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Doc#: 0903410033 Fee: \$46.00
Eugene "Gene" Moore
Cook County Recorder of Deeds
Date: 02/03/2009 10:07 AM Pg: 1 of 6

PIN : 15-15-417-044

**Recording requested by and
when recorded mail to:**

Benjamin B. Childs, Esq.
318 South Maryland Parkway
Las Vegas, Nevada 89101

In re : LYLES v YUAN
Case # A 525127 [Nevada 8th Judicial District]

AFFIRMATION

I affirm that the Declaration in Lieu of Affidavit attached to the **ORDER GRANTING
IN PART AND DENYING IN PART DEFENDANT/COUNTERCLAIMANT'S MOTION FOR
SUMMARY JUDGMENT** contains the date of birth and last 4 numbers of a social security
number of a person

January 23, 2009

Benjamin B. Childs
Benjamin B. Childs

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ms
grb

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DECLARATION IN LIEU OF AFFIDAVIT OF ATTORNEY FOR JUDGMENT CREDITOR

This affidavit is to be recorded with the **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT/COUNTERCLAIMANT'S MOTION FOR SUMMARY JUDGMENT** filed December 24, 2008 in 8th Judicial District Court of Nevada, Case # 525127

- 1) I, BENJAMIN B. CHILDS, am the attorney for MINHUI YUAN, who is a creditor of RUTH LYLES, Individually and as trustee of the RUTH FAMILY TRUST.
- 2) The name and social security number of the Judgment Debtor, RUTH LYLES, is set forth below:

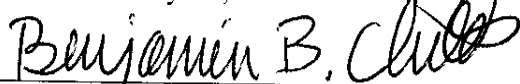
Name : RUTH LYLES
 Social Security # : xxx-xx-1320
 Date of Birth : 06/xx/1925
 Driver's License : unknown
 Current Address(es) :
 180 E. Furlong St.
 Carrier Mills, IL 62917-1273

 401 East End St.
 Carrier Mills, IL 62917

- 3) The amount that RUTH LYLES Individually and as trustee of the RUTH FAMILY TRUST owes MINHUI YUAN as of 12/31/2008 is \$ 163,703.89 (including accrued pre-judgment interest of \$19,765.64, attorney fees and costs of \$18,888 and \$ 5 for the certified copy of the judgment and \$ 45.25 recording fee).

The previous statements are made based on my personal knowledge and on a review of documents. I declare under penalty of perjury that the foregoing is true and correct.

Dated January 23, 2009



BENJAMIN B. CHILDS
 Nevada Bar # 3946
 318 S. Maryland Parkway
 Las Vegas, Nevada 89101

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CRDG
BENJAMIN B. CHILDS, ESQ.
Nevada Bar #3946
318 S. Maryland Parkway
Las Vegas, Nevada 89101
702-385-3865
Attorney for Defendant/Counterclaimant

FILED

DEC 24 11 51 AM '08

DISTRICT COURT
CLARK COUNTY, NEVADA

Ed Stein
CLERK OF THE COURT

ELBERT LYLES, RUTH LYLES,
Individually and as trustees of the
RUTH FAMILY TRUST

CASE NO. : A525127
DEPT. NO.: XIII

Plaintiffs/Counterdefendants

vs.

MINHUI YUAN

Defendant/Counter Claimant

ORDER GRANTING IN PART
AND DENYING IN PART

MINHUI YUAN

Third-Party Plaintiff,

Defendant/CounterClaimant's

vs.

MOTION FOR SUMMARY
JUDGMENT

LINDA AUSTIN and DOES 1-10

Third-Party Defendant

Hearing : 11/24/2008

This matter came on for hearing on , Defendant/CounterClaimant/Third-Party Plaintiff MINHUI YUAN's (YUAN), motion for summary judgment against Plaintiff/Counterdefendant RUTH LYLES, Individually and as trustee of the RUTH FAMILY TRUST (RUTH). No parties were present. YUAN was represented by attorney Benjamin Childs and RUTH was represented by attorney Stephen Stein and Third-Party Defendant LINDA AUSTIN was represented by attorney Marilyn Fine. The Court entertained argument of counsel and took the matter under submission.

Good Cause Appearing, based on the pleadings and evidence in the file and the oral argument of counsel, the Court sets forth the following findings of undisputed fact and the legal determinations on which basis summary judgment is GRANTED in favor of MINHUI YUAN against RUTH LYLES, Individually and as trustee of the RUTH FAMILY TRUST.

UNOFFICIAL COPYFINDINGS OF FACT

The Court finds that there is no genuine issue of material fact as to the authenticity or admissibility of documentation concerning contract for the purchase of the subject property from RUTH by YUAN. The finds that a contract was formed between YUAN and RUTH which contract was enforceable. The documentation reviewed by the court was attached as Exhibit 2 to the motion, organized into subparts as set forth below.

- A. August 4, 1999 CONTRACT FOR SALE OF REAL ESTATE
- B. August 4, 1999 MEMORANDUM OF CONTRACT FOR SALE ON REAL PROPERTY
- C. August 4, 1999 GRANT, BARGAIN, AND SALE DEED
- D. July 6, 1999 CONTRACT OF SALE ACKNOWLEDGEMENTS BY BUYER AND SELLER for LAND TITLE OF NEVADA, INC. escrow # 00211602-CJW
- E. July 8, 1999 ESCROW INSTRUCTIONS - SALE for LAND TITLE OF NEVADA, INC. escrow # 00211602-DRH

The subject property in this lawsuit is described as :

Street Address : 500 North 1st St. Las Vegas, NV 89101
 Brief Legal Description : Lot 11 in Block 3 of Biltmore Addition, as shown by map thereon on file in Book 2 of Plats, Page 33 in the Office of the County Recorder of Clark County, Nevada
 APN 139 27 810 009

The Court finds, based on the admissions of RUTH, that the following facts are established.

- 1 : RUTH understood the documents she signed in connection with the sale of the subject property to MINHUI YUAN.
- 2 : RUTH understood the document she signed on August 4, 1999 entitled CONTRACT FOR SALE OF REAL ESTATE in which ~~you~~^{she} signed in the capacity of Trustee of the ELBERT LYLES AND RUTH LYLES FAMILY TRUST as the seller of the subject property. Exhibit 2A.
- 3 : RUTH understood the document she signed on August 4, 1999 entitled MEMORANDUM OF CONTRACT FOR SALE ON REAL PROPERTY in which she signed in the capacity of Trustee of the ELBERT LYLES AND RUTH LYLES FAMILY TRUST as the seller of the subject property. This document was recorded August 5, 1999 with the Clark County Recorder, instrument # 01426. Exhibit 2B.

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- 1 4: RUTH understood the document she signed on August 4, 1999 entitled GRANT,
2 BARGAIN, AND SALE DEED in which she signed in the capacity of Trustee of the
3 ELBERT LYLES AND RUTH LYLES FAMILY TRUST as the seller of the subject
4 Property. Exhibit 2C.
- 5 5: RUTH understood the CONTRACT OF SALE ACKNOWLEDGEMENTS BY BUYER
6 AND SELLER for LAND TITLE OF NEVADA, INC. escrow # 00211602-CJW in which
7 she signed in the capacity of Trustee of the ELBERT LYLES AND RUTH LYLES
8 FAMILY TRUST as the seller of the subject property. Exhibit 2D.
- 9 6: RUTH understood the document dated July 8, 1999 ESCROW INSTRUCTIONS - SALE
10 for LAND TITLE OF NEVADA, INC. escrow # 00211602-DRH. Exhibit 2E.
- 11 7: RUTH knew that Defendant/Counterclaimant MINHUI YUAN had an interest in the
12 subject property when RUTH signed documents selling the subject property to LINDA
13 AUSTIN.
14

15 The Court further finds that RUTH breached the contract with YUAN regarding the sale of the
16 subject property.

17 The Court further finds that YUAN has incurred damages as a result of RUTH's breach of
18 contract by selling the subject property to AUSTIN. The Court finds that YUAN's contract damages are
19 \$155,000.00 and that YUAN has mitigated her damages and has received a settlement from AUSTIN in
20 the amount of \$30,000. The Court further finds that YUAN is contractually entitled to an award of
21 attorney fees and court costs as a result of RUTH's breach of contract.

22 The Court further concludes that there are contest issues of material fact issues regarding
23 YUAN's cause of action for Unjust Enrichment and Fraudulent Concealment. The Court notes that
24 YUAN's motion indicated that, given the Court's rulings, she could dismiss her causes of action for
25 Unjust Enrichment and Fraudulent Concealment against RUTH and by preparation of this Order YUAN
26 indicates her intention to do so.
27

28 CONCLUSIONS OF LAW

29

30 The Court concludes that, as a matter of law, the contracts cited above created legal obligations
31 by RUTH to YUAN regarding the subject property. The Court further concludes that RUTH's breach of
32 contract as set forth above creates liability to YUAN for the damages that YUAN incurred.

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1 ORDER

2
3 MINHUI YUAN is granted judgment against RUTH LYLES, Individually and as trustee of the
4 RUTH FAMILY TRUST, in the amount of one hundred and twenty-five thousand dollars (\$125,000.00).

5 MINHUI YUAN is further granted a judgment for attorney fees against RUTH LYLES,
6 Individually and as trustee of the RUTH FAMILY TRUST in the amount of \$18,630.00 plus necessary
7 court costs incurred in the amount of \$ 258.60.

8 YUAN's causes of action for Unjust Enrichment and Fraudulent Concealment against RUTH are
9 dismissed with prejudice.

10 RUTH's cause of action against YUAN is dismissed with prejudice.

11
12 Dated this December 18, 2008

13
14 **MARK R. DENTON**

15 **DISTRICT COURT JUDGE**

16
17
18 Respectfully Submitted by :

19 *Benjamin B. Childs*
20 *Childs*
21 BENJAMIN B. CHILDS, ESQ.
22 State Bar #3946
23 318 South Maryland Parkway
24 Las Vegas, Nevada 89101
25 Telephone: (702) 385-3865
26 Facsimile: (702) 385-1847
27 ben@benchilds.com
28 Attorney for Defendant/Counterclaimant/Third-Party Plaintiff

29
30
31 **CERTIFIED COPY**
32 **DOCUMENT ATTACHED IS A**
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE

Paul A. [Signature]
CLERK OF THE COURT

1-23-08
PM