

FILED

NO

1 CASE NO. 02-PB-0096

2 DEPT. NO. I

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DOUGLAS COUNTY  
DISTRICT COURT CLERK

BARBARA REED  
CLERK

BY B. PHENIX  
DEPUTY

5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

7 In Re:

8 HENRY VON BERG and LOREITA VON  
9 BERG INTERVIVOS TRUST, u.t.d.  
10 2/18/77

AMENDED ORDER FOR TRANSFER AND  
DELIVERY OF PROPERTY TO TRUST  
NUNC PRO TUNC

11  
12 THIS MATTER was brought on before the Court on the Verified  
13 Petition Re: Internal Affairs of Trust; For Transfer or Delivery of  
14 Property of Trust; and For Construction of Trust Instruments filed on  
15 September 20, 2002. The Petition is brought on behalf of JOAN WAUGH,  
16 beneficiary of the HENRY VON BERG AND LOREITA VON BERG INTERVIVOS  
17 TRUST, u.t.d. 2/18/77 ("Trust"). Pursuant to Notice of Hearing, this  
18 Court conducted a hearing on the 29th day of October, 2002, regarding  
19 the Petition. Present in Court was the Petitioner, JOAN WAUGH,  
20 together with her counsel, MICHAEL SMILEY ROWE, ESQ. of ROWE & HALES,  
21 LLP.

22 Good cause appearing, the Court hereby finds as a matter of  
23 fact, concludes as a matter of law and orders as follows:

24 1. The Court finds as fact that the Petitioner, JOAN WAUGH  
25 ("Petitioner") is the daughter and sole child of HENRY VON BERG and  
26 LOREITA VON BERG ("Trustors"), and is the beneficiary of the HENRY VON  
27 BERG and LOREITA VON BERG INTERVIVOS TRUST, u.t.d. 2/18/77.  
28

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1           2.     The Court finds that proper notice of the Petition Re:  
2 Internal Affairs of Trust; For Transfer or Delivery of Property of  
3 Trust; and For Construction of Trust Instruments was duly and properly  
4 served on all those interested in the Petition. Filed on September  
5 20, 2002, was a Certificate of Certified Mailing of the Petition and  
6 Notice of Hearing establishing October 28, 2002, at 1:30 p.m. as the  
7 date and time this Court would consider the Petition. Filed on  
8 October 8, 2002, were Return Receipts of Certified Mailing of a copy  
9 of the Petition and a copy of Notice of Hearing to all those  
10 interested in the Petition. It appears to the satisfaction of the  
11 Court that no one interested in the Petition, including the Trustee of  
12 the Trust, has objected to the requests contained in the Petition.

13           3.     The Court finds as a matter of fact that the Trustors had  
14 declared a prior trust and entered into a Declaration of Trust dated  
15 October 26, 1965 ("1965 Trust"). On the same date, Trustors conveyed  
16 certain property to the 1965 Trust including the three lots which are  
17 the subject of the Petition; specifically lots 39, 40 and 41 as set  
18 forth on the Trustee's Map of the Town of Genoa made in September,  
19 1874.

20           4.     On February 18, 1977, the Trustors revoked the 1965 Trust,  
21 and on the same date declared the Trust now before the Court.  
22 Subsequent to the execution of the Trust, Trustors, while both were  
23 living, entered into four amendments of the Trust in 1977, 1979, March  
24 10, 1982 and November 10, 1982. The Trustors had reserved the power  
25 of amendment and revocation of the Trust while each was alive. The  
26 Trust appointed the Bank of Stockton as the Trustee.

27           On the death of Henry Von Berg, the Trustee divided the  
28 Trust estate into two separate Trusts for the benefit of the

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1 Decedent's estate and the survivor. Loreita Von Berg survived Henry  
2 Von Berg and amended the Survivor's Trust twice.

3 5. The Court finds that in both the Trusts, and in the  
4 Survivor's Trust, it is provided that Petitioner would be distributed  
5 any real property owned by the Trustors. The Court has found that the  
6 Petitioner is the sole beneficiary of the Trust.

7 6. It appears to the satisfaction of the Court, and the Court  
8 so finds, that when the Trustors revoked the 1965 Trust, and created  
9 the 1977 Trust a clerical error was made in the transcription of the  
10 legal description for certain real property located in the Town of  
11 Genoa. In the 1965 Trust, the Trustors conveyed to the 1965 Trust  
12 lots 17, 18, 19, 20, 21, 38, 39, 40, 41 and 42 as shown on the  
13 Trustees' Map of the Town of Genoa made in 1874.

14 In the preparation of the 1977 Trust, and the legal  
15 description of the property conveyed to the Trust, the Court is  
16 satisfied that by clerical error and inadvertence lots 39, 40 and 41  
17 were omitted from the legal description contained in the grant deed.  
18 The grant deed is inaccurate and in error.

19 This error has been perpetuated to the current date. The  
20 Court accepts as a matter of fact the allegations of the Petition that  
21 no person has claimed an interest adverse to the Trust's and to the  
22 Petitioner's in the three lots inadvertently omitted from the  
23 conveyance to the Trust in 1977.

24 7. The Court finds as a matter of fact that the Trust has  
25 exercised dominion and control of all of the lots, including lots 39,  
26 40 and 41, since the Declaration of Trust in 1977. The Court finds as  
27 a matter of fact that Trustors constructed improvements on the lots  
28 omitted from the legal description, and after completion of the

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1 improvements, Trustors occupied the home built on this property.  
2 After the death of the Trustors, Petitioner has occupied the  
3 improvements located on this property.

4 8. The Court finds as a matter of fact that the Trustee is  
5 knowledgeable of the Petition, has consented to the Petition, and has  
6 not appeared to protest the requests contained in the Petition after  
7 proper notice to the Trustee was provided by the Petitioner. It  
8 appears to the satisfaction of the Court that, in fact, the Trustee  
9 has proposed to deed to the Petitioner the three omitted lots, but  
10 cannot do so until such time as the legal description of the Trust  
11 property is corrected.

12 9. The Court finds as a matter of fact that there are no  
13 creditors who claim against the Trust who would be affected by the  
14 Court's entry of an order clarifying the legal description of the  
15 Trust property to include lots 39, 40 and 41.

16 CONCLUSIONS OF LAW

17 1. The Court concludes as a matter of law that due and proper  
18 notice of the Petition and the Notice of Hearing has been provided by  
19 the Petitioner. The Court has been provided return receipts from the  
20 certified mailing of a copy of the Petition and the Notice of Hearing  
21 to all those interested in the Petition, including the Trustee. No  
22 one has appeared to protest the requests of the Petitioner.

23 2. The Court concludes as a matter of law that it has  
24 exclusive jurisdiction of a proceeding initiated by the Petition filed  
25 by the Petitioner. The Court may, pursuant to NRS 165.075, issue its  
26 order concerning the administration and distribution of the Trust, the  
27 declaration of rights and determination of other matters involving  
28 Trustees and beneficiaries of the Trust, and provide any appropriate

1 relief as in its sound discretion the Court deems proper.

2 3. The Court concludes that the beneficiary and Petitioner has  
3 properly brought the Petition pursuant to NRS 153.031, and pursuant to  
4 such statute has properly requested this Court's advice and  
5 instructions by way of this Order relating to the internal affairs of  
6 the Trust and the Trust property.

7 4. The Court concludes that it may, pursuant to NRS 164.033  
8 order that the omitted lots, lots 39, 40 and 41, be added to the legal  
9 description of the real property owned by the Trust and further order  
10 that the Trustee hereinafter may have possession of and title to lots  
11 39, 40 and 41.

12 5. The Court concludes as a matter of law that, pursuant to  
13 NRCP 70, the Court can direct the Trustee, or alternatively the Court  
14 Clerk, to execute a corrected deed clarifying the omission of lots 39,  
15 40 and 41.

16 6. The Court concludes as a matter of law that the Petition,  
17 and proceedings brought pursuant to the Petition, do not result in  
18 this Court's continuing supervisory jurisdiction or continued  
19 supervisory proceedings; excepting only unless the Court's  
20 jurisdiction is invoked by an interested party proceeding at a later  
21 time, by later petition, or otherwise as provided by law.

22 7. The Court concludes as a matter of law that should any of  
23 the findings of fact set forth hereinabove be construed as a  
24 conclusion of law, the Court so intends; conversely, should any  
25 conclusions of law be construed as a findings of fact, the Court  
26 intends such result.

27 / / /

28 / / /

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ORDER

**IT IS HEREBY ORDERED:**

1. The Court orders that the intentions of HENRY VON BERG and LOREITA VON BERG, as Trustors of the HENRY VON BERG and LOREITA VON BERG INTERVIVOS TRUST, u.t.d. 2/18/77, were that lots 39, 40 and 41 as depicted in Block 1 according to the Trustees' Map of the Town of Genoa made in September, 1874, and were to be conveyed to the Trust along with lots 17, 18, 19, 20, 21, 38 and 42.

2. The Court orders that lots 39, 40 and 41 as described shall be, and are, owned by the HENRY VON BERG and LOREITA VON BERG INTERVIVOS TRUST, u.t.d. 2/18/77.

3. The Court orders that the Petitioner is to be delivered and distributed all of the aforesaid described lots outright by the Trustee.

4. It is the Order of the Court that the construction of the Trust, and the amendments to the Trust identified in the Petition, are clear as to the Trustors' intent. Accordingly, the Court orders that a certified copy of this Order be recorded with the Office of the Douglas County, Nevada Recorder to clarify and correct the earlier deed by Trustors to the Trust to specifically include the omitted lots 39, 40 and 41.

5. Hereinafter, it is the Order of the Court that the Trust shall own, until such time as it conveys to JOAN WAUGH, the Petitioner, the real property of the Trust located in the Town of Genoa, specifically described as:

"Lots Seventeen (17), Eighteen (18), Nineteen (19), Twenty (20), Twenty-one (21), Thirty-eight (38), Thirty-nine (39), Forty (40), Forty-one (41) and Forty-two (42) in Block 1

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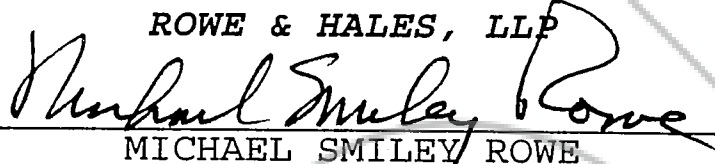
according to the Trustees' Map of said Town of Genoa made September A.D. 1874.

The property may also be commonly described as 2336 Genoa Street, Genoa, Nevada 89411; Douglas County, Nevada APN 1319-09-602-006".

This is an order *nunc pro tunc* correcting the previous order entered on October 29, 2002, as to the omission of Lot 42 from line 8, page 6 of the Order.

DATED this 5 day of November, 2002.

  
MICHAEL P. GIBBONS  
DISTRICT COURT JUDGE

Submitted by:  
ROWE & HALES, LLP  
  
MICHAEL SMILEY ROWE  
Nevada Bar Number 1374  
P.O. Box 2080  
Minden, Nevada 89423  
(775) 782-8141  
Attorneys for Petitioner

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

DATE: November 6, 2002  
Clerk of the 9th Judicial District Court  
of the State of Nevada, in and for the County of Douglas,  
By SEAN [Signature] Deputy

REQUESTED BY  
Rowe & Hales LLP  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2002 NOV -6 PM 4:00

LINDA SLATER  
RECORDER

\$20<sup>00</sup> PAID KL DEPUTY

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