

**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.

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**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 10**

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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:

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1 NRS 22.100, but an amount of \$65,000 would be more than fair and  
2 reasonable under these circumstances. Thank you.

3 THE COURT: Thank you, sir.

4 And we'll hear from the reply.

5 MR. SMITH: Thank you, Your Honor. I will keep with my  
6 original promise to be extremely brief, with the idea that my  
7 opposing counsel just argued for several minutes.

8 But, you know, I think that when we talk -- when we think  
9 about all the things that were just raised by opposing counsel and  
10 oral argument, it's nothing new from what was raised in his  
11 opposition.

12 We've addressed and responded to all of those arguments  
13 in our reply brief in detail and I'm sure that the Court is aware of  
14 those responses. So I won't reargue those same things again today.  
15 I don't think that's good use of our time.

16 I always point out that when we go back to the basis or  
17 the authority on which the Court can grant fees, I will point out that  
18 the Court previously awarded fees under the CC&Rs under Section  
19 25 on multiple occasions and multiple different orders to different  
20 parties.

21 Previously awarded fees to the plaintiffs under NRS  
22 18.010, and previously awarded fees under NRS 22.100. And so  
23 that's law of the case here. There is no different circumstances that  
24 would cause the Court to have a different decision today on those  
25 same bases.

1 All that's happened since the last fee award is we've had  
2 time up at the Supreme Court, defending this Court's appeals in  
3 which we successfully obtained affirmances of this Court's orders.

4 The Supreme Court had the opportunity to review those  
5 orders and chose not to change this Court's decisions in any  
6 manner.

7 And so I know that opposing counsel has argued that  
8 there was a narrow decision or a narrow affirmance. But certainly,  
9 the Supreme Court had the opportunity if it saw any error in the  
10 Court's decision to make a correction there and chose not to.

11 Law of the case dictates what needs to happen here, is  
12 that there should be an award under all the bases on which we've  
13 sought fees here.

14 When it comes to the hourly rate, let me just say that  
15 there is no question that the rate that we charged to our clients was  
16 \$265 an hour, but I think it's also clear that that is a low rate. That is  
17 below market rates. And the -- the lodestar rates uses the prevailing  
18 market rate for good reasons.

19 THE COURT: And tell me what I do with that because I  
20 thought about it, and what I mean by that is this. I mean, like in  
21 1983 cases and the like, you see from time to time, you know,  
22 lawyers can take that on a contingency and I get it, you know?

23 And it's like in any tort case, you know, most of the tort  
24 firms they take these cases, these PI cases, products cases and some  
25 of the mass disaster stuff on a contingency.

1           And so if they don't get -- if they don't win they don't get  
2 paid is basically what happens. If they don't recover, they get zero.  
3 And that's a different economic model than here.

4           Here you charge your client whatever, 280 or whatever the  
5 hourly rate might be. And then if the client doesn't prevail, they're  
6 out of that money; right?

7           Versus in a PI case the client, you know, walks away and  
8 the lawyer takes the hit. And here is my question because one of  
9 the things I always be concerned about is this.

10          When it comes to the award of fees, I don't think the fee  
11 award necessarily should be a windfall, if you understand -- and  
12 what I mean by that is, like here whatever the hourly rate is, it is  
13 what it is.

14          But why should the adverse party, even if they lose, have  
15 to pay the add-on? See what I mean? Because it's not -- that's not  
16 actually what was incurred.

17          Because that's the real difference and distinction I think  
18 between -- between a contingency fee practice; right? They have  
19 their rate. Like, I'm quite sure if you walk into some of the big tort  
20 guys in this town and I know what they charge, they say well, if I'm  
21 going to take the case on an hourly rate, it might be a thousand an  
22 hour, 1500. I mean, some of them can probably charge 5,000 an  
23 hour based upon some of their results.

24           MR. SMITH: Dennis Kennedy, he's up there.

25           THE COURT: Oh, yeah. I mean, if you look at some of the

1 results, I mean -- and so how do I deal with that, you know?  
2 Because -- because I think there's a difference. Say hypothetically  
3 this was a contingency fee case and you say Judge, look, my  
4 average fee is 550 an hour. I take it on a contingency and that's just  
5 how we do it. But if they came in and walked through the door, it be  
6 550 an hour.

7 MR. SMITH: Yeah. I -- I understand your concern. I think  
8 that you could look through the case law on the lodestar analysis  
9 and you would be able to point to those cases and say okay, well,  
10 that's a contingency case, that's a 1988 case.

11 THE COURT: Right.

12 MR. SMITH: You can point to those things. But there is  
13 no case law that says that the lodestar analysis is limited to those  
14 cases. And the reason for that is because as the Ninth Circuit  
15 explained in one of their cases, they said but there is such a thing as  
16 a high charger and a low charger.

17 And the district judge is supposed to use the prevailing  
18 market rate for attorneys of comparable experience, skill and  
19 reputation, which may or may not be the rate charged by the  
20 individual attorney in question.

21 It's really a -- it's something that cuts both ways. Let's say  
22 that --

23 THE COURT: No, I understand. I do. I get that. But go  
24 ahead. I don't want to cut you off.

25 MR. SMITH: Because you may have -- you may have a



1 counsel who charges say \$700 an hour, and in that instance the  
2 Court would use the prevailing market rates, instead of the \$700 an  
3 hour, unless the \$700 an hour is what's charged in the prevailing  
4 market.

5 But certainly, the Court is in a position to look at prior  
6 cases and to say okay, what is the prevailing market rate for  
7 attorneys of comparable skill, reputation and experience? And that  
8 is the rate that we're going to use. Because that levels the playing  
9 field.

10 And so that's why we're asking for it. We came in with  
11 the case law to support it. It's not something that is -- we're not  
12 seeking a windfall either because as we've explained in the  
13 declaration, we've exercised billing judgment here.

14 We've only asked for fees and costs that were actually and  
15 necessarily incurred in this case. And there have been additional  
16 hours upon hours spent related to this matter.

17 Certainly we've spent a lot of time in the related  
18 receivership case in which we're not being compensated for. And  
19 so there is no windfall here. My clients are left with substantial  
20 attorneys fees and costs that they're not being compensated for.

21 THE COURT: Well, I understand this. And this is another  
22 distinction I see and unfortunately you see it in cases like this. You  
23 see it in a lot of business court cases. We have small businesses.  
24 And these cases are set up that there happens to be a different  
25 economic model; right?

1           Like in tort cases I always go back to that. But insurance  
2 companies are in the business to do two things primarily. And part  
3 of it is, if there's responsibility, they're there to pay claims. And the  
4 process is set up that way.

5           Just as important too, they have another bucket where  
6 they're there to pay attorneys fees. And it can be part of -- of course  
7 their client, and then just as important, potentially the adverse  
8 party's claim.

9           But these cases are different because they're real money  
10 cases. And that's the best way I can look at it because I would  
11 anticipate, you know, you look at the Bouldens and so on and you  
12 look at the Lytles. These are real people, real issues and so on.

13           That's why I always take a very close look at these fee  
14 requests. I take a close look at the others, but I understand the  
15 impact. I do.

16           MR. SMITH: Absolutely, Your Honor. And I think you  
17 understand the issue. And so I just move on to the other --

18           THE COURT: But what about Chapter 22.100? And -- and  
19 Mr. Waite said, look, Judge, if you're going to award fees, it has to  
20 be under 22.100.

21           MR. SMITH: Well, we certainly agree that an award is  
22 appropriate under 22.100. They conceded that. They didn't oppose  
23 it in their opposition papers.

24           And so the Court can go ahead and award based upon  
25 that. But the Court can also award on the other bases that we've put

1 forth, CC&Rs and NRS 18.010(2).

2           So I'll briefly address some of the other reductions that  
3 they've asked for. Again, we've addressed each of those issues in  
4 our reply brief.

5           We really think that what's happened here is there's been  
6 some phrases taken out of context in the billing statements. They've  
7 been cherry picked, and when you put those back in the context say,  
8 if it says research, you put that in the whole paragraph.

9           And if you look at our billing statements, there is  
10 individual time for each task within a billing paragraph on a  
11 particular day.

12           If you look at that research you see what's going on  
13 around it. Talk about drafting an appellate brief. There's research  
14 related to that. You can look at the day before, the day after.

15           There's substantial description in our billing statements to  
16 show the work that was actually done. And so we don't believe that  
17 there's any reduction necessary for any of those vague entries.

18           I'll address also the -- the argument that there's clerical or  
19 paralegal work being done. Your Honor, when it talks about  
20 preparing a table of contents, that's the attorney taking the table of  
21 contents that's been prepared by staff and the time that the attorney  
22 spent on that making sure it complies with the rules of appellate  
23 procedure.

24           Make sure that it has all of the relevant citations to  
25 authority, the table of contents, making sure that those headings are

1 the way that they're supposed to be, that it's argumentative, that it's  
2 persuasive, all those things that are actual attorney analysis.

3 Those are things that we're asking to be compensated for,  
4 not for the actual staff sitting there and building the table of contents  
5 or building the table of authorities.

6 Similar in my descriptions, there will often be a  
7 description that says, "file notes." Actually when I look at my  
8 original notes on my time, it's prepared notes on the case to be put  
9 in the file. That was my time that I spent recording my mental  
10 impressions, my -- my work product, so that it can be placed into the  
11 file for -- for the case.

12 There is no request for compensation for a clerk to  
13 actually file something or to save something to the file. In our day  
14 and age I read on a computer. I write those notes, they're saved  
15 instantaneously. There is no time compensation for that. If there is,  
16 it's a millisecond that the computer takes to save that into the file.

17 And so Your Honor, I think that there's no basis for further  
18 reduction. I understand your concern with the hourly rate and we  
19 will -- we'll take whatever the Court decides on that, but there is no  
20 basis for further reduction and we think that our -- our motion is ripe  
21 for decision today.

22 THE COURT: Okay.

23 MR. SMITH: Thank you, Your Honor.

24 THE COURT: Thank you, sir.

25 And we'll go ahead and move on to the next issue and

1 that's Ms. Wang.

2 MS. WANG: Good morning, Your Honor. Our briefing in  
3 this matter has exhaustively gone through all of the issues. I agree  
4 with Mr. Smith that Your Honor has all of the information and all of  
5 the arguments that relate to these instant motions. So, unless the  
6 Court has specific questions for me, I'm going to submit my motion  
7 on the briefing.

8 THE COURT: And that's fine. And I don't mind sharing  
9 with everyone what my thoughts are. And it's not really this case,  
10 and sometimes from time to time I'll read cases on specific issues  
11 and, like, for fee requests and so on. And I do read some of our  
12 United States Supreme Court cases that come down from time to  
13 time.

14 And just to kind of get an idea as to what's going on on  
15 the federal level. But I don't mind saying it, and I think I what is --  
16 and I'm not going to rely upon this case, but this case kind of reflects  
17 the difficulty because it has great language. It really does, from the  
18 case, that trial courts have to deal with when it comes to fee awards.  
19 And I don't think our Nevada Supreme Court has really adopted this,  
20 but it kind of highlights -- and I understand you have *Berosini* and  
21 all. I understand what the Nevada case law is.

22 But this is what she said. She actually raised the issue  
23 when it came to sanction conduct that resulted in a fee award. She  
24 looked at it through this lens and when you read it, it makes so  
25 much sense, right? She says this, quote -- and the case just for the

1 cite purposes is *Goodyear Tire and Rubber Company vs. Hager*,  
2 that's 137 Supreme Court 1178.

3 And this is what she says, quote, "The but-for causation  
4 standard generally demands that a district court assesses and  
5 allocates specific litigation expenses, yet still allow it to exercise  
6 discretion and judgment."

7 I think everybody kind of -- it makes sense; right? We can  
8 all agree to that. And she said, "The court's fundamental job is to  
9 determine whether a given legal fee, say for taking a deposition or  
10 drafting a motion, would or would not have been incurred in  
11 absence of the sanctioned conduct."

12 Okay. That's what she calls but-for causation. Kind of  
13 makes sense. But this is what I like, I don't mind telling you this  
14 because I don't think that really deviates. And this shows -- and the  
15 reason why I probably like it, it probably highlights the difficulty the  
16 trial courts have; right?

17 And this is what she says, "Trial courts undertaking the  
18 task need not and indeed should not become green eyeshade  
19 accountants." That's what she says -- described. And, you know,  
20 and which is so true because it's very difficult --- how -- it becomes  
21 really difficult. I don't mind telling you this from my perspective.

22 But this is the one area I don't enjoy when it comes to  
23 decision making. And she says, "Green eyeshade accountants or  
24 whatever contemporary equivalent is." And she says, "The essential  
25 goal in shifting fees is to do rough justice, not to achieve auditing

1 perfection." That's pretty strong language, isn't it? I mean, it is.

2 And -- but the only reason I like that language and I  
3 always come back to it when I'm doing is, is I'm not a green shaded  
4 accountant and how do I do? You know, it's a tough task. It is.

5 But go ahead, ma'am. Anything you want to add?

6 MS. WANG: Your Honor, to your point and thank you for  
7 providing this case as -- the case has, you know, I think the language  
8 of the case precisely encapsulates what the Court -- what factors the  
9 Court shouldn't look at, honestly.

10 THE COURT: Right.

11 MS. WANG: Even if it's not as you stated governing law,  
12 it -- I mean, the Nevada Supreme Court has stated the district courts  
13 are permitted to look at decisions, especially published decisions  
14 from other jurisdictions as [indiscernible] of authority. And I think  
15 the language that Your Honor just read from the case put it  
16 perfectly, that --

17 THE COURT: Well, I will say this --

18 MS. WANG: -- at bottom --

19 THE COURT: -- I won't differ from *Berosini*, you know?  
20 I'm not going to do anything, but --

21 MS. WANG: Right.

22 THE COURT: -- the only reason I brought it up, it kind of  
23 highlights the difficulty trial courts confront or deal with when  
24 they're going through the fee award. Now, I understand this and I  
25 get it. I understand specifically what the positions are from the

1 respective parties and the plaintiffs are taking a position look, Judge,  
2 look at the case law. You should focus on what's reasonable for this  
3 type of work being performed. I get that.

4 And defense, Mr. Waite saying, look, Judge, what's  
5 actually incurred? They shouldn't get a windfall. That's really what  
6 it kind of comes down to. I understand. I do.

7 MS. WANG: Yeah. And as it relates to the Dismans  
8 though, I don't think that Mr. Waite can legitimately raise an issue  
9 with the hourly rate that I charge. This is not a rate that's available  
10 just to anyone. It's \$180 for almost 20 years of legal experience in  
11 the real estate field and it is substantially lower than what other  
12 attorneys of the same background and experience charge.

13 So I don't think Mr. Waite can take issue with that. And to  
14 the extent that Mr. Waite -- and I hate using the word nitpick, but  
15 Your Honor referenced this whole idea of forcing the Court to kind of  
16 be an accountant and go through each line item. I mean, it really  
17 does put the Court in the untenable position of having to second  
18 guess after the fact what work was done that was necessary for the  
19 case and, you know, what --

20 THE COURT: And that's a difficult task, ma'am. I agree  
21 with you in that regard. That's really what's difficult because, for  
22 example, you might go down one route and you say yeah, this  
23 might be very effective from a prosecution perspective of this case.  
24 And you have a good faith basis for that. And low and behold at the  
25 very end it's not as successful as you would like. However, another



1 point that you are also pursuing was a successful one. So the  
2 bottom line is, lawyers can have alternative claims for relief,  
3 alternative theories and so on.

4 And I understand that. And I think that's what I -- I'm not  
5 saying and I want to be clear on this. I'm not -- I'm going to follow  
6 the mandate of Nevada when it comes to this. Because I want to  
7 make sure the record is really clear.

8 But I just like what Justice Kagan says, and I think it makes  
9 a lot of sense, you know?

10 MS. WANG: It makes a lot of sense. And I submit, Your  
11 Honor, the Nevada Supreme Court has not tied the Court's hand  
12 with respect to how it is to view these attorneys' fees motions. I  
13 mean, in Nevada there is no law requiring even the submission of  
14 time sheets, of detailed time sheets.

15 And Your Honor understands from court actions, the  
16 plaintiffs' attorneys are not doing .1, .2 billing entries as far as all of  
17 the time that they spend on these cases.

18 You know, their billing entries are vastly different than  
19 commercial attorneys. And yet, when we come to these attorneys'  
20 fees motions in the commercial context, you know, so often every .1  
21 and every .2, you know, raises a challenge or an argument.

22 And, Your Honor, again, there's no Nevada governing law  
23 that says the Court is required to look at any one factor. And in fact  
24 the Court can determine a reasonable fee even without time sheets.

25 And in the cases that we have presented and in our

1 briefing, it shows that the Nevada Supreme Court has approved the  
2 Court looking at other evidence, stating that time sheets are but only  
3 one thing that the Court can consider.

4           The Court can look to the affidavits of the counsel stating  
5 and attesting to the fact that the work that they did was in  
6 furtherance of, you know, a successful result and attesting to the  
7 reasonableness of the work that was done as well as the -- the fees  
8 that were incurred.

9           And that in several cases was determined to be sufficient  
10 in and of themselves. So as far as --

11           THE COURT: No, no, go ahead, ma'am. I'm listening.

12           MS. WANG: -- as far as Mr. Waite's arguments about the  
13 reduction of my clients' fees, I submit, Your Honor, again, the Court  
14 is charged with not acting as an accountant but, you know, acting in  
15 a manner that determines a reasonable fee award.

16           And how does a Court arrive at that? I think the Court  
17 arrives at that looking at a whole variety of factors, the affidavits of  
18 the counsel, the type of work that was done, the results that were  
19 obtained, time sheets, the Court's experience with counsel in cases.

20           All of these things together the Court can use to  
21 determine a reasonable fee award. And in this case, Your Honor,  
22 with respect to the Dismans, but for the Lytles' contempt they would  
23 not have been involved at all in the contempt proceedings.

24           But for the Lytles' conduct, three additional years of work  
25 would not have been done. So the -- the amount of fees that my

1 clients are requesting for three years of work resulting from the  
2 Lytles' contempt, three years, over two appeals, participating in  
3 every aspect of both appeals.

4 I think that when my clients are asking for a 25 -- around  
5 \$25,000, is infinitely reasonable, Your Honor.

6 And I submit that any reduction in that amount aside from  
7 the \$72 that we state in our briefing that Your Honor can take off for  
8 the fact that Mr. Waite called me about my client, Robert Disman's  
9 dog. A phone call that I did not invite by the way. If Your Honor  
10 wants to take off time for that, we have no objections.

11 But I submit there are no other reasons for any additional  
12 reductions in the fees.

13 THE COURT: I understand, ma'am.

14 MS. WANG: So -- and I just want to make one final point,  
15 Your Honor. If Your Honor has questions about my clients'  
16 participation, I'll be happy to answer it, but frankly, you know, the --  
17 there were two main points raised in opposition to our motion that  
18 was -- that surprised me. One is that the Dismans were not parties  
19 to the contempt proceedings. That somehow we were bystanders to  
20 those proceedings.

21 I submit, Your Honor, the Dismans, as was their legal right  
22 filed a joinder to a motion by the September Trust plaintiffs that  
23 would have been identical to any motion they would have field. The  
24 Court found that there was contempt and issued relief to the  
25 Dismans specifically by virtue of their joinder. Under Nevada law a

1 joinder is treated as its own motion. The Dismans participated in  
2 every facet of the underlying contempt proceedings and every facet  
3 of the appeals, including making oral arguments in front of the  
4 Nevada Supreme Court.

5 To say that they were no more than volunteers or *amicus*  
6 *curiae* is frankly offensive because the Dismans never invited any of  
7 this. Starting in 2017 when they bought their property, that is the  
8 only thing they have ever done, that they dared buy a property for  
9 purposes of their retirement and since then, this case has taken on  
10 one form after another.

11 As soon as the Court issued its injunctions, the Dismans  
12 were so excited that it was done. That they can go on and live their  
13 lives. Then the receiver action came about and the resulting  
14 contempt order at proceedings.

15 As far as fee shifting, Your Honor, the Dismans, my  
16 clients, never invited any of this. And but for the Lytles' contempt,  
17 which has already been established and confirmed by the Nevada  
18 Supreme Court, it would not have to have incur even one penny of  
19 what it's asking for. Thank you.

20 THE COURT: Thank you.

21 Sir?

22 MR. WAITE: Thank you, Your Honor.

23 Let me maybe address where Ms. Wang left off and make  
24 a kind of a generalized statement. That is, today I've heard both  
25 counsel want to harken you back essentially to day one of this

1 lawsuit and the emotional aspects that existed at that time. But that  
2 was in the past.

3 THE COURT: Oh, no, I get that. I'm not even going there.  
4 You know what I was just thinking about, I was looking at 22.100 and  
5 it would be paragraph 3.

6 MR. WAITE: Paragraph 3.

7 THE COURT: And it does appear to be a but-for type  
8 causation analysis statutorily; right?

9 MR. WAITE: Resulting from the contempt.

10 THE COURT: Exactly.

11 MR. WAITE: Yeah.

12 THE COURT: And that's exactly what Kagan said.

13 MR. WAITE: Yeah. So --

14 THE COURT: And so that's the difference. It's not fees  
15 based upon, like, offer of judgment, or it's not fees incurred as result  
16 of a filing a lawsuit under Chapter 18.

17 MR. WAITE: Or the continuation --

18 THE COURT: Right.

19 MR. WAITE: -- because, Your Honor, that the --

20 THE COURT: No, I get it. I get it.

21 MR. WAITE: Yeah.

22 THE COURT: And so -- because here is what the statute  
23 says and I was just kind of -- I listen when lawyers are arguing and  
24 thinking too. But it says the following. It says, "The Court may  
25 require the person to pay to the party seeking to enforce the writ

1 order, rule or process the reasonable expenses, including without  
2 limitations attorney's fees, incurred by the party as a result of the  
3 contempt."

4 That's a but-for type.

5 MR. WAITE: Yeah. And you heard me say we're not  
6 disputing that.

7 THE COURT: Right. Right.

8 MR. WAITE: But as it relates to the plaintiff.

9 THE COURT: Yeah.

10 MR. WAITE: So let me move to that, Your Honor, and if  
11 Ms. Wang was offended because I argued that they were like akin to  
12 *amicus curiae*, she's going to be offended again because I'm going  
13 to delve into that.

14 And for that I have a little chart, Your Honor, that I'd like  
15 to -- may I approach?

16 THE COURT: Yes, you may.

17 MR. WAITE: To facilitate that discussion. Because what I  
18 think that the Dismans are overlooking here, Your Honor, that was  
19 not addressed in their reply brief and wasn't even addressed only  
20 slightly here is, I think they're disregarding the ramifications that this  
21 is a consolidated case and that the -- and that Mr. Smith was in one  
22 of the consolidated cases and the Dismans were in a different  
23 consolidated case.

24 And you may remember that the Dismans were actually  
25 kind of newcomers because they brought, excuse me, bought their

1 property from the Bouldens. The name of this case is Bouldens  
2 versus Lytle Trust. And then they sold to the -- to the Dismans.

3 And Your Honor will also remember that you entered two,  
4 you know, kind of starting all of this, was two preliminary  
5 injunctions. One that was entered in favor of the Bouldens against  
6 the Lytles, the Trust. And that is frequently referred to as the July  
7 2017 order.

8 And then Mr. Smith's clients, which I'll just refer to in this  
9 chart as the Trust client, the Trust plaintiffs, they came along and  
10 filed an action and then sought to consolidate their action here  
11 because they had similar issues, and you entered the May 2018  
12 injunction order.

13 And, you know, the case law that when cases are  
14 consolidated they don't lose their separate identity. They -- the  
15 parties to one don't become parties to the other. It's a matter of  
16 convenience and efficiency and those types of things.

17 And I think that is being overlooked and lost by the  
18 Dismans. Because as this chart shows, when Mr. Smith filed his  
19 motion to hold the Lytle Trust in contempt, it only regarded the May  
20 2018 order.

21 When Ms. Wang filed the Dismans' joinder to that motion,  
22 she joined in the May 2018 order, which was not even against their  
23 client, against the Dismans. I think, quite honestly, Your Honor,  
24 speculation on my part, I think Ms. Wang just made a mistake. I  
25 think she meant to not file a joinder to Mr. Smith's motion to hold

1 the Lytles in contempt for violating the May 2018 order. I think she  
2 probably meant, and certainly if not then, in hindsight, to file a  
3 similar motion to hold the Lytle Trust in contempt for violating the  
4 July 2017 order. But she didn't. She filed a motion to hold the  
5 Lytles in contempt, a joinder to hold the Lytles in contempt for the  
6 May 2018 order.

7           You granted that motion. You granted the joinder and  
8 you invited the parties to seek fees and the Dismans sought -- filed a  
9 motion and sought to seek, if recollection serves me right, about  
10 7,200 bucks, \$7,300 in attorneys' fees.

11           And rather than getting into all that -- that wasn't a whole  
12 lot of money. It wasn't really worth fighting a whole heck of a lot  
13 about. So we settled with the Dismans for \$5,000, including the  
14 \$500 penalty, contempt penalty that you awarded. And that  
15 resolved that.

16           And pursuant to that settlement agreement it quote on  
17 quote "wiped the slate clean." Now it did not -- it did not wipe the  
18 slate clean for future fees. This is a post-judgment proceeding. And  
19 it didn't wipe the slate clean for either party. The Lytles also have  
20 the right to seek fees for post judgment things that might come up  
21 down the road.

22           But when we settled with the Dismans for the violation as  
23 it relates to any damages that they incurred associated with the  
24 violation of the May 2018 order, they should have been done. They  
25 should have been done. They were fully compensated at that point



1 for all damages arising from, or in the words of the statute, resulting  
2 from the contempt. Now, if -- if they wanted to jump into the appeal  
3 and file briefs, I suppose that was their prerogative to do so, but  
4 Your Honor, here is the important part.

5 At that point the Dismans were no different than Mrs.  
6 Kramrov [phonetic] who is a property owner that you've never heard  
7 of that's in this Rosemere Estate, no different than Mr. Gegen  
8 [phonetic], who is a property owner that you haven't heard of, but is  
9 property owner in Rosemere Estates, no different than Ms. Reynolds  
10 [phonetic], who is a property owner in Rosemere Estates who you  
11 haven't heard of.

12 You haven't heard of them because they're not parties.  
13 They've never come in and made themselves parties to this action.  
14 And neither were the Dismans parties to the consolidated case.  
15 They were parties to the original action.

16 And so when we settled with them, that should have been  
17 the end of it.

18 Now, yes, they filed briefs at the Supreme Court. Yes,  
19 Justice Hardesty invited Ms. Wang to make some argument. But  
20 you won't find reference to the Dismans in the Supreme Court's  
21 order. Certainly they did not rule that the Dismans had standing.

22 But each one of those other property owners were in the  
23 exact same situation. Now hypothetically, Your Honor, if Ms.  
24 Kramrov [phonetic] had come into this Court, or into the Supreme  
25 Court and said I want to make sure my interests are protected. I

1 want to file a brief or whatever. They might have been allowed to  
2 do so and their position in support of Mr. Smith's clients' position  
3 would have prevailed. They did prevail. But they wouldn't be  
4 entitled to an award of fees. The case law is replete. *Amicus curiae*  
5 isn't entitled to an award of fees. They're not a prevailing party on  
6 anything. They're not a party. And that's what we have as well here  
7 with the Dismans. They're just simply not a party.

8           So when they filed their joinder motion and it was  
9 ultimately resolved, the Dismans did continue to incur some  
10 expense, but the question here, Your Honor, and you're right, you're  
11 not an accountant, but you do have to determine that the costs are  
12 reasonable and necessary.

13           And those costs that they incurred in the appeal were  
14 neither reasonable, nor necessary. Their -- the interests that they  
15 had were identically aligned with Mr. Smith. Mr. Smith is a  
16 competent attorney and they were adequately represented. My  
17 clients should not have to pay two attorneys essentially to double  
18 team them in the appeal.

19           Now, I'm going to shift gears, Your Honor. Ms. Wang or  
20 the Dismans, I don't mean to personalize it. The Dismans seek  
21 \$1,188 for what they call monitoring the proceedings in front of  
22 Judge Kushner.

23           Now, that's a really strange request, Your Honor. If they  
24 want fees somehow connected to keeping an eye on what was  
25 going on in Judge Kushner's case, the Dismans need to go ask for

1 those fees from Judge Kishner, and we'll oppose it there.

2 But undoubtedly, the Dismans understand that that's an  
3 uphill battle that they'll be facing seeking an award of fees in a case  
4 where they were not a party, where they never intervened, where  
5 they filed nothing, where they attended no hearings, made no  
6 appearance.

7 I mean, I may be wrong, but I just don't see Judge Kishner  
8 awarding them fees for that. And they say that they needed to do  
9 that to make sure that the Lytles didn't violate one of this Court's  
10 orders.

11 Well, Your Honor, they never did come forward and say  
12 oh, you know what? That monitoring was well worth it because we  
13 did find that the Lytles violated one of your orders as it relates to the  
14 Dismans. There's nothing like that in front of you.

15 It would be akin, Your Honor, to an attorney preparing a  
16 motion that they think might become necessary down the road, but  
17 isn't necessary, wasn't necessary, was never used and then seeking  
18 an award of fees for a motion -- not for a motion that was filed and  
19 lost, but worse, for a motion that was never even filed.

20 The Dismans have never answered as it relates to this fee  
21 why they needed to surreptitiously monitor another case for  
22 compliance there of an order that this Court found was not violated  
23 here, the July 2017 order.

24 Just briefly, Your Honor. The redactions that's all been  
25 briefed. We feel that \$9,924 is neither reasonable nor necessary. It

1 precludes you and me from evaluating whether the entries were  
2 reasonable and necessary.

3           The dog matter, Your Honor, you know it has nothing to  
4 do with this case. It should not be here. Ms. Wang says well, in her  
5 block billing entry that was for, I think it was 3.2 hours, 3.7 hours or  
6 something like that.

7           And when you look at that entry Your Honor it's line, line,  
8 line, line and then a little short phrase that's redacted. And she says  
9 that the 3.2 or 3.7 hours, the only thing that was related to the dog  
10 instance that was unredacted, was .2 hours, I think is the number.  
11 And the rest, the three point whatever hours was attributed to  
12 whatever the little portion that was redacted.

13           Block billing, Your Honor, this is where the rough justice is  
14 beautiful because you've applied it previously. You may remember  
15 previously in the prior order when in a prior fee request from Mr.  
16 Smith and he block billed at that time and I raised an argument.

17           He didn't block bill this time. He did his time entries, but  
18 Ms. Wang block billed. And you did rough justice last time. We  
19 presented arguments. There's cases out there that for block billing a  
20 10 percent to a 30 percent reduction is appropriate.

21           You said I'm going to do rough justice. I'm going to  
22 reduce it 15 percent. And so we suggest that that's appropriate here  
23 as well. And that 15 percent reduction would amount to \$3,152.70.

24           So when we look at that, Your Honor, all of those things  
25 together, first of all, we think that they're not entitled to any fees

1 because they weren't a party, they didn't have a direct stake in that  
2 appeal because the 2017 order was not at issue. You expressly  
3 found that that order was not violated. And that's the only order  
4 that affected them.

5 So they shouldn't be awarded any fees. But if they are  
6 awarded fees, the amount that they request should be reduced by  
7 approximately \$15,000 -- \$14,930. Thank you.

8 THE COURT: Thank you, sir.

9 And ma'am, you get the last word.

10 MS. WANG: Your Honor, everything that was just raised  
11 by Mr. Waite was addressed through my reply brief extensively.  
12 Just a couple points, Your Honor.

13 The first point is that the contempt order according to Mr.  
14 Waite had absolutely nothing to do with my clients. And because  
15 we were somehow not parties, by virtue of our filing of a joinder, we  
16 were parties to the contempt proceedings.

17 That is why Your Honor's contempt order specifically  
18 states that on page 10 and 11, "The Lytle Trust has no judgment  
19 creditor rights to try to collect the Rosemere judgments from the  
20 plaintiffs or Dismans in any way, shape or form. It is hereby  
21 ordered, adjudged and decreed that plaintiffs' motion for order to  
22 show cause by the Lytle Trust should not be held in contempt for a  
23 violation of court orders, as well as the joinder filed by," and then  
24 the Court includes the Dismans, "is hereby granted."

25 So when the Dismans participated in the subsequent

1 appeal, they were not *amicus curiae*. The contempt order  
2 specifically provided relief to the Dismans. They were parties to the  
3 contempt proceedings and the Dismans wanted to go and defend  
4 that order on appeal. They had an -- they were obligated to do so  
5 and they wanted the opportunity to do so to put the matter to bed,  
6 frankly.

7 Now, Mr. Waite made a comment about the fact that my  
8 clients entered into a settlement agreement with them with respect  
9 to a fee motion that was filed by my clients after the Court's  
10 contempt order.

11 And shockingly, I -- to me it's shocking because I believe it  
12 borders on misrepresentation. That settlement agreement was  
13 negotiated between Mr. Waite and I.

14 And at that time they had wanted the Dismans not to  
15 participate in the Supreme Court appeal. We said no, we're moving  
16 forward with a defense of the contempt order. And we reserve the  
17 right to seek all of our fees and costs after the date of the settlement  
18 agreement.

19 This is not a settlement agreement where we're trying to  
20 interpret what other people meant. Mr. Waite and I were actually  
21 the ones who came up with the language. And, Your Honor, to say  
22 that it wiped the slate clean with respect to the Lytles' contempt and  
23 the dispute between the Dismans and the Lytles.

24 If that was in fact true, why would the Dismans incur all of  
25 the additional fees and costs to defend in that appeal? Why would

1 they keep going if it wiped the slate clean? The settlement  
2 agreement specifically envisioned that the people involved were  
3 proceeding with appeal and the defense of appeal. And whatever  
4 comes of appeal, if they have any rights to seek attorneys' fees and  
5 costs, that they are permitted to do so. That's what the plain  
6 language says.

7           So for them to actually state that somehow it resolved the  
8 entirety of the contempt as between the Dismans and the Lytles, I  
9 honestly don't know where that comes from. But the language of  
10 the settlement agreement governs and I submit that it's in violation  
11 of that settlement agreement.

12           They're seeking the Court to interpret the plain language  
13 in a different way. It specifically states it does not affect anything  
14 that happens after the date of the settlement agreement. And Your  
15 Honor will see that we only sought fees for the dates after the  
16 settlement agreement.

17           With respect to the Court's authority to award fees and  
18 costs as a result of the Lytles' contempt in this case, 22.100, Your  
19 Honor, under that statute the Dismans are entitled to any fees that  
20 are incurred as a result of the Lytles' contempt. Again, their  
21 contempt has been established.

22           Previously, the Court awarded attorneys' fees to the  
23 Dismans pursuant to the original CC&Rs as prevailing parties. In  
24 this case the Court has multiple bases which the Court has used as a  
25 law of the case to award fees. There should not be any deviation

1 from that, especially because I think it's very clear cut that the last  
2 three years of work was -- the work that was required, would not  
3 have been required, but for the Lytles' contempt.

4 And Mr. Waite takes issue with the fact that I spent three,  
5 I'm sorry, a thousand dollars over the course of three years to  
6 monitor the receiver action. That was for pulling up all of the  
7 orders, all of the stuff that was filed in that case to make sure that  
8 nothing like what happened with the original receiver order, was  
9 going on.

10 Mr. Waite takes issue with the fact that I did not actually  
11 appear in that case? If I had appeared in that case my attorneys'  
12 fees for three years, Your Honor, would be much more than the one  
13 thousand dollars that was spent in the monitoring of that case.

14 Again, over the course of three years. I was very  
15 circumspect in what I did and only did what was necessary. And,  
16 Your Honor, so what Mr. Waite basically is complaining about is the  
17 fact that I took the most cost effective approach instead of jumping  
18 into that fray of making sure that everything was on the up and up.

19 And yeah, it was required because the receiver action  
20 didn't even come to the parties' attention, my clients' attention, until  
21 two years after it had been filed, until an order had already been  
22 issued giving the receiver the power to assess my clients for the  
23 payment of the Lytles' judgments.

24 So that monitoring wasn't because I didn't have anything  
25 better to do with my time. It was literally -- there's been so much



1 underhanded conduct in this case, that I needed to make sure that I  
2 was looking at everything that I was aware of with respect to my  
3 clients to make sure that nothing else was going to come down the  
4 pike and surprise us, again.

5           So, Your Honor, with respect to the monitoring fees and  
6 the rest of the reductions, I have provided multiple affidavits in  
7 which I have attested to the fact that all the work that I have done in  
8 this case was with respect to the contempt order and defense of the  
9 contempt order on appeal.

10           The only item that arguably we should not be awarded  
11 fees for is when Mr. Waite called me complaining about my clients'  
12 dog. Again, I didn't elicit that phone call. I took the phone call as an  
13 attorney.

14           I, you know, afforded him the respect of my time, but I  
15 should not be -- my clients, fine, will not challenge that reduction,  
16 but at the end of the day, Your Honor, all of the fees that we have  
17 submitted, aside and apart from that, they're reasonable, especially  
18 for the work that was involved and the results that were obtained.  
19 Thank you.

20           THE COURT: All right. And thank you, ma'am.

21           This is what I think I'm going to do. I'm going to take a  
22 closer look. And I thought about it, and for example we discussed  
23 actual fees incurred.

24           We had discussions regarding contingency fee issue.  
25 And one of the things I was thinking about well, is there a distinction

1 between taking a case at a lesser rate, a distinction without meaning  
2 when you look at the contingency fee case.

3 And what I mean by that is, is that basically access to  
4 justice issue? I don't know. But I thought about that; right?  
5 Because that's why lawyers take contingencies because they get  
6 paid down the road and so on and so on.

7 And sometimes they win, sometimes we lose. And  
8 similarly, maybe lawyers take cases at a reduced rate because  
9 clients can't typically afford to pay a lawyer 450 an hour, 550 an  
10 hour. But if they were limited to the fees that were paid up to that  
11 time versus what's reasonable in the market place, you know?

12 And I haven't decided what I'm going to do with that. But  
13 the only reason I'm saying it, I'm considering those types of issues,  
14 you know, when it comes down to my ultimate decision in this case,  
15 you know? Because I think that's kind of a big issue.

16 I don't know if that's been necessarily addressed per se by  
17 our Supreme Court. But I get it. I don't mind telling you this too.  
18 I'm leaning towards, as far as fees are concerned, they'll be under  
19 NRS 22.100; right? Because when you look at it, it makes perfect  
20 sense.

21 It just so happens that pursuant to the statutory scheme  
22 they perform a but-for causation analysis anyway, you know? Just  
23 like Justice Kagan was doing. And believe it or not, her case  
24 involved sanctions too, so it's probably -- I have to go back and look  
25 at it.

1 But we'll get a decision out for you and I have to go back  
2 and put my green shaded --

3 MR. WAITE: Green eyeshade.

4 THE COURT: - accountant's hat or whatever the  
5 contemporary equivalent would be.

6 MR. WAITE: I've always enjoyed that phrase.

7 THE COURT: Yes.

8 MR. WAITE: Thank you, Your Honor.

9 THE COURT: Everybody, enjoy your day.

10 MR. SMITH: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 MS. WANG: Thank you, Your Honor.

13 MR. WAITE: What was that last part, Your Honor? What  
14 did you say?

15 THE COURT: No, what did I --

16 MR. WAITE: Did you say you'd have it by the end of the  
17 day?

18 THE COURT: No, no, no.

19 MR. WAITE: Oh, okay. I was --

20 THE COURT: I said enjoy your day.

21 MR. WAITE: Oh, okay.

22 THE COURT: And I start jury selection --

23 MR. WAITE: I was going to be very surprised.

24 THE COURT: -- at what time?

25 THE CLERK: 1:15.

1 THE COURT: 1:15, 1:30.

2 MR. WAITE: Thank you and apologize to the remaining  
3 matters.

4 THE COURT: We just have one more matter.

5 UNIDENTIFIED SPEAKER: I was going to say, it's us.

6 MR. WAITE: Right.

7 UNIDENTIFIED SPEAKER: It's us.

8 THE COURT: Okay.

9 [Hearing concluded at 11:50 a.m.]

10 \* \* \* \* \*

11 ATTEST: I do hereby certify that I have truly and correctly  
12 transcribed the audio/video proceedings in the above-entitled case  
13 to the best of my ability.

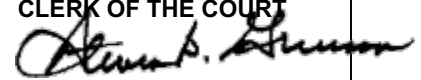


14 \_\_\_\_\_  
15 Petra Ziros  
16 Transcriber  
17  
18  
19  
20  
21  
22  
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002282

44

44



**NEFF**  
CHRISTINA H. WANG, ESQ.  
Nevada Bar No. 9713  
FIDELITY NATIONAL LAW GROUP  
8363 W. Sunset Road, Suite 120  
Las Vegas, Nevada 89113  
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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

Plaintiffs,

vs.

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

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

Defendants.

AND ALL RELATED MATTERS

PLEASE TAKE NOTICE that on August 17, 2023, the Court entered a FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER GRANTING IN PART AND DENYING IN  
PART ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR ATTORNEY'S

///

///

///

1 FEES in the above-entitled matter, a copy of which is attached as **Exhibit A**.

2 DATED this 17<sup>th</sup> day of August, 2023.

3 FIDELITY NATIONAL LAW GROUP

4  
5 /s/ Christina H. Wang

6 CHRISTINA H. WANG, ESQ.

7 Nevada Bar No. 9713

8 8363 W. Sunset Road, Suite 120

9 Las Vegas, Nevada 89113

10 *Attorneys for Counter-Defendants/*

11 *Cross-Claimants Robert Z. Disman*

12 *and Yvonne A. Disman*

**CERTIFICATE OF SERVICE**

The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING IN PART AND DENYING IN PART 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.

Dan R. Waite, Esq.  
Joel D. Henriod, Esq.  
LEWIS ROCA ROTHGERBER  
CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite  
600  
Las Vegas, Nevada 89169  
*Attorneys for Trudi Lee Lytle and John  
Allen Lytle as Trustees of the Lytle Trust*

Daniel T. Foley, Esq.  
FOLEY & OAKES, PC  
1210 S. Valley View Boulevard, #208  
Las Vegas, Nevada 89102  
*Attorneys for Marjorie Boulden Trust and  
Linda and Jacques Lamothe Trust*

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

**DATED:** 08/17/2023

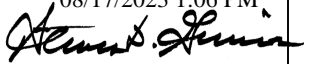
/s/ Lace Engelman

An employee of Fidelity National Law Group



# EXHIBIT A

002286

  
CLERK OF THE COURT

**ORDR**

CHRISTINA H. WANG, ESQ.  
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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.

AND ALL RELATED MATTERS

Case No.: A-16-747800-C

Dept. No.: XVI

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

Date of Hearing: July 13, 2023

Time of Hearing: 9:05 a.m.

This matter came before the Court for a hearing on July 13, 2023, pursuant to Counter-Defendants/Cross-Claimants Robert Z. Disman and Yvonne A. Disman's (collectively referred to herein as, the "Dismans") Motion for Attorney's Fees ("Fee Motion") against Defendants/Counter-Claimants Trudi Lee Lytle and John Allen Lytle, Trustees of the Lytle Trust (collectively referred to herein as, the "Lyttles"), filed on May 12, 2023. The Lyttles filed an Opposition to the Fee Motion ("Opposition") on June 13, 2023. The Dismans filed a Reply in Support of the Fee Motion ("Reply") on July 6, 2023.

Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the Dismans. Dan R. Waite, Esq. of Lewis Roca Rothgerber Christie LLP appeared on behalf of the Lytles. Additionally, in consolidated Case No. A-17-765372-C, Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of Plaintiffs September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen. (collectively referred to herein as, "Plaintiffs").

Following the hearing, the Court took the Fee Motion under advisement and subsequently issued a Minute Order on August 4, 2023, regarding its decision. The Minute Order is hereby incorporated by reference. The Court, having reviewed the record, the points and authorities set forth in the Motion, Opposition, and Reply, considered the oral arguments of counsel and good cause appearing therefore, makes the following Findings of Fact, Conclusions of Law and Order.

### **FINDINGS OF FACT**

1. The previous orders of the Court in these consolidated cases, including, but not limited to, the following orders, are hereby incorporated by reference:

a. July 25, 2017, Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law (the "July 2017 Order").

b. May 24, 2018, Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment (the "May 2018 Order").

c. May 22, 2020, 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").

d. August 11, 2020, Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs, as amended by subsequent Order Granting Plaintiffs'

1 Motion to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's  
2 Fees and Costs Pursuant to NRCP 52(b) (collectively referred to herein as, the "August 2020  
3 Fee Order").

4 2. On May 22, 2020, the Court entered the Contempt Order.

5 3. On June 22, 2020, the Lytles appealed the Contempt Order to the Nevada  
6 Supreme Court, which appeal was subsequently dismissed on the basis of a jurisdictional defect.

7 4. On April 11, 2022, the Lytles once again sought review of the Contempt Order  
8 by the Nevada Supreme Court, this time through a Petition for Writ of Mandamus or,  
9 Alternatively, Prohibition.

10 5. On December 29, 2022, the Nevada Supreme Court affirmed the Contempt Order  
11 through an Order Affirming in Docket No. 81689 and Denying Petition for a Writ of Mandamus  
12 in Docket No. 84538 (available at *Lytle v. September Trust*, Consolidated Case Nos. 81689 &  
13 84538, 523 P.3d 532 (Table), 2022 Nev. Unpub. LEXIS 912 (Nev. Dec. 29, 2022)).

14 6. On January 31, 2023, the Lytles filed a Petition for Rehearing, which the Nevada  
15 Supreme Court denied through an order dated February 13, 2023.

16 7. On March 13, 2023, the Lytles filed a Petition for En Banc Reconsideration,  
17 which the Nevada Supreme Court denied through an order dated March 27, 2023.

18 8. On April 24, 2023, the Nevada Supreme Court's Certificate of Judgment and  
19 Remittitur was filed in this case.

20 9. On May 12, 2023, the Dismans filed their Fee Motion requesting an award of  
21 attorney's fees in the amount of \$27,196.00 that they incurred from July 8, 2020, to May 12,  
22 2023.

23 10. The Fee Motion asserts the following three bases for an award of fees: NRS  
24 22.100; a Declaration of Covenants, Conditions and Restrictions governing the subdivision at  
25 issue in this case ("Original CC&Rs"); and NRS 18.010(2)(b).

26 11. The Lytles opposed the Fee Motion, arguing, among other things, that the  
27 Dismans were not parties to this Court's contempt proceedings, Contempt Order, or the  
28

subsequent Nevada Supreme Court appeals.

12. The Lytles also argue that in the event the Court decides to award fees, the amount of fees awarded should be reduced.

### **CONCLUSIONS OF LAW**

1. While the Court does not find that NRS 18.010(2)(b) is a sound basis for an award of fees, the Court does find that the Original CC&Rs and NRS 22.100 are appropriate bases for an award of fees.

2. Here, the Dismans litigated the issues pertaining to the Contempt Order and were real parties in interest during the appeal.

3. NRS 22.100 provides for an award of “reasonable expenses, including, without limitation, attorney’s fees, incurred by the party as a result of the contempt.” The Court finds that given the procedural posture of this case, most of the attorney’s fees that the Dismans incurred are “reasonable” and are “a result of the [Lytles’] contempt.” *See id.*

4. Additionally, Section 25 of the Original CC&Rs provide that “[i]n 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.” The Court finds that the Lytles are the losing parties pursuant to the Original CC&Rs because their appeal and litigation, which involved the Contempt Order, were ultimately unsuccessful. As a result, the Lytles are obligated to pay for the Dismans’ fees under Section 25 of the Original CC&Rs.

5. However, the Court finds that the fees relating to the “dog incident” (\$666.00) involve an unrelated matter that is outside the scope of the instant issues.

6. Further, in conformity with the Court’s August 2020 Fee Order regarding Plaintiffs, the Court reduces the block-billed fees, which the Lytles argue amount to \$21,018.00, by \$3,152.70 ( $\$21,018.00 \times 15\% = \$3,152.70$ ).

7. The Court analyzed the Dismans’ requested attorney’s fees utilizing the factors identified in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969),

1 including the qualities of the advocate, the character of the work to be done, the work actually  
2 performed by the lawyer, and the result obtained.

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

8 9. Consequently, the Court GRANTS in Part and DENIES in Part the Fee Motion.  
9 The Court grants the motion, except for the fees associated with the dog incident (\$666.00) and  
10 the block-billed entries, which the Court reduces by 15% (\$3,152.70) in conformity with the  
11 Court's August 2020 Fee Order. Therefore, the Dismans shall be awarded \$23,377.30 in  
12 attorney's fees.

13 **ORDER**

14 Based upon the Findings of Fact and Conclusions of Law above and the record before  
15 the Court, and good cause appearing therefore,

16 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Dismans' Fee  
17 Motion is GRANTED in Part and DENIED in Part. The Court grants the motion, except for the  
18 fees associated with the dog incident (\$666.00) and the block-billed entries, which the Court  
19 reduces by 15% (\$3,152.70) in conformity with the Court's August 2020 Fee Order.

20 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are  
21 awarded in favor of the Dismans in the total amount of \$23,377.30 against the Lytles.

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytles are  
23 ordered to pay the attorney's fees as ordered herein by certified check made payable to Fidelity  
24 National Law Group in the amount of \$23,377.30 and delivered to Fidelity National Law Group  
25 within thirty (30) days of the Notice of Entry of this Order.

26 ///

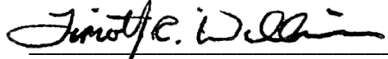
27 ///

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Findings of  
 2 Fact shall be treated as Conclusions of Law and the Conclusions of Law shall be treated as  
 3 Findings of Fact to any extent necessary to effectuate the intent of this Order.

4 **IT IS SO ORDERED.**

5 DATED this \_\_\_\_ day of \_\_\_\_\_, 2023.

6 Dated this 17th day of August, 2023

7 

8 DISTRICT COURT JUDGE JM

9 4DE B6F 07EB 874E

Timothy C. Williams  
 District Court Judge

10 Respectfully submitted by:

11 FIDELITY NATIONAL LAW GROUP

Approved as to form and content by:

12 LEWIS ROCA ROTHGERBER CHRISTIE  
 LLP

13 /s/ Christina H. Wang

14 CHRISTINA H. WANG, ESQ.  
 15 Nevada Bar No. 9713  
 8363 W. Sunset Road, Suite 120  
 16 Las Vegas, Nevada 89113  
 Attorneys for Counter-Defendants/  
 17 Cross-Claimants Robert Z. Disman  
 and Yvonne A. Disman

/s/ Dan R. Waite

DAN R. WAITE, ESQ.  
 Nevada Bar No. 4078  
 3993 Howard Hughes Parkway, Suite 600  
 Las Vegas, Nevada 89169  
 Attorneys for Defendants/Counter-Claimants  
 Trudi Lee Lytle and John Allen Lytle, Trustees  
 of the Lytle Trust

**Engelman, Lace**

---

**From:** Wang, Christina  
**Sent:** Wednesday, August 16, 2023 4:31 PM  
**To:** Waite, Dan R.  
**Cc:** Engelman, Lace  
**Subject:** RE: Lytle v. Disman

Hi Dan,

All of your changes are acceptable. We will make the changes, affix your e-signature and submit to the Court.

Thank you,

Christina

Christina H. Wang  
 Litigation Counsel  
 Fidelity National Law Group  
 8363 W. Sunset Road, Suite 120  
 Las Vegas, Nevada 89113  
 702-667-3000 (Main)  
 702-667-3002 (Direct)  
 702-938-8721 (Fax)  
[christina.wang@fnf.com](mailto: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.*

*THIS ELECTRONIC MAIL MESSAGE AND ANY ATTACHMENTS ARE INTENDED ONLY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT AN INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THIS E-MAIL TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS E-MAIL MESSAGE IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY REPLYING TO THIS MESSAGE OR BY TELEPHONE. THANK YOU.*

---

**From:** Waite, Dan R. <DWaite@lewisroca.com>  
**Sent:** Tuesday, August 15, 2023 9:45 AM  
**To:** Wang, Christina <Christina.Wang@fnf.com>  
**Cc:** Engelman, Lace <Lace.Engelman@fnf.com>  
**Subject:** RE: Lytle v. Disman

**IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.**

Good morning Christina,

I have only a few changes to your proposed order (see redlines attached). The most substantive change is to extend the time for payment from 10 to 30 days, which is intended to coincide with the deadline for filing an appeal. The Lytles have not decided to file an appeal but they should not be put to the risk of being in contempt of a court order while deciding whether to exercise rights afforded to them by rule. If these changes are acceptable, you are authorized to finalize the order, affix my e-signature, and submit to Judge Williams. Thanks,



Dan

Dan R. Waite  
Partner

[dwaite@lewisroca.com](mailto:dwaite@lewisroca.com)  
D. 702.474.2638

**LEWIS  ROCA**

---

**From:** Wang, Christina <[Christina.Wang@fnf.com](mailto:Christina.Wang@fnf.com)>  
**Sent:** Friday, August 11, 2023 2:15 PM  
**To:** Waite, Dan R. <[DWaite@lewisroca.com](mailto:DWaite@lewisroca.com)>  
**Cc:** Engelman, Lace <[Lace.Engelman@fnf.com](mailto:Lace.Engelman@fnf.com)>  
**Subject:** Lytle v. Disman

**CAUTION!** [EXTERNAL to Lewis Roca]

---

This message was sent securely using Zix®

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Good afternoon,

Attached for your review is the proposed order regarding the Dismans' motion for attorney's fees. To the extent that you have revisions, please provide them in redline format for ease of reference. My client is also in the process of reviewing this so there may be some revisions on our end as well.

Thank you,

Christina

Christina H. Wang  
Litigation Counsel  
Fidelity National Law Group  
8363 W. Sunset Road, Suite 120  
Las Vegas, Nevada 89113  
702-667-3000 (Main)  
702-667-3002 (Direct)  
702-938-8721 (Fax)  
[christina.wang@fnf.com](mailto: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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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Marjorie B. Boulden Trust,  
7 Plaintiff(s)

CASE NO: A-16-747800-C

8 vs.

DEPT. NO. Department 16

9 Trudi Lytle, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
15 case as listed below:

Service Date: 8/17/2023

16 "Daniel T. Foley, Esq." .	dan@foleyoakes.com
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19 Wesley Smith	wes@cjmlv.com
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21 Joel Henriod	JHenriod@LRRC.com
22 Daniel Polsenberg	DPolsenberg@LRRC.com
23 Dan Waite	DWaite@LRRC.com
24 Luz Horvath	lhorvath@lewisroca.com
25 Christina Wang	christina.wang@fnf.com

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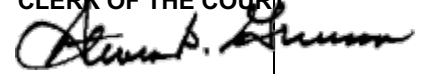
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,  
and Dennis & Julie Gegen*

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

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

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

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

Plaintiffs,

vs.

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

Defendants.

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

Consolidated

PLEASE TAKE NOTICE that on August 18, 2023, an Order Granting Plaintiffs' Motion  
for Attorney's Fees and Costs was entered by the Court, a copy of which is attached hereto.

**CHRISTENSEN JAMES & MARTIN**

By: /s/ Wesley J. Smith  
Wesley J. Smith (11871)  
7440 W. Sahara Ave.  
Las Vegas, NV 89117  
*Attorneys for Plaintiffs September Trust,  
Zobrist Trust, Sandoval Trust and  
Dennis & Julie Gegen*

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

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*Heather S. Martin*

CLERK OF THE COURT

**ORDR**

**CHRISTENSEN JAMES & MARTIN**

KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust*

*and Dennis & Julie Gegen*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

MARJORIE B. BOULDEN, TRUSTEE OF  
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vs.

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LYTLE, THE LYTLE TRUST,

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

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

Date: July 13, 2023

Time: 9:05 a.m.

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs ("Plaintiffs' Fee Motion") filed on May 12, 2023 (Doc. No. 274), Defendant's Opposition filed on June 13, 2023 (Doc. No. 281), and Plaintiffs' Reply filed July 6, 2023 (Doc. No. 287), which came on for hearing on July 13, 2023 at 9:05 a.m. in Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of September Trust, dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry

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

1 R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie  
 2 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution  
 3 Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and  
 4 Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and Gegens,  
 5 collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf  
 6 of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of Lewis Roca Rothgerber  
 7 Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust  
 8 ("Lytle Trust").

9 Following the hearing on the matter, the Court took Plaintiffs' Fee Motion under advisement and  
 10 subsequently issued a Minute Order on August 4, 2023, advising the parties of the Court's decision, which  
 11 is hereby incorporated by reference. The Court having considered Plaintiffs' Fee Motion and filings  
 12 related thereto, having heard the arguments of counsel, and with good cause appearing therefore, the Court  
 13 hereby grants in part and denies in part Plaintiffs' Fee Motion and enters the following Findings of Fact,  
 14 Conclusions of Law, and Order:

### 15 **FINDINGS OF FACT**

16 1. The previous Court Orders entered in these consolidated cases are hereby incorporated by  
 17 reference, including but not limited to the following: a) Order Granting Motion for Summary Judgment  
 18 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary  
 19 Judgment (Doc. No. 91) ("May 2018 Order"); b) Order Granting Plaintiffs' Motion for Order to Show  
 20 Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders (Doc. No.  
 21 193) ("Contempt Order"); c) Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's  
 22 Fees and Costs (Doc. No. 221) ("Second Fees Order"); and, d) Order Granting Plaintiffs' Motion to  
 23 Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs  
 24 Pursuant to NRCP 52(B) (Doc. No. 245) ("Amended Second Fees Order").

25 2. The Court has been waiting for the Lytle Trust's appeal from the Contempt Order and  
 26 Amended Second Fees Order and Petition for Writ of Mandamus for the Contempt Order to be resolved.  
 27  
 28





1           2.       While the Court does not find that NRS 18.010(2)(b) is a sound basis for an award of fees,  
2 the Court does find that NRS 22.100 and Section 25 of the CC&Rs are appropriate bases for an award of  
3 fees for the same reasons as set forth in the Second Fees Order and Amended Second Fees Order.

4           3.       Here, NRS 22.100 provides for an award of “reasonable expenses, including, without  
5 limitation, attorney’s fees, incurred by the party as a result of the contempt.” As a result of the procedural  
6 posture of the instant action, the Court finds that the expenses that Plaintiffs incurred, including attorney’s  
7 fees, are “reasonable” and are “a result of the [Defendants’] contempt.” NRS 22.100.

8           4.       Additionally, the CC&Rs provide that losing parties are to pay attorney’s fees that the  
9 Court “may fix.” As the Court discussed, the Plaintiffs in the instant case incurred reasonable expenses  
10 and attorney’s fees. The Court further finds that the Defendants are losing parties, pursuant to the CC&Rs,  
11 because their appeal and litigation, which involved the Contempt Order, was ultimately unsuccessful. As  
12 a result, the Defendants are obligated to pay for Plaintiffs’ fees under Section 25 of the CC&Rs.

13           5.       “After a court has determined that attorney’s fees are appropriate[,] it then must multiply  
14 the number of hours reasonably spent on the case by a reasonable hourly rate to reach what is termed the  
15 lodestar amount.” *Herbst v. Humana Health Ins.*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989).

16           6.       Defendants argue that the amount of fees requested by Plaintiffs should be reduced because  
17 they are calculated at a higher hourly rate than the actual billed rate. The Court finds that the rates billed  
18 by Plaintiffs’ counsel to the Plaintiffs are below-market. Further, the Court finds that the reasonable value  
19 of the service provided by Plaintiffs’ counsel is aligned with the requested rate. As a result, the Court finds  
20 that the requested fees, although higher than the billed amount, are a proper calculation of the number of  
21 hours reasonably spent multiplied by a reasonable hourly rate and shall be awarded pursuant to NRS  
22 22.100 and the original CC&Rs.

23           7.       However, the Court finds that the entries that Defendants label as “vague” are akin to block  
24 billing. As a result, and in conformity with the Second Fees Order and Amended Second Fees Order, the  
25 Court reduces the “vague” fees by 15%, or \$1,165.09 ( $\$7,767.25 \times 15\% = \$1,165.09$ ).

26           8.       The Court analyzed the Plaintiffs’ requested attorney’s fees utilizing the factors identified  
27 in *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), including the qualities  
28

1 of the advocate, the character of the work to be done, the work actually performed by the lawyer, and the  
2 result obtained.

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

8 10. Consequently, the Court GRANTS in Part and Denies in Part Plaintiffs' Motion for  
9 Attorney's Fees. The Court DENIES the motion with respect to \$1,165.09 for "vague" entries, but the  
10 Court GRANTS the motion with respect to all other fees. Therefore, Plaintiffs shall be awarded  
11 \$143,528.91 in attorney's fees and \$3,896.51 in costs.

12 **ORDER**

13 Based upon the Findings of Fact and Conclusions of Law above and the record before the Court,  
14 and good cause appearing therefore,

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion for  
16 Attorney's Fees and Costs filed on May 12, 2023 (Doc. No. 274) is GRANTED in Part and DENIED in  
17 Part. The Court DENIES the motion with respect to \$1,165.09 in attorney's fees, but the Court GRANTS  
18 the motion with respect to all other fees and costs.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are awarded  
20 in favor of Plaintiffs September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as  
21 Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie  
22 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution  
23 Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants,  
24 in the total aggregate amount of \$143,528.91 against Trudi Lee Lytle and John Allen Lytle, as Trustees  
25 of the Lytle Trust.

26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are awarded in favor  
27 of Plaintiffs September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of  
28

the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants, in the total aggregate amount of \$3,896.51 against Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust.

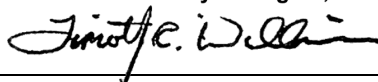
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is ordered to pay the attorney's fees and costs as ordered herein by certified check made payable to Christensen James & Martin Special Client Trust Account in the total amount of \$147,425.42 and delivered to Christensen James & Martin, within thirty (30) days of the Notice of Entry of this Order.

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

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

Dated this 18th day of August, 2023



JM

**F8C 524 1B18 244E**  
**Timothy C. Williams**  
**District Court Judge**

**Submitted by:**

**CHRISTENSEN JAMES & MARTIN**

By: /s/ Wesley J. Smith  
 Wesley J. Smith, Esq., Nev. Bar No. 11871  
 7440 W. Sahara Ave.  
 Las Vegas, NV 89117  
*Attorneys for Plaintiffs September Trust,  
 Zobrist Trust, Sandoval Trust, and  
 Dennis & Julie Gegen*

**Approved as to form and content by:**

**LEWIS ROCA ROTHGERBER CHRISTIE LLP**

By: /s/ Dan R. Waite  
 Dan R. Waite, Nevada Bar No. 4078  
 3993 Howard Hughes Parkway, Suite 600  
 Las Vegas, Nevada 89169  
 (702) 949-8200  
*Attorneys for Defendants, Trudi Lee Lytle  
 and John Allen Lytle, as Trustees of the Lytle  
 Trust*

**RE: A-16-747800-C Proposed Order Granting Plaintiffs Motion for Fees and Costs**

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

Thu 8/17/2023 9:43 AM

To: Wesley Smith <wes@cjmlv.com>

Cc: Horvath, Luz <LHorvath@lewisroca.com>

Approved. Thank you, Wes.

Dan

**Dan R. Waite**  
Partner

[dwaite@lewisroca.com](mailto:dwaite@lewisroca.com)  
D. 702.474.2638

**LEWIS  ROCA**

---

**From:** Wesley Smith <wes@cjmlv.com>

**Sent:** Thursday, August 17, 2023 9:34 AM

**To:** Waite, Dan R. <DWaite@lewisroca.com>

**Cc:** Horvath, Luz <LHorvath@lewisroca.com>

**Subject:** A-16-747800-C Proposed Order Granting Plaintiffs Motion for Fees and Costs

**CAUTION!** [EXTERNAL to Lewis Roca]

Dan,

Attached is the final version of the proposed Order Granting Plaintiffs' Motion for Attorney's Fees and Costs in Case No. A-16-747800-C. Please respond with your approval and permission to submit with your electronic signature. Thanks,

Wes Smith

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

*\* Licensed in Nevada, Washington & Utah*

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1 **CSERV**

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

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6 Marjorie B. Boulden Trust,  
7 Plaintiff(s)

CASE NO: A-16-747800-C

8 vs.

DEPT. NO. Department 16

9 Trudi Lytle, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 8/18/2023

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22 Daniel Polsenberg

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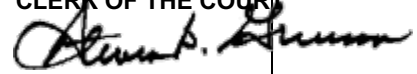
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Cynthia Kelley	ckelley@lewisroca.com
Emily Kapolnai	ekapolnai@lewisroca.com
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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,  
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**EIGHTH JUDICIAL DISTRICT COURT  
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1972, *et al.*,

Plaintiffs,

vs.

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

Defendants.

Case No.: A-17-765372-C  
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Consolidated

PLEASE TAKE NOTICE that on August 18, 2023, an Order Granting Plaintiffs' Motion  
for Attorney's Fees and Costs was entered by the Court, a copy of which is attached hereto.

**CHRISTENSEN JAMES & MARTIN**

By: /s/ Wesley J. Smith  
Wesley J. Smith (11871)  
7440 W. Sahara Ave.  
Las Vegas, NV 89117  
*Attorneys for Plaintiffs September Trust,  
Zobrist Trust, Sandoval Trust and  
Dennis & Julie Gegen*

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

002310

1 **ORDR**

2 **CHRISTENSEN JAMES & MARTIN**

3 KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

4 WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

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*Attorneys for September Trust, Zobrist Trust, Sandoval Trust*

*and Dennis & Julie Gegen*

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 MARJORIE B. BOULDEN, TRUSTEE OF  
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13 al.,

Plaintiffs,

14 vs.

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

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

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

Date: July 13, 2023

Time: 9:05 a.m.

17 SEPTEMBER TRUST, DATED MARCH 23,  
18 1972, et al.,

Plaintiffs,

19 vs.

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

Defendants.

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

23 Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs ("Plaintiffs' Fee  
24 Motion") filed on May 12, 2023 (Doc. No. 274), Defendant's Opposition filed on June 13, 2023 (Doc.  
25 No. 281), and Plaintiffs' Reply filed July 6, 2023 (Doc. No. 287), which came on for hearing on July 13,  
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002311  
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7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117  
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1 R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie  
2 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution  
3 Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and  
4 Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and Gegens,  
5 collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf  
6 of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of Lewis Roca Rothgerber  
7 Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust  
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9 Following the hearing on the matter, the Court took Plaintiffs' Fee Motion under advisement and  
10 subsequently issued a Minute Order on August 4, 2023, advising the parties of the Court's decision, which  
11 is hereby incorporated by reference. The Court having considered Plaintiffs' Fee Motion and filings  
12 related thereto, having heard the arguments of counsel, and with good cause appearing therefore, the Court  
13 hereby grants in part and denies in part Plaintiffs' Fee Motion and enters the following Findings of Fact,  
14 Conclusions of Law, and Order:

### 15 **FINDINGS OF FACT**

16 1. The previous Court Orders entered in these consolidated cases are hereby incorporated by  
17 reference, including but not limited to the following: a) Order Granting Motion for Summary Judgment  
18 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary  
19 Judgment (Doc. No. 91) ("May 2018 Order"); b) Order Granting Plaintiffs' Motion for Order to Show  
20 Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders (Doc. No.  
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23 Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs  
24 Pursuant to NRCP 52(B) (Doc. No. 245) ("Amended Second Fees Order").

25 2. The Court has been waiting for the Lytle Trust's appeal from the Contempt Order and  
26 Amended Second Fees Order and Petition for Writ of Mandamus for the Contempt Order to be resolved.  
27  
28



1           2.       While the Court does not find that NRS 18.010(2)(b) is a sound basis for an award of fees,  
2 the Court does find that NRS 22.100 and Section 25 of the CC&Rs are appropriate bases for an award of  
3 fees for the same reasons as set forth in the Second Fees Order and Amended Second Fees Order.

4           3.       Here, NRS 22.100 provides for an award of “reasonable expenses, including, without  
5 limitation, attorney’s fees, incurred by the party as a result of the contempt.” As a result of the procedural  
6 posture of the instant action, the Court finds that the expenses that Plaintiffs incurred, including attorney’s  
7 fees, are “reasonable” and are “a result of the [Defendants’] contempt.” NRS 22.100.

8           4.       Additionally, the CC&Rs provide that losing parties are to pay attorney’s fees that the  
9 Court “may fix.” As the Court discussed, the Plaintiffs in the instant case incurred reasonable expenses  
10 and attorney’s fees. The Court further finds that the Defendants are losing parties, pursuant to the CC&Rs,  
11 because their appeal and litigation, which involved the Contempt Order, was ultimately unsuccessful. As  
12 a result, the Defendants are obligated to pay for Plaintiffs’ fees under Section 25 of the CC&Rs.

13          5.       “After a court has determined that attorney’s fees are appropriate[,] it then must multiply  
14 the number of hours reasonably spent on the case by a reasonable hourly rate to reach what is termed the  
15 lodestar amount.” *Herbst v. Humana Health Ins.*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989).

16          6.       Defendants argue that the amount of fees requested by Plaintiffs should be reduced because  
17 they are calculated at a higher hourly rate than the actual billed rate. The Court finds that the rates billed  
18 by Plaintiffs’ counsel to the Plaintiffs are below-market. Further, the Court finds that the reasonable value  
19 of the service provided by Plaintiffs’ counsel is aligned with the requested rate. As a result, the Court finds  
20 that the requested fees, although higher than the billed amount, are a proper calculation of the number of  
21 hours reasonably spent multiplied by a reasonable hourly rate and shall be awarded pursuant to NRS  
22 22.100 and the original CC&Rs.

23          7.       However, the Court finds that the entries that Defendants label as “vague” are akin to block  
24 billing. As a result, and in conformity with the Second Fees Order and Amended Second Fees Order, the  
25 Court reduces the “vague” fees by 15%, or \$1,165.09 ( $\$7,767.25 \times 15\% = \$1,165.09$ ).

26          8.       The Court analyzed the Plaintiffs’ requested attorney’s fees utilizing the factors identified  
27 in *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), including the qualities  
28

1 of the advocate, the character of the work to be done, the work actually performed by the lawyer, and the  
2 result obtained.

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

8 10. Consequently, the Court GRANTS in Part and Denies in Part Plaintiffs' Motion for  
9 Attorney's Fees. The Court DENIES the motion with respect to \$1,165.09 for "vague" entries, but the  
10 Court GRANTS the motion with respect to all other fees. Therefore, Plaintiffs shall be awarded  
11 \$143,528.91 in attorney's fees and \$3,896.51 in costs.

12 **ORDER**

13 Based upon the Findings of Fact and Conclusions of Law above and the record before the Court,  
14 and good cause appearing therefore,

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion for  
16 Attorney's Fees and Costs filed on May 12, 2023 (Doc. No. 274) is GRANTED in Part and DENIED in  
17 Part. The Court DENIES the motion with respect to \$1,165.09 in attorney's fees, but the Court GRANTS  
18 the motion with respect to all other fees and costs.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are awarded  
20 in favor of Plaintiffs September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as  
21 Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie  
22 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution  
23 Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants,  
24 in the total aggregate amount of \$143,528.91 against Trudi Lee Lytle and John Allen Lytle, as Trustees  
25 of the Lytle Trust.

26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are awarded in favor  
27 of Plaintiffs September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of  
28



the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants, in the total aggregate amount of \$3,896.51 against Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust.

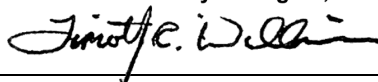
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is ordered to pay the attorney's fees and costs as ordered herein by certified check made payable to Christensen James & Martin Special Client Trust Account in the total amount of \$147,425.42 and delivered to Christensen James & Martin, within thirty (30) days of the Notice of Entry of this Order.

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

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

Dated this 18th day of August, 2023



JM

**F8C 524 1B18 244E**  
**Timothy C. Williams**  
**District Court Judge**

**Submitted by:**

**CHRISTENSEN JAMES & MARTIN**

By: /s/ Wesley J. Smith  
 Wesley J. Smith, Esq., Nev. Bar No. 11871  
 7440 W. Sahara Ave.  
 Las Vegas, NV 89117  
*Attorneys for Plaintiffs September Trust,  
 Zobrist Trust, Sandoval Trust, and  
 Dennis & Julie Gegen*

**Approved as to form and content by:**

**LEWIS ROCA ROTHGERBER CHRISTIE LLP**

By: /s/ Dan R. Waite  
 Dan R. Waite, Nevada Bar No. 4078  
 3993 Howard Hughes Parkway, Suite 600  
 Las Vegas, Nevada 89169  
 (702) 949-8200  
*Attorneys for Defendants, Trudi Lee Lytle  
 and John Allen Lytle, as Trustees of the Lytle  
 Trust*

**RE: A-16-747800-C Proposed Order Granting Plaintiffs Motion for Fees and Costs**

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

Thu 8/17/2023 9:43 AM

To: Wesley Smith <wes@cjmlv.com>

Cc: Horvath, Luz <LHorvath@lewisroca.com>

Approved. Thank you, Wes.

Dan

**Dan R. Waite**  
Partner

[dwaite@lewisroca.com](mailto:dwaite@lewisroca.com)  
D. 702.474.2638

**LEWIS  ROCA**

---

**From:** Wesley Smith <wes@cjmlv.com>

**Sent:** Thursday, August 17, 2023 9:34 AM

**To:** Waite, Dan R. <DWaite@lewisroca.com>

**Cc:** Horvath, Luz <LHorvath@lewisroca.com>

**Subject:** A-16-747800-C Proposed Order Granting Plaintiffs Motion for Fees and Costs

**CAUTION!** [EXTERNAL to Lewis Roca]

Dan,

Attached is the final version of the proposed Order Granting Plaintiffs' Motion for Attorney's Fees and Costs in Case No. A-16-747800-C. Please respond with your approval and permission to submit with your electronic signature. Thanks,

Wes Smith

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

*\* Licensed in Nevada, Washington & Utah*

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

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

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Marjorie B. Boulden Trust,  
7 Plaintiff(s)

CASE NO: A-16-747800-C

8 vs.

DEPT. NO. Department 16

9 Trudi Lytle, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 8/18/2023

16 "Daniel T. Foley, Esq." .

dan@foleyoakes.com

17 Maren Foley .

maren@foleyoakes.com

18 Natalie Saville

nat@cjmlv.com

19 Wesley Smith

wes@cjmlv.com

20 Laura Wolff

ljw@cjmlv.com

21 Joel Henriod

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22 Daniel Polsenberg

DPolsenberg@LRRC.com

23 Dan Waite

DWaite@LRRC.com

24 Luz Horvath

lhorvath@lewisroca.com

25 Christina Wang

christina.wang@fnf.com

26 FNLG Court Filings

FNLG-Court-Filings-NV@fnf.com

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Mia Hurtado	mia.hurtado@fnf.com

47

47


**NOAS**

DANIEL F. POLSENBERG (SBN 2376)  
DAN R. WAITE (SBN 4078)  
ABRAHAM G. SMITH (SBN 13,250)  
LEWIS ROCA ROTHGERBER CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 949-8200  
[DPolsenberg@LewisRoca.com](mailto:DPolsenberg@LewisRoca.com)  
[DWaite@LewisRoca.com](mailto:DWaite@LewisRoca.com)  
[ASmith@LewisRoca.com](mailto:ASmith@LewisRoca.com)

*Attorneys for Defendants 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,

Plaintiffs,

v.

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

Defendants.

SEPTEMBER TRUST, DATED MARCH 23,  
1972; GERRY R. ZOBRIST and JOLIN G.  
ZOBRIST, as Trustees of the Gerry R.  
Zobrist and Jolin G. Zobrist Family  
Trust; RAYNALDO G. SANDOVAL and  
JULIE MARIE SANDOVAL GEGEN, As  
Trustees of the Raynaldo G. and  
Evelyn A. Sandoval Joint Living and  
Devolution Trust Dated May 27, 1992;  
and DENNIS A. GEGEN and JULIE S.  
GEGEN, husband and wife, as joint  
tenants,

Plaintiffs,

v.

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

Defendants.

Case No. A-16-747800-C

Dep't No. 16

**NOTICE OF APPEAL**

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

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

- 4 1. All judgments and orders in this case;
- 5 2. "Order Granting Plaintiffs' Motion for Attorney's Fees and Costs,"  
6 filed August 18, 2023, notice of entry of which was served electronically on  
7 August 18, 2023 (Exhibit A); and
- 8 3. All judgments, rulings and interlocutory orders made appealable by  
9 the foregoing.

10 Dated this 1st day of September, 2023.

11 LEWIS ROCA ROTHGERBER CHRISTIE LLP

12  
13 By: /s/Abraham G. Smith

14 DANIEL F. POLSENBERG (SBN 2376)  
15 DAN R. WAITE (SBN 4078)  
16 ABRAHAM G. SMITH (SBN 13,250)  
3993 Howard Hughes Parkway, Suite 600  
Las Vegas, Nevada 89169  
(702) 949-8200

17 *Attorneys for Defendants Trudi Lee Lytle and*  
18 *John Allen Lytle, as Trustees of the Lytle*  
19 *Trust*  
20  
21  
22  
23  
24  
25  
26  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of September, 2023, I served the foregoing "Notice of Appeal" on counsel by the Court's electronic filing system to the persons and addresses listed below:

KEVIN B. CHRISTENSEN  
WESLEY J. SMITH  
LAURA J. WOLFF  
CHRISTENSEN JAMES & MARTIN  
7440 W. Sahara Avenue  
Las Vegas, Nevada 89117  
[KBC@CJMLV.com](mailto:KBC@CJMLV.com)  
[Wes@CJMLV.com](mailto:Wes@CJMLV.com)  
[LJW@CJMLV.com](mailto:LJW@CJMLV.com)

*Attorneys for September Trust,  
dated March 23, 1972, Gerry R.  
Zobrist and Jolin G. Zobrist, as  
trustees of the Gerry R. Zobrist  
and Jolin G. Zobrist Family Trust,  
Raynaldo G. Sandoval and Julie  
Marie Sandoval Gegen, as trustees  
of the Raynaldo G. and Evelyn A.  
Sandoval Joint Living and  
Devolution Trust dated May 27,  
1992, and Dennis A. Gegen and  
Julie S. Gegen, husband and wife,  
as joint tenants*

Christina H. Wang  
FIDELITY NATIONAL LAW GROUP  
8363 W. Sunset Road, Suite 120  
Las Vegas, Nevada 89113  
[Christina.Wang@FNF.com](mailto:Christina.Wang@FNF.com)

*Attorneys for Robert Z. Disman and  
Yvonne A. Disman*

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

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

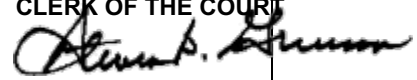
/s/ Jessie M. Helm  
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

# **EXHIBIT A**

## **to Notice of Appeal**

002324

002324



**NEOJ**  
**CHRISTENSEN JAMES & MARTIN**  
KEVIN B. CHRISTENSEN, ESQ. (175)  
WESLEY J. SMITH, ESQ. (11871)  
LAURA J. WOLFF, ESQ. (6869)  
7440 W. Sahara Avenue  
Las Vegas, Nevada 89117  
Tel.: (702) 255-1718  
Facsimile: (702) 255-0871  
Email: kbc@cjmlv.com; wes@cjmlv.com; ljw@cjmlv.com  
*Attorneys for September Trust, Zobrist Trust, Sandoval Trust,  
and Dennis & Julie Gegen*

**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

TRUDI LEE LYTLE, *et al.*,

Defendants.

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

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

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

Plaintiffs,

vs.

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

Defendants.

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

Consolidated

PLEASE TAKE NOTICE that on August 18, 2023, an Order Granting Plaintiffs' Motion  
for Attorney's Fees and Costs was entered by the Court, a copy of which is attached hereto.

**CHRISTENSEN JAMES & MARTIN**

By: /s/ Wesley J. Smith  
Wesley J. Smith (11871)  
7440 W. Sahara Ave.  
Las Vegas, NV 89117  
*Attorneys for Plaintiffs September Trust,  
Zobrist Trust, Sandoval Trust and  
Dennis & Julie Gegen*

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

002325

**CERTIFICATE OF SERVICE**

I am an employee of Christensen James & Martin. On August 18, 2023, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS**, to be served in the following manner:

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

/s/ Natalie Saville  
Natalie Saville

002326

1 **ORDR**

2 **CHRISTENSEN JAMES & MARTIN**

3 KEVIN B. CHRISTENSEN, ESQ.

Nevada Bar No. 175

4 WESLEY J. SMITH, ESQ.

Nevada Bar No. 11871

5 LAURA J. WOLFF, ESQ.

Nevada Bar No. 6869

6 7440 W. Sahara Avenue

Las Vegas, Nevada 89117

7 Tel.: (702) 255-1718

Facsimile: (702) 255-0871

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

*Attorneys for September Trust, Zobrist Trust, Sandoval Trust*

*and Dennis & Julie Gegen*

9 **EIGHTH JUDICIAL DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

Plaintiffs,

14 vs.

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

Defendants.

Case No.: A-16-747800-C

Dept. No.: XVI

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

Date: July 13, 2023

Time: 9:05 a.m.

17 SEPTEMBER TRUST, DATED MARCH 23,  
18 1972, et al.,

Plaintiffs,

19 vs.

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

Defendants.

Case No.: A-17-765372-C

Dept. No.: XVI

CONSOLIDATED

23 Presently before the Court is Plaintiffs' Motion for Attorney's Fees and Costs ("Plaintiffs' Fee  
24 Motion") filed on May 12, 2023 (Doc. No. 274), Defendant's Opposition filed on June 13, 2023 (Doc.  
25 No. 281), and Plaintiffs' Reply filed July 6, 2023 (Doc. No. 287), which came on for hearing on July 13,  
26 2023 at 9:05 a.m. in Department XVI of the Eighth Judicial District Court, Clark County, Nevada.

27 Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of September Trust,  
28 dated March 23, 1972 ("September Trust"), Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of the Gerry

002327  
CHRISTENSEN JAMES & MARTIN  
7440 WEST SAHARA AVE., LAS VEGAS, NEVADA 89117  
PH: (702) 255-1718 § FAX: (702) 255-0871

002327

1 R. Zobrist and Jolin G. Zobrist Family Trust ("Zobrist Trust"), Raynaldo G. Sandoval and Julie Marie  
2 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution  
3 Trust dated May 27, 1992 ("Sandoval Trust"), and Dennis A. Gegen and Julie S. Gegen, Husband and  
4 Wife, as Joint Tenants ("Gegens") (September Trust, Zobrist Trust, Sandoval Trust and Gegens,  
5 collectively, the "Plaintiffs"). Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf  
6 of Robert Z. Disman and Yvonne A. Disman ("Dismans"). Dan R. Waite, Esq. of Lewis Roca Rothgerber  
7 Christie LLP appeared on behalf of Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust  
8 ("Lytle Trust").

9 Following the hearing on the matter, the Court took Plaintiffs' Fee Motion under advisement and  
10 subsequently issued a Minute Order on August 4, 2023, advising the parties of the Court's decision, which  
11 is hereby incorporated by reference. The Court having considered Plaintiffs' Fee Motion and filings  
12 related thereto, having heard the arguments of counsel, and with good cause appearing therefore, the Court  
13 hereby grants in part and denies in part Plaintiffs' Fee Motion and enters the following Findings of Fact,  
14 Conclusions of Law, and Order:

### 15 **FINDINGS OF FACT**

16 1. The previous Court Orders entered in these consolidated cases are hereby incorporated by  
17 reference, including but not limited to the following: a) Order Granting Motion for Summary Judgment  
18 or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary  
19 Judgment (Doc. No. 91) ("May 2018 Order"); b) Order Granting Plaintiffs' Motion for Order to Show  
20 Cause Why the Lytle Trust Should Not Be Held in Contempt for Violation of Court Orders (Doc. No.  
21 193) ("Contempt Order"); c) Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's  
22 Fees and Costs (Doc. No. 221) ("Second Fees Order"); and, d) Order Granting Plaintiffs' Motion to  
23 Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs  
24 Pursuant to NRCP 52(B) (Doc. No. 245) ("Amended Second Fees Order").

25 2. The Court has been waiting for the Lytle Trust's appeal from the Contempt Order and  
26 Amended Second Fees Order and Petition for Writ of Mandamus for the Contempt Order to be resolved.  
27  
28

3. The Supreme Court affirmed those Orders on December 29, 2022, when it issued its Order Affirming In Docket No. 81689 And Denying Petition For A Writ Of Mandamus In Docket No. 84538 (“Supreme Court Order (12/29/22)”) (available at *Lytle v. September Trust*, Consolidated Case Nos. 81689 & 84538, 523 P.3d 532 (Table), 2022 Nev. Unpub. LEXIS 912 (Nev. Dec. 29, 2022)).

4. The Lytle Trust’s Petition for Rehearing was denied on February 13, 2023.

5. The Lytle Trust’s Petition for En Banc Reconsideration was denied on March 27, 2023.

6. The Supreme Court’s Certificate of Judgment and Remittitur was filed in this Case on April 24, 2024.

7. Plaintiffs filed Plaintiffs’ Memorandum of Costs and Disbursements (“Cost Memorandum”) on April 28, 2023 (Doc. No. 270), which itemized costs for copy fees in the amount of \$775.20, court filing fees in the amount of \$14.00, computerized legal research fees in the amount of \$3,071.01, and courier fees in the amount of \$36.30, for total costs of \$3,896.51.

8. Defendants did not file a motion to retax as authorized by NRS 18.110(4) or oppose Plaintiffs’ request for an award of costs as part of Plaintiffs’ Fee Motion.

9. Plaintiffs’ Fee Motion requests an award of attorney’s fees incurred from May 1, 2020, through April 30, 2023 in the total amount of \$144,694.00.

10. The Court finds that Plaintiffs assert the following four bases for an award of fees: NRS 22.100; the CC&Rs Section 25; EDCR 7.60, and NRS 18.010(2)(b).

11. Defendants did not dispute that Plaintiffs were entitled to an award of fees under NRS 22.100, but opposed any award under the CC&Rs, EDCR 7.60, and NRS 18.010(2)(b), and opposed the amount requested under all four bases.

### **CONCLUSIONS OF LAW**

1. NRS 18.110(4) requires a party contesting a memorandum of costs to file a motion to retax “[w]ithin three days after service of a copy of the memorandum...” The Lytle Trust did not do so or oppose the request for costs in Plaintiffs’ Fee Motion. Therefore, an award of costs in favor of the Plaintiffs is proper under NRS 18.005, 18.020, and 18.110 in the requested amount of \$3,896.51.

1           2.       While the Court does not find that NRS 18.010(2)(b) is a sound basis for an award of fees,  
2 the Court does find that NRS 22.100 and Section 25 of the CC&Rs are appropriate bases for an award of  
3 fees for the same reasons as set forth in the Second Fees Order and Amended Second Fees Order.

4           3.       Here, NRS 22.100 provides for an award of “reasonable expenses, including, without  
5 limitation, attorney’s fees, incurred by the party as a result of the contempt.” As a result of the procedural  
6 posture of the instant action, the Court finds that the expenses that Plaintiffs incurred, including attorney’s  
7 fees, are “reasonable” and are “a result of the [Defendants’] contempt.” NRS 22.100.

8           4.       Additionally, the CC&Rs provide that losing parties are to pay attorney’s fees that the  
9 Court “may fix.” As the Court discussed, the Plaintiffs in the instant case incurred reasonable expenses  
10 and attorney’s fees. The Court further finds that the Defendants are losing parties, pursuant to the CC&Rs,  
11 because their appeal and litigation, which involved the Contempt Order, was ultimately unsuccessful. As  
12 a result, the Defendants are obligated to pay for Plaintiffs’ fees under Section 25 of the CC&Rs.

13           5.       “After a court has determined that attorney’s fees are appropriate[,] it then must multiply  
14 the number of hours reasonably spent on the case by a reasonable hourly rate to reach what is termed the  
15 lodestar amount.” *Herbst v. Humana Health Ins.*, 105 Nev. 586, 590, 781 P.2d 762, 764 (1989).

16           6.       Defendants argue that the amount of fees requested by Plaintiffs should be reduced because  
17 they are calculated at a higher hourly rate than the actual billed rate. The Court finds that the rates billed  
18 by Plaintiffs’ counsel to the Plaintiffs are below-market. Further, the Court finds that the reasonable value  
19 of the service provided by Plaintiffs’ counsel is aligned with the requested rate. As a result, the Court finds  
20 that the requested fees, although higher than the billed amount, are a proper calculation of the number of  
21 hours reasonably spent multiplied by a reasonable hourly rate and shall be awarded pursuant to NRS  
22 22.100 and the original CC&Rs.

23           7.       However, the Court finds that the entries that Defendants label as “vague” are akin to block  
24 billing. As a result, and in conformity with the Second Fees Order and Amended Second Fees Order, the  
25 Court reduces the “vague” fees by 15%, or \$1,165.09 ( $\$7,767.25 \times 15\% = \$1,165.09$ ).

26           8.       The Court analyzed the Plaintiffs’ requested attorney’s fees utilizing the factors identified  
27 in *Brunzell v. Golden Gate Nat’l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), including the qualities  
28



1 of the advocate, the character of the work to be done, the work actually performed by the lawyer, and the  
2 result obtained.

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

8 10. Consequently, the Court GRANTS in Part and Denies in Part Plaintiffs' Motion for  
9 Attorney's Fees. The Court DENIES the motion with respect to \$1,165.09 for "vague" entries, but the  
10 Court GRANTS the motion with respect to all other fees. Therefore, Plaintiffs shall be awarded  
11 \$143,528.91 in attorney's fees and \$3,896.51 in costs.

12 **ORDER**

13 Based upon the Findings of Fact and Conclusions of Law above and the record before the Court,  
14 and good cause appearing therefore,

15 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiffs' Motion for  
16 Attorney's Fees and Costs filed on May 12, 2023 (Doc. No. 274) is GRANTED in Part and DENIED in  
17 Part. The Court DENIES the motion with respect to \$1,165.09 in attorney's fees, but the Court GRANTS  
18 the motion with respect to all other fees and costs.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are awarded  
20 in favor of Plaintiffs September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as  
21 Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie  
22 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution  
23 Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants,  
24 in the total aggregate amount of \$143,528.91 against Trudi Lee Lytle and John Allen Lytle, as Trustees  
25 of the Lytle Trust.

26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that costs are awarded in favor  
27 of Plaintiffs September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of  
28

the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, Husband and Wife, as Joint Tenants, in the total aggregate amount of \$3,896.51 against Trudi Lee Lytle and John Allen Lytle, as Trustees of the Lytle Trust.

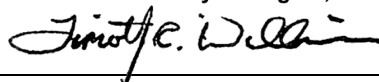
**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytle Trust is ordered to pay the attorney's fees and costs as ordered herein by certified check made payable to Christensen James & Martin Special Client Trust Account in the total amount of \$147,425.42 and delivered to Christensen James & Martin, within thirty (30) days of the Notice of Entry of this Order.

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

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

Dated this 18th day of August, 2023



JM

**F8C 524 1B18 244E**  
**Timothy C. Williams**  
**District Court Judge**

**Submitted by:**

**CHRISTENSEN JAMES & MARTIN**

By: /s/ Wesley J. Smith  
 Wesley J. Smith, Esq., Nev. Bar No. 11871  
 7440 W. Sahara Ave.  
 Las Vegas, NV 89117  
*Attorneys for Plaintiffs September Trust,  
 Zobrist Trust, Sandoval Trust, and  
 Dennis & Julie Gegen*

**Approved as to form and content by:**

**LEWIS ROCA ROTHGERBER CHRISTIE LLP**

By: /s/ Dan R. Waite  
 Dan R. Waite, Nevada Bar No. 4078  
 3993 Howard Hughes Parkway, Suite 600  
 Las Vegas, Nevada 89169  
 (702) 949-8200  
*Attorneys for Defendants, Trudi Lee Lytle  
 and John Allen Lytle, as Trustees of the Lytle  
 Trust*

**RE: A-16-747800-C Proposed Order Granting Plaintiffs Motion for Fees and Costs**

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

Thu 8/17/2023 9:43 AM

To: Wesley Smith <wes@cjmlv.com>

Cc: Horvath, Luz <LHorvath@lewisroca.com>

Approved. Thank you, Wes.

Dan

**Dan R. Waite**  
Partner

[dwaite@lewisroca.com](mailto:dwaite@lewisroca.com)  
D. 702.474.2638

**LEWIS  ROCA**

---

**From:** Wesley Smith <wes@cjmlv.com>

**Sent:** Thursday, August 17, 2023 9:34 AM

**To:** Waite, Dan R. <DWaite@lewisroca.com>

**Cc:** Horvath, Luz <LHorvath@lewisroca.com>

**Subject:** A-16-747800-C Proposed Order Granting Plaintiffs Motion for Fees and Costs

**CAUTION!** [EXTERNAL to Lewis Roca]

Dan,

Attached is the final version of the proposed Order Granting Plaintiffs' Motion for Attorney's Fees and Costs in Case No. A-16-747800-C. Please respond with your approval and permission to submit with your electronic signature. Thanks,

Wes Smith

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

*\* Licensed in Nevada, Washington & Utah*

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

002334

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1 **CSERV**

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 Marjorie B. Boulden Trust,  
7 Plaintiff(s)

CASE NO: A-16-747800-C

8 vs.

DEPT. NO. Department 16

9 Trudi Lytle, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 8/18/2023

16 "Daniel T. Foley, Esq." .

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17 Maren Foley .

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19 Wesley Smith

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23 Dan Waite

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24 Luz Horvath

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25 Christina Wang

christina.wang@fnf.com

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FNLG-Court-Filings-NV@fnf.com

27  
28

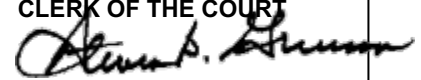
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48


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DAN R. WAITE (SBN 4078)  
ABRAHAM G. SMITH (SBN 13,250)  
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*Attorneys for Defendants 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,

Plaintiffs,

v.

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

Defendants.

SEPTEMBER TRUST, DATED MARCH 23,  
1972; GERRY R. ZOBRIST and JOLIN G.  
ZOBRIST, as Trustees of the Gerry R.  
Zobrist and Jolin G. Zobrist Family  
Trust; RAYNALDO G. SANDOVAL and  
JULIE MARIE SANDOVAL GEGEN, As  
Trustees of the Raynaldo G. and  
Evelyn A. Sandoval Joint Living and  
Devolution Trust Dated May 27, 1992;  
and DENNIS A. GEGEN and JULIE S.  
GEGEN, husband and wife, as joint  
tenants,

Plaintiffs,

v.

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

Defendants.

Case No. A-16-747800-C

Dep't No. 16

**CASE APPEAL STATEMENT**

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16



**CASE APPEAL STATEMENT**

1. Name of appellants filing this case appeal statement:

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

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

The Honorable Timothy C. Williams

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

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

DANIEL F. POLSENBERG

DAN R. WAITE

ABRAHAM G. SMITH

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

(702) 949-8200

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

*Attorneys for Respondents September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, as trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen, husband and wife, as joint tenants*

KEVIN B. CHRISTENSEN

WESLEY J. SMITH

LAURA J. WOLFF

CHRISTENSEN JAMES & MARTIN

7440 W. Sahara Avenue

Las Vegas, Nevada 89117

(702) 255-1718

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

5 N/A

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

8 Retained counsel

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

11 Retained counsel

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

15 N/A

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

18 "Complaint," filed December 8, 2016 in case no. A-16-  
19 7476800-C.

20 "Complaint," filed November 30, 2017 in case no. A-17-  
21 765372-C.

22 Case no. A-17-765372-C was consolidated with case no. A-16-  
23 7476800-C on February 28, 2018.

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

27 In other lawsuits, the defendant Lytle Trust obtained three  
28 judgments (totaling approx. \$1.8 million) against the Rosemere  
Estate Property Owners' Association ("Association"). The Lytle  
Trust is a member of the Association. This action stems from a

dispute over the validity and legal effect of abstracts of judgments the Lytle Trust recorded against certain residential property owned by other Association members. The district court (Judge M. Bailus) granted summary judgment in favor of plaintiffs and entered a permanent injunction against the Lytle Trust precluding action to enforce their judgments directly against the plaintiffs or their properties (the “May 2018 order”).

The present appeal arises after this Court affirmed an order of the district court (Judge T. Williams) holding the Lytle Trust in contempt for violating the May 2018 order. More specifically, following this Court’s affirmance of the fee orders that were subject to the appeal in Docket No. 81689 and denial of the writ petition related to the Contempt Order in Docket No. 84538, the district court awarded Plaintiffs (1) the September Trust, dated March 23, 1972, (2) Gerry R. Zobrist and Jolin G. Zobrist, as trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, (3) Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, as trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and (4) Dennis A. Gegen and Julie S. Gegen, husband and wife, as joint tenants \$143,528.91 in fees and \$3,896.51 in costs (the “August 2023 order”). Defendants appeal the August 2023 order.

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

*Lytle v. Boulden*, Case No. 73039  
*Lytle v. September Trust, Dated March 23, 1972*, Case No. 76198  
*Lytle v. September Trust, Dated March 23, 1972*, Case No. 77007  
*Lytle v. Disman*, Case No. 79753  
*Lytle v. Boulden*, Case No. 79776  
*Lytle v. September Trust, Dated March 23, 1972*, Case No. 81390  
*Lytle v. September Trust, Dated March 23, 1972*, Case No. 81689  
*Lytle v. District Court*, Case No. 84538

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

This case does not involve child custody or visitation.

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

3 In this long-running litigation, a settlement conference would  
4 not be productive.

5 Dated this 1st day of September, 2023.

6 LEWIS ROCA ROTHGERBER CHRISTIE LLP

7  
8 By: /s/Abraham G. Smith

9 DANIEL F. POLSENBERG (SBN 2376)

10 DAN R. WAITE (SBN 4078)

11 ABRAHAM G. SMITH (SBN 13,250)

12 3993 Howard Hughes Parkway, Suite 600

13 Las Vegas, Nevada 89169

14 (702) 949-8200

15 *Attorneys for Defendants Trudi Lee Lytle and*  
16 *John Allen Lytle, as Trustees of the Lytle*  
17 *Trust*  
18  
19  
20  
21  
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23  
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27  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 1st day of September, 2023, I served the foregoing "Case Appeal Statement" on counsel by the Court's electronic filing system to the persons and addresses listed below:

KEVIN B. CHRISTENSEN  
WESLEY J. SMITH  
LAURA J. WOLFF  
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[Wes@CJMLV.com](mailto:Wes@CJMLV.com)  
[LJW@CJMLV.com](mailto:LJW@CJMLV.com)

*Attorneys for September Trust,  
dated March 23, 1972, Gerry R.  
Zobrist and Jolin G. Zobrist, as  
trustees of the Gerry R. Zobrist  
and Jolin G. Zobrist Family Trust,  
Raynaldo G. Sandoval and Julie  
Marie Sandoval Gegen, as trustees  
of the Raynaldo G. and Evelyn A.  
Sandoval Joint Living and  
Devolution Trust dated May 27,  
1992, and Dennis A. Gegen and  
Julie S. Gegen, husband and wife,  
as joint tenants*

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[Christina.Wang@FNF.com](mailto:Christina.Wang@FNF.com)

*Attorneys for Robert Z. Disman and  
Yvonne A. Disman*

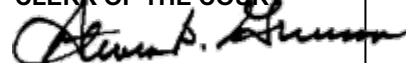
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*Attorneys for Marjorie B. Boulden,  
trustee of the Marjorie B. Boulden  
Trust, and Linda Lamothe and  
Jacques Lamothe, trustees of the  
Jacques & Linda Lamothe Living  
Trust*

/s/ Jessie M. Helm  
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

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**NOAS**

DANIEL F. POLSENBERG (SBN 2376)  
DAN R. WAITE (SBN 4078)  
ABRAHAM G. SMITH (SBN 13,250)  
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*Attorneys for Defendants 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,

Plaintiffs,

v.

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

Defendants.

SEPTEMBER TRUST, DATED MARCH 23,  
1972; GERRY R. ZOBRIST and JOLIN G.  
ZOBRIST, as Trustees of the Gerry R.  
Zobrist and Jolin G. Zobrist Family  
Trust; RAYNALDO G. SANDOVAL and  
JULIE MARIE SANDOVAL GEGEN, As  
Trustees of the Raynaldo G. and  
Evelyn A. Sandoval Joint Living and  
Devolution Trust Dated May 27, 1992;  
and DENNIS A. GEGEN and JULIE S.  
GEGEN, husband and wife, as joint  
tenants,

Plaintiffs,

v.

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

Defendants.

Case No. A-16-747800-C

Dep't No. 16

**NOTICE OF APPEAL**

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

1 Please take notice that defendants Trudi Lee Lytle and John Allen Lytle,  
2 as Trustees of the Lytle Trust appealed on September 1, 2023 from the August  
3 18, 2023, "Order Granting Plaintiffs' Motion for Attorney's Fees and Costs," and  
4 hereby appeal to the Supreme Court of Nevada from:

- 5 1. All judgments and orders in this case;
- 6 2. "Findings of Fact, Conclusions of Law and Order Granting in Part  
7 and Denying in Part Robert Z. Disman and Yvonne A. Disman's Motion for  
8 Attorney's Fees," filed August 17, 2023, notice of entry of which was served  
9 electronically on August 17, 2023 (Exhibit A); and
- 10 3. All judgments, rulings and interlocutory orders made appealable by  
11 the foregoing.

12 Dated this 18th day of September, 2023.

13 LEWIS ROCA ROTHGERBER CHRISTIE LLP

14  
15 By: /s/Abraham G. Smith

16 DANIEL F. POLSENBERG (SBN 2376)  
17 DAN R. WAITE (SBN 4078)  
18 ABRAHAM G. SMITH (SBN 13,250)  
19 3993 Howard Hughes Parkway, Suite 600  
20 Las Vegas, Nevada 89169  
21 (702) 949-8200

22 *Attorneys for Defendants Trudi Lee Lytle and*  
23 *John Allen Lytle, as Trustees of the Lytle*  
24 *Trust*  
25  
26  
27  
28



**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of September, 2023, I served the foregoing "Notice of Appeal" on counsel by the Court's electronic filing system to the persons and addresses listed below:

KEVIN B. CHRISTENSEN  
WESLEY J. SMITH  
LAURA J. WOLFF  
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[Wes@CJMLV.com](mailto:Wes@CJMLV.com)  
[LJW@CJMLV.com](mailto:LJW@CJMLV.com)

*Attorneys for September Trust,  
dated March 23, 1972, Gerry R.  
Zobrist and Jolin G. Zobrist, as  
trustees of the Gerry R. Zobrist  
and Jolin G. Zobrist Family Trust,  
Raynaldo G. Sandoval and Julie  
Marie Sandoval Gegen, as trustees  
of the Raynaldo G. and Evelyn A.  
Sandoval Joint Living and  
Devolution Trust dated May 27,  
1992, and Dennis A. Gegen and  
Julie S. Gegen, husband and wife,  
as joint tenants*

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Yvonne A. Disman*

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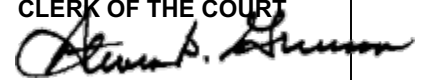
*Attorneys for Marjorie B. Boulden,  
trustee of the Marjorie B. Boulden  
Trust, and Linda Lamothe and  
Jacques Lamothe, trustees of the  
Jacques & Linda Lamothe Living  
Trust*

/s/ Jessie M. Helm  
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

# **EXHIBIT A**

## **to Notice of Appeal**

002346



**NEFF**  
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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

Plaintiffs,

vs.

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

Defendants.

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

AND ALL RELATED MATTERS

PLEASE TAKE NOTICE that on August 17, 2023, the Court entered a FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND ORDER GRANTING IN PART AND DENYING IN  
PART ROBERT Z. DISMAN AND YVONNE A. DISMAN'S MOTION FOR ATTORNEY'S

///

///

///

1 FEES in the above-entitled matter, a copy of which is attached as **Exhibit A**.

2 DATED this 17<sup>th</sup> day of August, 2023.

3 FIDELITY NATIONAL LAW GROUP

4  
5 /s/ Christina H. Wang

6 CHRISTINA H. WANG, ESQ.

7 Nevada Bar No. 9713

8 8363 W. Sunset Road, Suite 120

9 Las Vegas, Nevada 89113

10 *Attorneys for Counter-Defendants/*

11 *Cross-Claimants Robert Z. Disman*

12 *and Yvonne A. Disman*

**CERTIFICATE OF SERVICE**

The undersigned employee of Fidelity National Law Group, hereby certifies that she served a copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING IN PART AND DENYING IN PART 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.

Dan R. Waite, Esq.  
Joel D. Henriod, Esq.  
LEWIS ROCA ROTHGERBER  
CHRISTIE LLP  
3993 Howard Hughes Parkway, Suite  
600  
Las Vegas, Nevada 89169  
*Attorneys for Trudi Lee Lytle and John  
Allen Lytle as Trustees of the Lytle Trust*

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FOLEY & OAKES, PC  
1210 S. Valley View Boulevard, #208  
Las Vegas, Nevada 89102  
*Attorneys for Marjorie Boulden Trust and  
Linda and Jacques Lamothe Trust*

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

**DATED:** 08/17/2023

/s/ Lace Engelman

An employee of Fidelity National Law Group

# EXHIBIT A

002350

**ORDR**  
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,

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED MATTERS

Case No.: A-16-747800-C

Dept. No.: XVI

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

Date of Hearing: July 13, 2023

Time of Hearing: 9:05 a.m.

This matter came before the Court for a hearing on July 13, 2023, pursuant to Counter-Defendants/Cross-Claimants Robert Z. Disman and Yvonne A. Disman's (collectively referred to herein as, the "Dismans") Motion for Attorney's Fees ("Fee Motion") against Defendants/Counter-Claimants Trudi Lee Lytle and John Allen Lytle, Trustees of the Lytle Trust (collectively referred to herein as, the "Lyttles"), filed on May 12, 2023. The Lyttles filed an Opposition to the Fee Motion ("Opposition") on June 13, 2023. The Dismans filed a Reply in Support of the Fee Motion ("Reply") on July 6, 2023.

Christina H. Wang, Esq. of Fidelity National Law Group appeared on behalf of the Dismans. Dan R. Waite, Esq. of Lewis Roca Rothgerber Christie LLP appeared on behalf of the Lytles. Additionally, in consolidated Case No. A-17-765372-C, Wesley J. Smith, Esq. of Christensen James & Martin appeared on behalf of Plaintiffs September Trust, dated March 23, 1972, Gerry R. Zobrist and Jolin G. Zobrist, Trustees of the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, Raynaldo G. Sandoval and Julie Marie Sandoval Gegen, Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and Devolution Trust dated May 27, 1992, and Dennis A. Gegen and Julie S. Gegen. (collectively referred to herein as, "Plaintiffs").

Following the hearing, the Court took the Fee Motion under advisement and subsequently issued a Minute Order on August 4, 2023, regarding its decision. The Minute Order is hereby incorporated by reference. The Court, having reviewed the record, the points and authorities set forth in the Motion, Opposition, and Reply, considered the oral arguments of counsel and good cause appearing therefore, makes the following Findings of Fact, Conclusions of Law and Order.

### **FINDINGS OF FACT**

1. The previous orders of the Court in these consolidated cases, including, but not limited to, the following orders, are hereby incorporated by reference:

a. July 25, 2017, Order Granting Motion to Alter or Amend Findings of Fact and Conclusions of Law (the "July 2017 Order").

b. May 24, 2018, Order Granting Motion for Summary Judgment or, in the Alternative, Motion for Judgment on the Pleadings and Denying Countermotion for Summary Judgment (the "May 2018 Order").

c. May 22, 2020, 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").

d. August 11, 2020, Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's Fees and Costs, as amended by subsequent Order Granting Plaintiffs'



1 Motion to Amend Order Granting in Part and Denying in Part Plaintiffs' Motion for Attorney's  
2 Fees and Costs Pursuant to NRCP 52(b) (collectively referred to herein as, the "August 2020  
3 Fee Order").

4 2. On May 22, 2020, the Court entered the Contempt Order.

5 3. On June 22, 2020, the Lytles appealed the Contempt Order to the Nevada  
6 Supreme Court, which appeal was subsequently dismissed on the basis of a jurisdictional defect.

7 4. On April 11, 2022, the Lytles once again sought review of the Contempt Order  
8 by the Nevada Supreme Court, this time through a Petition for Writ of Mandamus or,  
9 Alternatively, Prohibition.

10 5. On December 29, 2022, the Nevada Supreme Court affirmed the Contempt Order  
11 through an Order Affirming in Docket No. 81689 and Denying Petition for a Writ of Mandamus  
12 in Docket No. 84538 (available at *Lytle v. September Trust*, Consolidated Case Nos. 81689 &  
13 84538, 523 P.3d 532 (Table), 2022 Nev. Unpub. LEXIS 912 (Nev. Dec. 29, 2022)).

14 6. On January 31, 2023, the Lytles filed a Petition for Rehearing, which the Nevada  
15 Supreme Court denied through an order dated February 13, 2023.

16 7. On March 13, 2023, the Lytles filed a Petition for En Banc Reconsideration,  
17 which the Nevada Supreme Court denied through an order dated March 27, 2023.

18 8. On April 24, 2023, the Nevada Supreme Court's Certificate of Judgment and  
19 Remittitur was filed in this case.

20 9. On May 12, 2023, the Dismans filed their Fee Motion requesting an award of  
21 attorney's fees in the amount of \$27,196.00 that they incurred from July 8, 2020, to May 12,  
22 2023.

23 10. The Fee Motion asserts the following three bases for an award of fees: NRS  
24 22.100; a Declaration of Covenants, Conditions and Restrictions governing the subdivision at  
25 issue in this case ("Original CC&Rs"); and NRS 18.010(2)(b).

26 11. The Lytles opposed the Fee Motion, arguing, among other things, that the  
27 Dismans were not parties to this Court's contempt proceedings, Contempt Order, or the  
28

subsequent Nevada Supreme Court appeals.

12. The Lytles also argue that in the event the Court decides to award fees, the amount of fees awarded should be reduced.

### **CONCLUSIONS OF LAW**

1. While the Court does not find that NRS 18.010(2)(b) is a sound basis for an award of fees, the Court does find that the Original CC&Rs and NRS 22.100 are appropriate bases for an award of fees.

2. Here, the Dismans litigated the issues pertaining to the Contempt Order and were real parties in interest during the appeal.

3. NRS 22.100 provides for an award of “reasonable expenses, including, without limitation, attorney’s fees, incurred by the party as a result of the contempt.” The Court finds that given the procedural posture of this case, most of the attorney’s fees that the Dismans incurred are “reasonable” and are “a result of the [Lytles’] contempt.” *See id.*

4. Additionally, Section 25 of the Original CC&Rs provide that “[i]n 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.” The Court finds that the Lytles are the losing parties pursuant to the Original CC&Rs because their appeal and litigation, which involved the Contempt Order, were ultimately unsuccessful. As a result, the Lytles are obligated to pay for the Dismans’ fees under Section 25 of the Original CC&Rs.

5. However, the Court finds that the fees relating to the “dog incident” (\$666.00) involve an unrelated matter that is outside the scope of the instant issues.

6. Further, in conformity with the Court’s August 2020 Fee Order regarding Plaintiffs, the Court reduces the block-billed fees, which the Lytles argue amount to \$21,018.00, by \$3,152.70 ( $\$21,018.00 \times 15\% = \$3,152.70$ ).

7. The Court analyzed the Dismans’ requested attorney’s fees utilizing the factors identified in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969),

1 including the qualities of the advocate, the character of the work to be done, the work actually  
2 performed by the lawyer, and the result obtained.

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

8 9. Consequently, the Court GRANTS in Part and DENIES in Part the Fee Motion.  
9 The Court grants the motion, except for the fees associated with the dog incident (\$666.00) and  
10 the block-billed entries, which the Court reduces by 15% (\$3,152.70) in conformity with the  
11 Court's August 2020 Fee Order. Therefore, the Dismans shall be awarded \$23,377.30 in  
12 attorney's fees.

13 **ORDER**

14 Based upon the Findings of Fact and Conclusions of Law above and the record before  
15 the Court, and good cause appearing therefore,

16 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Dismans' Fee  
17 Motion is GRANTED in Part and DENIED in Part. The Court grants the motion, except for the  
18 fees associated with the dog incident (\$666.00) and the block-billed entries, which the Court  
19 reduces by 15% (\$3,152.70) in conformity with the Court's August 2020 Fee Order.

20 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that attorney's fees are  
21 awarded in favor of the Dismans in the total amount of \$23,377.30 against the Lytles.

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Lytles are  
23 ordered to pay the attorney's fees as ordered herein by certified check made payable to Fidelity  
24 National Law Group in the amount of \$23,377.30 and delivered to Fidelity National Law Group  
25 within thirty (30) days of the Notice of Entry of this Order.

26 ///

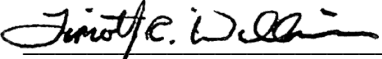
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1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Findings of  
 2 Fact shall be treated as Conclusions of Law and the Conclusions of Law shall be treated as  
 3 Findings of Fact to any extent necessary to effectuate the intent of this Order.

4 **IT IS SO ORDERED.**

5 DATED this \_\_\_\_ day of \_\_\_\_\_, 2023.

6 Dated this 17th day of August, 2023

7 

8 DISTRICT COURT JUDGE JM

9 4DE B6F 07EB 874E

Timothy C. Williams  
 District Court Judge

10 Respectfully submitted by:

11 FIDELITY NATIONAL LAW GROUP

Approved as to form and content by:

12 LEWIS ROCA ROTHGERBER CHRISTIE  
 LLP

13 /s/ Christina H. Wang

14 CHRISTINA H. WANG, ESQ.  
 15 Nevada Bar No. 9713  
 8363 W. Sunset Road, Suite 120  
 16 Las Vegas, Nevada 89113  
 Attorneys for Counter-Defendants/  
 17 Cross-Claimants Robert Z. Disman  
 and Yvonne A. Disman

/s/ Dan R. Waite

DAN R. WAITE, ESQ.  
 Nevada Bar No. 4078  
 3993 Howard Hughes Parkway, Suite 600  
 Las Vegas, Nevada 89169  
 Attorneys for Defendants/Counter-Claimants  
 Trudi Lee Lytle and John Allen Lytle, Trustees  
 of the Lytle Trust

**Engelman, Lace**

---

**From:** Wang, Christina  
**Sent:** Wednesday, August 16, 2023 4:31 PM  
**To:** Waite, Dan R.  
**Cc:** Engelman, Lace  
**Subject:** RE: Lytle v. Disman

Hi Dan,

All of your changes are acceptable. We will make the changes, affix your e-signature and submit to the Court.

Thank you,

Christina

Christina H. Wang  
 Litigation Counsel  
 Fidelity National Law Group  
 8363 W. Sunset Road, Suite 120  
 Las Vegas, Nevada 89113  
 702-667-3000 (Main)  
 702-667-3002 (Direct)  
 702-938-8721 (Fax)  
[christina.wang@fnf.com](mailto: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.*

*THIS ELECTRONIC MAIL MESSAGE AND ANY ATTACHMENTS ARE INTENDED ONLY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT AN INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THIS E-MAIL TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS E-MAIL MESSAGE IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY REPLYING TO THIS MESSAGE OR BY TELEPHONE. THANK YOU.*

---

**From:** Waite, Dan R. <DWaite@lewisroca.com>  
**Sent:** Tuesday, August 15, 2023 9:45 AM  
**To:** Wang, Christina <Christina.Wang@fnf.com>  
**Cc:** Engelman, Lace <Lace.Engelman@fnf.com>  
**Subject:** RE: Lytle v. Disman

**IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.**

Good morning Christina,

I have only a few changes to your proposed order (see redlines attached). The most substantive change is to extend the time for payment from 10 to 30 days, which is intended to coincide with the deadline for filing an appeal. The Lytles have not decided to file an appeal but they should not be put to the risk of being in contempt of a court order while deciding whether to exercise rights afforded to them by rule. If these changes are acceptable, you are authorized to finalize the order, affix my e-signature, and submit to Judge Williams. Thanks,

Dan

**Dan R. Waite**  
Partner

[dwaite@lewisroca.com](mailto:dwaite@lewisroca.com)  
D. 702.474.2638

**LEWIS  ROCA**

---

**From:** Wang, Christina <[Christina.Wang@fnf.com](mailto:Christina.Wang@fnf.com)>  
**Sent:** Friday, August 11, 2023 2:15 PM  
**To:** Waite, Dan R. <[DWaite@lewisroca.com](mailto:DWaite@lewisroca.com)>  
**Cc:** Engelman, Lace <[Lace.Engelman@fnf.com](mailto:Lace.Engelman@fnf.com)>  
**Subject:** Lytle v. Disman

**CAUTION!** [EXTERNAL to Lewis Roca]

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This message was sent securely using Zix®

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Good afternoon,

Attached for your review is the proposed order regarding the Dismans' motion for attorney's fees. To the extent that you have revisions, please provide them in redline format for ease of reference. My client is also in the process of reviewing this so there may be some revisions on our end as well.

Thank you,

Christina

Christina H. Wang  
Litigation Counsel  
Fidelity National Law Group  
8363 W. Sunset Road, Suite 120  
Las Vegas, Nevada 89113  
702-667-3000 (Main)  
702-667-3002 (Direct)  
702-938-8721 (Fax)  
[christina.wang@fnf.com](mailto: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.*

*THIS ELECTRONIC MAIL MESSAGE AND ANY ATTACHMENTS ARE INTENDED ONLY FOR THE USE OF THE ADDRESSEE(S) NAMED ABOVE AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT AN INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THIS E-MAIL TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU RECEIVED THIS E-MAIL MESSAGE IN ERROR, PLEASE IMMEDIATELY NOTIFY THE SENDER BY REPLYING TO THIS MESSAGE OR BY TELEPHONE. THANK YOU.*

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Marjorie B. Boulden Trust,  
7 Plaintiff(s)

CASE NO: A-16-747800-C

8 vs.

DEPT. NO. Department 16

9 Trudi Lytle, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Findings of Fact, Conclusions of Law and Order was served via the  
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled  
15 case as listed below:

Service Date: 8/17/2023

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27	
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002359

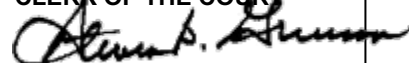
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Emily Kapolnai	ekapolnai@lewisroca.com
Mia Hurtado	mia.hurtado@fnf.com



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50


**ASTA**

DANIEL F. POLSENBERG (SBN 2376)  
DAN R. WAITE (SBN 4078)  
ABRAHAM G. SMITH (SBN 13,250)  
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[ASmith@LewisRoca.com](mailto:ASmith@LewisRoca.com)

*Attorneys for Defendants 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,

Plaintiffs,

v.

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

Defendants.

SEPTEMBER TRUST, DATED MARCH 23,  
1972; GERRY R. ZOBRIST and JOLIN G.  
ZOBRIST, as Trustees of the Gerry R.  
Zobrist and Jolin G. Zobrist Family  
Trust; RAYNALDO G. SANDOVAL and  
JULIE MARIE SANDOVAL GEGEN, As  
Trustees of the Raynaldo G. and  
Evelyn A. Sandoval Joint Living and  
Devolution Trust Dated May 27, 1992;  
and DENNIS A. GEGEN and JULIE S.  
GEGEN, husband and wife, as joint  
tenants,

Plaintiffs,

v.

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

Defendants.

Case No. A-16-747800-C

Dep't No. 16

**CASE APPEAL STATEMENT**

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

CASE APPEAL STATEMENT

1. Name of appellants filing this case appeal statement:

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

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

The Honorable Timothy C. Williams

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

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

DANIEL F. POLSENBERG

DAN R. WAITE

ABRAHAM G. SMITH

LEWIS ROCA ROTHGERBER CHRISTIE LLP

3993 Howard Hughes Parkway, Suite 600

Las Vegas, Nevada 89169

(702) 949-8200

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

*Attorneys for Respondents Robert Z. Disman and Yvonne A. Disman*

CHRISTINA H. WANG

FIDELITY NATIONAL LAW GROUP

8363 W. Sunset Road, Suite 120

Las Vegas, Nevada 89113

(702) 667-3000

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

N/A

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

Retained counsel

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

Retained counsel

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

N/A

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

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

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

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

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

In other lawsuits, the defendant Lytle Trust obtained three judgments (totaling approx. \$1.8 million) against the Rosemere Estate Property Owners’ Association (“Association”). The Lytle Trust is a member of the Association. This action stems from a dispute over the validity and legal effect of abstracts of judgments the Lytle Trust recorded against certain residential property owned by other Association members. The district court (Judge M. Bailus) granted summary judgment in favor of plaintiffs and entered a permanent injunction against the Lytle Trust precluding action to enforce their judgments directly against the plaintiffs or their properties (the “May 2018 order”).

The present appeal arises after this Court affirmed an order of the district court (Judge T. Williams) holding the Lytle Trust in contempt for violating the May 2018 order. More specifically, following this Court's affirmance of the fee orders that were subject to the appeal in Docket No. 81689 and denial of the writ petition related to the Contempt Order in Docket No. 84538, the district court awarded counter-defendants/cross-claimants Robert Z. Disman and Yvonne A. Disman \$23,377.30 in fees. Appellants have also appealed the district court's award to certain other plaintiffs of \$143,528.91 in fees and \$3,896.51 in costs, docketed as Case No. 87237. This appeal follows.

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

*Lytle v. Boulden*, Case No. 73039

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

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

*Lytle v. Disman*, Case No. 79753

*Lytle v. Boulden*, Case No. 79776

*Lytle v. September Trust, Dated March 23, 1972*, Case No. 81390

*Lytle v. September Trust, Dated March 23, 1972*, Case No. 81689

*Lytle v. District Court*, Case No. 84538

*Lytle v. September Trust, Dated March 23, 1972*, Case No. 87237

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

This case does not involve child custody or visitation.

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

Undersigned counsel is unaware of any circumstances that make settlement impossible.

1 Dated this 18th day of September, 2023.

2 LEWIS ROCA ROTHGERBER CHRISTIE LLP

3  
4 By: /s/Abraham G. Smith

5 DANIEL F. POLSENBERG (SBN 2376)

6 DAN R. WAITE (SBN 4078)

7 ABRAHAM G. SMITH (SBN 13,250)

8 3993 Howard Hughes Parkway, Suite 600

9 Las Vegas, Nevada 89169

10 (702) 949-8200

11 *Attorneys for Defendants Trudi Lee Lytle and*  
12 *John Allen Lytle, as Trustees of the Lytle*  
13 *Trust*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of September, 2023, I served the foregoing "Case Appeal Statement" on counsel by the Court's electronic filing system to the persons and addresses listed below:

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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,  
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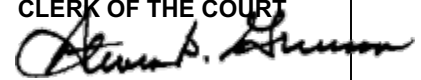
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Jacques Lamothe, trustees of the  
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/s/ Jessie M. Helm  
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

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**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

Plaintiffs,

**SATISFACTION OF JUDGMENT**

vs.

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

Defendants.

AND ALL RELATED MATTERS

On August 17, 2023, the Court entered a Findings of Fact, Conclusions of Law and Order Granting in Part and Denying in Part Robert Z. Disman and Yvonne A. Disman's Motion for Attorney's Fees (the "Judgment"), which included a monetary award in favor of Counter-Defendants/Cross-Claimants Robert Z. Disman and Yvonne A. Disman (collectively referred to herein as, the "Dismans") and against Defendants/Counter-Claimants Trudi Lee Lytle and John Allen Lytle, Trustees of the Lytle Trust (collectively referred to herein as, the "Lyttles") in the amount of \$23,377.30.

1 On October 9, 2023, the Dismans and the Lytles reached a settlement agreement  
2 regarding the Judgment. Pursuant to the terms of the settlement agreement, the Judgment has  
3 since been fully satisfied.

4 DATED this 19<sup>th</sup> day of October, 2023.

5 FIDELITY NATIONAL LAW GROUP

6  
7 /s/ Christina H. Wang

8 CHRISTINA H. WANG, ESQ.

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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 **SATISFACTION OF JUDGMENT** 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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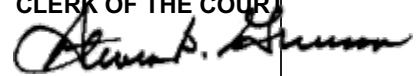
**DATED:** 10/19/2023

/s/ Lace Engelman

An employee of Fidelity National Law Group

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1 RTRAN

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3  
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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 MARJORIE B. BOULDEN TRUST,  
9 Plaintiffs,

CASE#: A-16-747800-C  
DEPT. XVI

10 vs.

11 TRUDI LYTLE,

12 Defendants.

13  
14 BEFORE THE HONORABLE TIMOTHY C. WILLIAMS,  
15 DISTRICT COURT JUDGE  
16 THURSDAY, NOVEMBER 2, 2023

17 **RECORDER'S TRANSCRIPT OF HEARING:**  
18 **DEFENDANTS' MOTION TO (1) APPROVE CASH SUPERSEDEAS**  
19 **BOND AND (2) AFFIRM STAY PENDING APPEAL**

20 APPEARANCES:

21 For the Plaintiff: WESLEY J. SMITH, ESQ.

22 For the Defendant: DAN R. WAITE, ESQ.

24 RECORDED BY: MARIA GARIBAY, COURT RECORDER  
25 TRANSCRIBED BY: PETRA ZIROS TRANSCRIPTION

1 Las Vegas, Nevada, Thursday, November 2, 2023

2  
3 [Case called at 9:40 a.m.]

4 THE COURT: We're going to move on. Next up, page 8 of  
5 the calendar and that's the Marjorie B. Boulden Trust vs. Trudi Lytle  
6 matter. Good morning, gentlemen. It seems like this case has been  
7 with me for a long time.

8 MR. WAITE: Looks like it's your oldest at least on this  
9 morning.

10 THE COURT: Yes. And anyway, yeah, it is. I think there's  
11 only a few cases I probably had longer. One might be *In Re: Kitec*.  
12 And there's a reason for that.

13 It didn't deal specifically with the appellate issues, but we  
14 had a couple of sub classes go to trial. But the real -- one issue that  
15 took a long time was the repair protocol that we had in place. And  
16 we've not -- we've repaired over 27,000 homes.

17 MR. WAITE: Wow.

18 THE COURT: With new plumbing systems.

19 MR. WAITE: Yeah, yeah. The Kitec. Yeah.

20 THE COURT: Yeah. That was a --

21 MR. WAITE: That was a while ago.

22 THE COURT: It was, yeah. It was a long time ago. But  
23 anyway, we have on calendar today defendant's motion to approve  
24 cash supersedeas bond and to affirm stay pending appeal. And then  
25 we have -- I think that we have -- this came down recently, right?

1 THE LAW CLERK: Yeah. October 11.

2 THE COURT: October 11th. We have an order dismissing  
3 appeal pursuant to stipulation of the parties. Where does this all put  
4 us?

5 MR. WAITE: So, Your Honor, the dismissal was as to the  
6 Disman party. But to put it in context, you issued fee awards in  
7 favor of Mr. Smith's clients, the four property owners.

8 THE COURT: Right.

9 MR. WAITE: And also a separate property owner, the  
10 Dismans, that was represented by Ms. Wang. If you'll recall Ms.  
11 Wang being in here at some of the prior hearings. We took an  
12 appeal from those orders and then settled with Ms. Wang's client.

13 THE COURT: Okay. I understand. All right. And let's go  
14 ahead and move to this matter. It appears to be relatively straight  
15 forward and simple.

16 MR. WAITE: Yeah. We haven't made appearances yet,  
17 Your Honor. Do you --

18 THE COURT: Oh yeah. I'm sorry.

19 MR. WAITE: Dan Waite for the defendant Lytle. Sorry,  
20 Wes, I should have let you go first.

21 MR. SMITH: It's no -- no problem. Wesley Smith on  
22 behalf of the plaintiffs.

23 THE COURT: All right. And Mr. Waite?

24 MR. WAITE: Thank you, Your Honor. So I think that the  
25 motion as it's before you presents three different issues for your

1 determination. One, what I'll refer to as the post-judgment interest  
2 issue. Two, the offset issue and three, the partial or full stay of the  
3 fee award.

4 And, Your Honor, to facilitate my argument today, I just  
5 have a one page handout, if I could approach?

6 THE COURT: Oh, you sure can.

7 MR. WAITE: Thank you.

8 THE COURT: Thank you, sir.

9 MR. WAITE: Thank you. So, Your Honor, as we  
10 mentioned in the briefs, we don't dispute that the practice in Nevada  
11 used to be -- I mean, we've been around for a long time --

12 THE COURT: Yeah.

13 MR. WAITE: -- truly include interest. But in 2015, the  
14 Legislature saw fit to add this statute 28.037 and subsection (1),  
15 which you'll notice the title of this statute is a limitation on amount  
16 of bond. And you can see the highlighted portions there.

17 THE COURT: And I -- I didn't look at the necessarily the  
18 legislative history to that -- to that statute. But one of the things I  
19 was thinking about -- and I don't know if this came up on the  
20 discussions, but there is an issue regarding access to justice; right?

21 And if you understand where I'm going because, I mean,  
22 supersedeas bonds are tough. They are. But it's the law. But I was  
23 thinking about it because sometimes, you know, you don't want that  
24 to stop an appeal.

25 MR. WAITE: Your Honor, you're right on. In fact, jumping



1 to the legislative history, I looked extensively --

2 THE COURT: Right.

3 MR. WAITE: -- at the legislative history. Some of it we put  
4 in the briefs.

5 THE COURT: Right.

6 MR. WAITE: As a business court judge you will appreciate  
7 that what prompted the statute wasn't this case. It was the case  
8 where the juries award a bazillion dollars --

9 THE COURT: Exactly.

10 MR. WAITE: -- and then to get a stay of that, the company  
11 had the defendant, judgment debtor, has to post a bazillion plus  
12 interest. And Senator Rosenberg I think was --

13 MR. SMITH: No.

14 MR. WAITE: -- I put it in -- what is it?

15 MR. SMITH: Roberson.

16 MR. WAITE: Roberson.

17 THE COURT: Roberson.

18 MR. WAITE: That's correct. Senator Roberson, who was  
19 the sponsor of the bill, you will find it as a business court judge  
20 interesting and appropriate, that he said that this bill that limited the  
21 interest or excluded post-judgment interest was needed to make  
22 Nevada -- to -- it was essential to improving business climate in  
23 Nevada.

24 THE COURT: Right.

25 MR. WAITE: Was essential to improving the business

1 climate in Nevada and to stay competitive with other states who  
2 were putting caps. But you can see --

3 THE COURT: I get it. I do.

4 MR. WAITE: -- yeah. But you can see that --

5 THE COURT: Without even going in into the legislative  
6 history, when I looked at the --

7 MR. WAITE: Statute.

8 THE COURT: -- statute, I said it's obvious to me --

9 MR. WAITE: Yeah. Right.

10 THE COURT: -- why this is here.

11 MR. WAITE: Right.

12 THE COURT: You know?

13 MR. WAITE: And so interestingly enough, Your Honor,  
14 the language is clear and unambiguous. We don't even need to get  
15 into the --

16 THE COURT: Right.

17 MR. WAITE: -- into the legislative history.

18 THE COURT: I know. And I agree with that 100 percent.  
19 And normally we don't.

20 MR. WAITE: Yeah.

21 THE COURT: But when I looked at the statute I said to  
22 myself I know why this is here.

23 MR. WAITE: Yeah. But when you get into the legislative  
24 history it is crystal clear. It came up ---

25 THE COURT: Yeah.

1 MR. WAITE: -- it was rejected. In other words, there  
2 was actually an amendment to add interest and it was defeated and  
3 this language remained.

4 Furthermore, Your Honor, there's a history in this case.  
5 There's a lot of this case we've put forth in our briefs --

6 THE COURT: Oh, there's a tremendous history --

7 MR. WAITE: -- it's five other times --

8 THE COURT: -- to this case.

9 MR. WAITE: Well, I mean, a history of posting bonds  
10 without any interest in this case --

11 THE COURT: Right.

12 MR. WAITE: -- In order to get a stay.

13 THE COURT: I understand.

14 MR. WAITE: So that -- that seems to be clear. Let me  
15 move on to the offset issue, Your Honor. First of all, I think that the  
16 offset issue that is presented by the plaintiffs is backwards. In this  
17 Court they're entitled to receive money from the Lytles.

18 The obligation to pay money is in the Judge Kishner  
19 action. So in essence, they're asking this Court, Your Honor, to  
20 relieve them of an obligation that was imposed by Judge Kishner.  
21 So they're in -- they're in front of the wrong judge as it relates to  
22 their offset argument.

23 Second of all, Your Honor, as a matter of law and this is  
24 really where I think it gets resolved, offset -- the concept of offset  
25 doesn't even apply here or, quite candidly, with Judge Kishner, if

1 they were to go there because there is no mutuality of indebtedness.  
2 That's a term of art that's in the Nevada Supreme Court cases.  
3 There is no mutuality of indebtedness.

4           Offset, Your Honor, applies -- I owe you five dollars, you  
5 owe me three dollars, offset says I pay you two dollars and you  
6 don't owe me anything.

7           But the mutuality is -- it's between the same parties. Your  
8 Honor, if you look at the bottom of this statue, this handout here that  
9 I gave to you.

10           THE COURT: Yes.

11           MR. WAITE: There's a chart there that I think is important  
12 to this offset issue. If you look at the fee award that you issued, the  
13 creditor, the benefactor of that award, is Mr. Smith's clients. The  
14 September Trust, the Zobrist Trust, the Sandoval Trust and Mr. and  
15 Mrs. Gegen. And the Lytle Trust is the debtor.

16           If we go to the Judge Kishner fee award, which is the one  
17 that they want to offset, the Lytles are the creditor there. But it's the  
18 Rosemere Estate property owners association that is the debtor  
19 there.

20           In fact, Mr. Smith did a wonderful job in front of Judge  
21 Kishner. I tried to convince Judge Kishner to make the award of fees  
22 there joint and severally against the association and his clients, who  
23 were intervenors in that action.

24           And Mr. Smith argued against that and he prevailed. But  
25 now he wants to have an offset as if Judge Kishner had made the

1 award against them. They're -- it's not the same parties. We don't  
2 have a mirror of the parties here as this chart shows.

3 So offset just simply doesn't apply as a matter of law  
4 because there is no mutuality of indebtedness.

5 We cited a very favorable case for us, Your Honor, a 2021  
6 published Nevada Court of Appeals case. It's the *Harrison vs.*  
7 *Ramparts* case that we cited on page 14 of our reply brief, that is  
8 essentially this case.

9 Where the Supreme Court, or excuse me, the Court of  
10 Appeals said, you don't have the same partners. The debt isn't  
11 owed to and from.

12 There's not the creditor and the debtor aren't mirrors of  
13 each other. And that's the same situation here.

14 Notwithstanding that, Your Honor, if you were to rule in  
15 Mr. Smith's favor here, his clients favor that the offset would apply,  
16 then our argument would be, okay, if you're going to apply an  
17 offset, apply them all because the association owes the Lytles over 2  
18 million dollars.

19 With the Judge Kishner order, now it's over \$2,128,000.  
20 And they only want you to offset the 128,000 part, not the 2 million  
21 part.

22 So it would -- with all due respect, Your Honor, it would  
23 be arbitrary and capricious to only apply one offset and not all that  
24 applies. So moving to the third issue, the partial stay of the fee  
25 award.

1           Your Honor, the notice of appeal that my clients filed is an  
2 appeal from this Court's fee award. And with all due respect, my  
3 clients feel that both the amount and the basis for the award is error  
4 and they will seek judicial review, appellate review.

5           THE COURT: And I think this is important to point out  
6 because at the end of the day, what that is, like it started at the very  
7 beginning, that's an access of justice issue.

8           And as a trial judge I understand I don't have the final  
9 word. And Mr. Waite, you've been in front of me many, many times  
10 and you know that I understand that first of all.

11           And secondly if -- if I didn't get it right then it's up to the  
12 Supreme Court to say that and I respect that. And I respect every  
13 party that walks in here their right to, you know, have access to  
14 justice and go to the next level.

15           MR. WAITE: Yeah, Your Honor, you said that many, many  
16 times and I truly believe it.

17           THE COURT: Yes.

18           MR. WAITE: I get the impression and you've -- with all  
19 due respect, you've been around long enough.

20           THE COURT: Long enough.

21           MR. WAITE: That it doesn't bother you.

22           THE COURT: It doesn't bother me, you know?

23           MR. WAITE: And I get that.

24           THE COURT: Yeah.

25           MR. WAITE: And -- and appreciate that as well.

1 THE COURT: And just as important though and I think I  
2 have to couple that with this fact. First it doesn't bother me, but I  
3 respect the rights of any party to go to the next level and ask that  
4 question. Because that's their right. Now sometimes the Appellate  
5 Court and/or Supreme Court will say well, Judge Williams is right. I  
6 was right.

7 Sometimes they say well, Judge Williams, he should have  
8 done it this way.

9 MR. WAITE: Yeah.

10 THE COURT: That's the process.

11 MR. WAITE: But totally as an aside --

12 THE COURT: Yeah.

13 MR. WAITE: -- this is, that's a very interesting issue.

14 THE COURT: That is.

15 MR. WAITE: And be one of first impression in this regard.

16 THE COURT: Yeah.

17 MR. WAITE: Best that I can tell, Your Honor, Your Honor  
18 is the first time that I can find anywhere in the United States where a  
19 Court awarded a fee rate that was higher than the contracted  
20 amount with their own client and that they've ever charged  
21 previously.

22 And so that will be an interesting issue. But Mr. Smith's  
23 argument that prevailed with you was, well, but it's the market rate.  
24 It's the prevailing rate.

25 THE COURT: Right.

1 MR. WAITE: He just charges too little money.

2 THE COURT: Yeah.

3 MR. WAITE: And so it's going to be a very interesting  
4 issue of impression. But coming back to this, Your Honor, we know  
5 what a super --

6 THE COURT: That is a fascinating issue.

7 MR. WAITE: Yeah.

8 THE COURT: It really is.

9 MR. WAITE: Yeah.

10 THE COURT: It's kind of -- you know what it reminds me  
11 of? And it's kind of like this, what do you do, like, in a -- in the  
12 contingency fee cases? Kind of like, you know, and there's an issue  
13 there regarding what the rate is and so on and so on. But no, it's  
14 fascinating.

15 MR. WAITE: Yeah.

16 THE COURT: It really is.

17 MR. WAITE: So the supersedeas bond, Your Honor, as the  
18 United States Supreme Court said in the *Chesapeake* case that we  
19 cited at page 17 of our reply brief, a supersedeas bond stays  
20 execution of quote "the judgment which is under review" end quote.

21 And the judgment, which is under review here, is your  
22 August 18th, 2023, fee order.

23 THE COURT: Right.

24 MR. WAITE: And the Lytles are ready, willing and able to  
25 post the entire fee award amount and in return are entitled to a stay



1 of the entire fee.

2 THE COURT: I understand. Because they want -- want the  
3 issue addressed --

4 MR. WAITE: Right.

5 THE COURT: -- with the Nevada Supreme Court or Court  
6 of Appeals. I get it.

7 MR. WAITE: And there are reasons why, even though in  
8 the briefing portions and so forth we -- we acknowledge they're  
9 entitled to some award. We disagree with the amount and the basis,  
10 but --

11 THE COURT: I get it.

12 MR. WAITE: -- but there are reasons why the entirety of  
13 the fee award should be stayed if you're interested in hearing that.  
14 But that's what we are asking. We appealed from the order. The  
15 order should be stayed.

16 So, Your Honor, in sum, no post-judgment interest  
17 pursuant to statute, legislative history and the law of this case. No  
18 offset. We don't have mutuality of indebtedness, and no partial  
19 stay.

20 The Lytles are posting a bond for the full award. The full  
21 award should be stayed. Thank you, Your Honor.

22 THE COURT: You're welcome.

23 Sir?

24 MR. SMITH: Good morning, Your Honor. Wesley Smith  
25 on behalf of the plaintiffs. I'm going to go in reverse order and I'm

1 not going to take very much of your time today. We're going to talk  
2 first about the amount. To be clear, the plaintiffs are not disputing  
3 the right to appeal and we're not disputing the right to post cash in  
4 lieu of a supersedeas bond, a supersedeas surety bond.

5 THE COURT: I understand.

6 MR. SMITH: So what we're talking about today is, what is  
7 the appropriate scope of the stay that would be granted by this  
8 Court and how much should be deposited in order to achieve that  
9 stay.

10 If you recall, when we were at the hearing and the briefing  
11 on that fee order, there was no dispute as to an award of fees under  
12 NRS 22.100.

13 So although they are disputing a basis for fees under  
14 other statutes or under the CC&Rs, maybe they'll prevail on that on  
15 appeal, but it's not going to change the fact that there is an award  
16 under NRS 22.100, which is appropriate, which they consented to.

17 And by consenting to it and by not opposing it, they've  
18 waived their right to appeal that issue before any appellate court.

19 Second, not only do they not appeal or not dispute an  
20 award in concept, but they did not dispute certain amounts that we  
21 had requested and which this Court granted.

22 If you look at the briefing it becomes clear that the total  
23 amount of all of their dollar amount disputes under their briefing  
24 was \$68,010.48.

25 Now, this Court actually agreed with \$1,165.09. And so

1 the total amount that they could even dispute on appeal is  
2 \$66,845.39. That's the total amount at issue in their appeal.

3 Now, filing a notice of appeal cannot change the fact that  
4 what they actually argued about below at the trial court level. So if  
5 they are 100 percent successful at the Supreme Court, the net result  
6 will be that they would get a reduction of that amount, \$66,845.39.

7 There will still be an award for the remainder, which totals  
8 over \$80,000. It would be inappropriate to stay something that  
9 couldn't possibly be changed. And that's why the offset issue  
10 becomes important.

11 We weren't asking you to grant an offset today. We  
12 brought up the issue to demonstrate why this is important to us.  
13 Because although the -- the fee order in the other case is against the  
14 association, that order also says that the association shall make an  
15 assessment against the nine property owners, including the four  
16 plaintiffs that I represent here today.

17 So they are going to be paying. And so they're asking  
18 essentially --

19 THE COURT: So what does that break down to per home  
20 owner?

21 MR. SMITH: It's about 14,000 and change.

22 THE COURT: Okay.

23 MR. SMITH: That they would need to be paying to the  
24 association -- the association would make the assessment. They pay  
25 that to them and go to the Lytle Trust.

1 THE COURT: I understand.

2 MR. SMITH: So I understand that if you simplify it as he's  
3 done in his chart, that it looks like it's not the same, but if you  
4 actually read that fee order, there is a mutual obligation and there  
5 should be an offset. And there's not -- \$80,000 of the fee order that  
6 you've entered, is not in dispute and cannot be changed on appeal.

7 It's a matter of black letter law. It's not appealable.

8 THE COURT: So in essence you're saying, well, Judge we  
9 should be able to -- you should be able to release the 80,000?

10 MR. SMITH: Absolutely.

11 THE COURT: Right now and hold the other 66,000 --  
12 \$66,845.39, which is in dispute?

13 MR. SMITH: Absolutely. We would stipulate to a cash  
14 bond in that amount today. We understand -- we argued for  
15 interest. We think interest should be there.

16 There's already been 3,000 -- over \$3,000 in interest as of  
17 today, which if we were to get a writ of execution today, that would  
18 be included in the writ of execution as part of the judgment amount.

19 But we understand that the statute has changed.  
20 Whatever the Court decides on that. But we would stipulate to that  
21 \$66,000 amount today, cash bond.

22 It's far less than they're offering. It actually benefits both  
23 parties. We can simplify this matter greatly and move on. And then  
24 they can still have all of their rights on appeal. Doesn't change  
25 anything that they would be able to argue on appeal. They'll -- they

1 can go through that process if that's what they chose to do. Access  
2 to justice is granted and all parties are benefiting. That's all I have  
3 for --

4 THE COURT: Can you approach for a second?

5 THE COURT RECORDER: Do you want me to go on bench  
6 conference, Your Honor?

7 THE COURT: Pardon?

8 THE COURT RECORDER: Bench conference?

9 THE COURT: Bench conference, yeah.

10 THE COURT RECORDER: I mean BlueJeans?

11 THE COURT: Yes.

12 THE COURT RECORDER: Okay. Give me just one second.

13 [Bench conference begin at 10:00 a.m.]

14 THE COURT: Guys, trust me on this. I have empathy for  
15 all individuals that are involved in litigation. And let's face it, we're  
16 not talking about major corporations, insurance companies and the  
17 like. We're talking about real people here, be it like my neighbor,  
18 right? And so I really do -- this is -- this is real money.

19 But I was listening and thinking about it. Is only the  
20 66,000 and change at dispute?

21 MR. WAITE: I haven't confirmed the number. But there is  
22 a portion that we're not going to dispute on appeal because we  
23 didn't dispute it here.

24 THE COURT: Yeah. Well, here is kind of my point. And  
25 this is what I was thinking. How much would the appeal be? You

1 kind of see where I'm going on that? And just as important too,  
2 when it comes to this issue, is it worth your client fighting that on  
3 appeal and so on and so on?

4 MR. WAITE: Here's the issue, Your Honor.

5 THE COURT: Yeah. Okay.

6 MR. WAITE: Here is the reason why the answer to that  
7 unfortunately is yes. Because you have now created a precedent  
8 that parties can come in and be awarded an amount of fee at a rate  
9 that they've never ever charged or -- their own clients or any of their  
10 clients.

11 THE COURT: Right.

12 MR. WAITE: We have to get -- we have to now get a  
13 ruling on that.

14 THE COURT: Well, the only thing I can say in that regard  
15 and I don't know if my decisions are precedential as far as anyone  
16 else, you know? And -- and the only reason I was thinking about --  
17 the only reason I brought up the contingency fee issue, it's, like, our  
18 Nevada Supreme Court had, like, one case. I forget the name of the  
19 case.

20 It's relatively recent within the last year, where they  
21 permitted lawyers in a -- in PI cases to assess as fees and a fee  
22 award, a percentage; right? Which I didn't think was appropriate.

23 I don't mind saying that, you know, when it comes to the  
24 fee award issue because although they can contracted with that, I  
25 thought that the appropriate way to handle that would have been

1 just go by -- and this is something that I've always done.

2 I've had big awards in my department. I remember -- I  
3 won't mention the name of the lawyers, and they had a verdict over  
4 500 million dollars. And then they came back and they wanted a  
5 third. I said no. I said, give me your *quantum meruit*. I mean, I  
6 might award a million or two million, something like that. But --

7 MR. WAITE: Five million. I'm going to retire.

8 THE COURT: -- all right. That's what I did, you know?  
9 And fortunately that was never appealed. But then they come  
10 back -- and that was probably 10 or 12 years ago. Now they come  
11 back and the Supreme Court said that's okay.

12 That's what they did. I think it was -- who was it? It was --  
13 God, I really like him on the Supreme Court. He was the DA. Not  
14 Ron Parraguirre.

15 MR. WAITE: DA? Who --

16 THE COURT: I really like him. He was a great trial judge.

17 MR. WAITE: Yeah. Trying to think who that might be.

18 THE COURT: Yeah. It'll come to me.

19 MR. WAITE: Okay.

20 THE COURT: But anyway, he wrote the dissent.

21 MR. WAITE: Okay.

22 THE COURT: Dougie Herndon. He wrote dissent.

23 MR. WAITE: Oh, okay. Yeah, yeah. Herndon.

24 THE COURT: But I think Dougie was right, you know? I  
25 do. But so I don't know what they'll do. But I don't know if -- if

1 anyone else can rely upon my decision, you know, from a legal  
2 perspective. But it is what it is. But I was just saying --

3 MR. WAITE: Well, it would be -- it would be law of the  
4 case here.

5 THE COURT: I understand. I understand. I was just  
6 thinking, you know, for the clients best interest, maybe it would be  
7 better to resolve this issue. But if it's not, it's not. That's okay. I  
8 make a decision.

9 MR. WAITE: Yeah. On the appeal you're talking about?

10 THE COURT: Well, yeah --

11 MR. WAITE: As far as the bond amount?

12 THE COURT: Yeah.

13 MR. WAITE: The appeal, Your Honor, is not about the  
14 money. It has -- it has, for my clients it's become the ruling. Which,  
15 we couldn't even, quite honestly, about -- we couldn't go to a  
16 settlement conference and say well, let's agree on this amount of  
17 money and agree to set aside Judge Williams' order *nonc pro tunc*.

18 THE COURT: Right.

19 MR. WAITE: Because you've already ruled and it would --  
20 in your mind you've -- you've come to that conclusion. So we need  
21 to get direction from the Supreme Court that that was right or that  
22 was wrong.

23 THE COURT: And no, no, no. That's your right. I was just  
24 saying. I was looking at it more from a pragmatic view.

25 MR. WAITE: Oh, this is not worth -- this appeal is not



1 worth this amount of money.

2 THE COURT: Exactly. That's what I was --

3 MR. WAITE: Yeah.

4 THE COURT: -- that's what I was thinking.

5 MR. WAITE: But the declaration is.

6 THE COURT: I understand. I do. And that's what it is.

7 But if there's --

8 MR. WAITE: And on the record when we go back on, I'll  
9 address the issue about the partial --

10 THE COURT: Yeah.

11 MR. WAITE: I'd like to be heard on that. But --

12 THE COURT: Oh, absolutely.

13 MR. WAITE: Yeah. Okay.

14 THE COURT: But gentlemen, thank you.

15 [Bench conference ends at 10:05 a.m.]

16 THE COURT: All right.

17 MR. SMITH: Thank you, Your Honor. I have nothing  
18 further.

19 THE COURT: Okay. Thank you, sir.

20 MR. WAITE: Okay, Your Honor. So just to quickly reply, I  
21 wasn't quite sure -- I thought I heard Mr. Smith say as it relates to  
22 the offset that they weren't asking for an offset, and then he was  
23 saying that there should be an offset, there was mutuality of  
24 indebtedness and that's just wrong, Your Honor.

25 Because here we have in this action, to use abstract terms,

1 we have A owing B. But in the Judge Kishner action we have B  
2 owing C. In other words, the in -- in the Judge Kishner action the --  
3 the property owners there don't owe my clients the money, the pro  
4 rata portion. They owe the association the money and then the  
5 association owes us the money.

6 So there is no mutuality of obligation. It's, like I say in my  
7 brief, if I owe you five dollars and you owe Mr. Smith three dollars, I  
8 can't -- I can't pay you, you know, the net and say now you go get  
9 the money, the balance, from Mr. Smith. Well, Mr. Smith may not  
10 be able to be found. Mr. Smith may become insolvent or whatever  
11 the case may be. It has to be between the same parties and that just  
12 doesn't exist here.

13 Turning to the last issue, the scope of the stay, Your  
14 Honor. I know that there is some -- certainly some superficial appeal  
15 to the partial stay. But there is the reality, Your Honor, and why my  
16 clients are willing to post the full amount of the bond -- of the award  
17 in order to get a full stay, a stay of the full order.

18 And that is, if they are successful on appeal, and if they  
19 are awarded their fees and costs for the appeal, if there's only been  
20 a partial stay, then my clients are in the awkward, untenable position  
21 of having to go back to these folks -- going to these folks and say we  
22 need our money back. We need the money that you executed on  
23 back.

24 And these are the same people, Your Honor, that are  
25 running the association today. The same ones who, despite Judge

1 Kishner's order in July, are saying you shall make an assessment.

2 To this day not only has that award not been paid, but  
3 three plus months later, the association run by Mr. Smith's clients --  
4 his clients are the president and the vice-president of the  
5 association, haven't even made the assessment.

6 And we got to go and try to get our money back from  
7 them? So, Your Honor, it's a little bit of an awkward situation where  
8 you have the debtor saying we are willing to post the full amount  
9 instead of a smaller amount, but we're willing to post the full  
10 amount to get a stay of the full amount, hoping that if we prevail on  
11 appeal we don't have to go get our money back.

12 And if we lose on appeal, the money is there. Go get it.

13 THE COURT: And here's my last question. What about  
14 the uncontested amount?

15 MR. WAITE: Well, that's what I'm talking about.

16 THE COURT: Okay.

17 MR. WAITE: So -- so there is a contested portion --

18 THE COURT: Right.

19 MR. WAITE: -- and there's an uncontested portion; okay?  
20 So if on appeal we win, the contested portion goes by the wayside,  
21 all right? But if we win and get our attorneys' fees and the  
22 uncontested portion goes to them, and we win our fees, we got to  
23 go get that money back.

24 THE COURT: I understand.

25 MR. WAITE: We got to go try to collect it back.

1           THE COURT: I get it. I do. A couple of comments. And I  
2 think this is really -- these -- these are really fascinating issues that  
3 are being raised. They are. And to a certain extent I think a lot of  
4 the salient points as far as this motion, my fee award, really do focus  
5 on access to justice.

6           And here is my point, and this is important to point out, I  
7 think, from a reviewing court because the court might not think what  
8 was Judge Williams thinking when he came to this fee award?

9           And we can agree that all cases aren't necessarily  
10 contingency fee cases. And this is one of them. But just as  
11 important, lawyers should be able to take a case. And when they  
12 take a case, they shouldn't have to bear the loss necessarily of that  
13 case.

14           And here is my point: Under the facts of this case I realize  
15 that plaintiff's counsel, as far as the rate charged was probably less  
16 than the market rate. I get that. But just as important too, they have  
17 to charge something in order to keep the doors open of their  
18 practice; right?

19           But just as important too, and I think of critical import  
20 would be this this, that if lawyers weren't willing to take cases where  
21 they potentially would just break even based upon the time they put  
22 in the case, they could -- that would shut the doors of people having  
23 access to justice.

24           And that's why I did what I did in this case. And I realize  
25 that. Just as important too, my -- my ultimate decision as far as the

1 plaintiff's fee award was based upon the value of the service -- of  
2 the -- what it would cost to prosecute or defend a case such as that.  
3 And just as important the *Brunzell* factors, experiences and those  
4 types of things.

5 I just want to be clear, that's why I did what I did. But I  
6 think this is very nuanced because it is an access to justice. We'll  
7 flip it to the other side from Mr. Waite and your perspective. This is  
8 an access to justice issue. It really is.

9 And I think what's so overlooked in civil litigation outside  
10 of tort cases is this one fact. These cases are extremely expensive to  
11 prosecute and defend; right? And so, if the courthouse doors are  
12 shut because of economic reasons, there's no justice; right? I don't  
13 mind saying that. I feel very strongly about that.

14 And so this is what I'm going to do. I'm going to go in  
15 line with my prior decision, and Mr. Waite, I'm granting your  
16 request.

17 Because, once again -- and you can argue this in front of  
18 the Supreme Court. You can say one thing for sure Judge Williams  
19 believes in is access to justice. Both for the plaintiff and the  
20 defendant; right?

21 And -- and that's a true concern. And I think it's so  
22 overlooked. It really is. Because I realize we have pro bono. But,  
23 you know, pro bono, you don't get paid at all and it's a loss. But  
24 there has to be some intermediate step where young lawyers' law  
25 firms can take cases on that require hourly, but they shouldn't have

1 to do it at a loss. They can do it where they can keep their doors  
2 open. And if they prevail, they should get what their time is worth.

3 That's how I see it, you know? And read that to the  
4 Supreme Court or the Court of Appeals.

5 So they know what I was thinking about. Because I tell  
6 you what I'm thinking about. I think that's an important access to  
7 justice. Not just from a plaintiff's perspective, but from the defense  
8 perspective too and that's why, Mr. Waite, I ruled the way I did.

9 MR. WAITE: Thank you. And so to be clear, I'll prepare  
10 the order, run it by Mr. Smith. You're ruling in my favor on the three  
11 issues that I argued?

12 THE COURT: Yes.

13 MR. WAITE: Perfect. Thank you.

14 THE COURT: Yes. Absolutely. And I look at it from, once  
15 again, an access to justice issue. Because your client, I think they  
16 have a right to an appeal. They posted a bond. It's there. I  
17 understand there's issues regarding fees on the next level. I get  
18 that.

19 But at the end of the day the bond in my opinion is  
20 sufficient. And for the reasons that you set forth. And I don't want  
21 to prevent anyone from having access to justice; right?

22 MR. WAITE: Thank you, Your Honor.

23 MR. SMITH: Thank you.

24 THE COURT: And so we'll call this the access to justice  
25 case.

1 MR. SMITH: Your Honor, can I -- can I clarify one issue?  
2 Are you ruling on the offset question or only on the --

3 THE COURT: No, I'm not ruling on -- I'm just --

4 MR. SMITH: Okay.

5 THE COURT: -- the call of the question. Can you post a  
6 cash supersedeas bond and then go ahead and fight your appeal?  
7 Absolutely.

8 MR. WAITE: So no post-judgment interest has to be  
9 posted?

10 THE COURT: Right. Right.

11 MR. WAITE: They're not -- they're not entitled to an  
12 offset?

13 THE COURT: Correct. For now.

14 MR. WAITE: And the stay --

15 THE COURT: Yeah. Yeah.

16 MR. WAITE: -- it'll -- we post the full amount and there's a  
17 full stay?

18 THE COURT: Full stay.

19 MR. WAITE: Yeah.

20 THE COURT: That's it.

21 MR. WAITE: Okay.

22 THE COURT: And I look at this case, once again, from  
23 both the plaintiff's perspective and the defense perspective on  
24 access to justice and as a case of first impression I don't mind that at  
25 all. And just as important, I hope the Supreme Court considers my

1 thoughts.

2 MR. WAITE: Thank you.

3 MR. SMITH: Thank you, Your Honor.

4 THE COURT: Okay. What you think of that.

5 THE LAW CLERK: It's interesting.

6 THE COURT: Yeah, it is. So where do we go next?

7 [Hearing concluded at 10:14 a.m.]

8 \* \* \* \* \*

9 ATTEST: I do hereby certify that I have truly and correctly  
10 transcribed the audio/video proceedings in the above-entitled case  
11 to the best of my ability.



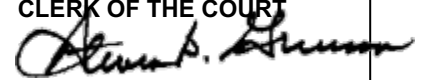
12 \_\_\_\_\_  
13 Petra Ziros  
14 Transcriber

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**NEO**  
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*Attorneys for Defendants, 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, et  
al.,

Plaintiff,

v.

TRUDI LEE LYTLE, et al.,

Defendants,

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

Plaintiffs,

v.

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

Defendants.

AND ALL RELATED MATTERS

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

Consolidated:

Case No.: A-17-765372-C  
Dept. No.: 16

**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANTS' MOTION  
TO (1) APPROVE CASH SUPERSEDEAS  
BOND, AND (2) AFFIRM STAY  
PENDING APPEAL**

1 PLEASE TAKE NOTICE that an Order Granting Defendants' Motion to (1) Approve  
2 Cash Supersedeas Bond, and (2) Affirm Stay Pending Appeal was entered in this matter on  
3 November 14, 2023. A copy of the Order is attached hereto.

4  
5 Dated this 15th day of November, 2023.

6 **LEWIS ROCA ROTHGERBER CHRISTIE LLP**

7  
8 By: /s/ Dan R. Waite

9 Dan R. Waite (SBN 4078)  
10 3993 Howard Hughes Parkway, Suite 600  
11 Las Vegas, Nevada 89169  
12 (702) 949-8200

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

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668200 3993 Howard Hughes Parkway, Suite 600  
Las Vegas, NV 89169

**LEWIS**  **ROCA**

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that on this day, I caused a true and correct copy of the following ***“Notice of Entry of Order Granting Defendants' Motion to (1) Approve Cash Supersedeas Bond, and (2) Affirm Stay Pending Appeal”*** to be e-filed and served via the Court’s E-Filing System.

Wesley J. Smith  
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*Attorneys for Counter-Defendants/Cross-Claimants  
Robert Z. Disman and Yvonne A. Disman*

Dated this 15th day of November, 2023

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

**ORDR**  
DAN R. WAITE, ESQ.  
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**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiff,

v.

TRUDI LEE LYTLE, et al.,

Defendants,

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

Plaintiffs,

v.

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

Defendants.

AND ALL RELATED MATTERS

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

Consolidated:

Case No.: A-17-765372-C  
Dept. No.: 16

**ORDER GRANTING DEFENDANTS'  
MOTION TO (1) APPROVE CASH  
SUPERSEDEAS BOND, AND (2) AFFIRM  
STAY PENDING APPEAL**

Date of Hearing: November 2, 2023  
Time of Hearing: 9:05 a.m.

A hearing in Case A-17-765372-C on "Defendants' Motion to (1) Approve Cash  
Supersedeas Bond, and (2) Affirm Stay Pending Appeal" ("Motion") was held on November 2,  
2023, at 9:05 a.m. in Department 16 of the Eighth Judicial District Court, Clark County, Nevada.

Wesley J. Smith of Christensen James & Martin appeared on behalf of Plaintiffs (1)

1 September Trust, dated March 23, 1972, (2) Gerry R. Zobrist and Jolin G. Zobrist, as Trustees of  
2 the Gerry R. Zobrist and Jolin G. Zobrist Family Trust, (3) Raynaldo G. Sandoval and Julie Marie  
3 Sandoval Gegen, as Trustees of the Raynaldo G. and Evelyn A. Sandoval Joint Living and  
4 Devolution Trust dated May 27, 1992, and (4) Dennis & Julie Gegen (collectively, the  
5 “Plaintiffs”). Dan R. Waite of Lewis Roca appeared on behalf of Defendants Trudi Lee Lytle and  
6 John Allen Lytle as Trustees of the Lytle Trust (“Lytle Trust”).

7 The Court, having considered the Motion and filings related thereto, the arguments of  
8 counsel, and good cause appearing therefore, hereby GRANTS the Motion. More particularly, the  
9 Court orders as follows:

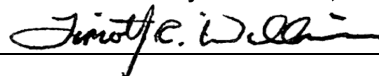
10 1. The Lytle Trust’s cash supersedeas bond in the amount and form attached to the  
11 Motion (and attached hereto for convenience) as Exhibit 1 is approved. The Lytle Trust is not  
12 required to add any amount to cover interest during the anticipated appeal period. (*See* NRS  
13 20.037). The Court Clerk is ordered to accept the Lytle Trust’s tender of funds in the amount of  
14 \$147,425.42 as a cash supersedeas bond (“Cash Supersedeas Bond”). The Lytle Trust’s tender of  
15 the Cash Supersedeas Bond to the Court Clerk was sufficient without the need of a court order and  
16 continues to be sufficient to obtain a complete stay pending appeal of this Court’s August 18, 2023  
17 “Order Granting Plaintiffs’ Motion for Attorney’s Fees and Costs” (the “Fee Award (8/18/23”).  
18 Upon posting the Cash Supersedeas Bond, execution upon and enforcement of this Court’s Fee  
19 Award (8/18/23) in the full amount of \$147,425.42 will be stayed pending a final resolution on  
20 appeal.

21 2. Regarding the scope of the stay, the Plaintiffs argued that the Lytle Trust contested  
22 \$66,845.39 of the \$147,425.42 and did not contest \$80,580.03; Plaintiffs therefore requested that  
23 the supersedeas bond amount be reduced from \$147,425.42 to \$66,845.39 and that the stay  
24 pending appeal apply only to the \$66,845.39. The Lytle Trust agreed that the full fee award was  
25 not in dispute but argued that a full stay was proper. Plaintiffs’ request for a partial stay is denied.  
26 Upon the Lytle Trust’s posting \$147,425.42 with the Court Clerk, a complete stay of this Court’s  
27 Fee Award (8/18/23) will be in effect.  
28

3. Plaintiffs also argued that a partial stay was warranted because of a potential offset related to an Order entered on July 25, 2023, in Case No. A-18-775843-C, which, among other things, ordered the Rosemere Estate Property Owners' Association to pay \$128,679.90 to the Lytle Trust "through an assessment upon each Association property owner on a pro rata basis of 1/9<sup>th</sup> each", which would include the four Plaintiffs here. Plaintiffs' counsel clarified during oral argument that the Plaintiffs were not seeking an order from this Court that an offset is proper, but raised the issue to demonstrate why the partial stay was being requested. The Lytle Trust's counsel argued that the offset issue should be decided in the other case and that there is no mutuality of indebtedness. The Court rules that Plaintiffs are not entitled to an offset for now.

**IT IS SO ORDERED**

Dated this 14th day of November, 2023



SE

Respectfully submitted,

**B73 811 C3A8 4342**  
**Timothy C. Williams**  
**District Court Judge**

**LEWIS ROCA ROTHGERBER CHRISTIE LLP**

By: /s/ Dan R. Waite

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

Approved as to form and content by:

**CHRISTENSEN JAMES & MARTIN**

By: /s/ Wesley J. Smith

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*Attorneys for Intervenor September Trust, Zobrist Trust,  
 Sandoval Trust and Dennis & Julie Gegen*

**From:** Wesley Smith <wes@cjmlv.com>  
**Sent:** Monday, November 13, 2023 8:36 AM  
**To:** Waite, Dan R. <DWaite@lewisroca.com>  
**Cc:** Horvath, Luz <LHorvath@lewisroca.com>  
**Subject:** Re: Case No. A-17-765372-C: Proposed Order

**CAUTION!** [EXTERNAL to Lewis Roca]

Approved. You may affix my signature.

Wes Smith

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

*\* Licensed in Nevada, Washington & Utah*

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

**From:** Waite, Dan R. <[DWaite@lewisroca.com](mailto:DWaite@lewisroca.com)>  
**Sent:** Monday, November 13, 2023 6:05 AM  
**To:** Wesley Smith <[wes@cjmlv.com](mailto:wes@cjmlv.com)>  
**Cc:** Horvath, Luz <[LHorvath@lewisroca.com](mailto:LHorvath@lewisroca.com)>  
**Subject:** Case No. A-17-765372-C: Proposed Order

Good morning Wes,

Attached is the clean version of the draft order we've been discussing. Please advise if we are authorized to affix your e-signature and submit to the Court. Thanks,

Dan

**Dan R. Waite**  
 Partner

[dwaite@lewisroca.com](mailto:dwaite@lewisroca.com)  
 D. 702.474.2638

**LEWIS  ROCA**



1 **CSERV**

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 Marjorie B. Boulden Trust,  
7 Plaintiff(s)

CASE NO: A-16-747800-C

8 vs.

DEPT. NO. Department 16

9 Trudi Lytle, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Granting Motion was served via the court's electronic eFile  
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/14/2023

16 "Daniel T. Foley, Esq." .

dan@foleyoakes.com

17 Maren Foley .

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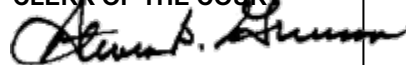
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**NPP**

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*Attorneys for Defendants 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,

Plaintiffs,

v.

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

Defendants.

SEPTEMBER TRUST, DATED MARCH 23,  
1972; GERRY R. ZOBRIST and JOLIN G.  
ZOBRIST, as Trustees of the Gerry R.  
Zobrist and Jolin G. Zobrist Family  
Trust; RAYNALDO G. SANDOVAL and  
JULIE MARIE SANDOVAL GEGEN, As  
Trustees of the Raynaldo G. and  
Evelyn A. Sandoval Joint Living and  
Devolution Trust Dated May 27, 1992;  
and DENNIS A. GEGEN and JULIE S.  
GEGEN, husband and wife, as joint  
tenants,

Plaintiffs,

v.

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

Defendants.

Case No. A-16-747800-C

Dep't No. 16

**NOTICE OF POSTING CASH BOND  
TO SECURE ORDER GRANTING  
ATTORNEY'S FEES AND COSTS  
PENDING APPEAL**

Consolidated with:

Case No. A-17-765372-C

Dep't No. 16

1 Please take notice that on November 15, 2023, defendants Trudi Lee  
2 Lytle and John Allen Lytle, as Trustees of the Lytle Trust, posted \$147,425.42  
3 with the Clerk of the Court to secure a stay of the Court's award of fees and  
4 costs that currently is pending appeal,<sup>1</sup> pursuant to this Court's order of August  
5 18, 2023:

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that  
7 the Lytle Trust is ordered to pay the attorney's fees and costs  
8 as ordered herein by certified check made payable to  
9 Christensen James & Martin Special Client Trust Account in  
10 the total amount of \$147,425.42 and delivered to Christensen  
James & Martin, within thirty (30) days of the Notice of Entry  
of this Order.<sup>2</sup>

11 A copy of the receipt is attached. See NRCP 62(d).

12 Dated this 16th day of November, 2023.

13 LEWIS ROCA ROTHGERBER CHRISTIE LLP

14  
15 By: /s/Abraham G. Smith

16 DANIEL F. POLSENBERG (SBN 2376)  
17 DAN R. WAITE (SBN 4078)  
18 ABRAHAM G. SMITH (SBN 13,250)  
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(702) 949-8200

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

22  
23  
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25  
26 <sup>1</sup> The appeal is docketed with the Nevada Supreme Court as Case No. 87237.

27 <sup>2</sup> "Order Granting Plaintiffs' Motion for Attorney's Fees and Costs," filed on  
28 August 18, 2023, notice of entry of which was served on August 18, 2023, at 6:6-9.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16th day of November, 2023, I served the foregoing "Notice of Posting Cash Bond to Secure Order Granting Attorney's Fees and Costs Pending Appeal" on counsel by the Court's electronic filing system to the persons and addresses listed below:

KEVIN B. CHRISTENSEN  
WESLEY J. SMITH  
LAURA J. WOLFF  
CHRISTENSEN JAMES & MARTIN  
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Las Vegas, Nevada 89117  
[KBC@CJMLV.com](mailto:KBC@CJMLV.com)  
[Wes@CJMLV.com](mailto:Wes@CJMLV.com)  
[LJW@CJMLV.com](mailto:LJW@CJMLV.com)

*Attorneys for September Trust,  
dated March 23, 1972, Gerry R.  
Zobrist and Jolin G. Zobrist, as  
trustees of the Gerry R. Zobrist  
and Jolin G. Zobrist Family Trust,  
Raynaldo G. Sandoval and Julie  
Marie Sandoval Gegen, as trustees  
of the Raynaldo G. and Evelyn A.  
Sandoval Joint Living and  
Devolution Trust dated May 27,  
1992, and Dennis A. Gegen and  
Julie S. Gegen, husband and wife,  
as joint tenants*

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Yvonne A. Disman*

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

/s/ Jessie M. Helm  
An Employee of LEWIS ROCA ROTHGERBER CHRISTIE LLP

**OFFICIAL RECEIPT**  
District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

002410

Payor  
Lytle, John Allen

Receipt No.  
**2023-94876-CCCLK**

Transaction Date  
11/15/2023

Description	Amount Paid
On Behalf Of Lytle Trust A-16-747800-C Marjorie B. Boulden Trust, Plaintiff(s) vs. Trudi Lytle, Defendant(s) Supersedeas Bond	
Supersedeas Bond	147,425.42
<b>SUBTOTAL</b>	<b>147,425.42</b>

**PAYMENT TOTAL** **147,425.42**

Cashier Check (Ref #0928332736) Tendered	147,425.42
Total Tendered	147,425.42
Change	0.00

11/14/2023 Order Granting Defendants' Motion to (1) Approve Cash Supersedeas Bond and (2) Affirm Stay Pending Appeal

11/15/2023  
02:51 PM

Cashier  
Station LE02

Audit  
38579144

**OFFICIAL RECEIPT**

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