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APPEARANCES:

FOR THE PETITIONER:

Pro Per

FOR THE RESPONDENT:

Daniel Oehler, Esq.

DANIEL J. OEHLER LAW OFFICES

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LAKE HAVASU CITY, ARIZONA

MONDAY, APRIL 2, 2018

2:00 P.M.

* * * * *

(Whereupon, follows a partial transcript requested by the Plaintiff.)

THE COURT: This is CV-2018-4003. This is Nancy Knight, Plaintiff, versus Glen Ludwig, et al., Defendants. This is the time set for oral argument on the Defendant's Motion to Dismiss which the Court is treating as a Motion for Summary Judgment because there were attachments -- ultimately I think there were attachments for both sides.

And I understand that public documents I probably don't need to convert it to a Motion for Summary Judgment. I'm not convinced necessarily that all the documents would have been public documents. Anyway, so I'm treating it as a Motion for Summary Judgment.

Show for the record -- and are you Nancy Knight?

THE PLAINTIFF: Yes.

THE COURT: -- the presence of the Plaintiff, Nancy Knight, representing herself. Mr. Oehler is representing the Defendants.

And who do you have with you, Mr. Oehler?

MR. OEHLER: Your Honor, we have here today Jim and Donna Roberts, the homeowners of the home in question.

1 THE COURT: All right. Show for the record the
2 presence of two of the Defendants, Jim and Donna Roberts.

3 And this is the time set for the argument on the
4 Motion for Summary Judgment. I guess I didn't specifically say
5 it in the Order that went out. I generally give people ten
6 minutes per side to argue a case. That's basically how much
7 time we have on the local rules.

8 Because it's your Motion to Dismiss, I will let
9 you go first and last. So I don't know if you want me to give
10 you your full ten minutes at this point or just to let you know
11 when eight minutes have gone by or how you want to approach
12 that, Mr. Oehler.

13 MR. OEHLER: Thank you, Your Honor.

14 I think I'll probably just spend a minute or two
15 and the balance of the time for the reply --

16 THE COURT: All right.

17 MR. OEHLER: -- if that pleases the Court.

18 Your Honor, thank you very much. Again, we are
19 here representing all of the Defendants, including, of course,
20 the homeowners, Mr. and Mrs. Roberts.

21 Your Honor, the Roberts' home was constructed I
22 believe in 2016. They, I think, took occupancy in about the
23 middle of 2016. Their home clearly and unarguably is located
24 in what we call A Tract, Tract 4076-A.

25 The single issue that is before the Court today

1 is whether or not the Plaintiff has standing to bring this
2 litigation. I think it is unarguable and there is certainly
3 nothing before the Court that would indicate otherwise that
4 Ms. Knight and her husband own a property in a completely
5 different tract, a completely different subdivision than that
6 in which the Roberts and the other Defendants are involved.

7 We are not here today, Your Honor, or this
8 afternoon to discuss whether or not there are a multitude of
9 violations that create the declaration in question -- or
10 declarations in question to be voidable.

11 We are here exclusively to review and contest
12 whether or not Mrs. Knight living in a subdivision that was
13 created about 12 years or thereabouts, I believe it was after
14 the 4076-A Tract was -- was built, has standing to argue that
15 the Roberts' property has any impact whatsoever or that she has
16 any right to argue what is happening in a tract that was
17 created a multitude of years prior to the property and the
18 subdivision, the separate tract, separate subdivision, in which
19 Mrs. Knight and her husband live.

20 These are not properties that -- that adjoin one
21 another. I don't believe that Mrs. Knight can even see the
22 project that my clients reside in. Similarly, Your Honor,
23 we're not here to discuss or take exception to the fact that
24 the timing of Mrs. Knight's request to have my clients' house
25 dismantled or torn down is relevant, germane, or can be

1 enforced or would be enforced under Arizona law.

2 Again, issue being whether or not Mrs. Knight
3 has any appropriate and proper standing before this Court to
4 attempt to enforce the subdivision restrictions of a completely
5 separate subdivision from the one in which she resides.

6 THE COURT: All right. And do you have any
7 disagreement that the tract that she lives in which is now
8 numbered apparently 4163 was previously a part of 4076-B?
9 Not -- and I'm not saying A. I'm saying that it was previously
10 a part of 4076-B.

11 MR. OEHLER: It absolutely was, Your Honor. It
12 was a separate parcel -- a separate parcel in the B Tract. And
13 that particular parcel in the B Tract, when the Court as I'm
14 sure it already has reviews the CC&Rs for the B Tract will find
15 that there are no setback requirements of any type whatsoever
16 referring to the parcel that ultimately was sold, I think,
17 either to two or three times prior to the final purchaser who
18 developed T & M Ranching I believe it was, that developed the
19 parcel in 2002 or 2004, whatever it was.

20 My point there being, Your Honor, there have
21 never been -- there has never been in any subdivision with
22 which we're dealing, any front or side setback requirements for
23 the -- for the property in which Mrs. Knight now resides, a
24 different contractor, a different developer, a project that has
25 no CC&Rs whatsoever.

1 In other words, T & M when they resubdivided
2 this parcel that was originally in the B Tract did not record
3 any Codes, Covenants, or Restrictions. You know, Your Honor,
4 and I apologize for taking this much time at the opening, but,
5 you know, if in fact the Court is concerned with the fact that
6 Mrs. Knight resides in a tract on a parcel of ground that was
7 involved in the B Tract, not the A Tract, but the B Tract, I
8 would point out, Your Honor, that perhaps what the Court needs
9 to do upon application being delivered to the Court is wipe out
10 all of the single-family residences in the tract that
11 Mrs. Knight currently resides in, because the B Tract, of
12 course, Your Honor, no restrictions whatsoever as far as side
13 or front setbacks for this parcel, but what it did say is that
14 it was reserved for multi-family residential. Mrs. Knight does
15 not live in a multi-family residential tract, rather it was
16 resubdivided by a different owner, by a different developer.

17 So, you know, if you want to take Mrs. Knight's
18 argument to this Court into heart, then, in fact, the entire
19 tract in which she resides is a violation of the CC&Rs. And,
20 of course, I suppose according to the Knight theory, her house
21 and all her neighbors, just like my clients' house, needs to be
22 torn down because it's not a multi-family residential property.
23 Indeed, Your Honor, that argument is just fallacious.

24 We're dealing with an original B Tract property
25 that was sold in bulk and resubdivided. Even if you want to

1 utilize the B Tract CC&Rs, Your Honor, even if the Court
2 chooses to do that, use the front and side setbacks that are
3 set forth in the B Tract for this particular parcel and you'll
4 find there is no restriction whatsoever.

5 My point being, Your Honor, that -- that these
6 are separate projects developed by separate developers at
7 separate times, and every one of the Desert Lakes tracts have
8 their own Codes, Covenants, and Restrictions, every one of
9 them.

10 And the law that I cited to the Court in my
11 reply memorandum from multiple jurisdictions generally
12 utilizing the restatement third clearly indicate that unless
13 they're -- unless one can prove that there is a common scheme
14 by common developers, then the person in Ms. Knight's position
15 does not have standing to argue what the neighboring
16 subdivision can or cannot do.

17 To enforce, which is the case here,
18 Mrs. Knight's effort to force down a separate tract developed
19 by a different developer at a different point in time with its
20 own CC&Rs, those are the litmus tests that are used. And in
21 each instance, Your Honor, we have a separate developer, a
22 separate tract, separately identified even though it came out
23 of one property, each of which has its own separately recorded
24 Codes, Covenants, and Restrictions. Those are the tests that
25 are used, and those tests fail when they are imposed or

1 attempted to be imposed by Mrs. Knight.

2 Thank you.

3 THE COURT: All right. And you ended up using
4 most of your time. You only have about a minute left, so --

5 MR. OEHLER: Thank you, Judge.

6 THE COURT: All right. Ms. Knight, you get to
7 use all your time at once, so --

8 THE PLAINTIFF: And I'd like to say I hate to
9 feel railroaded, but I -- I brought -- I did a lot of research.
10 Thank you for this chance for oral arguments, and, however, the
11 time is so limited.

12 I did a lot of research to get more documents
13 available for you to look at. The original developer, I got
14 his original A.D.R.E. reports, and I got more -- I got -- I
15 ordered from the recorder more of the CC&Rs for all the tracts,
16 so we've got all -- there are six tracts and seven -- no, seven
17 tracts and six versions of the CC&Rs, but it's a main
18 boilerplate for all of them with just a little bit of specifics
19 for -- within a tract if they had flooding issues or drainage
20 issues, whoever would purchase those particular lots had to be
21 informed of that.

22 Anyway, I put together -- I've got this whole
23 packet of exhibits for you, and my oral arguments, and my list
24 of exhibits. I didn't know how to file it with the Court, but
25 I have this available for you to look at, and I'll try to get

1 through my oral arguments.

2 There is something in the CC&Rs on the last page
3 of every one of them, the grammatical change argument. And, by
4 the way, this is a single 300-acre development, Desert Lakes
5 Golf Course and Estates, AKA is written in many of the
6 documents that -- and the county calls it the Desert Lakes
7 Subdivision. Everybody calls it the subdivision. We didn't
8 purchase something in a tract to be isolated from the whole
9 project.

10 We -- and the golf course -- the original
11 4076-A had a golf course, a clubhouse, and sewage treatment
12 plant all included in that original tract. That -- and we were
13 all connected to that same -- all those lots were connected to
14 that same sewer. That makes it one uniform development.

15 And we should be looking at it -- the last page,
16 and I want to get to it because I might run out of time, the
17 grammatical change argument. In all the recorded CC&Rs,
18 declarations, whether cited in provision 21 or 22 -- because
19 one of the documents had an extra paragraph that had to be
20 included.

21 So it states "the singular wherever used herein
22 shall be construed to mean the plural when applicable and" --
23 this is important -- "the necessary grammatical changes
24 required to make the provisions hereof apply either to
25 corporations or individuals, men or women, shall in all cases

1 be assumed as though in each case fully expressed."

2 That was the portion of the -- to prevent what
3 happened for whoever that was that -- the 1961 case that he
4 cited where that poor woman is sitting with a -- she -- she
5 assumed everyone's got a five-foot setback and the Court said,
6 no, you're in two different tracts within this one subdivision,
7 that case that he brought up, this part of our CC&Rs prevents
8 that from happening to us.

9 In all cases -- you shall in all cases assume
10 that it's fully expressed that this -- this whole subdivision,
11 the Desert Lakes Golf Course and Estates Subdivision, comes
12 under these CC&Rs. And I brought case law that I was gonna if
13 I had if time to read it all to you. And with limited time, I
14 can't go through my whole thing, but let me -- let me find my
15 case law.

16 And, by the way, an interest of a higher
17 authority had me advise this case. It's not just me. This is
18 not self-serving motive at all. The Attorney General's Office
19 was interested in it. They advanced it to their special
20 investigations section, and that -- it even went to the F.B.I.
21 So -- and I've got -- I brought some emails, this packet if you
22 wanted to have a look at it maybe when there's time just to
23 prove that I'm not lying. So the -- I'm looking for the law.

24 Oh, the master planned community, he argued
25 that. He brought up some -- some law about planned community.

1 No, we are not a planned community. We are a master planned
2 community, and it wasn't just T & M that called it that.
3 Mr. Angelo Rinauldi (phonetic) who is a main player in this
4 whole development, he was -- he was there from the start, he
5 was appointed to the architectural control committee, he was --
6 he's cited in every one of our CC&Rs, and he even purchased a
7 small section of another subdivision, Mohave Mesa Acres, and
8 adjoined a few lots into the Golf Course and Estates. And in
9 his A.D.R.E. reports he says it's a master planned community.
10 So I just want to make that clear.

11 Because some of the law that I was going to --
12 if I can find it quickly, law argument. Okay.
13 *Leonard* (phonetic) -- *Leonard* (phonetic) v. *Jet Homes*, it is
14 cited, where restrictive covenants are imposed upon an area
15 included within a single subdivision or plan of development,
16 and that's what we've got, a single plan of development,
17 300 acres with a golf course in the middle, a clubhouse, and a
18 sewer treatment plant -- the restrictions are characterized as
19 real rights running with the land and not merely rights
20 personal to the vendor. They inure to the benefit and are
21 consequently enforceable by all other grantees of property in
22 the subdivision in which come under the same plan of
23 development. Every one of our homes are under the same plan of
24 development. So that was cited in that part that he didn't
25 cite for you in his arguments.

1 Determining what constitutes a general plan of
2 development creating these reciprocal rights and what area is
3 included therein, certain standards are applied among which
4 are that an intent on the part of the original grantor -- which
5 is that original developer, and you will see he's called --
6 he's called a developer in his A.D.R.E. reports -- to establish
7 such a plan must be found from either his language or
8 conduct -- you can see from the CC&Rs one boilerplate was used
9 for the whole thing -- and the area covered by the scheme must
10 be described so as to clearly be ascertainable.

11 So my comment in here, the area covered by the
12 scheme is the entire area surrounding the developer's golf
13 course. It's easily ascertainable that AKA Desert Lakes Golf
14 Course and Estates, had an established plan, especially
15 considering it even had its own sewage plant. There was not a
16 separate and distinct plan for each of the tracts.

17 The master plan is a single plan of development
18 that was designed by the subdivider of lots and parcels in the
19 various tracts and who was the original developer, which -- and
20 it's Desert Lakes Development, L.P., Limited Partnership. The
21 remedy of one grantee to -- this is another part of law -- one
22 grantee to prevent a violation of or to enforce compliance with
23 the restrictions by another is by injunction.

24 And I'm saying the Defendants have thumbed their
25 noses -- Medhi isn't here, especially Medhi -- thumbed their

1 noses at their contract and at the rights of every property
2 owner coming under the same plan of development within Desert
3 Lakes Golf Course and Estates Subdivision, enforcement of the
4 restrictions and remedies by injunction is essential to
5 justice.

6 As was said in *Murphy v. Marino* -- I'll give you
7 the scripts so you can see one section of the law -- in order
8 to create a binding covenant running with the land in a
9 subdivision which is enforceable by any purchaser of a property
10 therein, there should be a uniform plan of restriction
11 applicable to the subdivision as a whole or to a particular
12 part known to each purchaser and thereby by reference or by
13 implication forming a part of his contract with the subdivider.

14 The uniform plan of restriction -- restrictions
15 which are pertinent parts of this matter at hand and are
16 applicable to the Desert Lake Golf and Estates master planned
17 subdivision as a whole is for the 20-foot regular setbacks and
18 no signage on unimproved lots.

19 These and many other uniform plans of
20 restrictions are applicable to the Desert Lakes Subdivision as
21 a whole, such as the life of the document and perpetuity,
22 invalidations by a Court Order, consequences for violations or
23 attempted or threatened violations -- which is another thing
24 that Medhi did -- conflicts with zoning ordinances, and the
25 very important last provision which I stated before, the

1 necessary grammatical change were all specified uniformly
2 throughout the five tract versions of the CC&Rs and therefore
3 applied to the entire Desert Lakes master planned subdivision
4 as a whole.

5 I don't know if I -- I can't get through all of
6 my pages because I know it took me an hour and a half to read
7 it to my husband and you only gave us 30 minutes.

8 We couldn't have a continuance, could we maybe?

9 THE COURT: (Shakes head.)

10 THE PLAINTIFF: No. Okay. So let's see. Where
11 these principals must be applied to determine one's right to
12 enforce a covenant it becomes --

13 THE COURT REPORTER: You are going to have to
14 slow down. I know you are limited on time, but I can't keep
15 up. I apologize.

16 THE PLAINTIFF: I can give you the script, you
17 know, I've got it.

18 THE COURT REPORTER: If you could just try
19 again, please.

20 THE PLAINTIFF: From the law of property where a
21 tract of land is subdivided into lots and burdened with
22 restrictive covenants, real rights are created running with the
23 land in favor of each and all of the grantees.

24 The basis of the creation of this right is the
25 mutuality of burden and the mutuality of benefit as between the

1 grantees arising out of the imposition of such restrictions on
2 the land itself. This mutuality of burden and benefit
3 constitutes reciprocal promises between the grantees each
4 supported by that of the other. The --

5 THE COURT: All right. Sorry to interrupt,
6 Ms. Knight. You've used up your time. And I know that
7 Mr. Oehler used more of his time than he anticipated. I do
8 have another hearing. I can probably give you each another
9 five minutes if you want.

10 Mr. Oehler, do you have any objection to that?

11 MR. OEHLER: No, Your Honor.

12 THE COURT: All right. I'll give you five more
13 minutes so -- but I'm not gonna go beyond the five minutes.

14 THE PLAINTIFF: Just one question.

15 May I give you the evidence and the script
16 maybe?

17 THE COURT: Generally, even on a Motion to
18 Dismiss --

19 THE PLAINTIFF: A Summary Judgment where we
20 could, you know, written, but you said it was oral, so I
21 prepared this. I did all that research.

22 THE COURT: Generally on a Motion to Dismiss I
23 wouldn't consider any evidence. On a Motion for Summary
24 Judgment I would consider the evidence that's submitted with
25 the pleadings. So either way, even if I granted oral argument,

1 I'm not generally going to consider additional evidence. So if
2 you -- so, no, I guess would be the short answer.

3 THE PLAINTIFF: I guess you get a minute.

4 THE COURT: You've got five more minutes, so --

5 THE PLAINTIFF: I have five more?

6 THE COURT: Yeah.

7 THE PLAINTIFF: Oh. Okay. And thus far the
8 Defendant's motion has avoided the critical --

9 THE COURT REPORTER: I'm not gonna be able to do
10 it, five minutes or not.

11 THE COURT: Ms. Knight --

12 THE PLAINTIFF: I know. I can't speak slow and
13 try to get it all in.

14 THE COURT: Well, then you need to figure out
15 what's the most important things for you to say because --

16 THE PLAINTIFF: Okay. The government even
17 joindered, in the legal language, 762 of the property owners'
18 lots for -- in the Desert -- what they call the Desert Lakes
19 Subdivision by a proposed B.O.S. resolutions 2016-125 and
20 2016-126.

21 So even the government took out the whole Desert
22 Lakes Golf Course Estates Community, we're gonna do a B.O.S.
23 resolution, and adjoined all of our lots into one what they
24 call the Desert Lakes Subdivision and sent out mailing notices.
25 I brought -- I brought in all the notices that came to my

1 house. I'm part of -- I'm part of the tract, the Desert Lakes
2 Golf Course and Estates.

3 And I had to argue to get them to deny that
4 B.O.S. resolution that was gonna change the setbacks in the
5 entire subdivision when most of our lots are already built, and
6 it was gonna take the views away from other people which is
7 what happened when Mehdi did this with their home and, you
8 know -- I'm sorry this happened to you, and I'm not asking to
9 tear down the whole house. And there -- there were some --
10 there were some options that could happen in mediation that,
11 you know, for how they might remedy their problem. They've got
12 a problem.

13 And if we had to appeal, if I find -- you want
14 me to bring in other Plaintiffs that live in 4076-A, you know,
15 this could -- this could go on forever, and I don't know. My
16 time is almost up. I leave you the floor.

17 THE COURT: All right. You still have three
18 minutes left if you have anything else you want to say.

19 THE PLAINTIFF: Oh, there's lots, but -- so if
20 you're not gonna take any more evidence, I mean, the master
21 planned subdivision I was gonna show you Rinauldi's (phonetic)
22 statement on that. You already know the -- the road
23 department, the planning commission, Glen Ludwig's own
24 statement that it's a master -- it's a subdivision -- Desert
25 Lakes Golf Course and Estates is a subdivision, and that's part

1 of your evidence packet, which, by the way, I asked your clerk,
2 Mary King, she's not in here, if you had gotten my Plaintiff's
3 objections to his evidence offered in reply or something and
4 she said, yes, it was on your desk.

5 And when you -- when the notice came out for
6 this hearing today, this oral arguments, it wasn't among the
7 filed documents that you -- so I'm hoping you have this packet
8 as well and the evidence that I did submit. It was filed.

9 THE COURT: I've considered that.

10 THE PLAINTIFF: Okay. Very good. So you've got
11 a lot of that. So you've got my title insurance policy that
12 shows that I -- I have CC&Rs. They want to argue I have no
13 CC&Rs and I have no setback restrictions, that's not true. We
14 all -- we all -- every -- every lot has 20-foot front and rear
15 setbacks, and that's where, you know, some people want to take
16 advantage of other people and break the rules.

17 I think I can't -- I can't -- I can't give
18 you -- I've got too much here to try to figure out which is
19 most important.

20 THE COURT: All right. Thank you, Ms. Knight.

21 Mr. Oehler, any final argument?

22 MR. OEHLER: Briefly, Your Honor.

23 I don't think anyone is saying that there are no
24 front or side setback requirements. The issue is whether they
25 are derivative of the Codes, Covenants, and Restrictions, not

1 whether they are derivative of Mohave County setback
2 requirements. Of course, Mohave County adjusted the setback
3 requirements on the Roberts' home. It went through the hearing
4 process and the setbacks were changed to specifically provide
5 authority for the Roberts' home as it was built.

6 So the argument, Your Honor, is not whether
7 there are no setback requirements. The Roberts built their
8 home in accordance with the county law. The county grantor
9 granted amendment to the then existing county requirement --
10 minimum requirements.

11 The issue is, Your Honor, whether or not the
12 declaration in question can be enforced by this Plaintiff.
13 Your Honor, Mrs. Knight is exactly correct, Desert Lakes Tract
14 4076-A is a subdivision as is the B Tract, the C Tract, the
15 D Tract, the tract in which Mrs. Knight resides.

16 The problem, Your Honor, is that each one of
17 those subdivisions are a separate subdivision in and of itself
18 and that is precisely why each of them with the exception of
19 the youngest, the one in which Mrs. Knight resides, has their
20 own separate Codes, Covenants, and Restrictions. Every one of
21 them do, Your Honor. And I believe there were three or four
22 separate owners, separate developers. There is no master set
23 of CC&Rs.

24 Laughlin Ranch, for instance, and many other
25 major subdivisions have an umbrella set of CC&Rs, and then they

1 have separate within that master set. That did not occur here.
2 We're dealing with independent, independently owned, and
3 independently developed subdivisions.

4 Mrs. Knight does not live in the A Tract.
5 The -- she does not live in the B Tract. She has no standing
6 to bring this litigation against my clients. Your Honor, the
7 argument that there is one sewer system is, again, simply a red
8 herring.

9 You know, I would suggest to the Court that
10 there is one sewer system in the city of Lake Havasu. At the
11 present time there is one sewer system in the city of Bullhead
12 City. The fact that there is a single sewer system, even one
13 that is privately developed, such as two that my own company
14 has developed over the years, because they serve XYZ Tract and
15 FGH Tract is irrelevant. It does not bring those subdivisions
16 into a master umbrella set of CC&Rs and none was created.

17 The law, Your Honor, that we have presented is
18 in accordance with the restatement second -- or third, excuse
19 me, of property and servitudes, and the Court decisions, even
20 though they are not in general from the state of Arizona, all
21 clearly specify what it takes for a Plaintiff to bring
22 litigation such as that brought by Mrs. Knight, and it gives
23 this Court the litmus test of if these elements are present,
24 separate CC&Rs, separate developers, separate subdivisions
25 developed in separate periods of time, in this case over a

1 12- or 13-year period of time, these were all indications that
2 they are dealt with and to be dealt with separately.

3 And somebody that lives in Subdivision A cannot
4 bring an action to enforce Subdivision A's CC&Rs if they live
5 in Subdivision X, and that's precisely what is before the Court
6 and the only law that has been presented to this Court in
7 regard to the issues before you today.

8 Thank you, Your Honor.

9 (The proceedings were concluded at 2:49 p.m.)

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CERTIFICATE OF REPORTER

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2
3 I, Dawn M. Duffey, Official Reporter in the Superior
4 Court of the State of Arizona, in and for the County of Mohave,
5 do hereby certify that I made a shorthand record of the
6 proceedings had at the foregoing entitled cause at the time and
7 place hereinbefore stated;

8 That said record is full, true, and accurate;

9 That the same was thereafter transcribed under my
10 direction; and

11 That the foregoing (22) typewritten pages constitute
12 a full, true, and accurate transcript of said record, all to
13 the best of my knowledge and ability.

14 Dated at Lake Havasu City, Arizona, this 3rd day of
15 April 2019.

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Dawn M. Duffey, Registered Professional
23 Reporter, Arizona Certified Reporter No.
24 50039, California Certified Reporter No.
25 10491, Nevada Certified Reporter No. 722
Iowa Certified Reporter No. 1357