

CLERK OF THE COURT

Electronically Filed
May 28 2013 08:28 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

ASTA
Ryan Kerbow, Esq.
Nevada Bar No. 11403
Bradley Bace, Esq.
Nevada Bar No. 12684
ALESSI & KOENIG, LLC
9500 W. Flamingo, Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033
Fax: (702) 222-4043
ryan@alessikoenig.com
brad@alessikoenig.com
Attorneys for Defendants/Appellants
Shadow Wood Homeowners' Association, Inc.;
and Gogo Way Trust

DISTRICT COURT
CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK,

Plaintiff,

vs.

SHADOW WOOD HOMEOWNERS
ASSOCIATION, INC.; GOGO WAY TRUST;
and DOES 1 through 20, inclusive,

Defendants.

AND RELATED CROSS-CLAIMS

Case No. A-12-660328-C
Dept. No. XV

CASE APPEAL STATEMENT

1. **Name of appellants filing this case appeal statement:** Defendant Shadow Wood Homeowners Association, Inc., and Defendant Gogo Way Trust.
2. **Identify the judge issuing the decision, judgment or order appealed from:** The Honorable Abbi Silver.

1 **3. Identify all parties to the proceedings in the district court:** Plaintiff New York
2 Community Bancorp, Inc.; and Defendants Shadow Wood Homeowners
3 Association, Inc., and Gogo Way Trust.

4 **4. Identify all parties involved in this appeal:** Plaintiff New York Community
5 Bancorp, Inc.; and Defendants Shadow Wood Homeowners Association, Inc., and
6 Gogo Way Trust.

7
8 **5. Set forth the name, law firm, address and telephone number of all counsel on**
9 **appeal and identify the party or parties whom they represent:**

10 Gregg A. Hubley, Esq.
11 Nevada Bar No. 7386
12 K. Alexandra Cavin, Esq.
13 Nevada Bar No. 11782
14 Pite Duncan, LLP
15 701 Bridger Avenue, Suite 700
16 Las Vegas, NV 89101
17 702-991-4628
18 *Attorneys for Plaintiff New York Community Bank*

19 Ryan Kerbow, Esq.
20 Nevada Bar No. 11403
21 Bradley Bace, Esq.
22 Nevada Bar No. 12684
23 Alessi & Koenig, LLC
24 9500 W. Flamingo, Suite 205
25 Las Vegas, NV 89147
26 702-222-4033
27 *Attorneys for Defendants Shadow Wood Homeowners' Association, Inc.;*
28 *and Gogo Way Trust*

23 **6. Indicate whether any attorney above is unlicensed in Nevada, but was**
24 **permitted to appear pursuant to SCR 42:** Each attorney is licensed to practice
25 in the State of Nevada.

26 **7. Indicate whether appellants were represented by appointed or retained counsel**
27 **in the district court:** Appellant was represented by retained counsel.

- 1 8. **Indicate whether appellants are represented by appointed or retained counsel**
2 **on appeal:** Appellants are represented by retained counsel.
- 3 9. **Indicate whether appellants were granted leave to proceed in forma pauperis,**
4 **and of the date of entry on the district court granting that leave:** Such leave
5 was not requested.
- 6
7 10. **Indicate the date the proceedings commenced in the district court (e.g., date of**
8 **complaint, indictment, information, or petition was filed):** April 4, 2012.
- 9 11. **Provide a brief description of the nature of the action and result in the district**
10 **court, including the type of judgment or order being appealed and the relief**
11 **granted by the district court:** Plaintiff commenced the action in the lower court
12 seeking quiet title and other declaratory relief. Plaintiff filed a Motion for Summary
13 Judgment on February 8, 2013. Hearing was heard on March 13, 2013. On April
14 10, 2013 the court entered its Finding of Facts, Conclusions of Law, and Order
15 Granting Plaintiff's Motion for Summary Judgment. In granting Plaintiff's motion,
16 the court set aside the February 22, 2012 foreclosure sale and rescinded the Trustee's
17 Deed of Trust recorded on March 1, 2012 in favor of Defendant Gogo Way Trust.
18 The court restored title to Plaintiff, granted immediate possession, and held that title
19 reverted *ex post facto* to the date of February 22, 2012. Furthermore, the court held
20 that Defendant Gogo Way Trust was not a bona fide purchaser. Finally, under NRS
21 116.3116(2) Plaintiff was ordered to pay Defendant Shadow Wood the nine (9)
22 month super-priority lien amount totaling \$1,519.29. Defendant's Motion for
23 Summary Judgment was denied, the trial date was vacated and all pending motions
24 were rendered moot.
25
26
27
28

12. Indicate whether this case has been previously subject to an appeal or original writ proceeding in the Supreme Court: There has been no previous appeal or original writ proceeding.

13. Indicate whether the appeal involves child custody or visitation: This appeal does not involve either child custody or visitation.

14. Indicate whether this appeal involves the possibility of settlement: This appeal does involve the possibility of settlement.

DATED this 7 day of May, 2013.

ALESSI & KOENIG, LLC


Ryan Kerkow, Esq.
Nevada Bar No. 11403
Bradley Bace, Esq.
Nevada Bar No. 12684
ALESSI & KOENIG, LLC
9500 W. Flamingo, Suite #205
Las Vegas, Nevada 89147
Phone: (702) 222-4033
Fax: (702) 222-4043
Attorneys for Defendants/Appellants Shadow Wood Homeowners' Association, Inc.; and Gogo Way Trust

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Gregg A. Hubley, Esq.
PITE DUNCAN
701 East Bridger Avenue, Suite 700
Las Vegas, NV 89101
702-991-4628 phone
702-685-6342 fax
Attorneys for Plaintiff
New York Community Bancorp, Inc.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-660328-C

New York Community Bancorp, Inc., Plaintiff(s)
vs.
Shadow Wood Homeowners Association Inc, Defendant
(s)

§
§
§
§
§

Location: **Department 15**
Judicial Officer: **Silver, Abbi**
Filed on: **04/18/2012**
Conversion Case Number: **A660328**

CASE INFORMATION

Statistical Closures

04/10/2013 Summary Judgment

Case Type: **Title to Property**

Subtype: **Quiet Title**

Case Flags: **Appealed to Supreme Court**
Automatically Exempt from Arbitration

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-12-660328-C
Court	Department 15
Date Assigned	04/18/2012
Judicial Officer	Silver, Abbi




PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	New York Community Bancorp, Inc.	Hubley, Gregg A. <i>Retained</i> 858-750-0935(W)
Defendant	Gogo Way Trust	Koenig, Robert A. <i>Retained</i> 702-222-4033(W)
	Shadow Wood Homeowners Association Inc	Koenig, Robert A. <i>Retained</i> 702-222-4033(W)
Counter Claimant	Gogo Way Trust	Koenig, Robert A. <i>Retained</i> 702-222-4033(W)
Counter Defendant	New York Community Bancorp, Inc.	Hubley, Gregg A. <i>Retained</i> 858-750-0935(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX


04/18/2012	 Complaint Filed By: Plaintiff New York Community Bancorp, Inc. <i>Verified Complaint for Quiet Title and Declaratory Relief</i>	
04/18/2012	Case Opened	
04/20/2012	 Summons Filed by: Plaintiff New York Community Bancorp, Inc. <i>Summons</i>	
04/20/2012	 Notice of Pendency of Action Filed By: Plaintiff New York Community Bancorp, Inc. <i>Notice of Pendency of Action</i>	

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-660328-C










05/10/2012	 Affidavit of Service Filed By: Plaintiff New York Community Bancorp, Inc. <i>Affidavit of Service</i>
05/10/2012	 Affidavit of Due Diligence Filed By: Plaintiff New York Community Bancorp, Inc. <i>Affidavit of Due Diligence</i>
05/10/2012	 Answer Filed By: Defendant Shadow Wood Homeowners Association Inc <i>Answer</i>
05/10/2012	 Initial Appearance Fee Disclosure Filed By: Defendant Shadow Wood Homeowners Association Inc <i>Initial Appearance Fee Disclosure</i>
06/19/2012	 Affidavit of Service Filed By: Plaintiff New York Community Bancorp, Inc. <i>Affidavit of Service - Gogo Way Trust</i>
07/10/2012	 Initial Appearance Fee Disclosure Filed By: Plaintiff New York Community Bancorp, Inc. <i>Initial Appearance Fee Disclosure</i>
07/10/2012	 Answer Filed By: Defendant Gogo Way Trust <i>Answer</i>
07/12/2012	 Joint Case Conference Report Filed By: Plaintiff New York Community Bancorp, Inc. <i>Joint Case Conference Report</i>
07/18/2012	 Scheduling Order <i>Scheduling Order</i>
07/20/2012	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial And Calendar Call</i>
09/17/2012	 Notice of Entry of Stipulation and Order Filed By: Plaintiff New York Community Bancorp, Inc. <i>Notice of Entry of Stipulation and Order for Leave to File First Amended Complaint</i>
09/17/2012	 Stipulation and Order Filed by: Plaintiff New York Community Bancorp, Inc. <i>Stipulation and Order for Leave to File First Amended Complaint</i>
10/05/2012	 First Amended Complaint Filed By: Plaintiff New York Community Bancorp, Inc. <i>First Amended Complaint for Quiet Title and Declaratory Relief</i>
10/30/2012	 Answer and Counterclaim Filed By: Defendant Shadow Wood Homeowners Association Inc

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-660328-C





Answer and Counter Claim

11/04/2012	 Affidavit of Service Filed By: Plaintiff New York Community Bancorp, Inc. <i>Affidavit of Service</i>
11/04/2012	 Affidavit of Service Filed By: Plaintiff New York Community Bancorp, Inc. <i>Affidavit of Service: Re: Subpoena Duces Tecum / Notice of Deposition c/o Corporation Trust Co. of Nevada, as Resident Agent</i>
11/16/2012	 Reply to Counterclaim Filed by: Plaintiff New York Community Bancorp, Inc. <i>New York Community Bank's Reply to Counterclaim</i>
02/07/2013	 Motion for Summary Judgment Filed By: Defendant Shadow Wood Homeowners Association Inc <i>Notice of Motion and Motion for Summary Judgment; Memorandum of Points and Authorities; Affidavits in Support</i>
02/08/2013	 Initial Appearance Fee Disclosure Filed By: Plaintiff New York Community Bancorp, Inc. <i>Initial Appearance Fee Disclosure</i>
02/08/2013	 Motion for Summary Judgment Filed By: Plaintiff New York Community Bancorp, Inc. <i>Motion for Summary Judgment</i>
02/12/2013	 Notice of Hearing Filed By: Plaintiff New York Community Bancorp, Inc. <i>Notice of Hearing on Motion for Summary Judgment</i>
02/12/2013	 Notice Filed By: Plaintiff New York Community Bancorp, Inc. <i>Notice of Submission of Affidavit of Sarah Artino in Support of Motion for Summary Judgment</i>
02/13/2013	 List of Witnesses Filed By: Defendant Shadow Wood Homeowners Association Inc <i>Defendants'/Counterclaimants Shadow Wood Homeowners' Association, INC's and GOGO Way Trust's List of Trial Witnesses and Exhibits</i>
02/13/2013	 Pre Trial Conference (10:30 AM) (Judicial Officer: Silver, Abbi)
02/14/2013	 Stipulation and Order Filed by: Plaintiff New York Community Bancorp, Inc. <i>Stipulation and Order to Extend Dispositive Motion Deadline</i>
02/19/2013	 Notice of Entry of Stipulation and Order Filed By: Plaintiff New York Community Bancorp, Inc. <i>Notice of Entry of Stipulation and Order to Extend Dispositive Motion Deadline</i>
03/01/2013	 Opposition to Motion For Summary Judgment Filed By: Defendant Shadow Wood Homeowners Association Inc <i>Defendant's Opposition to Plaintiff's Motion for Summary Judgment</i>

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-660328-C

03/01/2013	 Affidavit in Support Filed By: Defendant Shadow Wood Homeowners Association Inc <i>Affidavit of Naomi Eden in Support of Opposition to Plaintiff's Motion for Summary Judgment</i>
03/01/2013	 Supplement to Motion for Summary Judgment Filed by: Plaintiff New York Community Bancorp, Inc. <i>Supplemental Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment</i>
03/01/2013	 Pre-trial Memorandum Filed by: Plaintiff New York Community Bancorp, Inc. <i>New York Community Bank's Pre-Trial Memorandum</i>
03/06/2013	 Notice Filed By: Defendant Shadow Wood Homeowners Association Inc <i>Notice of Change of Attorney of Record</i>
03/07/2013	 Reply to Opposition Filed by: Plaintiff New York Community Bancorp, Inc. <i>Reply to Defendants' Opposition to Plaintiff's Motion for Summary Judgment</i>
03/11/2013	 Motion to Disqualify Attorney Filed By: Plaintiff New York Community Bancorp, Inc. <i>Motion to Disqualify Counsel for Defendants/Counterclaimants</i>
03/11/2013	CANCELED Bench Trial (10:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i>
03/12/2013	 Reply to Opposition Filed by: Defendant Shadow Wood Homeowners Association Inc <i>Defendants' Reply to Opposition to Plaintiff's Motion for Summary Judgment</i>
03/13/2013	Calendar Call (9:00 AM) (Judicial Officer: Silver, Abbi)
03/13/2013	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 02/07/2013 Motion for Summary Judgment <i>Notice of Motion and Motion for Summary Judgment; Memorandum of Points and Authorities; Affidavits in Support</i>
03/13/2013	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Silver, Abbi) Events: 02/08/2013 Motion for Summary Judgment
03/13/2013	 All Pending Motions (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Calendar Call, Notice of Motion and Motion for Summary Judgment; Memorandum of Points and Authorities; Affidavits in Support and Motion for Summary Judgment</i>
04/10/2013	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff New York Community Bancorp, Inc. <i>Findings of Fact, Conclusions of Law, and Order Granting Plaintiff's Motion for Summary Judgment</i>
04/10/2013	Summary Judgment (Judicial Officer: Silver, Abbi) Debtors: Shadow Wood Homeowners Association Inc (Defendant), Gogo Way Trust (Defendant) Creditors: New York Community Bancorp, Inc. (Plaintiff) Judgment: 04/10/2013, Docketed: 04/17/2013

DEPARTMENT 15
CASE SUMMARY
CASE NO. A-12-660328-C

04/16/2013	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Plaintiff New York Community Bancorp, Inc. <i>Notice of Entry of Findings of Fact, Conclusions of Law, and Order Granting Plaintiff's Motion for Summary Judgment</i>
04/17/2013	CANCELED Motion (9:00 AM) (Judicial Officer: Silver, Abbi) <i>Vacated - per Judge</i> <i>Motion to Disqualify Counsel for Defendants/Counterclaimants</i>
04/24/2013	 Memorandum Filed By: Plaintiff New York Community Bancorp, Inc. <i>Memorandum of Costs and Disbursements</i>
05/07/2013	 Notice of Appeal Filed By: Defendant Shadow Wood Homeowners Association Inc <i>Notice of Appeal</i>
05/07/2013	 Case Appeal Statement Filed By: Defendant Shadow Wood Homeowners Association Inc <i>Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION
	Defendant Gogo Way Trust Total Charges 223.00 Total Payments and Credits 223.00 Balance Due as of 5/9/2013 0.00
	Defendant Shadow Wood Homeowners Association Inc Total Charges 447.00 Total Payments and Credits 447.00 Balance Due as of 5/9/2013 0.00
	Plaintiff New York Community Bancorp, Inc. Total Charges 475.00 Total Payments and Credits 475.00 Balance Due as of 5/9/2013 0.00

Case No. _____
(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):
New York Community Bancorp, Inc.

Attorney (name/address/phone):
Gregg A. Hubley
PITE DUNCAN, LLP
701 East Bridger Avenue, Suite 700
Las Vegas, Nevada 89101
Telephone: (702) 991-4628

Defendant(s) (name/address/phone):
Shadow Woods Homeowners' Association
6029 S Fort Apache Ste 130
Las Vegas, NV 89148

Attorney (name/address/phone):
UNKNOWN

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

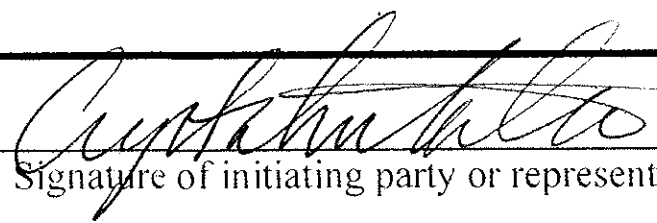
Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
Estimated Estate Value: _____ <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Foreclosure Mediation <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

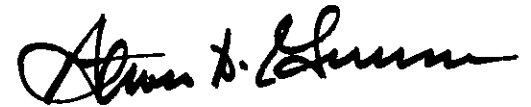
III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

April 18, 2012

Date


Signature of initiating party or representative



CLERK OF THE COURT

FFCL
GREGG A. HUBLEY (NV Bar #007386)
PITE DUNCAN, LLP
701 East Bridger Avenue, Suite 700
Las Vegas, NV 89101
Telephone: (702) 991-4628
Facsimile: (702) 685-6342
E-mail: Ghubley@piteduncan.com

Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

DISTRICT COURT
CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK,

Plaintiff,

v.

SHADOW WOOD HOMEOWNERS'
ASSOCIATION, INC.; GOGO WAY TRUST;
and DOES 1 through 20, inclusive,

Defendants.

Case No.: A-12-660328-C
Dept. No.: XV

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Date of Hearing: March 13, 2013
Time of Hearing: 9:00 a.m.

GOGO WAY TRUST,

Counterclaimant,

v.

NEW YORK COMMUNITY BANCORP,
INC.; DOE Individuals I through X; and ROE
Corporations XI through XX,

Counterdefendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This matter having come before the Court on March 13, 2013, for the hearing on the Motion for Summary Judgment filed by Plaintiff NEW YORK COMMUNITY BANK (hereinafter, "NYCB'S Motion"), by and through its counsel of record, Gregg A. Hubley, Esq., of PITE

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Settle Dis	<input checked="" type="checkbox"/> Sum Jgmt	<input type="checkbox"/> Non-Jury Trial	<input type="checkbox"/> Final Dispositions
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Settle Jgmt			
<input type="checkbox"/> Jgmt on Adv Award	<input type="checkbox"/> Default Jgmt	<input type="checkbox"/> Jury Trial		<input type="checkbox"/> Time Limit Expired
<input type="checkbox"/> Ref to Dis (by def)	<input type="checkbox"/> Transferred			<input type="checkbox"/> Dismissed (with or without prejudice)
				<input type="checkbox"/> Judgment Satisfactorily Paid in full

1 DUNCAN, LLP, on February 8, 2013, and the Motion for Summary Judgment filed by Defendants,
2 SHADOW WOOD HOMEOWNERS' ASSOCIATION, INC. and GOGO WAY TRUST
3 (hereinafter, "Defendants' Motion"), by and through Defendants' counsel of record, ALESSI &
4 KOENIG, LLC, on February 8, 2013; Plaintiff appearing at the March 13, 2013, hearing through its
5 counsel, Gregg A. Hubley, Esq., and Defendants appearing by and through their counsel, Huong
6 Lam, Esq.; the Court being having reviewed the pleadings filed, the moving papers, and being fully
7 advised in the premises, and with good cause appearing therefor, hereby GRANTS Plaintiff's Motion
8 for Summary Judgment, and DENIES Defendants' Motion for Summary Judgment, based upon the
9 following Findings of Fact and Conclusions of Law.

10 **I.**

11 **FINDINGS OF FACT**

12 1. The real property at issue in these proceedings is located at 3923 Gogo Way, #109,
13 Las Vegas, Nevada, 89103, Assessor's Parcel Number 162-18-613-029 ("Subject Property").

14 2. Prior to Plaintiff NYCB's foreclosure sale, the Subject Property was owned by non-
15 party, Virginia V. Fedel, who had executed a Promissory Note secured by a Deed of Trust, which
16 was recorded on April 27, 2007, in the Official Records of Clark County, Nevada, as Instrument No.
17 20070427-0004835.

18 3. Virginia V. Fedel defaulted on the terms of the Promissory Note and Deed of Trust
19 referenced in Paragraph 2, above, by failing to make the payments required. Virginia V. Fedel also
20 failed to pay the monthly assessments as set forth in the CC&Rs recorded by Defendant SHADOW
21 WOOD HOMEOWNERS' ASSOCIATION.

22 4. The beneficial interest in the Deed of Trust executed by Virginia V. Fedel was
23 assigned to Plaintiff NYCB, and the Assignment was recorded in the Official Records of Clark
24 County, Nevada, as Instrument No. 20100707-0003641, on July 7, 2010.

25 5. On June 1, 2010, a Notice of Breach and Default and of Election to Cause Sale of
26 Real Property Under Deed of Trust ("NYCB NOD") was recorded on June 1, 2010, in the Official
27 Records of Clark County, Nevada, as Instrument No. 20100602-0003706. On March 8, 2011, the
28 Nevada Foreclosure Mediation Program issued a Certificate of Completion authorizing Plaintiff

1 NYCB to proceed with foreclosure, which was recorded on April 13, 2011, in the Official Records
2 of Clark County, Nevada, as Instrument No. 20110413-0002248.

3 6. On May 9, 2011, Plaintiff NYCB purchased the Subject Property at a Trustee's Sale
4 ("NYCB's Foreclosure Sale") for \$45,900.00, and a Trustee's Deed Upon Sale was recorded in the
5 Official Records of Clark County, Nevada, as Instrument No. 20110524-0003017 ("NYCB's TDUS).

6 7. The Subject Property is located within a condominium association which has
7 significant common area expenses, and the Subject Property is governed by SHADOW WOOD
8 HOMEOWNERS' ASSOCIATION, INC.'s ("Shadow Wood"), Declaration of Covenants,
9 Conditions and Restrictions for Shadow Wood Condominiums ("CC&Rs"). Shadow Wood issues
10 monthly assessments against all units pursuant to the CC&Rs.

11 8. The monthly assessments relative to the Subject Property had a delinquent balance
12 since 2008, as, prior to NYCB's Foreclosure Sale, Virginia V. Fedel failed to pay all of the monthly
13 assessments.

14 9. Although the monthly assessments were delinquent, Shadow Wood and/or its agents
15 had accepted partial payments from Virginia V. Fedel, and did not hold a foreclosure sale to collect
16 the unpaid/delinquent balance until after NYCB's Foreclosure Sale.

17 10. On June 29, 2011, Shadow Wood and/or its agents executed a Notice of Delinquent
18 Lien ("Notice of Lien") which was recorded in the Official Records of Clark County, Nevada, on
19 July 7, 2011, as Instrument No. 20110707-0002436. The Notice of Lien indicated that Shadow
20 Wood had a lien against the Subject Property in the amount of \$8,238.87, consisting of collection
21 and/or attorney fees, assessments, interest, late fees, service charges, and collection costs.

22 11. On August 29, 2011, Shadow Wood and/or its agents executed a Notice of Default
23 and Election to Sell under Homeowners Association Lien ("HOA NOD"), which was recorded in
24 the Official Records of Clark County, Nevada, on October 13, 2011, as Instrument No. 20111013-
25 0001665. The HOA NOD indicated that the amount due as of August 29, 2011, was \$6,608.34.

26 12. On November 2, 2011, and December 2, 2011, NYCB's representative contacted
27 Shadow Wood's agent, Alessi & Koenig, in writing, requesting a detailed statement identifying the
28 amount of the lien payoff requested by Shadow Wood. Shadow Wood's agent sent a response to the

1 payoff demand to another employee of Shadow Wood's agent, apparently in error, and NYCB did
2 not receive this response.

3 13. NYCB's representative contacted Ticor Title of Nevada, Inc., the escrow agent for
4 NYCB's Foreclosure Sale, on December 12, 2011, requesting assistance with its attempts to
5 communicate with Shadow Wood's agents and obtain a payoff statement. On December 28, 2011,
6 Ticor Title of Nevada, Inc., sent an escrow demand to Shadow Wood's management company, MP
7 Association Management. On December 28, 2011, Gerald Marks, the owner of MP Association
8 Management completed, signed and returned the Demand Form to Ticor Title of Nevada, Inc. The
9 executed Demand Form stated that the monthly dues on the Subject Property had been paid to 11-31-
10 11, that the next payment was due on 12-1-11, that there was a delinquent amount of \$328.94, that
11 the account had not been sent to a collection agency, and that no liens had been filed against the
12 Subject Property.

13 14. On January 18, 2012, Defendant Shadow Wood and/or its agents executed a Notice
14 of Trustee's Sale ("HOA NOS"), scheduling the HOA Trustee's Sale for February 22, 2012. The
15 HOA NOS was recorded on January 27, 2012, in the Official Records of Clark County, Nevada, as
16 Instrument NO. 20120127-0002208. The HOA NOS stated that an unpaid balance existed in the
17 amount of \$8,539.77.

18 15. On January 23, 2012, NYCB received a ledger of past due amounts from Shadow
19 Wood's agent, Alessi & Koenig, which listed an outstanding balance of \$6,445.54, which was good
20 through February 1, 2012.

21 16. On January 31, 2012, NYCB sent a check to Shadow Wood's agent, Alessi & Koenig,
22 in the amount of \$6,783.16, as payment for the balance reflected on the January 23, 2012, ledger and
23 payment of future assessments through April 1, 2012.

24 17. Shadow Wood's agent, Alessi & Koenig, received NYCB's payment of \$6,783.16.
25 Shadow Wood's agent, Alessi & Koenig, rejected the payment of \$6,783.16, and advised NYCB on
26 February 8, 2012, that the outstanding balance now totaled \$9,017.39.

27 ///

28

1 18. At the time that Shadow Wood recorded and served the Notice of Lien, the regular
2 monthly assessment applicable to the Subject Property was \$168.81 per month. For the period of
3 nine (9) months preceding the Notice of Lien, nine (9) regular monthly assessments applicable to the
4 Subject Property totaled \$1,519,.29.¹

5 19. On February 22, 2012, Shadow Wood's agent, Alessi & Koenig, sold the Subject
6 Property to Defendant Gogo Way Trust at the HOA Trustee Sale for \$11,018.39. On March 1, 2012,
7 a Trustee's Deed Upon Sale was recorded in the Official Records of Clark County, Nevada, as
8 Instrument No. 20120301-0004775 ("HOA TDUS").

9 20. Shadow Wood's Notice of Lien and all of its HOA foreclosure efforts in relation to
10 the Subject Property were based upon the alleged failure of the unit owner to pay the monthly
11 assessments of the HOA, coupled with the collection costs and attorney's fees allegedly incurred in
12 the foreclosure. Shadow Wood has not claimed that its lien on the Subject Property was related to
13 nuisance abatement costs incurred by Shadow Wood (NRS 116.310312), and has not claimed that
14 its foreclosure on the Subject Property related to fines or penalties related to a violation that posed
15 an imminent threat of harm to other unit owners or residents (NRS 116.31162(4)(a)) or a penalty for
16 failure to adhere to a construction schedule for the completion of an improvement (NRS
17 116.31162(4)(b)).

18 21. Shadow Wood's agent, MP Association Management, documented the receipt of
19 \$3,442.39 from the HOA Trustee Sale on March 22, 2012. Shadow Wood's agent, MP Association
20 Management, documented a "Bad Debt Write Off," also on March 22, 2012, in the amount of
21 \$3,013.15, bringing the purported HOA dues owed on the Subject Property current.

22 22. On April 18, 2012, NYCB filed its Verified Complaint for Quiet Title and
23 Declaratory Relief. On October 5, 2012, pursuant to a Stipulation and Order filed September 17,
24 2012, NYCB filed its First Amended Complaint for Quiet Title and Declaratory Relief. On October
25 30, 2012, Defendants filed an Answer to the First Amended Complaint and Defendant Gogo Way
26 asserted a Counterclaim for Quiet Title and Declaratory Relief against NYCB.

27
28 ¹ \$168.81 X 9 months (September, 2010, through May, 2011) = \$1,519.29.

23. Any Findings of Fact which should be construed as Conclusions of Law shall be deemed as such, and any Conclusions of Law which should be construed as Findings of Fact shall be deemed as such.

II.

CONCLUSIONS OF LAW

1. Summary Judgment is appropriate if the “...pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” NRCp 56(c). The determination of materiality depends upon the underlying substantive law, and includes only those factual issues that could change the ultimate outcome of the case. Wood v. Safeway, 121 Nev. 724, 730, 121 P.3d 1026 (2005). The Court must consider all properly asserted facts and evidence in a light most favorable to the nonmoving party, but the nonmoving party must show that there is more than just a “metaphysical doubt” as to the operative facts to avoid summary judgment, and must, by affidavit or otherwise, set forth specific facts that demonstrate the existence of genuine issues for trial. Wood v. Safeway, 121 Nev. 724, 732.

2. “[W]hen a senior lienholder forecloses and sells property to a person other than the junior lienholder, the junior lienholder is ‘sold-out’ and can institute proceedings to collect the debt without attempting to fruitlessly proceed against the property.” McDonald. v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 818, 123 P.3d 748 (2005). Any amount allegedly owed by Virginia V. Fedel to Shadow Wood or its agents prior to NYCB’s Foreclosure Sale was sold out, with the exception of those identified in NRS 116.3116 and NRS 116.310312, and Shadow Wood or its agents could have instituted proceedings against Virginia V. Fedel to recover the amount(s) claimed.

3. Shadow Wood cannot foreclose on a lien by sale when that lien is based upon a fine or penalty for violating the governing documents of the association unless the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents, or the penalty is imposed for a failure to adhere to a schedule required pursuant to NRS 116.310305. NRS 116.31162(4).

1 4. Shadow Wood's lien was entitled to super priority status in this matter only to the
2 extent of "...the assessments for common expenses based on the periodic budget adopted by the
3 association which would have become due in the absence of acceleration during the 9 months
4 immediately preceding institution of an action to enforce the lien[.]" NRS 116.3116(2).

5 5. Although not precedential, the State of Nevada Department of Business and Industry,
6 Real Estate Division ("Real Estate Division") published an Advisory Opinion on December 12,
7 2012, setting forth that costs of collection cannot properly be included in an HOA's super-priority
8 lien, and stating that "...liens for fines and penalties may not be foreclosed unless they satisfy the
9 requirements of NRS 116.3116(4)." The Real Estate Division further suggests that it is
10 unreasonable to expect that fines, which generally cannot be used as the basis for foreclosure, survive
11 a foreclosure of the first security interest.

12 6. The Nevada Supreme Court has held that "...the responsibility for determining which
13 fees may be charged, the maximum amount of such fees, and whether they maintain a priority, rests
14 with the Real Estate Division and the CCICCH." Dep't. of Bus. & Indus. v. Nev. Ass'n Servs., Inc.,
15 128 Nev.Adv.Op. 34, at *4 (2012).

16 7. Plaintiff NYCB is entitled to summary judgment as a matter of law on the declaratory
17 relief claim and claim for quiet title, quieting title in favor of Plaintiff NYCB and against Gogo Way
18 Trust immediately. Pursuant to this Court's equitable powers, the HOA TDUS recorded March 1,
19 2012, is hereby immediately set aside, invalidated and rescinded, and the Court declares that
20 NYCB's TDUS, recorded on May 9, 2011, is superior to and not subject to any interest held or
21 claimed by Gogo Way Trust.

22 8. The HOA foreclosure sale (February 22, 2012) was based at least in part upon
23 collection costs, attorney's fees, and other fees that predated NYCB's Foreclosure Sale (May 9,
24 2011) and had been wiped out. Nine (9) months of regular monthly assessments applicable to the
25 Subject Property from the time of the Notice of Lien totaled \$1,519.29.

26 8. The undisputed facts demonstrate that Shadow Wood and/or its agents supplied
27 several lien payoff figures to NYCB that differed significantly. Shadow Wood has conceded by
28 Affidavit that it or its agents made at least one "mistake" in providing payoff figures which

1 overstated the amount of its lien. Shadow Wood's agent has further admitted that at least one of the
2 payoff demands was not sent to NYCB, but was instead mistakenly sent to another employee of
3 Shadow Wood's agent. Shadow Wood's other agent, MP Association Management, advised in
4 writing less than two months before the HOA Trustee Sale that the monthly assessments on the
5 Subject Property had been paid to the end of November, 2011, the next payment was due on
6 December 1, 2011, and that the amount in delinquency relative to the Subject Property was only
7 \$328.94.

8 9. NYCB attempted in good faith to pay off the lien asserted by Shadow Wood and/or
9 its agents, sending payment of \$6,783.16 on January 31, 2012, after having received a ledger of past
10 due amounts from Shadow Wood's agent on January 23, 2012, asserting an outstanding balance of
11 \$6,445.54. Shadow Wood and/or its agents rejected the payment and sent it back to NYCB.
12 NYCB's efforts to pay off the lien asserted by Shadow Wood and/or its agents were frustrated by
13 the unreasonable and oppressive actions of Shadow Wood and/or its agents.

14 10. Shadow Wood's agent, MP Association Management, provided documents that
15 demonstrate that Shadow Wood ultimately received the sum of \$3,442.39 from the HOA Trustee
16 Sale, and wrote off \$3,013.15 as a bad debt. NYCB's payment of \$6,783.16 more than satisfied the
17 nine (9) months of assessments (\$1,519.29) on which Shadow Wood could have legitimately based
18 a super-priority lien, and would have netted Shadow Wood more than it ultimately collected. The
19 Court believes, based upon the papers and pleadings submitted, as well as oral argument at the
20 hearing of this matter, that Shadow Wood and/or its agents were attempting to profit off of the
21 subject HOA foreclosure by including exorbitant fees and costs that could not be used as the basis
22 for an HOA foreclosure sale in this matter.

23 11. Defendant Gogo Way Trust was not a bona fide purchaser at the subject HOA
24 foreclosure sale, and is not entitled to the protections of NRS 645F.440.

25 12. The HOA TDUS recorded by Shadow Wood and/or its agents is not conclusive proof
26 that Shadow Wood "...satisfied all the foreclosure requirements," as Defendants contend.

27 /./

28 /./

1 III.

2 ORDER

3 Good cause appearing therefor,

4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion for
5 Summary Judgment is GRANTED in its entirety.

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that, based upon the
7 Court's equitable powers, the HOA Foreclosure Sale of February 22, 2012, to Gogo Way Trust was
8 not legitimate and is set aside, and the HOA TDUS recorded on March 1, 2012, in favor of Gogo
9 Way Trust is rescinded. NYCB is entitled to immediate possession of the Subject Property, and title
10 is to be restored to NYCB immediately and shall be *ex post facto* to February 22, 2012.

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Gogo Way
12 Trust was not a bona fide purchaser at the March 1, 2012, HOA foreclosure sale.

13 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff is to pay
14 Shadow Wood the amount that it was rightly due for its super-priority lien under NRS 116.3116(2),
15 based upon the Shadow Wood Notice of Lien, in the total amount of \$1,519.29.

16 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendants' Motion
17 for Summary Judgment is DENIED in its entirety.

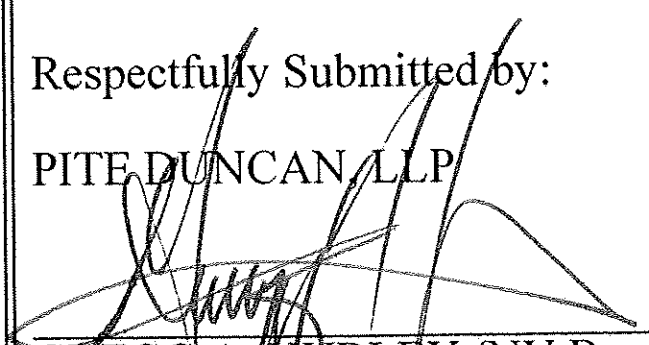
18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the trial setting
19 previously entered in this matter is vacated, and any pending Motions are denied as moot.

20 **IT IS SO ORDERED** this 8th day of April, 2013.

21
22 
DISTRICT COURT JUDGE **Abbi Silver**

23 Respectfully Submitted by:

24 PITE DUNCAN LLP

25 
26 GREGG A. HUBLEY (NV Bar #007386)
27 Attorneys for Plaintiff/Counterdefendant NEW
28 YORK COMMUNITY BANK

1 **NEO**
GREGG A. HUBLEY (NV Bar #007386)
2 **PITE DUNCAN, LLP**
701 East Bridger Avenue, Suite 700
3 Las Vegas, Nevada 89101
Telephone: (702) 991-4628
4 Facsimile: (702) 685-6342
E-mail: Ghubleyley@piteduncan.com
5


CLERK OF THE COURT

6 Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK
7
8

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 NEW YORK COMMUNITY BANK,

12 Plaintiff,

13 v.

14 SHADOW WOOD HOMEOWNERS'
ASSOCIATION, INC.; GOGO WAY TRUST;
15 and DOES 1 through 20, inclusive,

16 Defendants.

Case No.: A-12-660328-C
Dept. No.: XV

**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

17 GOGO WAY TRUST,

18 Counterclaimant,

19 v.

20 NEW YORK COMMUNITY BANCORP,
INC.; DOE Individuals I through X; and ROE
21 Corporations XI through XX,

22 Counterdefendants.
23

24 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
25 **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

26 PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law, and Order Granting
27 Plaintiff's Motion for Summary Judgment was entered in the above-entitled matter on the 10th day
28 of April, 2013.

1 A true and correct of copy of said Findings of Fact, Conclusions of Law, and Order Granting
2 Plaintiff's Motion for Summary Judgment is attached hereto as Exhibit 1.

3 DATED this 16th day of April, 2013.

4 PITE DUNCAN, LLP

5
6 GREGG A. HUBLEY

7 *Attorneys for Plaintiff/Counterdefendant NEW*
8 *YORK COMMUNITY BANK*
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 New York Community Bank v. Shadow Wood, et al.
2 District Court Clark County, Nevada
3 **Case No.: A-12-660328-C**

4 **DECLARATION OF SERVICE**

5 I, the undersigned, declare: I am, and was at the time of service of the papers herein referred
6 to, over the age of 18 years, and not a party to this action. My business address is 701 East Bridger
7 Avenue, Suite 700, Las Vegas, Nevada 89101.

8 On April 16, 2013, I served the following document(s):

9 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
10 ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

11 on the parties in this action addressed as follows:

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Huong X. Lam, Esq.
ALESSI & KOENIG, LLC
9500 West Flamingo Road, Suite 205
Las Vegas, Nevada 89147
*Attorneys for Defendants Shadow Wood Homeowners'
Association, Inc. and Gogo Way Trust*

X

BY MAIL: I placed a true copy in a sealed envelope addressed as indicated above. I am
readily familiar with the firm's practice of collection and processing correspondence for
mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course
of business. I am aware that on motion of party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one day after date of deposit for mailing
in affidavit.

BY CERTIFIED MAIL: I placed a true copy in a sealed envelope addressed as indicated
above via certified mail, return receipt requested.

BY FACSIMILE: I personally sent to the addressee's facsimile number a true copy of the
above-described document(s). I verified transmission with a confirmation printed out by the
facsimile machine used. Thereafter, I placed a true copy in a sealed envelope addressed and
mailed as indicated above.

BY FEDERAL EXPRESS: I placed a true copy in a sealed Federal Express envelope
addressed as indicated above. I am familiar with the firm's practice of collection and
processing correspondence for Federal Express delivery and that the documents served are
deposited with Federal Express this date for overnight delivery.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
is true and correct.

Executed this 16th day of April 2013, at Las Vegas, Nevada.


NICOLE L. SCHLANDERER

EXHIBIT 1

EXHIBIT 1



CLERK OF THE COURT

1 **FFCL**
2 GREGG A. HUBLEY (NV Bar #007386)
3 **PITE DUNCAN, LLP**
4 701 East Bridger Avenue, Suite 700
5 Las Vegas, NV 89101
6 Telephone: (702) 991-4628
7 Facsimile: (702) 685-6342
8 E-mail: Ghubbley@piteduncan.com

Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

DISTRICT COURT

CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK,

Plaintiff,

v.

SHADOW WOOD HOMEOWNERS'
ASSOCIATION, INC.; GOGO WAY TRUST;
and DOES 1 through 20, inclusive,

Defendants.

Case No.: A-12-660328-C
Dept. No.: XV

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Date of Hearing: March 13, 2013
Time of Hearing: 9:00 a.m.

GOGO WAY TRUST,

Counterclaimant,

v.

NEW YORK COMMUNITY BANCORP,
INC.; DOE Individuals I through X; and ROE
Corporations XI through XX,

Counterdefendants.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

This matter having come before the Court on March 13, 2013, for the hearing on the Motion for Summary Judgment filed by Plaintiff NEW YORK COMMUNITY BANK (hereinafter, "NYCB'S Motion"), by and through its counsel of record, Gregg A. Hubley, Esq., of PITE

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Settle Dis	<input checked="" type="checkbox"/> Sum Judgment	<input type="checkbox"/> Non-Jury Trial	<input type="checkbox"/> Jury Trial
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Settle Judgment			
<input type="checkbox"/> Judgment on Auto Award	<input type="checkbox"/> Default Judgment			
<input type="checkbox"/> Motion to Dis (by party)	<input type="checkbox"/> Transferred			
FINAL DISPOSITIONS				
<input type="checkbox"/> Judgment Satisfactorily Paid in Full	<input type="checkbox"/> Time Limit Expired			
<input type="checkbox"/> Dismissed (with or without prejudice)				

1 DUNCAN, LLP, on February 8, 2013, and the Motion for Summary Judgment filed by Defendants,
2 SHADOW WOOD HOMEOWNERS' ASSOCIATION, INC. and GOGO WAY TRUST
3 (hereinafter, "Defendants' Motion"), by and through Defendants' counsel of record, ALESSI &
4 KOENIG, LLC, on February 8, 2013; Plaintiff appearing at the March 13, 2013, hearing through its
5 counsel, Gregg A. Hubley, Esq., and Defendants appearing by and through their counsel, Huong
6 Lam, Esq.; the Court being having reviewed the pleadings filed, the moving papers, and being fully
7 advised in the premises, and with good cause appearing therefor, hereby GRANTS Plaintiff's Motion
8 for Summary Judgment, and DENIES Defendants' Motion for Summary Judgment, based upon the
9 following Findings of Fact and Conclusions of Law.

10 **I.**

11 **FINDINGS OF FACT**

12 1. The real property at issue in these proceedings is located at 3923 Gogo Way, #109,
13 Las Vegas, Nevada, 89103, Assessor's Parcel Number 162-18-613-029 ("Subject Property").

14 2. Prior to Plaintiff NYCB's foreclosure sale, the Subject Property was owned by non-
15 party, Virginia V. Fedel, who had executed a Promissory Note secured by a Deed of Trust, which
16 was recorded on April 27, 2007, in the Official Records of Clark County, Nevada, as Instrument No.
17 20070427-0004835.

18 3. Virginia V. Fedel defaulted on the terms of the Promissory Note and Deed of Trust
19 referenced in Paragraph 2, above, by failing to make the payments required. Virginia V. Fedel also
20 failed to pay the monthly assessments as set forth in the CC&Rs recorded by Defendant SHADOW
21 WOOD HOMEOWNERS' ASSOCIATION.

22 4. The beneficial interest in the Deed of Trust executed by Virginia V. Fedel was
23 assigned to Plaintiff NYCB, and the Assignment was recorded in the Official Records of Clark
24 County, Nevada, as Instrument No. 20100707-0003641, on July 7, 2010.

25 5. On June 1, 2010, a Notice of Breach and Default and of Election to Cause Sale of
26 Real Property Under Deed of Trust ("NYCB NOD") was recorded on June 1, 2010, in the Official
27 Records of Clark County, Nevada, as Instrument No. 20100602-0003706. On March 8, 2011, the
28 Nevada Foreclosure Mediation Program issued a Certificate of Completion authorizing Plaintiff

1 NYCB to proceed with foreclosure, which was recorded on April 13, 2011, in the Official Records
2 of Clark County, Nevada, as Instrument No. 20110413-0002248.

3 6. On May 9, 2011, Plaintiff NYCB purchased the Subject Property at a Trustee's Sale
4 ("NYCB's Foreclosure Sale") for \$45,900.00, and a Trustee's Deed Upon Sale was recorded in the
5 Official Records of Clark County, Nevada, as Instrument No. 20110524-0003017 ("NYCB's TDUS).

6 7. The Subject Property is located within a condominium association which has
7 significant common area expenses, and the Subject Property is governed by SHADOW WOOD
8 HOMEOWNERS' ASSOCIATION, INC.'s ("Shadow Wood"), Declaration of Covenants,
9 Conditions and Restrictions for Shadow Wood Condominiums ("CC&Rs"). Shadow Wood issues
10 monthly assessments against all units pursuant to the CC&Rs.

11 8. The monthly assessments relative to the Subject Property had a delinquent balance
12 since 2008, as, prior to NYCB's Foreclosure Sale, Virginia V. Fedel failed to pay all of the monthly
13 assessments.

14 9. Although the monthly assessments were delinquent, Shadow Wood and/or its agents
15 had accepted partial payments from Virginia V. Fedel, and did not hold a foreclosure sale to collect
16 the unpaid/delinquent balance until after NYCB's Foreclosure Sale.

17 10. On June 29, 2011, Shadow Wood and/or its agents executed a Notice of Delinquent
18 Lien ("Notice of Lien") which was recorded in the Official Records of Clark County, Nevada, on
19 July 7, 2011, as Instrument No. 20110707-0002436. The Notice of Lien indicated that Shadow
20 Wood had a lien against the Subject Property in the amount of \$8,238.87, consisting of collection
21 and/or attorney fees, assessments, interest, late fees, service charges, and collection costs.

22 11. On August 29, 2011, Shadow Wood and/or its agents executed a Notice of Default
23 and Election to Sell under Homeowners Association Lien ("HOA NOD"), which was recorded in
24 the Official Records of Clark County, Nevada, on October 13, 2011, as Instrument No. 20111013-
25 0001665. The HOA NOD indicated that the amount due as of August 29, 2011, was \$6,608.34.

26 12. On November 2, 2011, and December 2, 2011, NYCB's representative contacted
27 Shadow Wood's agent, Alessi & Koenig, in writing, requesting a detailed statement identifying the
28 amount of the lien payoff requested by Shadow Wood. Shadow Wood's agent sent a response to the

1 payoff demand to another employee of Shadow Wood's agent, apparently in error, and NYCB did
2 not receive this response.

3 13. NYCB's representative contacted Ticor Title of Nevada, Inc., the escrow agent for
4 NYCB's Foreclosure Sale, on December 12, 2011, requesting assistance with its attempts to
5 communicate with Shadow Wood's agents and obtain a payoff statement. On December 28, 2011,
6 Ticor Title of Nevada, Inc., sent an escrow demand to Shadow Wood's management company, MP
7 Association Management. On December 28, 2011, Gerald Marks, the owner of MP Association
8 Management completed, signed and returned the Demand Form to Ticor Title of Nevada, Inc. The
9 executed Demand Form stated that the monthly dues on the Subject Property had been paid to 11-31-
10 11, that the next payment was due on 12-1-11, that there was a delinquent amount of \$328.94, that
11 the account had not been sent to a collection agency, and that no liens had been filed against the
12 Subject Property.

13 14. On January 18, 2012, Defendant Shadow Wood and/or its agents executed a Notice
14 of Trustee's Sale ("HOA NOS"), scheduling the HOA Trustee's Sale for February 22, 2012. The
15 HOA NOS was recorded on January 27, 2012, in the Official Records of Clark County, Nevada, as
16 Instrument NO. 20120127-0002208. The HOA NOS stated that an unpaid balance existed in the
17 amount of \$8,539.77.

18 15. On January 23, 2012, NYCB received a ledger of past due amounts from Shadow
19 Wood's agent, Alessi & Koenig, which listed an outstanding balance of \$6,445.54, which was good
20 through February 1, 2012.

21 16. On January 31, 2012, NYCB sent a check to Shadow Wood's agent, Alessi & Koenig,
22 in the amount of \$6,783.16, as payment for the balance reflected on the January 23, 2012, ledger and
23 payment of future assessments through April 1, 2012.

24 17. Shadow Wood's agent, Alessi & Koenig, received NYCB's payment of \$6,783.16.
25 Shadow Wood's agent, Alessi & Koenig, rejected the payment of \$6,783.16, and advised NYCB on
26 February 8, 2012, that the outstanding balance now totaled \$9,017.39.

27 /././

28

1 18. At the time that Shadow Wood recorded and served the Notice of Lien, the regular
2 monthly assessment applicable to the Subject Property was \$168.81 per month. For the period of
3 nine (9) months preceding the Notice of Lien, nine (9) regular monthly assessments applicable to the
4 Subject Property totaled \$1,519.29.¹

5 19. On February 22, 2012, Shadow Wood's agent, Alessi & Koenig, sold the Subject
6 Property to Defendant Gogo Way Trust at the HOA Trustee Sale for \$11,018.39. On March 1, 2012,
7 a Trustee's Deed Upon Sale was recorded in the Official Records of Clark County, Nevada, as
8 Instrument No. 20120301-0004775 ("HOA TDUS").

9 20. Shadow Wood's Notice of Lien and all of its HOA foreclosure efforts in relation to
10 the Subject Property were based upon the alleged failure of the unit owner to pay the monthly
11 assessments of the HOA, coupled with the collection costs and attorney's fees allegedly incurred in
12 the foreclosure. Shadow Wood has not claimed that its lien on the Subject Property was related to
13 nuisance abatement costs incurred by Shadow Wood (NRS 116.310312), and has not claimed that
14 its foreclosure on the Subject Property related to fines or penalties related to a violation that posed
15 an imminent threat of harm to other unit owners or residents (NRS 116.31162(4)(a)) or a penalty for
16 failure to adhere to a construction schedule for the completion of an improvement (NRS
17 116.31162(4)(b)).

18 21. Shadow Wood's agent, MP Association Management, documented the receipt of
19 \$3,442.39 from the HOA Trustee Sale on March 22, 2012. Shadow Wood's agent, MP Association
20 Management, documented a "Bad Debt Write Off," also on March 22, 2012, in the amount of
21 \$3,013.15, bringing the purported HOA dues owed on the Subject Property current.

22 22. On April 18, 2012, NYCB filed its Verified Complaint for Quiet Title and
23 Declaratory Relief. On October 5, 2012, pursuant to a Stipulation and Order filed September 17,
24 2012, NYCB filed its First Amended Complaint for Quiet Title and Declaratory Relief. On October
25 30, 2012, Defendants filed an Answer to the First Amended Complaint and Defendant Gogo Way
26 asserted a Counterclaim for Quiet Title and Declaratory Relief against NYCB.

27
28 ¹ \$168.81 X 9 months (September, 2010, through May, 2011) = \$1,519.29.

23. Any Findings of Fact which should be construed as Conclusions of Law shall be deemed as such, and any Conclusions of Law which should be construed as Findings of Fact shall be deemed as such.

II.

CONCLUSIONS OF LAW

1. Summary Judgment is appropriate if the “...pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” NRCp 56(c). The determination of materiality depends upon the underlying substantive law, and includes only those factual issues that could change the ultimate outcome of the case. Wood v. Safeway, 121 Nev. 724, 730, 121 P.3d 1026 (2005). The Court must consider all properly asserted facts and evidence in a light most favorable to the nonmoving party, but the nonmoving party must show that there is more than just a “metaphysical doubt” as to the operative facts to avoid summary judgment, and must, by affidavit or otherwise, set forth specific facts that demonstrate the existence of genuine issues for trial. Wood v. Safeway, 121 Nev. 724, 732.

2. “[W]hen a senior lienholder forecloses and sells property to a person other than the junior lienholder, the junior lienholder is ‘sold-out’ and can institute proceedings to collect the debt without attempting to fruitlessly proceed against the property.” McDonald. v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 818, 123 P.3d 748 (2005). Any amount allegedly owed by Virginia V. Fedel to Shadow Wood or its agents prior to NYCB’s Foreclosure Sale was sold out, with the exception of those identified in NRS 116.3116 and NRS 116.310312, and Shadow Wood or its agents could have instituted proceedings against Virginia V. Fedel to recover the amount(s) claimed.

3. Shadow Wood cannot foreclose on a lien by sale when that lien is based upon a fine or penalty for violating the governing documents of the association unless the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents, or the penalty is imposed for a failure to adhere to a schedule required pursuant to NRS 116.310305. NRS 116.31162(4).

1 4. Shadow Wood's lien was entitled to super priority status in this matter only to the
2 extent of "...the assessments for common expenses based on the periodic budget adopted by the
3 association which would have become due in the absence of acceleration during the 9 months
4 immediately preceding institution of an action to enforce the lien[.]" NRS 116.3116(2).

5 5. Although not precedential, the State of Nevada Department of Business and Industry,
6 Real Estate Division ("Real Estate Division") published an Advisory Opinion on December 12,
7 2012, setting forth that costs of collection cannot properly be included in an HOA's super-priority
8 lien, and stating that "...liens for fines and penalties may not be foreclosed unless they satisfy the
9 requirements of NRS 116.3116(4)." The Real Estate Division further suggests that it is
10 unreasonable to expect that fines, which generally cannot be used as the basis for foreclosure, survive
11 a foreclosure of the first security interest.

12 6. The Nevada Supreme Court has held that "...the responsibility for determining which
13 fees may be charged, the maximum amount of such fees, and whether they maintain a priority, rests
14 with the Real Estate Division and the CCICCH." Dep't. of Bus. & Indus. v. Nev. Ass'n Servs., Inc.,
15 128 Nev. Adv. Op. 34, at *4 (2012).

16 7. Plaintiff NYCB is entitled to summary judgment as a matter of law on the declaratory
17 relief claim and claim for quiet title, quieting title in favor of Plaintiff NYCB and against Gogo Way
18 Trust immediately. Pursuant to this Court's equitable powers, the HOA TDUS recorded March 1,
19 2012, is hereby immediately set aside, invalidated and rescinded, and the Court declares that
20 NYCB's TDUS, recorded on May 9, 2011, is superior to and not subject to any interest held or
21 claimed by Gogo Way Trust.

22 8. The HOA foreclosure sale (February 22, 2012) was based at least in part upon
23 collection costs, attorney's fees, and other fees that predated NYCB's Foreclosure Sale (May 9,
24 2011) and had been wiped out. Nine (9) months of regular monthly assessments applicable to the
25 Subject Property from the time of the Notice of Lien totaled \$1,519.29.

26 8. The undisputed facts demonstrate that Shadow Wood and/or its agents supplied
27 several lien payoff figures to NYCB that differed significantly. Shadow Wood has conceded by
28 Affidavit that it or its agents made at least one "mistake" in providing payoff figures which

1 overstated the amount of its lien. Shadow Wood's agent has further admitted that at least one of the
2 payoff demands was not sent to NYCB, but was instead mistakenly sent to another employee of
3 Shadow Wood's agent. Shadow Wood's other agent, MP Association Management, advised in
4 writing less than two months before the HOA Trustee Sale that the monthly assessments on the
5 Subject Property had been paid to the end of November, 2011, the next payment was due on
6 December 1, 2011, and that the amount in delinquency relative to the Subject Property was only
7 \$328.94.

8 9. NYCB attempted in good faith to pay off the lien asserted by Shadow Wood and/or
9 its agents, sending payment of \$6,783.16 on January 31, 2012, after having received a ledger of past
10 due amounts from Shadow Wood's agent on January 23, 2012, asserting an outstanding balance of
11 \$6,445.54. Shadow Wood and/or its agents rejected the payment and sent it back to NYCB.
12 NYCB's efforts to pay off the lien asserted by Shadow Wood and/or its agents were frustrated by
13 the unreasonable and oppressive actions of Shadow Wood and/or its agents.

14 10. Shadow Wood's agent, MP Association Management, provided documents that
15 demonstrate that Shadow Wood ultimately received the sum of \$3,442.39 from the HOA Trustee
16 Sale, and wrote off \$3,013.15 as a bad debt. NYCB's payment of \$6,783.16 more than satisfied the
17 nine (9) months of assessments (\$1,519.29) on which Shadow Wood could have legitimately based
18 a super-priority lien, and would have netted Shadow Wood more than it ultimately collected. The
19 Court believes, based upon the papers and pleadings submitted, as well as oral argument at the
20 hearing of this matter, that Shadow Wood and/or its agents were attempting to profit off of the
21 subject HOA foreclosure by including exorbitant fees and costs that could not be used as the basis
22 for an HOA foreclosure sale in this matter.

23 11. Defendant Gogo Way Trust was not a bona fide purchaser at the subject HOA
24 foreclosure sale, and is not entitled to the protections of NRS 645F.440.

25 12. The HOA TDUS recorded by Shadow Wood and/or its agents is not conclusive proof
26 that Shadow Wood "...satisfied all the foreclosure requirements," as Defendants contend.

27 /./

28 /./

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

ORDER

Good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Summary Judgment is GRANTED in its entirety.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based upon the Court's equitable powers, the HOA Foreclosure Sale of February 22, 2012, to Gogo Way Trust was not legitimate and is set aside, and the HOA TDUS recorded on March 1, 2012, in favor of Gogo Way Trust is rescinded. NYCB is entitled to immediate possession of the Subject Property, and title is to be restored to NYCB immediately and shall be *ex post facto* to February 22, 2012.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Gogo Way Trust was not a bona fide purchaser at the March 1, 2012, HOA foreclosure sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is to pay Shadow Wood the amount that it was rightly due for its super-priority lien under NRS 116.3116(2), based upon the Shadow Wood Notice of Lien, in the total amount of \$1,519.29.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants' Motion for Summary Judgment is DENIED in its entirety.

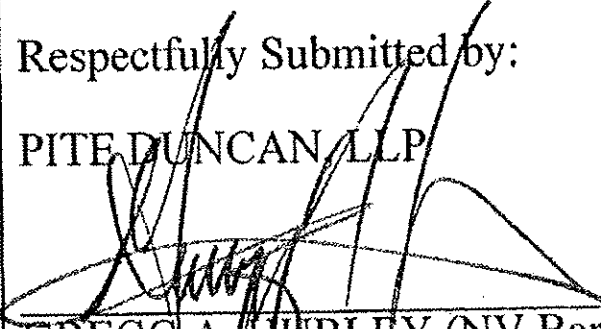
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the trial setting previously entered in this matter is vacated, and any pending Motions are denied as moot.

IT IS SO ORDERED this 8th day of April, 2013.

WR 
DISTRICT COURT JUDGE **Abdi Silver**

Respectfully Submitted by:

PITE DUNCAN LLP


GREGG A. HUBLEY (NV Bar #007386)
Attorneys for Plaintiff/Counterdefendant NEW
YORK COMMUNITY BANK

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 13, 2013

A-12-660328-C New York Community Bancorp, Inc., Plaintiff(s)
vs.
Shadow Wood Homeowners Association Inc, Defendant(s)

February 13, 2013 10:30 AM Pre Trial Conference

HEARD BY: Silver, Abbi **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Jennifer Kimmel

RECORDER:

REPORTER:

PARTIES

PRESENT: Hubley, Gregg A. Attorney
 Kerbow, Ryan M Attorney

JOURNAL ENTRIES

- Mr. Hubley, Esq. indicated he believes Deft"s counsel has a conflict and he will be filing a 56 f motion. Additionally, the Pltf. will not be going forward with trail they intend to ask for a continuance even in the event the Court should grant the upcoming Motion for Summary Judgment. COURT so noted. COURT ORDERED, the Calendar Call is CONTINUED to 3/13/13 9:00 A.M. wherein if the Motion for Summary Judgment is granted the Court will reset the Trial. Counsel advised they need one day for this Quiet Title bench trial.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

March 13, 2013

A-12-660328-C New York Community Bancorp, Inc., Plaintiff(s)
vs.
Shadow Wood Homeowners Association Inc, Defendant(s)

March 13, 2013 9:00 AM All Pending Motions

HEARD BY: Silver, Abbi **COURTROOM:** RJC Courtroom 11D

COURT CLERK: Jennifer Kimmel

RECORDER:

REPORTER:

PARTIES

PRESENT: Hubley, Gregg A. Attorney
 Lam, Huong Attorney

JOURNAL ENTRIES

- CALENDAR CALL...NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT;
MEMORANDUM OF POINTS AND AUTHORITIES; AFFIDAVITS IN SUPPORT...MOTION FOR
SUMMARY JUDGMENT

COURT clarified it will not consider the Deft's Response to the Plt's Reply given it was not timely. Argument by counsel. COURT ORDERED, New York Community Bancorp Inc.'s Motion for Summary Judgment is GRANTED.

Court directed Mr. Hubley to prepare the Order and submit to opposing counsel for their signature and then to the Court for signature. COURT stated, should opposing counsel not sign off within a reasonable period of time the Pltf. may submit the Order directly to the Court without opposing counsel's signature.

COURT FURTHER ORDERED, upcoming Motion to Disqualify Counsel for Defendants is now MOOT and therefore the upcoming hearing is VACATED.



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

RYAN KERBOW, ESQ.
9500 W. FLAMINGO, SUITE 205
LAS VEGAS, NV 89147

DATE: May 9, 2013
CASE: A660328

RE CASE: NEW YORK COMMUNITY BANK vs. SHADOW WOOD HOMEOWNERS
ASSOCIATION, INC.; GOGO WAY TRUST

NOTICE OF APPEAL FILED: May 7, 2013

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

- ☒ **\$250 – Supreme Court Filing Fee**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ **\$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ **\$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ **Case Appeal Statement**
 - NRAP 3 (a)(1), Form 2
- ☐ **Order**
- ☐ **Notice of Entry of Order**

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

NEW YORK COMMUNITY BANK,

Plaintiff(s),

vs.

SHADOW WOOD HOMEOWNERS
ASSOCIATION, INC.; GOGO WAY TRUST,

Defendant(s),

Case No: A660328

Dept No: XV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 9 day of May 2013.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk