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7  
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Feb 03 2020 07:21 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

9 IN THE SUPREME COURT OF THE STATE OF NEVADA

\*\*\*

10 AIRMOTIVE INVESTMENTS, LLC, A )  
11 NEVADA LIMITED LIABILITY COMPANY, )  
12 ) Appellant, ) Supreme Court No. 80373  
13 vs. )  
14 BANK OF AMERICA, N.A., ) District Court Case No. A654840  
15 ) Respondent. )  
\_\_\_\_\_ )

16 **DOCKETING STATEMENT**

17 **1.** Judicial District: Eighth Department: XXIII  
18 County: Clark Judge: The Honorable Stefany A. Miley  
19 District Court Docket No. A-12-654840-C

20 **2. Attorney filing this docket statement:**

21 Roger P. Croteau, Esq.  
22 Timothy E. Rhoda, Esq.  
23 Roger P. Croteau & Associates, Ltd.  
2810 West Charleston Blvd. #75  
24 Las Vegas, Nevada 89102  
(702) 254-7775 (telephone)  
25 *Attorney for Appellant*  
*Airmotive Investments, LLC*  
26  
27  
28

1 **3. Attorney representing Respondents:**

2 A. BANK OF AMERICA, N.A.

3 Darren T. Brenner, Esq.  
4 Scott R. Lachman, Esq.  
5 Akerman, LLP  
6 1635 Village Center Circle, Suite 200  
7 Las Vegas, Nevada 89134  
8 (702) 634-5000

6 **4. Nature of disposition below:**

- 7 ☐ Judgment after bench trial ☐ Dismissal
- 8 ☐ Judgment after jury verdict ☐ Lack of jurisdiction
- 9 ☒ Summary judgment ☐ Failure to state claim
- 10 ☐ Default judgment ☐ Failure to prosecute
- 11 ☐ Grant/denial of NRCP 60(b) relief ☐ Other (specify) \_\_\_\_\_
- 12 ☐ Grant/denial of injunction ☐ Divorce decree:
- 13 ☐ Grant/denial of declaratory relief ☐ Original ☐ Modification
- 14 ☐ Review of agency determination
- 15 ☐ Other disposition (specify): \_\_\_\_\_

16 **5. Does this appeal raise issues concerning any of the following:**

- 17 ☐ Child custody
- 18 ☐ Venue
- 19 ☐ Termination of parental rights

20 **6. Pending and prior proceedings in this court.** List the case name and docket number of  
21 all appeals or original proceedings presently or previously pending before this court  
22 which are related to this appeal: *Las Vegas Development Group, LLC v. Bank of*  
23 *America, N.A.*, Supreme Court Case No. 65083

24 **7. Pending and prior proceedings in other courts.** List the case name, number and court  
25 of all pending and prior proceedings in other courts which are related to this appeal (e.g.,  
26 bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: **None**

27 **8. Nature of action.** Briefly describe the nature of the action and the result below:  
28

1 The action is primarily a quiet title action related to real property that was the  
2 subject of a HOA lien foreclosure sale pursuant to NRS Chapter 116. Plaintiff purchased  
3 the property at the HOA lien foreclosure sale and asserts that said sale served to  
4 extinguish any and all deeds of trust previously secured by the property. The Defendant,  
5 Bank of America, N.A., asserted that the loan secured by the first deed of trust recorded  
6 against the property was owned by Fannie Mae or Freddie Mac and that it was thus  
7 protected from extinguishment by the so-called "Federal Foreclosure Bar" of 12 U.S.C.  
8 §4617. The district court agreed and found the security interest to have not been  
9 extinguished.

10 **9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate  
11 sheets as necessary): The interrelationship between NRS Chapter 116 and the Federal  
12 Foreclosure Bar have been addressed in prior cases. The primary issues in this case relate  
13 to the timeliness of the Bank's claims and its production of evidence. Specifically, in this  
14 case, the Bank failed to disclose evidence supporting its claims until 31 minutes prior to  
15 the close of business on the last day of the discovery period. This was the case although  
16 it was apparent that the Bank had possessed the subject evidence for months.  
17 Additionally, the Bank failed to timely raise the Federal Foreclosure Bar as a defense. As  
18 a result, its claims were barred by the statute of limitations.

19 **10. Pending proceedings in this court raising the same or similar issues.** This Court has  
20 addressed numerous cases involving the Federal Foreclosure Bar. Appellant is unaware  
21 of any cases that specifically address the timeliness of claims and the disclosure of  
22 evidence in conjunction with the defense.

23 **11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the  
24 state, any state agency, or any officer or employee thereof is not a party to this appeal,  
25 have you notified the clerk of this court and the attorney general in accordance with  
26 NRAP 44 and NRS 30.130?

27 ☒ N/A ☐ Yes ☐ No If not, explain:

28 **12. Other issues.** Does this appeal involve any of the following issues?



(NRCP 50(b), 52(b), or 59),

(a) Specify the type of motion, the date and method of service of the motion, and date of filing

☐ NRCP 50(b) Date of filing \_\_\_\_\_

☐ NRCP 52(b) Date of filing \_\_\_\_\_

☐ NRCP 59 Date of filing: \_\_\_\_\_

**Note: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion: N/A

(c) Date written notice of entry of order resolving tolling motion was served: N/A  
Was service by:

☐ Delivery

☐ Mail/electronic/fax

**18. Date notice of appeal was filed:** Appellant, Airmotive Investments, LLC, filed its Notice of Appeal on January 2, 2020.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Inapplicable.

**19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other \_\_\_\_\_ NRAP 4(a)**

**SUBSTANTIVE APPEALABILITY**

**20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

1                   □ Other (specify) \_\_\_\_\_

2           (b) Explain how each authority provides a basis for appeal from the judgment or order:  
3           Although the district court's order granting of summary judgment did not dispose of all  
4           claims at issue, the parties subsequently submitted a Stipulation and Order to Dismiss and  
5           for Final Judgment that was approved on December 10, 2019 and filed on December 12,  
6           2019. This Order constituted a final judgment appealable pursuant to NRAP 3A(b)(1).  
7           The Order resolved the action as to all parties.

8   **21. List all parties involved in the action or consolidated actions in the district court:**

9           (a) Parties:

10          Plaintiff/Counter-Defendant - Airmotive Investments, LLC

11          Defendant/Counterclaimant - Bank of America, N.A.

12          Defendant - Genevieve Uniza-Enriquez

13          (b) If all parties in the district court are not parties to this appeal, explain in detail why  
14               those parties are not involved in this appeal, e.g., formally dismissed, not served,  
15               or other: Defendant, Genevieve Uniza-Enriquez is not a party to this appeal  
16               because the claims against said Defendant were dismissed pursuant to stipulation  
17               and order filed on December 12, 2019.

18   **22. Give a brief description (3 to 5 words) of each party's separate claims,**  
19   **counterclaims, cross-claims, or third party claims, and the date of formal disposition**

20   **of each claim.** Plaintiff's Third Amended Complaint is comprised of claims for Quiet  
21   Title; Unjust Enrichment; Equitable Mortgage; Temporary Restraining Order; and  
22   Slander of Title. Bank of America's Counterclaim is comprised of claims for Quiet  
23   Title; Declaratory Relief; and Unjust Enrichment. The district court's order granting  
24   summary judgment disposed of the parties' claims for Quiet Title and Declaratory Relief.  
25   The Stipulation and Order filed on December 12, 2019 resolved the remainder of the  
26   claims.

27   **23. Did the judgment or order appealed from adjudicate ALL the claims alleged below**  
28   **and the rights and liabilities of ALL the parties to the action or consolidated actions**

below?

☒ Yes

☐ No

**24. If you answered “No” to question 23, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

**25. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

N/A

**26. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

See attached:

Exhibit 1 - Third Amended Complaint

Exhibit 2 - Answer and Counterclaim

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- Exhibit 3 - Decision and Order
- Exhibit 4 - Notice of Entry of Order of Decision and Order
- Exhibit 5 - Stipulation and Order to Dismiss and for Final Judgment
- Exhibit 6 - Notice of Entry of Stipulation and Order to Dismiss and for Final Judgment

**VERIFICATION**

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of appellant: Airmotive Investments, LLC

Name of counsel of record: Roger P. Croteau, Esq.

Timothy E. Rhoda, Esq.

State and county where signed: Clark County, Nevada

DATED this 3<sup>rd</sup> day of February, 2020.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda  
ROGER P. CROTEAU, ESQ.  
Nevada Bar No. 4958  
TIMOTHY E. RHODA, ESQ.  
Nevada Bar No. 7878  
2810 West Charleston Blvd. #75  
Las Vegas, Nevada 89102  
(702) 254-7775  
***Attorney for Appellant***  
**AIRMOTIVE INVESTMENTS, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD.  
and that on the 3<sup>rd</sup> day of February, 2020, I caused a true and correct copy of the  
foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's efile and  
serve system.

       VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with  
postage thereon fully prepaid, addressed as indicated on service list below in the United  
States mail at Las Vegas, Nevada.

       VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated  
on the service list below.

       VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this  
date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda  
An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD.

EXHIBIT 1

EXHIBIT 1

  
CLERK OF THE COURT

1 **ACOM**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 TIMOTHY E. RHODA, ESQ.  
5 Nevada Bar No. 7878  
6 ROGER P. CROTEAU & ASSOCIATES, LTD.  
7 9120 West Post Road, Suite 100  
8 Las Vegas, Nevada 89148  
9 (702) 254-7775  
10 (702) 228-7719 (facsimile)  
11 croteaulaw@croteaulaw.com  
12 *Attorney for Plaintiff*  
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

8  
9 DISTRICT COURT  
10 CLARK COUNTY, NEVADA

11 \*\*\*

12 LAS VEGAS DEVELOPMENT GROUP, LLC, )  
13 a Nevada limited liability company, )

14 Plaintiff, )

Case No. A-12-654840-C  
Dept. No. XXIII

15 vs. )

16 BANK OF AMERICA, GENEVIEVE UNIZA- )  
17 ENRIQUEZ, DOES 1 THROUGH 20, AND )  
18 ROE CORPORATIONS 1 THROUGH 20, )  
19 INCLUSIVE, )

20 Defendants. )

21 BANK OF AMERICA, N.A. )

22 Counterclaimant, )

23 vs. )

24 LAS VEGAS DEVELOPMENT GROUP, LLC, )

25 Counter-Defendant. )

26 **THIRD AMENDED COMPLAINT**

27 COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through  
28 its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges  
as follows:

PARTIES

1. At all times relevant to this matter, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, was and is a Nevada limited liability company, authorized to do business and doing business in the County of Clark, State of Nevada.
2. Upon information and belief, at all times relevant to this matter, Defendant, GENEVIEVE UNIZA-ENRIQUEZ, was and is an individual and resident of the County of Clark, State of Nevada.
3. Upon information and belief, at all times relevant to this matter, Defendant, BANK OF AMERICA, N.A. ("*Bank of America*"), was and is a national banking association, authorized to do business and doing business in the County of Clark, State of Nevada.
4. Plaintiff is unaware of the true names and capacities whether individuals, corporations, associates, or otherwise of Defendants DOES I through X and ROE Corporations I through X, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff is informed and believes and thereupon alleges that the Defendants, and each of them, are in some manner responsible and liable for the acts and damages alleged in this Complaint. Plaintiff will seek leave of this Court to amend this Complaint to allege the true names and capacities of the DOES and ROE CORPORATIONS Defendants when the true names of the DOES and ROE CORPORATIONS Defendants are ascertained.

GENERAL ALLEGATIONS

5. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 4 hereof as if set forth fully herein.
6. On or about March 12, 2004, a Declaration was recorded as instrument number 20040312-01067 in the Official Records of the Clark County Recorder, thereby creating the Palo Verde Ranch Homeowners' Association (*the "HOA"*) and perfecting a lien in favor of the HOA on all real property located within the common interest community it governed, including but not limited to that real property commonly known as 6279 Downpour Court, Las Vegas, Nevada 89110, Assessor Parcel No. 140-34-413-075 (*the "Property"*).

- 1 7. The lien having been recorded prior to any other liens is first in right and first in time as  
2 to all other interests recorded after the Declaration with the exception of liens for real  
3 estate taxes and other governmental assessments.
- 4 8. N.R.S. Chapter 116 provides that the lien perfected by the Declaration is subordinate to a  
5 “first security interest on the unit recorded before the date on which the assessment  
6 sought to be enforced became delinquent.”
- 7 9. While this statutory subordination applies to the majority of the lien perfected by the  
8 Declaration, pursuant to N.R.S. 116.3116(2)(c), it does not subordinate the lien to two  
9 specific charges incurred under it.
- 10 10. The charges which are NOT subordinated to the first security interest include: (1) any  
11 charges incurred by the association on a unit pursuant to NRS 116.310312 and; (2) that  
12 portion of the assessments for common expenses based on the periodic budget adopted by  
13 the association pursuant to NRS 116.3115 which would have become due in the absence  
14 of acceleration during the 9 months immediately preceding institution of an action to  
15 enforce the lien.
- 16 11. On or about August 12, 2004, Defendant, GENEVIEVE UNIZA-ENRIQUEZ (“*Former*  
17 *Owner*”) acquired title to and ownership of the Property.
- 18 12. Between approximately August 12, 2004, and April 12, 2011, Former Owner held title to  
19 and ownership of the Property.
- 20 13. Upon information and belief, Former Owner obtained one or more mortgages and/or lines  
21 of credit secured by the Property.
- 22 14. Upon information and belief, Bank of America is the current holder and/or owner of a  
23 deed of trust recorded against the Property on or about June 30, 2006, recorded in the  
24 Official Records of the Clark County Recorder as Instrument No. 20060630-0002110  
25 (“*First Deed of Trust*”).
- 26 15. Bank of America may claim a beneficial interest in the First Deed of Trust and, as such,  
27 claim an interest in the Property.
- 28 16. The Property is and was subject to certain Covenants, Conditions and Restrictions

- 1 ("CC&Rs") of HOA.
- 2 17. By virtue of her ownership of the Property, Former Owner was a member of the HOA and
- 3 accordingly was obligated to pay HOA assessments pursuant to the terms of the CC&Rs.
- 4 18. At some point in time during his ownership of the Property, Former Owner failed to pay
- 5 the HOA assessments related to the Property.
- 6 19. As a result of the failure of Former Owner to pay the HOA assessments, HOA caused one
- 7 or more Notices of Delinquent Assessment Lien ("*HOA Lien*") to be recorded with the
- 8 Office of the Recorder of Clark County, Nevada.
- 9 20. Thereafter, HOA caused a Notice of Default and Election to Sell to be recorded with the
- 10 Office of the Recorder of Clark County, Nevada.
- 11 21. Upon information and belief, the Notice of Default and Election to Sell was served upon
- 12 the Former Owner, as well as all interested parties holding a security interest in the
- 13 Property.
- 14 22. After the expiration of 90 days from the recording and mailing of the Notice of Default,
- 15 HOA caused a Notice of Trustee's Sale to be recorded with the Office of the Recorder of
- 16 Clark County, Nevada.
- 17 23. Upon information and belief, the Notice of Trustee's Sale was served upon the Former
- 18 Owner, as well as all interested parties holding a security interest in the Property.
- 19 24. On or about April 12, 2011, HOA caused a foreclosure sale ("*HOA Foreclosure Sale*") to
- 20 be conducted pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,
- 21 116.31162, 116.31163 and 116.31164; the CC&Rs; the Notice of Delinquent Assessment
- 22 Lien; and the Notice of Default and Election to Sell.
- 23 25. Plaintiff purchased the Property by successfully bidding at the HOA Foreclosure Sale in
- 24 accordance with N.R.S. 116.3116, *et seq.*
- 25 26. On or about April 13, 2011, a Trustee's Deed Upon Sale ("*HOA Foreclosure Deed*") was
- 26 recorded in the Official Records of the Clark County Recorder as Instrument No.
- 27 201104130000953, vesting title to the Property in the name of Plaintiff.
- 28 27. The HOA Foreclosure Sale complied with all requirements of law, including but not

- 1 limited to, the recording and mailing of copies of the Notice of Delinquent Assessment  
2 and Notice of Default, and the recording, posting and publication of the Notice of Sale.
- 3 28. Upon information and belief, Defendants had actual and/or constructive notice of the  
4 HOA foreclosure proceedings.
- 5 29. N.R.S. 116.3116(2) provides that an HOA Lien has priority over all other liens and  
6 encumbrances except:
- 7 (a) Liens and encumbrances recorded before the recordation of the declaration  
8 and, in a cooperative, liens and encumbrances which the association creates,  
9 assumes or takes subject to;  
10 (b) A first security interest on the unit recorded before the date on which the  
11 assessment sought to be enforced became delinquent or, in a cooperative, the first  
12 security interest encumbering only the unit's owner's interest and perfected before  
13 the date on which the assessment sought to be enforced became delinquent; and  
14 (c) Liens for real estate taxes and other governmental assessments or charges  
15 against the unit or cooperative.
- 16 30. N.R.S. 116.3116(2) further provides that a portion of the HOA Lien has priority over  
17 even a first security interest in the Property, stating as follows:
- 18 The lien is also prior to all security interests described in paragraph (b) to the  
19 extent of any charges incurred by the association on a unit pursuant to NRS  
20 116.310312 and to the extent of the assessments for common expenses based on  
21 the periodic budget adopted by the association pursuant to NRS 116.3115 which  
22 would have become due in the absence of acceleration during the 9 months  
23 immediately preceding institution of an action to enforce the lien[.]
- 24 31. Upon information and belief, the HOA incurred charges within the 9 months immediately  
25 preceding the initiation of the HOA foreclosure action that constituted super priority  
26 amounts.
- 27 32. Upon information and belief, no party still claiming an interest in the Property recorded a  
28 lien or encumbrance prior to the declaration creating the HOA.
33. Upon information and belief, the prevailing bid at the HOA Foreclosure Sale was equal to  
or in excess of the amount necessary to satisfy the costs of sale and the super-priority  
portion of the HOA Lien.
34. Upon information and belief, the HOA distributed or should have distributed any excess  
funds that existed to lien holders in order of priority pursuant to N.R.S. 116.3114(c).
35. Upon information and belief, Defendants had actual and/or constructive notice of the

- 1 requirement to pay assessments to the HOA and of the HOA Lien.
- 2 36. Upon information and belief, prior to the HOA Foreclosure Sale, no individual or entity
- 3 paid the full amount of delinquent assessments described in the Notice of Default.
- 4 37. Upon information and belief, prior to the HOA Foreclosure Sale, no individual or entity
- 5 paid the super priority portion of the delinquent assessments described in the Notice of
- 6 Default.
- 7 38. Upon information and belief, Defendants had actual and/or constructive notice of the
- 8 super priority portion of the HOA Lien.
- 9 39. Upon information and belief, prior to the HOA Foreclosure Sale, Bank of America had
- 10 not assigned the First Deed of Trust to the Secretary of Housing and Urban Development
- 11 ("HUD"), the Federal National Mortgage Association ("FNMA"), the Federal Home
- 12 Loan Mortgage Corporation ("Freddie Mac") or any governmental agency or
- 13 instrumentality.
- 14 40. Upon information and belief, at the time of the HOA Foreclosure Sale, neither the United
- 15 States nor any of its agencies or instrumentalities possessed any interest in either the First
- 16 Deed of Trust or the Property.
- 17 41. Upon information and belief, Bank of America knew or should have known that any
- 18 security interest that it may have possessed pursuant to the First Deed of Trust would be
- 19 extinguished through foreclosure if it failed to cure the super-priority portion of the HOA
- 20 Lien representing 9 months of assessments for common expenses based upon the periodic
- 21 budget adopted by the HOA which would have become due in the absence of acceleration
- 22 for the relevant time period.
- 23 42. Pursuant to N.R.S. 116.31166, the HOA Foreclosure Sale vested title in Plaintiff "without
- 24 equity or right of redemption."
- 25 43. Pursuant to N.R.S. 116.31166, the HOA Foreclosure Deed is conclusive against the
- 26 Property's "former owner, his or her heirs and assigns, and all other persons."
- 27 44. Former Owner's ownership interest in the Property was extinguished by the foreclosure
- 28 of the HOA Lien.

- 1 45. Bank of America's security interest in the Property, if any, was extinguished by the  
2 foreclosure of the HOA Lien and the First Deed of Trust was rendered null, void and  
3 unenforceable.
- 4 46. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became  
5 the sole owner of all right, title and interest in the Property free and clear of any  
6 encumbrances of the Defendants.
- 7 47. In the matter of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_, 334 P.3d  
8 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014), the Nevada Supreme Court  
9 resolved a split that previously existed in the state and federal courts of the State of  
10 Nevada regarding the force, effect and interpretation of N.R.S. §116.3116.
- 11 48. In doing so, the Nevada Supreme Court clarified that the statute provides a homeowners  
12 association a true super-priority lien over real property that can and does extinguish a first  
13 deed of trust when non-judicially foreclosed. *Id.*
- 14 49. In *SFR Investments*, the Nevada Supreme Court also recognized that a foreclosure deed  
15 "reciting compliance with notice provisions of N.R.S. 116.31162 through NRS  
16 116.31168 'is conclusive' as to the recitals 'against the unit's former owner, his or her  
17 heirs and assigns and all other persons.'" *See id.* at 3 (citing NRS 116.3116(2)).
- 18 50. Moreover, under Nevada law, the HOA foreclosure sale and the resulting foreclosure  
19 deed are both presumed valid. NRS 47.250(16)-(18) (stating that disputable presumptions  
20 exist "that the law has been obeyed"; "that a trustee or other person, whose duty it was to  
21 convey real property to a particular person, has actually conveyed to that person, when  
22 such presumption is necessary to perfect the title of such person or a successor in  
23 interest"; "that private transactions have been fair and regular"; and "that the ordinary  
24 course of business has been followed.").

### **FIRST CAUSE OF ACTION**

#### **(Quiet Title against Bank of America and Former Owner)**

- 25  
26  
27 51. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1  
28 through 50 hereof as if set forth fully herein.

- 1 52. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure  
2 Sale in exchange for good and valuable consideration.
- 3 53. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became  
4 the sole owner of all right, title and interest in the Property free and clear of any  
5 encumbrances of the Defendants.
- 6 54. Upon information and belief, Bank of America may claim an interest in the Property  
7 pursuant to the First Deed of Trust.
- 8 55. Upon information and belief, Former Owner may claim an interest in the Property based  
9 upon her past ownership of the Property.
- 10 56. A justiciable controversy exists regarding the right, title and interest held by Plaintiff and  
11 Defendants in the Property.
- 12 57. The interests of Plaintiff and Defendants are adverse in this justiciable controversy.
- 13 58. The Plaintiff has a legally protectible interest in the Property.
- 14 59. The controversy between Plaintiff and Defendants is ripe for judicial determination.
- 15 60. This Court should enter an Order which determines all and every claim, estate or interest  
16 of the parties in the Property.
- 17 61. The Plaintiff is entitled to a declaratory judgment finding that: (1) Plaintiff is the title  
18 owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the  
19 HOA Foreclosure Sale extinguished the Defendants' ownership and security interests in  
20 the Property; and (4) Plaintiff's rights and interest in the Property are superior to any  
21 interest claimed by the Defendants and/or any third party.
- 22 62. Title to the Property should be quieted solely in the name of Plaintiff.
- 23 63. As a direct and proximate result of the actions of the Defendants, it has become necessary  
24 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this  
25 Claim.
- 26 64. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil  
27 Procedure as further facts become known.
- 28

**SECOND CAUSE OF ACTION**

**(Unjust Enrichment against Bank of America and Former Owner)**

65. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 64 hereof as if set forth fully herein.

66. Plaintiff has expended significant funds and resources in connection with the acquisition and maintenance of the Property.

67. In the event that the Plaintiff does not maintain sole and exclusive title to and possession of the Property, the Defendants will obtain substantial benefits from the funds and resources expended by the Plaintiff.

68. It would be unjust for the Defendants to accept and retain such benefits without compensating Plaintiff for the value of the benefits which they received.

69. As a direct and proximate result of the actions of the Defendants, it has become necessary for Plaintiff to retain the services of an attorney to protect its rights and prosecute this Claim.

70. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil Procedure as further facts become known.

**THIRD CAUSE OF ACTION**

**(Equitable Mortgage against Bank of America and Former Owner)**

71. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 70 hereof as if set forth fully herein.

72. Plaintiff has expended significant funds and resources in connection with the acquisition and maintenance of the Property.

73. In the event that the Plaintiff does not maintain sole and exclusive title to and possession of the Property, the Defendants will obtain substantial benefits from the funds and resources expended by the Plaintiff.

74. It would be unjust for the Defendants to accept and retain such benefits without compensating Plaintiff for the value of the benefits which they received.

75. In the event that the Plaintiff does not maintain sole and exclusive title to and possession

1 of the Property, the existence of an equitable mortgage is essential to the effectuation of  
2 justice and to protect the interests of Plaintiff .

3 76. In the event that Plaintiff is divested of title to the Property for any reason, an equitable  
4 mortgage should be imposed against the Property in favor of Plaintiff to secure the  
5 payment of all sums expended by Plaintiff in connection with the acquisition and  
6 maintenance of the Property.

7 77. As a direct and proximate result of the actions of the Defendants, it has become necessary  
8 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this  
9 Claim.

10 78. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil  
11 Procedure as further facts become known.

12 **FOURTH CAUSE OF ACTION**

13 **(Temporary Restraining Order, Preliminary Injunction and**

14 **Permanent Injunction against all Defendants)**

15 79. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1  
16 through 78 hereof as if set forth fully herein.

17 80. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure  
18 Sale in exchange for good and valuable consideration.

19 81. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became  
20 the sole owner of all right, title and interest in the Property free and clear of any  
21 encumbrances of the Defendants.

22 82. Bank of America has caused one or more Notices of Breach and Election to Sell to be  
23 recorded against the Property in the Official Records of the Clark County Recorder.

24 83. Bank of America has caused one or more Notices of Trustee's Sale to be recorded against  
25 the Property in the Official Records of the Clark County Recorder.

26 84. Any foreclosure sale based upon the First Deed of Trust would be invalid and ineffective  
27 because the First Deed of Trust was extinguished by virtue of the HOA Foreclosure Sale.

28 85. Any attempt to take or maintain possession of the Property by Defendants would be

1 invalid because Defendants' interest in the Property, if any, was extinguished by the HOA  
2 Foreclosure Sale.

3 86. Any attempt to sell, transfer, encumber or otherwise convey the Property by Defendants  
4 would be invalid because Defendants' interest in the Property, if any, was extinguished by  
5 the HOA Foreclosure Sale.

6 87. The Property is unique.

7 88. Plaintiff would suffer irreparable harm, damage and injury in the event of an attempted  
8 foreclosure of the Property by Defendants.

9 89. Plaintiff has no adequate remedy at law or otherwise for the harm or damage that would  
10 be done as a result of an attempted foreclosure of the Property by Defendants.

11 90. Plaintiff possesses a reasonable probability of success on the merits of its claims.

12 91. The Court should issue a Temporary Restraining Order, Preliminary Injunction and  
13 Permanent Injunction against Defendants and any third party, enjoining the initiation or  
14 continuation of any foreclosure proceedings related to the Property.

15 92. As a direct and proximate result of the actions of the Defendants, it has become necessary  
16 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this  
17 Claim.

18 93. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil  
19 Procedure as further facts become known.

20 **FIFTH CAUSE OF ACTION**

21 **(Slander of Title against Bank of America)**

22 94. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1  
23 through 93 hereof as if set forth fully herein.

24 95. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure  
25 Sale in exchange for good and valuable consideration.

26 96. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became  
27 the sole owner of all right, title and interest in the Property free and clear of any  
28 encumbrances of the Defendants.

- 1 97. Bank of America has caused one or more Notices of Breach and Election to Sell to be  
2 recorded against the Property in the Official Records of the Clark County Recorder.
- 3 98. Bank of America has caused one or more Notices of Trustee's Sale to be recorded against  
4 the Property in the Official Records of the Clark County Recorder.
- 5 99. The Notice(s) of Breach and Election to Sell, Notice(s) of Trustee's Sale and/or other  
6 documents recorded by Defendants since the time that Plaintiff purchased the Property  
7 have impugned Plaintiff's title to the Property.
- 8 100. Plaintiff's title to the Property has been disparaged and slandered, and there is a cloud on  
9 Plaintiff's title.
- 10 101. The actions of the Defendants were done with the intent to cause Plaintiff harm, or in  
11 conscious disregard for its rights, or were done with conscious disregard for the  
12 consequences of their actions, and were therefore done with either express or implied  
13 malice.
- 14 102. As a direct and proximate result of the actions of the Defendants, it has become necessary  
15 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this  
16 Claim.
- 17 103. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil  
18 Procedure as further facts become known.

19 WHEREFORE, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, prays for  
20 judgment as follows:

- 21 A. On its First Cause of Action, for an Order which determines all and every claim,  
22 estate or interest of the parties in the Property, finding that: (1) Plaintiff is the title  
23 owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable;  
24 (3) the HOA Foreclosure Sale extinguished the Defendants' ownership and  
25 security interests in the Property; and (4) Plaintiff's rights and interest in the  
26 Property are superior to any interest claimed by the Defendants and/or any third  
27 party;
- 28 B. On its Second Cause of Action, for general and special damages in excess of Ten

Thousand Dollars (\$10,000.00);

- C. On its Third Cause of Action for, in the event that Plaintiff is divested of title to the Property for any reason, for the imposition of an equitable mortgage against the Property in favor of Plaintiff to secure the payment of all sums expended by Plaintiff in connection with the acquisition and maintenance of the Property;
- D. On its Fourth Cause of Action, for the issuance of a Temporary Restraining Order, Preliminary Injunction and Permanent Injunction against Defendants and any third party, enjoining the initiation or continuation of any foreclosure proceedings related to the Property;
- E. On its Fifth Cause of Action, for general and special damages in excess of Ten Thousand Dollars (\$10,000.00) and for exemplary or punitive damages in an amount sufficient to deter Defendants and others from engaging in similar conduct, said amount to adequately express social outrage over Defendants' wrongful actions;
- F. For costs and attorneys' fees incurred in bringing this action; and
- G. For such other and further relief as this Court may deem meet and proper.

DATED this 29<sup>th</sup> day of February, 2016.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda  
ROGER P. CROTEAU, ESQ.  
Nevada Bar No. 4958  
TIMOTHY E. RHODA, ESQ.  
Nevada Bar No. 7878  
9120 West Post Road, Suite 100  
Las Vegas, Nevada 89148  
(702) 254-7775  
*Attorney for Plaintiff*  
**LAS VEGAS DEVELOPMENT GROUP, LLC**

**CERTIFICATE OF SERVICE**

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 29<sup>th</sup> day of February, 2016, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

**Akerman LLP**

**Contact**

Akerman Las Vegas Office

Ariel E. Stern, Esq.

Elizabeth Streible

Matthew I. Knepper, Esq.

***Attorneys for Defendant***

***Bank of America, N.A.***

**Email**

akermanlas@akerman.com

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matthew.knepper@akerman.com

— VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

— VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

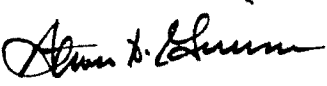
— VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda

An employee of ROGER P. CROTEAU &  
ASSOCIATES, LTD.

EXHIBIT 2

EXHIBIT 2

  
CLERK OF THE COURT

ANS  
ARIEL E. STERN, ESQ.  
Nevada Bar No. 8276  
MATTHEW KNEPPER, ESQ.  
Nevada Bar No. 12796  
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*Attorneys for Bank of America, N.A.*

**DISTRICT COURT FOR  
CLARK COUNTY, NEVADA**

LAS VEGAS DEVELOPMENT GROUP,  
LLC, a Nevada limited liability company,

Plaintiff,

vs.

BANK OF AMERICA; GENEVIEVE UNIZA-  
ENRIQUEZ; DOES 1 through 20, and ROE  
CORPORATIONS 1 through 20, inclusive,

Defendants.

Case No.: A-12-654840-C  
Dept. No.: XXIII

**BANK OF AMERICA, N.A.'s ANSWER  
TO THIRD AMENDED COMPLAINT  
AND COUNTERCLAIMS**

BANK OF AMERICA, N.A.,

Counterclaimant,

vs.

LAS VEGAS DEVELOPMENT GROUP, LLC,

Counter-Defendant.

Defendant Bank of America, N.A. ("Bank of America"), answers the Complaint filed by  
Plaintiff Las Vegas Development Group, LLC ("Plaintiff") as follows:

1. Bank of America lacks sufficient information to admit or deny the allegations of  
Paragraph 1 and therefore denies the same.

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7/3827868.1

AKERMAN LLP

1160 Town Center Drive, Suite 330  
LAS VEGAS, NEVADA 89144  
TEL.: (702) 634-5000 - FAX: (702) 380-8572

2. Bank of America lacks sufficient information to admit or deny the allegations of Paragraph 2 and therefore denies the same.

3. Bank of America admits that it is a national banking association that does business in Clark County, Nevada.

4. The allegations in Paragraph 4 of the Complaint are directed to unnamed entities or persons and, therefore, no response is required. To the extent a response is required, Bank of America lacks sufficient information to admit or deny such allegations and therefore denies same.

#### **GENERAL ALLEGATIONS**

5. Bank of America adopts and incorporates by reference its responses to the preceding paragraphs of Plaintiff's Complaint as if set forth fully herein.

6. Bank of America lacks sufficient information to admit or deny the allegations of Paragraph 6 and therefore denies the same.

7. The allegations in Paragraph 7 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, Bank of America denies the allegations in Paragraph 7.

8. The allegations in Paragraph 8 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, Bank of America states that the referenced statute speaks for itself and to the extent any of the allegations in Paragraph 8 are inconsistent with the referenced statute, such allegations are denied.

9. The allegations in Paragraph 9 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, Bank of America states that the referenced statute speaks for itself and to the extent any of the allegations in Paragraph 9 are inconsistent with the referenced statute, such allegations are denied.

10. The allegations in Paragraph 10 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, Bank of America states that the referenced statute speaks for itself and to the extent any of the allegations in Paragraph 10 are inconsistent with the referenced statute, such allegations are denied.

11. Bank of America admits that Defendant Genevieve Uniza-Enriquez was at one time the record owner of the Property.

12. Bank of America states that the property records speak for themselves and to the extent any of the allegations in Paragraph 12 are inconsistent with the property records, such allegations are denied.

13. Bank of America states that the property records speak for themselves and to the extent any of the allegations in Paragraph 13 are inconsistent with the property records, such allegations are denied.

14. Bank of America admits that a Deed of Trust was recorded on June 30, 2006 as instrument number 20060630-0002110 (the **Deed of Trust**). Bank of America states that the recorded Deed of Trust speaks for itself, and, to the extent any allegations contained in Paragraph 14 of the Complaint are inconsistent with the Deed of Trust, such allegations are denied.

15. Admitted.

16. Admitted upon information and belief.

17. Bank of America lacks sufficient information to admit or deny the allegations of Paragraph 17 and therefore denies the same.

18. Bank of America lacks sufficient information to admit or deny the allegations of Paragraph 18 and therefore denies the same.

19. Bank of America admits that a Notice of Delinquent Assessment Lien was recorded on April 1, 2010 as instrument number 20100401-0001086. Bank of America states that the recorded document speaks for itself, and, to the extent any allegations contained in Paragraph 19 of the Complaint are inconsistent with the document, such allegations are denied.

20. Bank of America admits that a Notice of Default and Election to Sell Under Notice of Delinquent Assessment was recorded on July 14, 2010 as instrument number 20100714-0001222. Bank of America states that the recorded document speaks for itself, and, to the extent any allegations contained in Paragraph 20 of the Complaint are inconsistent with the document, such allegations are denied.

1           21. Bank of America denies that the Notice of Default was served upon all interested  
2 parties holding an interest in the Property. Bank of America lacks sufficient information to admit or  
3 deny the remaining allegations of Paragraph 21 and therefore denies the same.

4           22. Bank of America admits that a Notice of Trustee's Sale was recorded on November  
5 18, 2010 as instrument number 20101118-0001542. Bank of America states that the recorded  
6 document speaks for itself, and, to the extent any allegations contained in Paragraph 22 of the  
7 Complaint are inconsistent with the document, such allegations are denied.

8           23. Bank of America denies that the Notice of Trustee's Sale was served upon all  
9 interested parties holding an interest in the Property. Bank of America lacks sufficient information  
10 to admit or deny the remaining allegations of Paragraph 23 and therefore denies the same.

11           24. Bank of America admits that the Trustee's Deed Upon Sale reflects that the HOA  
12 held a foreclosure sale on April 12, 2011 (**HOA foreclosure sale**). Bank of America denies that this  
13 foreclosure sale was conducted in compliance with the applicable law.

14           25. Bank of America lacks sufficient information to admit or deny the allegations of  
15 Paragraph 25 and therefore denies the same. Bank of America denies that this foreclosure sale was  
16 conducted in compliance with the applicable law and denies that the interest Plaintiff acquired by  
17 virtue of the HOA foreclosure sale, if any, is superior to the Deed of Trust.

18           26. Bank of America admits that a Trustee's Deed Upon Sale was recorded on April 13,  
19 2011 as instrument number 20110413-0000953. Bank of America states that the recorded document  
20 speaks for itself, and, to the extent any allegations contained in Paragraph 26 of the Complaint are  
21 inconsistent with the document, such allegations are denied. Bank of America denies that the  
22 interest Plaintiff acquired by virtue of the HOA foreclosure sale, if any, is superior to the Deed of  
23 Trust.

24           27. The allegations in Paragraph 27 of the Complaint state legal conclusions to which no  
25 response is required. To the extent a response is required, Bank of America denies that the HOA  
26 foreclosure sale was conducted in compliance with the applicable law.

1           28.     The allegations in Paragraph 28 of the Complaint state legal conclusions to which no  
2 response is required. To the extent a response is required, Bank of America denies the allegations in  
3 Paragraph 28.

4           29.     The allegations in Paragraph 29 of the Complaint state characterizations and legal  
5 conclusions to which no response is required. To the extent a response is required, Bank of America  
6 states that the referenced statute speaks for itself and, to the extent any of the allegations in  
7 Paragraph 29 are inconsistent with the statute, Bank of America denies such allegations.

8           30.     The allegations in Paragraph 30 of the Complaint state characterizations and legal  
9 conclusions to which no response is required. To the extent a response is required, Bank of America  
10 states that the referenced statute speaks for itself and, to the extent any of the allegations in  
11 Paragraph 30 are inconsistent with the statute, Bank of America denies such allegations.

12           31.     Bank of America lacks sufficient information to admit or deny the allegations of  
13 Paragraph 31 and therefore denies the same.

14           32.     Bank of America lacks sufficient information to admit or deny the allegations of  
15 Paragraph 32 and therefore denies the same.

16           33.     Bank of America lacks sufficient information to admit or deny the allegations of  
17 Paragraph 33 and therefore denies the same.

18           34.     The allegations in Paragraph 34 of the Complaint state characterizations and legal  
19 conclusions to which no response is required. To the extent a response is required, Bank of America  
20 states that the referenced statute speaks for itself and, to the extent any of the allegations in  
21 Paragraph 34 are inconsistent with the statute, Bank of America denies such allegations.

22           35.     The allegations in Paragraph 35 of the Complaint state legal conclusions to which no  
23 response is required. To the extent a response is required, Bank of America denies the allegations in  
24 Paragraph 35. Bank of America lacks sufficient information to admit or deny the remaining  
25 allegations of Paragraph 35 and therefore denies the same.

26           36.     Bank of America lacks sufficient information to admit or deny the remaining  
27 allegations of Paragraph 36 and therefore denies the same.  
28

1           37. Bank of America lacks sufficient information to admit or deny the remaining  
2 allegations of Paragraph 37 and therefore denies the same.

3           38. Bank of America denies that it was provided actual or constructive notice of the  
4 super-priority portion of the HOA lien. Bank of America lacks sufficient information to admit or  
5 deny the remaining allegations of Paragraph 38 and therefore denies the same.

6           39. Bank of America admits that the property records speak for themselves and to the  
7 extent any of the allegations in Paragraph 39 are inconsistent with the property records, Bank of  
8 America denies such allegations.

9           40. Denied. Bank of America states that Fannie Mae owned the subject loan at the time  
10 of the HOA foreclosure sale.

11           41. The allegations in Paragraph 41 of the Complaint state legal conclusions to which no  
12 response is required. To the extent a response is required, Bank of America denies the allegations in  
13 Paragraph 41.

14           42. The allegations in Paragraph 42 of the Complaint state characterizations and legal  
15 conclusions to which no response is required. To the extent a response is required, Bank of America  
16 states that the referenced statute speaks for itself and, to the extent any of the allegations in  
17 Paragraph 42 are inconsistent with the statute, Bank of America denies such allegations.

18           43. The allegations in Paragraph 43 of the Complaint state characterizations and legal  
19 conclusions to which no response is required. To the extent a response is required, Bank of America  
20 states that the referenced statute speaks for itself and, to the extent any of the allegations in  
21 Paragraph 43 are inconsistent with the statute, Bank of America denies such allegations.

22           44. The allegations in Paragraph 44 of the Complaint state characterizations and legal  
23 conclusions to which no response is required. To the extent a response is required, Bank of America  
24 denies that the Deed of Trust was extinguished.

25           45. The allegations in Paragraph 45 of the Complaint state characterizations and legal  
26 conclusions to which no response is required. To the extent a response is required, Bank of America  
27 denies that the Deed of Trust was extinguished.

47. The allegations in Paragraph 47 of the Complaint state characterizations and legal conclusions to which no response is required. To the extent a response is required, Bank of America states that the referenced case speaks for itself and, to the extent any of the allegations in Paragraph 47 are inconsistent with the case, Bank of America denies such allegations.

48. The allegations in Paragraph 48 of the Complaint state characterizations and legal conclusions to which no response is required. To the extent a response is required, Bank of America states that the referenced case speaks for itself and, to the extent any of the allegations in Paragraph 48 are inconsistent with the case, Bank of America denies such allegations.

49. The allegations in Paragraph 49 of the Complaint state characterizations and legal conclusions to which no response is required. To the extent a response is required, Bank of America states that the referenced case speaks for itself and, to the extent any of the allegations in Paragraph 49 are inconsistent with the case, Bank of America denies such allegations. Bank of America denies that the recitals in the foreclosure deed are conclusive proof of anything.

50. The allegations in Paragraph 50 of the Complaint state characterizations and legal conclusions to which no response is required. To the extent a response is required, Bank of America denies that allegations in Paragraph 50.

**(Quiet Title against Bank of America and Former Owner)**

51. Bank of America adopts and incorporates by reference its responses to the preceding paragraphs of Plaintiff's Complaint as if set forth fully herein.

52. The allegations in Paragraph 52 of the Complaint state characterizations and legal conclusions to which no response is required. To the extent a response is required, Bank of America denies that allegations in Paragraph 52.

1           53.     The allegations in Paragraph 53 of the Complaint state characterizations and legal  
2 conclusions to which no response is required. To the extent a response is required, Bank of America  
3 denies that allegations in Paragraph 53.

4           54.     Admitted.

5           55.     Bank of America lacks sufficient information to admit or deny the remaining  
6 allegations of Paragraph 55 and therefore denies the same.

7           56.     The allegations in Paragraph 56 of the Complaint state characterizations and legal  
8 conclusions to which no response is required. To the extent a response is required, Bank of America  
9 admits that there is a justiciable controversy regarding the right, title, and interest purportedly held  
10 by Plaintiff and Bank of America.

11          57.     Bank of America admits that its interest are adverse to Plaintiff's.

12          58.     The allegations in Paragraph 58 of the Complaint state characterizations and legal  
13 conclusions to which no response is required. To the extent a response is required, Bank of America  
14 denies that Plaintiff has any interest in the Property superior to the Deed of Trust.

15          59.     The allegations in Paragraph 59 of the Complaint state characterizations and legal  
16 conclusions to which no response is required. To the extent a response is required, Bank of America  
17 admits that the controversy between Plaintiff and Bank of America is ripe for judicial determination.

18          60.     The allegations in Paragraph 59 of the Complaint state characterizations and legal  
19 conclusions to which no response is required. To the extent a response is required, Bank of America  
20 admits that this court has the authority to determine all claims to the Property.

21          61.     Denied.

22          62.     Denied.

23          63.     The allegations in Paragraph 63 of the Complaint state characterizations and legal  
24 conclusions to which no response is required. To the extent a response is required, Bank of America  
25 denies the allegations in Paragraph 63.

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78. The allegations in Paragraph 78 of the Complaint state characterizations and legal conclusions to which no response is required. To the extent a response is required, Bank of America states that the Nevada Rules of Civil Procedure speak for themselves.

**(Temporary Restraining Order, Preliminary Injunction  
and Permanent Injunction against all Defendants)**

81. Denied.

1           82. Bank of America admits that the property records speak for themselves and to the  
2 extent any of the allegations in Paragraph 40 are inconsistent with the property records, Bank of  
3 America denies such allegations.

4           83. Bank of America admits that the property records speak for themselves and to the  
5 extent any of the allegations in Paragraph 83 are inconsistent with the property records, Bank of  
6 America denies such allegations.

7           84. Denied.

8           85. Denied.

9           86. Denied.

10          87. Bank of America lacks sufficient information regarding Plaintiff's meaning of the  
11 word "unique" and cannot admit or deny the allegations of Paragraph 87 and therefore denies the  
12 same.

13          88. Denied.

14          89. Denied.

15          90. Denied.

16          91. Denied.

17          92. The allegations in Paragraph 92 of the Complaint state characterizations and legal  
18 conclusions to which no response is required. To the extent a response is required, Bank of America  
19 denies the allegations in Paragraph 92.

20          93. The allegations in Paragraph 93 of the Complaint state characterizations and legal  
21 conclusions to which no response is required. To the extent a response is required, Bank of America  
22 states that the Nevada Rules of Civil Procedure speak for themselves.

23                                   **FIFTH CAUSE OF ACTION**

24                                   **(Slander of Title against Bank of America)**

25          94. Bank of America adopts and incorporates by reference its responses to the preceding  
26 paragraphs of Plaintiff's Complaint as if set forth fully herein.



7. Bank of America denies that Plaintiff is entitled to the relief sought in Paragraph G of the Prayer for Relief.

Bank of America asserts the following additional defenses. Discovery and investigation of this case is not yet complete, and Bank of America reserves the right to amend this Answer by adding, deleting, or amending defenses as may be appropriate. Any allegations not specifically admitted are denied. In further answer to the Complaint, and by way of additional defenses, Bank of America avers as follows:

Plaintiff has failed to state facts sufficient to constitute any cause of action against Bank of America.

To the extent that Plaintiff may rely on and accurately interpret NRS 116.3116 to support its claim, the statute, and Chapter 116, are void for vagueness as applied to this matter.

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14 Amendment of the United States Constitution and Article 1, Sec. 8, of the Nevada Constitution.

**FOURTH AFFIRMATIVE DEFENSE****(Violation of Procedural Due Process)**

The super-priority lien was satisfied prior to the homeowner's association foreclosure under the doctrines of tender, estoppel, laches, or waiver.

**FIFTH AFFIRMATIVE DEFENSE****(Commercial Reasonableness and Violation of Good Faith – NRS 116.1113)**

The homeowner's association foreclosure sale was not commercially reasonable, and the circumstances of sale of the property violated the homeowner's association's obligation of good faith under NRS 116.1113 and duty to act in a commercially reasonable manner.

**SIXTH AFFIRMATIVE DEFENSE****(Failure to Mitigate Damages)**

Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

**SEVENTH AFFIRMATIVE DEFENSE****(No Standing)**

Plaintiff lacks standing to bring some or all of its claims and causes of action.

**EIGHTH AFFIRMATIVE DEFENSE****(Unclean Hands)**

Bank of America avers the affirmative defense of unclean hands.

**NINTH AFFIRMATIVE DEFENSE****(Plaintiff is Not Entitled to Relief)**

Bank of America denies that Plaintiff is entitled to any relief for which it prays.

**TENTH AFFIRMATIVE DEFENSE****(Failure to Do Equity)**

Bank of America avers the affirmative defense of failure to do equity.

...

...

**ELEVENTH AFFIRMATIVE DEFENSE****(Failure to Provide Notice)**

Bank of America was not provided proper notice of the “superpriority” assessment amounts and the homeowner’s association foreclosure sale, and any such notice provided to Bank of America failed to comply with the statutory and common law requirements of Nevada and with state and federal constitutional law.

**TWELFTH AFFIRMATIVE DEFENSE****(Void Foreclosure Sale)**

The HOA foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

**THIRTEENTH AFFIRMATIVE DEFENSE****(Plaintiff is not a Bona Fide Purchaser for Value)**

Plaintiff purchased the property with record notice of the interest of the senior deed of trust recorded against the property.

**FOURTEENTH AFFIRMATIVE DEFENSE****(Barred by 12 U.S.C. § 4617(j)(3))**

Plaintiff’s claim of free and clear title to the Property is barred by 12 U.S.C. § 4617(j)(3), which precludes an HOA sale from extinguishing the Deed of Trust on the Property and preempts any state law to the contrary.

**FIFTEENTH AFFIRMATIVE DEFENSE****(Additional Affirmative Defenses)**

Pursuant to NRCP 11, Defendant reserves the right to assert additional affirmative defenses in the event discovery and/or investigation disclose the existence of other affirmative defenses.

**SIXTEENTH AFFIRMATIVE DEFENSE****(Due Process—Facially Unconstitutional Provisions)**

Chapter 116 of the Nevada Revised Statutes is facially unconstitutional because its “opt-in” notice provisions do not mandate that reasonable and affirmative steps be taken to give actual notice

1 to a record lien holder before depriving that lien holder of its property rights, in violation of the Due  
2 Process Clauses of the Fifth and Fourteenth Amendments of the United States Constitution and of  
3 the Nevada Constitution.

#### 4 **SEVENTEENTH AFFIRMATIVE DEFENSE**

##### 5 ***(SFR Investments Cannot be Applied Retroactively)***

6 The Deed of Trust cannot be extinguished by the HOA foreclosure sale because the Nevada  
7 Supreme Court's decision in *SFR Investments Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev.  
8 2014) cannot be applied retroactively.

#### 9 **COUNTERCLAIMS**

10 Defendant/Counterclaimant Bank of America, N.A., as successor by merger to BAC Home  
11 Loans Servicing, LP fka Countrywide Home Loans Servicing, LP ("Bank of America") hereby  
12 counterclaims against Plaintiff/Counter-Defendant Las Vegas Development Group, LLC  
13 ("Plaintiff") as follows:

#### 14 **PARTIES**

- 15 1. Bank of America is a national association doing business in Clark County, Nevada.
- 16 2. On information and belief, Plaintiff is a Nevada limited liability company.

#### 17 **JURISDICTION AND VENUE**

18 3. This Court has jurisdiction over Plaintiff because the allegations set forth in Bank of  
19 America's counterclaims relate to Plaintiff's purported purchase of an interest in real property  
20 located and situated in Clark County, Nevada.

21 4. Venue is proper in this judicial district because the property that is the subject of this  
22 action is situated in this district.

#### 23 **GENERAL ALLEGATIONS**

24 5. Under Nevada law, homeowners' associations have the right to charge property  
25 owners residing within the community assessments to cover the homeowners' association's expenses  
26 for maintaining or improving the community, among other things.

1           6.       When these assessments are not paid, the homeowners' association may both impose  
2 and foreclose on a lien.

3           7.       A homeowners' association may impose a lien for "any penalties, fees, charges, late  
4 charges, fines and interest charged" under NRS 116.3102(1)(j)-(n). NRS 116.3116(1).

5           8.       NRS 116.3116 makes a homeowners' association lien for assessments junior to a first  
6 deed of trust beneficiary's secured interest in the property, with one limited exception: a  
7 homeowners' association lien is senior to a first deed of trust beneficiary's secured interest "to the  
8 extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the  
9 extent of the assessments for common expenses based on the periodic budget adopted by the  
10 association pursuant to NRS 116.3115 which would have become due in the absence of acceleration  
11 during the 9 months<sup>1</sup> immediately preceding institution of an action to enforce the lien[.]" NRS  
12 116.3116(2)(c).

13           9.       According to the Nevada Supreme Court's recent decision in *SFR Investments Pool I,*  
14 *LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014), if a homeowner's association properly forecloses  
15 on its super-priority lien, it can extinguish a first deed of trust. However, the homeowners'  
16 association's foreclosure in this case did not extinguish the first Deed of Trust because the  
17 foreclosure did not comply with Nevada law and was commercially unreasonable as a matter of law.  
18 To deprive Bank of America of its Deed of Trust under the circumstances of this case would deprive  
19 Bank of America of its due process rights.

## 20                                   FACTUAL ALLEGATIONS

### 21                                   The Deed of Trust and Assignment

22           10.       On or about June 22, 2006, Genevieve Uniza-Enriquez ("Borrower") executed a Note  
23 to finance the purchase of real property located at 6279 Downpour Court, Las Vegas Nevada 89110  
24 (the "Property"), which was secured by a Deed of Trust. This Deed of Trust in favor of Mortgage  
25 Electronic Registration Systems ("MERS") was recorded on June 30, 2006.

26  
27  
28           <sup>1</sup> This is reduced to 6 months where the subject loan is owned by a government-sponsored enterprise.

11. On or about June 25, 2010, the Deed of Trust was assigned to BAC Home Loans Servicing, LP via an Assignment of Deed of Trust. This Assignment was recorded on June 30, 2010.

12. Borrowers defaulted under the terms of the Note and First Deed of Trust.

13. The unpaid principal balance due on the loan secured by the Deed of Trust, as of April 12, 2011, exceeds \$452,557.77. The total amount due has continued to increase pursuant to the Note and Deed of Trust.

#### **The HOA Lien and Foreclosure**

14. Upon information and belief, Borrower failed to pay the HOA all amounts due to it. Accordingly, on April 1, 2010, Absolute Collection Services, LLC (ACS), as agent for the HOA, recorded a Notice of Delinquent Assessment Lien. The Notice stated the amount due to the HOA was \$754.56. This Notice neither identifies the super-priority amount claimed by the HOA, nor describes the “deficiency in payment” required by NRS 116.31162(1)(b)(1).

15. On July 14, 2010 the HOA, through ACS, recorded a Notice of Default and Election to Sell Under Notice of Delinquent Assessment. The Notice stated the amount due to the HOA was \$1,749.65. This Notice neither identifies the super-priority amount claimed by the HOA, nor describes the “deficiency in payment” required by NRS 116.31162(1)(b)(1).

16. In none of the recorded documents did the HOA or the HOA Trustee identify the amount of the alleged lien that was for late fees, interest, fines/violations, or collection fees/costs.

17. In none of the recorded documents nor in any notice did the HOA or ACS specify whether it was foreclosing on the super-priority portion of its lien, if any, or on the sub-priority portion of its lien.

18. Despite the deficiency of the Notices, ACS, conducted a foreclosure sale on behalf of the HOA on April 12, 2011. The property was sold to Plaintiff for \$4,001.00.

19. ACS’s sale of the HOA’s interest in the Property for less than 1% of the value of the unpaid principal balance of the loan secured by the first Deed of Trust, and, on information and

1 belief, for a similarly diminutive percentage of the Property's fair market value, is commercially  
2 unreasonable and not in good faith as required by NRS 116.1113.

3 29. This foreclosure sale was commercially unreasonable because the manner in which  
4 ACS conducted the sale, including the notices it provided, the legal uncertainty concerning the effect  
5 of the sale, and other circumstances surrounding the sale, was not calculated to attract proper  
6 prospective purchasers, and thus could not promote an equitable sales price of the Property.

### 7 **FIRST CAUSE OF ACTION**

#### 8 **(Counterclaim for Declaratory Relief Against Plaintiff)**

9 30. Bank of America repeats and re-alleges the preceding paragraphs as though fully set  
10 forth herein and incorporates the same by reference.

11 31. Under NRS 30.010 *et seq.*, this Court has the power and authority to declare Bank of  
12 Americas' rights and interests in the Property and to resolve Plaintiff's adverse claim in the Property.

13 32. The HOA, through ACS, foreclosed on the HOA's lien on April 12, 2011. Plaintiff  
14 purchased the Property at the HOA foreclosure sale.

15 33. Upon information and belief, Plaintiff claims an interest in the Property adverse to  
16 Bank of America, in that Plaintiff claims that the HOA's foreclosure sale extinguished the first Deed  
17 of Trust. A judicial determination is necessary to ascertain the rights, obligations, and duties of the  
18 various parties.

19 34. The HOA's foreclosure sale did not extinguish the first Deed of Trust because the  
20 recorded notices, even if they were in fact provided, failed to describe the lien in sufficient detail as  
21 required by Nevada law, including, without limitation: whether the deficiency included a "super-  
22 priority" component, the amount of the super-priority component, how the super-priority component  
23 was calculated, when payment on the super-priority component was required, where payment was to  
24 be made, or the consequences for failure to pay the super-priority component.

25 35. The foreclosure sale did not extinguish the first Deed of Trust because the sale was  
26 commercially unreasonable or otherwise failed to comply with the good faith requirement of NRS  
27 116.1113 in several respects, including, without limitation: the lack of sufficient notice, the sale of  
28

1 the Property for a fraction of the loan balance or actual market value of the Property, a foreclosure  
2 that was not calculated to promote an equitable sales price for the Property or to attract proper  
3 prospective purchasers, and a foreclosure sale that was designed and/or intended to result in a  
4 maximum profit for the HOA and ACS without regard to the rights and interests of those who have  
5 an interest in the loan and made the purchase of the Property possible in the first place.

6 36. The HOA's foreclosure sale did not extinguish the Deed of Trust because the statute  
7 authorizing the foreclosure sale, NRS 116, *et seq.*, is facially unconstitutional because it does not  
8 mandate that deed of trust beneficiaries receive actual notice of an HOA's foreclosure sale, as  
9 required by the Due Process Clause of the United States Constitution.

10 37. Because the foreclosure sale conducted by ACS was commercially unreasonable, the  
11 sale is invalid. Consequently, the Deed of Trust continued to encumber the Property after the HOA  
12 foreclosure sale.

13 38. Based on the adverse claims being asserted by the parties, a judicial determination is  
14 necessary to ascertain the rights, obligations, and duties of the various parties.

15 39. Bank of America is entitled to a declaration that the HOA sale was not a valid sale.

16 40. Bank of America is required to retain an attorney to prosecute this action, and is  
17 therefore entitled to collect its reasonable attorney's fees and costs.

## 18 **SECOND CAUSE OF ACTION**

### 19 **(Counterclaim for Quiet Title Against Plaintiff)**

20 41. Bank of America repeats and re-alleges the preceding paragraphs as though fully set  
21 forth herein and incorporates the same by reference.

22 42. Under NRS 40.010, this Court has the power and authority to declare Bank of  
23 America's rights and interests in the Property and to resolve Plaintiff's adverse claim in the Property.

24 43. At the time of the HOA foreclosure sale, the Deed of Trust was a first secured interest  
25 on the Property as intended by NRS 116.3116(2)(b).

26 44. Based on the adverse claims being asserted by the parties, the parties are entitled to a  
27 judicial determination regarding the rights and interests of the respective parties.

1 45. Bank of America is entitled to a determination from this Court that, pursuant to NRS  
2 40.010 and NRS 116, that the HOA sale is unlawful and void under NRS 116.3102 *et seq.*

3 46. Bank of America was required to retain an attorney to prosecute this action, and is  
4 therefore entitled to collect its reasonable attorney's fees and costs.

5 **THIRD CAUSE OF ACTION**

6 **(Counterclaim for Unjust Enrichment Against Plaintiff)**

7 47. Bank of America repeats and re-alleges the preceding paragraphs as though fully set  
8 forth herein and incorporates the same by reference.

9 48. The HOA's foreclosure sale unjustly enriched Plaintiff by allowing it to obtain title to  
10 real property secured by a Deed of Trust with an unpaid principal balance of \$452,557.77 for the  
11 inequitable purchase price \$4,001.00.

12 49. Upon information and belief, Plaintiff continues to retain and derive income from the  
13 Property to the detriment of Bank of America, contrary to fundamental principles of fairness, justice,  
14 and fair dealing.

15 50. Bank of America is entitled to the reasonable amount of the benefits obtained by  
16 Plaintiff based on a theory of unjust enrichment.

17 51. Bank of America was required to retain an attorney to prosecute this action, and are  
18 therefore entitled to collect its reasonable attorney's fees and costs.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Bank of America prays for the following:

21 1. An order declaring that the HOA sale was invalid and that the transfer of the Property  
22 conveyed no legitimate interest to Plaintiff, and that the Deed of Trust continues to encumber the  
23 Property;

24 2. An order establishing that the first Deed of Trust is secured against the Property and  
25 that any interest of Plaintiff is subject to the Deed of Trust;

26 3. Judgment in Bank of America's favor against Plaintiff for the amount that it was  
27 unjustly enriched in an amount in excess of \$10,000;

3. Reasonable attorney's fees as special damages and the costs of the suit; and
4. For such other and further relief the Court deems proper.

DATED this 12<sup>th</sup> of May, 2016.

**AKERMAN LLP**

/s/ Matthew Knepper, Esq.

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*Attorneys for Bank of America, N.A.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 12<sup>th</sup> day of May, 2016 I caused to be served a true and correct copy of foregoing **BANK OF AMERICA, N.A.'s ANSWER TO THIRD AMENDED COMPLAINT AND COUNTERCLAIMS** in the following manner:

**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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**Roger P. Croteau & Associates, Ltd.****Contact**

Roger P. Croteau, Esq.

**Email**[croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)

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For those Parties not registered pursuant to Administrative Order 14-2, service was made in the following manner:

**(UNITED STATES MAIL)** Pursuant to NRCP 5(b), by depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written.

*/s/ Julia M. Diaz*  
\_\_\_\_\_  
An employee of AKERMAN LLP

EXHIBIT 3

EXHIBIT 3

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

AIRMOTIVE INVESTMENTS,  
LLC, a Nevada limited liability  
Company,

Plaintiff,

v.

BANK OF AMERICA,  
GENEVIEVE UNIZA-ENRIQUEZ,  
DOES 1 THROUGH 20, AND  
ROE CORPORATIONS 1  
THROUGH 20, INCLUSIVE,

Defendants.

CASE NO.: A-12-654840-C

DEPARTMENT XXIII

DECISION & ORDER

I. INTRODUCTION

This matter came before the Court on September 10, 2019 for defendant Bank of America's Motion for Summary Judgment against plaintiff Airmotive Investments, LLC's claims for quiet title and declaratory relief. Bank of America also requests Summary Judgment in favor of its own counterclaims for quiet title and declaratory relief against Airmotive Investments, LLC. Defendant Bank of America filed its Motion for Summary Judgment on April 5, 2019. Plaintiff Airmotive Investments, LLC filed its opposition on July 17, 2019. Defendant Bank of America filed its Reply on September 5, 2019.

Bank of America's Reply cites the Nevada Supreme Court's recent binding precedent in *Daisy Trust v. Wells Fargo* in support of its Motion for Summary Judgment. *See infra* p. 4. At the hearing, Plaintiff conceded that per the *Daisy Trust* holding, Fannie Mae does not need to be the beneficiary of record to establish its ownership interest. While it was undisputed the real property in question was owned by Fannie Mae, Plaintiff

STEFANY A. MILEY  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
LAS VEGAS NV 89101-2408

1  
2 asserted that defendant Bank of America's Affirmative Defense of the Federal Foreclosure  
3 Bar was nonetheless barred, based upon the Statute of Limitations. Furthermore, Plaintiff  
4 asserted that Bank of America's counterclaims were also barred by the Statute of  
5 Limitations.

6 Having considered the papers on file and the relevant law, the Court enters the  
7 following Decision and Order on defendant Bank of America's Motion for Summary  
8 Judgment against plaintiff Airmotive Investments, LLC's claims for quiet title and  
9 declaratory relief, as well as Bank of America's counterclaims for quiet title and  
10 declaratory relief against Airmotive Investments, LLC.  
11

## 12 II. STATEMENT OF FACTS

13 At issue before the Court is real property known as 6279 Downpour Court, Las  
14 Vegas, Nevada 89110 (Property). A Deed of Trust listing defendant Genevieve Uniza-  
15 Enriquez as the borrower was executed on June 23, 2006, and was recorded on June 30,  
16 2006. Fannie Mae became the successor to the Lender and acquired ownership of the Deed  
17 of Trust in August 2006 by purchasing the Loan.  
18

19 On April 12, 2011, the Property was purchased by Las Vegas Development Group,  
20 LLC at a Home Owner's Association (HOA) Foreclosure Sale in accordance with N.R.S.  
21 116.3116. Fannie Mae maintained its ownership at the time of the HOA Sale and Bank of  
22 America was the servicer of the Loan for Fannie Mae. At no time did Fannie Mae consent  
23 to the sale extinguishing or foreclosing its interest in the Property.  
24

25 Las Vegas Development Group, LLC filed the instant Complaint on January 17,  
26 2012, filed a Second Amended Complaint on August 1, 2013, and filed its Third Amended  
27 Complaint on February 29, 2016. Defendant Bank of America first claimed the affirmative  
28 defense of The Federal Foreclosure Bar in its Answer to the Second Amended Complaint

1  
2 on March 26, 2015. Bank of America also asserted its counterclaims against Plaintiff at  
3 that time.

4 Las Vegas Development Group, LLC conveyed its interest in the Property to  
5 Plaintiff through a recorded Grant Deed on March 7, 2017.

### 6 III. DISCUSSION

#### 7 A. Legal Standard

8 Rule 56(a) of the Nevada Rules of Civil Procedure governs Motions for Summary  
9 Judgment. NRCp 56(a). The pleadings, depositions, answers to interrogatories,  
10 admissions, and affidavits, if any, that are properly before the court must demonstrate that  
11 no genuine issue of material fact exists, and the moving party is entitled to judgment as a  
12 matter of law. *See Id.*; *Wood v. Safeway*, 121 P.3d 1026 (Nev. 2005). A court must accept  
13 the nonmoving party's properly supported factual allegations as true, and it must draw all  
14 reasonable inferences in the nonmoving party's favor. *Michaels v. Sudeck*, 810 P.2d 1212,  
15 1213 (Nev. 1991).  
16  
17

18 In determining whether a fact is material, the court shall look to the substantive law  
19 of the claims and only disputes over facts that might affect the outcome of the suit under  
20 the governing law will properly preclude the entry of summary judgment. *Wood*, 121 P.3d  
21 at 1030. Nevada courts no longer follow the "slightest doubt" standard that applied before  
22 *Wood*; the courts follow the federal summary judgment standard. *Id.* at 1031, 1037.  
23

#### 24 B. Defendant Bank of America's Motion for Summary Judgment against 25 plaintiff Airmotive Investments, LLC's claims for quiet title and declaratory 26 relief

##### 26 1. The Federal Foreclosure Bar Applies

27 HOAs are provided with a "superpriority" lien pursuant to NRS 116.3116(2) that,  
28 when properly foreclosed, extinguishes a first deed of trust. *SFR Investments Pool 1, LLC*

1  
2 v. *U.S. Bank, N.A.*, 130 Nev. 742 (Nev. 2014); NRS 116.3116(2). Commonly known as the  
3 Federal Foreclosure Bar, 12 U.S.C. § 4617 (HERA) has a provision stating “No property  
4 of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale  
5 without the consent of the Agency, nor shall any involuntary lien attach to the property of  
6 the Agency.” 12 U.S.C. § 4617(j)(3) (2012). This preempts NRS 116.3116(2) and  
7 prevents an HOA foreclosure sale from extinguishing the first deed of trust in those  
8 circumstances. *Saticoy Bay LLC Series 9641 Christine View v. Federal National Mortgage*  
9 *Ass’n*, 417 P.3d 363, 367-68 (Nev. 2018).

10  
11 After Bank of America filed its Motion for Summary Judgment, but before the  
12 present hearing before the Court, the Nevada Supreme Court provided further guidance to  
13 the District Courts on claims involving Fannie Mae or Freddie Mac. In *Daisy Trust v.*  
14 *Wells Fargo Bank, N.A.* the Nevada Supreme Court held that Fannie Mae and Freddie Mac  
15 need not be the beneficiary of record to establish their ownership interests. *Daisy Tr. V.*  
16 *Wells Fargo Bank, N.A.*, 445 P.3d 846, 849 (Nev. 2019). Furthermore, the deed of trust  
17 beneficiary is not required to produce the loan servicing agreement or original promissory  
18 note in order to establish that Fannie Mae or Freddie Mac owned the loan at the time of the  
19 foreclosure sale, and that the Federal Foreclosure Bar prevents any sale from extinguishing  
20 the deed of trust. *Id.* at 849-50. The Nevada Supreme Court has affirmed a recent summary  
21 judgment decision from this Court based on the *Daisy Trust* holding. *RH Kids, LLC v.*  
22 *Nationstar Mortg., LLC*, No. 76300, 2019 WL 4390764, at \*1 (Nev. Sept. 12, 2019).

23  
24  
25 **2. Neither Bank of America’s Federal Foreclosure Bar Defense nor its**  
26 **counterclaims are untimely.**

27 Any action brought by FHFA is governed by the statute of limitations set forth in  
28 HERA. These timing requirements are stated as follows:

1  
2 (12) Statute of limitations for actions brought by conservator or receiver  
3 (A) In general

4 Notwithstanding any provision of any contract, the applicable statute of  
5 limitations with regard to any action brought by the Agency as conservator  
6 or receiver shall be—

7 (i) in the case of any contract claim, the longer of—

8 (I) the 6-year period beginning on the date on which the claim  
9 accrues; or

10 (II) the period applicable under State law; and

11 (ii) in the case of any tort claim, the longer of—

12 (I) the 3-year period beginning on the date on which the claim  
13 accrues; or

14 (II) the period applicable under State law.

15 12 U.S.C. §4617(b)(12). In the case of contract claims, FHFA must bring suit within six  
16 years from the time the claim accrued. FHFA must bring claims within three years from  
17 the time the claim accrued for any torts claims.

18 In Nevada, NRS 11.190 governs the statute of limitations for most claims arising  
19 under Nevada law. Relevant here, NRS 11.190 defines the statute of limitations as three  
20 years for “an action upon a liability created by statute, other than a penalty or forfeiture.”  
21 NRS 11.190(3)(a). The Nevada Revised Statutes apply a four-year statute of limitation for  
22 “an action for relief, not hereinbefore provided for.” NRS 11.220. This “catch-all” time  
23 frame has been applied for equitable quiet-title claims brought by Freddie Mac, rather  
24 than the three-year statute of limitation in NRS 11.190(3)(a). *See Fed. House. Fin. Agency*  
25 *v. LN Mgmt. LLC, Series 2937 Barboursville*, 369 F. Supp. 3d 1101, 1111 (D. Nev. 2019).

26 A five-year period exists under NRS 11.070 and NRS 11.080, both statutes relating  
27 to the possession of real property. NRS 11.070 states:

28 No cause of action or defense to an action, **founded upon the title to real  
property**, or to rents or to services out of the same, shall be effectual,  
unless it appears **that the person prosecuting the action or making the  
defense**, or under whose title the action is prosecuted or the defense is  
made, or the ancestor, predecessor, **or grantor of such person**, was seized  
or possessed of the premises in question within 5 years before the

1  
2 committing of the act in respect to which said action is prosecuted or  
defense made.

3 NRS 11.070 (emphases added). NRS 1.080 states:

4 No action for the recovery of real property, or for the recovery of the  
5 possession thereof other than mining claims, shall be maintained, unless it  
6 appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor  
was seized or possessed of the premises in question, within 5 years before  
the commencement thereof.

7  
8 NRS 11.080.

9 Plaintiff does not deny that the *Daisy Trust* holding applies to the present facts.

10 Plaintiff does, however, assert that defendant Bank of America's Federal Foreclosure Bar  
11 defense is untimely. Bank of America filed its Federal Foreclosure Bar defense along with  
12 its counterclaims in March 2015, just under four years after the HOA Sale in April 2011.

13 Plaintiff argues that Bank of America's raised defense is based upon neither contract nor  
14 tort. Rather, being premised upon statute, the Federal Foreclosure Bar is subject to a three-  
15 year statute of limitations pursuant to NRS 11.190. Because neither Bank of America nor  
16 Fannie Mae asserted the Federal Foreclosure Bar as a defense until March 26, 2015, more  
17 than three years after the HOA Foreclosure Sale, Plaintiff believes this defense is  
18 untimely. Plaintiff asks the Court to deny Bank of America's Motion for Summary  
19 Judgment against Plaintiff's claims for that reason.  
20

21 Plaintiff next argues that because Bank of America's counterclaims are for  
22 declaratory relief, and are premised upon HERA, they are also subject to a three-year  
23 statute of limitations. Like the Federal Foreclosure Bar defense, the counterclaims were  
24 not asserted until March 26, 2015, more than three years after the HOA Foreclosure Sale.  
25 Because these claims are premised upon a statute they are subject to the three-year statute  
26 of limitations allowed under NRS 11.190 and this Court should deny Bank of America's  
27 Motion for Summary Judgment in regard to its counterclaims.  
28

1  
2 In response Bank of America claims that its invocation of the Federal Foreclosure  
3 Bar as a defense to Plaintiff's claims is not subject to a statute of limitations period.  
4 Raising the defense against a quiet title claim such as this one is not itself a stand-alone  
5 claim. *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 757-58  
6 (Nev. 2017) (Recognizing that arguing property owned by Freddie Mac is not subject to  
7 foreclosure while it is in conservatorship under federal law based on the Supremacy  
8 Clause is not akin to asserting a cause of action). Bank of America further asserts that if  
9 any statute of limitations applies, it would be the six-year limitation found in HERA. 12  
10 U.S.C. § 4617(b)(12)(A).  
11

12 Bank of America points out that while a quiet-title claim does not fit neatly into the  
13 "contract" or "tort" category provided by HERA, it is closer to the contract category  
14 because it seeks to validate a contractually created interest in the Property. The  
15 counterclaims and defenses arise from the contractual relationship between the borrower  
16 and the lender when creating the loan, which was purchased by Fannie Mae in August  
17 2006. "Because a mortgage lien is an interest in property created by contract, an action to  
18 enforce that lien is clearly a contract action." *Smith v. FDIC*, 61 F.3d 1552, 1561 (11th Cir.  
19 1995). This means that the invocation of the Federal Foreclosure Bar is subject to the six-  
20 year statute of limitations prescribed by HERA and Bank of America's defense is timely.  
21

22 Further, even if the Court cannot classify Bank of America's quiet-title  
23 counterclaim as either a tort or contract claim, Bank of America points this Court to two  
24 Ninth Circuit cases as support for its argument that the longer statute of limitations should  
25 apply in the event of ambiguity. When there is a substantial question regarding which  
26 statute of limitations should apply between two conflicting statutes, the court should apply  
27 the longer. *FDIC v. Former Officers & Directors of Metro. Bank*, 884 F.2d 1304, 1307  
28

1  
2 (9th Cir. 1989). More recently in *Wise v. Verizon Communications*, the Ninth Circuit  
3 stated that even if they were not bound by precedence, they would have chosen the longer  
4 statute of limitations when presented with multiple potentially-applicable statutes. *Wise v.*  
5 *Verizon Commc'ns, Inc.*, 600 F.3d 1180, 1187 n.2 (9th Cir. 2010). While neither of these  
6 cases apply to HERA, the FDIC court evaluated very similar statute of limitations  
7 provided to the FDIC in its capacity as a government agency where the FDIC's breach of  
8 fiduciary duty claims were being characterized as either tort or contract.  
9

10 Bank of America lastly asserts that at minimum, the statute of limitations would be  
11 five or four years. The counterclaim brought by Bank of America is for quiet title. The  
12 claims here satisfy the elements of NRS 11.070. The present dispute is whether the HOA  
13 conveyed clear title to the buyer, or whether the deed of trust owned by Fannie Mae  
14 continued to encumber the buyer's title. Fannie Mae's "grantor" is the former borrower,  
15 who was "seized or possessed of the premises" once the home was sold at the HOA  
16 Foreclosure Sale. And because NRS 11.070 applies to either a quiet title plaintiff, or to the  
17 "grantor", the five-year statute of limitations would apply.  
18

19 Bank of America also points to the broad statutory language of NRS 11.080 and  
20 says that the Nevada Supreme Court has applied its five-year limitations in a case  
21 involving a dispute between a lienholder and a purchaser at an HOA Foreclosure Sale. *See*  
22 *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d  
23 226, 232 (Nev. 2017). Finally, the four-year "catch-all" statute of limitations from NRS  
24 11.220 should apply at a bare minimum. Because Bank of America asserted its Federal  
25 Foreclosure Bar defense and filed its counterclaims within four years of the HOA  
26 Foreclosure Sale, its actions are timely and the Court should grant Bank of America's  
27  
28

1  
2 motion for summary judgment and enter a declaration that Plaintiff's interest in the  
3 Property is subject to the deed of trust.

4 Based on the foregoing, COURT FINDS, there is no genuine issue of material fact  
5 the subject loan was owned by Fannie Mae at the time of the HOA sale. Further, COURT  
6 FINDS, there is no genuine issue of material fact Fannie Mae did not consent to the HOA  
7 sale per NRS Chapter 116.

8 COURT FINDS, Defendant Bank of America's Federal Foreclosure Bar defense is  
9 not barred by the statute of limitations. Plaintiff has failed to convince the Court that the  
10 defense should be barred at all, as it is not a stand-alone action. Even if a statute of  
11 limitations attaches to the action, COURT FINDS, that at a minimum the statute of  
12 limitations attaches to the action, COURT FINDS, that at a minimum the statute of  
13 limitations would be the four-year period prescribed in NRS 11.220. Pursuant to the  
14 Nevada Supreme Court's holding in *Daisy Trust v. Wells Fargo*, COURT FINDS, that the  
15 Federal Foreclosure Bar precluded Plaintiff from acquiring title to the Property free and  
16 clear of Fannie Mae's property interest.

17 Based on Fannie Mae's ownership of the Deed of Trust in the Property and Bank  
18 of America timely asserting the Federal Foreclosure Bar, COURT ORDERS, defendant  
19 Bank of America's Motion for Summary Judgment on plaintiff Airmotive Investments,  
20 LLC's claims for quiet title and declaratory relief is GRANTED.

21 COURT FINDS, that defendant Bank of America's counterclaims for quiet title  
22 and declaratory relief against plaintiff are timely as they fall within NRS 11.220's four-  
23 year limitation period and were brought within four years from the HOA Foreclosure Sale.  
24 Further, there are no genuine issues of material fact related to defendant Bank of  
25 America's Motion for Summary Judgment on its counterclaims for quiet title and  
26 declaratory relief against Plaintiff Airmotive Investments, LLC.  
27  
28

1  
2 Therefore, COURT ORDERS, defendant Bank of America's Motion for Summary  
3 Judgment on its counterclaims for quiet title and declaratory relief against Plaintiff is  
4 GRANTED.

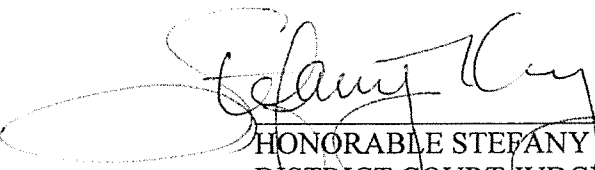
5 It is so ORDERED.

6 **IV. ORDER**

7 For the foregoing reasons, COURT HEREBY ORDERS, Defendant's Motion for  
8 Summary Judgment as to Plaintiff's Claims for quiet title and declaratory relief is  
9 GRANTED.  
10

11 COURT FURTHER ORDERS, Defendant's Motion for Summary Judgment as to  
12 Defendant's counterclaims for quiet title and declaratory relief is GRANTED.

13  
14 Dated this \_\_\_\_\_ day of ~~September~~, 2018. 10-17-19

15  
16  
17   
18 HONORABLE STEFANY A. MILEY  
19 DISTRICT COURT JUDGE  
20 DEPARTMENT XXIII

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on or about the date signed, a copy of this Decision and  
23 Order was electronically served and/or placed in the attorney's folders maintained  
24 by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage  
25 prepaid, by United States mail to the proper parties as follows: Roger P. Croteau,  
26 Esq., and Darren T. Brenner, Esq.

27 By: 

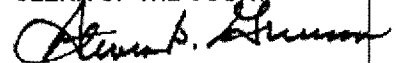
28 Carmen Alper  
Judicial Executive Assistant  
Department XXIII

STEFANY A. MILEY  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
LAS VEGAS NV 89101-2408

EXHIBIT 4

EXHIBIT 4



1 **NEO**  
2 DARREN T. BRENNER, ESQ.  
3 Nevada Bar No. 8386  
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13 *Attorneys for Bank of America, N.A.*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 AIRMOTIVE INVESTMENTS, LLC, a Nevada  
17 limited liability company,

18 Plaintiff,

19 v.

20 BANK OF AMERICA, N.A.; GENEVIEVE  
21 UNIZA-ENRIQUEZ; DOES 1 through 20; and  
22 ROE CORPORATIONS 1 through 20, inclusive

23 Defendants.

24 AND ALL RELATED CLAIMS.

Case No.: A-12-654840-C

Dept. No.: XXIII

**NOTICE OF ENTRY OF DECISION AND ORDER**

**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that a **DECISION AND ORDER** was entered on October 17, 2019, a copy of which is attached hereto as **Exhibit A**.

Dated: October 25, 2019.

**AKERMAN LLP**

/s/ Jared M. Sechrist

DARREN T. BRENNER, ESQ.  
Nevada Bar No. 8386  
JARED M. SECHRIST, ESQ.  
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1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134

*Attorneys for Bank of America, N.A.*

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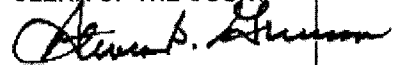
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# EXHIBIT A



DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

AIRMOTIVE INVESTMENTS,  
LLC, a Nevada limited liability  
Company,

Plaintiff,

v.

BANK OF AMERICA,  
GENEVIEVE UNIZA-ENRIQUEZ,  
DOES 1 THROUGH 20, AND  
ROE CORPORATIONS 1  
THROUGH 20, INCLUSIVE,

Defendants.

CASE NO.: A-12-654840-C

DEPARTMENT XXIII

DECISION & ORDER

I. INTRODUCTION

This matter came before the Court on September 10, 2019 for defendant Bank of America's Motion for Summary Judgment against plaintiff Airmotive Investments, LLC's claims for quiet title and declaratory relief. Bank of America also requests Summary Judgment in favor of its own counterclaims for quiet title and declaratory relief against Airmotive Investments, LLC. Defendant Bank of America filed its Motion for Summary Judgment on April 5, 2019. Plaintiff Airmotive Investments, LLC filed its opposition on July 17, 2019. Defendant Bank of America filed its Reply on September 5, 2019.

Bank of America's Reply cites the Nevada Supreme Court's recent binding precedent in *Daisy Trust v. Wells Fargo* in support of its Motion for Summary Judgment. *See infra* p. 4. At the hearing, Plaintiff conceded that per the *Daisy Trust* holding, Fannie Mae does not need to be the beneficiary of record to establish its ownership interest. While it was undisputed the real property in question was owned by Fannie Mae, Plaintiff

STEFANY A. MILEY  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
LAS VEGAS NV 89101-2408

1  
2 asserted that defendant Bank of America's Affirmative Defense of the Federal Foreclosure  
3 Bar was nonetheless barred, based upon the Statute of Limitations. Furthermore, Plaintiff  
4 asserted that Bank of America's counterclaims were also barred by the Statute of  
5 Limitations.

6 Having considered the papers on file and the relevant law, the Court enters the  
7 following Decision and Order on defendant Bank of America's Motion for Summary  
8 Judgment against plaintiff Airmotive Investments, LLC's claims for quiet title and  
9 declaratory relief, as well as Bank of America's counterclaims for quiet title and  
10 declaratory relief against Airmotive Investments, LLC.  
11

## 12 II. STATEMENT OF FACTS

13 At issue before the Court is real property known as 6279 Downpour Court, Las  
14 Vegas, Nevada 89110 (Property). A Deed of Trust listing defendant Genevieve Uniza-  
15 Enriquez as the borrower was executed on June 23, 2006, and was recorded on June 30,  
16 2006. Fannie Mae became the successor to the Lender and acquired ownership of the Deed  
17 of Trust in August 2006 by purchasing the Loan.  
18

19 On April 12, 2011, the Property was purchased by Las Vegas Development Group,  
20 LLC at a Home Owner's Association (HOA) Foreclosure Sale in accordance with N.R.S.  
21 116.3116. Fannie Mae maintained its ownership at the time of the HOA Sale and Bank of  
22 America was the servicer of the Loan for Fannie Mae. At no time did Fannie Mae consent  
23 to the sale extinguishing or foreclosing its interest in the Property.  
24

25 Las Vegas Development Group, LLC filed the instant Complaint on January 17,  
26 2012, filed a Second Amended Complaint on August 1, 2013, and filed its Third Amended  
27 Complaint on February 29, 2016. Defendant Bank of America first claimed the affirmative  
28 defense of The Federal Foreclosure Bar in its Answer to the Second Amended Complaint

1  
2 on March 26, 2015. Bank of America also asserted its counterclaims against Plaintiff at  
3 that time.

4 Las Vegas Development Group, LLC conveyed its interest in the Property to  
5 Plaintiff through a recorded Grant Deed on March 7, 2017.

### 6 III. DISCUSSION

#### 7 A. Legal Standard

8 Rule 56(a) of the Nevada Rules of Civil Procedure governs Motions for Summary  
9 Judgment. NRC 56(a). The pleadings, depositions, answers to interrogatories,  
10 admissions, and affidavits, if any, that are properly before the court must demonstrate that  
11 no genuine issue of material fact exists, and the moving party is entitled to judgment as a  
12 matter of law. *See Id.*; *Wood v. Safeway*, 121 P.3d 1026 (Nev. 2005). A court must accept  
13 the nonmoving party's properly supported factual allegations as true, and it must draw all  
14 reasonable inferences in the nonmoving party's favor. *Michaels v. Sudeck*, 810 P.2d 1212,  
15 1213 (Nev. 1991).  
16  
17

18 In determining whether a fact is material, the court shall look to the substantive law  
19 of the claims and only disputes over facts that might affect the outcome of the suit under  
20 the governing law will properly preclude the entry of summary judgment. *Wood*, 121 P.3d  
21 at 1030. Nevada courts no longer follow the "slightest doubt" standard that applied before  
22 *Wood*; the courts follow the federal summary judgment standard. *Id.* at 1031, 1037.  
23

#### 24 B. Defendant Bank of America's Motion for Summary Judgment against 25 plaintiff Airmotive Investments, LLC's claims for quiet title and declaratory 26 relief

##### 27 1. The Federal Foreclosure Bar Applies

28 HOAs are provided with a "superpriority" lien pursuant to NRS 116.3116(2) that,  
when properly foreclosed, extinguishes a first deed of trust. *SFR Investments Pool 1, LLC*

1  
2 v. *U.S. Bank, N.A.*, 130 Nev. 742 (Nev. 2014); NRS 116.3116(2). Commonly known as the  
3 Federal Foreclosure Bar, 12 U.S.C. § 4617 (HERA) has a provision stating “No property  
4 of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale  
5 without the consent of the Agency, nor shall any involuntary lien attach to the property of  
6 the Agency.” 12 U.S.C. § 4617(j)(3) (2012). This preempts NRS 116.3116(2) and  
7 prevents an HOA foreclosure sale from extinguishing the first deed of trust in those  
8 circumstances. *Saticoy Bay LLC Series 9641 Christine View v. Federal National Mortgage*  
9 *Ass’n*, 417 P.3d 363, 367-68 (Nev. 2018).

10  
11 After Bank of America filed its Motion for Summary Judgment, but before the  
12 present hearing before the Court, the Nevada Supreme Court provided further guidance to  
13 the District Courts on claims involving Fannie Mae or Freddie Mac. In *Daisy Trust v.*  
14 *Wells Fargo Bank, N.A.* the Nevada Supreme Court held that Fannie Mae and Freddie Mac  
15 need not be the beneficiary of record to establish their ownership interests. *Daisy Tr. V.*  
16 *Wells Fargo Bank, N.A.*, 445 P.3d 846, 849 (Nev. 2019). Furthermore, the deed of trust  
17 beneficiary is not required to produce the loan servicing agreement or original promissory  
18 note in order to establish that Fannie Mae or Freddie Mac owned the loan at the time of the  
19 foreclosure sale, and that the Federal Foreclosure Bar prevents any sale from extinguishing  
20 the deed of trust. *Id.* at 849-50. The Nevada Supreme Court has affirmed a recent summary  
21 judgment decision from this Court based on the *Daisy Trust* holding. *RH Kids, LLC v.*  
22 *Nationstar Mortg., LLC*, No. 76300, 2019 WL 4390764, at \*1 (Nev. Sept. 12, 2019).

23  
24  
25 **2. Neither Bank of America’s Federal Foreclosure Bar Defense nor its**  
26 **counterclaims are untimely.**

27 Any action brought by FHFA is governed by the statute of limitations set forth in  
28 HERA. These timing requirements are stated as follows:

1  
2 (12) Statute of limitations for actions brought by conservator or receiver  
3 (A) In general

4 Notwithstanding any provision of any contract, the applicable statute of  
5 limitations with regard to any action brought by the Agency as conservator  
6 or receiver shall be—

7 (i) in the case of any contract claim, the longer of—

8 (I) the 6-year period beginning on the date on which the claim  
9 accrues; or

10 (II) the period applicable under State law; and

11 (ii) in the case of any tort claim, the longer of—

12 (I) the 3-year period beginning on the date on which the claim  
13 accrues; or

14 (II) the period applicable under State law.

15 12 U.S.C. §4617(b)(12). In the case of contract claims, FHFA must bring suit within six  
16 years from the time the claim accrued. FHFA must bring claims within three years from  
17 the time the claim accrued for any torts claims.

18 In Nevada, NRS 11.190 governs the statute of limitations for most claims arising  
19 under Nevada law. Relevant here, NRS 11.190 defines the statute of limitations as three  
20 years for “an action upon a liability created by statute, other than a penalty or forfeiture.”  
21 NRS 11.190(3)(a). The Nevada Revised Statutes apply a four-year statute of limitation for  
22 “an action for relief, not hereinbefore provided for.” NRS 11.220. This “catch-all” time  
23 frame has been applied for equitable quiet-title claims brought by Freddie Mac, rather  
24 than the three-year statute of limitation in NRS 11.190(3)(a). *See Fed. House. Fin. Agency*  
25 *v. LN Mgmt. LLC, Series 2937 Barboursville*, 369 F. Supp. 3d 1101, 1111 (D. Nev. 2019).

26 A five-year period exists under NRS 11.070 and NRS 11.080, both statutes relating  
27 to the possession of real property. NRS 11.070 states:

28 No cause of action or defense to an action, **founded upon the title to real property**, or to rents or to services out of the same, shall be effectual, unless it appears **that the person prosecuting the action or making the defense**, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, **or grantor of such person**, was seized or possessed of the premises in question within 5 years before the

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committing of the act in respect to which said action is prosecuted or defense made.

NRS 11.070 (emphases added). NRS 1.080 states:

No action for the recovery of real property, or for the recovery of the possession thereof other than mining claims, shall be maintained, unless it appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor was seized or possessed of the premises in question, within 5 years before the commencement thereof.

NRS 11.080.

Plaintiff does not deny that the *Daisy Trust* holding applies to the present facts.

Plaintiff does, however, assert that defendant Bank of America's Federal Foreclosure Bar defense is untimely. Bank of America filed its Federal Foreclosure Bar defense along with its counterclaims in March 2015, just under four years after the HOA Sale in April 2011. Plaintiff argues that Bank of America's raised defense is based upon neither contract nor tort. Rather, being premised upon statute, the Federal Foreclosure Bar is subject to a three-year statute of limitations pursuant to NRS 11.190. Because neither Bank of America nor Fannie Mae asserted the Federal Foreclosure Bar as a defense until March 26, 2015, more than three years after the HOA Foreclosure Sale, Plaintiff believes this defense is untimely. Plaintiff asks the Court to deny Bank of America's Motion for Summary Judgment against Plaintiff's claims for that reason.

Plaintiff next argues that because Bank of America's counterclaims are for declaratory relief, and are premised upon HERA, they are also subject to a three-year statute of limitations. Like the Federal Foreclosure Bar defense, the counterclaims were not asserted until March 26, 2015, more than three years after the HOA Foreclosure Sale. Because these claims are premised upon a statute they are subject to the three-year statute of limitations allowed under NRS 11.190 and this Court should deny Bank of America's Motion for Summary Judgment in regard to its counterclaims.

1  
2 In response Bank of America claims that its invocation of the Federal Foreclosure  
3 Bar as a defense to Plaintiff's claims is not subject to a statute of limitations period.  
4 Raising the defense against a quiet title claim such as this one is not itself a stand-alone  
5 claim. *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 757-58  
6 (Nev. 2017) (Recognizing that arguing property owned by Freddie Mac is not subject to  
7 foreclosure while it is in conservatorship under federal law based on the Supremacy  
8 Clause is not akin to asserting a cause of action). Bank of America further asserts that if  
9 any statute of limitations applies, it would be the six-year limitation found in HERA. 12  
10 U.S.C. § 4617(b)(12)(A).  
11

12 Bank of America points out that while a quiet-title claim does not fit neatly into the  
13 "contract" or "tort" category provided by HERA, it is closer to the contract category  
14 because it seeks to validate a contractually created interest in the Property. The  
15 counterclaims and defenses arise from the contractual relationship between the borrower  
16 and the lender when creating the loan, which was purchased by Fannie Mae in August  
17 2006. "Because a mortgage lien is an interest in property created by contract, an action to  
18 enforce that lien is clearly a contract action." *Smith v. FDIC*, 61 F.3d 1552, 1561 (11th Cir.  
19 1995). This means that the invocation of the Federal Foreclosure Bar is subject to the six-  
20 year statute of limitations prescribed by HERA and Bank of America's defense is timely.  
21

22 Further, even if the Court cannot classify Bank of America's quiet-title  
23 counterclaim as either a tort or contract claim, Bank of America points this Court to two  
24 Ninth Circuit cases as support for its argument that the longer statute of limitations should  
25 apply in the event of ambiguity. When there is a substantial question regarding which  
26 statute of limitations should apply between two conflicting statutes, the court should apply  
27 the longer. *FDIC v. Former Officers & Directors of Metro. Bank*, 884 F.2d 1304, 1307  
28

1 (9th Cir. 1989). More recently in *Wise v. Verizon Communications*, the Ninth Circuit  
2 stated that even if they were not bound by precedence, they would have chosen the longer  
3 statute of limitations when presented with multiple potentially-applicable statutes. *Wise v.*  
4 *Verizon Commc'ns, Inc.*, 600 F.3d 1180, 1187 n.2 (9th Cir. 2010). While neither of these  
5 cases apply to HERA, the FDIC court evaluated very similar statute of limitations  
6 provided to the FDIC in its capacity as a government agency where the FDIC's breach of  
7 fiduciary duty claims were being characterized as either tort or contract.  
8

9  
10 Bank of America lastly asserts that at minimum, the statute of limitations would be  
11 five or four years. The counterclaim brought by Bank of America is for quiet title. The  
12 claims here satisfy the elements of NRS 11.070. The present dispute is whether the HOA  
13 conveyed clear title to the buyer, or whether the deed of trust owned by Fannie Mae  
14 continued to encumber the buyer's title. Fannie Mae's "grantor" is the former borrower,  
15 who was "seized or possessed of the premises" once the home was sold at the HOA  
16 Foreclosure Sale. And because NRS 11.070 applies to either a quiet title plaintiff, or to the  
17 "grantor", the five-year statute of limitations would apply.  
18

19 Bank of America also points to the broad statutory language of NRS 11.080 and  
20 says that the Nevada Supreme Court has applied its five-year limitations in a case  
21 involving a dispute between a lienholder and a purchaser at an HOA Foreclosure Sale. *See*  
22 *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d  
23 226, 232 (Nev. 2017). Finally, the four-year "catch-all" statute of limitations from NRS  
24 11.220 should apply at a bare minimum. Because Bank of America asserted its Federal  
25 Foreclosure Bar defense and filed its counterclaims within four years of the HOA  
26 Foreclosure Sale, its actions are timely and the Court should grant Bank of America's  
27  
28

1  
2 motion for summary judgment and enter a declaration that Plaintiff's interest in the  
3 Property is subject to the deed of trust.

4 Based on the foregoing, COURT FINDS, there is no genuine issue of material fact  
5 the subject loan was owned by Fannie Mae at the time of the HOA sale. Further, COURT  
6 FINDS, there is no genuine issue of material fact Fannie Mae did not consent to the HOA  
7 sale per NRS Chapter 116.

8 COURT FINDS, Defendant Bank of America's Federal Foreclosure Bar defense is  
9 not barred by the statute of limitations. Plaintiff has failed to convince the Court that the  
10 defense should be barred at all, as it is not a stand-alone action. Even if a statute of  
11 limitations attaches to the action, COURT FINDS, that at a minimum the statute of  
12 limitations would be the four-year period prescribed in NRS 11.220. Pursuant to the  
13 Nevada Supreme Court's holding in *Daisy Trust v. Wells Fargo*, COURT FINDS, that the  
14 Federal Foreclosure Bar precluded Plaintiff from acquiring title to the Property free and  
15 clear of Fannie Mae's property interest.  
16

17 Based on Fannie Mae's ownership of the Deed of Trust in the Property and Bank  
18 of America timely asserting the Federal Foreclosure Bar, COURT ORDERS, defendant  
19 Bank of America's Motion for Summary Judgment on plaintiff Airmotive Investments,  
20 LLC's claims for quiet title and declaratory relief is GRANTED.  
21

22 COURT FINDS, that defendant Bank of America's counterclaims for quiet title  
23 and declaratory relief against plaintiff are timely as they fall within NRS 11.220's four-  
24 year limitation period and were brought within four years from the HOA Foreclosure Sale.  
25 Further, there are no genuine issues of material fact related to defendant Bank of  
26 America's Motion for Summary Judgment on its counterclaims for quiet title and  
27 declaratory relief against Plaintiff Airmotive Investments, LLC.  
28

1  
2 Therefore, COURT ORDERS, defendant Bank of America's Motion for Summary  
3 Judgment on its counterclaims for quiet title and declaratory relief against Plaintiff is  
4 GRANTED.


5 It is so ORDERED.

6  
7 **IV. ORDER**

8 For the foregoing reasons, COURT HEREBY ORDERS, Defendant's Motion for  
9 Summary Judgment as to Plaintiff's Claims for quiet title and declaratory relief is  
10 GRANTED.

11 COURT FURTHER ORDERS, Defendant's Motion for Summary Judgment as to  
12 Defendant's counterclaims for quiet title and declaratory relief is GRANTED.

13  
14 Dated this \_\_\_\_ day of September, 2018. 10-17-19

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18 HONORABLE STEFANY A. MILEY  
19 DISTRICT COURT JUDGE  
20 DEPARTMENT XXIII

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on or about the date signed, a copy of this Decision and  
23 Order was electronically served and/or placed in the attorney's folders maintained  
24 by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage  
25 prepaid, by United States mail to the proper parties as follows: Roger P. Croteau,  
26 Esq., and Darren T. Brenner, Esq.

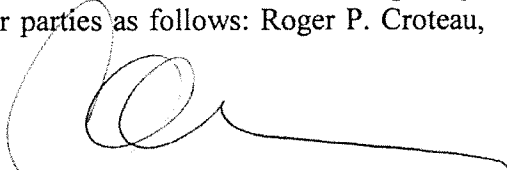

27  
28 By:   
Carmen Alper  
Judicial Executive Assistant  
Department XXIII

EXHIBIT 5

EXHIBIT 5



1 **SAO**  
2 ROGER P. CROTEAU, ESQ.  
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11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorney for Plaintiff*  
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

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DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*

AIRMOTIVE INVESTMENTS, LLC, a Nevada )  
limited liability company, )

Plaintiff, )

Case No. A-12-654840-C  
Dept. No. XXIII

vs. )

BANK OF AMERICA, GENEVIEVE UNIZA- )  
ENRIQUEZ, DOES 1 THROUGH 20, AND )  
ROE CORPORATIONS 1 THROUGH 20, )  
INCLUSIVE, )

Defendants. )

BANK OF AMERICA, N.A. )

Counterclaimant, )

vs. )

AIRMOTIVE INVESTMENTS, LLC, )

Counter-Defendant. )

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input checked="" type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

**STIPULATION AND ORDER TO DISMISS AND FOR FINAL JUDGMENT**

COMES NOW, Plaintiff/Counter-Defendant, AIRMOTIVE INVESTMENTS, LLC  
("Airmotive"), and Defendant/Counterclaimant, BANK OF AMERICA, N.A. ("BANA"), by and

1 through their undersigned counsel of record, and hereby stipulate and agree as follows:

- 2 1. On October 17, 2019, this Court entered a Decision and Order granting BANA's  
3 Motion for Summary Judgment as to (1) Airmotive's claims for Quiet Title and  
4 Declaratory Relief and (2) BANA's counterclaims for Quiet Title and Declaratory  
5 Relief.
- 6 2. Remaining unresolved and pending are Airmotive's claims for unjust enrichment;  
7 equitable mortgage; temporary restraining order/injunctive relief; and slander of  
8 title, as well as BANA's counterclaim for unjust enrichment.
- 9 3. Airmotive's claims for unjust enrichment; equitable mortgage; temporary  
10 restraining order/injunctive relief; and slander of title, as well as BANA's  
11 counterclaim for unjust enrichment shall be dismissed with prejudice in their  
12 entirety.
- 13 4. Defendant, Genevieve Uniza-Enriquez, has neither answered nor appeared herein  
14 to date. Airmotive hereby dismisses its claims against said Defendant in their  
15 entirety without prejudice.
- 16 5. All claims herein having been fully adjudicated as to all parties, the instant action

17 may be closed.  
18 DATED this 6<sup>th</sup> day of December, 2019.

19 ROGER P. CROTEAU &  
20 ASSOCIATES, LTD.

21  
22 TIMOTHY E. RHODA, ESQ.  
23 Nevada Bar No. 7878  
24 9120 West Post Road, Suite 100  
25 Las Vegas, Nevada 89148  
26 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
27 *Attorney for Plaintiff/Counter-Defendant*  
28 **LAS VEGAS DEVELOPMENT GROUP,  
LLC**

DATED this 4 day of December, 2019.

AKERMAN, LLP

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24 1635 Village Center Circle, Suite 200  
25 Las Vegas, Nevada 89134  
26 [scott.lachman@akerman.com](mailto:scott.lachman@akerman.com)  
27 *Attorneys for Defendant/Counterclaimant*  
28 **BANK OF AMERICA, N.A.**

**ORDER**

Having reviewed the stipulation of the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED that Airmotive's claims for unjust enrichment; equitable mortgage; temporary restraining order/injunctive relief; and slander of title, as well as BANA's counterclaim for unjust enrichment shall be dismissed with prejudice in their entirety.

IT IS FURTHER ORDERED that Defendant, Genevieve Uniza-Enriquez, has neither answered nor appeared herein to date and that Airmotive's claims against said Defendant are hereby dismissed in their entirety without prejudice.

IT IS FURTHER ORDERED that, all claims at issue herein having been adjudicated, the instant action shall be closed.

Dated this \_\_\_\_\_ day of November, 2019.

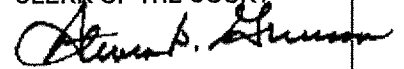
12-10-19

  
DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY

EXHIBIT 6

EXHIBIT 6



1 **NEOJ**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 TIMOTHY E. RHODA, ESQ.  
5 Nevada Bar No. 7878  
6 ROGER P. CROTEAU & ASSOCIATES, LTD.  
7 9120 West Post Road, Suite 100  
8 Las Vegas, Nevada 89148  
9 (702) 254-7775  
10 (702) 228-7719 (facsimile)  
11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorney for Plaintiff*  
13 **AIRMOTIVE INVESTMENTS, LLC**

14  
15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 \*\*\*

18 AIRMOTIVE INVESTMENTS, LLC, a Nevada )  
19 limited liability company, )

20 Plaintiff, )

Case No. A-12-654840-C  
Dept. No. XXIII

21 vs. )

22 BANK OF AMERICA, GENEVIEVE UNIZA- )  
23 ENRIQUEZ, DOES 1 THROUGH 20, AND )  
24 ROE CORPORATIONS 1 THROUGH 20, )  
25 INCLUSIVE, )

26 Defendants. )

27 BANK OF AMERICA, N.A. )

28 Counterclaimant, )

29 vs. )

30 AIRMOTIVE INVESTMENTS, LLC, )

31 Counter-Defendant. )

32 **NOTICE OF ENTRY OF ORDER**

33 PLEASE TAKE NOTICE that a **STIPULATION AND ORDER TO DISMISS AND**  
34 **FOR FINAL JUDGMENT** was entered in the above-entitled matter on or about the 12<sup>th</sup> day of

35 //

1 December, 2019, a copy of which is attached hereto.

2 DATED this 18<sup>th</sup> day of December, 2019.

3 ROGER P. CROTEAU & ASSOCIATES, LTD.

4  
5 /s/ Timothy E. Rhoda

6 ROGER P. CROTEAU, ESQ.

7 Nevada Bar No. 4958

8 TIMOTHY E. RHODA, ESQ.

9 Nevada Bar No. 7878

10 9120 West Post Road, Suite 100

11 Las Vegas, Nevada 89148

12 (702) 254-7775

13 *Attorney for Plaintiff*

14 **AIRMOTIVE INVESTMENTS, LLC**

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  X   VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

       VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

       VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

       VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

Page 3 of 3 6279 Downpour Court

EXHIBIT 1

EXHIBIT 1

*Steven D. Grierson*

1 **SAO**  
2 ROGER P. CROTEAU, ESQ.  
3 Nevada Bar No. 4958  
4 TIMOTHY E. RHODA, ESQ.  
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11 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
12 *Attorney for Plaintiff*  
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

10 DISTRICT COURT  
11 CLARK COUNTY, NEVADA

12 \*\*\*

13 AIRMOTIVE INVESTMENTS, LLC, a Nevada )  
14 limited liability company, )

15 Plaintiff, )

Case No. A-12-654840-C  
Dept. No. XXIII

16 vs. )

17 BANK OF AMERICA, GENEVIEVE UNIZA- )  
18 ENRIQUEZ, DOES 1 THROUGH 20, AND )  
19 ROE CORPORATIONS 1 THROUGH 20, )  
20 INCLUSIVE, )

21 Defendants. )

22 BANK OF AMERICA, N.A. )

23 Counterclaimant, )

24 vs. )

25 AIRMOTIVE INVESTMENTS, LLC, )

26 Counter-Defendant. )

<input type="checkbox"/> Voluntary Dismissal	<input type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input checked="" type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

27 **STIPULATION AND ORDER TO DISMISS AND FOR FINAL JUDGMENT**

28 COMES NOW, Plaintiff/Counter-Defendant, AIRMOTIVE INVESTMENTS, LLC  
("Airmotive"), and Defendant/Counterclaimant, BANK OF AMERICA, N.A. ("BANA"), by and

1 through their undersigned counsel of record, and hereby stipulate and agree as follows:

- 2 1. On October 17, 2019, this Court entered a Decision and Order granting BANA's  
3 Motion for Summary Judgment as to (1) Airmotive's claims for Quiet Title and  
4 Declaratory Relief and (2) BANA's counterclaims for Quiet Title and Declaratory  
5 Relief.
- 6 2. Remaining unresolved and pending are Airmotive's claims for unjust enrichment;  
7 equitable mortgage; temporary restraining order/injunctive relief; and slander of  
8 title, as well as BANA's counterclaim for unjust enrichment.
- 9 3. Airmotive's claims for unjust enrichment; equitable mortgage; temporary  
10 restraining order/injunctive relief; and slander of title, as well as BANA's  
11 counterclaim for unjust enrichment shall be dismissed with prejudice in their  
12 entirety.
- 13 4. Defendant, Genevieve Uniza-Enriquez, has neither answered nor appeared herein  
14 to date. Airmotive hereby dismisses its claims against said Defendant in their  
15 entirety without prejudice.
- 16 5. All claims herein having been fully adjudicated as to all parties, the instant action


17 may be closed.  
18 DATED this 17 day of December, 2019.

19 ROGER P. CROTEAU &  
20 ASSOCIATES, LTD.

21   
22 TIMOTHY E. RHODA, ESQ.  
23 Nevada Bar No. 7878  
24 9120 West Post Road, Suite 100  
25 Las Vegas, Nevada 89148  
26 [croteaulaw@croteaulaw.com](mailto:croteaulaw@croteaulaw.com)  
27 *Attorney for Plaintiff/Counter-Defendant*  
28 LAS VEGAS DEVELOPMENT GROUP,  
LLC

DATED this 4 day of December, 2019.

AKERMAN, LLP

21   
22 SCOTT R. LACHMAN, ESQ.  
23 Nevada Bar No. 12016  
24 1635 Village Center Circle, Suite 200  
25 Las Vegas, Nevada 89134  
26 [scott.lachman@akerman.com](mailto:scott.lachman@akerman.com)  
27 *Attorneys for Defendant/Counterclaimant*  
28 BANK OF AMERICA, N.A.

**ORDER**

Having reviewed the stipulation of the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED that Airmotive's claims for unjust enrichment; equitable mortgage; temporary restraining order/injunctive relief; and slander of title, as well as BANA's counterclaim for unjust enrichment shall be dismissed with prejudice in their entirety.

IT IS FURTHER ORDERED that Defendant, Genevieve Uniza-Enriquez, has neither answered nor appeared herein to date and that Airmotive's claims against said Defendant are hereby dismissed in their entirety without prejudice.

IT IS FURTHER ORDERED that, all claims at issue herein having been adjudicated, the instant action shall be closed.

Dated this \_\_\_\_\_ day of November, 2019.

12-10-19

  
DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY