* Exhibit N. Thus, the matter of the Lytles' contempt has already been established. Due to the Lytles' subsequent appeals of the Contempt Order, the Dismans were forced to defend the order and incur additional attorney's fees as a result of the Lytles' contempt. This Court should, therefore, award the Dismans' the requested attorney's fees pursuant to NRS 22.100.

C. NRS 18.010(2)(b) Also Provides a Basis for the Award of Attorney's Fees to the Dismans.

NRS 18.010(2) provides in relevant part:

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

1 (b) Without regard to the recovery sought, when the court finds that
2 the claim, counterclaim, cross-claim or third-party complaint or
3 defense of the opposing party was brought or maintained without
4 reasonable ground or to harass the prevailing party. The court
shall liberally construe the provisions of this paragraph in favor of
awarding attorney's fees in all appropriate situations. . . .

5 A groundless claim is a claim that is "not supported by any credible evidence at trial."
6 *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 995-96, 860 P.2d 720, 724 (1993). A frivolous claim
7 is a claim that is "baseless", which is defined as a pleading that is "not well grounded in fact or
8 not warranted by existing law or a good faith argument for the extension, modification or
9 reversal of existing law." *Simonian v. Univ. & Cmty. Coll. Sys.*, 122 Nev. 187, 196, 128 P.3d
10 1057, 1063 (2006). In assessing the award of attorney's fees under NRS 18.010(2)(b), the
11 Court must consider if a party had reasonable grounds for making or defending its claims, based
12 on actual circumstances of the case. *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563
(1993).

13 Here, the Court determined in the Contempt Order that the Lytles violated its orders
14 when it "initiated an action against the Association that included a prayer for appointment of a
15 receiver, applied for appointment of a receiver, and argued that the Association, through the
16 Receiver, could make special assessments on the Plaintiffs' and other property owners for the
17 purpose of paying the Rosemere Judgments...." See Exhibit N at 11:3-8. In their subsequent
18 appeals of the Contempt Order, the Lytles maintained the baseless position that they could
19 accomplish through the receiver action what this Court prohibited them from doing in its orders
20 and the injunctions contained therein. Given that the appeals were maintained without
21 reasonable ground and that the Dismans ultimately prevailed in the appeals, NRS 18.010(2)
22 provides a further basis with which to award the Dismans their requested attorney's fees.

23 **D. The Attorney's Fees Sought Are Reasonable and Justified in Amount.**

24 Under Nevada law, the basic elements to be considered in determining the reasonable
25 value of an attorney's services are: "(1) the qualities of the advocate: his ability, his training,
26 education, experience, professional standing and skill; (2) the character of the work to be done:
27 its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and
28

1 the prominence and character of the parties where they affect the importance of the litigation;
2 (3) the work actually performed by the lawyer: the skill, time and attention given to the work;
3 (4) the result: whether the attorney was successful and what benefits were derived.” *Brunzell v.*
4 *Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (internal citations omitted).
5 “Furthermore, good judgment would dictate that each of these factors be given consideration by
6 the trier of fact and that no one element should predominate or be given undue weight.” *Id.* at
7 349-50, 455 P.2d at 33.

8 The qualities of the Dismans’ attorney, including her ability, training, education,
9 experience, professional standing, and skill, establish the reasonableness of the fees sought. *See*
10 Exhibit B. The character of the work performed – its difficulty, intricacy, importance, time and
11 skill required, and responsibility imposed, likewise justify the reasonableness of the Dismans’
12 attorney’s fees. *See id.* Defending the Contempt Order on appeal required extensive analysis,
13 research and preparation by the Dismans’ attorney. Moreover, it required the Dismans’ attorney
14 not only to participate in the appeal proceedings in this case but also to monitor the receiver
15 action to ensure no further violations of this Court’s orders.

16 The skill, time, and attention given to the work are also indicative of the reasonableness
17 of the Dismans’ attorney’s fees. *See id.* As shown in the attached time sheets, *see* Exhibit A,
18 the Lytles’ appeals were thoroughly litigated. Tremendous attention and time was paid to the
19 appeals. The preparation of the Dismans’ attorney was detailed and complete and the fees
20 charged were reasonable and necessary.

21 The final factor depends on the success and benefits derived from the efforts of the
22 Dismans’ attorney. Through those efforts, the Dismans succeeded in the appeals as the Nevada
23 Supreme Court affirmed the Contempt Order. *See* Exhibit Q. Accordingly, the Lytles cannot
24 reasonably argue that the result obtained was not a successful result for the Dismans.

25 In sum, this Court should find that all of the *Brunzell* factors have been satisfied and
26 sufficient basis exists to award reasonable attorney’s fees in the amount of \$27,196.00 incurred
27 by the Dismans after July 6, 2020.

28 ///

1 **IV. CONCLUSION**

2 For the above and foregoing reasons, the Dismans respectfully request that the Court
3 grant their Motion in its entirety.

4 DATED this 12th day of May, 2023.

5 FIDELITY NATIONAL LAW GROUP

6
7 /s/ Christina H. Wang

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12 *Attorneys for Counter-Defendants/*

13 *Cross-Claimants Robert Z. Disman*

14 *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 **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: [X] (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.

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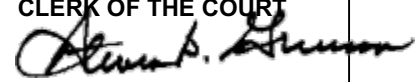
DATED: 05/12/2023

/s/ Lace Engelman

An employee of Fidelity National Law Group

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APEN
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Attorneys for Counter-Defendants/Cross-Claimants
Robert Z. Disman and Yvonne A. Disman

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

**APPENDIX OF EXHIBITS FOR
ROBERT Z. DISMAN AND YVONNE
A. DISMAN'S MOTION FOR
ATTORNEY'S FEES**

AND ALL RELATED MATTERS

EXHIBIT NO.	DESCRIPTION	PAGE NOS.
A	Attorney Time Sheets	001-014
B	Affidavit of Counsel in Support of Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees	015-021
C	Declaration of Covenants, Conditions and Restrictions	022-026
D	Order Granting the Lytles' Motion for Summary Judgment	027-039
E	Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law	040-047

F	The Lytles' Answer to Plaintiffs' Second Amended Complaint and Counterclaim	048-064
G	The Lytles' Opposition to Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings	065-091
H	Notice of Entry of Order Denying the Dismans' Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings	092-101
I	Order of Affirmance	102-111
J	Findings of Fact, Conclusions of Law and Order Granting the Dismans' Motion for Attorney's Fees	112-123
K	Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment	124-138
L	Complaint for Declaratory Relief and Preliminary Injunction	139-147
M	January 22, 2020, Correspondence from Kevin Singer to the Dismans	148-169
N	Order Granting Contempt Motion	170-184
O	Settlement Agreement Re. Fees, Costs, and Penalty	185-191
P	Order Dismissing Appeal	192-195
Q	Order Affirming in Docket 81869 and Denying Petition for a Writ of Mandamus in Docket No. 84538	196-203
R	Order Denying Rehearing	204-206
S	Order Denying En Banc Reconsideration	207-210
T	Remittitur	211-213

DATED this 12th day of May, 2023.

FIDELITY NATIONAL LAW GROUP

/s/ Christina H. Wang

CHRISTINA H. WANG, ESQ.

Nevada Bar No. 9713

8363 W. Sunset Road, Suite 120

Las Vegas, Nevada 89113

*Attorneys for Counter-Defendants/
Cross-Claimants Robert Z. Disman
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 **APPENDIX OF EXHIBITS FOR 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 ☒ (vi) via electronic service through the Court's Electronic File/Service Program.

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*Attorneys for the
September Trust Plaintiffs*

DATED: 05/12/2023

/s/ Lace Engelman

An employee of Fidelity National Law Group

EXHIBIT A

001563

FIDELITY NATIONAL LAW GROUP

8363 West Sunset Road, Suite 120
Las Vegas, Nevada 89113

TIME SHEET

Client Name: Robert Z. Disman and Yvonne A. Disman
File Number: L080698 – *Lytle v. Disman*
Attorney: Christina H. Wang, Esq.
Hourly Rate: \$200.00 through July 27, 2020
 \$180.00 from July 28, 2020

Date	Task	Hours	Amount
<i>Hourly Rate: \$200.00</i>			
07/08/2020	Initial receipt and review of notice of assignment to NV Supreme Court settlement program re contempt order appeal.	0.10	\$20.00
07/09/2020	Initial receipt, review and respond to multiple correspondences from legal assistant L. Engelman re [REDACTED]	0.30	\$60.00
07/14/2020	Initial receipt, review and respond to multiple correspondences from NV Supreme Court mediator I. Kunin and attorney W. Smith re mandatory pre-settlement conference telephone call.	0.50	\$100.00
07/15/2020	Initial receipt and review of correspondence from NV Supreme Court mediator I. Kunin re mandatory pre-settlement conference telephone call. Initial receipt and review of order denying the Lytles' motion for clarification of contempt order and notice of entry of same.	0.30	\$60.00
07/22/2020	Initial receipt and review of order granting the Lytles an extension to file their docketing statement.	0.10	\$20.00
07/23/2020	Prepare for and attend mandatory pre-settlement conference telephone call with settlement judge I. Kunin. Initial receipt and review of correspondence from Ms. Kunin re same. Exchange multiple correspondences with legal assistant L. Engelman re same.	1.30	\$260.00
<i>Start of New Hourly Rate: \$180.00</i>			
07/30/2020	Attend NV Supreme Court mandatory pre-settlement conference telephone call with settlement judge I. Kunin and all parties' counsel. Initial receipt and review of settlement program early case assessment report.	0.40	\$72.00
07/31/2020	Initial receipt and review of the Lytles' amended notice of appeal and amended case appeal statement.	0.30	\$54.00

08/03/2020	Initial receipt and review of NV Supreme Court order removing from settlement program and reinstating briefing.	0.10	\$18.00
08/04/2020	Initial receipt and review of the Lytles' errata to amended notice of appeal and errata to amended case appeal statement.	0.10	\$18.00
08/05/2020	Initial receipt and review of multiple correspondences from attorneys W. Smith and D. Waite re proposed orders granting in part and denying in part the September Trust Plaintiffs' motion for attorney's fees and costs. Initial receipt and review of amended notice of appeal. Initial receipt, review, and respond to multiple correspondences from claims counsel D. Chien and legal assistant L. Engelman re [REDACTED]. Initial receipt and review of docketing statement.	1.10	\$198.00
08/11/2020	Initial receipt and review of order granting in part and denying in part the September Trust Plaintiffs' motion for attorney's fees and costs. Initial receipt and review of notice of entry of same.	0.10	\$18.00
08/18/2020	Initial receipt and review of order granting the Lytles an extension to file transcript request.	0.10	\$18.00
08/21/2020	Initial receipt and review of the Lytles' notice of appeal and case appeal statement re the September Trust Plaintiffs' attorney's fee award.	0.20	\$36.00
08/26/2020	Initial receipt and review of the Lytles' errata to amended notice of appeal.	0.10	\$18.00
08/31/2020	Initial receipt and review of the Lytles' request for transcript re appeal and notice re same.	0.10	\$18.00
09/08/2020	Initial receipt and review of the September Trust Plaintiffs' motion to amend judgment and clerk's notice of hearing re same.	0.30	\$54.00
09/11/2020	Initial receipt and review of request for transcripts re appeal.	0.10	\$18.00
09/17/2020	Initial receipt, review and respond to correspondence from claims counsel D. Chien re [REDACTED].	0.20	\$36.00
09/22/2020	Initial receipt and review of the Lytles' opposition to the September Trust Plaintiffs' motion to amend order granting in part and denying in part their motion for attorney's fees and costs.	0.20	\$36.00
09/24/2020	Initial receipt and review of transcript of hearing on the September Trust Plaintiffs' motion for attorney's fees and costs.	0.20	\$36.00
09/28/2020	Initial receipt, review, and detailed legal analysis of the Lytles' supplemental opposition to the September Trust Plaintiffs' motion to amend order granting in part and denying in part their motion for attorney's fees and costs.	0.20	\$36.00
10/06/2020	Initial receipt and review of the September Trust Plaintiffs' reply in support of motion to amend order granting in part and denying in part their motion for attorney's fees and costs.	0.20	\$36.00

10/07/2020	Initial receipt and review of the September Trust Plaintiffs' opposition to the Lytles' motion to stay portions of the order appointing receiver pending appeal.	0.20	\$36.00
10/12/2020	Initial receipt and review of minute order re hearing on the September Trust Plaintiffs' motion to amend order granting in part and denying in part their motion for attorney's fees and costs.	0.10	\$18.00
10/13/2020	Prepare for and attend hearing on the September Trust Plaintiffs' motion to amend order granting in part and denying in part their motion for attorney's fees and costs. Initial receipt, review, and respond to correspondence from attorney W. Smith re same.	2.80	\$504.00
10/26/2020	Telephone conference with client R. Disman re [REDACTED] [REDACTED] Initial receipt and review of the September Trust Plaintiffs' response to the Lytles' motion to stay in the receiver action.	1.80	\$324.00
10/29/2020	Initial receipt, review and detailed legal analysis of the September Trust Plaintiffs' motion to dismiss appeal.	0.20	\$36.00
11/02/2020	Initial receipt and review of stipulation for extension to file opening brief.	0.10	\$18.00
11/03/2020	Initial receipt and review of NV Supreme Court order granting the Lytles an extension to file their opening brief.	0.10	\$18.00
11/06/2020	Initial receipt and review of order granting the Lytles an extension to respond to the September Trust Plaintiffs' motion to dismiss appeal.	0.10	\$18.00
11/12/2020	Initial receipt and review of multiple correspondences from claims counsel D. Chien and legal assistant L. Engelman re [REDACTED]	0.70	\$126.00
11/19/2020	Initial receipt and review of the Lytles' motion for extension to oppose the September Trust Plaintiffs' motion to dismiss appeal. Prepare case status update in Legal Files.	0.30	\$54.00
11/30/2020	Initial receipt, review, and detailed legal analysis of the Lytles' opposition to the September Trust Plaintiffs' motion to dismiss appeal.	0.30	\$54.00
12/02/2020	Initial receipt and review of order granting the Lytles' motion for a second extension to file an opposition to the September Trust Plaintiffs' motion to dismiss appeal.	0.10	\$18.00
12/03/2020	Initial receipt and review of the Lytles' motion for extension to file opening brief and appendix. Initial receipt and review of multiple correspondences from claims counsel D. Chien and legal assistant L. Engelman re [REDACTED]	0.40	\$72.00
12/07/2020	Initial receipt, review, and detailed legal analysis of the September Trust Plaintiffs' reply in support of motion to dismiss appeal.	0.20	\$36.00
12/14/2020	Initial receipt and review of court minute order re the September Trust Plaintiffs' motion for attorney's fees.	0.10	\$18.00

12/14/2020	Initial receipt and review of correspondence from claims counsel D. Chien re [REDACTED]	0.10	\$18.00
01/04/2021	Initial receipt and review of multiple correspondences from court recorder P. Isom and attorney W. Smith re transcript request for appeal.	0.20	\$36.00
01/05/2021	Initial receipt and review of the Lytles' motion for third extension to file opening brief and appendix.	0.20	\$36.00
01/07/2021	Initial receipt and review of multiple correspondences from attorney W. Smith re certification to the NV Supreme Court of order granting the September Trust Plaintiffs' motion to amend attorney's fee order.	0.20	\$36.00
01/08/2021	Initial receipt and review of order denying the September Trust Plaintiffs' motion to dismiss appeal. Initial receipt and review of correspondence from legal assistant L. Engelman re same.	0.20	\$36.00
01/14/2021	Initial receipt and review of order certifying to the NV Supreme Court the district court's order granting the September Trust Plaintiffs' motion to amend attorney's fee order.	0.10	\$18.00
01/15/2021	Initial receipt and review of notice of entry of order certifying to the NV Supreme Court the district court's order granting the September Trust Plaintiffs' motion to amend attorney's fee order.	0.10	\$18.00
01/28/2021	Initial receipt and review of the September Trust Plaintiffs' motion to consolidate the receiver case with the instant case. Conduct research re [REDACTED]	0.90	\$162.00
01/29/2021	Initial receipt and review of multiple correspondences from claims counsel D. Chien and legal assistant L. Engelman re [REDACTED]	0.20	\$36.00
02/01/2021	Initial receipt and review of notice of hearing re the September Trust Plaintiffs' motion to consolidate.	0.10	\$18.00
02/04/2021	Initial receipt and review of the Lytles' motion for extension to file opening brief. Prepare case status update in Legal Files.	0.20	\$36.00
02/11/2021	Initial receipt and review of the Lytles' opposition to the September Trust Plaintiffs' motion to consolidate.	0.20	\$36.00
02/12/2021	Initial receipt and review of order granting the Lytles' motion for extension to file opening brief and appendix.	0.20	\$36.00
02/25/2021	Initial receipt and review of notice re hearing on the September Trust Plaintiffs' motion to consolidate.	0.10	\$18.00
02/26/2021	Initial receipt and review of the September Trust Plaintiffs' reply in support of motion to consolidate.	0.20	\$36.00
03/01/2021	Initial receipt and review of multiple correspondences from claims counsel D. Chien and L. Engelman re [REDACTED]	0.40	\$72.00

03/04/2021	Prepare for and attend hearing on the September Trust Plaintiffs' motion to consolidate this case with the receiver action.	1.30	\$234.00
03/05/2021	Initial receipt and review of the Lytle' motion to extend time to file opening brief and appendix.	0.10	\$18.00
03/10/2021	Initial receipt and review of order denying the September Trust Plaintiffs' motion to consolidate.	0.10	\$18.00
03/11/2021	Initial receipt and review of order granting the Lytles' motion for extension to file opening brief and appendix.	0.10	\$18.00
03/15/2021	Initial receipt and review of the Lytles' opening brief and appendices.	0.80	\$144.00
03/16/2021	Initial receipt, review and respond to multiple correspondences from legal assistant L. Engelman and claims counsel D. Chien re [REDACTED]	0.60	\$108.00
03/17/2021	Initial receipt and review of notice of entry of order denying the September Trust Plaintiffs' motion to consolidate.	0.10	\$18.00
03/29/2021	Telephone call to attorney W. Smith re appeal. Exchange multiple correspondences with Mr. Smith re same.	0.40	\$72.00
03/30/2021	Prepare litigation plan and case summary.	4.30	\$774.00
03/31/2021	Continue to prepare litigation plan and case summary. Initial receipt, review and respond to correspondence from claims counsel D. Chien re same. Telephone conference with attorney W. Smith re appeal.	4.60	\$828.00
04/07/2021	Initial receipt, review and respond to multiple correspondences from attorney W. Smith re status of receiver action.	0.30	\$54.00
04/12/2021	Initial receipt, review and respond to multiple correspondences from claims counsel D. Chien re [REDACTED]	0.20	\$36.00
04/13/2021	Initial receipt and review of order granting us a telephonic extension to file answering brief. Initial receipt, review and respond to correspondence from claims counsel D. Chien re [REDACTED] Telephone conference with Ms. Chien re same.	1.10	\$198.00
04/16/2021	Initial receipt and review of stipulation for extension of time for the September Trust Plaintiffs to file answering brief. Telephone conference with the September Trust Plaintiffs' counsel W. Smith re same. Prepare stipulation for extension of time for the Dismans to file answering brief.	0.80	\$144.00
04/19/2021	Initial receipt and review of order setting hearing re NV Supreme Court order of limited remand.	0.10	\$18.00
04/26/2021	Prepare correspondence to the Lytles' counsel J. Henriod re stipulation for extension of time to file answering brief.	0.10	\$18.00
04/27/2021	Initial receipt, review and respond to multiple correspondences from the Lytles' counsel J. Henriod re stipulation to extend time to filing	2.40	\$432.00

answering brief. Prepare motion to extend. Exchange multiple correspondences with legal assistant L. Engelman re same. Initial receipt and review of court correspondence confirming filing of same. Initial receipt and review of the Lytles' report for hearing on order for limited remand.

04/28/2021	Initial receipt and review of the September Trust Plaintiffs' status report for hearing on order for limited remand.	0.10	\$18.00
04/29/2021	Attend hearing on order for limited remand. Initial receipt, review and respond to correspondence from attorney W. Smith re same.	1.20	\$216.00
04/30/2021	Initial receipt and review of order granting the September Trust Plaintiffs' motion to amend order granting motion for attorney's fees.	0.10	\$18.00
05/03/2021	Initial receipt and review of order granting our motion for extension to file answering brief.	0.10	\$18.00
05/04/2021	Initial receipt and review of notice of entry of order granting the September Trust Plaintiffs' motion to amend order re attorney's fees.	0.10	\$18.00
05/07/2021	Initial receipt and review of correspondence from claims counsel D. Chien re [REDACTED]	0.10	\$18.00
05/10/2021	Initial receipt and review of correspondence from legal assistant L. Engelman re [REDACTED]	0.10	\$18.00
05/17/2021	Conduct legal research and prepare answering brief.	7.30	\$1,314.00
05/19/2021	Continue to conduct legal research and prepare answering brief.	6.60	\$1,188.00
05/26/2021	Prepare correspondences to claims counsel D. Chien and client R. Disman re [REDACTED]	0.20	\$36.00
05/27/2021	Initial receipt, review and respond to multiple correspondences from claims counsel D. Chien re [REDACTED] Initial receipt, review and respond to correspondence from attorney W. Smith re same. Prepare correspondence to client R. Disman re same.	0.70	\$126.00
05/28/2021	Initial receipt, review and respond to multiple correspondences from legal assistant L. Engelman re [REDACTED] Exchange multiple correspondences with client R. Disman re same. Initial receipt and review of multiple court correspondences confirming filing and service of our answering brief. Prepare correspondence to claims counsel D. Chien re same.	2.30	\$414.00
06/03/2021	Initial receipt and review of the Lytles' amended notice of appeal and amended case appeal statement.	0.20	\$36.00
06/28/2021	Initial receipt, review and respond to multiple correspondences from attorneys J. Henriod and W. Smith re stipulation for extension of time for the Lytles to file their reply brief on appeal. Initial receipt and review of filed stipulation. Initial receipt and review of minute order setting status check hearing. Initial receipt and review of Plaintiffs' response to minute order.	0.80	\$144.00

06/29/2021	Initial receipt and review of filed stipulation for extension for the Lytles to file reply brief. Initial receipt and review of order approving same. Initial receipt and review of order scheduling telephonic status hearing.	0.30	\$54.00
07/01/2021	Prepare for and attend status check hearing.	0.90	\$162.00
07/06/2021	Initial receipt, review and respond to multiple correspondences from claims counsel D. Chien re [REDACTED]	0.30	\$54.00
07/29/2021	Initial receipt and review of the Lytles' motion to extend time to file reply brief.	0.10	\$18.00
08/06/2021	Initial receipt and review of order granting the Lytles' motion for extension to file reply brief.	0.10	\$18.00
08/10/2021	Initial receipt, review and respond to multiple correspondences from claims counsel D. Chien re [REDACTED]	0.40	\$72.00
08/13/2021	Initial receipt, review and respond to correspondence from client R. Disman re [REDACTED]	0.20	\$36.00
08/30/2021	Initial receipt and review of the Lytles' motion to extend time to file reply brief.	0.10	\$18.00
08/31/2021	Initial receipt and review of order granting the Lytles' motion for extension to file reply brief.	0.10	\$18.00
09/08/2021	Initial receipt and review of the Lytles' reply brief on appeal. Initial receipt and review of correspondence from legal assistant L. Engelman re same.	0.30	\$54.00
09/13/2021	Initial receipt and review of correspondence from client R. Disman re [REDACTED]	0.10	\$18.00
09/22/2021	Initial receipt, review and respond to correspondence from client R. Disman re [REDACTED]	0.20	\$36.00
09/24/2021	Initial receipt, review and respond to correspondence from attorney D. Waite re issue with the Dismans' dog. Exchange multiple correspondences with Mr. Disman re same. Multiple telephone conferences with Mr. Disman re same and re [REDACTED]	3.70	\$666.00
09/27/2021	Initial receipt and review of correspondence from attorney W. Smith re scheduling of meeting with receiver.	0.10	\$18.00
02/18/2021	Initial receipt and review of order dismissing appeal. Exchange multiple correspondences with legal assistant L. Engelman re same. Initial receipt and review of correspondence from claims counsel D. Chien re same.	0.60	\$108.00
03/02/2022	Telephone call to the September Trust Plaintiffs' counsel W. Smith re dismissal of appeal. Telephone conference with Mr. Smith re same. Telephone call to claims counsel D. Chien re same.	0.90	\$162.00

03/11/2022	Initial receipt and review of the September Trust Plaintiffs' motion for attorney's fees and costs related to appeal. Telephone conference with attorney W. Smith re same. Initial receipt and review of clerk's notice of hearing re same.	0.80	\$144.00
03/16/2022	Initial receipt, review and respond to multiple correspondences from claims counsel D. Chien re [REDACTED]. Telephone conference with Ms. Chien re same. Exchange correspondences with Ms. Chien re same.	1.60	\$288.00
03/22/2022	Initial receipt and review of issued remittitur.	0.10	\$18.00
03/23/2022	Initial receipt and review of multiple correspondences from claims counsel D. Chien and client R. Dismar re [REDACTED]	0.20	\$36.00
03/24/2022	Initial receipt and review of correspondence from claims counsel D. Chien re [REDACTED]	0.10	\$18.00
03/25/2022	Exchange multiple correspondences with claims counsel D. Chien re [REDACTED]. Initial receipt and review of correspondence from client R. Dismar re same.	1.10	\$198.00
03/31/2022	Initial receipt and review of the September Trust Plaintiffs' memo of costs and disbursements.	0.10	\$18.00
04/01/2022	Initial receipt and review of the September Trust Plaintiffs' reply in support of motion for attorney's fees. Initial receipt and review of the Lytles' motion to re-tax costs.	0.20	\$36.00
04/04/2022	Initial receipt and review of notice of hearing re the Lytles' motion to re-tax costs.	0.10	\$18.00
04/11/2022	Initial receipt, review, and detailed legal analysis of the Lytles' petition for writ of mandamus or prohibition and accompanying appendix. Initial receipt, review and respond to multiple correspondences from legal assistant L. Engelman re same. Prepare correspondence to client R. Dismar re same. Initial receipt and review of notice of filing of writ petition. Initial receipt and review of correspondence from claims counsel D. Chien re same.	2.10	\$378.00
04/12/2022	Initial receipt, review and respond to multiple correspondences from claims counsel D. Chien re [REDACTED]. Telephone call from client R. Dismar re same. Telephone call to attorney W. Smith re the Lytles' writ petition. Prepare correspondence to Mr. Smith re same.	0.80	\$144.00
04/14/2022	Initial receipt, review and respond to correspondence from the September Trust Plaintiffs' attorney W. Smith re the Lytles' writ petition. Initial receipt, review and respond to multiple correspondences from claims counsel D. Chien re same.	0.50	\$90.00
04/18/2022	Initial receipt and review of stipulation and order to withdraw the September Trust Plaintiffs' memo of costs and the Lytles' motion to re-tax costs; order denying the September Trust Plaintiffs' motion for	0.30	\$54.00

attorney's fees and costs related to the contempt appeal; and notices of entry of same.

04/29/2022	Initial receipt and review of correspondence from client R. Disman re [REDACTED] Prepare correspondence to legal assistant L. Engelman re same. Initial receipt and review of multiple correspondences from Mr. Disman and Ms. Engelman re same.	0.50	\$90.00
05/02/2022	Telephone conference with client R. Disman re [REDACTED]	1.10	\$198.00
05/12/2022	Initial receipt and review of NV Supreme Court order directing answer to the Lytles' writ petition. Exchange multiple correspondences with claims counsel D. Chien re same. Prepare correspondence to client R. Disman re same. Initial receipt and review of correspondence from Mr. Disman re same. Conduct research re [REDACTED]	1.60	\$288.00
05/18/2022	Initial receipt and review of the Lytles' status conference report.	0.10	\$18.00
06/01/2022	Telephone conference with the September Trust Plaintiffs' counsel W. Smith re response to the Lytles' writ petition. Exchange multiple correspondences with Mr. Smith re same.	0.80	\$144.00
06/02/2022	Conduct legal research and prepare answer to the Lytles' writ of mandamus or prohibition. Exchange multiple correspondences with the September Trust Plaintiffs' attorney W. Smith re same.	5.80	\$1,044.00
06/03/2022	Prepare correspondences to client R. Disman and claims counsel D. Chien re [REDACTED] Initial receipt, review and respond to multiple correspondences from Mr. Disman re same.	0.70	\$126.00
06/06/2022	Continue to conduct legal research and prepare answer to the Lytles' writ of mandamus or prohibition. Initial receipt and review of correspondence from claims counsel D. Chien re same.	4.80	\$864.00
06/07/2022	Continue to conduct legal research and prepare answer to the Lytles' writ of mandamus or prohibition.	2.50	\$450.00
06/08/2022	Exchange multiple correspondences with the September Trust Plaintiffs' counsel W. Smith re answer to the Lytles' writ of mandamus or prohibition. Initial receipt and review of stipulation and order to partially release and distribute cash bond and notice of entry of same. Initial receipt and review of correspondence from legal assistant L. Engelman re [REDACTED]	0.80	\$144.00
06/09/2022	Initial receipt and review of the September Trust Plaintiffs' answer to the Lytles' petition for writ of mandamus or prohibition. Initial receipt and review of multiple court correspondences confirming filing and service of our answer to the Lytles' petition for writ of mandamus or prohibition.	0.40	\$72.00

06/17/2022	Initial receipt and review of multiple correspondences from client R. Disman and legal assistant L. Engelman re [REDACTED]	0.20	\$36.00
06/21/2022	Initial receipt and review of order granting the Lytles an extension to file reply in support of their writ petition.	0.10	\$18.00
07/07/2022	Initial receipt and review of correspondence from R. Disman re [REDACTED] Exchange correspondences with legal assistant L. Engelman re same.	0.40	\$72.00
07/08/2022	Initial receipt and review of the Lytles' reply in support of petition for writ of mandamus or prohibition.	0.20	\$36.00
07/12/2022	Telephone conference with claims counsel D. Chien re [REDACTED] Conduct research re same. Prepare correspondence to Ms. Chien re same. Prepare correspondence to the September Trust Plaintiffs' counsel W. Smith re same. Initial receipt and review of correspondence from Mr. Smith re same. Telephone conference with Mr. Smith re same. Initial receipt, review and respond to multiple correspondences from Mr. Smith re same. Prepare correspondence to claims counsel D. Chien re same. Initial receipt and review of multiple correspondences from client R. Disman re same.	4.60	\$828.00
07/19/2022	Initial receipt and review of correspondence from client R. Disman re [REDACTED] Telephone call to Mr. Disman re same. Prepare correspondence to Mr. Disman re same. Telephone conference with Mr. Disman re same.	3.50	\$630.00
10/07/2022	Initial receipt and review of the September Trust Plaintiffs' status report. Review status of receiver action.	0.70	\$126.00
10/13/2022	Prepare for and attend status check hearing.	1.60	\$288.00
10/20/2022	Review status of receiver action.	0.20	\$36.00
10/24/2022	Initial receipt, review and respond to correspondence from claims counsel D. Chien re [REDACTED]	0.20	\$36.00
11/03/2022	Review developments in receiver action. Telephone conference with the September Trust Plaintiffs' counsel W. Smith re same.	3.60	\$648.00
11/10/2022	Initial receipt and review of NV Supreme Court order consolidating matters and scheduling oral argument. Initial receipt and review of correspondence from legal assistant L. Engelman re same.	0.20	\$36.00
11/14/2022	Initial receipt and review of correspondence from client R. Disman re [REDACTED]	0.10	\$18.00
11/22/2022	Initial receipt and review of NV Supreme Court 's reminder re oral argument.	0.10	\$18.00
11/23/2022	Begin preparing for NV Supreme Court oral argument.	2.20	\$396.00
11/28/2022	Continue to prepare for NV Supreme Court oral argument.	2.70	\$486.00

11/29/2022	Initial receipt and review of correspondence from the September Trust Plaintiffs' counsel W. Smith re NV Supreme Court oral argument. Telephone conference with Mr. Smith re same. Continue preparing for same. Initial receipt, review and respond to multiple correspondences from Mr. Smith re same.	2.60	\$468.00
11/30/2022	Initial receipt and review of the Lytles' counsel J. Henriod's notice of appearance for NV Supreme Court oral argument. Initial receipt, review and respond to multiple correspondences from the September Trust Plaintiffs' counsel W. Smith re his notice of appearance. Initial receipt and review of Mr. Smith's file-stamped notice of appearance. Exchange multiple correspondences with legal assistant L. Engelman re [REDACTED] Prepare notice of appearance. Prepare correspondence to claims counsel D. Chien re same. Exchange multiple correspondences with client R. Disman re same.	1.90	\$342.00
12/01/2022	Initial receipt and review of correspondence from claims counsel D. Chien re [REDACTED] Continue to prepare for same. Initial receipt and review of correspondence from client R. Disman re [REDACTED]	1.70	\$306.00
12/06/2022	Continue to prepare for NV Supreme Court oral argument. Prepare correspondence to the September Trust Plaintiffs' counsel W. Smith re same. Attend same. Initial receipt and review of multiple correspondences from IHL counsel N. Lehman re [REDACTED] Telephone conference with Ms. Lehman re same.	5.80	\$1,044.00
12/07/2022	Initial receipt and review of correspondence from client R. Disman re [REDACTED] Telephone conference with Mr. Disman re same. Exchange multiple correspondences with claims counsel D. Chien re same.	1.60	\$288.00
12/08/2022	Initial receipt, review and respond to correspondence from claims counsel D. Chien re [REDACTED] Telephone conference with Ms. Chien re same.	1.30	\$234.00
01/03/2023	Initial receipt, review and detailed legal analysis of NV Supreme Court order affirming the district court's contempt order and denying the Lytles' writ petition. Initial receipt, review and respond to correspondence from the September Trust Plaintiffs' counsel W. Smith re same. Exchange correspondences with client R. Disman re same. Telephone conference with Mr. Smith re case status and next steps.	1.70	\$306.00
01/04/2023	Initial receipt, review and respond to multiple correspondences from client R. Disman re [REDACTED] Prepare correspondence to managing counsel P. Davis re same.	0.90	\$162.00
01/06/2023	Initial receipt, review and respond to multiple correspondences from managing counsel P. Davis re [REDACTED]	1.60	\$288.00
01/09/2023	Telephone calls from and to client R. Disman re [REDACTED] Prepare correspondence to Mr. Disman re same.	0.30	\$54.00

01/10/2023	Telephone conference with client R. Disman re [REDACTED] [REDACTED] Initial receipt and review of multiple correspondences from Mr. Disman re same.	2.10	\$378.00
01/18/2023	Initial receipt and review of order granting the Lytles an extension to file petition for rehearing of affirmance order.	0.10	\$18.00
01/23/2023	Prepare correspondence to claims counsel D. Chien re [REDACTED] [REDACTED]	0.10	\$18.00
01/25/2023	Initial receipt and review of correspondence from client R. Disman re [REDACTED] [REDACTED]	0.10	\$18.00
02/01/2023	Initial receipt and detailed review of the Lytles' petition for rehearing re NV Supreme Court order affirming the district court's finding of contempt against them. Review appellate rules governing petitions for rehearing. Initial receipt, review and respond to multiple correspondences from legal assistant L. Engelman re same. Prepare correspondence to claims counsel D. Chien re same. Prepare correspondence to the September Trust Plaintiffs' counsel W. Smith re same. Initial receipt and review of correspondence from Mr. Smith re same. Telephone conference with Mr. Smith re same. Enter status update in Legal Files.	2.50	\$450.00
02/08/2023	Initial receipt and review of the September Trust Plaintiffs' status report to the Court.	0.10	\$18.00
02/13/2023	Initial receipt and review of NV Supreme Court order denying the Lytles' petition for rehearing. Initial receipt, review and respond to multiple correspondences from the September Trust Plaintiffs' counsel W. Smith re same.	0.50	\$90.00
02/14/2023	Initial receipt and review of correspondence from the September Trust Plaintiffs' counsel W. Smith re NV Supreme Court order denying the Lytles' petition for rehearing. Telephone conference with Mr. Smith re same. Prepare correspondence to claims counsel D. Chien re same. Initial receipt, review and respond to correspondence from Ms. Chien re same. Prepare status update in Legal Files.	1.30	\$234.00
02/24/2023	Initial receipt and review of NV Supreme Court order granting the Lytles an extension to file petition for en banc reconsideration of order affirming the district court's finding of contempt against them. Exchange correspondences with legal assistant L. Engelman re same. Initial receipt, review and respond to correspondence from the September Trust Plaintiffs' counsel W. Smith re same.	0.50	\$90.00
03/20/2023	Initial receipt, review, and detailed legal analysis of the Lytles' petition for en banc reconsideration of order affirming the district court's finding of contempt against them. Initial receipt and review of multiple correspondences from legal assistant L. Engelman re same.	0.50	\$90.00
03/27/2023	Initial receipt and review of NV Supreme Court order denying the Lytles' petition for en banc reconsideration of its order affirming the district court's finding of contempt against them. Exchange multiple correspondences with the September Trust Plaintiffs' counsel W.	0.90	\$162.00

Smith re same. Prepare correspondence to claims counsel D. Chien re same. Initial receipt, review and respond to correspondence from Ms. Chien re same.

04/27/2023	Initial receipt and review of correspondence from legal assistant L. Engelman re [REDACTED] [REDACTED] Exchange multiple correspondences with attorney W. Smith re same.	0.60	\$108.00
04/28/2023	Initial receipt and review of the Lyles' memorandum of costs and disbursements in the receiver action. Telephone conference with attorney W. Smith re same.	0.40	\$72.00
05/01/2023	Initial receipt and review of correspondence from client R. Dismar re [REDACTED]	0.10	\$18.00
05/02/2023	Initial receipt and review of correspondence from claims counsel D. Chien re [REDACTED]	0.10	\$18.00
05/03/2023	Prepare correspondence to claims counsel D. Chien re [REDACTED] [REDACTED] Conduct legal research and prepare motion for attorney's fees. Exchange correspondences with attorney W. Smith re same. Telephone conference with Mr. Smith re same. Initial receipt, review and respond to correspondence from Mr. Smith re same. Exchange correspondences with legal assistant L. Engelman re same.	3.10	\$558.00
05/04/2023	Continue to conduct legal research and prepare motion for attorney's fees. Initial receipt, review and respond to correspondence from legal assistant L. Engelman re same.	2.70	\$486.00
05/11/2023	Continue to conduct legal research and prepare motion for attorney's fees and affidavit in support of motion. Exchange multiple correspondences with legal assistant L. Engelman re same.	3.40	\$612.00
05/12/2023	Review/revise/finalize motion for attorney's fees and accompanying documents. Exchange multiple correspondences with legal assistant L. Engelman re same.	1.20	\$216.00
TOTAL:			\$27,196.00

EXHIBIT B

001577

**AFFIDAVIT OF COUNSEL IN SUPPORT OF ROBERT Z. DISMAN AND YVONNE
A. DISMAN'S MOTION FOR ATTORNEY'S FEES**

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Christina H. Wang, Esq., being first duly sworn, deposes and says:

1. I am an attorney with the Fidelity National Law Group; I am licensed to practice law before all courts in the State of Nevada; I have personal knowledge of the facts set forth herein; and I make this Affidavit in support of Counter-Defendants/Cross-Claimants Robert Z. Disman and Yvonne A. Disman (at times collectively referred to herein as, the "Dismans")' Motion for Attorney's Fees against Defendants/Counter-Claimants Trudi Lee Lytle and John Allen Lytle, Trustees of The Lytle Trust (collectively referred to herein as, the "Lyttles").

2. This action was commenced on or about December 8, 2016, by Plaintiffs Marjorie B. Boulden, Trustee of The Marjorie B. Boulden Trust ("Boulden"), and Linda Lamothe and Jacques Lamothe, Trustees of The Jacques & Linda Lamothe Living Trust (collectively referred to herein as, "Lamothe").

3. Boulden and Lamothe (at times collectively referred to herein as, "Plaintiffs") commenced this action for slander of title, injunctive relief, quiet title, and declaratory relief following the Lyttles' recording of abstracts of judgment against Plaintiffs' properties in a residential subdivision called Rosemere Court ("Rosemere" or "subdivision").

4. At the time, Boulden was the owner of the property identified as APN: 163-03-313-008, commonly known as 1960 Rosemere Court, Las Vegas, NV 89117 ("1960 Rosemere Court"). Lamothe was the owner of the property identified as APN: 163-03-313-002, commonly known as 1830 Rosemere Court, Las Vegas, NV 89117 ("1830 Rosemere Court").

5. The abstracts related to a judgment that the Lyttles had obtained against their property owners association, Rosemere Estates Property Owners Association ("Rosemere Association" or "Association") in Eighth Judicial District Court, Clark County, Nevada, Case No. A-09-593497-C (the "Rosemere Judgment I").

1 6. The Lytles sought to enforce the Rosemere Judgment I against the properties in
2 Rosemere under NRS 116.3117.

3 7. In an order entered on or about July 19, 2017 (the "July 2017 Order"), this Court
4 granted summary judgment in favor of Plaintiffs and made the following legal conclusions:

5 CONCLUSIONS OF LAW

6 1. The Association is a "limited purpose association" as referenced
7 in NRS 116.1201(2).

8 2. As a limited purpose association, NRS 116.3117 is not applicable
9 to the Association.

10 3. As a result of the Rosemere [] Litigation [I], the Amended
11 CC&Rs were judicially declared to have been improperly adopted and recorded,
12 the Amended CC&Rs are invalid and have no force and effect and were declared
13 void ab initio.

14 4. The Plaintiffs were not parties to the Rosemere [] Litigation [I].
15

16 7. The Final Judgment against the Association is not an obligation or
17 debt owed by the Plaintiffs.

18 *See* Exhibit E, at 4:12-23. The Court thus held that the Lytles improperly clouded title to
19 Boulden and Lamothe's properties by recording abstracts of the Rosemere Judgment I against
20 them; that those abstracts of judgment should be released; and that the Lytles are permanently
21 enjoined from recording and enforcing the Rosemere Judgment I or any abstracts related thereto
22 against Boulden and Lamothe's properties and from "taking any action in the future against"
23 those properties." *See id.* at pp. 5-7.

24 8. The Lytles appealed the July 2017 Order to the Nevada Supreme Court.

25 9. On or about August 4, 2017, Boulden sold 1960 Rosemere Court to the Dismans.

26 10. On August 11, 2017, the Lytles filed a Counterclaim against Lamothe and the
27 Dismans seeking a declaration that an abstract of a second judgment that the Lytles had
28 obtained against the Rosemere Association (the "Rosemere Judgment II") can be recorded
against Lamothe and the Dismans' properties. *See* Exhibit F.

 11. I was retained to defend the Dismans in this action, which also necessitated my
participation in the Lytles' appeal of the July 2017 Order.

 12. On or about December 4, 2018, the Nevada Supreme Court affirmed the order in

1 its entirety. *See* Exhibit I. As a result, the Lytles agreed to dismiss the Counterclaim against the
2 Dismans without prejudice.

3 13. On January 23, 2019, the Dismans filed a motion against the Lytles for
4 attorney's fees that the Dismans incurred through January 22, 2019, including fees incurred in
5 connection with the Lytles' appeal of the July 2017 Order.

6 14. This Court granted the Dismans' motion on or about September 4, 2019. *See*
7 Exhibit J.

8 15. The Lytles appealed the attorney's fee award to the Nevada Supreme Court, and
9 I continued my defense of the Lytles with respect to the appeal (the "Attorney's Fee Appeal").

10 16. Thereafter, the Dismans and the Lytles reached a settlement of the Attorney's
11 Fee Appeal, and the appeal was dismissed.

12 17. On January 27, 2020, Robert Disman contacted me regarding correspondence
13 sent to the Dismans by receiver Kevin Singer in Eighth Judicial District Court, Clark County,
14 Nevada, Case No. A-18-775843-C (the "receiver action"). *See* Exhibit M.

15 18. The correspondence informed the Dismans of Mr. Singer's appointment and
16 attached an order regarding his appointment to, among other things, "[i]ssue and collect a
17 special assessment upon all owners within the Association to satisfy the Lytle[s'] ... judgments
18 against the Association." *See id.* at its Exhibit 1, p. 2, ¶ 2.

19 19. Further, the correspondence invited the Dismans to meet with Mr. Singer to
20 share ideas on payment of the Lytles' judgments. *See id.*

21 20. I learned that the Lytles had commenced the receiver action on or about June 8,
22 2018, and Mr. Singer sent similar correspondences to other parties in this case and Rosemere
23 property owners September Trust, dated March 23, 1972; Gerry R. Zobrist and Jolin G. Zobrist,
24 as Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust; Raynaldo G. Sandoval
25 and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint
26 Living and Devolution Trust Dated May 27, 1992; and Dennis A. Gegen and Julie S. Gegen
27 (collectively referred to herein as, the "September Trust Plaintiffs")

28 21. The September Trust Plaintiffs had obtained a similar order as the July 2017

1 Order that the Lytles cannot record or enforce the judgments that they obtained against the
2 Association against the September Trust Plaintiffs or their properties within the subdivision.
3 *See Exhibit K.*

4 22. On March 4, 2020, the September Trust Plaintiffs filed a motion with this Court
5 for an order to show cause why the Lytles should not be held in contempt for violating the
6 Court's orders and the injunctions contained therein ("Contempt Motion").

7 23. The Dismans joined in the Contempt Motion.

8 24. On May 22, 2020, this Court entered an order granting the Contempt Motion and
9 the Dismans' joinder thereto (the "Contempt Order"). *See Exhibit N.*

10 25. Based upon their violation, the Court ordered the Lytles to, among other things,
11 pay a \$500 fine to the Dismans. *Id.* at 12:9-12. Additionally, the Court provided that the
12 Dismans "may file applications for their reasonable expenses, including, without limitation,
13 attorney's fees, incurred by the party as a result of the contempt." *Id.* at 13:1-3.

14 26. On June 11, 2020, the Dismans filed a motion against the Lytles for various
15 attorney's fees incurred through June 9, 2020, as a result of the Lytles' contempt.

16 27. The Dismans and the Lytles subsequently reached a settlement regarding the fine
17 imposed and fees sought, and the Dismans withdrew the motion. *See Exhibit O.*

18 28. The parties' settlement agreement, however, expressly provides that it does not
19 affect the parties' rights to seek fees or costs incurred after the date of the settlement, or July 6,
20 2020. *See id.*

21 29. From July 6, 2020, to date, the Dismans have incurred attorney's fees in the
22 amount of \$27,196.00 for my services associated with the Lytles' contempt, the proceedings in
23 this Court, and the monitoring of the receiver action to ensure compliance with this Court's
24 orders. *See Exhibit A.*

25 30. Specifically, on or about June 22, 2020, the Lytles appealed the Contempt Order
26 to the Nevada Supreme Court, which appeal was designated as No. 81390.

27 31. Following full briefing by all the parties, including the Dismans, the Nevada
28 Supreme Court dismissed the appeal on the basis of a jurisdictional defect. *See Exhibit P.*

1 32. On April 11, 2022, the Lytles once again appealed the Contempt Order to the
2 Nevada Supreme Court, this time through a Petition for Writ of Mandamus or, alternatively,
3 Prohibition (“Writ Petition”).

4 33. All of the parties subsequently briefed the Writ Petition and attended oral
5 arguments before the Nevada Supreme Court.

6 34. On December 29, 2022, the Nevada Supreme Court entered an order affirming
7 the Contempt Order and denying the Writ Petition. *See* Exhibit Q.

8 35. On January 31, 2023, the Lytles filed a Petition for Rehearing, which the Nevada
9 Supreme Court denied through an order dated February 13, 2023. *See* Exhibit R.

10 36. On March 13, 2023, the Lytles filed a Petition for En Banc Reconsideration,
11 which the Nevada Supreme Court also denied. *See* Exhibit S.

12 37. On or about April 21, 2023, the Nevada Supreme Court issued a Remittitur. *See*
13 Exhibit T.

14 38. All attorney’s fees requested were actually and necessarily incurred and are
15 directly attributable to addressing the Lytles’ contempt and the proceedings in this Court, as
16 well as monitoring the receiver action to ensure compliance with this Court’s orders. They are
17 also exceedingly reasonable and justified in light of the following factors.

18 39. My standard hourly rate was \$200.00 through July 27, 2020. Since July 28,
19 2020, it has been \$180.00. Both rates are substantially lower than the standard hourly rate of
20 other attorneys practicing in the Las Vegas, Nevada legal market with similar education and
21 experience.

22 40. With respect to my experience, I obtained my Juris Doctorate degree from the
23 William S. Boyd School of Law in 2005, after which I clerked for the United States District
24 Court for the District of Nevada for one (1) year.

25 41. I have been a practicing attorney for over 17 years. In particular, I have been
26 with the Fidelity National Law Group for over 11 years.

27 42. I have been the primary handling attorney in hundreds of litigation cases, and my
28 primary focus for the past 11 years has been in real estate litigation. I have been involved in

1 every facet of litigation, from commencement to resolution through trial, motion practice,
2 settlement, and/or other means.

3 43. With respect to addressing the Lytles' contempt, I expended considerable efforts
4 on behalf of the Dismans, including, but not limited to, conducting legal research, preparing
5 pleadings, and appearing for oral arguments before the Nevada Supreme Court.

6 44. As a result of my efforts, the Dismans prevailed in the appeals.

7 45. My background, experience, work performed and ultimate result more than
8 justify the amount incurred in addressing the Lytles' contempt. *See Brunzell v. Golden Gate*
9 *Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

10 46. In sum, all professional services, expenses, charges, and fees incurred by the
11 Dismans were and are reasonable and in accordance with the standards for such services in Las
12 Vegas, Nevada for the type of services rendered.

13 FURTHER YOUR AFFIANT SAYETH NAUGHT.

14
15 
16 CHRISTINA H. WANG, ESQ.

17 Subscribed and sworn to before me
18 this 2nd day of May, 2023.

19 
20 NOTARY PUBLIC

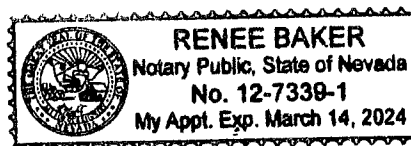


EXHIBIT C

001584

9 4 0 1 0 0 1 2 4 1

4

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

This Declaration of Covenants, Conditions and Restrictions made this 4th Day of JAN, 1974 by Baughman & Turner Pension Trust hereinafter referred to as "Subdivider", owner in fee simple of the land situated in the City of Las Vegas, County of Clark, State of Nevada, described as follows:

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

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

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

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

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

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

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

9 4 0 1 0 1 2 4 1

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

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

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

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

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

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

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

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

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

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

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

9 4 0 1 0 1 2 4 1

15. Landscaping in front of a residence shall be completed within three (3) months from completion of construction of that residence. Landscaping shall meet or surpass VA and FHA standards.

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

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

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

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

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

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

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

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

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

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

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

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

9 4 0 1 0 0 1 2 4 1

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

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

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

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

Date: 1/4/94
Owner/Subdivider/Trustee

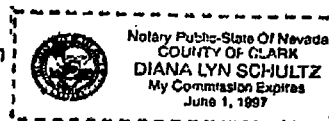
Stephen F. Turner
Stephen F. Turner

Date: 1-4-94
Owner/Subdivider/Trustee

Richard J. Baughman
Richard J. Baughman

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

Stephen F. Turner & Richard J. Baughman



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

(this area for official seal)

When Recorded Mail To:
Baughman & Turner, Inc.
1210 Hinson Street
Las Vegas, NV 89102

4 of 4

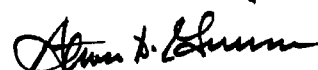
CLARK COUNTY, NEVADA
JOAN L. SWIFT, RECORDER
RECORDED AT REQUEST OF:
BAUGHMAN & TURNER, INC.
01-04-94 14:00 PDR 4
OFFICIAL RECORDS
BOOK: 940104 INST: 01241
FEE: 10.00 RPTT: .00

EXHIBIT D

001589

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Attorneys for Plaintiff

JOHN ALLEN LYTLE and

TRUDI LEE LYTLE

as Trustees of the Lytle Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

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

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

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

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JUL 25 2013

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 to conform to NRS Chapter 116 “without complying with the procedural requirements generally
2 applicable to the adoption of an amendment...,” and (5) all of the changes made were under NRS
3 116.2117.

4 25. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs
5 and changed the very nature of property ownership within Rosemere Estates. The Amended
6 CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the
7 powers, rights, and duties of the Association, a section entitled “Restrictions on Use, Alienation,
8 and Occupancy,” pet restrictions, parking restrictions, lease restrictions, the establishment of a
9 Design Review Committee with unfettered discretion, and a new and expansive definition of
10 “nuisance.”

11 26. The Amended CC&Rs also contained a morality clause, providing as follows:

12 No use that is reasonably deemed immoral, improper,
13 offensive, or unlawful by the Board of Directors may be
14 made of the Property or any portion thereof.

15 27. The Amended CC&Rs also contained a pet restriction that permits any animal found
16 off a leash to immediately be turned over to animal control, and any animal causing a “nuisance,” a
17 vague and undefined term, to be permanently removed from Rosemere Estates upon three days
18 written notice and hearing before the Board.

19 28. Finally, the proposed Amended CC&Rs contained a construction timeline that would
20 require Plaintiff to complete the construction of the custom home on the lot within a mere *60 days*
21 of receipt of approval from the proposed Design Review Committee—something never envisioned
22 in the Original CC&Rs and impossible to adhere to.

23 29. Plaintiff’s property is the only Property subject to this restriction as Plaintiff’s
24 Property was the only undeveloped lot at the time of amendment.

25 30. Further, the 60 day deadline is impossible to satisfy, and the homeowner is fined
26 \$50.00 per day for failure to comply with this impossible deadline.

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1 31. Pursuant to the Amended CC&Rs, approval for a home design was (1) entirely within
2 the Board's discretion, (2) based on Design Review Guidelines that have never been published, and
3 (3) not subject "to any objective standards of reasonableness."

4 32. After the Board presented the proposed Amended CC&Rs to the owners, together
5 with the written misrepresentations set forth above, the Board did not provide the owners with a
6 reasonable time to review or discuss the lengthy pack of legal documents, or to seek legal advice.
7 Rather, the Board insisted that the amendment was "a done deal."

8 33. Despite the misrepresentations introducing the governing documents, the vast
9 expansion of the Original CC&Rs, the lack of any review time or discussion, and the insistence that
10 the amendment was a "done deal," the Board asked the property owners to sign documents
11 acknowledging their approval, with a notary retained by the Board present to verify signatures.

12 34. The Amended CC&Rs were not agreed to by all property owners at the July 2, 2007
13 meeting. In fact, only five of the property owners approved, with three property owners who
14 refused to sign the amendment. A fourth homeowner submitted a disputed proxy that was not
15 counted by the Board.

16 35. Despite the failure to obtain the required unanimous approval for amending the
17 Original CC&Rs, the Association proceeded, on July 3, 2007, to record the Amended CC&Rs in the
18 office of the Recorder for Clark County, Nevada.

19 **II. LEGAL DETERMINATIONS**

20 **A. Summary Judgment Standard**

21 1. Summary judgment shall be rendered in favor of a moving party if the pleadings,
22 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
23 show that there is no genuine issue as to any material fact and that the moving party is entitled to
24 judgment as a matter of law. NRCP Rule 56(c).

25 2. "Summary Judgment is appropriate and shall be rendered forthwith when the
26 pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact
27 [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*,
28 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (*quoting* NRCP 56(c).)

3. The Nevada Supreme Court held that "Rule 56 should not be regarded as a disfavored procedural shortcut" but instead as an integral important procedure which is designed "to secure just, speedy and inexpensive determination in every action." *Wood*, 121 Nev. at 730, 121 P.3d at 1030 (internal citation omitted).

B. Plaintiff Is Entitled To Summary Judgment In Its Favor

4. A declaratory relief cause of action is proper where a conflict has arisen between the litigating parties, and the action is brought to establish the rights of the parties. 26 C.J.S. Declaratory Judgments § 1.

5. Plaintiff's Cause of Action for Declaratory Relief seeks (1) a declaration from the Court that the Amended CC&Rs were not properly adopted by the members of the Association and were improperly recorded against Plaintiff's Property, and (2) a permanent injunction against the Association from adopting further amendments without unanimous consent.

6. Summary judgment as to the Declaratory Relief Cause of Action is warranted based on the Court's finding that the Amended CC&Rs were not adopted with unanimous consent, as required, and were, therefore, improperly recorded against Plaintiff's Property.

C. Rosemere Is A Limited Purpose Association Under NRS 116.1201 And Not A Unit-Owners' Association Within The Meaning Of NRS, Chapter 116

7. In order to create a valid unit-owners' association, as defined by Chapter 116, certain formalities "must" be followed. NRS 116.3101 provides, in pertinent part,

Organization of unit-owners' association.

1. A unit-owners' association must be organized no later than the date the first unit in the common-interest community is conveyed. . .

8. The purpose of Section 3101 is to provide the purchaser record notice that he/she/it is purchasing a property that is governed by a homeowners association and will be bound by Chapter 116, *et seq.*

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1 9. There is a strong public policy in protecting property owners in common-interest
2 communities against any alteration of the burdens of character of the community. Rest. 3d,
3 Property – Servitudes, § 6.10, Comments.¹

4 10. A buyer is said to have “record notice” of the recorded covenants, conditions and
5 restrictions on the property, thus the mandate that the homeowners’ association be formed prior to
6 conveyance of the first unit in the community, together with the requirement that the CC&Rs be
7 recorded. NRS 116.3101.

8 11. Here, no Chapter 116 unit-owners’ association was formed because no association
9 was organized prior to the date the first unit was conveyed. The Association was not formed until
10 February 25, 1997, more than three years after Rosemere Estates was formed and the Original
11 CC&Rs were recorded.

12 12. Further, the Association did not have any powers beyond those of the “property
13 owners committee” designated in the Original CC&Rs—simply to care for the landscaping and
14 other common elements of Rosemere Estates as set forth in Paragraph 21 of the Original CC&Rs.

15 13. The Original CC&Rs provide for the creation of a “property owners’ committee,”
16 which is a “limited purpose association,” as defined by the 1994 version of NRS 116.1201, then in
17 effect. That provision provided that Chapter 116 did not apply to “Associations created for the
18 limited purpose of maintaining. . . “[t]he landscape of the common elements of a common interest
19 community. . . .”

20 14. In 1997, Rosemere Estates’ owners formed the Association for the express and
21 limited purpose of (1) tending to the limited matters set forth in Paragraph 21 of the Original
22 CC&Rs, (2) holding a bank account in which to deposit and withdraw funds for the payment of the
23 limited common area expenses assigned to the Owners Committee, and (3) purchasing liability
24 insurance. The intent was never to form a unit-owners’ association within the meaning of Chapter
25 116.

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28 ¹ “Property owners in common-interest communities are protected against amendments that unfairly
change the allocation of burdens in the community or change the character of the community.” Rest.
Law 3d, Property – Servitudes, § 6.10, Comments.

1 15. A limited purpose association cannot enforce “any restrictions concerning the use of
2 units by the units’ owners, unless the limited-purpose association is created for a rural agricultural
3 residential common-interest community.” NRS 116.1201(2)(a)(5). There is no question that
4 Rosemere Estates was not “created for a rural agricultural residential common-interest community,”
5 hence the Association cannot enforce “any restrictions concerning the use of units by the units’
6 owners....”

7 16. In reviewing the language of the Original CC&Rs, the Court must strictly construe
8 the covenants thereto and any “doubt will be resolved in favor of the unrestricted use of the
9 property....” *Dickstein v. Williams*, 93 Nev. 605, 608, 571 P.2d 1169 (1977); *see also, e.g., South*
10 *Shore Homes Ass’n v. Holland Holidays*, 549 P.2d 1035, 1043 (Kan. 1976); *Duffy v. Sunburst*
11 *Farms East Mutual Water & Agricultural Company, Inc.*, 604 P.2d 1124 (Ariz. 1980); *Bordleon v.*
12 *Homeowners Ass’n of Lake Ramsey*, 916 So.2d 179, 183 (La. Ct. App. 2005); *Cummings v. Dosam*,
13 159 S.E.2d 513, 517 (N.C. 1968); *Long v. Branham*, 156 S.E.2d 235, 236 (N.C. 1967).

14 17. In keeping with this well-settled and general principle, the Court construes the
15 Original CC&Rs pursuant to the plain meaning of the language therein. Nowhere is there reference
16 in the Original CC&Rs to a “unit-owners’ association” or “homeowners association.” Rather, the
17 Developer created a 116.1201 *limited purpose association* termed a “property owners’ committee,”
18 and the Developer provided that committee with limited, rather than comprehensive, duties and
19 powers.

20 18. Consistent with the absence of a governing body, *e.g.* unit-owners’ association,
21 delegated with the duty to enforce the Original CC&Rs, the Developer provided each homeowner
22 the right to independently enforce the Original CC&Rs against one another.

23 19. The Association is a limited purpose association under NRS 116.1201, is not a
24 Chapter 116 “unit-owners’ association,” and is relegated to only those specific duties and powers
25 set forth in Paragraph 21 of the Original CC&Rs and NRS 116.1201.

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D. The CC&Rs Can Only Be Amended By Unanimous Consent of All Property Owners

20. Because Rosemere Estates is a limited purpose association under NRS 116.1201, NRS 116.2117, the statutory provision typically governing amendments to the CC&R's, does not apply here.

21. The Original CC&Rs are mutual and reciprocal among all of the Rosemere Estates property owners. The Original CC&Rs "touch and concern" (and thus "run with") the land. Accordingly, under long-standing and well-established common law, the Original CC&Rs are binding, and not subject to amendment, absent a new conveyance properly executed by all Rosemere property owners and in conformance with all of the other legal requirements for a valid transfer of an interest in real property. In short, there can be no valid amendment of the Original CC&Rs absent, at a minimum, the unanimous consent of all Rosemere property owners.

22. There has never been unanimous consent to amend the Original CC&Rs and there has never been a valid conveyance of Plaintiff's interest in the Original CC&Rs. Specifically, unanimous consent was not received in 2007, when the invalid Amended CC&Rs were wrongfully recorded by the Association.

23. Even if the provisions related to amendment within Chapter 116 were to apply, the Amended CC&Rs would still be invalid, and wrongly recorded, because NRS 116.2117 required unanimous consent under these circumstances. NRS 116.2117 specifies the kinds of amendments that require unanimous unit owner approval (as opposed to majority or supermajority approval). In particular, a "change of use" always requires unanimous approval.

NRS 116.2117 provides, in pertinent part:

1. . . .the declaration, including any plats, may be amended only by vote or agreement of units' owners of units to which at least a majority of the votes in the association are allocated, unless the declaration specifies a different percentage for all amendments or for specified subjects of amendment. If the declaration requires the approval of another person as a condition of its effectiveness, the amendment is not valid without that approval.

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4. Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may change the boundaries of any unit, change the allocated interests of a unit **or change the uses to which any unit is restricted, in the absence of unanimous consent of only those units' owners whose units are affected and the consent of a majority of the owners of the remaining units.**

(Emphasis added.)

24. For the reasons set forth above, the Association's counter-motion for summary judgment is without merit.

III. JUDGMENT

IT IS HEREBY ADJUDGED AND DECREED:

A. Declaration

25. Pursuant to the foregoing, this Court declares and orders that the Amended CC&Rs were not properly adopted or recorded, that the Amended CC&Rs are invalid, and that the Amended CC&Rs have no force and effect. This Order, may be recorded in the Office of the Clark County Recorder's Office by any party and, once recorded, shall be sufficient notice of same.

B. Injunctive Relief

26. The Association is permanently enjoined from recording and enforcing the Amended CC&Rs. The Association is hereby ordered to release the Amended CC&Rs, Document Number 20070703-0001934, recorded with the Clark County Recorder on July 3, 2007, within ten (10) court days after the date of Notice of Entry of this Order.

C. Plaintiff's Monetary Damages

27. Plaintiff's monetary damages are subject to a prove-up hearing, and Plaintiff is to submit a separate motion regarding the same.

D. The Association's Motion For Summary Judgment

28. The Association's Motion for Summary Judgment is denied.

E. Costs

29. Plaintiff is deemed the prevailing party in this action. Plaintiff is directed to prepare, file and serve a Memorandum of Costs.

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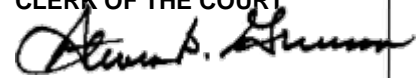
Dated this 21 day of July, 2013.

Prepared and submitted by:

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT

EXHIBIT E

001602



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TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

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

Plaintiff,

v.

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

Defendants.

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

**ORDER GRANTING MOTION TO
ALTER OR AMEND FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

Hearing: June 29, 2017

Plaintiffs' Motion for Partial Summary Judgment and Defendants' Counter Motion for Summary Judgment having come on for hearing before this Court on of April 13, 2017. Plaintiffs Marjorie Boulden and Linda Lamothe appeared with their counsel, Daniel T. Foley, Esq. and Defendants John Allen Lytle and Trudi Lee Lytle, as Trustees of the Lytle Trust, appeared with their counsel, Richard Haskin, Esq. After hearing, the Court entered Findings of Fact, Conclusions of Law and entered an Order Granting Plaintiffs' Motion for Partial Summary Judgment on April 25, 2017.

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1 On June 29, 2017, Defendants' Motion for Reconsideration or, in the Alternative, Motion to
2 Alter or Amend Judgment, came on for hearing. Plaintiffs Marjorie Boulden and Linda Lamothe
3 appeared with their counsel, Daniel T. Foley, Esq. and Defendants John Allen Lytle and Trudi Lee
4 Lytle, as Trustees of the Lytle Trust, appeared with their counsel, Richard Haskin, Esq.

5 The Court having reviewed the Defendants' Motion, Plaintiff's Opposition and the
6 Defendants' Reply, all documents attached thereto or otherwise filed in this case, and good cause
7 appearing therefore, grants Defendants' Motion to Alter and Amend Judgment pursuant to EDCR
8 2.24(b), and the Court makes the following Amendment Findings of Fact and Conclusions of Law,
9 granting Plaintiffs' Motion for Partial Summary Judgment.

10 **FINDINGS OF FACT**

11 1. Mrs. Boulden is trustee of the Marjorie B. Boulden Trust (hereinafter "Mrs.
12 Boulden") which owns that residential property known as parcel number 163-03-313-008 also
13 known as 1960 Rosemere Ct., Las Vegas, NV 89117 ("the Boulden Property").

14 2. Mr. and Mrs. Lamothe are the trustees of the Linda Lamothe and Jacques Lamothe
15 Living Trust (hereinafter "Mr. and Mrs. Lamothe") which owns that certain residential property
16 known as parcel number 163-03-313-002 also known as 1830 Rosemere Ct., Las Vegas, NV 89117
17 (the "Lamothe Property").

18 3. The Boulden Property and the Lamothe Property are located in the Rosemere Court
19 subdivision and are subject to the CC&Rs recorded January 4, 1994 (the "Original CC&Rs").

20 4. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust (collectively
21 the "Defendants") which owns that certain residential property known as parcel number 163-03-313-
22 009 (the "Lytle Property").

23 5. In 2009, the Defendants sued the Rosemere Estates Property Owners Association (the
24 Association") in the Eighth Judicial District Court, case # A-09-593497-C (the "Rosemere LPA
25 Litigation").

26 6. None of the Plaintiffs were ever parties in the Rosemere LPA Litigation.

27 7. None of the Plaintiffs were a "losing party" in the Rosemere LPA Litigation as that
28 term is found in Section 25 of the Original CC&Rs.

1 8. The Defendants obtained a Summary Judgment for Declaratory Relief from the
2 District Court in the Rosemere LPA Litigation, which found and ruled as follows:

- 3 a. The Association is a limited purpose association under NRS 116.1201, is not
4 a Chapter 116 "unit-owners' association," and is relegated to only those
5 specific duties and powers set forth in Paragraph 21 of the Original CC&Rs
6 and NRS 116.1201.
7 b. The Association did not have any powers beyond those of the "property
8 owners committee" designation in the Original CC&Rs – simply to care for
9 the landscaping and other common elements of Rosemere Estates as set forth
10 in Paragraph 21 of the Original CC&Rs.
11 c. Consistent with the absence of a governing body, the Developer provided
12 each homeowner the right to independently enforce the Original CC&Rs
13 against one another.
14 d. The Amended and Restated CC&Rs recorded with the Clark County
15 Recorder's Office as Instrument #20070703-0001934 (the "Amended
16 CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

17 9. Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the
18 Association because it is a limited purpose association that is not a rural agricultural residential
19 community.
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21 10. After obtaining Summary Judgment in the Rosemere LPA Litigation, the Defendants
22 filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up
23 hearing on damages. After hearing all matters, a Final Judgment was entered in the Defendants'
24 favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs
(the "Final Judgment").

25 11. After obtaining the Attorneys' Fees Judgment, the Defendants, on August 16, 2016,
26 recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final
27 Judgment against the Association, recorded as Instrument #20160818-0001198 (the "First Abstract
28 of Judgment").

 12. In the First Abstract of Judgment, the Defendants listed the parcel numbers of the
Boulden Property and the Lamothe Property as properties to which the First Abstract of Judgment
and Final Judgment was to attach.

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14. On September 2, 2016, the Defendants recorded with the Clark County Recorder's office an Abstract of Judgement referencing the Final Judgment against the Association, recorded as Instrument #20160902-0002690 (the "Third Abstract of Judgment"). The Third Abstract of Judgment listed the parcel number of the Boulden Property only as the property to which the Judgment was to attach.

1. The Association is a “limited purpose association” as referenced in NRS 116.1201(2).
2. As a limited purpose association, NRS 116.3117 is not applicable to the Association.
3. As a result of the Rosemere LPA Litigation, the Amended CC&Rs were judicially declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and have no force and effect and were declared void ab initio.

5. The Plaintiffs were not “losing parties” in the Rosemere LPA Litigation as per Section 25 of the Original CC&Rs.

7. The Final Judgment against the Association is not an obligation or debt owed by the Plaintiffs.

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1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Second
2 Abstract of Judgment recorded as Instrument #20160902-0002684 in the Clark County Recorder's
3 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

4 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Third
5 Abstract of Judgment recorded as Instrument #20160902-0002690 in the Clark County Recorder's
6 Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

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IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are permanently enjoined from recording and enforcing the Final Judgment from the Rosemere LPA Litigation or any abstracts related thereto against the Boulden Property or the Lamothe Property.

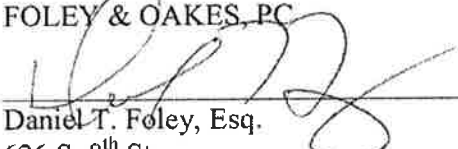
IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are permanently enjoined from taking any action in the future against the Plaintiffs or their properties based upon the Rosemere LPA Litigation.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants are hereby ordered to release the First Abstract of Judgment, the Second Abstract of Judgment, and the Third Abstract of Judgment recorded with the Clark County Recorder within ten (10) days after the date of Notice of Entry of this Order.

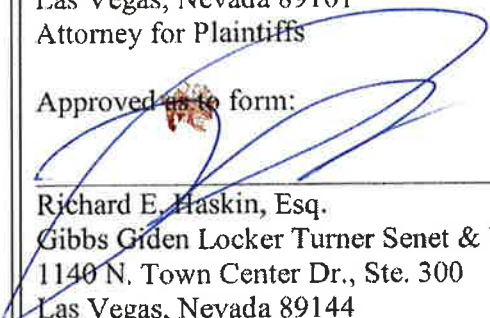
DATED this 19th day of July 2017


DISTRICT COURT JUDGE

Submitted by:
FOLEY & OAKES, PC


Daniel T. Foley, Esq.
626 S. 8th St.
Las Vegas, Nevada 89101
Attorney for Plaintiffs

Approved as to form:


Richard E. Haskin, Esq.
Gibbs Giden Locker Turner Senet & Wittbrodt LLP
1140 N. Town Center Dr., Ste. 300
Las Vegas, Nevada 89144
Attorney for Defendants

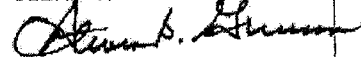
GIBBS GIDEN LOCKER TURNER SENET & WITTBRODT LLP

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EXHIBIT F

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Steven D. Grierson
CLERK OF THE COURT



1 **ANAC**
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6 Attorneys for Defendants
7 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST
8

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

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

14 Plaintiff,

15 v.

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

18 Defendants.
19

20 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
21 THE LYTLE TRUST,

22 Counter-Claimants,

23 v.

24 LINDA LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST, ROBERT Z.
25 DISMAN, YVONNE A. DISMAN, and ROES 1
through 10, inclusive,

26 Counter-Defendants.
27
28

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

**DEFENDANTS TRUDI LEE LYTLE AND
JOHN ALLEN LYTLE, TRUSTEES OF
THE LYTLE TRUST'S ANSWER TO
PLAINTIFFS' SECOND AMENDED
COMPLAINT AND COUNTERCLAIM**

1 COMES NOW Defendants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of
2 THE LYTLE TRUST ("Defendants" and/or the "Lytles"), by and through their counsel of record,
3 Richard E. Haskin, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET &
4 WITTBRODT, LLP, and hereby answers Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF
5 THE MARJORIE B. BOULDENR TRUST, LINDA LAMOTHE AND JACQUES LAMOTHE,
6 TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST's (collectively
7 "Plaintiffs") Second Amended Complaint as follows:

8 1. As to Paragraphs 1 through 3 of the Second Amended Complaint, Defendants admit
9 the allegations set forth in said Paragraphs.

10 2. As to Paragraphs 4 through 5 of the Second Amended Complaint, Defendants are
11 without knowledge or information sufficient to admit or deny the allegations contained therein. Said
12 Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied.
13 Defendants deny the same on that basis.

14 3. As to Paragraph 6 of the Second Amended Complaint, Defendants admit the
15 allegations set forth in said Paragraph.

16 4. As to Paragraph 7 of the Second Amended Complaint, Defendants admit that
17 Rosemere Estates Property Owners Association, a Nevada non-profit corporation ("Rosemere"), is a
18 Limited Purpose Association governed by Chapter 116 of the Nevada Revised Statutes. As to the
19 remaining allegations, said Paragraph also contains legal conclusions rather than facts that need
20 admitted or denied. Defendants deny the same on that basis, as well as the content of such allegation
21 should such a denial be necessary.

22 5. Defendants deny the allegations in Paragraph 8 of the Second Amended Complaint.

23 6. As to Paragraphs 9 of the Second Amended Complaint, Defendants admit that
24 paragraph 24 of the CC&Rs speaks for itself.

25 7. As to Paragraphs 10 through 14 of the Second Amended Complaint, Defendants
26 admit the allegations set forth in said Paragraphs.

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1 8. As to Paragraph 15 of the Second Amended Complaint, Defendants admit that the
2 Bouldens and the Lamothes were not parties to the aforementioned lawsuit. However, Defendants
3 deny the allegation that the property of the Bouldens and Lamothes described in the Second
4 Amended Complaint is not subject to the judgment described in the Second Amended Complaint.
5 As to the remaining allegations, said Paragraph also contains legal conclusions rather than facts that
6 need to be admitted or denied. Defendants deny the same on that basis, as well as the content of
7 such allegation should such a denial be necessary.

8 9. Defendants deny the allegations in Paragraphs 16 through 18 of the Second Amended
9 Complaint. Furthermore, said Paragraphs also contain legal conclusions rather than facts that need
10 to be admitted or denied. Defendants deny the same on that basis.

11 10. As to Paragraphs 19 and 20 of the Second Amended Complaint, Defendants are
12 without knowledge or information sufficient to admit or deny the allegations contained therein.

13 11. As to Paragraphs 21 and 22 of the Second Amended Complaint, Defendants admit the
14 allegations contained therein.

15 12. As to Paragraph 23. Defendants admit that Plaintiffs were not parties in the Rosemere
16 II litigation; however, Defendants deny that Plaintiffs did not have notice of the same. Plaintiffs
17 regularly attended Board meetings for the Association during which all litigation by and against
18 Defendants were discussed, and Plaintiffs routinely contributed assessments to fund such litigation.

19 13. As to Paragraph 24 of the Second Amended Complaint, Defendants admit the
20 allegations contained therein.

21 **FIRST CAUSE OF ACTION**

22 **(Slander of Title, Mrs. Boulden)**

23 14. Defendants repeat herein by this reference Paragraphs 1 through 13, inclusive, with
24 the same force and effect as if said Paragraphs were set forth herein in full.

25 15. As to Paragraph 25 of the Second Amended Complaint, Defendants deny the
26 allegations contained therein. Furthermore, said Paragraph also contains legal conclusions rather
27 than facts that need to be admitted or denied. Defendants deny the same on that basis.

28 ///

1 16. As to Paragraphs 26 through 31 of the Second Amended Complaint, Defendants are
2 without knowledge or information sufficient to admit or deny the allegations contained therein. Said
3 Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied.
4 Defendants deny the same on that basis.

5 **SECOND CAUSE OF ACTION**

6 **(Injunction, All Plaintiffs)**

7 17. Defendants repeat herein by this reference Paragraphs 1 through 16, inclusive, with
8 the same force and effect as if said Paragraphs were set forth herein in full.

9 18. Defendants deny the allegations in Paragraph 33 of the Second Amended Complaint.

10 19. As to Paragraphs 34 through 38 of the Second Amended Complaint, Defendants are
11 without knowledge or information sufficient to admit or deny the allegations contained therein. Said
12 Paragraphs also contain legal conclusions rather than facts that need to be admitted or denied.
13 Defendants deny the same on that basis.

14 **THIRD CAUSE OF ACTION**

15 **(Quiet Title, All Plaintiffs)**

16 20. Defendants repeat herein by this reference Paragraphs 1 through 19, inclusive, with
17 the same force and effect as if said Paragraphs were set forth herein in full.

18 21. As to Paragraph 40 of the Complaint, Defendants admit the allegations contained
19 therein.

20 22. As to Paragraphs 41 through 45 of the Second Amended Complaint, Defendants deny
21 the allegations contained therein. Furthermore, said Paragraphs also contain legal conclusions rather
22 than facts that need admitted or denied. Defendants deny the same on that basis.

23 **FOURTH CAUSE OF ACTION**

24 **(Declaratory Relief, All Plaintiffs)**

25 23. Defendants repeat herein by this reference Paragraphs 1 through 22, inclusive, with
26 the same force and effect as if said Paragraphs were set forth herein in full.

27 24. As to Paragraph 47 of the Second Amended Complaint, Defendants admit the
28 allegations contained therein.

1 25. As to Paragraphs 48 through 49 of the Second Amended Complaint, Defendants deny
2 that the allegations contained therein.

3 **FIFTH CAUSE OF ACTION**

4 **(Injunction, Rosemere II Judgment)**

5 26. Defendants repeat herein by this reference Paragraphs 1 through 25, inclusive, with
6 the same force and effect as if said Paragraphs were set forth herein in full.

7 27. As to Paragraphs 51 through 57 of the Second Amended Complaint, Defendants deny
8 that the allegations contained therein.

9 **SIXTH CAUSE OF ACTION**

10 **(Declaratory Relief)**

11 28. Defendants repeat herein by this reference Paragraphs 1 through 27, inclusive, with
12 the same force and effect as if said Paragraphs were set forth herein in full.

13 29. Defendants admit the allegations contained in Paragraph 59 of the Second Amended
14 Complaint.

15 30. 27. As to Paragraphs 60 through 61 of the Second Amended Complaint,
16 Defendants deny that the allegations contained therein.

17 **AFFIRMATIVE DEFENSES**

18 For their further and separate affirmative defenses to the Second Amended Complaint filed
19 by Plaintiffs and the claims asserted therein, and without assuming the burden of proof on any
20 matters for which that burden rests with Plaintiffs, Defendants allege as follows:

21 **FIRST AFFIRMATIVE DEFENSE**

22 The Complaint fails to state a claim upon which relief can be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 If Plaintiffs suffered or sustained any loss, injury, damage or other detriment, the same was
25 directly and proximately caused and contributed to by the breach of contract, conduct, acts,
26 omissions, activities, carelessness, recklessness, negligence, and/or intentional misconduct of
27 Plaintiffs or persons or entities under Plaintiffs' control, and thereby completely or partially bars
28 Plaintiffs' recovery herein.

1 **THIRD AFFIRMATIVE DEFENSE**

2 Defendants are not legally responsible for the acts and/or omissions claimed herein.

3 **FOURTH AFFIRMATIVE DEFENSE**

4 Plaintiffs failed, refused and neglected to take reasonable steps to mitigate its alleged
5 damages, if any, thus barring or diminishing Plaintiffs' recovery herein.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 The injuries and damages of which Plaintiffs complain were proximately caused by, or
8 contributed to, by the acts of other persons and/or other entities, whether now named or otherwise,
9 and that said acts were an intervening and superseding cause of the injuries and damages, if any, of
10 which Plaintiffs complain, thus barring Plaintiffs from any recovery against these Defendants or
11 entitled Defendants to contribution from such parties.

12 **SIXTH AFFIRMATIVE DEFENSE**

13 Plaintiffs' claims are reduced, modified, and/or barred by the doctrine of unclean hands.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 Plaintiffs have knowledge of and assumed the risks of their acts or failure to act. The
16 damages alleged by Plaintiffs were caused by, and arose out of, risks which Plaintiffs directly
17 assumed.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 Defendants are informed and believe, and thereon allege, that Plaintiffs waived their claims
20 against these Defendants at issue herein.

21 **NINTH AFFIRMATIVE DEFENSE**

22 Plaintiffs would be unjustly enriched if they recovered from Defendants any of the damages
23 alleged in the Complaint.

24 **TENTH AFFIRMATIVE DEFENSE**

25 In the event Defendants are found liable in any manner to Plaintiffs, Defendants would be
26 entitled to offsets and credits against any purported damages, if any, allegedly sustained by
27 Plaintiffs.

28 ///

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 Defendants allege that Plaintiffs failed to properly confer jurisdiction on this Court on some
3 or all causes of action in its Complaint because Plaintiffs failed to comply with the provisions of
4 Chapter 38 of the Nevada Revised Statutes. Defendants reserve their right to raise this issue at any
5 time, including appeal, as jurisdiction cannot be consented upon this Court by the parties and is
6 never waived.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 Defendants incorporate by reference those affirmative defenses enumerated in NRCP 8 as
9 fully set forth herein. In the event further investigation or discovery reveals the applicability of any
10 such defenses, Defendants reserve the right to seek leave of the court to amend its answer to
11 specifically assert the same. Such defenses are herein incorporated by reference for the specific
12 purpose of not waiving the same.

13 **THIRTEENTH AFFIRMATIVE DEFENSE**

14 Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been
15 stated or alleged herein insofar as sufficient facts were not available after reasonable inquiry upon
16 the filing of Defendants' Answer to the Second Amended Complaint, and therefore, Defendants
17 specifically reserve the right to amend its Answer to allege additional affirmative defenses if
18 subsequent investigation so warrants, up to and including through the time of trial in this matter.

19
20 WHEREFORE, Defendants pray for relief as follows:

- 21 1. That the Second Amended Complaint be dismissed and that Plaintiffs take nothing by
22 way of its Second Amended Complaint;
- 23 2. For costs and disbursements in connection with this action;
- 24 3. For reasonable attorney's fees, and
- 25 4. For such other and further relief that this Court deems just and proper.
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COUNTERCLAIM

COMES NOW Defendants and Counter-Claimants TRUDI LEE LYTLE and JOHN ALLEN LYTLE, Trustees of THE LYTLE TRUST (the "Lytles"), by and through their counsel of record, Richard E. Haskin, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP, and hereby alleges as follows:

I. THE PARTIES AND JURISDICTION

1. The Lytle Trust (the "Lytle Trust"), is the current owner of real property located 1930 Rosemere Court, in Clark County, Nevada, APN 163-03-313-009, and described as:

Lot Nine (9) of Rosemere Court, as shown by map thereof on file in Book 59, of Plats, Page 58, in the Office of the County Recorder of Clark County, Nevada ("Lytle Property").

The Lytle Property was previously owned by Defendants, Counter-Claimants J. Allen Lytle and Trudi L. Lytle, the current Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996.

2. The Lytles are informed and believe, and thereon allege, that Counter-Defendants Linda Lamothe and Jacques Lamothe, Trustees of the Jacques & Linda Lamothe Living Trust, are the owners of the residential property in Clark County, Nevada known as parcel number 163-03-313-002, and commonly known as 1830 Rosemere Court, Las Vegas, Nevada 89117 ("1830 Rosemere Court").

3. The Lytles are informed and believe, and thereon allege, that Plaintiff Marjorie B. Boulden ("Boulden") was formerly the owner of the residential property in Clark County, Nevada known as parcel number 163-03-313-008, and commonly known as 1860 Rosemere Court, Las Vegas, Nevada 89117 ("1960 Rosemere Court"). However, the Lytles are informed and believe, and thereon allege, that on or about August 4, 2017, Boulden sold 1960 Rosemere Court to Counter-Defendants Robert Z. Disman and Yvonne A. Disman, who are now owners of 1960 Rosemere Court. Under NRS 116.4109, Counter-Defendants Robert and Yvonne Disman knew or should have known that the Association had judgments against it and recorded against it that could encumber

1 their property prior to their purchase of the property.

2 4. The true names and capacities of Counter-Defendants sued herein as ROES 1 through
3 10, inclusive, and each of them, are presently unknown to the Lytles, and, therefore, they are sued
4 herein under fictitious names, and when the true names are discovered, the Lytles will seek leave to
5 amend this Counterclaim and proceedings herein to substitute the true names of said Counter-
6 Defendants. The Lytles are informed and believe and based thereon allege that each of the foregoing
7 Counter designated herein as a ROE is negligent or responsible in some manner for the events herein
8 referred to.

9 **II. ROSEMERE ESTATES COMMUNITY AND GOVERNING DOCUMENTS**

10 5. The Original CC&Rs, in the first paragraph, defines Rosemere Estates as "Lots 1
11 through 9 of Rosemere Court, a subdivision..." The document adds that "it is the desire and
12 intention of the Subdivider to sell the land described above and to impose on it mutual, beneficial,
13 covenants, conditions and restrictions under a general plan or scheme of improvement for the benefit
14 of all of the land described above and the future owners of the lots comprising said land." Thus, the
15 Association includes each and every lot within Rosemere Estates.

16 6. Rosemere Property Owners' Association (the "Association"), at all times herein
17 mentioned is comprised of nine (9) owners of single family lots all as more particularly described in
18 the recorded Declaration of Covenants, Conditions and Restrictions, dated January 4, 1994 (the
19 "Original CC&Rs") for the Association, as recorded in the official records of the Clark County
20 Nevada Recorder's office. A true and correct copy of the Original CC&Rs is attached hereto, and
21 incorporated herein, as Exhibit "1." The Lytles are informed and believe, and based thereon allege,
22 that the Original CC&Rs were recorded on January 4, 1994, before title to any lot within the
23 Association was conveyed by deed, and are referenced in the deeds to all Nine (9) properties located
24 within the Association.

25 7. On February 25, 1997, Plaintiff and Counter-Defendant Linda Lamothe and Plaintiff
26 Marge Boulden, acting on behalf of all owners, filed Non-Profit Articles of Incorporation (the
27 "Articles") pursuant to Nevada Revised Statutes ("NRS") 82, which formalized the property owners'
28 committee and created an association, naming it "Rosemere Estates Property Owners Association."

1 8. At the July 2, 2007, the Association's Board, the Board presented the homeowners
2 with a binder that contained the following: (1) new Articles of Incorporation, dated July 6, 2007,
3 which articles were never filed although represented to be as set forth herein; (2) a letter from Kearn
4 to the Association members; (3) a Corporate Charter referencing the February 25, 1997 and July 6,
5 2007 Articles of Incorporation; (4) a section entitled "Governing Documents" referencing the July 6,
6 2007 Articles of Incorporation; (5) the "First Statutorily Mandated Amendment to the Bylaws of the
7 Rosemere Estates Homeowners Association," and (5) the proposed Amended and Restated
8 Covenants, Conditions and Restrictions ("Amended CC&Rs").

9 9. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs
10 and changed the very nature of property ownership within Rosemere Estates. The Amended CC&Rs
11 contained numerous use restrictions including a section entitled "Restrictions on Use, Alienation,
12 and Occupancy," pet restrictions, lease restrictions, the establishment of a Design Review
13 Committee with unfettered discretion, and a new and expansive definition of "nuisance." Further,
14 the Amended CC&Rs made the Association a full blown unit owners' association, subject to the
15 entirety of Chapter 116.

16 10. The proposed amended CC&Rs were not agreed to by all owners at the July 2, 2007
17 meeting, in fact less than 67% thereof, with at least 3 owners specifically objecting to the proposed
18 changes and refusing to sign the approval.

19 11. Despite the failure to obtain the required unanimous approval for changing the
20 CC&Rs, the Association proceeded, on July 3, 2007, to record in the office of the Recorder for Clark
21 County, Nevada, the Amended CC&Rs.

22 12. The Lytles immediately contested and continued to contest the Amended CC&Rs and
23 its unlawful adoption.

24 **III. THE UNDERLYING LITIGATION**

25 13. After proceeding through two separate mandatory arbitrations via NRS 38.383 in
26 2009 and 2010, one which contested the validity of the Amended CC&Rs and a second which
27 contested the validity of liens placed against the Lytle Property by the Association due to the Lytles
28 refusing to pay assessments levied against their property to fund litigation against them, the Lytles

1 filed two lawsuits in Nevada District Court. Pursuant to the Amended CC&Rs, which was the
2 governing document at the time and at all times during the underlying litigation, the Lytles were
3 required to file their claims against the Association, not against the any of the individual owners.

4 **A. NRED I LITIGATION**

5 14. The first lawsuit commenced by the Lytles, case number A-09-593497-C which was
6 assigned to Judge Michelle Leavitt in Department XII, contested the validity of the Amended
7 CC&Rs and sought to overturn the Amended CC&Rs ("NRED I Litigation"). The Lytles ultimately
8 prevailed, entirely, in the litigation, and the Court granted the Lytles summary judgment on July 29,
9 2013. The matter was appealed, and the Nevada Supreme Court affirmed the District Court's Order
10 granting the Lytles summary judgment. The Supreme Court remanded the case to the District Court
11 for redetermination of costs, attorneys' fees and damages on October 19, 2015.

12 15. On May 25, 2016, the Court awarded the Lytles \$297,072.66 in attorneys' fees
13 pursuant to the Original CC&Rs and the Amended CC&Rs, which the Court declared as the
14 governing documents during the entirety of the litigation.

15 16. On June 17, 2016, the Court awarded the Lytles damages in the NRED I Litigation,
16 after a prove-up hearing, in the amount of \$63,566.93.

17 17. Finally, on July 22, 2016, the Court in the NRED I Litigation awarded the Lytles
18 costs in the amount of \$599.00.

19 18. On September 2, 2016, the Lytles recorded Abstracts of Judgment from the NRED I
20 Litigation against each property within the Association pursuant to the law set forth herein.

21 **B. NRED II LITIGATION**

22 19. On December 13, 2010, the Lytles filed a second lawsuit against the Association
23 seeking to release and expunge three (3) unlawfully recorded liens, which were recorded by the
24 Association against the Lytle Property in 2009 and 2010. This second lawsuit bore case number A-
25 10-631355-C and was assigned to Department 32, Judge Robert Bare (the "NRED II Litigation").

26 20. Distinct from the NRED I Litigation, in the NRED II Litigation, both the Lytles and
27 the Association stipulated to the underlying fact that the Amended CC&Rs were the controlling
28 governing documents for the Association in the NRED II Litigation.

1 21. On November 14, 2011, the Court granted the Association's Motion for Summary
2 Judgment against the Lytles in the NRED II Litigation. The Court then granted attorneys' fees to the
3 Association pursuant to the Amended CC&Rs and NRS 116.4117. The Lytles appeals the Court's
4 rulings in the NRED II Litigation.

5 22. On December 21, 2015, the Nevada Supreme Court vacated the Order Granting
6 Summary Judgment in the NRED II Litigation and remanded the NRED II Litigation back to
7 Department 32 for determination. The Supreme Court also vacated the order awarding attorneys'
8 fees, costs, and damages to the Association.

9 23. On November 10, 2016, the Court in the NRED II Litigation granted the Lytles'
10 Motion for Summary Judgment and entered an Order thereon, finding in favor of the Lytles as to all
11 causes of action.

12 24. On April 14, 2017, the Court in the NRED II Litigation awarded the Lytles'
13 attorneys' fees in the amount of \$274,608.28 pursuant to the Original CC&Rs, the Amended CC&Rs
14 and NRS 116.4117, finding that the Amended CC&Rs controlled the remedies provided in the
15 action. The Court also awarded costs in the amount of \$4,725.00.

16 25. Finally, on May 11, 2017, after a prove-up hearing, the Court in the NRED II
17 Litigation awarded the Lytles punitive damages in the amount of \$823,824.84, pursuant to NRS
18 42.005.

19 26. On July 20, 2017, the Court in the NRED II Litigation issued an Abstract of
20 Judgment in the amount of \$1,103,158.12, which has been recorded against the Association but none
21 of the individual lots or properties within the Association.

22 **FIRST CAUSE OF ACTION**

23 **(For Declaratory Relief Against Counter-Defendants Jacques and Linda Lamouthe, Third-**
24 **Party Defendants Robert Disman and Yvonne Disman, and ROES 1 through 10, Inclusive)**

25 27. The Lytles incorporate the allegations contained in Paragraphs 1 through 26 herein as
26 though set forth in full.

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1 28. There exists a controversy between the Lytles and Counter-Defendants and Third
2 Party Defendants regarding the interpretation, application and enforcement of NRS, Chapter 116 as
3 well as the application of the Original CC&Rs and Amended CC&Rs to the controversy at hand,
4 requiring a determination by this Court and entry of declaratory relief.

5 29. Specifically, the Lytles contend as follows:

- 6 a. Pursuant to the Original CC&Rs, a lien or judgment against the Association
7 established under the Original CC&Rs attaches to each lot within the Association.
- 8 b. Pursuant to the Amended CC&Rs, which were in force at all times from 2007
9 through July 29, 2013, a lien or judgment against the Association established
10 under the Amended CC&Rs attaches to each lot within the Association.
- 11 c. Pursuant to NRS, Chapter 116, the Uniform Common Interest Development Act,
12 a lien or judgment against the Association attaches to each lot within the
13 Association, even if the Association is a *limited purpose association*, because
14 under NRS 116.021, each common interest community consists of all "real estate
15 described in a declaration with respect to which a person, by virtue of the person's
16 ownership of a unit, is obligated to pay for a share of real estate taxes, insurance
17 premiums, maintenance or improvement of, or services or other expenses related
18 to, common elements, other units or other real estate described in that
19 declaration." Further under NRS 116.093, each "unit" is defined as the "physical
20 portion of the common-interest community designated for separate ownership or
21 occupancy..." Thus, the association, or common interest community, includes
22 each and every unit in the community, including those owned by third parties.
- 23 d. Pursuant to NRS 116.3117, which governed the Association and all owners
24 during the underlying litigation, a judgment against the Association is a lien in
25 favor of the Lytles against all of the real property within the Association and all of
26 the units therein, including Counter-Defendants' properties. The Association and
27 its membership are not entitled to use Chapter 116 and all of its provisions as a
28 sword during the litigation against the Lytles, *e.g.* to record multiple liens totaling

1 \$209,883.19 against the Lytles and attempt foreclosure against the Lytle Property
2 forcing the Lytles to procure a \$123,000.00 cash bond to prevent such
3 foreclosure, and then a shield to defend against the Lytles after they prevailed in
4 that litigation and the Association was declared a *limited purpose association*.

5 30. The Lytles desire a judicial determination of the parties' rights and duties and a
6 declaration the a lien against the Association, specifically the Abstract of Judgment issued in the
7 NRED II Litigation, can be recorded against 1830 Rosemere Court and 1960 Rosemere Court.

8 31. A judicial declaration is necessary and appropriate at this time so that the parties may
9 ascertain their rights and duties because the Lytles wish to record the Abstract of Judgment in the
10 NRED II Litigation against 1830 Rosemere Court and 1960 Rosemere Court to enforce their rights
11 as creditors against the Association.

12
13 WHEREFORE, Defendants and Counter-Claimants pray for relief as follows:

14 1. That the Second Amended Complaint be dismissed and that Plaintiffs take nothing by
15 way of its Second Amended Complaint;

16 2. That the Court enter a Declaratory Judgment in favor of the Lytles and against the
17 Counter-Defendants and Third Party Defendants, finding and declaring that the Lytles are entitled to
18 record a lien and/or Abstract of Judgment obtained in the NRED II Litigation against 1830
19 Rosemere Court and 1960 Rosemere Court in order to enforce the Lytles' rights as creditors against
20 the Association.

21 3. For an injunction preventing any Counter-Defendant or Third Party Defendant from
22 selling either 1830 Rosemere Court and 1960 Rosemere Court until this Court has entered a
23 Declaratory Judgment;

24 4. For costs and disbursements in connection with this action;

25 5. For reasonable attorney's fees, and

26 ///

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1 6. For such other and further relief that this Court deems just and proper.

2
3 DATED: August 11, 2017

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

4
5
6 By: 

Richard E. Haskin, Esq.
Nevada State Bar # 11592

Timothy P. Elson, Esq.
Nevada State Bar # 11559

1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144

Attorneys for Defendants

TRUDI LEE LYTLE, JOHN ALLEN LYTLE, & THE
LYTLE TRUST

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

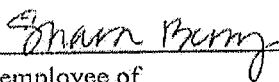
CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER
 SENET & WITTBRODT LLP, hereby certifies that on August 11, 2017, she served a copy of the
 foregoing **DEFENDANTS TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, TRUSTEES OF
 THE LYTLE TRUST'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT
 AND COUNTERCLAIM;** by electronic service through the Regional Justice Center for Clark
 County, Nevada's ECF System:

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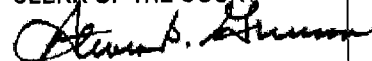
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EXHIBIT G

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

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

Plaintiff,

v.

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

Defendants.

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

**DEFENDANTS TRUDI LEE LYTLE,
JOHN ALLEN LYTLE, THE LYTLE
TRUST OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT, OR, IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS**

Date: July 31, 2018
Time: 9:00 a.m.

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST,

Counter-Claimants,

v.

LINDA LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST, ROBERT Z.
DISMAN, YVONNE A. DISMAN, and ROES 1
through 10, inclusive,

Counter-Defendants.

COMES NOW Defendants TRUDI LEE LYTLE, JOHN ALLEN LYTLE, and THE LYTLE TRUST (the "Lytle"), by and through their counsel of record, Richard E. Haskin, Esq., and Timothy Elson, Esq., of the law firm of GIBBS, GIDEN, LOCHER, TURNER, SENET & WITTBRODT, LLP, and hereby files the Lytles' Opposition to ROBERT Z. DISMAN and YVONNE A. DISMAN's (the "Dismans") Motion for Summary Judgment, or, in the Alternative, Motion for Judgment on the Pleadings, and Countermotion for Summary Judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Dismans lack any standing to bring the instant Motion for Summary Judgment. There is but a single claim by and between the Lytles and the Dismans, and that claim already was adjudicated by Judge Timothy Williams. The matter is now on appeal before the Nevada Supreme Court, and the matter has been fully briefed by the parties, including the Dismans.

The only cause of action between the Lytles and Dismans is a single cause of action by the Lytles for declaratory relief. Specifically, the Lytles sought a declaration from the Court that the Lytles could lawfully record an Abstract of Judgment recorded against the Dismans' property.¹ See Answer to Second Amended Complaint and Counterclaim, ¶¶ 30, 31, Exhibit W. The claim was fully adjudicated by Judge Williams in this very matter on July 25, 2017, when Judge Williams found that the Abstract of Judgment recorded on the Dismans' property clouded title. Judge Williams quieted title to the property, expunged the Abstract of Judgment, and issued an injunction preventing the Lytles from further clouding title to the Dismans' property.²

The Lytles then appealed that decision, and the appeal is fully briefed and awaiting disposition before the Nevada Supreme Court. The Dismans are parties to the appeal and submitted briefing on the issues. There is simply nothing for this Court now to consider as all claims between these parties already were adjudicated.

¹ The Dismans are the present owners of the property formerly belonging to Plaintiff MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE B. BOULDEN TRUST ("Boulden"). The Lytles added the Dismans as a necessary party in this action once Boulden sold the property to the Dismans.

² In addition to the expungement, the Lytles recorded a Release of Abstract of Judgment.

1 The Dismans liken their Motion for Summary Judgment to this Court's recent adjudication
2 related to other parties in this consolidated case. However, those parties brought claims against the
3 Lytles. The Dismans do not assert any claim against the Lytles. Once more, as set forth above, the
4 only claim between the Lytles and the Dismans is pending determination on appeal. Thus, the
5 instant Motion for Summary Judgment is misplaced.

6 Irrespective of the lack of standing, the Lytles continue to assert they rightfully recorded the
7 Abstracts of Judgment, which have since been released. The Lytles specifically contend that the
8 provisions of common law and Chapter 116 provide the Lytles with such rights, as fully set forth
9 herein and in prior briefing.

10 **II. BRIEF STATEMENT OF MATERIAL AND UNDISPUTED FACTS**

11 **A. Rosemere Estates**

12 On January 4, 1994, Baughman & Turner Pension Trust (the "Developer"), as the subdivider
13 of a cul-de-sac to be made up of nine (9) residential lots on a street known as Rosemere Court in Las
14 Vegas, Nevada, recorded with the Clark County Recorder's Office a Declaration of Covenants,
15 Conditions, and Restrictions ("Original CC&Rs"). Original CC&Rs, Request for Judicial Notice
16 ("RJN"), Exhibit A. The Lytles purchased their property, Lot 163-03-313-009 (the "Lytle
17 Property") on November 6, 1996, from the original buyer who first purchased it from the Developer
18 on August 25, 1995.

19 **B. The Original CC&Rs and Formation of the Association**

20 Of note to the instant controversy, the Original CC&Rs, in the first paragraph, defines
21 Rosemere Estates as "Lots 1 through 9 of Rosemere Court, a subdivision..." Original CC&Rs,
22 Exhibit A. The document adds that "it is the desire and intention of the Subdivider to sell the land
23 described above and to impose on it mutual, beneficial, covenants, conditions and restrictions under
24 a general plan or scheme of improvement for the benefit of all of the land described above and the
25 future owners of the lots comprising said land." *Id.* Thus, the Association includes each and every
26 lot therein.

27 ///

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Sometime after the Lytles purchased their property, a group of homeowners formed the Association. In 1997, Linda Lamothe and Marge Boulden, two homeowners acting on behalf of all owners, filed Non-Profit Articles of Incorporation (the "Articles") pursuant to Nevada Revised Statutes ("NRS") 82, which formalized the property owners' committee and named it "Rosemere Estates Property Owners Association." Articles of Incorporation, Exhibit B.

C. The Amended CC&Rs

Without warning or consult with the homeowners, the Board for the Association, on July 2, 2007, presented the Amended and Restated Covenants, Conditions and Restrictions (the "Amended CC&Rs") to the Association membership. Order Granting Summary Judgment in NRED 1 Litigation, FOF Nos. 23, 24, Exhibit D. The proposed Amended CC&Rs were far more restrictive than the Original CC&Rs and changed the very nature of property ownership within Rosemere Estates. *Id.* at FOF No. 25. The Amended CC&Rs contained numerous and onerous new use restrictions including the drastic expansion of the powers, rights, and duties of the Association, a section entitled "Restrictions on Use, Alienation, and Occupancy," pet restrictions, parking restrictions, lease restrictions, the establishment of a Design Review Committee with unfettered discretion, and a new and expansive definition of "nuisance." *Id.* The Amended CC&Rs also contained a morality provision. *Id.* at FOF Nos. 26. Finally, the Amended CC&Rs contained a construction timeline that would require the Lytles, and only the Lytles, to complete the construction of a custom home on the lot within a mere *60 days* of receipt of approval from the proposed *Design Review Committee*—something never envisioned in the Original CC&Rs and impossible to adhere to. *Id.* at FOF No. 28. Failure to comply would cost the Lytles \$50.00 per day. *Id.* at 30. Despite failure to obtain the consent of all homeowners, the Board unilaterally recorded the Amended CC&Rs on July 3, 2007, with the Office of the Recorder for Clark County, Nevada. *Id.* at FOF Nos. 34, 35, *see also* Amended CC&Rs, Exhibit B.

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

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

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

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

3 Section 1.24. "'Governing Documents includes the Amended CC&Rs."

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

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

6 Amended CC&Rs, Exhibit C.

7 **D. The Association Records Unlawful Liens Under the Amended CC&Rs and Chapter 116 and Initiates Foreclosure Against the Lytles**

8 After the Amended CC&Rs were adopted, at a September 15, 2008 Executive Board meeting of the Association, the Association's membership voted to approve a Board proposal that, first, each member of the Association should be assessed \$10,000.00 "in conjunction with [the Lytles'] actions" in bringing the NRED 1 litigation and in pursuing litigation against Plaintiff for unarticulated and nebulous reasons, and, second, that "the Association should bring foreclosure proceedings against any lots with outstanding assessments due the Association." Order Granting Summary Judgment in NRED 2 Litigation, FOF No. 10, Exhibit L. The Association then initiated non-judicial foreclosure proceedings against the Lytles. *Id.* at FOF Nos. 11, 20. In addition to instituting the non-judicial foreclosure process afforded to it by NRS Chapter 116 and the Amended CC&Rs, the Board recorded additional, unlawful liens without right against the Lytles. *Id.* at FOF Nos. 12 – 18, 22. The total of the three (3) unlawfully recorded liens was \$209,883.19. *Id.* at FOF Nos. 25, 26

9 **E. NRED 1 Litigation**

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

1 After the arbitrator found in favor of the Association, the Lytles filed for a trial de novo in
2 this District Court, case number A-09-593497-C, which was assigned to Judge Michelle Leavitt in
3 Department XII. After the matter was initially dismissed, the Lytles appealed to the Supreme Court,
4 prevailed, and the matter was then remanded back to the District Court.

5 The Lytles ultimately prevailed, entirely, in the litigation, and the Court granted the Lytles
6 summary judgment on July 29, 2013. Order Granting Summary Judgment in NRED 1 Litigation,
7 COL No. 11, Exhibit D. The court made the following pertinent findings:

- 8 • The Association was formed by the homeowners on February 25, 1997. Order
9 Granting Summary Judgment in NRED 1 Litigation, COL No. 11, Exhibit D.
- 10 • The Association is a limited purpose association as defined by NRS 116.1201. *Id.* at
11 COL Nos. 13, 19.
- 12 • The Amended CC&Rs were improperly recorded, were invalid, and the Amended
13 CC&Rs were ordered released. *Id.* at COL Nos. 25, 26.
- 14 • From July 3, 2007, through July 29, 2013, the Amended CC&Rs governed the
15 Association and its members. *See generally id.*

16 The matter was once again appealed, and the Nevada Supreme Court affirmed the district
17 court's Order granting the Lytles summary judgment. The Supreme Court remanded the case to the
18 District Court for redetermination of costs, attorneys' fees and damages on October 19, 2015.
19 Supreme Court Order in NRED 1 Litigation, Exhibit U.

20 On May 25, 2016, after hearing the Lytles' motion for attorneys' fees, the Court awarded the
21 Lytles \$297,072.66 in attorneys' fees pursuant to the Original CC&Rs, the Amended CC&Rs and
22 NRS 116.4117. Order Awarding Attorneys' Fees in NRED 1 Litigation, Exhibit E.

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

27 Finally, on July 22, 2016, the Court awarded the Lytles costs in the amount of \$599.00.
28 Order Awarding Costs in NRED 1 Litigation, Exhibit G. Previously, the Court had awarded

1 \$1,962.80 in costs.

2 On September 2, 2016, the Lytles recorded Abstracts of Judgment against each property
3 within the Association pursuant to the law set forth herein. Abstracts of Judgment from NRED 1
4 Litigation, Exhibit R.

5 **F. NRED 2 Litigation**

6 On March 16, 2010, the Lytles initiated another NRS 38.310 mandated non-binding
7 arbitration before NRED, naming the Association as respondent (the "NRED 2 Litigation"). The
8 purpose of the NRED 2 Litigation was to halt non-judicial foreclosure proceedings initiated by the
9 Association against the Lytles pursuant to NRS, Chapter 116 and the Amended CC&Rs. *See*
10 Complaint in NRED 2 Litigation, Exhibit I. The Lytles also sought an order from the Court directing
11 the Association to comply with NRS Chapter 116 and the Amended CC&Rs where the Association
12 had failed to comply, e.g. approval of budgets, conduct of meetings, etc. *Id.* In that arbitration, all
13 parties stipulated that the Amended CC&Rs were valid and enforceable for the purpose of the NRED
14 2 Litigation. Stipulation, Exhibit H.

15 After the Association prevailed in the Arbitration (in November 2010), the Lytles promptly
16 and timely filed a lawsuit (for trial de novo) on December 13, 2010. Complaint in NRED 2
17 Litigation, Exhibit I. The Association filed a counterclaim, seeking to enforce the assessments the
18 Association levied against the Lytles property.

19 The Lytles included the following language in their Complaint:

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

25 Complaint in NRED 2 Litigation, ¶ 11, Exhibit I.

26 On November 14, 2011, the Court granted the Association's Motion for Summary Judgment.
27 *See* Order Granting Summary Judgment in NRED 2 Litigation, Exhibit L. The Court also awarded
28 the Association's Motion for Attorneys' Fees pursuant to NRS Chapter 116 and the Amended

1 CC&Rs, with an amount to be determined at a subsequent hearing. *Id.* The Court then entered two
2 orders granting the Association's attorneys' fees pursuant to NRS 116.4117 and Section 16 of the
3 Amended CC&Rs. Order Granting Assoc. Fees in NRED 2 Litigation, Exhibit J. Thereafter, the
4 Court awarded an additional \$7,068.00 in attorneys' fees to the Association pursuant to NRS
5 116.4117 and the Amended CC&Rs. *See* Order Granting Supplement Fees in NRED 2 Litigation,
6 Exhibit K.

7 On July 16, 2012, the Lytles filed a Notice of Appeal. On December 21, 2015, the Nevada
8 Supreme Court vacated the Order Granting Summary Judgment and remanded this case back to this
9 Court for determination. Specifically, the Supreme Court held that the

10 Lytles' actions during the NRED arbitration were sufficient to 'submit'
11 their slander of title claim to the NRED arbitrator for the purposes of NRS
12 38.330(5). We also conclude that the Lytles did not need to establish that
they suffered monetary damages for their remaining claims to be viable.

13 Supreme Court Order Re: NRED 2 Litigation, Exhibit T. The Supreme Court also vacated the order,
14 awarding attorneys' fees, costs, and damages to the Association. *Id.* In the second footnote of the
15 foregoing Supreme Court Order, and an item of importance to the present case, the Court noted that
16 its ruling was "premised in part on the Lytles' stipulation as to the amended CC&Rs validity." *Id.*

17 Upon remand, the case was essentially thrust back to the beginning. On November 14, 2016,
18 the Court granted the Lytles' Motion for Summary Judgment as to each and every cause of action
19 and against the Association's Counterclaim. *See* Order Granting Summary Judgment in NRED 2
20 Litigation, Exhibit L. The district court then awarded the Lytles the following: \$274,608.28 in
21 attorneys' fees, \$4,725.00 in costs, and \$823,824.84 in punitive damages pursuant to NRS 42.005.
22 *See* Order Granting Attorneys' Fees and Costs in NRED 2 Litigation, Exhibit M; *see also* Order
23 Granting Punitive Damages in NRED 2 Litigation, Exhibit N. Pursuant to the foregoing, the total
24 amount of the judgment against the Association and in favor of the Lytles in the NRED 2 Litigation,
25 including attorneys' fees and costs, is \$1,103,158.12.

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1 **G. NRED 3 Litigation**

2 On April 2, 2015, the Lytles filed an action against the Association in the Eighth Judicial
3 District, Case No. A-15-716420-C, seeking an order from the Court that the Association hold an
4 election, as it has not held such an election since March 24, 2010, despite the legal obligation to do
5 so. *See* Complaint in NRED 3 Litigation, Exhibit Q. On September 13, 2017, the Court granted the
6 Lytles' Motion for Summary Judgment in the NRED 3 Litigation, and ordered that election take
7 place before a neutral third party. *See* Order Granting Summary Judgment in NRED 3 Litigation,
8 Exhibit P.

9 On November 7, 2017, the Court awarded the Lytles \$14,807.50 in attorneys' fees and
10 \$655.10 in costs. Order Granting Attorneys' Fees and Costs in NRED 3 Litigation, Exhibit Q.

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

13 **III. SUMMARY OF RELEVANT PROCEDURE**

14 On July 12, 2017, Plaintiffs MARJORIE B. BOULDEN, TRUSTEE OF THE MARJORIE
15 B. BOULDEN TRUST ("Boulden) and LINDA LAMOTHE AND JACQUES LAMOTHE,
16 TRUSTEES OF THE JACQUES & LINDA LAMOTHE LIVING TRUST ("Lamothe") filed a
17 Complaint in this matter against the Lytles, alleging causes of action for (1) slander of title, (2)
18 injunctive relief, (3) quiet title, and (4) declaratory relief. The Complaint related to the Abstracts of
19 Judgment obtained in the NRED 1 Litigation by the Lytles and recorded by the Lytles against the
20 Boulden and Lamothe properties, among others. The Lytles answered the Complaint on February 8,
21 2017.

22 Thereafter, Boulden and Lamothe filed a Motion for Summary Judgment, which was met by
23 a Countermotion for Summary Judgment by the Lytles. On July 25, 2017, the Court issued an order
24 Granting Motion to Alter or Amend findings of Fact Conclusions of Law, wherein the Court granted
25 partial summary judgment for Boulden and Lamothe as to cloud on title, injunctive and declaratory
26 relief, leaving in place Boulden and Lamothe's claim for slander of title, which has yet to be
27 litigated. Thereafter, pursuant to the Court's order, the Abstracts of Judgment were released by the
28 Lytles as to the Boulden and Lamothe properties.

1 On July 25, 2017, Boulden and Lamothe filed their Second Amended Complaint against the
2 Lytles, alleging causes of action for (1) slander of title, (2) injunctive relief, (3) quiet title, and (4)
3 declaratory relief. The slander of title remains at issue.

4 On August 11, 2017, the Lytles filed their Answer to the Second Amended Complaint and
5 Second Amended Counterclaim. Therein, the Lytles named the Dismans as parties to this lawsuit as
6 the new and present owners of Boulden's property. The Lytles allege a single cause of action
7 against the Dismans for declaratory relief. Therein, the Lytles requested that the Court declare the
8 Abstract of Judgment obtained in the NRED 1 Litigation be declared valid against the Disman
9 property. However, the Court already issued an Order declaring said Abstract invalid, and that
10 Abstract was released against the Disman property, formerly the Boulden property. The matter is
11 now on appeal before the Nevada Supreme Court.

12 The Dismans filed their Answer and Cross-Complaint on September 27, 2017. Therein, the
13 Dismans alleged the following cross-claims against Boulden and Lamothe: (1) breach of warranty,
14 and (2) unjust enrichment. **The Dismans did not assert any claims against the Lytles.**

15 There are no claims by and between the Dismans and the Lytles. Specifically, the Dismans
16 did not allege any declaratory relief, quiet title, or slander of title claims against the Lytles that could
17 be adjudicated. The only cause of action between them has been adjudicated and is on appeal.

18 **IV. LEGAL ARGUMENT**

19 **A. Summary Judgment Standard**

20 Summary judgment shall be rendered in favor of a moving party if the pleadings, depositions,
21 answers to interrogatories, and admissions on file, together with the affidavits, if any, show that
22 there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a
23 matter of law. NRCP Rule 56(c). "Summary Judgment is appropriate and shall be rendered
24 forthwith when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any
25 material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood*
26 *v. Safeway*, 121 Nev. Adv. Op. 73, 121 P.3d, 1026, 1029 (2005) (quoting NRCP 56(c)). In *Wood*,
27 the Nevada Supreme Court rejected the "slightest doubt" standard from Nevada's prior summary
28 judgment jurisprudence, *Id.* at 1037, and adopted the summary judgment standard which had been

1 articulated by the United States Supreme Court in its 1986 Trilogy: *Celotex Corp. v. Catrett*, 477
 2 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and *Matsushita Electrical*
 3 *Industrial Company v. Zenith Radio Corporation*, 475 U.S. 574 (1986). The application of the
 4 standard requires the non-moving party to respond to the motion by “Set[ting] forth specific facts
 5 demonstrating existence of a genuine issue for trial.” *Wood*, 121 p.3d at 1031. This obligation
 6 extends to every element of every claim made, and where there is a failure as to any element of a
 7 claim, summary judgment is proper. *Barmettler v. Reno Air, Inc.*, 114 Nevada 441, 447, 956, P2d.
 8 1382, 1386 (1998).

9 The Nevada Supreme Court held that “Rule 56 should not be regarded as a “disfavored
 10 procedural shortcut” but instead as an integral important procedure which is designed “to secure just,
 11 speedy and inexpensive determination in every action.” *Wood*, 121, p.3d at 1030 (*quoting Celotex*,
 12 477 U.S. at 327). In *Liberty Lobby*, the U.S. Supreme Court noted that:

13 “Only disputes over facts that might affect the outcome
 14 of the suit under governing law will properly preclude
 15 the entry of summary judgment. Factual disputes that
 are irrelevant or unnecessary will not be counted.

16 *Id.* (*quoting Liberty Lobby*, 477 U.S. at 247-48).

17 **B. The Motion For Summary Judgment Should Be Denied Because There Are No**
 18 **Claims To Adjudicate**

19 The Lytles allege a single cause of action for declaratory relief as to the Abstract of Judgment
 20 obtained in the NRED 1 Litigation against the Dismans, as successors in interest to the Boulden
 21 property. The Dismans alleged no claim against the Lytles. The single cause of action alleged
 22 against the Dismans already has been decided by Judge Williams, when he found in favor of
 23 Boulden, the prior owner, as to the competing declaratory relief causes of action. There simply is no
 24 cause of action for which this Court can grant summary judgment. That claim already was decided
 25 and is on appeal. That Order specifically states as follows, as it relates to the Disman property: (1)
 26 the Lytles clouded title to the property, (2) the Abstract of Judgment is expunged and stricken from
 27 the records, (3) the Lytles are permanently enjoined from recording and enforcing the judgment in
 28 the NRED 1 Litigation against the Disman property, and (4) the Lytles are permanently enjoined

1 from taking any action in the future against the Disman property that is based on the NRED 1
2 Litigation.

3 Further, the Lytles did not record any abstracts of judgment related to either the NRED 2 or
4 NRED 3 litigation against the Dismans.

5 Conversely, the SEPTEMBER TRUST, DATED MARCH 23, 1972; GERRY R. ZOBRIST
6 AND JOLIN G. ZOBRIST, AS TRUSTEES OF THE GERRY R. ZOBRIST AND JOLIN G.
7 ZOBRIST FAMILY TRUST; RAYNALDO G. SANDOVAL AND JULIE MARIE SANDOVAL
8 GEGEN, AS TRUSTEES OF THE RAYNALDO G. AND EVELYN A. SANDOVAL JOINT
9 LIVING AND DEVOLUTION TRUST DATED MAY 27, 1992; and DENNIS A. GEGEN AND
10 JULIE S. GEGEN, HUSBAND AND WIFE, AS JOINT TENANTS (the "Consolidated Plaintiffs")
11 alleged causes of action for quiet title and declaratory relief against the Lytles. The Dismans did not
12 allege any causes of action against the Lytles. The Consolidated Plaintiffs claims generally seek two
13 things: first, an expungement of the Abstract of Judgment recorded against their respective
14 properties from the NRED 1 Litigation, and second, an order that no additional abstracts or claims
15 from the NRED 2 and NRED 3 Litigation may be recorded against their respective properties. The
16 Dismans make no such claim against the Lytles. In order for this Motion for Summary Judgment to
17 have any standing, the Dismans would have to assert a cause of action against the Lytles, and as set
18 forth above, no cause of action is even alleged.

19 Indeed, the Dismans' dispute, as that matter is laid-out in the pleadings, is currently pending
20 before the Nevada Supreme Court.

21 C. The District Court's Orders In These Consolidated Cases Are Interlocutory, Not
22 Final, And Not Binding On This Court

23 The Dismans argue that the Order Granting Partial Summary Judgment and entering an
24 injunction in Case A-16-747800-C, by Judge Timothy C. Williams, and the Court's recent Order
25 Granting Summary Judgment in A-17-765372-C are res judicata and necessarily binding. As an
26 initial matter, and as set forth above, Judge Williams' prior order provides the Dismans with the only
27 relief appropriate. Specifically, Judge Williams already adjudicated the only claim between the
28 Lytles and Dismans. Second, however, that order is not final, rather the orders of the Court are

1 partial and interlocutory.

2 The doctrines of res judicata and issue preclusion are “triggered when judgment is entered.”
 3 *Univ. of Nev. v. Tarkanian*, 1110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). There must be a **final**
 4 **determination** by a court of competent jurisdiction. *Id.* An order granting partial summary
 5 judgment is not a final order or judgment where issues of damages remain. *Mid-Century Ins. Co. v.*
 6 *Pavilkowski*, 94 Nev. 162, 576 P.2d 748 (1978), *see also Hallicrafters Co. v. Moore*, 102 Nev. 526,
 7 528, 728 P.2d 441, 442 (1986). Further, there was no certification by the court that this was a final
 8 judgment under NRCP 54(b).

9 A “final order” resolves all claims against all parties, leaving nothing for further
 10 consideration except for post-judgment issues, *i.e.* attorneys’ fees. *Lee v. GNLV Corp.*, 116 Nev.
 11 424, 426, 996 P.2d 416, 417 (2000); *see also Cox v. Gilcrease Well Corp.*, 2014 WL 2466229
 12 (2014).

13 The doctrines of res judicata and issue preclusion are “triggered when judgment is entered.”
 14 *Univ. of Nev. v. Tarkanian*, 1110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994). There must be a **final**
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 17 *Pavilkowski*, 94 Nev. 162, 576 P.2d 748 (1978), *see also Hallicrafters Co. v. Moore*, 102 Nev. 526,
 18 528, 728 P.2d 441, 442 (1986). Further, there was no certification by the court that this was a final
 19 judgment under NRCP 54(b). The Order Granting Partial Summary Judgment from Judge Williams
 20 is not a final order as claims remain in that case. *See generally* Order Granting Motion to Alter or
 21 Amend Findings of Fact and Conclusions of Law, Exhibit V.

22 The law-of-the-case doctrine “refers to a family of rules embodying the general concept that
 23 a court involved in later phases of a lawsuit should not re-open questions decided (*i.e.*, established as
 24 law of the case) by that court or a higher one in earlier phases.” *Crocker v. Piedmont Aviation, Inc.*,
 25 49 F.3d 735, 739 (D.C.Cir.1995). “Normally, ‘for the law-of-the-case doctrine to apply, the
 26 **appellate court** must actually address and decide the issue explicitly or by necessary implication.’”
 27 [Emphasis added] *Reconstruct Co. v. Zhang*, 317 P.3d 814, 818 (2014) (quoting *Dictor v. Creative*
 28 *Mgmt. Servs., L.L.C.*, 126 Nev. —, —, 223 P.3d 332, 334 (2010)), *see also Dictor v. Creative*

1 *Management Services, LLC*, 126 Nev. 41, 44-46, 223 P.2d 332, 335 (2010) (holding that in order for
 2 the law-of-the-case doctrine to apply, the appellate court must specifically and actually address and
 3 decide the issue). A trial court's ruling does not constitute law of the case. *Byford v. State* 116 Nev.
 4 215, 232, 994 P.2d 700, 711-12 (2000). The issue must be adjudicated on appeal. *Id.* These
 5 Court's two orders granting motions for summary judgment are both on appeal and, therefore, and
 6 not law of the case.

7 **D. The Distinction Between The Various NRED Litigation**

8 There is a key distinction between the various underlying litigation between the Lytles and
 9 the Association that cannot be ignored - in the NRED 2 Litigation, the Lytles and the Association
 10 stipulated that the Amended CC&Rs were valid and enforceable. *See* Stipulation, Exhibit H, *see*
 11 *also* Complaint in NRED 2 Litigation, ¶ 11, Exhibit I. Thus, in issuing an order in the NRED 2
 12 appeal that was seemingly inconsistent with its affirmation of the district court's order in the NRED
 13 1 Litigation declaring the Amended CC&Rs *void ab initio*, the Nevada Supreme Court explained the
 14 parties' stipulation to the Amended CC&Rs as binding and authoritative. Supreme Court Order Re:
 15 NRED 2 Litigation, Fn. 2, Exhibit U.

16 The distinction provides a qualitative difference in facts. Specifically, there is no declaration
 17 that the Amended CC&Rs were *void ab initio* in NRED 2 Litigation. Indeed, for the purposes of that
 18 litigation only, the Amended CC&Rs unquestionably define the rights, liabilities and obligations of
 19 the parties. The Lytles obtained a judgment in the NRED 2 Litigation in the total amount of
 20 \$1,103,158.12, which amount was awarded pursuant to the Amended CC&Rs and NRS, Chapter
 21 116.

22 While the Lytles contend, as set forth herein, that all the rights provided to creditors of the
 23 Association under the Amended CC&Rs and NRS 116.3117 apply in each of the NRED Litigation
 24 matters, the stipulation in the NRED 2 Litigation alleviates any argument to the contrary.

25 **E. NRS 116.3117 Provides That Lytles Can Record Abstracts Of Judgment Against**
 26 **the Dismal Property Within The Association**

27 The Lytles are within their rights, as judgment creditors of the Association, to record a lien
 28 against each unit within the Association because (1) NRS 116.3117 provides this specific right to

1 judgment creditors of a unit owners' association, (2) the Lytles may invoke all of the rights set forth
 2 in the entirety of Chapter 116 because the Association invoked such rights during the underlying
 3 litigation (and prior thereto), (3) Chapter 116's statutory mechanism provides such rights to the
 4 Lytles as judgment creditors against the Association, and (4) in the case of the NRED 2 Litigation,
 5 all parties stipulated that the Amended CC&Rs governed and were valid and enforceable.

6 **1. NRS 116.3117 Permits a Judgment Creditor to Record a Lien Against All**
 7 **Units Within an Association**

8 When a statute is facially clear, the Court should give effect to the statute's plain meaning.
 9 *D.R. Horton, Inc. v. Eighth Judicial Dist. Court (First Light I)*, 123 Nev. 468, 476, 168 P.3d 731,
 10 737 (2007). "[W]hen a term is defined in NRS Chapter 116, the statutory definition controls and any
 11 definition that conflicts will not be enforced." *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters.,*
 12 *LLC*, 125 Nev. 397, 406, 215 P.3d 27, 32 (2009). Further, NRS 116.003 states that "the words and
 13 terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those
 14 sections." *Id.*

15 NRS 116.3117 provides, in pertinent part:

16 1. In a condominium or planned community:

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

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

27 The comments to Section 3-117 of the Uniform Common Interest Ownership Act (1982) —
 28 the uniform act upon which NRS Chapter 116 is based — reinforce that which is already clear from
 the plain language of the statute: "the Act makes the judgment lien a direct lien against each
 individual unit . . ." See UCIOA § 3-117, cmt. 2, *see also, e.g., Ensberg v. Nelson*, 320 P.3d 97, 102
 (Wash. Ct. App. 2013) ("[B]y statute, a condominium association is a lien in favor of the judgment

1 lienholder against all of the units in the condominium.”); *Summit House Condominium v. Com.*, 523
 2 A.2d 333, 336 (Pa. 1987) (“[A] judgment against the Council would have constituted a lien against
 3 each individual condominium unit owner.”); *Interlaken Service Corp. v. Interlaken Condominium*
 4 *Ass’n, Inc.*, 588 N.W.2d 262, 266 (Wisc. 1998) (“[A]ny money judgment obtained by [the plaintiff
 5 as against the association] would result in a lien against each of the condominium units.”).

6 The purpose of the statute, however, is not to provide a remedy to creditors. This remedy
 7 exists regardless of this subsection (as explained below). Rather, it protects unit owners within an
 8 association and limits the extent to which a creditor can collect on a judgment against an association
 9 as to each unit owner. NRS 116.3117 provides that a creditor must first collect against any security
 10 interest the creditor may have in common elements before pursuing units. NRS 116.3117(1)(b).

11 **2. The Association is Afforded All Rights and Remedies of NRS, Chapter 116,**
 12 **Because Prior to Final Determination in the NRED Litigation, the**
 13 **Association Enjoyed Such Benefits to the Detriment of Defendants**

14 For a myriad of reasons set forth herein, NRS 116.3117 applies in this case and affords the
 15 Lytles the right to lien the Dismans’ property and all properties within the Association.

16 **a. Background on the Different Types of Common Interest**
 17 **Communities**

18 The term “homeowners’ association” is often misused and, indeed, in the State of Nevada has
 19 no true statutory definition. Rather, a “homeowners’ association” is more of an informal, catch-all
 20 term for all types of common interest communities.

21 Chapter 116 applies to all types of governing bodies of residential common interest
 22 communities created in Nevada. NRS 116.1201. A “common-interest community” is defined as
 23 “real estate described in a declaration with respect to which a person, by virtue of the person’s
 24 ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums,
 25 maintenance or improvement of, or services or other expenses related to, common elements, other
 26 units or other real estate described in that declaration.” NRS 116.021. Some of the types of
 27 common interest communities include: (1) unit owners’ association, (2) limited purpose associations
 28 (NRS 116.1201(2)(a)), (3) small planned communities (NRS 116.1203), (4) nonresidential planned

1 communities (NRS 116.1201(2)(b)), (5) time shares (NRS 116.1201(2)(e)), and condominiums
2 (NRS 116.027).

3 Chapter 116 applies to "all common interest communities" created within Nevada, with
4 defined limitations for limited purpose associations, small planned communities, and nonresidential
5 planned communities. NRS 116.1201.

6 **b. From July 3, 2007 Through July 29, 2013, the Association Was a**
7 **Unit Owners' Association, for Which the Entirety of NRS,**
8 **Chapter 116 Applied**

9 While the district court in the NRED 1 Litigation held that the Association was a limited
10 purpose association, the district court in that case found that the Amended CC&Rs were recorded on
11 July 3, 2007, in the office of the Recorder for Clark County, Nevada, and from July 3, 2007, through
12 July 29, 2013, when the court granted the Lytles summary judgment in that case, the Association
13 was a full-blown unit owners' association, subject to and taking advantages of all rights, privileges
14 and remedies afforded by the entirety of Chapter 116, including the right to assess and initiate
15 Chapter 116 foreclosure proceedings for failure to pay assessments, which is exactly what the
16 Association did to the Lytles. *See generally* Order Granting Summary Judgment in NRED 1
17 Litigation, Exhibit D. Further, in the NRED 2 Litigation, the parties stipulated to the enforceability
18 of the Amended CC&Rs. *See* Complaint in NRED 2 Litigation, Exhibit I; *see also* Stipulation,
19 Exhibit H.

20 The Amended CC&Rs adopt Chapter 116 of the Nevada Revised Statutes. Amended
21 CC&Rs, at Article I, Exhibit C. The Amended CC&Rs define the Association pursuant to the
22 Uniform Common-Interest Ownership Act. *Id.* at 1.1. The Amended CC&Rs routinely reference
23 Chapter 116 of the Nevada Revised Statutes. *See, e.g., id.* at 1.13, 1.14, 1.30, 8.1, 10.3 (referring to
24 the lien statutes codified in Chapter 116). Finally, the Amended CC&Rs prescribe a remedy equal to
25 NRS 116.3117 within Section 10.2, specifically, that any judgment against the Association is a
26 judgment against each unit within the Association on a pro rata basis. Amended CC&Rs, § 10.2(e).

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28 ///

1 In the NRED 2 Litigation, the Lytles and the Association stipulated that Amended CC&Rs
2 were valid and enforceable. Stipulation, Exhibit H, *see also* Complaint in NRED 2 Litigation,
3 Exhibit I.

4 In granting the Lytles' Motion for Attorneys' Fees in the NRED 1 Litigation, the court cited
5 *Mackintosh*, 113 Nev. at 405-406, 935 P.2d at 1162, and held that the Lytles could recover
6 attorneys' fees under the Amended CC&Rs because that document, while declared *void ab initio* by
7 the district court, was in effect and enforced by the Association against the Lytles at all times during
8 the underlying litigation. *See generally*, Order Granting Attorneys' Fees in NRED 1 Litigation,
9 Exhibit E.

10 In *Mackintosh*, *supra*, the purchasers of real property sued a savings and loan association for
11 rescission of a residential property purchase agreement. *Mackintosh*, 113 Nev. at 396-397, 935 P.2d
12 at 1157. The Supreme Court upheld a district court's granting of summary judgment and
13 determination that the purchasers had rescinded the purchase agreement. *Id.* 113 Nev. at 405-406,
14 935 P.2d at 1162. However, the Supreme Court held the district court improperly denied the
15 purchasers' request for attorneys' fees, which request was based on the attorney fee provision in the
16 rescinded agreement. *Id.* The district court, in denying attorneys' fees stated that the rescinded
17 agreement was "void from its date of inception, just as if the contract had never existed." *Id.* The
18 Supreme Court disagreed and cited a Florida Supreme Court case, *Katz v. Van Der Noord*, 546 So.2d
19 1047 (Fla. 1989), which held:

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

28 *Id.* at 1049.

Similarly, in the present case, the "legal fictions" that accompany the court's determination
in the NRED 1 Litigation that the Amended CC&Rs were *void ab initio* cannot change the fact that
they did, indeed, exist from July 3, 2007, through July 29, 2013, and were enforced against the

1 Lytles. Once more, in the NRED 2 Litigation, the parties stipulated that the Amended CC&Rs were
2 valid and enforceable, so the "legal fiction" did not even exist, rather enforceability was actual.

3 The foregoing is akin to the evidentiary "sword and shield" doctrine. Therein, it is held that
4 a party may not use a privilege as both a sword to assert a claim and a shield to protect the content
5 related to the claim. *Molina v. State* 120 Nev. 185, 194, 87 P.3d 533, 539 (2004). A party
6 attempting to enforce a contract against another cannot argue that a court's determination that it was
7 void shields the party from the provisions that would be detrimental, *e.g.* an attorneys' fee provision.
8 Or, in the present case, members of the Association should not be permitted to shield themselves
9 from certain provisions of Chapter 116, namely NRS 116.3117, once the court in the NRED 1
10 Litigation declared the Amended CC&Rs void after years of those same Amended CC&Rs being
11 recorded and enforced against the Lytles. In fact, the Amended CC&Rs' restrictions were so severe
12 that they prevented the Lytles from building their dream home in the Rosemere Estates community
13 and thrust the Lytles into years of litigation that exhausted the Lytles' retirement savings and created
14 emotional turmoil. Order Granting Summary Judgment in NRED 1 Litigation, FOF Nos. 25 – 31,
15 Exhibit D. Indeed, the Lytles, as the only undeveloped lot, were the only targets of the Amended
16 CC&Rs and the prohibitive building restrictions. *Id.*

17 There are other instances during which the Association took clear advantage of the entirety of
18 Chapter 116 during this operative time period despite a subsequent finding that the Association is a
19 limited purpose association and the Amended CC&Rs are void. For example, the Association filed a
20 countersuit against the Lytles in the NRED 2 Litigation, something a limited purpose association is
21 not permitted to do. NAC 116.090(1)(c)(1), (prohibiting a limited purpose association from
22 enforcing restrictions against unit owners). The Association moved to dismiss and had the
23 Complaint dismissed in the NRED 1 Litigation, purportedly as a result of a failure to timely file
24 under Chapter 38, which does not apply to limited purpose associations. The Association was
25 initially awarded attorneys' fee in the NRED 2 Litigation pursuant to the Amended CC&Rs and
26 provisions of Chapter 116. *See* Order Awarding Attorneys' Fees in NRED 2 Litigation, Exhibit J;
27 *see also* Supplemental Order Awarding Attorneys' Fees in NRED 2 Litigation, Exhibit K.

28 ///

1 The Lytles obtained judgments against the Association due to the Association's actions taken
2 in order to both defend and impose its position as a unit owners' association. During the entire
3 pendency of the NRED Litigation (and indeed well before), the Association operated pursuant to the
4 statutory luxuries afforded to it as a litigant by NRS Chapter 116. And had the Association, and not
5 the Lytles, prevailed in the NRED Litigation, the Association would enjoy all of the benefits as a
6 judgment creditor against the Lytles, including the right to lien the Lytles' property and foreclose
7 thereon.

8 With the utmost respect and deference to this court, the ruling in the instant case thus far
9 provides the Association (and the members) with forgiveness to utilize NRS Chapter 116 and the
10 Amended CC&Rs as swords to impose the Association's will during the NRED Litigation and prior
11 thereto, but as shields from liability and collection once the Association's position was declared
12 invalid. The public policy underlying *Mackintosh* and its progeny is that such two-faced positions
13 cannot stand the test of equities.

14 c. **NRS 116.3117 Applies To Limited Purpose Associations**

15 As set forth in Chapter 116 and explained above, the Association is a common interest
16 community consisting of nine (9) units, as that term is defined by Chapter 116, and organized as a
17 limited purpose association. Order Granting Summary Judgment in NRED 1 Litigation, FOF No. 6,
18 COL Nos. 7 – 19, Exhibit D, *see also* NRS 116.021, NRS 116.093. NRS 116.1201(2)(a)(4)
19 provides, in pertinent part, that Chapter 116 does not apply to a limited purpose association, "except
20 that a limited purpose association shall comply...with the provisions of NRS 116.4101 to 116.412."
21 Included within the scope of these provisions is NRS 116.4117, which addresses civil actions for
22 damages for failure or refusal to comply with provisions of Chapter 116 or an association's
23 governing documents.

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1 NRS 116.4117(2) provides:

2 Subject to the requirements set forth in NRS 38.310 and except as otherwise
3 provided in NRS 116.3111, a civil action for damages or other appropriate
4 relief for a failure or refusal to comply with any provision of this chapter or
5 the governing documents of an association may be brought:

6 (a) By the association against:

- 7 (1) A declarant;
- 8 (2) A community manager; or
- 9 (3) A unit's owner.

10 (b) By a unit's owner against:

- 11 (1) The association;
- 12 (2) A declarant; or
- 13 (3) Another unit's owner of the association.

14 (c) By a class of units' owners constituting at least 10 percent of the
15 total number of voting members of the association against a
16 community manager.

17 Thus, an owner in a limited purpose association may pursue a civil action against an
18 association as set forth in NRS 116.4117, as the Lytles did in the NRED Litigation.

19 Following the linear statutory reference, then, from NRS 116.4117, NRS 116.3111(3)
20 provides, among other things, that "[l]iens resulting from judgments against the association are
21 governed by NRS 116.3117." NRS 116.3117 then provides:

22 a judgment for money against the association, if a copy of the docket or an
23 abstract or copy of the judgment is recorded, is not a lien on the common
24 elements, but is a lien in favor of the judgment lienholder against all of the
25 other real property of the association and all of the units in the common-
26 interest community at the time the judgment was entered. No other property of
27 a unit's owner is subject to the claims of creditors of the association.

28 As a judgment creditor and lienholder in a proper civil action brought under NRS 116.4117,
the Lytles have a lien on all units in the Association, a common interest community. Pursuant to this
right as set forth in NRS, Chapter 116, Sections 4117(2), 3111 and 3117, the Lytles recorded the
abstracts of judgment.

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F. General Common-Interest Community Principles Define The Association As Including Each Unit Therein, and Defendants May Record a Lien/Abstract Against Each Unit Within the Association

NRS 17.150(2) provides, in pertinent part:

A transcript of the original docket or an abstract or copy of any judgment or decree of a district court of the State of Nevada or the District Court or other court of the United States in and for the District of Nevada, the enforcement of which has not been stayed on appeal, certified by the clerk of the court where the judgment or decree was rendered, may be recorded in the office of the county recorder in any county, and when so recorded it becomes a lien upon all the real property of the judgment debtor not exempt from execution in that county, owned by the judgment debtor at the time, or which the judgment debtor may afterward acquire, until the lien expires.

[Emphasis added.]

In recording the abstracts of judgment against the units within the Association, the abstracts became a lien upon all the real property of the Association, as the judgment debtor. Each unit, owned or unowned, within the Association is property of the Association, as set forth in Chapter 116. NRS 116.3117 mirrors the foregoing by encapsulating the lien framework within a single statute.

NRS 116.021 defines a “common interest community” as all “real estate described in a declaration with respect to which a person, by virtue of the person’s ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance or improvement of, or services or other expenses related to, common elements, other units or other real estate described in that declaration.” NRS 116.093 defines a “unit” as the “physical portion of the common-interest community designated for separate ownership or occupancy...” Thus, an association, or common interest community, includes each unit in the community, including those owned by third parties.

This Nevada Supreme Court concluded as much in granting standing to homeowners’ associations to file claims on behalf of unit owners in construction defect cases. In *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 125 Nev. 449, 215 P.3d 697 (2009), the Supreme Court held that “provisions of NRS Chapter 116, among other sources, demonstrate that a common-interest community includes individual units...” *Id.*, 125 Nev. at 451, 215 P.3d at 699. Thus, the Supreme Court concluded that a homeowners’ association has standing to file representative actions on behalf

1 of its members for construction defects of units.

2 NRS 116.3117, clarifies that a judgment may be recorded against each unit. This is not a
3 special rule of any sort in favor of creditors, rather it adds statutory clarity that a judgment against
4 the common-interest community can be recorded against all property within that community,
5 including units defined as being included in the community. These definitions are echoed in the
6 Uniform Common Interest Ownership Act, under Section 1-203(9) and 1-203(35).

7 a. The Original CC&Rs Define the Association as Including Each
8 Lot Therein

9 Pursuant to the Original CC&Rs, a lien or judgment against the Association established
10 under the Original CC&Rs attaches to each lot within the Association. As a result, the individual
11 property of the owners within the Association, defined as Lots 1 through 9, is subject to lien.

12 The Original CC&Rs provide as follows:

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

16 Original CC&Rs, ¶2, Exhibit A. (referring to the “Lots 1 through 9 of Rosemere Court” in the
17 definition above, thereby including the Dismen lot, which the Dismans do not dispute).

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

22 *Id.* at ¶ 4 (emphasis added).

23 The Original CC&Rs were recorded against each of the nine (9) lots within the Association,
24 and each owner, or prospective owner, including the Dismans, purchased property with record and
25 actual notice of the foregoing rights and remedies.³ Order Granting Summary Judgment in NRED 1

26 _____
27 ³ While CC&Rs are a restrictive covenant, the CC&Rs are interpreted like a contract. *See, e.g., Diaz*
28 *v. Ferne*, 120 Nev. 70, 73, 84 P.2d 664, 665-66 (2004) (stating that the CC&Rs are a restrictive
covenant, which is interpreted like a contract); *see also Lee v. Savalli Estates Homeowners Ass’n*,
2014 WL 4639148 (Nev. Sept. 16, 2014) (affirming *Diaz* that the rules of construction governing

1 Litigation, FOF No. 1, Exhibit D.

2 The second provision cited above specifically attaches liens established under the Original
3 CC&Rs "to said lots or Property." The attorneys' fee award in both the NRED 1, NRED 2 and
4 NRED 3 Litigation, in relevant part, specifically find the Lytles' lien or judgment is established
5 under the Original CC&Rs. Order Granting Attorneys' Fees in NRED 1 Litigation, at 2:1-15,
6 Exhibit E; *see also* Order Granting Attorneys' Fees in NRED 2 Litigation, at 2:6-19, Exhibit M. If
7 liens under the Original CC&Rs could not attach to the lots, there would be absolutely no need to
8 include this provision, *i.e.* there would be no need for the Original CC&Rs to state that such a lien
9 could not extinguish the first deed of trust or any other mortgage. Again, the Association has no
10 property to even secure any loan as the only property that exists is Lots 1 through 9, which includes
11 Plaintiffs' properties. Nowhere in the Original CC&Rs is there any inclusion of property owned by
12 the Association or subject to the Original CC&Rs other than "Lots 1 through 9."

13 Nothing under this provision distinguishes the Lytles' liens or judgment pursuant to the
14 attorneys' fees provision from any other provision or lien or judgment in the Original CC&Rs. The
15 Original CC&Rs simply state "any liens established hereunder." RJN, Original CC&Rs. This
16 necessarily includes the Lytles' liens.

17 **2. The Fact That Dismans Were Not Parties To The NRED Litigation And Not**
18 **Homeowners At The Time Of The Litigation Is Irrelevant**

19 The basis for asserting a lien against each unit (property) within the Association is a
20 prescribed right and remedy afforded to creditors by NRS 116.3117, the Amended CC&Rs, and
21 general common-interest community principles as argued herein. Neither NRS 116.3117 nor
22 Section 10.2(e) of the Amended CC&Rs mandate that an individual unit owner must be a party to
23 the underlying litigation. Indeed, quite the opposite is true. Each unit, not each owner of the unit, is
24 liable up to a pro rata share of any judgment obtained against the Association. NRS 116.3117, *see*
25 *also* Amended CC&Rs, § 10.2(e). The lien attaches to the units, not the individual owners. It runs
26 with the property. Further evidence of this is the fact that Chapter 116 requires sellers within an

27
28 contracts apply to the CC&Rs). "A court should not interpret a contract so as to make meaningless
its provisions." *Phillips v. Mercer*, 94 Nev. 279, 282, 597 P.2d 174, 176 (1978).

1 association to notify all prospective purchasers of any unsatisfied judgments and pending litigation
2 against the Association. See NRS 116.4109.

3 **V. CONCLUSION**

4 For the reasons set forth herein, the Lytles respectfully request that the Court deny the
5 Dismans' Motion for Summary Judgment, or in the alternative, for Judgment on the Pleadings.

6 DATED: July 26, 2018

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7 SENET & WITTBRODT LLP

8
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16 TRUSTEES OF THE LYTLE TRUST
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CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on July 26, 2018, she served a copy of the foregoing **DEFENDANTS TRUDI LEE LYTLE, JOHN ALLEN LYTLE, THE LYTLE TRUST OPPOSITION TO MOTION FOR SUMMARY JUDGMENT, OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

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FOLEY & OAKS
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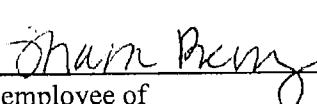
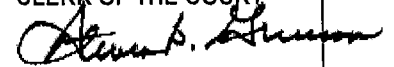

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EXHIBIT H

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1 **NEOJ**
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10 *Attorneys for Counter-Defendants/Cross-Claimants*
11 *Robert Z. Disman and Yvonne A. Disman*

7
8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

14 Plaintiffs,

15 vs.

16 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,)
17 THE LYTLE TRUST, DOES I through X, and)
18 ROE CORPORATIONS I through X,)

18 Defendants.

19
20 TRUDI LEE LYTLE, JOHN ALLEN LYTLE,)
21 THE LYTLE TRUST,)

22 Counter-Claimants,

23 vs.

24 LINDA LAMOTHE AND JACQUES)
25 LAMOTHE, TRUSTEES OF THE JACQUES &)
26 LINDA LAMOTHE LIVING TRUST, ROBERT)
27 Z. DISMAN, YVONNE A. DISMAN, and)
28 ROES 1 through 10, inclusive,)

Counter-Defendants.

Case No.: A-16-747800-C

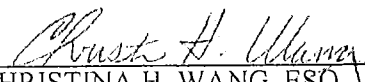
Dept. No.: XVIII

**NOTICE OF ENTRY OF ORDER
DENYING ROBERT Z. DISMAN AND
YVONNE A. DISMAN'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS**

1 PLEASE TAKE NOTICE that on December 26, 2018, the Court entered an ORDER
2 DENYING ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR
3 SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON
4 THE PLEADINGS in the above-entitled matter, a copy of which is attached hereto as **Exhibit 1**.

5 DATED this 3rd day of January, 2019.

6 FIDELITY NATIONAL LAW GROUP

7 
8 CHRISTINA H. WANG, ESQ.
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12 Attorneys for Plaintiff
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CERTIFICATE OF SERVICE

The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, MOTION FOR JUDGMENT ON THE PLEADINGS** upon the following parties on the date below entered (unless otherwise noted), at the fax numbers and/or addresses indicated below by: [X] (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.

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 Timothy P. Elson, Esq.
 GIBBS GIDEN LOCHER TURNER
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 1140 N. Town Center Drive, Suite 300
 Las Vegas, Nevada 89144-0596
*Attorneys for Defendants/Counter-
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 Allen Lytle, Trustees of The Lytle Trust*

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 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*

Kevin B. Christensen, Esq.
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*Attorneys for September Trust, Zobrist
 Trust, Sandoval Trust and Dennis &
 Julie Gagn*

DATED: 1/3/19

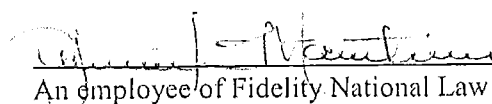
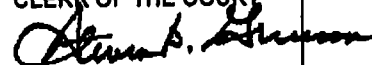

 An employee of Fidelity National Law Group

EXHIBIT 1

001658

Electronically Filed
12/27/2018 11:49 AM
Steven D. Grierson
CLERK OF THE COURT



ORDR

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Nevada State Bar # 11592
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Attorneys for Defendants
TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
& THE LYTLE TRUST

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,

v.

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

Defendants.

TRUDI LEE LYTLE, JOHN ALLEN LYTLE,
THE LYTLE TRUST,

Counter-Claimants,

v.

LINDA LAMOTHE AND JACQUES LAMOTHE,
TRUSTEES OF THE JACQUES & LINDA
LAMOTHE LIVING TRUST, ROBERT Z.
DISMAN, YVONNE A. DISMAN, and ROES I
through 10, inclusive,

Counter-Defendants.

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

**ORDER DENYING ROBERT Z. DISMAN
AND YVONNE A. DISMAN'S MOTION
FOR SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS**

Date: August 9, 2018
Time: 9:00 a.m.

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

1 Presently before the Court is Counter-Defendants/Cross-Claimants ROBERT Z. DISMAN and
 2 YVONNE A. DISMAN (collectively, the "Dismans")' Motion for Summary Judgment or, in the
 3 Alternative, Motion for Judgment on the Pleadings ("Motion") against Defendants/Counter-Claimants
 4 Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust (collectively, "Lytle Trust") in
 5 Case No. A-16-747800-C, which came on for hearing on August 9, 2018 at 9:00 a.m. in Department
 6 XVIII of the Eighth Judicial District Court, Clark County, Nevada.

7 Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the Dismans.
 8 Richard Haskin, Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP appeared on behalf of
 9 the Lytle Trust. Daniel T. Foley, Esq. of Foley & Oakes, PC appeared on behalf of Marjorie B.
 10 Boulden, Trustee of the Marjorie B. Boulden Trust, amended and restated dated July 17, 1996
 11 ("Boulden Trust") and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda
 12 Lamothe Living Trust ("Lamothe Trust") (collectively, the "Boulden Plaintiffs"). Additionally,
 13 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of the September Trust,
 14 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
 15 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
 16 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
 17 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
 18 Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively, the "September Trust
 19 Plaintiffs") in Case No. A-17-765372-C.

20 The Court having considered the pleadings and exhibits, having heard the arguments of
 21 counsel, and with good cause appearing therefore, the Court hereby makes the following findings and
 22 enters the following Order.

23 FINDINGS

24 1. The Lytle Trust is the owner of certain residential property located in a Clark County,
 25 Nevada, subdivision called Rosemere Estates ("Rosemere Subdivision").

26 2. In 2009, the Lytle Trust filed a lawsuit against the Rosemere Estates Property Owners
 27 Association ("Association") in the Eighth Judicial District Court of Clark County, Nevada, Case No.
 28 A-09-593497-C ("Rosemere Litigation I").

1 3. The Lytle Trust obtained a monetary judgment against the Association in the Rosemere
2 Litigation I and subsequently caused to be recorded abstracts of that judgment ("Abstracts of
3 Judgment") against properties within the Rosemere Subdivision.

4 4. In 2010, the Lytle Trust filed another lawsuit against the Association in the Eighth
5 Judicial District Court of Clark County, Nevada, Case No. A-10-631355-C ("Rosemere Litigation II").
6 The Lytle Trust also obtained a monetary judgment against the Association in that litigation
7 ("Rosemere Litigation II Judgment").

8 5. On December 8, 2016, the Boulden Plaintiffs commenced the instant action against the
9 Lytle Trust alleging causes of action for (1) slander of title, (2) injunctive relief, (3) quiet title, and (4)
10 declaratory relief. Their Complaint related to the Abstracts of Judgment that the Lytle Trust had
11 recorded against their properties within the Rosemere Subdivision related to the Rosemere I Litigation.

12 6. At the time, the Boulden Trust was the owner of the residential property in the
13 Rosemere Subdivision known as 1960 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel
14 No. 163-03-313-008 ("1960 Rosemere Court" or "Property").

15 7. Thereafter, the Boulden Plaintiffs filed a Motion for Partial Summary Judgment, and
16 on July 25, 2017, the Court issued an Order Granting Motion to Alter or Amend Findings of Fact and
17 Conclusions of Law ("Order") wherein the Court granted partial summary judgment for the Boulden
18 Plaintiffs as to cloud on title and injunctive and declaratory relief.

19 8. The Order specifically states as follows with respect to 1960 Rosemere Court: (1) the
20 Lytle Trust clouded title to the Property, (2) the Abstracts of Judgment are expunged and stricken from
21 the record, (3) the Lytle Trust is permanently enjoined from recording and enforcing the Rosemere
22 Litigation I judgment against the Property, and (4) the Lytle Trust is permanently enjoined from taking
23 any action in the future against 1960 Rosemere Court based on the Rosemere Litigation I.

24 9. On July 25, 2017, the Boulden Plaintiffs filed a Second Amended Complaint against
25 the Lytle Trust. The Second Amended Complaint seeks, in part, to enjoin the Lytle Trust from
26 recording the Rosemere Litigation II Judgment against the Boulden Plaintiffs' properties.

27 10. The Boulden Trust subsequently sold 1960 Rosemere Court to the Dismans.

28 11. On August 11, 2017, the Lytle Trust filed its Answer to the Second Amended

1 Complaint and a Counterclaim against the Lamothe Trust and the Dismans ("Counterclaim"). Therein,
2 the Lytle Trust named the Dismans as necessary parties to this action as the new owners of the
3 Property.

4 12. The Lytle Trust's Counterclaim states a single cause of action against the Lamothe
5 Trust and the Dismans for a declaratory judgment that it is entitled to record a lien and/or abstract of
6 the Rosemere Litigation I and II Judgments against the Lamothe Trust's property and the Dismans'
7 Property.

8 13. The Dismans filed the instant Motion seeking summary judgment or, in the alternative,
9 judgment on the pleadings with respect to the Lytle Trust's Counterclaim.

10 14. In its Opposition to the Motion, the Lytle Trust argued, in essence, that the Motion is
11 moot because the Court's prior Order with respect to the Boulden Plaintiffs' Motion for Partial
12 Summary Judgment disposed of the Counterclaim – the only cause of action between the Lytle Trust
13 and the Dismans.

14 15. After review and consideration, this Court holds that the prior Order, including its
15 underlying basis, is the law of the case.

16 16. Consequently, as the law of the case, the Order encompasses the Lytle Trust's
17 Counterclaim.

18 17. The matter is now on appeal before the Nevada Supreme Court. Hence, there is no
19 cause of action or live controversy between the Lytle Trust and the Dismans upon which this Court
20 can grant summary judgment or judgment on the pleadings. *See Personhood Nevada v. Bristol*, 126
21 Nev. 599, 602, 245 P.3d 572, 574 (2010) ("A controversy must be present through all stages of the
22 proceeding, and even though a case may present a live controversy at its beginning, subsequent events
23 may render the case moot.") (Citations omitted).

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ORDER

THEREFORE,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Dismans' Motion is DENIED without prejudice as there is no pending cause of action or live controversy between the Lytle Trust and the Dismans.

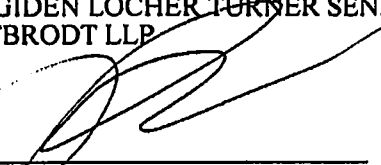
IT IS SO ORDERED.

Dated this 26 day of December, 2018.


 DISTRICT COURT JUDGE *d.d.*

Submitted by:

GIBBS GIDEN LOCHER TURNER SENET
 & WITTBRODT LLP


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Approved as to Form and Content by:

FIDELITY NATIONAL LAW GROUP

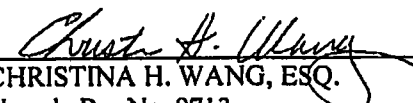

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Attorneys for Counter-Defendants/Cross-Claimants
Robert Z. Disman And Yvonne A. Disman

EXHIBIT I

001664

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Appellants,

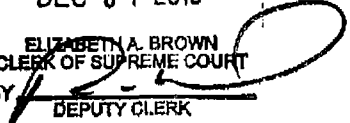
vs.

MARJORIE B. BOULDEN, TRUSTEE
OF THE MARJORIE B. BOULDEN
TRUST; LINDA LAMOTHE; JACQUES
LAMOTHE, TRUSTEES OF THE
JACQUES & LINDA LAMOTHE
LIVING TRUST; ROBERT Z. DISMAN;
AND YVONNE A. DISMAN,
Respondents.

No. 73039

FILED

DEC 04 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting an injunction in a real property action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

In 1996, appellants Trudi and John Lytle purchased a lot in Rosemere Estates for the purpose of building a residence. The lots in Rosemere Estates are subject to Covenants, Conditions, and Restrictions (Original CC&Rs) imposed by the developer. The Original CC&Rs contemplated the future formation of a property owners' committee that would maintain limited common areas in the development. Two homeowners, acting on behalf of all Rosemere Estates lot-owners, subsequently filed non-profit articles of incorporation to create the committee contemplated in the Original CC&Rs, the Rosemere Estates Property Owners Association (Association).

18-906850

In 2007, the Association amended the Original CC&Rs, effectively trying to turn itself into a homeowners' association under NRS Chapter 116 and enforce new restrictions on the Lytles' lot. The Lytles filed suit against the Association, seeking a declaration that the amended CC&Rs were void as well as damages, costs, and fees. The district court granted summary judgment in favor of the Lytles, finding that: the Original CC&Rs did not form a homeowners' association under NRS Chapter 116, but rather a limited purpose association; the amended CC&Rs were improperly adopted and recorded; and the Association had no power to impose additional restrictions on the Lytles' property as though it were a homeowners' association. Consequently, the district court declared the amended CC&Rs invalid and awarded the Lytles monetary damages, attorney fees, and costs.

The Lytles subsequently recorded abstracts of judgment against properties contained within Rosemere Estates, including two owned by Marjorie Boulden and Linda and Jacques Lamothe.¹ Boulden and the Lamothes filed suit against the Lytles seeking declaratory and injunctive relief and to quiet title and remove the abstracts of judgment clouding title. They later moved for summary judgment on all causes of action. The district court granted the motion, concluding that because Boulden and the Lamothes were not parties to the previous litigation and the Association

¹Respondents Robert Z. Disman and Yvonne A. Disman purchased the property belonging to Marjorie Boulden in August 2017, and were added as respondents to this appeal on the Lytles' motion to join them.

was limited in purpose and not subject to NRS 116.3117's mechanism by which judgments against a homeowners' association may be recorded against properties therein, Boulden and the Lamothes were not obligated under the Lytle's judgment. Determining that the Lytles improperly clouded title, the district court ordered the abstracts of judgment expunged from the properties' titles and entered a permanent injunction enjoining the Lytles from enforcing the judgment or any related abstracts against the Boulden or Lamothe properties.

The Lytles now appeal, arguing that NRS 116.3117 applies to limited purpose associations both through plain statutory language and on equitable grounds or, in the alternative, that they are permitted to record their abstracts of judgment against the subject properties under general principles governing common-interest communities.

DISCUSSION

Standard of review

Where injunctive relief is granted in the form of summary judgment, the standard of review is de novo. *A.L.M.N., Inc. v. Rosoff*, 104 Nev. 274, 277, 757 P.2d 1319, 1321 (1988); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate where there is no dispute of material fact and the moving party is entitled to judgment as a matter of law. *Wood*, 121 Nev. at 729, 121 P.3d at 1029.

NRS 116.3117 does not apply to limited purpose associations

Where a statute's language is unambiguous, this court gives effect to its plain meaning. *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*,

123 Nev. 468, 476, 168 P.3d 731, 737 (2007). NRS 116.1201(2)(a) provides, in relevant part, that limited purpose associations are not subject to NRS Chapter 116, with enumerated statutory exceptions, NRS 116.3117 not among them. NRS 116.3117(1)(a) states that a monetary judgment against an association, once recorded, is a lien against all real property of the association and all of the units in the common-interest community. An "association" is defined as a unit-owners' association organized under NRS 116.3101. NRS 116.011. A unit-owners' association must be in existence on or before the date when the first unit is conveyed. NRS 116.3101.

Here, the Lytles do not dispute that the Association is a limited purpose association. Although they assert that properties within limited purpose associations are subject to NRS 116.3117's lien provisions, NRS 116.1201 spells out the specific statutes within NRS Chapter 116 that apply to limited purpose associations, and NRS 116.3117 is not among them. Aside from those listed statutes, NRS Chapter 116 "does not apply to [a] limited purpose association." NRS 116.1201(2)(a). Thus, the plain language of the statute is clear that limited purpose associations are not subject to NRS 116.3117's lien provisions. By listing exactly which provisions within NRS Chapter 116 apply to limited purpose associations, NRS 116.1201 does not leave any room for question or expansion in the way the Lytles urge. We are likewise not persuaded by the Lytles' further contention that they may place a valid judgment lien on the Boulden and Lamothe properties through a series of statutory incorporations. Specifically, although the Lytles argue that NRS 116.3117 applies to limited purpose associations

through NRS 116.4117(2)'s reference to NRS 116.3111, which states that "liens resulting from judgments against the association are governed by NRS 116.3117," NRS 116.4117(2) does not incorporate NRS 116.3111. Instead, it enumerates the circumstances in which suit may be brought for breach of NRS Chapter 116 or governing documents "except as otherwise provided in NRS 116.3111." NRS 116.3111 addresses tort and contract liability for "injury or damage arising out of the condition or use of the common elements," which is not at issue here. Therefore, although NRS 116.4117(2) references NRS 116.3111, it does not incorporate it and there is no interpretive progression that suggests limited purpose associations are subject to NRS 116.3117.

The Lytles next argue that a broad, equitable mechanism set forth in *Mackintosh v. California Federal Savings & Loan Association*, 113 Nev. 393, 935 P.2d 1154 (1997), allows them to record a judgment lien against the Boulden and Lamothe properties. We disagree here as well. The Lytles contend that *Mackintosh* allows them to treat the Association as a homeowners' association subject to all provisions of NRS Chapter 116 in order to enforce their judgment, despite the district court's unchallenged determination in the action in which they obtained their judgment that the Association is a limited purpose association. The facts and holdings of *Mackintosh* do not support the conclusion proffered by the Lytles. Although *Mackintosh* recognized that a prevailing party may recover attorney fees from the other contracting party under a contractual provision even where that contract has been rescinded, it had nothing to do with statutory lien rights. 113 Nev. at 406, 935 P.2d at 1162. The Lytles intermingle two

different legal theories—contractual attorney fees and statutory lien rights—in an attempt to piece together a solution that would allow them to enforce a judgment lien against property owners who were not parties to the Lytles' complaint against Rosemere Estates, and whose property interests had never been subject of any suit. Nothing in *Mackintosh* suggests that applies beyond the context of contractual agreements and the circumstances of that case, and we are not persuaded that it otherwise provides a basis for expanding the application of NRS 116.3117.²

General principles of common-interest communities do not permit the Lytles to record the abstracts of judgment against all properties subject to the Association

The Lytles argue that all of the Rosemere Estates units, including respondents' real properties, are the property of the Association under *D.R. Horton, Inc. v. Eighth Judicial District Court*, 125 Nev. 449, 215 P.3d 697 (2009), and the Lytles consequently may record their abstracts of judgment pursuant to NRS 17.150(2). We disagree.

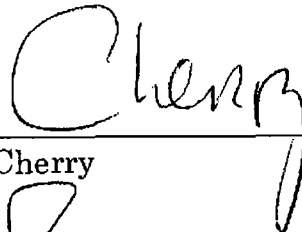
²The Lytle's also argue that the "sword and shield doctrine" allows the judgment to be recorded against respondents' properties, relying on *Molina v. State*, 120 Nev. 185, 193-94, 87 P.3d 533, 539 (2004), which held that a criminal defendant could not invoke the attorney-client privilege while simultaneously seeking to withdraw his guilty plea when he put the content of his interactions with his attorney at issue by arguing that his attorney advised him to enter a plea without knowledge of his case. *Molina* is inapposite here, as it adjudicated evidentiary issues unrelated to this dispute. Here, although respondents relied on the inapplicability of NRS Chapter 116 in seeking declaratory and injunctive relief in the underlying action in order to have the liens clouding their titles expunged, they were not parties to the Lytle-Rosemere Estates litigation, in which the Lytles likewise relied on NRS Chapter 116 to have Rosemere Estate's amended CC&Rs declared invalid.

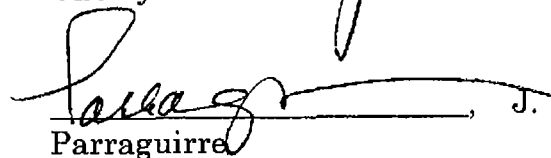
NRS 17.150(2) allows a party to record a judgment with a county recorder, which then serves as a lien on the property of the judgment debtor. Because it is undisputed that the respondents were not parties to the Lytles' prior suit against the Association, the question turns on whether the Association holds a property interest in the individual lots constituting Rosemere Estates.

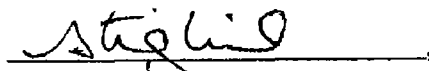
D.R. Horton did not hold that individual units subject to a homeowners' association are the property of that association. *D.R. Horton* only considered the question of standing, not ownership. 125 Nev. at 451-52, 215 P.3d at 699. Additionally, *D.R. Horton's* holding that individual units are part of the common-interest community, *id.* at 460, 215 P.3d 704, does not mean that the property of individual owners is also owned by homeowners' associations, as homeowners' associations and common-interest communities are not the same thing, *see* NRS 116.011; NRS 116.3101; NRS 116.021. Finally, NRS 116.3117(1)(a) further undermines the Lytles' position that homeowners' associations have an ownership interest in individual units, as it distinguishes between the property owned by the association and the individual units in the common-interest community. Under the association ownership position asserted by the Lytles, the statute's language allowing judgments to be recorded against the units would be rendered superfluous, as NRS 17.150 would be sufficient to allow judgments to be recorded against the units of a common-interest community. Statutory construction principles do not support this position. *See Harris Assocs. v. Clark Cty. Sch. Dist.*, 119 Nev. 638, 642, 81 P.3d 532,

534 (2003) (“[W]e construe statutes to give meaning to all of their parts and language[.]” (internal quotation marks omitted)).³ Based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.

 J.
Cherry

 J.
Parraguirre

 J.
Stiglich

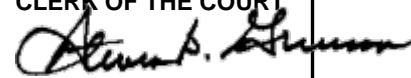
³The Lytles also contend that the Original CC&Rs created a mechanism to record a judgment against the Association on individual units within Rosemere Estates. They cite the provision stating, “[A]ny liens established hereunder shall not defeat . . . the lien of any mortgage . . . as to said lots” As nothing within that provision explicitly permits a judgment against the contemplated association to be recorded as a lien on properties within the community, we conclude that it does not create a mechanism by which the Lytles could record their judgment against the Association as a lien on member properties. *Diaz v. Ferne*, 120 Nev. 70, 73, 84 P.3d 664, 665-66 (2004) (observing that this court reviews de novo the interpretation of a restrictive covenant in CC&Rs); see *Am. First Fed. Credit Union v. Soro*, 131 Nev. 737, 739, 359 P.3d 105, 106 (2015) (providing that when “the language of the contract [or CC&R] is clear and unambiguous[,] . . . the contract will be enforced as written” (internal quotation marks omitted)).

cc: Hon. Timothy C. Williams, District Judge
Persi J. Mishel, Settlement Judge
Gibbs Giden Locher Turner Senet & Wittbrodt LLP/Las Vegas
Fidelity National Law Group
Foley & Oakes, PC
Christensen James & Martin
Eighth District Court Clerk

001673

EXHIBIT J

001674



1 **ORDR**

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10 *Attorneys for Counter-Defendants*
11 *Robert Z. Disman and Yvonne A. Disman*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 MARJORIE B. BOULDEN, TRUSTEE OF
15 THE MARJORIE B. BOULDEN TRUST,
16 LINDA LAMOTHE AND JACQUES
17 LAMOTHE, TRUSTEES OF THE JACQUES
18 & LINDA LAMOTHE LIVING TRUST,

19 Plaintiffs,

20 vs.

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

24 Defendants.

25 AND ALL RELATED MATTERS

Case No.: A-16-747800-C

Dept. No.: XVI

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER GRANTING
ROBERT Z. DISMAN AND YVONNE
A. DISMAN'S MOTION FOR
ATTORNEY'S FEES**

Date of Hearing: May 16, 2019

Time of Hearing: 9:00 a.m.

26 This matter came before the Court for a hearing on May 16, 2019, pursuant to Counter-
27 Defendants Robert Z. Disman and Yvonne A. Disman (collectively referred to herein as, the
28 "Dismans")' Motion for Attorney's Fees ("Motion") against Defendants/Counter-Claimants
Trudi Lee Lytle and John Allen Lytle, Trustees of the Lytle Trust (collectively referred to herein
as, the "Lytle Trust"), filed on January 23, 2019. The Lytle Trust filed an Opposition to the
Motion ("Opposition") on February 12, 2019. The Dismans filed a Reply in Support of the
Motion ("Reply") on February 20, 2019.

Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the

1 Dismans. Richard E. Haskin, Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP
2 appeared on behalf of the Lytle Trust. Daniel T. Foley, Esq. of Foley & Oak, PC appeared on
3 behalf of Plaintiffs/Counter-Defendants Marjorie B. Boulden, Trustee of the Marjorie B.
4 Boulden Trust, amended and restated dated July 17, 1996 ("Boulden Trust") and Linda Lamothe
5 and Jacques Lamothe, Trustees of the Jacques and Linda Lamothe Living Trust ("Lamothe
6 Trust") (at times collectively referred to herein as, the "Boulden Plaintiffs"). Additionally,
7 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of Plaintiffs in Case
8 No. A-17-765372-C – September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G.
9 Zobrist, Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G.
10 Sandoval and Julie Marie Sandoval Gegen, Trustees of the Raynaldo G. and Evelyn A. Sandoval
11 Joint Living and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S.
12 Gegen.

13 The Court, having reviewed the record, the points and authorities set forth in the Motion,
14 Opposition, and Reply, considered the oral arguments of counsel and good cause appearing
15 therefore, makes the following Findings of Fact, Conclusions of Law and Order.

16 FINDINGS OF FACT

17 1. The Dismans are the owners of the residential property in Clark County, Nevada
18 known as 1960 Rosemere Court, Las Vegas, Nevada 89117, Assessor's Parcel No. 163-03-313-
19 008 ("1960 Rosemere Court" or "Property").

20 2. The Lytle Trust is the owner of the residential property in Clark County, Nevada
21 known as Assessor's Parcel No. 163-03-313-009.

22 3. Both properties are located within a subdivision commonly known as Rosemere
23 Estates ("Subdivision").

24 4. On January 4, 1994, a Declaration of Covenants, Conditions and Restrictions
25 governing the Subdivision ("Original CC&Rs") was recorded by Baughman & Turner Pension
26 Trust, then owner and developer of the Subdivision.

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1 5. On July 3, 2007, an Amended and Restated Declaration of Covenants,
2 Conditions, and Restrictions for the Subdivision ("Amended CC&Rs") was recorded
3 purportedly by the Rosemere Estates Property Owners Association ("Association").

4 6. The Amended CC&Rs set forth new requirements for the Subdivision and
5 provided that the changes were made "in order to bring the same into compliance with the
6 provisions of Nevada Revised Statutes ("NRS") Chapter 116.

7 7. In 2009, the Lytle Trust sued the Association in the Eighth Judicial District
8 Court, Case No. A-09-593497-C (the "Rosemere Litigation I"), seeking, *inter alia*, a declaratory
9 judgment that the Amended CC&Rs were not properly adopted and, therefore, void.

10 8. The Dismans were not parties to the Rosemere Litigation I.

11 9. The Lytle Trust ultimately obtained a summary judgment for declaratory relief
12 from the district court in the Rosemere Litigation I, which found and ruled as follows, in
13 pertinent part:

14 a. The Association is a limited purpose association under NRS 116.1201, is
15 not a Chapter 116 "unit-owners' association," and is relegated to only
16 those specific duties and powers set forth in Paragraph 21 of the Original
CC&Rs and NRS 116.1201.

17 b. The Association did not have any powers beyond those of the "property
18 owners committee" designated in the Original CC&Rs – simply to care
for the landscaping and other common elements of Rosemere Estates as
set forth in Paragraph 21 of the Original CC&Rs.

19 c. Consistent with the absence of a governing body, the Developer provided
20 each homeowner the right to independently enforce the Original CC&Rs
against one another.

21 d. The Amended and Restated CC&Rs recorded with the Clark County
22 Recorder's Office as Instrument #20070703-0001934 (the "Amended
CC&Rs") are invalid, and the Amended CC&Rs have no force and effect.

23 10. Additionally, the Lytle Trust obtained a monetary judgment against the
24 Association in the Rosemere Litigation I which included an award of attorneys' fees and costs
25 ("Rosemere Litigation I Judgment") and subsequently caused to be recorded abstracts of that
26 judgment ("Abstracts of Judgment") against properties within the Subdivision, including 1960
27 Rosemere Court.

28 11. In 2010, the Lytle Trust filed another lawsuit against the Association in the

1 Eighth Judicial District Court, Case No. A-10-631355-C (the “Rosemere Litigation II”).

2 12. The Dismans were not parties to the Rosemere Litigation II.

3 13. The Lytle Trust also obtained a monetary judgment against the Association in the
4 Rosemere Litigation II which included an award of punitive damages, attorneys’ fees and costs
5 (“Rosemere Litigation II Judgment”).

6 14. On or about December 8, 2016, the Boulden Plaintiffs commenced this case
7 against the Lytle Trust regarding the Abstracts of Judgment that the Lytle Trust had recorded
8 against their properties in the Subdivision.

9 15. At the time, the Boulden Trust was the owner of 1960 Rosemere Court within the
10 Subdivision.

11 16. On March 10, 2017, the Boulden Plaintiffs filed an Amended Complaint against
12 the Lytle Trust, alleging claims for slander of title, injunctive relief, quiet title, and declaratory
13 relief.

14 17. The Boulden Plaintiffs alleged in support of their claims that the Original
15 CC&Rs recorded on January 4, 1994 against all of the properties within the Subdivision created
16 a limited purpose association, that the district court in the Rosemere Litigation I had previously
17 declared that the Subdivision was a limited purpose association, that NRS 116.3117, the statute
18 upon which the Lytle Trust relied in recording the Abstracts of Judgment, was not applicable to
19 the Association, and, therefore, the Abstracts of Judgment could not be recorded against the
20 Boulden Plaintiffs’ properties.

21 18. Thereafter, the Boulden Plaintiffs filed a motion for partial summary judgment,
22 and on April 26, 2017, this Court issued an order granting partial summary judgment in their
23 favor (“Order”) as to the quiet title and declaratory relief causes of action, finding and
24 concluding as follows:

25 7. None of the Plaintiffs were a “losing party” in the
26 Rosemere LPA Litigation¹ as that term is found in Section 25 of
27 the Original CC&Rs.

28 ¹ The Rosemere LPA Litigation is referred to herein as the Rosemere Litigation I.

1
2 8. The Defendants obtained a Summary Judgment for
3 Declaratory Relief from the District Court in the Rosemere LPA
4 Litigation, which found and ruled as follows:

- 5 a. The Association is a limited purpose association
6 under NRS 116.1201, is not a Chapter 116 "unit-
7 owners' association," and is relegated to only those
8 specific duties and powers set forth in Paragraph 21
9 of the Original CC&Rs and NRS 116.1201.
- 10 b. The Association did not have any powers beyond
11 those of the "property owners committee"
12 designation in the Original CC&Rs – simply to care
13 for the landscaping and other common elements of
14 Rosemere Estates as set forth in Paragraph 21 of the
15 Original CC&Rs.
- 16 c. Consistent with the absence of a governing body,
17 the Developer provided each homeowner the right
18 to independently enforce the Original CC&Rs
19 against one another.
- 20 d. The Amended and Restated CC&Rs recorded with
21 the Clark County Recorder's Office as Instrument
22 #20070703-0001934 (the "Amended CC&Rs") are
23 invalid, and the Amended CC&Rs have no force
24 and effect.

25 9. Pursuant to NRS 116.1201(2) most of NRS Chapter 116
26 does not apply to the Association because it is a limited purpose
27 association that is not a rural agricultural residential community.

28 19. The Order specifically states as follows with respect to 1960 Rosemere Court:
(1) the Lytle Trust clouded title to the Property, (2) the Abstracts of Judgment are expunged and
stricken from the record, (3) the Lytle Trust is permanently enjoined from recording and
enforcing the Rosemere Litigation I judgment against the Property, and (4) the Lytle Trust is
permanently enjoined from taking any action in the future against 1960 Rosemere Court based
on the Rosemere Litigation I.²

20. The Lytle Trust released its Abstracts of Judgment from the Boulden Plaintiffs'

² The Order was subsequently amended on or about July 25, 2017; however, none of the findings of fact and
conclusions of law recited above were modified.

1 properties in accordance with the Order, but recorded notices of lis pendens against those
2 properties on or about May 10, 2017. Moreover, it advised the Boulden Plaintiffs of the
3 Rosemere Litigation II Judgment that it had recently obtained.

4 21. This prompted the Boulden Plaintiffs to file a Second Amended Complaint
5 against the Lytle Trust on July 25, 2017, that sought, *inter alia*, to enjoin the Lytle Trust from
6 recording or enforcing the Rosemere Litigation II Judgment against their properties.

7 22. On or about August 4, 2017, the Boulden Trust sold 1960 Rosemere Court to the
8 Dismans.

9 23. On August 11, 2017, the Lytle Trust filed an Answer to the Second Amended
10 Complaint and a Counterclaim against the Lamothe Trust and the Dismans ("Counterclaim").

11 24. The Counterclaim seeks, in essence, a declaration that the Lytle Trust can record
12 an abstract of the Rosemere Litigation II Judgment against the Lamothe Trust and the Dismans'
13 properties.

14 25. On or about June 28, 2018, the Dismans moved for summary judgment or
15 judgment on the pleadings against the Lytle Trust on the basis that this Court's Order regarding
16 the Rosemere Litigation I Judgment rendered the Counterclaim regarding the Rosemere
17 Litigation II Judgment unsustainable.

18 26. On or about December 27, 2018, Judge Mark B. Bailus denied the Dismans'
19 motion as moot,³ holding that this Court's Order encompasses the Lytles' Counterclaim and
20 prevents the Lytle Trust from recording an abstract of the Rosemere Litigation II Judgment
21 against the Dismans' property.

22 27. On January 23, 2019, the Dismans filed the instant Motion seeking an award of
23 their attorney's fees against the Lytle Trust pursuant to the terms of the Original CC&Rs and/or
24 the provisions of NRS 18.010(2).

25 CONCLUSIONS OF LAW

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28 ³ Subsequent to this Court's Order, the case was reassigned to Judge Mark B. Bailus in Department 18. It was then
reassigned to this department.

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

3 2. Section 25 of the Original CC&Rs governing the Subdivision provides:

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

7 3. The Lytle Trust brought the Counterclaim against the Dismans seeking to
8 enforce, among other things, its alleged rights under the Original CC&Rs against them. The
9 Counterclaim alleges in pertinent part:

10 28. There exists a controversy between the Lytles and the
11 Counter-defendants and Third—Party Defendants regarding the
12 interpretation, application and *enforcement* of NRS, Chapter 116
as well as the application of the Original CC&Rs and Amended
13 CC&Rs to the controversy at hand, requiring a determination by
this Court and entry of declaratory relief.

14 29. Specifically, the Lytles contend as follows:

- 15 a. Pursuant to the Original CC&Rs, a lien or
16 judgment against the association established under
the Original CC&Rs attaches to each lot within the
Association.
- 17 b. Pursuant to the Amended CC&Rs, which were in
18 force at all times from 2007 through July 29, 2013,
a lien or judgment against the Association
19 established under the Amended CC&Rs attaches to
each lot with the Association.
- 20 c. Pursuant to NRS, Chapter 116, the Uniform
21 Common Interest Development Act, a lien or
judgment against the Association attached to each
22 lot within the Association, even if the Association
is a limited purpose association, because under
23 NRS 116.021, each common interest community
consists of all “real estate described in a
24 declaration with respect to which a person, by
virtue of the person’s ownership of a unit, is
25 obligated to pay for a share of real estate taxes,
insurance premiums, maintenance or improvement
26 of, or services or other expenses related to,
common elements, other units or other real estate
27 described in that declaration.” Further under NRS
116.093, each “unit” is defined as the “physical
28 portion of the common-interest community
designated for separate ownership or occupancy...”

1 Thus, the association, or common interest
2 community, includes each and every unit in the
community, including those owned by third parties.

- 3 d. Pursuant to NRS 116.3117, which governed the
4 Association and all owners during the underlying
5 litigation, a judgment against the Association is a
6 lien in favor of the Lytles against all of the real
7 property within the Association and all of the units
8 therein, including Counter-Defendants' properties.
9 The association and its membership are not entitle
10 to use Chapter 116 and all of its provisions as a
11 sword during the litigation against the Lytles, e.g.
12 to record multiple liens totaling \$209,883.19
13 against the Lytles and attempt foreclosure against
14 the Lytle Property forcing to procure a \$123,000.00
15 cash bond to prevent such foreclosure, and then a
16 shield to defend against the Lytles after they
17 prevailed in that litigation and the Association was
18 declared a limited purpose association.

19 30. The Lytles desire a judicial determination of the parties'
20 rights and duties and a declaration (that) the lien against the
21 Association, specifically, the Abstract of judgment issued in the
22 NRED II Litigation,⁴ can be recorded against 1830 Rosemere
23 Court and 1960 Rosemere Court.

24 4. Given the nature of the Counterclaim, as well as the overall case in which both
25 the Boulden Plaintiffs and the Lytle Trust sought to enforce their alleged rights under the
26 Original CC&Rs, this Court concludes that Section 25 of the Original CC&Rs applies to control
27 the award of attorney's fees.

28 5. Moreover, applying the language of Section 25, the Court concludes that the
Dismans are the winning parties, that the Lytle Trust is the losing party, and that the assessment
of attorney's fees against the losing party is mandatory under Section 25.

6. The Dismans incurred \$35,676.00 in attorney's fees.

7. Under Nevada law, the basic elements to be considered in determining the
reasonable value of an attorney's service are: "(1) the qualities of the advocate: his ability, his
training, education, experience, professional standing and skill; (2) the character of the work to
be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility

⁴ The NRED II Litigation is referred to herein as the Rosemere Litigation II.

1 imposed and the prominence and character of the parties where they affect the importance of the
2 litigation; (3) the work actually performed by the lawyer: the skill, time and attention given to
3 the work; (4) the result: whether the attorney was successful and what benefits were derived.”
4 *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) (internal citations
5 omitted).

6 8. Based on the record and the affidavit of the Dismans’ counsel in support of the
7 Motion, the Court finds that the qualities of counsel, including her ability, training, education,
8 experience, professional standing and skill, establish the reasonableness of the fees sought.
9 Furthermore, the Court observed firsthand in reviewing pleadings and at hearings the quality of
10 representation and level of preparation of the Dismans’ counsel. Therefore, the first *Brunzell*
11 factor has been satisfied.

12 9. The Court also finds that the character of the work to be done and its difficulty,
13 intricacy, importance, time and skill required, and responsibility imposed likewise establish the
14 reasonableness of the Dismans’ attorney’s fees. This case has a ten (10) year history which
15 required extensive review, analysis, research and preparation of pleadings by the Dismans’
16 counsel. Therefore, the second *Brunzell* factor has been sufficiently satisfied.

17 10. The Court further finds that the skill, time, and attention given to the work are
18 also indicative of the reasonableness of the Dismans’ attorney’s fees. As shown by the Court
19 records and counsel’s billing statements, the case was contentious and zealously litigated.
20 Tremendous attention and time were paid by counsel. The preparation for this case was detailed
21 and complete and the fees charged were reasonable and necessary. Accordingly, the third
22 *Brunzell* factor has been satisfied.

23 11. The fourth factor assesses the success and benefits derived from the litigation.
24 Through their counsel’s efforts, the Counterclaim was ultimately dismissed. Accordingly, the
25 Lytle Trust cannot reasonably argue that the result obtained was not a successful result for the
26 Dismans. Thus, the fourth *Brunzell* factor has been satisfied to permit the Dismans to recover
27 reasonable attorney’s fees from the Lytle Trust.

28

1 12. In sum, consideration of the *Brunzell* factors supports an award of reasonable
2 attorney's fees in the amount of \$35,676.00 to the Dismans.

3 13. The Court declines to make the determination that the Lytle Trust's actions in
4 this case lacked reasonable grounds except for the filing of their Notices of Lis Pendens, which
5 was clearly unreasonable in light of the procedural history of the case.

6 **ORDER**

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

9 **IT IS ORDERED, ADJUDGED AND DECREED** that the Dismans' Motion is hereby
10 GRANTED pursuant to the Original CC&Rs.

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are
12 hereby awarded in favor of the Dismans in the total and aggregate amount of Thirty-Five
13 Thousand Six Hundred Seventy Six and 00/100 Dollars (\$35,676.00) against the Lytle Trust.

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1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is
 2 hereby ordered to pay the attorney's fees as ordered herein by certified check made payable to
 3 Fidelity National Law Group in the amount of Thirty-Five Thousand Six Hundred Seventy Six
 4 and 00/100 Dollars (\$35,676.00) and delivered to Fidelity National Law Group within ten (10)
 5 days of the Notice of Entry of this Order.


6 **IT IS SO ORDERED.**

7 DATED this 4TH day of Sept., 2019.

8
 9 
 10 DISTRICT COURT JUDGE
 11 

12
 13 Respectfully submitted by:

14 FIDELITY NATIONAL LAW GROUP

15
 16 
 17 CHRISTINA H. WANG, ESQ.
 18 Nevada Bar No. 9713
 2450 St. Rose Parkway, Suite 100
 19 Henderson, Nevada 89074
Attorneys for the Dismans

Approved as to form and content by:

20 GIBBS GIDEN LOCHER TURNER SENET &
 21 WITTBRODT LLP

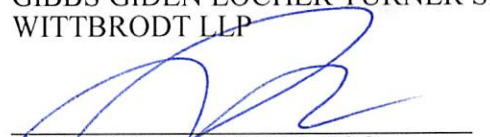
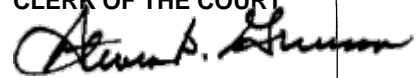
22 
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EXHIBIT K

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001686



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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.: XVIII

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, MOTION FOR
JUDGMENT ON THE PLEADINGS
AND DENYING COUNTERMOTION
FOR SUMMARY JUDGMENT**

Date: May 2, 2018
Time: 9:00 a.m.

AND ALL RELATED COUNTERCLAIMS
AND CROSS-CLAIMS

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.: XXVIII

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

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 Summary Judgment or, in the
13 Alternative, Motion for Judgment on the Pleadings filed by the September Trust, dated March
14 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry R.
15 Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
16 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
17 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S.
18 Gegen, Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively the
19 "Plaintiffs") in Case No. A-17-765372-C, and Defendants' Countermotion for Summary
20 Judgment filed by Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust ("Lytle
21 Trust") in Case No. A-17-765372-C, which came on for hearing on March 21, 2018 at 9:00 a.m.
22 and May 2, 2018 at 9:00 a.m. in Department XVIII of the Eighth Judicial District Court, Clark
23 County, Nevada.

24 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of the Plaintiffs
25 September Trust, Zobrist Trust, Sandoval Trust, and Dennis & Julie Gegen. Richard Haskin,
26 Esq. of Gibbs Giden Locher Turner Senet & Wittbrodt LLP appeared on behalf of the Lytle
27 Trust. Daniel T. Foley, Esq. of Foley & Oakes, PC appeared on behalf of Marjorie B. Boulden,
28 Trustee of the Marjorie B. Boulden Trust, amended and restated dated July 17, 1996 ("Boulden

1 Trust”) and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda Lamothe
2 Living Trust (“Lamothe Trust”). Christina H. Wang, Esq. of Fidelity Law Group appeared on
3 behalf of Robert Z. Disman and Yvonne A. Disman (“Robert & Yvonne Disman”).

4 The Court having considered the Motions and exhibits, having heard the arguments of
5 counsel, for all the reasons contained in the Plaintiffs’ Motion for Summary Judgment or, in the
6 Alternative, Motion for Judgment on the Pleadings, and with good cause appearing therefore, the
7 Court hereby enters the following Order:

8
9 **FINDINGS OF FACT**

10 1. The September Trust is the owner of the residential property in Clark County,
11 Nevada known as 1861 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
12 03-313-004 (“September Property”).

13 2. The Zobrist Trust is the owner of the residential property in Clark County,
14 Nevada known as 1901 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
15 03-313-005 (“Zobrist Property”).

16 3. The Sandoval Trust is the owner of the residential property in Clark County,
17 Nevada known as 1860 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
18 03-313-001 (“Sandoval Property”).

19 4. Dennis & Julie Gegen are the owner of the residential property in Clark County,
20 Nevada known as 1831 Rosemere Court, Las Vegas, Nevada 89117, Assessor’s Parcel No. 163-
21 03-313-003 (“Gegen Property”) (hereafter September Property, Zobrist Property, Sandoval
22 Property and Gegen Property may be collectively referred to as “Plaintiffs’ Properties”).
23

24 5. The Plaintiffs’ Properties are located in the Rosemere Estates subdivision
25 (“Rosemere Subdivision” or “Subdivision”) and are subject to the CC&R’s recorded January 4,
26 1994 (the “CC&Rs”).
27
28

1 6. John Allen Lytle and Trudi Lee Lytle are the Trustees of the Lytle Trust
2 (collectively "Lytle Trust") which owns that certain residential property known as parcel number
3 163-03-313-009 (the "Lytle Property"), also located in the Rosemere Subdivision.

4 7. In 2009, the Lytles filed suit against the Rosemere Association directly in the
5 Eighth Judicial District Court, Case No. A-09-593497-C ("Rosemere Litigation I").

6 8. None of the Plaintiffs were ever parties in the Rosemere Litigation I.

7 9. None of the Plaintiffs were a "losing party" in the Rosemere Litigation I as that
8 term is found in Section 25 of the Original CC&Rs.
9

10 10. The Lytles obtained a Summary Judgment for Declaratory Relief from the District
11 Court in the Rosemere Litigation I, which found and ruled as follows:

12 a. The Association is a limited purpose association under NRS 116.1201, is not a
13 Chapter 116 "unit-owners' association," and is relegated to only those specific
14 duties and powers set forth in Paragraph 21 of the Original CC&Rs and NRS
116.1201.

15 b. The Association did not have any powers beyond those of the "property owners
16 committee" designation in the Original CC&Rs - simply to care for the
17 landscaping and other common elements of Rosemere Estates as set forth in
Paragraph 21 of the Original CC&Rs.

18 c. Consistent with the absence of a governing body, the Developer provided each
19 homeowner the right to independently enforce the Original CC&Rs against one
another.

20 d. The Amended and Restated CC&Rs recorded with the Clark County Recorder's
21 Office as Instrument No. 20070703-0001934 (the "Amended CC&Rs") are
22 invalid, and the Amended CC&Rs have no force and effect.

23 11. Pursuant to NRS 116.1201(2) much of NRS Chapter 116 does not apply to the
24 Association because it is a limited purpose association that is not a rural agricultural residential
25 community.

26 12. After obtaining Summary Judgment in the Rosemere Litigation I, the Lytle Trust
27 filed a Motion for Attorneys' Fees and Costs against the Association, and conducted a prove-up
28

1 hearing on damages. After hearing all matters, a Final Judgment was entered in the Lytle Trust's
2 favor against the Association for \$361,238.59, which includes damages, attorneys' fees and costs
3 (the "Final Judgment").

4 13. After obtaining the Attorneys' Fees Judgment, the Lytle Trust, on August 16,
5 2016, recorded with the Clark County Recorder's office an Abstract of Judgment referencing the
6 Final Judgment against the Association, recorded as Instrument No. 20160818-0001198 (the
7 "First Abstract of Judgment").
8

9 14. In the First Abstract of Judgment, the Lytle Trust listed the parcel numbers for all
10 of the Plaintiffs' Properties as properties to which the First Abstract of Judgment and Final
11 Judgment was to attach.

12 15. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
13 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
14 as Instrument No. 20160902-0002685 (the "Second Abstract of Judgment"). The Second
15 Abstract of Judgment listed the parcel number of the Gegen Property only as the property to
16 which the Judgment was to attach.
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18 16. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
19 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
20 as Instrument No. 20160902-0002686 (the "Third Abstract of Judgment"). The Third Abstract of
21 Judgment listed the parcel number of the September Trust Property only as the property to which
22 the Judgment was to attach.
23

24 17. On September 2, 2016, the Lytle Trust recorded with the Clark County Recorder's
25 office an Abstract of Judgment referencing the Final Judgment against the Association, recorded
26 as Instrument No. 20160902-0002687 (the "Fourth Abstract of Judgment"). The Fourth Abstract
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1 of Judgment listed the parcel number of the Zobrist Trust Property only as the property to which
2 the Judgment was to attach.

3 18. In 2010, the Lytle Trust filed another suit against the Rosemere Association
4 directly in Case No. A-10-631355-C ("Rosemere Litigation II"). The Lytle Trust did not name
5 the Plaintiffs as Defendants in the Rosemere Litigation II.

6 19. On or about November 14, 2016, the Lytle Trust was granted Summary Judgment
7 against the Rosemere Association.

8 20. On or about July 20, 2017, the District Court signed an Abstract of Judgment in
9 the amount of \$1,103,158.12. ("Rosemere Judgment II").
10

11 21. The Plaintiffs were not named parties in the Rosemere II Litigation.

12 22. On or about April 2, 2015, the Lytle Trust filed a third case (Case No. A-15-
13 716420-C) against the Association and named as Defendants Sherman L. Kearl ("Kearl") and
14 Gerry G. Zobrist ("Zobrist") ("Rosemere Litigation III"). On April 8, 2015, the Lytles filed an
15 Errata to the Complaint amending it so that all references to Kearl and Zobrist were taken out of
16 the Complaint.
17

18 23. On or about September 13, 2017, the Court in the entered its Order granting
19 Summary Judgment for Declaratory Relief as against the Association ("Rosemere Judgment III").
20 On November 8, 2017, the Rosemere Litigation III Court granted a Motion for Attorney's Fees
21 and Costs.

22 24. On February 24, 2017, the Boulden Trust, owner of Parcel No. 163-03-313-008 in
23 the Rosemere Subdivision, and the Lamothe Trust, owner of Parcel No. 163-03-313-002 in the
24 Rosemere Subdivision, filed a Motion for Partial Summary Judgment in this Court in this Case,
25 Case No. A-16-747900-C.
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1 25. This Court granted the Boulden Trust's and Lamothe Trust's Motion for Partial
2 Summary Judgment, and on July 25, 2017, entered its Order Granting Motion to Alter or Amend
3 Findings of Fact and Conclusions of Law ("Order").

4 26. In its Order, the Court found that, among other things, the Association is not
5 subject to NRS 116.3117, the Boulden Trust and Lamothe Trust were not parties to the
6 Rosemere Litigation, the Rosemere Judgment I (referred to as the "Rosemere LP Litigation" in
7 the Order) is not an obligation or debt of the Boulden Trust or the Lamothe Trust and that the
8 Abstracts of Judgment were improperly recorded against their properties and must be expunged
9 and stricken from the record.
10

11 27. After the Court issued its Order, the Lytles released their liens against the
12 Boulden Trust and Lamothe Trust properties.

13 28. On February 21, 2018, Case No. A-17-765372-C was consolidated with Case No.
14 A-16-747900-C.
15

16 **CONCLUSIONS OF LAW**

17 1. The Court's prior Order with respect to Boulden Trust's and Lamothe Trust's
18 Motion for Partial Summary Judgment, Case No. A-16-747900-C, is the law of the case, to the
19 extent applicable to Plaintiffs' claims.

20 2. The Association is a "limited purpose association" as referenced in NRS
21 116.1201(2).

22 3. As a limited purpose association, NRS 116.3117 is not applicable to the
23 Association.
24

25 4. As a result of the Rosemere Litigation I, the Amended CC&Rs were judicially
26 declared to have been improperly adopted and recorded, the Amended CC&Rs are invalid and
27 have no force and effect and were declared *void ab initio*.
28

///

ORDER

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

IT IS HEREBY ORDERED ADJUDGED AND DECREED that Plaintiffs' Motion for Summary Judgment is GRANTED.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust's Countermotion for Summary Judgment is DENIED.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the September Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Zobrist Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Sandoval Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust improperly clouded the title to the Gegen Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the First Abstract of Judgment recorded as Instrument No. 20160818-0001198 in the Clark County Recorder's Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Second Abstract of Judgment recorded as Instrument No. 20160902-0002685 in the Clark County Recorder's Office is hereby expunged and stricken from the records of the Clark County Recorder's Office.

1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
2 Third Abstract of Judgment recorded as Instrument No. 20160902-0002686 in the Clark County
3 Recorder's Office is hereby expunged and stricken from the records of the Clark County
4 Recorder's Office.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
6 Fourth Abstract of Judgment recorded as Instrument No. 20160902-0002687 in the Clark County
7 Recorder's Office is hereby expunged and stricken from the records of the Clark County
8 Recorder's Office.

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
10 Lytle Trust is permanently enjoined from recording and enforcing the Judgments obtained from
11 the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other
12 judgments obtained against the Association, against the September Property, Zobrist Property,
13 Sandoval Property or Gegen Property.

14 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
15 Lytle Trust is permanently enjoined from taking any action in the future directly against the
16 Plaintiffs or their properties based upon the Rosemere Litigation I, Rosemere Litigation II or
17 Rosemere Litigation III.

18 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the
19 Lytle Trust is hereby ordered to release the First Abstract of Judgment, the Second Abstract of
20 Judgment, the Third Abstract of Judgment and the Fourth Abstract of Judgment recorded with
21 the Clark County Recorder within ten (10) days after the date of Notice of Entry of this Order.

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1 **IT IS SO ORDERED.**

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3 Dated this ____ day of May, 2018.

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DISTRICT COURT JUDGE

Submitted by:

CHRISTENSEN JAMES & MARTIN

Wesley J. Smith

Wesley J. Smith, Esq.

Nevada Bar No. 11871

Laura J. Wolff, Esq.

Nevada Bar No. 6869

7440 W. Sahara Ave.

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Attorneys for Plaintiffs September Trust,

Zobrist Trust, Sandoval Trust, and

Dennis & Julie Gegen

Approved as to Form and Content by:

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Claimants Robert & Yvonne Disman

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1140 N. Town Center Drive, Suite 300

Las Vegas, Nevada 89144

Attorneys for Defendants/Counter-

Claimants Lytle Trust

1 **IT IS SO ORDERED.**

2
3 Dated this ____ day of May, 2018.

4
5
6 _____
DISTRICT COURT JUDGE

7 Submitted by:

8 **CHRISTENSEN JAMES & MARTIN**

9 _____
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Defendants/Cross-Defendants Boulden Trust
and Lamothe Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 22 day of May, 2018.

4
5
6 **DISTRICT COURT JUDGE**

7 Submitted by:

L. R.

8 **CHRISTENSEN JAMES & MARTIN**

9
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15 **Approved as to Form and Content by:**

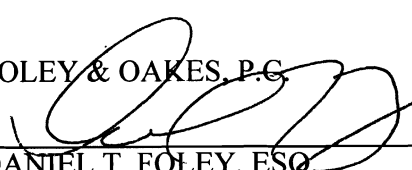
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Defendants/Cross-Defendants Boulden Trust
and Lamothe Trust

1 **IT IS SO ORDERED.**

2
3 Dated this 28 day of May, 2018.



DISTRICT COURT JUDGE

4
5
6 Submitted by:

7
8 **CHRISTENSEN JAMES & MARTIN**

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10 Wesley J. Smith, Esq.
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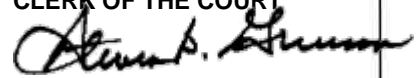
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43 and Lamothe Trust

EXHIBIT L

001701



COMP

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-775843-C
DEPT.: Department 31

**COMPLAINT FOR DECLARATORY
RELIEF AND PRELIMINARY
INJUNCTION**

**(EXEMPT FROM ARBITRATION –
AFFECTS TITLE TO REAL PROPERTY
AND DECLARATORY RELIEF
REQUESTED)**

Plaintiff TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE
LYTLE TRUST (hereinafter "Plaintiff" or the "Lyttles"), by and through the undersigned counsel,
hereby complains and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is the current owner of real property located 1930 Rosemere Court, in Clark
County, Nevada, APN 163-03-313-009, and described as:

Lot Nine (9) of Rosemere Court, as shown by map thereof on file in Book 59,
of Plats, Page 58, in the Office of the County Recorder of Clark County,
Nevada ("Plaintiff's Property").

///

1 Plaintiff's Property was previously owned by J. Allen Lytle and Trudi L. Lytle, the current
2 Trustees of the Lytle Trust, having been purchased by deed recorded November 15, 1996.

3 2. Defendant ROSEMER ESTATES PROPERTY OWNERS' ASSOCIATION
4 ("Defendant" or the "Association"), at all times herein mentioned is a common interest community
5 and comprised of nine (9) owners of single family lots, eight of which are developed, all as more
6 particularly described in the recorded Declaration of Covenants, Conditions and Restrictions, dated
7 January 4, 1994 (the "CC&Rs") for the Association, as recorded in the official records of the Clark
8 County Nevada Recorder's office. A true and correct copy of the CC&Rs is attached hereto, and
9 incorporated herein, as Exhibit "1."

10 3. Defendants DOES 1 through 20, inclusive, are sued herein under fictitious names,
11 their true names and capacities being unknown to Plaintiff but are believed to reside in the State of
12 Nevada; Plaintiff will ask leave of Court to amend its Complaint by inserting their true names and
13 capacities in the place and stead of said fictitious names when the same have been ascertained.

14 4. Defendants ROE CORPORATIONS 1 through 80, inclusive, are sued herein under
15 fictitious names, their true names and capacities being unknown to Plaintiff but are believed to be
16 corporations or other entities authorized to conduct business in the State of Nevada; Plaintiff will ask
17 leave of Court to amend its Complaint by inserting their true names and capacities in the place and
18 stead of said fictitious names when the same have been ascertained.

19 5. Plaintiff is informed and believes and based upon such information and belief alleges
20 that each Defendant designated herein as DOES 1 through 20, inclusive, and ROE
21 CORPORATIONS 1 through 80, inclusive (collectively the "DOE and ROE DEFENDANTS"), is
22 responsible in some way and/or manner for the acts and occurrences herein alleged, whether such
23 acts and occurrences were committed intentionally, negligently, recklessly or otherwise, and that
24 each DOE and ROE Defendant is subject to Plaintiff's relief or are involved as otherwise alleged
25 herein.

26 6. At all times mentioned herein, each of the Defendants was the agent and employee of
27 each of the remaining Defendants, and was, in doing the things herein complained of, acting within
28 the course and scope of such agency and employment or are otherwise in privity as alleged herein.

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1 14. The Association consistently held Board elections through March 2010, pursuant to
2 the protocols and methodology of NRS 116.31034, even though the Association is a limited purpose
3 association and Chapter 116 does not provide for a method of election of a Board for a limited
4 purpose association.

5 15. The Board last held an election on March 24, 2010. The Board members in place
6 from 2010 through July 2013 were as follows: Ray Sandoval (President), Orville McCumber
7 (Secretary), and Johnnie McCumber (Treasurer).

8 16. On January 27, 2014, during an unrelated court hearing involving the Association,
9 Orville McCumber, former Board Secretary, testified under oath that he no longer sat on the
10 Association's Board. In August 2015, Ray Sandoval, former Board President, told Plaintiff that the
11 Board "dissolved" and had not conducted any business since July 29, 2013. During this
12 conversation, Mr. Sandoval stated that the Board had not conducted any meetings since July 2013,
13 and did not intend on conducting any future meetings or conducting any future Association business.
14 It was abundantly clear from this conversation that the Board simply does not exist, and all former
15 officers abandoned their positions.

16 17. Presently, there is no sitting and acting Board for the Association, even though such a
17 board is required.

18 18. Thereafter, the Lytles filed a legal action in the Eighth Judicial District Court of
19 Nevada, Case No. A-15-716420-C (the "Prior Lawsuit") to require the Association to hold an
20 election. In the Prior Lawsuit, the Court held that the Association was required to hold an election
21 pursuant to NRS 82.271, 82.276, and 82.306. Despite a ruling requiring the election, the Association
22 has not done so as no neutral third party will agree to handle the election due to the Association
23 lacking funds to compensate the third party in advance of the election.

24 19. As a result of not having a Board, the Association cannot conduct business and
25 maintain the community as required by the CC&RS and Chapters 82 and 116 of the Nevada Revised
26 Statutes. Therefore, the Rosemere Estates Community has begun to dilapidate.

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1 Nevada law.

2 28. Plaintiffs bring this action pursuant to NRS 116.4117(2)(b).

3 29. As such, an order from this Court is appropriate that the Association must conduct the
4 above-referenced activity.

5 **SECOND CAUSE OF ACTION**

6 **((For Breach of Contract / Easement Agreement Against All Defendants))**

7 30. Plaintiff repeats and re-alleges the preceding paragraphs as though fully set forth
8 herein and incorporates the same herein by reference.

9 31. Pursuant to the CC&Rs, as well as other Nevada law, the Association was required to
10 maintain the Rosemere Estates Community and handle the day to day activities required of the
11 Association, as specified in more detail throughout this Complaint.

12 32. The Association breached the CC&Rs, as well as other Nevada law, by failing to
13 maintain the Rosemere Estates Community and handle the day to day activities, which includes, but
14 is no limited to: 1) maintaining the landscaping in the exterior wall planters; 2) maintaining the
15 exterior perimeter and frontage; 3) maintaining the entrance gate; 4) maintaining the private drive
16 and sewer system; 5) ensuring that homeowners are paying their assessments; 6) seeking collection
17 activity against any homeowners that have failed to pay their assessments; 7) paying known creditors
18 of the Association; 8) specially assessing the homeowners to ensure that enough proceeds exist
19 within the HOA funds to pay all known creditors assessing; and 9) any other activity required under
20 Nevada law.

21 33. Plaintiff, at all times, performed under the CC&Rs.

22 34. Plaintiff, at all times, substantially complied with all provisions contained therein.

23 35. Plaintiff alleges that the terms of the CC&Rs, as well as the other obligations under
24 Nevada law, are definite and certain between the parties.

25 36. Plaintiff is informed and believes that certain remedies at law are inadequate because,
26 for example, the Association failed and continues to fail to handle its obligations under the CC&Rs,
27 as well as Nevada law. Monetary damages will not make Plaintiff whole for these types of damages.
28 Plaintiff seeks specific performance to prevent these types of violations from occurring moving

1 forward.

2 37. Plaintiff tendered performance under the CC&Rs, as well as other Nevada law.

3 38. Plaintiff respectfully requests that this Court make an order requiring specific
4 performance and believes the Court will do so given the facts plead herein.

5 39. Plaintiff is informed and believes that it is entitled to the relief demanded herein.

6 40. Plaintiff is informed and believes that the Association is violating and will continue to
7 violate certain provisions in the CC&Rs, as well as Nevada law, as more specifically set forth above.

8 41. The Association's actions will continue to violate Plaintiff's rights respecting the
9 subject of this action, and will tend to render the judgment ineffectual.

10 42. If the Association continues to commit these types of violations, Plaintiff will suffer
11 great or irreparable injury.

12 43. Plaintiff has demonstrated a likelihood of success on the merits.

13 44. Plaintiff has demonstrated a reasonable probability that if the Association's conduct
14 continues, Plaintiff will suffer irreparable harm for which there is an inadequate remedy at law.

15 45. Plaintiff has demonstrated that the threatened injury to it in absence of an injunction
16 outweighs any potential harm that the injunction may cause the Association.

17 46. Plaintiff has demonstrated that the granting of an injunction is not contrary to the
18 public interest.

19 47. Plaintiff respectfully requests that this Court make an order precluding the
20 Association from continuing to breach the CC&Rs, as well as Nevada law, for all violations in which
21 there is not an adequate remedy at law until this matter is resolved.

22 48. It has been necessary for Plaintiff to retain the services of counsel to represent them
23 and to bring this action, and Plaintiff is entitled to recover attorneys' fees and costs incurred herein.

24 **PRAYER FOR RELIEF**

25 Plaintiff responsibly requests the Court grant the following relief:

26 1. For an Order declaring that the Association must continue to operate as required by
27 the CC&Rs and Chapters 82 and 116 of the Nevada Revised Statutes, which includes, but is not
28 limited to: 1) maintaining the landscaping in the exterior wall planters; 2) maintaining the exterior

1 perimeter and frontage; 3) maintaining the entrance gate; 4) maintaining the private drive and sewer
2 system; 5) ensuring that homeowners are paying their assessments; 6) seeking collection activity
3 against any homeowners that have failed to pay their assessments; 7) paying known creditors of the
4 Association; 8) specially assessing the homeowners to ensure that enough proceeds exist within the
5 HOA funds to pay all known creditors assessing; and 9) any other activity required under Nevada
6 law.

7 2. For specific performance requiring the Association to comply with the CC&Rs, as
8 well as other Nevada law, with respect to the Association's maintenance and day-to-day activities;

9 3. For injunctive relief preventing the Association from violating the terms of the
10 CC&RS, as well as other Nevada law, moving forward;

11 4. For appointment of a receiver to handle the maintenance obligations and day-to-day
12 activities, including the financial activities regarding assessments and creditors, until a duly
13 constituted board may be instituted and power transitioned thereto;

14 5. For reasonable attorneys' fees;

15 6. For costs of suit and litigation; and

16 7. For such other and further relief as the Court deems just and proper

17 DATED: June 8, 2018

GIBBS GIDEN LOCHER TURNER
18 SENET & WITTBRODT LLP

19 By: 

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

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

EXHIBIT M

001710

RECEIVERSHIP SPECIALISTS

STATE AND U.S. FEDERAL COURT RECEIVERS/TRUSTEES

January 22, 2020

To: Mr. & Mrs. Disman
1960 Rosemere Ct.
Las Vegas, NV 89117

From: Kevin Singer
Receivership Specialists

RE: Receivership Over Rosemere Estates Property Owners Association

Dear Mr. & Mrs. Disman;

My name is Kevin Singer and I have been appointed by the District Court of Clark County as the neutral District Court Receiver ("Receiver") over your homeowner's association (HOA). Attached as "**Exhibit 1**" is my appointing order for you to review. My intention is to work with the HOA and its members, not against.

The appointment of the receivership is predicated on judgments against the HOA in the approximate amount of \$1,481,822 by the Lytle family ("the Plaintiff"). The Lytle's own lot 9 in Rosemere Estates. These judgments need to be paid and the Court agreed with the Plaintiff by appointing a Receiver to facilitate the satisfying of the judgments.

We would like to meet with the title holding members of the HOA on February 1, 2020, at 9:30 am at the mailboxes of Rosemere Estates to introduce ourselves, go over the Court's Order and share three ideas we have to pay these judgments. It would be appreciated if someone volunteered their home for the meeting. This will not be an HOA meeting and we will not be conducting HOA business at this meeting.

In the meantime, we welcome a conversation with you regarding the current care and maintenance of the community. We are seeking to know the following:

- 1) Who is currently leading the HOA?
- 2) How much are the HOA dues per home per month?
- 3) Who does the HOA bank with? Provide evidence of bank statements.
- 4) Are there any insurances in place for the HOA?
- 5) A list of all vendors servicing the property for landscaping and your gate, etc.

Corporate Headquarters
Los Angeles
11500 W. Olympic Blvd.
Suite 530
Los Angeles, CA 90064
Tel: (310) 552-9064
Fax: (310) 552-9066

San Francisco
795 Folsom Street
1st Floor
San Francisco, CA 94107
Tel: (415) 848-2984
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San Diego
4660 La Jolla Village Drive
Suite 100
San Diego, CA 92122
Tel: (858) 546-4815
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Sacramento
980 9th Street
16th Floor
Sacramento, CA 95814
Tel: (916) 449-9655
Fax: (916) 446-7104

Las Vegas
7251 W. Lake Mead Blvd.
Suite 300
Las Vegas, NV 89128
Tel: (702) 562-4230
Fax: (702) 562-4001

Reno
200 S. Virginia Street
Suite 800
Reno, NV 89501
Tel: (775) 398-3103
Fax: (775) 686-2401

Phoenix
2 N. Central Avenue
Suite 1800
Phoenix, AZ 85004
Tel: (602) 343-1889
Fax: (602) 343-1801

Lastly, since my appointment on December 18, 2019, I have put the HOA back into good standing with the Nevada Real Estate Division and the Nevada Secretary of State. See **"Exhibits 2 & 3"** showing good standing.

If you have any questions or any information you would like to communicate to me, please call or e-mail my associate Scott Yahraus at (702) 562-4230, Scott@ReceivershipSpecialists.com. All homeowners will be receiving this correspondence.

Respectfully Yours;

A handwritten signature in blue ink, appearing to read "Kevin Singer". The signature is stylized with a large "K" and "S".

Kevin Singer
Clark County District Court Receiver
Case: A-18-775843-C

001712

EXHIBIT 1

001713

001713

Electronically Filed
12/18/2019 9:33 AM
Steven D. Grierson
CLERK OF THE COURT



NEOJ

Richard E. Haskin, Esq.
Nevada State Bar # 11592

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

1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144-0596
(702) 836-9800

Attorneys for Plaintiff

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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

Defendants.

CASE NO.: A-18-775843-C
DEPT.: XXXI

**NOTICE OF ENTRY OF ORDER
APPOINTING A RECEIVER OF
DEFENDANT ROSEMERE PROPERTY
OWNERS ASSOCIATION**

NOTICE IS HEREBY GIVEN that on the 18th day of December, 2019, a **ORDER
APPOINTING A RECEIVER OF DEFENDANT ROSEMERE PROPERTY OWNERS
ASSOCIATION** was entered in the above-entitled matter, a copy of which is attached hereto.

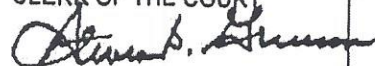
DATED: December 18, 2019

GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

By: Richard E. Haskin

Richard E. Haskin, Esq.
Nevada State Bar # 11592
1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Plaintiff
TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS
TRUSTEES OF THE LYTLE TRUST

Electronically Filed
12/18/2019 9:07 AM
Steven D. Grierson
CLERK OF THE COURT



ORD

Richard E. Haskin, Esq.
Nevada State Bar # 11592
**GIBBS GIDEN LOCHER TURNER
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1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144-0596
(702) 836-9800

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

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

CASE NO.: A-18-775843-C
DEPT.: XXXI

Plaintiff,

v.

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

Defendants.

**[PROPOSED] ORDER
APPOINTING A RECEIVER
OF DEFENDANT ROSEMERE
PROPERTY OWNERS ASSOCIATION**

On December 3, 2019, at 9:00 a.m. in Department XXXI of the above-caption Court, Plaintiff TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS TRUSTEES OF THE LYTLE TRUST (hereinafter the "Lytle Trust"), Renewed Application for Appointment of a Receiver came on for hearing. No one appeared for Defendant ROSEMERE ESTATES PROPERTY OWNERS' ASSOCIATION (the "Association"), which has been defaulted in this case due to its failure to appear.

After reviewing the Lytle Trust's Application for Appointment of a Receiver and considering additional argument at the hearing, the Court makes the following Order:

IT IS ORDERED that the Lytle Trust's Application for Appointment for Receiver is granted pursuant to NRS 32.010(1) and NRS 82.476. A Receiver shall be appointed for the Association which consists of the following properties: APN 163-03-313-001; APN 163-03-313-002; APN 163-

2256834.1

12/18/2019 9:07 AM

03-313-003; APN 163-03-313-004; APN 163-03-313-005; APN 163-03-313-006; APN 163-03-313-007; APN 163-03-313-008; and APN 163-03-313-009.

IT IS FURTHER ORDERED that Kevin Singer (the "Receiver") is hereby appointed Receiver in this action, subject to the condition that before entering upon his duties as Receiver, he shall execute a receiver's oath and post a bond from an insurer in the sum of \$5,000.00, conditioned upon faithful performance of his duties as receiver herein. The Receiver's oath and bond are to be filed in Department XXXI no later than December 27, 2015 *with the Clerk*. Prior to Receiver posting his bond, Plaintiffs shall advance \$5,000.00 to the Receiver to cover his cost to post a bond and initial fees and expenses. The Receiver shall reimburse Plaintiff's advance through an Association assessment or dues.

IT IS FURTHER ORDERED that the Receiver is directed by this Court to do the following specific acts pursuant to NRS 32.255 which provides the Court, when appointing a receiver, "exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property:"

1. Immediately take possession and control of the Association's financial accounts, including locating all checkbooks, and ledgers, and other Association records and documents including, but not limited to, budgets, reserve studies, insurance policies and other effects of the Association Accounts.

2. Issue and collect a special assessment upon all owners within the Association to satisfy the Lytle Trust's judgments against the Association.

3. Pay NRED for mandatory registration pursuant to NRS 116.31155, and if there are insufficient funds within the Association's accounts to pay such fees, issue a special assessment to all owners within the Association to satisfy any amounts due to NRED.

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

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

- 1 6. Conduct an election for the Board of Directors for the Association.
- 2 7. Make any necessary repairs to the common areas, and if there are insufficient funds
- 3 within the Association's account to pay for such repairs, issue and collect a special assessment to all
- 4 owners within the Association to pay for said repairs.
- 5 8. Issue and collect a special assessment to the Association membership to pay the
- 6 receiver's fees and costs.
- 7 9. Exercise any power set forth in NRS 32.290, NRS 32.295, NRS 32.315, and NRS
- 8 32.320.
- 9 10. The Receiver shall have all power and authority of a receiver provided by law,
- 10 including the following powers and responsibilities:
- 11 a. The Receiver is authorized and empowered to operate, manage, control, conduct, care
- 12 for, preserve, and maintain the Receivership Estate ("Receivership Estate" is defined
- 13 as the Association and all operations of the Association). In this regard the Receiver
- 14 shall be authorized to manage, operate and make all decisions on behalf of the
- 15 Association.
- 16 b. The Receiver may change the locks on the doors providing access and access to the
- 17 common areas and management office, so long as this does not interfere with
- 18 Association owner's and resident's access to their units in the Property, and to do all
- 19 things which he deems necessary to protect the Receivership Estate.
- 20 c. The Receiver is authorized to take possession of the Receivership Estate and seize,
- 21 manage and control the Receivership Estate, whether in the possession of the
- 22 Association's board of directors and/or officers, past or present members of the board
- 23 of directors or officers, or any company contracted to provide services to the
- 24 Association, including common area services.
- 25 d. The Receiver is further authorized to take possession of and collect any accounts,
- 26 chattel paper and general intangibles of every kind hereafter arising out of the
- 27 Receivership Estate and take possession of all the books and records relating to the
- 28 foregoing, wherever located, as the Receiver deems necessary for the proper

- 1 administration of the Receivership Estate.
- 2 e. The Receiver is authorized and empowered to enter, gain access to take possession of
- 3 and manage all Association Accounts wherever located pending discharge, including
- 4 the power to demand any and all records from the any and all banks and other
- 5 financial institutions holding present and past Association Accounts.
- 6 f. The Receiver shall preserve and protect the assets, tax records, books and records
- 7 where located while he acts to operate the affairs of the Association.
- 8 g. The Receiver is authorized to review all Accounts of the Association for all
- 9 expenditures and collections. Also, the Receiver is authorized to review the current
- 10 active account statements, contracts, invoices, and materials prepared by or regarding
- 11 any third party (past or present) who provided services to the Association.
- 12 h. The Receiver is authorized and empowered to execute and prepare all documents and
- 13 to perform all acts, either in the name of the Association, as applicable, or in the
- 14 Receiver's own name, which are necessary or incidental to preserving, protecting,
- 15 managing and/or controlling the Receivership Estate while the Receiver operates the
- 16 business of the Association. In particular, the Receiver shall have the authority
- 17 without limitation to immediately cancel, extend, modify or enter into any existing or
- 18 new contracts or leases necessary to operate the Receivership Estate.
- 19 i. The Receiver is authorized and empowered to demand, collect and receive all monies,
- 20 funds and payments arising from or in connections with any sale and/or lease of any
- 21 assets of the Receivership Estate, as well as monthly payments of mortgage debt
- 22 service, maintenance fees, dues, assessments and other fees from Association unit
- 23 owners, including fees paid directly to any person or entity managing any portion of
- 24 the Property on the Association's behalf.
- 25 j. The Receiver may take any and all steps necessary to receive, collect and review all
- 26 mail addressed to or on behalf of the Association, received at any address by any
- 27 owner or board member on behalf of the Association, or any post office boxes held in
- 28 the name of the Association, and the Receiver is authorized to instruct the U.S.

1 Postmaster to re-route, hold, and/or release said mail to said Receiver.

- 2 k. The Receiver may take possession of all Association Accounts and safe deposit boxes
3 of the Association and accounts as they pertain to the assets, wherever located and
4 receive possession of any money on deposit in said Association Accounts. The
5 Receiver also has the authority to close any Association Account(s) that the Receiver
6 deems necessary for operation or management of the Receivership Estate. Institutions
7 that have provided banking or other financial services to the Association are
8 instructed to assist the Receiver by providing records that he requests. These
9 institutions may charge their ordinary rates for providing this service.
- 10 l. The Receiver is empowered to use Association tax identification numbers and
11 establish bank accounts at any bank or investment accounts at any financial institution
12 the Receiver deems appropriate for the deposit of monies and funds collected and
13 received in connection with his operation and management of the Receivership
14 Estate. Any institutions that have Association Accounts and/or funds that are part of
15 the Receivership Estate or the Association shall be turned over to the custody and
16 control of the Receiver and that institution shall not be held liable for turnover of
17 funds.
- 18 m. To the extent feasible, the Receiver shall, within thirty (30) days of his qualification
19 hereunder, file in this action an inventory of all property of which Receiver shall have
20 taken possession pursuant to this Order and file monthly accountings thereafter.
- 21 n. The Receiver, or any party to this action, may from time to time, and on due notice to
22 all parties, make application to this Court on an ex parte basis or noticed motion for
23 further orders instructing the Receiver.
- 24 o. The Receiver is authorized to institute ancillary proceedings in this state or other
25 states as is necessary to obtain possession and control of assets of the Association and
26 the Receiver may engage the services of counsel with further court order. The
27 Receiver may pay for such services from the funds of the Receivership Estate. The
28 Receiver may hire legal counsel with further court order to institute such proceedings

1 in this State or other states as is necessary to obtain possession and control of assets
2 of the Association.

3 p. The Receiver is empowered to serve subpoenas when necessary with court approval.

4 q. The Receiver has the authority to assess all Association unit owners to pay for any
5 operation costs or to pay for judgments against the Association. If an Association
6 member does not pay an assessment then the Receiver may proceed to foreclose on
7 said members ownership interest in the property.

8 r. The Receiver has authority to take any and all legal actions or remedies to make sure
9 that Association unit owners pay their monthly debt service, maintenance fees, dues,
10 assessments or other fees.

11 11. The Receiver shall also be entitled to perform the following:

12 a. Hire professionals, including accountants, paralegals, property managers, and
13 attorneys, to aid and counsel the Receiver in performing his duties.

14 b. Hire contractors to evaluate and make repairs to the Property and other assets of the
15 Receivership Estate.

16 c. Pay the fees and costs of any professional retained by the Receiver to aid him.

17 d. Pay such other and ordinary expenses deemed appropriate by the Receiver to carry
18 out the Receiver's duties as specified herein.

19 e. Pay the Receiver's fees from the funds of the Receivership Estate.

20 f. The Receiver may use any federal tax payer identification numbers or apply for a new
21 tax payer number relating to the Association for any lawful purposes and prepare tax
22 returns if required.

23 12. Monthly accounting of Receiver's income, expenses, and fees ("Receiver's Report"):

24 a. The Receiver shall each month prepare and serve on the parties a narrative of what
25 issues he is addressing, accounting of revenues and expenses incurred in the
26 administration of the receivership.

27 b. The Receiver shall pay the Receiver's own fees of \$275 per hour, fees of his agents,
28 and expenses using funds of the Receivership Estate. Upon completion of monthly

Receiver's Report, and the mailing of such statement to the parties' respective attorneys of record, or any other designated person or agent, and if no objection is received within 10 calendar days after the mailing of the interim statement. If a party fails to object within 10 days of receiving Receiver's fees and administrative costs and expenses in the monthly interim statement, they shall thereafter be barred from making an objection to Receiver's fees and administrative costs and expenses as reflected in said interim report;

13. Receiver's final report and discharge:

- a. Motion required. Discharge of the Receiver shall require a Court order upon noticed motion for approval of the Receiver's final report and account and exoneration of the Receiver's bond.
- b. Time. Not later than sixty (60) days after the receivership terminates the Receiver shall file, serve, and obtain a hearing date on a motion for discharge of the Receiver.
- c. Notice. The Receiver shall give notice to all persons of whom the Receiver is aware who have potential claims against the receivership property.
- d. Contents of Motion. The motion to approve the final report and account and for discharge of the Receiver shall contain the following:
 - i. Declaration or Declarations. (1) stating what was done during the receivership; (2) certifying the accuracy of the final accounting, and the basis for said accounting (3) stating the termination of the receivership (such as reinstatement); and (4) stating the basis for an order for the distribution of any surplus or payment of any deficit.
 - ii. Accounting Summary. A summary of the receivership accounting, which shall include: (1) the total revenues received; (2) the total expenditures identified and enumerated by major categories; (3) the net amount of any surplus or deficit; and (4) evidence of necessary supporting facts.

14. Bankruptcy: Nominal Plaintiff's Duty to Give Notice. If any party files a bankruptcy case during the receivership, the Association shall give notice of the bankruptcy case to the Court, to all parties, and to the Receiver three (3) business days after the day on which the Association

1 receives notice of the bankruptcy.

2 15. Bankruptcy: Receiver's Duties. If the Receiver receives notice that a bankruptcy has
3 been filed and part of the bankruptcy estate includes property that is the subject of this Order, the
4 Receiver shall have the following duties:

- 5 a. Turn over property if no relief from the stay will be sought. The Receiver shall
6 immediately contact the party who obtained the appointment of the Receiver, and
7 determine whether that party intends to move in the bankruptcy court for an order for
8 (1) relief from the automatic stay, and (2) relief from the Receiver's obligation to turn
9 over the property (11 U.S.C. § 542). If the party has no intention to make such a
10 motion, the Receiver shall immediately turn over the property to the appropriate
11 entity either to the trustee in bankruptcy if one has been appointed or, if not, to the
12 debtor in possession-and otherwise comply with 11 United States Code § 543.
- 13 b. Remain in possession pending resolution. If the party who obtained the receivership
14 intends to seek relief immediately from both the automatic stay and the Receiver's
15 obligation to turn over the property, the Receiver may remain in possession and
16 preserve the property pending the ruling on those motions (11 U.S.C. § 543(a)). The
17 Receiver's authority to preserve the property shall continue as follows:
- 18 i. The Receiver may continue to collect monthly payments of mortgage debt
19 service, maintenance fees, dues, assessments and other fees from Association
20 unit owners;
- 21 ii. The Receiver may make only those disbursements necessary to preserve and
22 protect any and all accounts of the Receivership Estate.
- 23 c. Turn over property if no motion for relief is filed within fifteen (15) days after notice
24 of the bankruptcy. If the party who obtained the receivership fails to file a motion
25 within fifteen (15) court days after his or her receipt of notice of the bankruptcy
26 filing, the Receiver shall immediately turn over the property to the appropriate entity
27 either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in
28 possession and otherwise comply with 11 United States Code §543.
- d. Retain Bankruptcy Counsel. The Receiver may petition the Court to retain legal

counsel to assist the Receiver with issues arising out of the bankruptcy proceedings.

IT IS FURTHER ORDERED that the board of directors and officers of the Association, any and all parties to this action, including any of their respective agents, servants, directors, assignees, successors, representatives, employees, and all persons or entities acting under, or in concert with them, or for them, are required to cooperate with the Receiver by providing documents, account records, statements, ledgers, check books, check book register, and any and all documents necessary for the Receiver to manage the affairs of the Receivership Estate. They are also required to pay any assessments which the Receiver imposes on the Association.

IT IS FURTHER ORDERED that receipt of this Order constitutes notice as contemplated in NRS 32.290.

IT IS FURTHER ORDERED that this Order shall remain in full force and effect until: (1) upon entry of an order by the Court finding good cause for removal of the Receiver, or (2) by further order of this Court.

IT IS FURTHER ORDERED, that the Court will maintain jurisdiction over this matter and over the Receiver so long as the Receiver is in place.

IT IS SO ORDERED. — *A status check is set for Thursday, March 12, 2020.*
Dated this 13 day of December 2019.


DISTRICT COURT JUDGE

Submitted by:
GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP

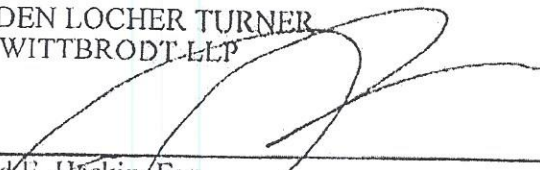
By: 
Richard E. Haskin, Esq.
Nevada State Bar # 11592
Daniel M. Hansen, Esq.
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1140 N. Town Center Drive, Suite 300
Las Vegas, Nevada 89144
Attorneys for Plaintiff
TRUDI LEE LYTLE AND JOHN ALLEN LYTLE, AS
TRUSTEES OF THE LYTLE TRUST

EXHIBIT 2

001724

SilverFlume Business Portal is available for use. Please replace your bookmark with this new URL:
<https://www.nvsilverflume.gov/>

ROSEMER ESTATES PROPERTY OWNERS ASSOCIATION

My Business Checklist

Nevada Business ID: NV19971112707
Entity Type: Domestic Nonprofit
Corporation (82)
Entity Status: Active

As you proceed, your filings *auto-save* to your Dashboard for later access.

Note: The filing of the formation documents or annual renewal includes the State Business License.

Steps to License a Nevada Business

<input type="checkbox"/>	* Articles of Incorporation - Non-Profit Corporation, List and State Business License ?	Active Exp: 02/28/2021
Completed: <input type="checkbox"/> Pending: <input type="checkbox"/> (*) is a required field		

Communication Preferences

☒ Monitor this business via email ?

Related Services

[Disadvantaged Business Resources \(Optional\)](#)
[NV Gender Equality in the Workplace Survey](#)
[Patriot Employer Program](#)
[Reserve a Web Domain](#)

Other Actions

[Amendments](#)
[Cancellations, Dissolutions, Terminations, etc.](#)
[Domestications](#)
[Mergers, Exchanges, and Conversions](#)

Miscellaneous
Reinstatements and Revivals

Questions? Please email support@nvsilverflume.gov

Supported Browsers

001726

001726

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

ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION

Entity Number:

C3724-1997

Entity Type:

Domestic Nonprofit Corporation (82)

Entity Status:

Active

Formation Date:

02/25/1997

NV Business ID:

NV19971112707

Termination Date:

Perpetual

Annual Report Due Date:

2/28/2021

Solicits Charitable Contribution:

No

REGISTERED AGENT INFORMATION

001727

Name of Individual or Legal Entity:

ORVILLE MCCUMBER

Status:

Active

CRA Agent Entity Type:**Registered Agent Type:**

Non-Commercial Registered Agent

NV Business ID:**Office or Position:****Jurisdiction:****Street Address:**

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

Email Address:**Mailing Address:****Individual with Authority to Act:****Contact Phone Number:****Fictitious Website or Domain Name:****PRINCIPAL OFFICE ADDRESS****Address:****Mailing Address:**

001728

OFFICER INFORMATION☐ **VIEW HISTORICAL DATA**

Title	Name	Address	Last Updated	Status
President	KEVIN SINGER - COURT RECEIVER	7251 W. LAKE MEAD BLVD. #300, Las Vegas, NV, 89128, USA	01/21/2020	Active
Secretary	KEVIN SINGER - COURT RECEIVER	7251 W. LAKE MEAD BLVD. #300, Las Vegas, NV, 89128, USA	01/21/2020	Active
Treasurer	KEVIN SINGER - COURT RECEIVER	7251 W. LAKE MEAD BLVD. #300, Las Vegas, NV, 89128, USA	01/21/2020	Active
Director	KEVIN SINGER - COURT RECEIVER	7251 W. LAKE MEAD BLVD. #300, Las Vegas, NV, 89128, USA	01/21/2020	Active

Page 1 of 1, records 1 to 4 of 4

CURRENT SHARES

Class/Series	Type	Share Number	Value
No records to view.			
Number of No Par Value Shares:			
0			
Total Authorized Capital:			
Filing History Name History Mergers/Conversions			

[Return to Search](#)[Return to Results](#)

EXHIBIT 3

001730

Policy 09-01

NRS 116.31155 [8]: Upon the payment of the fees and any administrative penalties and interest required by this section, the Administrator shall provide to the association or master association evidence that it paid the fees and the administrative penalties and interest in compliance with this section.

The Office of the Ombudsman for Common-Interest Communities and Condominium Hotels will provide a receipt to each association or to the master association that is required to submit the annual \$3.00 unit fee.

Beginning July 1, 2008, a certificate of good standing will be provided to each association, at the mailing address on record with the office, after receipt of both the annual unit fees and registration form. The certificate will contain the association's name, master association's name (if applicable), Secretary of State filing number, number of current units, county, and the registration renewal date. The certificate must be displayed in a prominent place.

Definition of "prominent place": an area that can be accessible by the public at their request during business hours; conspicuously; noticeable.

DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
OFFICE OF THE OMBUDSMAN
3300 W. Sahara Ave., Suite 350
Las Vegas, Nevada 89102
(702) 486-4480 • Fax (702) 486-4520
CICombudsman@red.nv.gov
www.red.nv.gov

State of Nevada
Department of Business and Industry
Real Estate Division

HOMEOWNERS' ASSOCIATION
RENEWAL REGISTRATION CERTIFICATE
ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION

3724-1997

Number of units

9

County

Clark

This shall serve as proof of renewal registration with the Office of the Ombudsman for Common-Interest Communities and Condominium Hotels, as mandated by Nevada Revised Statutes (NRS) chapters 78, 82, 87 and 88.

This certification expires 02/28/2020

ROSEMERE ESTATES PROPERTY OWNERS ASSOCIATION
C/O RECEIVERSHIP SPECIALISTS
KEVIN SINGER - COURT RECEIVER
7251 W. LAKE MEAD BLVD. #300
LAS VEGAS, NV 89128

EXHIBIT N

001732

ORDR**CHRISTENSEN JAMES & MARTIN**

KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

LAURA J. WOLFF, ESQ.

Nevada Bar No. 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,
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 FOR ORDER TO SHOW
CAUSE WHY THE LYTLE TRUST
SHOULD NOT BE HELD IN
CONTEMPT FOR VIOLATION OF
COURT ORDERS

Date: April 22, 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 Order to Show Cause Why the Lytle Trust
13 Should Not Be Held in Contempt for Violation of Court Orders ("Motion") filed by the September Trust,
14 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the
15 Gerry R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie
16 Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and
17 Devolution Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen,
18 Husband and Wife, as Joint Tenants ("Dennis & Julie Gegen") (collectively the "Plaintiffs"), the Joinders
19 filed by Marjorie B. Boulden, Trustee of the Marjorie B. Boulden Trust, amended and restated dated July
20 17, 1996 ("Boulden Trust") and Linda Lamothe and Jacques Lamothe, Trustees of the Jacques and Linda
21 Lamothe Living Trust ("Lamothe Trust") and Robert Z. Disman and Yvonne A. Disman (the "Dismans"),
22 and the Opposition and Reply thereto, which came on for hearing on April 22, 2020 at 9:00 a.m. in
23 Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

24 Wesley J. Smith, Esq. of Christensen James & Martin, Chtd. appeared on behalf of the Plaintiffs.
25 Daniel T. Foley, Esq. of Foley & Oakes, PC appeared on behalf of the Boulden Trust and Lamothe Trust.
26 Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the Dismans. Dan R.
27 Waite, Esq. of Lewis Roca Rothgerber Christie LLP and Richard Haskin, Esq. of Gibbs Giden Locher
28 Turner Senet & Wittbrodt LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees
of the Lytle Trust ("Lytle Trust"). Patricia Lee, Esq. of Hutchison & Steffen was present on behalf of
Kevin Singer, court appointed Receiver over the Rosemere Estates Property Owners Association

1 (“Association”), in Case No. A-18-775843-C, *Trudi Lee Lytle et al. v. Rosemere Estates Property*
 2 *Owners’ Association* (“Receivership Action”).

3 The Court having considered the Motion, Joinders, Opposition, and Reply, together with the
 4 Exhibits thereto, having heard the arguments of counsel, and with good cause appearing therefore, the
 5 Court hereby grants the Motion and Joinders and enters the following Findings of Fact, Conclusions of
 6 Law, and Order:

7 **FINDINGS OF FACT**

8 1. On April 26, 2017, this Court entered its Findings of Fact, Conclusions of Law, and Order
 9 Granting the Boulden Trust and Lamothe Trust’s Motion for Partial Summary Judgment (“April 2017
 10 Order”) against the Lytle Trust. On the Lytle Trust’s Motion for Reconsideration or, in the alternative,
 11 Motion to Alter or Amend Judgment, on July 27, 2017, this Court entered its Order Granting Motion to
 12 Alter or Amend Findings of Fact and Conclusions of Law (“July 2017 Order”) in favor of the Boulden
 13 Trust and the Lamothe Trust on their Motion for Partial Summary Judgment.¹ The July 2017 Order is
 14 hereby incorporated by reference.

15 2. In the July 2017 Order, the Court concluded, in part, that: the Association is a “limited
 16 purpose association” as referenced in NRS 116.1201(2); as a limited purpose association, NRS 116.3117
 17 is not applicable to the Association; as a result of the Rosemere Litigation I (referred to in the July 2017
 18 Order as the Rosemere LPA Litigation) between the Lytle Trust and the Association, the Amended
 19 CC&Rs at issue were judicially declared to have been improperly adopted and recorded, were invalid,
 20 have no force and effect, and were declared *void ab initio*; the Boulden Trust and Lamothe Trust were
 21 not parties to the Rosemere Litigation I; the Boulden Trust and Lamothe Trust were not “losing parties”
 22 in the Rosemere Litigation I per Section 25 of the Original CC&Rs; the Final Judgment in the Rosemere
 23 Litigation I against the Association in favor of the Lytle Trust is not against, and is not an obligation of,

26 ¹ The April 2017 Order included an order that the Lytle Trust had slandered title. The Court
 27 subsequently determined that it had not made findings of fact or conclusions of law on this issue and
 28 amended accordingly by entering the July 2017 Order without any order on the slander of title claim.
 The slander of title claim was later dismissed by stipulation between the parties. *See* Notice of Entry of
 Stipulation and Order to Dismiss All Remaining Claims Without Prejudice filed on January 14, 2019.

1 the Boulden Trust and Lamothe Trust; and the Final Judgment against the Association in the Rosemere
2 Litigation I is not an obligation or debt owed by the Boulden Trust and Lamothe Trust.

3 3. The July 2017 Order also included the following permanent injunction at page 7:

4 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants
5 are permanently enjoined from recording and enforcing the Final Judgment from the Rosemere
6 LPA Litigation or any abstracts related thereto against the Boulden Property or the Lamothe
7 Property.

8 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Defendants
9 are permanently enjoined from taking any action in the future against the Plaintiffs or their
10 properties based upon the Rosemere LPA Litigation.

11 4. The Court ordered the Lytle Trust to expunge the Abstracts of Judgment that it had
12 recorded against properties owned by the Boulden Trust and Lamothe Trust. The Lytle Trust released
13 the Abstracts of Judgment, but immediately recorded two *lis pendens* against the Boulden Trust and
14 Lamothe Trust properties. Thereafter, the Lytle Trust refused to voluntarily expunge the *lis pendens* and
15 the Boulden Trust and Lamothe Trust were forced to file a Motion to Expunge *Lis Pendens*. This Court
16 summarily granted the Motion on June 23, 2017 and the *lis pendens* were ordered stricken, but the Lytle
17 Trust was not held in contempt.

18 5. The Lytle Trust appealed the July 2017 Order and the Nevada Supreme Court issued an
19 Order of Affirmance on December 4, 2018 in Case No. 73039, *Trudi Lee Lytle v. Marjorie B. Boulden*
20 (“First Order of Affirmance”).²

21 6. After entry of the July 2017 Order, the September Trust, Zobrist Trust, Sandoval Trust,
22 and Gegens, which also own property within the Rosemere Subdivision, approached the Lytle Trust and
23 requested that it release the Abstracts of Judgment recorded against their properties as well. After the
24 Lytle Trust refused to release the Abstracts of Judgment as to their properties, the September Trust,
25 Zobrist Trust, Sandoval Trust, and Gegens filed a Complaint against the Lytle Trust in Case No. A-17-
26 765372-C, which was consolidated with this Case (Case No. A-16-747900-C) on February 21, 2018.

27 ² The Boulden Trust sold its property to the Dismans on August 4, 2017. This Court subsequently held,
28 in an Order entered on or about December 26, 2018, that the July 2017 Order likewise applied to the
Rosemere Litigation II Judgment, which the Lytle Trust sought to enforce against the Lamothe Trust
and the Dismans’ and their properties after entry of the July 2017 Order.

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

5 8. In the May 2018 Order, the Court concluded, in part, that: the Association is a “limited
6 purpose association” as referenced in NRS 116.1201(2); as a limited purpose association, NRS 116.3117,
7 the statute upon which the Lytle Trust relied to record the Abstracts of Judgment, is not applicable to the
8 Association; as a result of the Rosemere Litigation I between the Lytle Trust and the Association, the
9 Amended CC&Rs at issue were judicially declared to have been improperly adopted and recorded, were
10 invalid, have no force and effect, and were declared *void ab initio*; the September Trust, Zobrist Trust,
11 Sandoval Trust, and Gegens were not parties to the Rosemere Litigation I, Rosemere Litigation II, or
12 Rosemere Litigation III; the September Trust, Zobrist Trust, Sandoval Trust, and Gegens were not
13 “losing parties” in the Rosemere Litigation I, Rosemere Litigation II, or Rosemere Litigation III per
14 Section 25 of the Original CC&Rs; the Judgments issued in the Rosemere Litigation I, Rosemere
15 Litigation II, or Rosemere Litigation III (collectively the “Rosemere Judgments”) against the Association
16 in favor of the Lytle Trust are not against, and are not an obligation of, the September Trust, Zobrist
17 Trust, Sandoval Trust, or Gegens to the Lytle Trust; and the Rosemere Judgments against the Association
18 are not an obligation or debt owed by the September Trust, Zobrist Trust, Sandoval Trust, or Gegens to
19 the Lytle Trust.

20 9. The May 2018 Order, at page 10, lines 10-19, contained the following permanent
21 injunction:

22 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust
23 is permanently enjoined from recording and enforcing the Judgments obtained from the
24 Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other
judgments obtained against the Association, against the September Property, Zobrist Property,
Sandoval Property or Gegen Property.

25 IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust
26 is permanently enjoined from taking any action in the future directly against the Plaintiffs or
27 their properties based upon the Rosemere Litigation I, Rosemere Litigation II or Rosemere
28 Litigation III.

1 10. On June 19, 2018, the Lytle Trust appealed the May 2018 Order to the Nevada Supreme
2 Court, Case No. 76198, *Trudi Lee Lytle v. September Trust, Dated March 23, 1972*. This appeal was
3 consolidated with the Lytle Trust's subsequent appeal of an award of attorney's fees and costs in favor
4 of the September Trust, Zobrist Trust, Sandoval Trust, and Gegens under NRS 18.010(2)(b), Case No.
5 77007. The Supreme Court entered its Order of Affirmance affirming the May 2018 Order and
6 subsequent fees order on March 2, 2020 ("Second Order of Affirmance").

7 11. On June 8, 2018, the Lytle Trust filed a new action, Case No. A-18-775843-C, *Trudi Lee*
8 *Lytle et al. v. Rosemere Estates Property Owners' Association* ("Receivership Action"), asserting claims
9 against the Association for (a) Declaratory Judgment, and (b) Breach of Contract/Easement Agreement.
10 The prayer for relief in the Receivership Action sought:

11 a. an Order declaring that the Association must continue to operate as required by the
12 CC&Rs and Chapters 82 and 116 of the Nevada Revised Statutes, which includes, but is not limited
13 to: 1) maintaining the landscaping in the exterior wall planters; 2) maintaining the exterior
14 perimeter and frontage; 3) maintaining the entrance gate; 4) maintaining the private drive and
15 sewer system; 5) ensuring that homeowners are paying their assessments; 6) seeking collection
16 activity against any homeowners that have failed to pay their assessments; 7) paying known
17 creditors of the Association; 8) specially assessing the homeowners to ensure that enough proceeds
18 exist within the HOA funds to pay all known creditors assessing; and 9) any other activity required
19 under Nevada law.

20 b. specific performance requiring the Association to comply with the CC&Rs, as well
21 as other Nevada law, with respect to the Association's maintenance and day-to-day activities;

22 c. injunctive relief preventing the Association from violating the terms of the CC&RS,
23 as well as other Nevada law, moving forward;

24 d. appointment of a receiver to handle the maintenance obligations and day-to-day
25 activities, including the financial activities regarding assessments and creditors, until a duly
26 constituted board may be instituted and power transitioned thereto; and
27
28

e. reasonable attorneys' fees, costs of suit and litigation, and such other and further relief as the Court deems just and proper

12. The Complaint in the Receivership Action alleges that the Association is not functioning, that the common elements of the community are not being maintained, and that “the Association has not paid known creditors of the Association, which includes, but is not limited to, the annual dues to the Nevada Secretary of State or the Nevada Department of Real Estate or the Lytles, which hold multiple judgments against the Association.” Complaint at ¶ 21.

13. In a Renewed Application for Appointment of Receiver filed by the Lytle Trust on October 24, 2019 (“Application”) in the Receivership Action, the Lytle Trust asserts that one reason for a Receiver over the Association was due to the Association’s refusal to pay the Rosemere Judgments, including its refusal to assess Association members, including the Plaintiffs, so the Association could pay the Rosemere Judgments. Application at 3:2-4, 5:17-18 (“Additional grounds exist because the Association is refusing to pay and refusing to assess Association members related to various monetary judgments awarded to the Lytles against the Association”), 13:19-28 (“A receiver may be appointed...[a]fter judgment, to carry the judgment into effect” (quoting NRS 32.010(3))), 14:1-2, 16-28 (“the Lytle Trust obtained judgments against the Association and a Receiver is needed to carry those judgments into effect”), 15:20-25 (“the Association has a duty...to pay its debts, including the Judgments obtained by the Lytle Trust”), 16:17-22 (“the Association is without any governing body to assess the homeowners and pay the judgments”).

14. The Lytle Trust disclosed to the judge in the Receivership Action (the “Receivership Court”) that the Amended CC&Rs had been judicially declared *void ab initio* and of no force or effect. *Id.* at 8:11-12 (the District “Court determined that the Amended CC&Rs were not properly adopted or recorded, that the Amended CC&Rs are invalid, and that the Amended CC&Rs have no force or effect”); 8 at n.3 (“Note, Rosemere 2 Litigation commenced more than six years *before* the Court in Rosemere 1 Litigation ruled that the Amended CC&Rs were invalid.”) (emphasis in original); 9:13-17 (“In granting the Lytle Trust’s Motion for Attorneys’ Fees, the district court in the Rosemere 1 and Rosemere 2 Litigations . . . held that the Lytle Trust could recover attorneys’ fees under the Amended CC&Rs because

1 that document, while declared *void ab initio* by the district court, was in effect and enforced by the
2 Association against the Lytle Trust at all times during the underlying litigation.”).

3 15. However, The Lytle Trust further argued in the Application that the Amended CC&Rs
4 provide authority for a receiver to make special assessments on the Plaintiffs’ and other owners’
5 properties to collect funds to pay the Rosemere Judgments. *Id.* at 11:4-28, 13:1-17, 17:1-9. The Lytle
6 Trust’s Application included a section heading in its Statement of Fact section titled “The Amended
7 CC&Rs Grant the Association Authority to Assess Each Unit for Payment of Judgments Against the
8 Association.” *Id.* at 11:4-5. The Lytle Trust also represented that “the District Court already ruled that
9 the Association is liable for attorneys’ fees, costs and damages pursuant to the Amended CC&Rs, which
10 provide the Association with the ability to specially assess each property (unit) for the costs of the
11 judgments. Amended CC&Rs ¶ 10.11, Exhibit 16.” *Id.* at 17:6-9.

12 16. The Lytle Trust did not inform the Receivership Court about this Case, the July 2017 Order,
13 May 2018 Order, or the Orders of Affirmance.³ The Lytle Trust did not inform the Receivership Court
14 that this Court had issued permanent injunctions against the Lytle Trust relating to enforcement of the
15 Rosemere Judgments against the Plaintiffs, the Boulden Trust, the Lamothe Trust, the Dismans, or their
16 properties.

17 17. On December 18, 2019, based on the Lytle Trust’s Application, the Receivership Court
18 entered an Order Appointing a Receiver of Defendant Rosemere Property Owners Association (“Order
19 Appointing Receiver”). The Order Appointing Receiver, drafted by the Lytle Trust, directs the Receiver
20 to “[i]ssue and collect a special assessment upon all owners within the Association to satisfy the Lytle
21 Trust’s judgments against the Association.” Order Appointing Receiver at 2:19-20. It further empowers
22 the Receiver with “the authority to assess all Association unit owners to pay for any operation costs or
23 to pay for judgments against the Association. If an Association member does not pay an assessment then
24 the Receiver may proceed to foreclose on said member’s ownership interest in the property.” *Id.* at 6:4-
25 7.

26
27 ³ The Court notes that the Second Order of Affirmance was issued after entry of the Order Appointing
28 Receiver and the Lytle Trust could not have informed the Receivership Court of it prior to entry of the
Order Appointing Receiver.

21. The Association has never been a party to this Case.

CONCLUSIONS OF LAW

1. This case has a history, such as the filing of the *lis pendens* against the Boulden Trust and Lamothe Trust properties after the Court had ordered the expungement of the Abstracts of Judgment and continued enforcement of the Abstracts of Judgment against the September Trust, Zobrist Trust, Sandoval Trust, and Gegens' properties after entry of the July 2017 Order, that demonstrates that the Lytle Trust does not respect this Court's Orders.

⁴ At the time, the Boulden Trust and Lamothe Trust no longer held title to any property within the Rosemere Subdivision, having sold their properties on August 4, 2017, and May 1, 2019, respectively.

⁵ After the hearing on the Motion but prior to entry of this Order, the Boulden Trust and the Lamothe Trust withdrew their Joinders pursuant to a settlement with the Lytle Trust. Therefore, the Boulden Trust and Lamothe Trust are no longer considered movants for purposes of the relief granted herein.

2. This Court has inherent power to enforce its decrees, orders and judgments. A party is required to adhere to court orders, even disagreeable or erroneous orders, until terminated or overturned.

3. The proper course of action if a party disagrees with a Court order is to appeal.

4. The May 2018 Order must be obeyed by the Lytle Trust.

5. Each paragraph, each finding of fact, and each conclusion of law in the May 2018 Order must be given its plain meaning, and each paragraph of that Order's permanent injunction must be obeyed by the Lytle Trust.

6. As a result of the Findings of Fact and Conclusions of Law in the May 2018 Order, there were specific orders which are not mutually exclusive. Each issue ordered by the Court should be given its meaning, and they are not in conflict.

7. The Court's factual determinations and conclusions of law culminated with the permanent injunction language starting at Page 10, Line 10 of the May 2018 Order, which stated:

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust is permanently enjoined from recording and enforcing the Judgments obtained from the Rosemere Litigation I, Rosemere Litigation II and Rosemere Litigation III, or any other judgments obtained against the Association, against the September Property, Zobrist Property, Sandoval Property or Gegen Property.

IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED that the Lytle Trust is permanently enjoined from taking any action in the future directly against the Plaintiffs or their properties based upon the Rosemere Litigation I, Rosemere Litigation II or Rosemere Litigation III.

8. These paragraphs are not mutually exclusive and each must be obeyed by the Lytle Trust.

9. The Findings of Fact, Conclusions of Law, and Orders contained in the May 2018 Order, including the permanent injunctions, are clear, specific and unambiguous as to what the parties could and could not do in this case. Further, the terms of the permanent injunction are specific and definite so that the Lytle Trust could readily know exactly what duties or obligations were imposed on it.

10. The May 2018 Order's permanent injunction clearly precluded the Lytle Trust from doing anything as it relates to enforcing and recording the Rosemere Judgments against the Plaintiffs and Dismans or their properties.

11. Indeed, the Lytle Trust has no judgment creditor rights to try to collect the Rosemere Judgments from the Plaintiffs or Dismans in any way, shape, or form.

19. In addition, the court may award “reasonable expenses, including, without limitation, attorney’s fees, incurred by the party as a result of the contempt.” NRS 22.100(3).

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

1 **IT IS HEREBY ORDERED ADJUDGED AND DECREED** that Plaintiffs' Motion for Order
2 to Show Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders, as
3 well as the Joinders thereto filed by the Boulden Trust, the Lamothe Trust, and the Dismans, are
4 GRANTED.

5 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
6 violated the May 2018 Order.

7 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
8 is in contempt of the May 2018 Order.

9 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the Lytle Trust
10 shall pay a \$500 penalty to each movant for violation of the May 2018 Order; specifically, \$500 payable
11 to the September Trust, \$500 payable to the Zobrist Trust, \$500 payable to the Sandoval Trust, \$500
12 payable to the Gegens, and \$500 payable to the Dismans.

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1 **IT IS HEREBY FURTHER ORDERED ADJUDGED AND DECREED** that the September
 2 Trust, Zobrist Trust, Sandoval Trust, Gegens, and Dismans, may file applications for their reasonable
 3 expenses, including, without limitation, attorney's fees, incurred by the party as a result of the contempt.
 4 The Court will consider such applications on the merits.

5 **IT IS SO ORDERED.**

6 Dated this 22 day of May, 2020.

7 
 8 DISTRICT COURT JUDGE CG

9 **Submitted by:**

10 **CHRISTENSEN JAMES & MARTIN**

11 /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.
 17 Las Vegas, NV 89117
 18 *Attorneys for Plaintiffs September Trust,*
 19 *Zobrist Trust, Sandoval Trust, and*
 20 *Dennis & Julie Gegen*

Approved as to Form and Content by:

FIDELITY NATIONAL LAW GROUP

/s/ Christina H. Wang

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 8363 W. Sunset Road, Suite 120
 Las Vegas, Nevada 89113
Attorneys for Robert & Yvonne Disman

16 **Reviewed by Not Approved by:**

17 **LEWIS ROCA ROTHBERGER CHRISTIE**
 18 **LLP**

19 Reviewed But Not Approved

20 DAN R. WAITE, ESQ.
 21 Nevada Bar 4078
 22 3993 Howard Hughes Parkway, Suite 600
 23 Las Vegas, Nevada 89169
 24 *Attorneys for Lytle Trust*

RE: Case No. A-16-747800-C - Boulden v. Lytle - ORDR - Proposed Order Granting Plaintiffs' Motion for Order to Show Cause

Wang, Christina <Christina.Wang@fnf.com>

Mon 5/18/2020 9:52 AM

To: Wesley Smith <wes@cjmlv.com>

Cc: Engelman, Lace <Lace.Engelman@fnf.com>

Approved – thanks.

Christina H. Wang

Litigation Counsel

Fidelity National Law Group

8363 W. Sunset Road, Suite 120

Las Vegas, Nevada 89113

702-667-3000 (Main)

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christina.wang@fnf.com

PLEASE NOTE THAT OUR OFFICE HAS MOVED TO THE ABOVE ADDRESS.

The Law Division of Alamo Title Insurance, Chicago Title Insurance Co., Commonwealth Land Title Insurance Co., Fidelity National Title Insurance Co., and Fidelity National Title Group, Inc.

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From: Wesley Smith <wes@cjmlv.com>

Sent: Monday, May 18, 2020 9:45 AM

To: Wang, Christina <Christina.Wang@fnf.com>

Cc: Engelman, Lace <Lace.Engelman@fnf.com>

Subject: Re: Case No. A-16-747800-C - Boulden v. Lytle - ORDR - Proposed Order Granting Plaintiffs' Motion for Order to Show Cause

IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.

Christina,

Per our discussion, can you please approve this version which adds the date to footnote 2?

Wes Smith

Christensen James & Martin

EXHIBIT O

001747

SETTLEMENT AGREEMENT RE. FEES, COSTS, AND PENALTY

This Settlement Agreement Re. Fees, Costs, and Penalty ("Settlement Agreement") is entered into by and between Trudi Lee Lytle and John Allen Lytle, individually and as trustees of the Lytle Trust (collectively, the "Lytle Parties"), and Robert Z. Disman and Yvonne A. Disman (collectively, the "Dismans"). The Lytle Parties and the Dismans are collectively referred to herein as the "Parties" or singularly as a "Party."

WHEREAS, on December 8, 2016, Marjorie B. Boulden, as trustee of the Marjorie B. Boulden Trust (the "Boulden Trust") and Linda Lamothe and Jacques Lamothe, as trustees of the Jacques & Linda Lamothe Living Trust (the "Lamothe Trust") filed suit against Trudi Lee Lytle and John Allen Lytle, as trustees of the Lytle Trust (the "Lytle Trust") in the Eighth Judicial District Court as Case No. A-16-747800-C and the Lytle Trust filed a Counter Complaint against the Boulden Trust and the Lamothe Trust (collectively, "Case 747800").

WHEREAS, on or about August 4, 2017, the Dismans purchased the property then owned by the Boulden Trust, identified as APN: 163-03-313-008, and commonly known as 1960 Rosemere Court, Las Vegas, NV 89117. The Dismans were thereafter added as a party to Case 747800.

WHEREAS, on May 22, 2020, the Court in Case 747800 entered an "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" and underlying "Contempt Motion"), which also granted the Dismans' joinder in the Contempt Motion.

WHEREAS, the Contempt Order provided that the Lytle Trust shall pay the Dismans a \$500 penalty and allowed the Dismans to file an application for their reasonable expenses, including attorney's fees.

WHEREAS, on June 11, 2020, the Dismans filed their Motion for Attorney's Fees ("Fee Motion").

WHEREAS, the Parties desire to amicably settle the Fee Motion, the \$500 penalty awarded to the Dismans, and to otherwise wipe the slate clean of any fees, costs, or penalty the Lytle Trust could possibly owe the Dismans as of the date of this Settlement Agreement. Nothing in this Settlement Agreement is intended nor shall anything herein be construed as a waiver, release or relinquishment of the Parties' rights, if any, to seek fees, costs, or other amounts incurred by them or owed to them after the date of this Settlement Agreement.

NOW, THEREFORE, the Parties agree as follows:

1.0 Cash Consideration: Contemporaneous with the execution of this Settlement Agreement, the Lytle Trust will pay the Dismans' title insurer, Chicago

Title Insurance Company, a total of Five Thousand and 00/100 Dollars (\$5,000.00) ("Settlement Amount").

2.0 Reservation of Claims: This Settlement Agreement resolves only the attorney's fees, costs, and penalty the Lytle Trust could possibly owe the Dismans as of the date of this Settlement Agreement. In short, the intent of this Settlement Agreement is to wipe the slate clean of any attorney's fees, costs, and penalty owed, or which could possibly be claimed to be owed, by the Lytle Trust to the Dismans as of the date of this Settlement Agreement. Nothing in this Settlement Agreement is intended nor shall anything herein be construed as a waiver, release or relinquishment of the Parties' rights, if any, to seek fees, costs, or other amounts incurred by them or owed to them after the date of this Settlement Agreement. Further, nothing in this Settlement Agreement is intended nor shall anything herein be construed as releasing, limiting, or in any way affecting (1) the Lytle Trust's judgments against the Rosemere Estates Property Owners' Association, (2) any claims arising in the future by one Party against the other related to that other Party's ownership or use of property in Rosemere Estates, including without limitation, claims arising under the CC&Rs, or (3) any claims or arguments related to the now-appealed Contempt Order.

3.0 Withdrawal of the Dismans' Fee Motion: Contemporaneous with the execution of this Settlement Agreement, the Dismans will cause their counsel to withdraw the Fee Motion, with prejudice, and to vacate the hearing on the Fee Motion.

4.0 Warranty of Capacity to Execute: The undersigned represent and warrant that they are duly authorized and empowered to execute this Settlement Agreement and to bind the indicated Party to the terms and conditions hereof.

5.0 Denial of Liability and Wrongdoing: By entering into this Settlement Agreement, no Party admits any liability or wrongdoing to the other. To the contrary, each Party denies liability and wrongdoing to the other.


6.0 Governing Law and Dispute Resolution: This Settlement Agreement shall be enforced and construed in accordance with the laws of the State of Nevada. Any action to enforce or construe this Settlement Agreement shall be brought only in a court of competent jurisdiction located in Clark County, Nevada, where the prevailing Party will be entitled to an award of its reasonable attorney fees and costs. In construing and enforcing this Settlement Agreement, any ambiguities will not be construed against any Party as the drafter, i.e., all Parties acknowledge their counsel have participated in the drafting of this Settlement Agreement and agree that the general rule construing ambiguities against the drafter will not apply here.

7.0 Entire Agreement and Successors-in-Interest: This Settlement Agreement contains the entire agreement between the Parties with regard to the

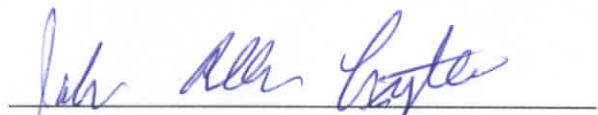
matters set forth herein and shall be binding upon and inure to the benefit of the successors, heirs, and assigns of each Party.

8.0 Counterparts: This Agreement may be executed in counterparts, and via email in pdf format, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures received by email in pdf format are deemed to be original signatures and binding on the Parties.

We have fully read and understand the terms of the foregoing Settlement Agreement and have had an opportunity to consult with an attorney and, being fully advised, freely and voluntarily execute this Settlement Agreement.


 TRUDI LEE LYTLE, individually and
 as a Trustee of the Lytle Trust

This 6 day of ~~June~~^{July}, 2020.


 JOHN ALLEN LYTLE, individually and
 as a Trustee of the Lytle Trust

This 6 day of ~~June~~^{July}, 2020.

 ROBERT Z. DISMAN

This ____ day of June, 2020.

 YVONNE A. DISMAN

This ____ day of June, 2020.

[Signatures of counsel on p. 4]