

CLERK OF THE COURT

AACC

Ryan Kerbow, Esq.

Nevada Bar No. 10916

ALESSI & KOENIG, LLC

9500 W. Flamingo, Suite 205

Las Vegas, Nevada 89147

Phone: (702) 222-4033

Fax: (702) 254-9044

Email: huong@alessikoenig.com

*Attorneys for Defendants/Counter Claimants*

*Shadow Wood Homeowners' Association, Inc.;*

*Gogo Way Trust*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

NEW YORK COMMUNITY BANCORP,  
INC.,

Plaintiff(s),

- VS -

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

Defendant(s).

GOGO WAY TRUST,

Counter Claimant,

vs.

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

Counter Defendant

Case No.: A-12-660328-C

Dept. No.: XV

ANSWER AND COUNTER  
CLAIM

**Arbitration Exemption Claimed:**

**1) Declaratory Relief**

**2) Concerns Title to Real Property**

**ANSWER**

1. Defendants SHADOW WOOD HOMEOWNERS' ASSOCIATION, INC., a Nevada non-profit corporation and GOGO WAY TRUST (hereinafter, "Defendants") hereby answer and defend the allegations of NEW YORK COMMUNITY BANCORP, INC. (hereinafter "Plaintiff"), as follows:

2. As to the allegations contained in paragraphs 10, 11, 12, 13, 14, 15, 17, 20, 21, 22, and 25, Defendants are without sufficient information to admit or deny and therefore deny said allegations.

3. As to the allegations contained in paragraphs 4, 6, 16, 18, 23, and 39 Defendants admit the allegations contained therein.

4. As to the allegations contained in paragraph 3, 8, 19, 24, 26, 27, 28, 30, 31, 32, 33, 34, 35, and 38, Defendants deny the allegations contained therein.

**AFFIRMATIVE DEFENSES**

1. Plaintiff's Complaint fails to state a claim or claims against Defendant upon which relief may be granted.

2. Subject to discovery, Plaintiff's claims are barred by laches and/or statute of limitations.

3. Subject to discovery, Plaintiff's claims are barred because of waiver, acquiescence and/or estoppel.

4. Whatever injuries and damages Plaintiff incurred were proximately caused in whole or in part or were contributed to by reason of Plaintiff's own negligence.

5. By reason of its own acts, Plaintiff has released and discharged these answering Defendants from the alleged claims in the Complaint.

1 6. Any damages that Plaintiff may have sustained by reasons of the allegations of its  
2 complaint were proximately caused by the acts of persons other than these answering defendants,  
3 and therefore, Plaintiff is not entitled to any relief from these answering defendants.

4 7. Plaintiff has failed to do equity toward these answering defendants and therefore is not  
5 entitled to any relief from these answering defendants.

6 8. Plaintiff failed to properly mitigate damages, if any.

7 9. Defendants reserve the right to amend their affirmative defenses to assert new and  
8 additional affirmative defenses at a later date.

9 WHEREFORE, Defendants pray for relief as follows:

- 10 1. That Plaintiff take nothing by way of its Complaint;  
11 2. That the Complaint be dismissed with prejudice and Defendants dismissed from the  
12 action;  
13 3. For an award of attorney's fees and costs of suit;  
14 4. For such other and further relief as the Court may deem just and proper.  
15  
16  
17  
18  
19

20 **CROSS COMPLAINT**

21 COMES NOW, Plaintiff Gogo Way Trust, by and through its attorneys of record, Alessi  
22 & Koenig, LLC, and hereby files this Complaint against New York Community Bank  
23 (hereinafter "NY Community Bank") as follows:  
24

25 **THE PARTIES AND JURISDICTION**

- 26 1. At all times relevant herein, Plaintiff Gogo Way Trust was a trust organized and  
27 authorized to conduct business in the State of Nevada.  
28

- 1 2. Upon information and belief, Defendant NY Community Bank was a national  
2 association authorized to do business in the State of Nevada.
- 3 3. The names given to the Defendants sued herein as Doe Individuals I through X and  
4 Roe Corporations XI through XX, inclusive, are fictitious names. Other parties  
5 unknown to Plaintiff may have caused Plaintiff to incur damages as pled herein or  
6 may have an interest in the Property. Plaintiff prays that if and when the true names  
7 of any said defendants, or any of them, and the nature of their alleged actions and/or  
8 interests are ascertained, that they may be inserted herein by proper amendment.  
9 Plaintiff has no knowledge of the addresses or places of residence of any fictitious  
10 defendants.  
11
- 12 4. Jurisdiction and venue are proper in this Court because this action concerns real  
13 property located in the County of Clark, State of Nevada, and the facts, acts, events  
14 and circumstances herein mentioned, alleged and described occurred in the County of  
15 Clark, State of Nevada.  
16

17  
18 **THE UNDERLYING FORECLOSURE SALE**

- 19 5. Plaintiff hereby repeats, realleges, and incorporates by reference each and every  
20 preceding paragraph and allegation as if fully stated herein.
- 21 6. On or about December 3, 1985, a Declaration of Covenants, Conditions, and  
22 Restrictions ("CC&Rs") for the Shadow Woods Homeowners' Association, Inc. was  
23 recorded in the public records with the Clark County Recorder in Book No. 2226, as  
24 Document No. 2185340.  
25
- 26 7. Section 4.01 of the CC&Rs provides, in pertinent part:  
27  
28 The Purchaser of each Condominium Unit, by acceptance of a deed  
therefor, whether or not it shall be so expressed in such deed, is deemed to  
covenant and agree to pay the Association: (a) annual assessments (to be  
paid in monthly installments), which shall include an adequate reserve

1 fund for the periodic maintenance, repair and replacement of the Common  
2 Area, and (b) special assessments for capital improvements, such  
3 assessments to be established and collected as hereinafter provided. The  
4 annual and special assessments, together with interest, costs and  
5 reasonable attorney's fees, shall be a charge on the Condominium Unit  
6 and shall be a continuing lien upon the Condominium Unit against which  
7 each such assessment is made, and shall be superior to any declaration of  
8 homestead, the lien to become effective upon recordation of notice of  
9 assessment.

8. Section 4.06 of the CC&Rs provides, in pertinent part:

9 Each assessment lien may be foreclosed as and in the same manner as the  
10 foreclosure of a mortgage upon real property under the laws of the State of  
11 Nevada, or may be enforced by sale pursuant to Nevada Revised Statutes Chapter  
12 117, and to that end a power of sale is hereby conferred upon the Association.

13 9. On or about May 9, 2011, Defendant NY Community Bank obtained title to certain  
14 real property commonly known as 3923 Gogo Way, Unit 109, Las Vegas, NV 89103,  
15 Assessor's Parcel Number , and legally described as:

16  
17 UNIT ONE HUNDRED NINE (109), AS SHOWN UPON THE MAP  
18 ENTITLED "SILVERADO VILLAS II, A SUBDIVISION FOR  
19 CONDOMINIUM PURPOSES, ON FILE IN THE OFFICE OF THE  
20 COUNTY RECORDER OF CLARK COUNTY, NEVADA, IN BOOK 33  
21 OF PLATS, PAGE 44.

22 (the "Property").

23 10. Pursuant to Nevada Revised Statute Chapter 116, Defendants NY Community Bank  
24 is governed by the requirements and obligations set forth in the CC&Rs and related  
25 governing documents.

26 11. The CC&Rs require owners within the community to pay regular assessments and  
27 comply with the requirements and obligations set forth in CC&Rs and related  
28 governing documents.

- 1 12. Defendant NY Community Bank failed to pay their regular assessments and further  
2 failed to comply with other requirements set forth in the CC&Rs and other related  
3 governing documents.
- 4 13. Nevada Revised Statute ("NRS") 116.3116 *et. seq.* specifically authorizes a  
5 homeowner's association to conduct a foreclosure sale of any lot that has become  
6 delinquent on its assessment payments.
- 7 14. As a result of Defendant NY Community Bank's failure to comply with NRS 116 and  
8 CC&Rs, Alessi & Koenig, LLC (hereinafter "A&K") was retained to foreclose on the  
9 Property pursuant to NRS 116.3116 *et. seq.*
- 10 15. Pursuant to the aforementioned statutory and CC&Rs provisions, A&K, on behalf of  
11 homeowners association, Shadow Wood Homeowners' Association, Inc., foreclosed  
12 on the Property on or about February 22, 2012.
- 13 16. On or about March 1, 2012, a "Trustee's Deed Upon Sale" was recorded against the  
14 Property with the Clark County Recorder in Book 20120301, Instrument No.  
15 0004775.
- 16 17. The grantee (buyer) at the foreclosure sale was Plaintiff Gogo Way Trust. As such,  
17 as of February 22, 2012, Plaintiff became the title owner of the Property.
- 18 18. Plaintiff has been unable to obtain title insurance on the Property and seeks to quiet  
19 title on the Property.

20  
21  
22  
23  
24 **CAUSE OF ACTION**  
**(Declaratory Relief and Quiet Title)**

- 25 19. Plaintiff hereby repeats, realleges, and incorporates by reference each and every  
26 preceding paragraph and allegation as if fully stated herein.
- 27 20. Upon information and belief, a justiciable controversy exists between Gogo Way  
28 Trust and Defendant NY Community Bank in that their interests are adverse.

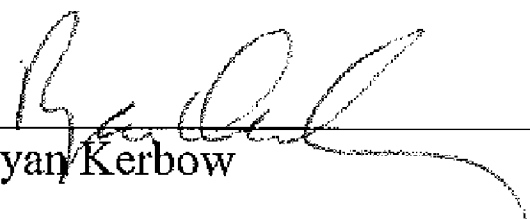
- 1 21. Defendant NY Community Bank failed to meet their obligations to pay assessments  
2 pursuant to the CC&Rs and NRS 116, et al.
- 3 22. As a result of the default in payment under the CC&Rs and NRS 116, et al., the  
4 Shadow Woods Homeowners' Association, Inc. had a legal right to foreclose on the  
5 Property.
- 6 23. Shadow Woods Homeowners' Association, Inc., through their foreclosing agent  
7 A&K, performed all conditions and requirements pursuant to the CC&Rs and NRS  
8 116, et al., and NRS 107, et al., and properly foreclosed on the Property.
- 9 24. Pursuant to the CC&Rs and applicable law, title vested in Plaintiff Gogo Way Trust  
10 on or about February 22, 2012.
- 11 25. The present question of title in the subject property has abridged the rights of Gogo  
12 Way Trust as Plaintiff is unable to obtain title insurance.
- 13 26. Gogo Way Trust requests a judicial determination that the foreclosure sale on  
14 February 22, 2012, was valid and proper pursuant to the CC&Rs and applicable  
15 Nevada law.
- 16 27. Gogo Way Trust further requests that this Court determine the issues of title herein  
17 and declare title to the Property vested in Gogo Way Trust on or about February 22,  
18 2012.
- 19 28. The claims of the parties are adverse, and Plaintiff has no plain, speedy, or adequate  
20 remedy at law.
- 21 29. Declaratory relief is necessary and appropriate to avoid the multiplicity of claims that  
22 might otherwise ensue; to allow the parties to determine their rights and liabilities  
23 relative to the interests claimed herein; and to obtain a decree setting forth the  
24  
25  
26  
27  
28

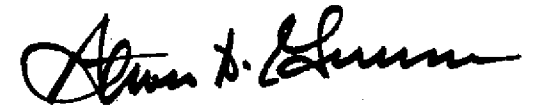


**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b) I hereby certify that I am an employee of Alessi & Koenig, LLC  
and that on the 30<sup>th</sup> day of October 2012, I mailed a true and correct copy of the Answer and  
Counter Claim via US Mail, postage prepaid, to the following address:

Pite Duncan, LLP  
701 Bridger Avenue, Suite 700  
Las Vegas, NV 89101

  
Ryan Kerbow



CLERK OF THE COURT

**RPLY**

GREGG A. HUBLEY (NV Bar #007386)

CRYSTAL M. TATCO (NV Bar #12110)

**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

**NEW YORK COMMUNITY BANK'S  
REPLY TO COUNTERCLAIM**

GOGO WAY TRUST,

Counterclaimant,

v.

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

Counterdefendant.

**NEW YORK COMMUNITY BANK'S REPLY TO COUNTERCLAIM**

COMES NOW Plaintiff/Counterdefendant, NEW YORK COMMUNITY BANK (hereinafter  
"NYCB"), by and through its counsel of record, Pite Duncan, LLP, and replies to  
Defendant/Counterclaimant, GOGO WAY TRUST's, Counterclaim as follows:

///



1 **<**



1           4.       For such other and further relief as the Court may deem proper and/or just.

2       DATED this 16<sup>th</sup> day of November, 2012.

3                               Respectfully submitted,

4                               PITE DUNCAN, LLP

5                               

6                               GREGG A. HUBLEY

7                               CRYSTAL M. TATCO

8                               Attorneys for Plaintiff/Counterdefendant NEW  
9                               YORK COMMUNITY BANK

1 <



1 <

# EXHIBIT A

# EXHIBIT A



1           **IT**

# EXHIBIT 1

# EXHIBIT 1

1 **FAC**













1

1  
2  
3  
4





















# EXHIBIT 1

# EXHIBIT 1



All requirements of law





# EXHIBIT 2

# EXHIBIT 2



# EXHIBIT 3

# EXHIBIT 3





# EXHIBIT 4

# EXHIBIT 4







































































































































































































































































































