

CLERK OF THE COURT

1 **FFCL**
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5
6 Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

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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

**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.

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

25
26 This matter having come before the Court on March 13, 2013, for the hearing on the Motion
27 for Summary Judgment filed by Plaintiff NEW YORK COMMUNITY BANK (hereinafter,
28 "NYCB'S Motion"), by and through its counsel of record, Gregg A. Hubley, Esq., of PITE

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Step Dis	<input checked="" type="checkbox"/> Sum Jgmt	<input checked="" type="checkbox"/> FINAL DISPOSITIONS
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Step Jgmt		
<input type="checkbox"/> Jgmt on Adv Award	<input type="checkbox"/> Default Jgmt	<input type="checkbox"/> Non-Jury Trial	<input type="checkbox"/> Time Limit Expired
<input type="checkbox"/> Min to Dis (by def)	<input type="checkbox"/> Transferred	<input type="checkbox"/> Jury Trial	<input type="checkbox"/> Discontinued (with or without prejudice)
			<input type="checkbox"/> Judgment Satisfied/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.

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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.

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 116.31162(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.

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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.

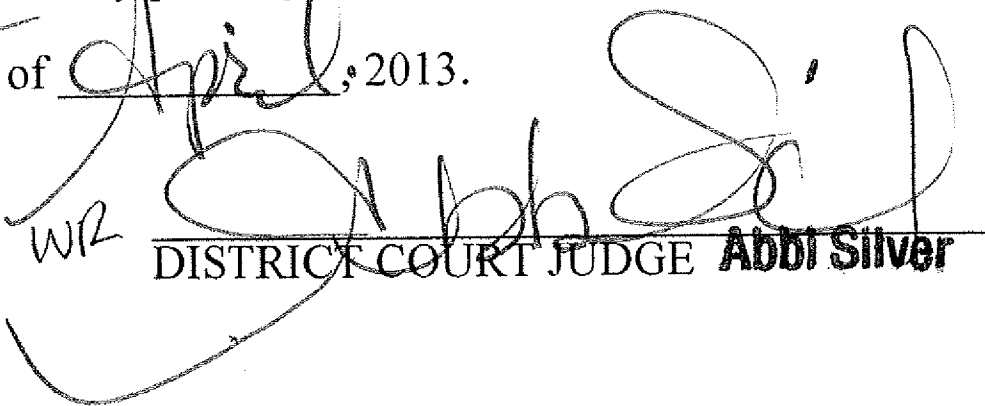
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Gogo Way Trust was not a bona fide purchaser at the March 1, 2012, HOA foreclosure sale.

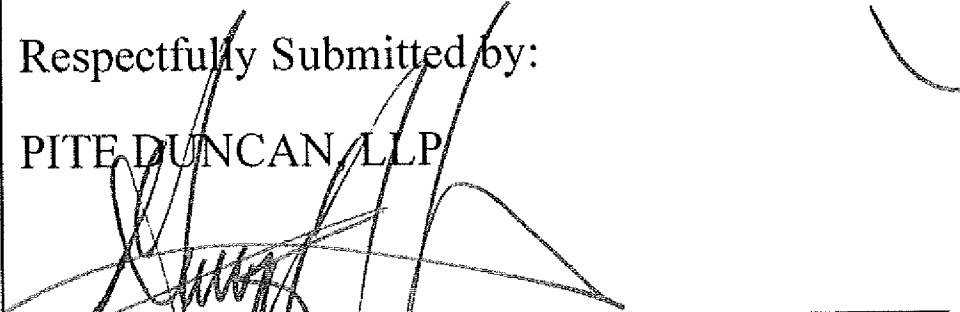
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is to pay Shadow Wood the amount that it was rightly due for its super-priority lien under NRS 116.3116(2), based upon the Shadow Wood Notice of Lien, in the total amount of \$1,519.29.

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.

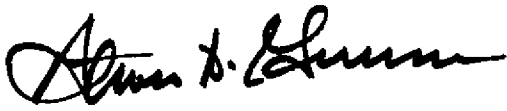
IT IS SO ORDERED this 8th day of April, 2013.

WR

DISTRICT COURT JUDGE **Abbi Silver**

Respectfully Submitted by:

PITE DUNCAN LLP

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

1 **NEO**
GREGG A. HUBLEY (NV Bar #007386)
2 **PITE DUNCAN, LLP**
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9 **DISTRICT COURT**
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11 NEW YORK COMMUNITY BANK,
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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,
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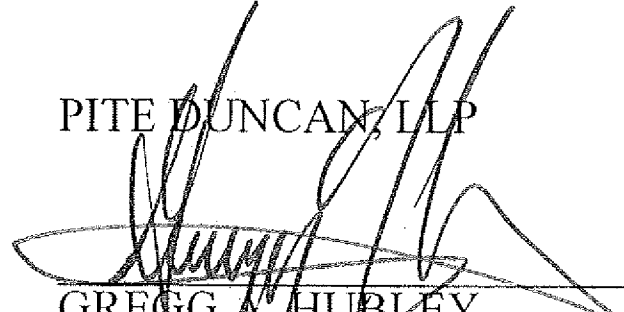
24 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
25 **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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 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*

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3 **DECLARATION OF SERVICE**

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

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

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

9 on the parties in this action addressed as follows:

10 **Huong X. Lam, Esq.**
ALESSI & KOENIG, LLC
9500 West Flamingo Road, Suite 205
11 Las Vegas, Nevada 89147
Attorneys for Defendants Shadow Wood Homeowners'
12 *Association, Inc. and Gogo Way Trust*

13 **X**

BY MAIL: I placed a true copy in a sealed envelope addressed as indicated above. I am
14 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
15 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.

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

18 _____ **BY FACSIMILE:** I personally sent to the addressee's facsimile number a true copy of the
19 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
20 mailed as indicated above.

21 _____ **BY FEDERAL EXPRESS:** I placed a true copy in a sealed Federal Express envelope
22 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.

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

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

25
26 
27 **NICOLE L. SCHLANDERER**
28

EXHIBIT 1

EXHIBIT 1

Alvin D. Quinn
CLERK OF THE COURT

1 **FFCL**
GREGG A. HUBLEY (NV Bar #007386)
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6 Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK
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<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Sum Judgment	<input type="checkbox"/> Final Dispositions
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Slip Dis	<input type="checkbox"/> Non-Jury Trial	<input type="checkbox"/> Time Limit Expired
<input type="checkbox"/> Judgment on Auto Award	<input type="checkbox"/> Default Judgment	<input type="checkbox"/> Jury Trial	<input type="checkbox"/> Demand (with or without prejudice)
<input type="checkbox"/> Min to Dis (by party)	<input type="checkbox"/> Transferred		<input type="checkbox"/> Judgment Satisfied 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,
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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
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20 failed to pay the monthly assessments as set forth in the CC&Rs recorded by Defendant SHADOW
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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
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1 NYCB to proceed with foreclosure, which was recorded on April 13, 2011, in the Official Records
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4 ("NYCB's Foreclosure Sale") for \$45,900.00, and a Trustee's Deed Upon Sale was recorded in the
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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.

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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.

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

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.

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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.

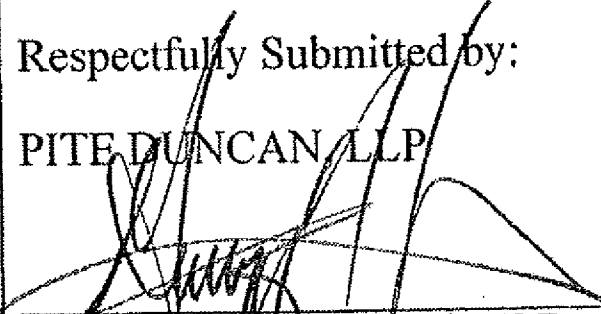
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the trial setting previously entered in this matter is vacated, and any pending Motions are denied as moot.

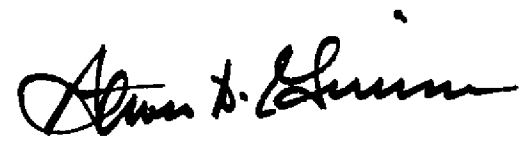
IT IS SO ORDERED this 9th day of April, 2013.

WR 
DISTRICT COURT JUDGE **Abbi Silver**

Respectfully Submitted by:

PITE DUNCAN LLP


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



CLERK OF THE COURT

1 **MEMO**
2 GREGG A. HUBLEY (NV Bar #007386)
3 CHRISTOPHER A.J. SWIFT (NV Bar #011291)
4 **PITE DUNCAN, LLP**
5 701 East Bridger Avenue, Suite 700
6 Las Vegas, Nevada 89101
7 Telephone: (702) 991-4628
8 Facsimile: (702) 685-6342
9 E-mail: Ghublely@piteduncan.com

6 Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 NEW YORK COMMUNITY BANK,

12 Plaintiff,

13 v.

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

16 Defendants.

17 GOGO WAY TRUST,

18 Counterclaimant,

19 v.

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

23 Counterdefendants.

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

**MEMORANDUM OF COSTS AND
DISBURSEMENTS**

24 **MEMORANDUM OF COSTS AND DISBURSEMENTS**

25	CLERKS' FEES	\$470.00
26	FILING FEES (electronic)	\$105.10
27	PROCESS SERVICES FEES	\$370.50
28	POSTAGE FEES	\$29.13

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

3 **DECLARATION OF SERVICE**

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

6 On April 24, 2013, I served the following document(s):

7 **MEMORANDUM OF COSTS AND DISBURSEMENTS**

8 on the parties in this action addressed as follows:

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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*

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

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

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

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

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

24 Executed this 24th day of April 2013, at Las Vegas, Nevada.

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NICOLE L. SCHLANDERER

DAVID ALESSI*
 THOMAS BAYARD*
 ROBERT KOENIG**
 RYAN KERRBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
 and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm
 9500 W. Flamingo Road, Suite 205
 Las Vegas, Nevada 89147
 Telephone: 702-222-4033
 Facsimile: 702-222-4043
 www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
 PHONE: 818-735-9600

RENO NV
 PHONE: 775-626-2323
 &
 DIAMOND BAR CA
 PHONE: 909-861-8300

FACSIMILE COVER LETTER

1. Attorney and/or Trustees fees:	\$2,305.00
2. Notary, Recording, Copies, Mailings, and PACER	\$450.00
3. Assessments August 9, 2010 Through December 15, 2011	\$2,869.77
4. Late Fees Through December 15, 2011	\$170.00
5. Fines Through November 15, 2011	\$0.00
6. Interest Through December 15, 2011	\$0.00
7. RPIR-GI Report	\$170.00
8. Title Research (10-Day Mailings per NRS 116.31163)	\$550.00
9. Management Company Advanced Audit Fee	\$150.00
10. Management Account Setup Fee	\$300.00
11. Publishing and Posting of Trustee Sale	\$350.00
13. Conduct Foreclosure Sale	\$0.00
14. Capital Contribution	\$0.00
15. Progress Payments:	\$0.00
Sub-Total:	\$7,314.77
Less Payments Received:	\$0.00
Total Amount Due:	\$7,314.77

Please have a check in the amount of \$7,314.77 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

A&K-040

DAVID ALESSI*
 THOMAS BAYARD*
 ROBERT KOENIG**
 RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
 and Colorado Bars

*** Admitted to the Nevada and California Bar



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RENO NV
 PHONE: 775-626-2323
 &
 DIAMOND BAR CA
 PHONE: 909-861-8300

FACSIMILE COVER LETTER

To:	dianna.palmer-hopkins@mynych.com	Re:	3923 Gogo Wy #109/HO #12888
From:	Ryan Kerbow	Date:	Monday, January 23, 2012
Fax No.:		Pages:	1, including cover
		HO #:	12888

Dear dianna.palmer-hopkins@mynych.com:

This cover will serve as a nine month super priority demand on behalf of Shadow Wood Homeowners' Association, Inc for the above referenced escrow; property located at 3923 Gogo Wy #109, Las Vegas, NV. The date of foreclosure was May 9, 2011. The total amount due through February, 29, 2012 is \$9,017.39. The breakdown of fees, interest and costs is as follows:

6/29/2011	Notice of Delinquent Assessment Lien -- Nevada	(2)	\$650.00
8/29/2011	Notice of Default	(2)	\$800.00
4/14/2010	Notice of Trustee's Sale	(2)	\$550.00
8/13/2011	Pre NOD		\$90.00
9/21/2009	Pre-Notice of Trustee's Sale		\$90.00
8/25/2010	Postponement of Trustees Sale	(3)	\$225.00
6/2/2010	Monitoring Foreclosure		\$100.00
11/9/2010	Demand Fee		\$150.00
1/23/2012	Update Demand Fee	(2)	\$150.00
	Trustee Deed Preparation & Recordation		\$0.00
1/18/2012	Foreclosure Fee		\$150.00
Total			\$2,955.00

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

A&K-041

DAVID ALESSI*
 THOMAS HAYARD*
 ROBERT KOENIG**
 RYAN KERROW***

* Admitted to the California Bar

** Admitted to the California, Nevada
 and Colorado Bars

*** Admitted to the Nevada and California Bar



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AGOURA HILLS, CA
 PHONE: 818-735-9600

RENO NV
 PHONE: 775-626-2323

&
 DIAMOND BAR CA
 PHONE: 909-861-8300

FACSIMILE COVER LETTER

1. Attorney and/or Trustees fees:	\$2,955.00
2. Notary, Recording, Copies, Mailings, and PACER	\$625.00
3. Assessments August 9, 2010 Through February 29, 2012	\$3,252.39
4. Late Fees Through February 29, 2012	\$190.00
5. Fines Through January 23, 2012	\$0.00
6. Interest Through February 29, 2012	\$0.00
7. RPIR-GI Report	\$170.00
8. Title Research (10-Day Mailings per NRS 116.31163)	\$550.00
9. Management Company Advanced Audit Fee	\$150.00
10. Management Account Setup Fee	\$300.00
11. Publishing and Posting of Trustee Sale	\$700.00
13. Conduct Foreclosure Sale	\$125.00
14. Capital Contribution	\$0.00
15. Progress Payments:	\$0.00
Sub-Total:	\$9,017.39
Less Payments Received:	\$0.00
Total Amount Due:	\$9,017.39

Please have a check in the amount of \$9,017.39 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

A&K-042

Exhibit “J”

MAILING LABEL: APRIL 20, 2010

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD STE. 100
LAS VEGAS, NV 89147
ATTN: AMANDA LOWER

REFERENCE: 12668
ORDER NUMBER: 4432519

PROPERTY ADDRESS:

3929 GOGO WY #109, LAS VEGAS, NEVADA 89103

ENCLOSED IS A RECORD PROPERTY INFORMATION REPORT - GENERAL MATTERS ON THE ABOVE REFERENCED ORDER. AS A COURTESY TO OUR CUSTOMERS, AN ADDITIONAL COPY OF THE LEGAL DESCRIPTION IS ATTACHED.

ALL INQUIRIES AND CORRESPONDENCE REGARDING THE ABOVE SHOULD BE DIRECTED TO THE TITLE OFFICER WHOSE NAME AND PHONE NUMBER APPEAR BELOW.

First American Title Insurance Company
National Default Title Services
FORCLOSURE DEPARTMENT - NV, 2250 CORPORATE CIRCLB, SUITE 350

ASSISTANT SECRETARY / TITLE OFFICER
PH: 702-222-4273
FX: 866-515-8363

A&K-043

APP000874

ORDER NO: 4432519
REFERENCE NO: 12668
FILE NO:
TITLE OFFICER: AUGIE JIMENEZ

MAILING LABEL: APRIL 20, 2010

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD STE. 100
LAS VEGAS, NV 89147

REFERENCE: 12668
ORDER NUMBER: 4432519

PROPERTY ADDRESS:

3929 GOGO WY #109, LAS VEGAS, NEVADA 89103

ENCLOSED IS A RECORD PROPERTY INFORMATION REPORT - GENERAL MATTERS ON THE ABOVE REFERENCED ORDER. AS A COURTESY TO OUR CUSTOMERS, AN ADDITIONAL COPY OF THE LEGAL DESCRIPTION IS ATTACHED.

ALL INQUIRIES AND CORRESPONDENCE REGARDING THE ABOVE SHOULD BE DIRECTED TO THE TITLE OFFICER WHOSE NAME AND PHONE NUMBER APPEAR BELOW.

First American Title Insurance Company
Lenders Advantage

FORECLOSURE DEPARTMENT - NV, 2250 CORPORATE CIRCLE, SUITE 350

AUGIE JIMENEZ
ASSISTANT SECRETARY / TITLE OFFICER
PH: 702-222-4273
FX: 866-515-8363

ORDER NO: 4432519
REFERENCE NO: 12668
FILE NO:
TITLE OFFICER: AUGIE JIMENEZ

First American Title Insurance Company
FORECLOSURE DEPARTMENT - NV, 2250 CORPORATE CIRCLE, SUITE 350
HENDERSON, NV 89074

RECORD PROPERTY INFORMATION REPORT

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD STE. 100
LAS VEGAS, NV 89147
ATTN: AMANDA LOWER

AS OF THE DATE HEREOF: APRIL 14, 2010 AT 7:30 AM

Order# 4432519

A. THE LAST RECORDED DOCUMENT PURPORTING TO TRANSFER TITLE TO THE LAND DESCRIBED
HEREIN SHOWS THE FOLLOWING:

PURPORTED OWNER: VIRGINIA V. FEDEL, A WIDOW

PROPERTY ADDRESS: 3929 GOGO WY #109, LAS VEGAS, NEVADA 89103

B. ACCORDING TO THE LATEST EQUALIZED ASSESSMENT ROLL THE FOLLOWING AD VALOREM TAX
INFORMATION IS SHOWN:

ASSESSED VALUATION OF THE LAND: \$17,500.00

ASSESSED VALUATION OF THE IMPROVEMENTS: \$10,406.00

EXEMPTIONS: \$0.00

C. ACCORDING TO THE CURRENT YEAR TAX FIGURES PROVIDED BY THE TAXING AUTHORITY THE
FOLLOWING TAX INSTALLMENT AMOUNTS AND STATUS IS SHOWN:

1. TAXES FOR THE FISCAL YEAR JULY 1, 2009, THROUGH JUNE 30, 2010, INCLUDING ANY
SECURED PERSONAL PROPERTY TAXES COLLECTED BY THE COUNTY TREASURER.

PARCEL NO.: 162-18-613-029.
TAX DISTRICT: 470.
TOTAL TAX: \$817.81, PAID.

**NOTE: THE TAX INFORMATION SET FORTH ABOVE REFLECTS CURRENT YEAR GENERAL TAX
INFORMATION ONLY. THE RECORD PROPERTY INFORMATION REPORT DOES NOT PROVIDE
INFORMATION RELATING TO SUPPLEMENTAL TAX BILLS AND/OR PRIOR YEARS(S) DEFAULTED
TAXES.

ORDER NO: 4432519
REFERENCE NO: 12668
FILE NO:
TITLE OFFICER: AUGIE JIMENEZ

D. OFFICIAL RECORDS OF THE COUNTY WHERE THE LAND IS LOCATED SHOWS THE FOLLOWING DEED(S) OF TRUST AFFECTING THE LAND:

1. A DEED OF TRUST TO SECURE AN ORIGINAL INDEBTEDNESS OF \$127,500.00, AND ANY OTHER AMOUNTS OR OBLIGATIONS SECURED THEREBY, RECORDED APRIL 27, 2007 IN BOOK 20070427 AS INSTRUMENT NO. 0004835 OF OFFICIAL RECORDS.

DATED: APRIL 25, 2007.
TRUSTOR: VIRGINIA V. FEDEL, A WIDOW.
TRUSTEE: SOUTHWEST TITLE COMPANY.
BENEFICIARY: MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
("MERS"), AS NOMINEE FOR
LENDER: CCSE, LLC DBA GREYSTONE FINANCIAL GROUP, A LIMITED
LIABILITY COMPANY.

2. A NOTICE OF HOMEOWNERS ASSOCIATION ASSESSMENT LBN RECORDED DECEMBER 03, 2008 IN BOOK 20081203 AS INSTRUMENT NO. 0003006 OF OFFICIAL RECORDS.

ASSOCIATION: SHADOW WOOD HOA.
AMOUNT: \$1,237.30, AND ANY OTHER AMOUNTS DUE THEREUNDER.

NOTE 1: NOTICE OF DEFAULT RECORDED JANUARY 30, 2009 IN BOOK 20090130 AS INSTRUMENT NO. 0003019 OF OFFICIAL RECORDS.

NOTE 2: NOTICE OF DEFAULT RECORDED JUNE 03, 2009 IN BOOK 20090603 AS INSTRUMENT NO. 0003427 OF OFFICIAL RECORDS.

E. OFFICIAL RECORDS OF THE COUNTY SHOWS THE GENERAL INDEX MATTERS AGAINST THE PURPORTED OWNERS AS FOLLOWS:

NONE

LIMITATION OF LIABILITY

RECIPIENT RECOGNIZES THAT IT IS DIFFICULT TO DETERMINE THE EXTENT OF DAMAGES WHICH COULD ARISE FROM ANY ERROR OR OMISSION IN THIS REPORT. RECIPIENT RECOGNIZES THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL DAMAGES OR LIABILITIES ARISING FROM ANY SUCH ERROR OR OMISSION. AS A PART OF THE CONSIDERATION GIVEN IN EXCHANGE FOR THE ISSUANCE OF THIS REPORT, THE RECIPIENT AGREES THAT THE COMPANY'S SOLE LIABILITY FOR ANY LOSS OR DAMAGE ARISING BY REASON OF ANY ERROR OR OMISSION CONTAINED HEREIN SHALL BE LIMITED BY THIS PARAGRAPH. IN NO EVENT SHALL SUCH LIABILITY EXCEED THE FEE AMOUNT CHARGED FOR THIS REPORT.

ORDER NO: 4432519
REFERENCE NO: 12668
FILE NO:
TITLE OFFICER: AUGIE JIMENEZ

R. THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK, CITY OF LAS VEGAS, AND DESCRIBED AS FOLLOWS:

PARCEL ONE (1)

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

PARCEL TWO (2)

AN UNDIVIDED 7.345% INTEREST IN AND TO THE COMMON AREA AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA ON DECEMBER 3, 1985 IN BOOK 2226 OF OFFICIAL RECORDS AS DOCUMENT NO. 2185340.

EXCEPTING THE FOLLOWING:

ALL LIVING UNITS AS SHOWN UPON THE MAP HEREINABOVE REFERRED TO AND AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA ON DECEMBER 3, 1985 IN BOOK 2226 OF OFFICIAL RECORDS AS DOCUMENT NO. 2185340.

AND FURTHER EXCEPTING THEREFROM:

THE EXCLUSIVE RIGHT TO POSSESSION OF ALL THOSE "RESTRICTED COMMON AREAS AND/OR EXCLUSIVE USE AREA", AS DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, HEREINABOVE, REFERRED TO, AND AS SET FOR ON THE SUBDIVISION MAP OF SILVERADO VILLAS II.

PARCEL THREE (3)

THE EXCLUSIVE RIGHT TO POSSESSION AND OCCUPANCY OF THOSE PORTIONS OF THE COMMON AREAS, ABOVE DESCRIBED, DESIGNATED AS "RESTRICTED COMMON AREAS AND/OR EXCLUSIVE USE AREAS", AS APPURTENANT TO PARCEL ONE (1) AND PARCEL TWO (2), ABOVE DESCRIBED, AS DELINEATED ON THE AFOREMENTIONED MAP AND AS DEFINED ON THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, HEREINABOVE REFERRED.

162-18-613-029

ORDER NO: 4432519
REFERENCE NO: 12668
FILE NO:
TITLE OFFICER: AUGIE JIMENEZ

EXHIBIT "A"

THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK, CITY OF LAS VEGAS, AND DESCRIBED AS FOLLOWS:

PARCEL ONE (1)

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

PARCEL TWO (2)

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EXCEPTING THE FOLLOWING:

ALL LIVING UNITS AS SHOWN UPON THE MAP HEREBINAFOVE REFERRED TO AND AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA ON DECEMBER 3, 1985 IN BOOK 2226 OF OFFICIAL RECORDS AS DOCUMENT NO. 2185340.

AND FURTHER EXCEPTING THEREFROM:

THE EXCLUSIVE RIGHT TO POSSESSION OF ALL THOSE "RESTRICTED COMMON AREAS AND/OR EXCLUSIVE USE AREA", AS DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, HEREBINAFOVE, REFERRED TO, AND AS SET FORTH ON THE SUBDIVISION MAP OF SILVERADO VILLAS II.

PARCEL THREE (3)

THE EXCLUSIVE RIGHT TO POSSESSION AND OCCUPANCY OF THOSE PORTIONS OF THE COMMON AREAS, ABOVE DESCRIBED, DESIGNATED AS "RESTRICTED COMMON AREAS AND/OR EXCLUSIVE USE AREAS", AS APPURTENANT TO PARCEL ONE (1) AND PARCEL TWO (2), ABOVE DESCRIBED, AS DELINEATED ON THE AFOREMENTIONED MAP AND AS DEFINED ON THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, HEREBINAFOVE REFERRED.

162-18-613-029

First American Title Insurance Company

NATIONAL DEFAULT TITLE SERVICES - TSG DIVISION
2250 CORPORATE CIRCLE, SUITE 350, HENDERSON, NV 89074

OCTOBER 4, 2011

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD STE. 100
LAS VEGAS, NV 89147
ATTN: AMANDA LOWER

REFERENCE: 12668/COMMUNITY
OUR ORDER NUMBER: 6037081

THE ITEMS ENCLOSED WERE PREPARED FOR THE SOLE USE OF THE HEREIN-NAMED TRUSTEE. THESE ITEMS SHOULD NOT BE RELIED UPON BY ANY THIRD PARTY AS A CONDITION OF TITLE.

First American Title Insurance Company
National Default Title Services

AUGIE JIMENEZ
ASSISTANT SECRETARY
TITLE OFFICER
PH: 702-222-4273
FX: 866-515-8363

ENCLOSURE

A&K-049

APP000880

ORDER NO: 6037081
REFERENCE NO: 12668
FILE NO: CLARK
TITLE OFFICER: AUGIE JIMENEZ

First American Title Insurance Company
FORECLOSURE DEPARTMENT - NV, 2250 CORPORATE CIRCLE, SUITE 350
HENDERSON, NV 89074

RECORD PROPERTY INFORMATION REPORT

ALESSI & KOENIG, LLC
9500 W. FLAMINGO ROAD STE. 100
LAS VEGAS, NV 89147
ATTN: AMANDA LOWER

AS OF THE DATE HEREOF: SEPTEMBER 26, 2011 AT 7:30 AM

Order# 6037081

A. THE LAST RECORDED DOCUMENT PURPORTING TO TRANSFER TITLE TO THE LAND DESCRIBED
HEREIN SHOWS THE FOLLOWING:

PURPORTED OWNBR: NEW YORK COMMUNITY BANK

PROPERTY ADDRESS: 3923 GOGO WY #109, LAS VEGAS, NEVADA 89103

B. ACCORDING TO THE LATEST EQUALIZED ASSESSMENT ROLL THE FOLLOWING AD VALOREM TAX
INFORMATION IS SHOWN:

ASSESSED VALUATION OF THE LAND:	\$5,250.00
ASSESSED VALUATION OF THE IMPROVEMENTS:	\$12,989.00
EXEMPTIONS:	\$0.00

C. ACCORDING TO THE CURRENT YEAR TAX FIGURES PROVIDED BY THE TAXING AUTHORITY THE
FOLLOWING TAX INSTALLMENT AMOUNTS AND STATUS IS SHOWN:

1. THOSE TAXES FOR THE FISCAL YEAR JULY 1, 2011, THROUGH JUNE 30, 2012, INCLUDING ANY
SECURED PERSONAL PROPERTY TAXES COLLECTED BY THE COUNTY TREASURER.

TAX DISTRICT:	470.
PARCEL NO.:	162-18-613-029.
1ST INSTALLMENT DUE AUGUST 15, 2011:	\$139.37, DELINQUENT.
2ND INSTALLMENT DUE OCTOBER 03, 2011:	\$133.73, OPEN.
3RD INSTALLMENT DUE JANUARY 02, 2012:	\$133.73, OPEN.
4TH INSTALLMENT DUE MARCH 05, 2012:	\$133.73, OPEN.

EACH INSTALLMENT WILL BECOME DELINQUENT TBN (10) DAYS AFTER THE DUE DATE.

**NOTE: THE TAX INFORMATION SET FORTH ABOVE REFLECTS CURRENT YEAR GENERAL TAX
INFORMATION ONLY. THE RECORD PROPERTY INFORMATION REPORT DOES NOT PROVIDE
INFORMATION RELATING TO SUPPLEMENTAL TAX BILLS AND/OR PRIOR YEARS(S) DEFAULTED
TAXES.

ORDER NO: 6037081
REFERENCE NO: 12668
FILE NO: CLARK
TITLE OFFICER: AUGIE JIMENEZ

D. OFFICIAL RECORDS OF THE COUNTY WHERE THE LAND IS LOCATED SHOWS THE FOLLOWING DEED(S) OF TRUST AFFECTING THE LAND:

1. A NOTICE OF HOMEOWNERS ASSOCIATION ASSESSMENT LIEN RECORDED DECEMBER 3, 2008 IN BOOK 20081203 AS INSTRUMENT NO. 0003006 OF OFFICIAL RECORDS.
ASSOCIATION: SHADOW WOOD HOA.
AMOUNT: \$1,237.30, AND ANY OTHER AMOUNTS DUE THEREUNDER.

NOTE 1: NOTICE OF DEFAULT RECORDED JANUARY 30, 2009 IN BOOK 20090130 AS INSTRUMENT NO. 0003019 OF OFFICIAL RECORDS.

NOTE 2: NOTICE OF DEFAULT RECORDED JUNE 3, 2009 IN BOOK 20090603 AS INSTRUMENT NO. 0003427 OF OFFICIAL RECORDS.

NOTE 3: A NOTICE OF TRUSTEE'S SALE DATED APRIL 14, 2010, EXECUTED BY ALESSI & KOENIG, LLC, RECORDED APRIL 22, 2010 IN BOOK 20100422 AS INSTRUMENT NO. 0000852 OF OFFICIAL RECORDS. SAID NOTICE SETS FORTH, AMONG OTHER ITEMS, A PURPORTED SALE DATE OF MAY 12, 2010 AT 04:00 P.M.

2. A NOTICE OF HOMEOWNERS ASSOCIATION ASSESSMENT LIEN RECORDED JULY 07, 2011 IN BOOK 20110707 AS INSTRUMENT NO. 0002436 OF OFFICIAL RECORDS.
ASSOCIATION: SHADOW WOOD HOMEOWNERS' ASSOCIATION, INC.
AMOUNT: \$8,238.87, AND ANY OTHER AMOUNTS DUE THEREUNDER.

E. OFFICIAL RECORDS OF THE COUNTY SHOWS THE GENERAL INDEX MATTERS AGAINST THE PURPORTED OWNERS AS FOLLOWS:

NONE

LIMITATION OF LIABILITY

RECIPIENT RECOGNIZES THAT IT IS DIFFICULT TO DETERMINE THE EXTENT OF DAMAGES WHICH COULD ARISE FROM ANY ERROR OR OMISSION IN THIS REPORT. RECIPIENT RECOGNIZES THAT THE FEE CHARGED IS NOMINAL IN RELATION TO THE POTENTIAL DAMAGES OR LIABILITIES ARISING FROM ANY SUCH ERROR OR OMISSION. AS A PART OF THE CONSIDERATION GIVEN IN EXCHANGE FOR THE ISSUANCE OF THIS REPORT, THE RECIPIENT AGREES THAT THE COMPANY'S SOLE LIABILITY FOR ANY LOSS OR DAMAGE ARISING BY REASON OF ANY ERROR OR OMISSION CONTAINED HEREIN SHALL BE LIMITED BY THIS PARAGRAPH. IN NO EVENT SHALL SUCH LIABILITY EXCEED THE FEE AMOUNT CHARGED FOR THIS REPORT.

ORDER NO: 6037081
REFERENCE NO: 12668
FILE NO: CLARK
TITLE OFFICER: AUGIE JIMENEZ

F. THE LAND REFERRED TO IN THIS REPORT IS SITUATED IN THE STATE OF NEVADA, COUNTY OF CLARK, CITY OF LAS VEGAS, AND DESCRIBED AS FOLLOWS:

PARCEL ONE (1):

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

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AN UNDIVIDED 7.345% INTEREST IN AND TO THE COMMON AREA AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA ON DECEMBER 3, 1985, IN BOOK 2226 OF OFFICIAL RECORDS AS DOCUMENT NO. 2185340.

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162-18-613-029

ORDER NO: 6037081
REFERENCE NO: 12668
FILE NO: CLARK
TITLE OFFICER: AUGIE JIMENEZ

EXHIBIT "A"

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162-18-613-029

Exhibit "K"

RUN DATE: 04/05/2010

SHADOW WOOD
 ACCOUNT HISTORY REPORT
 FOR THE PERIOD 01/01/2009 TO 04/30/2010
 SINGLE OWNER

PAGE: 1

000109-01 FEDEL, VIRGINIA

TRX DATE	DESCRIPTION	STOP PAYMENT	CHARGES	CREDITS	BALANCE
12/31/2008	BEGINNING BALANCE				920.76
01/01/2009	MONTHLY ASSESSMENTS		168.81		1,089.57
01/31/2009	LATE CHARGE		10.00		1,099.57
02/01/2009	MONTHLY ASSESSMENTS		168.81		1,268.38
02/09/2009	LOCKBOX PAYMENT CK:	1038		500.00	768.38
03/01/2009	MONTHLY ASSESSMENTS		168.81		937.19
03/03/2009	LATE CHARGE		10.00		947.19
03/31/2009	LATE CHARGE		10.00		957.19
04/01/2009	MONTHLY ASSESSMENTS		168.81		1,126.00
04/17/2009	LOCKBOX PAYMENT CK:	1068		250.00	876.00
05/01/2009	MONTHLY ASSESSMENTS		168.81		1,044.81
05/01/2009	LATE CHARGE		10.00		1,054.81
05/31/2009	LATE CHARGE		10.00		1,064.81
06/01/2009	MONTHLY ASSESSMENTS		168.81		1,233.62
07/01/2009	MONTHLY ASSESSMENTS		168.81		1,402.43
07/01/2009	LATE CHARGE		10.00		1,412.43
07/02/2009	LOCKBOX PAYMENT CK:	1126		500.00	912.43
07/31/2009	LATE CHARGE		10.00		922.43
08/01/2009	MONTHLY ASSESSMENTS		168.81		1,091.24
08/31/2009	LATE CHARGE		10.00		1,101.24
09/01/2009	MONTHLY ASSESSMENTS		168.81		1,270.05
10/01/2009	MONTHLY ASSESSMENTS		168.81		1,438.86
10/01/2009	LATE CHARGE		10.00		1,448.86
10/31/2009	LATE CHARGE		10.00		1,458.86
11/01/2009	MONTHLY ASSESSMENTS		168.81		1,627.67
12/01/2009	MONTHLY ASSESSMENTS		168.81		1,796.48
12/01/2009	LATE CHARGE		10.00		1,806.48
12/31/2009	LATE CHARGE		10.00		1,816.48
01/01/2010	MONTHLY ASSESSMENTS		168.81		1,985.29
01/31/2010	LATE CHARGE		10.00		1,995.29
02/01/2010	MONTHLY ASSESSMENTS		168.81		2,164.10
03/01/2010	MONTHLY ASSESSMENTS		168.81		2,332.91
03/03/2010	LATE CHARGE		10.00		2,342.91
04/01/2010	MONTHLY ASSESSMENTS		168.81		2,511.72

1 OWNERS -

REPORT BALANCE AS OF: 04/30/2010

2,511.72

RUN DATE: 05/12/2009

SHADOW WOOD
 ACCOUNT HISTORY REPORT
 FOR THE PERIOD 01/01/2009 TO 05/15/2009
 SINGLE OWNER

PAGE: 1

000109-01 FEDEL, VIRGINIA

TRX DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
	BEGINNING BALANCE			920.76
01/01/2009	MONTHLY ASSESSMENTS	168.81		1,089.57
01/31/2009	LATE CHARGE	10.00		1,099.57
02/01/2009	MONTHLY ASSESSMENTS	168.81		1,268.38
02/09/2009	LOCKBOX PAYMENT CK: 1038		500.00	768.38
03/01/2009	MONTHLY ASSESSMENTS	168.81		997.19
03/03/2009	LATE CHARGE	10.00		947.19
03/31/2009	LATE CHARGE	10.00		957.19
04/01/2009	MONTHLY ASSESSMENTS	168.81		1,126.00
04/17/2009	LOCKBOX PAYMENT CK: 1068		250.00	876.00
05/01/2009	MONTHLY ASSESSMENTS	168.81		1,044.81
	ENDING BALANCE			1,044.81

1 OWNERS - REPORT BALANCE AS OF 05/15/2009

1,044.81

RUN DATE: 05/05/2010

SHADOW WOOD
ACCOUNT HISTORY REPORT
FOR THE PERIOD 01/01/2009 TO 05/30/2010
SINGLE OWNER

PAGE: 1

3923 Gogo Way #109

000109-01 FEDEL, VIRGINIA

STOP PAYMENT

TRX DATE	DESCRIPTION		CHARGES	CREDITS	BALANCE
12/31/2008	BEGINNING BALANCE				920.76
01/01/2009	MONTHLY ASSESSMENTS		168.81		1,089.57
01/31/2009	LATE CHARGE		10.00		1,099.57
02/01/2009	MONTHLY ASSESSMENTS		168.81		1,268.38
02/09/2009	LOCKBOX PAYMENT CK:	1038		500.00	768.38
03/01/2009	MONTHLY ASSESSMENTS		168.81		937.19
03/03/2009	LATE CHARGE		10.00		947.19
03/31/2009	LATE CHARGE		10.00		957.19
04/01/2009	MONTHLY ASSESSMENTS		168.81		1,126.00
04/17/2009	LOCKBOX PAYMENT CK:	1068		250.00	876.00
05/01/2009	MONTHLY ASSESSMENTS		168.81		1,044.81
05/01/2009	LATE CHARGE		10.00		1,054.81
05/31/2009	LATE CHARGE		10.00		1,064.81
06/01/2009	MONTHLY ASSESSMENTS		168.81		1,233.62
07/01/2009	MONTHLY ASSESSMENTS		168.81		1,402.43
07/01/2009	LATE CHARGE		10.00		1,412.43
07/02/2009	LOCKBOX PAYMENT CK:	1126		500.00	912.43
07/31/2009	LATE CHARGE		10.00		922.43
08/01/2009	MONTHLY ASSESSMENTS		168.81		1,091.24
08/31/2009	LATE CHARGE		10.00		1,101.24
09/01/2009	MONTHLY ASSESSMENTS		168.81		1,270.05
10/01/2009	MONTHLY ASSESSMENTS		168.81		1,438.86
10/01/2009	LATE CHARGE		10.00		1,448.86
10/31/2009	LATE CHARGE		10.00		1,458.86
11/01/2009	MONTHLY ASSESSMENTS		168.81		1,627.67
12/01/2009	MONTHLY ASSESSMENTS		168.81		1,796.48
12/01/2009	LATE CHARGE		10.00		1,806.48
12/31/2009	LATE CHARGE		10.00		1,816.48
01/01/2010	MONTHLY ASSESSMENTS		168.81		1,985.29
01/21/2010	LATE CHARGE		10.00		1,995.29
02/01/2010	MONTHLY ASSESSMENTS		168.81		2,164.10
03/01/2010	MONTHLY ASSESSMENTS		168.81		2,332.91
03/03/2010	LATE CHARGE		10.00		2,342.91
03/31/2010	LATE CHARGE		10.00		2,352.91
04/01/2010	MONTHLY ASSESSMENTS		168.81		2,521.72
05/01/2010	MONTHLY ASSESSMENTS		168.81		2,690.53

1 OWNERS -

REPORT BALANCE AS OF: 05/30/2010

2,690.53

*Mail - 1350 E. Flamingo
Box 477
LV 89119*

AUG/26/2010/THU 03:32 AM

P. 001/001

RUN DATE: 08/26/2010

SHADOW WOOD
ACCOUNT HISTORY REPORT
FOR THE PERIOD 09/01/2009 TO 09/30/2010
SINGLE OWNER

PAGE: 1

000109-01 FEDEL, VIRGINIA

3923 GOGO WAY #109

TRX DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
08/31/2009	BEGINNING BALANCE			1,101.24
09/01/2009	MONTHLY ASSESSMENTS	168.81		1,270.05
10/01/2009	MONTHLY ASSESSMENTS	168.81		1,438.86
10/01/2009	LATE CHARGE	10.00		1,448.86
10/31/2009	LATE CHARGE	10.00		1,458.86
11/01/2009	MONTHLY ASSESSMENTS	168.81		1,627.67
12/01/2009	MONTHLY ASSESSMENTS	168.81		1,796.48
12/01/2009	LATE CHARGE	10.00		1,806.48
12/31/2009	LATE CHARGE	10.00		1,816.48
01/01/2010	MONTHLY ASSESSMENTS	168.81		1,985.29
01/31/2010	LATE CHARGE	10.00		1,995.29
02/01/2010	MONTHLY ASSESSMENTS	168.81		2,164.10
03/01/2010	MONTHLY ASSESSMENTS	168.81		2,332.91
03/03/2010	LATE CHARGE	10.00		2,342.91
03/31/2010	LATE CHARGE	10.00		2,352.91
04/01/2010	MONTHLY ASSESSMENTS	168.81		2,521.72
05/01/2010	MONTHLY ASSESSMENTS	168.81		2,690.53
05/01/2010	LATE CHARGE	10.00		2,700.53
05/31/2010	LATE CHARGE	10.00		2,710.53
06/01/2010	MONTHLY ASSESSMENTS	168.81		2,879.34
07/01/2010	MONTHLY ASSESSMENTS	168.81		3,048.15
07/01/2010	LATE CHARGE	10.00		3,058.15
07/31/2010	LATE CHARGE	10.00		3,068.15
08/01/2010	MONTHLY ASSESSMENTS	168.81		3,236.96
09/01/2010	MONTHLY ASSESSMENTS	168.81		3,405.77

1. OWNERS -

REPORT BALANCE AS OF: 09/30/2010

3,405.77

A&K-057

APP000889

SEP/18/2009/FRI 12:36 AM

P.001

TO: STEPHANIE

RUN DATE: 09/18/2009

SHADOW WOOD
ACCOUNT HISTORY REPORT
FOR THE PERIOD 01/01/2009 TO 12/31/2009
SINGLE OWNER

PAGE: 1

3923 GORD #109

000109-01 FEDEL, VIRGINIA

TRX DATE	DESCRIPTION	CHARGE\$	CREDITS	BALANCE
12/31/2007	BEGINNING BALANCE			50.00
01/01/2008	MONTHLY ASSESSMENTS	153.46		103.46
02/01/2008	MONTHLY ASSESSMENTS	153.46		256.92
03/01/2008	MONTHLY ASSESSMENTS	153.46		410.38
03/19/2008	LOCKBOX PAYMENT CK: 10132		460.38	50.00
04/01/2008	MONTHLY ASSESSMENTS	153.46		103.46
04/16/2008	LOCKBOX PAYMENT CK: 10171		153.46	50.00
05/01/2008	MONTHLY ASSESSMENTS	153.46		103.46
06/01/2008	MONTHLY ASSESSMENTS	153.46		256.92
06/16/2008	LATE CHARGE	10.00		266.92
06/16/2008	REVERSE LATE CHARGE		10.00	256.92
06/25/2008	LOCKBOX PAYMENT CK: 10238		256.92	0.00
07/01/2008	MONTHLY ASSESSMENTS	153.46		153.46
08/01/2008	MONTHLY ASSESSMENTS	153.46		306.92
09/01/2008	MONTHLY ASSESSMENTS	153.46		460.38
10/01/2008	MONTHLY ASSESSMENTS	153.46		613.84
11/01/2008	MONTHLY ASSESSMENTS	153.46		767.30
12/01/2008	MONTHLY ASSESSMENTS	153.46		920.76
01/01/2009	MONTHLY ASSESSMENTS	168.81		1,089.57
01/31/2009	LATE CHARGE	10.00		1,099.57
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04/01/2009	MONTHLY ASSESSMENTS	168.81		1,126.00
04/17/2009	LOCKBOX PAYMENT CK: 1068		250.00	876.00
05/01/2009	MONTHLY ASSESSMENTS	168.81		1,044.81
05/01/2009	LATE CHARGE	10.00		1,054.81
05/31/2009	LATE CHARGE	10.00		1,064.81
06/01/2009	MONTHLY ASSESSMENTS	168.81		1,233.62
07/01/2009	MONTHLY ASSESSMENTS	168.81		1,402.43
07/01/2009	LATE CHARGE	10.00		1,412.43
07/02/2009	LOCKBOX PAYMENT CK: 1126		500.00	912.43
07/31/2009	LATE CHARGE	10.00		922.43
08/01/2009	MONTHLY ASSESSMENTS	168.81		1,091.24
08/31/2009	LATE CHARGE	10.00		1,101.24
09/01/2009	MONTHLY ASSESSMENTS	168.81		1,270.05
10/01/2009	MONTHLY ASSESSMENTS	168.81		1,438.86

1 OWNERS -

REPORT BALANCE AS OF: 12/31/2009

1,438.86

A&K-058

RUN DATE: 01/23/2012

SHADOW WOOD
ACCOUNT HISTORY REPORT
FOR THE PERIOD 02/01/2011 TO 02/28/2012
SINGLE OWNER

PAGE: 1

000109-01 FEDERAL, VIRGINIA

3923 GOMO WAY #109

TRX DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
01/31/2011	BEGINNING BALANCE			4,141.01
02/01/2011	MONTHLY ASSESSMENTS	168.81		4,309.82
03/01/2011	MONTHLY ASSESSMENTS	168.81		4,478.63
03/03/2011	LATE CHARGE	10.00		4,488.63
03/31/2011	LATE CHARGE	10.00		4,498.63
04/01/2011	MONTHLY ASSESSMENTS	168.81		4,667.44
05/01/2011	MONTHLY ASSESSMENTS	168.81		4,836.25
05/01/2011	LATE CHARGE	10.00		4,846.25
05/31/2011	LATE CHARGE	10.00		4,856.25
06/01/2011	MONTHLY ASSESSMENTS	168.81		5,025.06
07/01/2011	MONTHLY ASSESSMENTS	168.81		5,193.87
07/01/2011	LATE CHARGE	10.00		5,203.87
07/31/2011	LATE CHARGE	10.00		5,213.87
08/01/2011	MONTHLY ASSESSMENTS	168.81		5,382.68
08/31/2011	LATE CHARGE	10.00		5,392.68
09/01/2011	MONTHLY ASSESSMENTS	168.81		5,561.49
10/01/2011	MONTHLY ASSESSMENTS	168.81		5,730.30
10/01/2011	LATE CHARGE	10.00		5,740.30
10/31/2011	LATE CHARGE	10.00		5,750.30
11/01/2011	MONTHLY ASSESSMENTS	168.81		5,919.11
12/01/2011	MONTHLY ASSESSMENTS	168.81		6,087.92
12/01/2011	LATE CHARGE	10.00		6,097.92
12/31/2011	LATE CHARGE	10.00		6,107.92
01/01/2012	MONTHLY ASSESSMENTS	168.81		6,276.73
02/01/2012	MONTHLY ASSESSMENTS	168.81		6,445.54

1 OWNERS -

REPORT BALANCE AS OF: 02/28/2012

6,445.54

NOV/14/2011/MON 01:36 AM

P. 001

RUN DATE: 11/14/2011

SHADOW WOOD
ACCOUNT HISTORY REPORT
FOR THE PERIOD 01/01/2011 TO 12/31/2011
SINGLE OWNER

PAGE: 1

000109-01 PEDEL, VIRGINIA

3923 GOGO WAY #109

TRX DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
12/31/2010	BEGINNING BALANCE			3,962.20
01/01/2011	MONTHLY ASSESSMENTS	160.81		4,131.01
01/31/2011	LATE CHARGE	10.00		4,141.01
02/01/2011	MONTHLY ASSESSMENTS	160.81		4,309.82
02/03/2011	LATE CHARGE	168.81		4,478.63
03/03/2011	LATE CHARGE	10.00		4,488.63
03/31/2011	LATE CHARGE	10.00		4,498.63
04/01/2011	MONTHLY ASSESSMENTS	160.81		4,657.44
05/01/2011	MONTHLY ASSESSMENTS	168.81		4,826.25
05/01/2011	LATE CHARGE	10.00		4,846.25
05/31/2011	LATE CHARGE	10.00		4,856.25
06/01/2011	MONTHLY ASSESSMENTS	168.81		5,025.06
07/01/2011	MONTHLY ASSESSMENTS	168.81		5,193.87
07/01/2011	LATE CHARGE	10.00		5,203.87
07/31/2011	LATE CHARGE	10.00		5,213.87
08/01/2011	MONTHLY ASSESSMENTS	168.81		5,382.68
08/31/2011	LATE CHARGE	10.00		5,392.68
09/01/2011	MONTHLY ASSESSMENTS	160.81		5,551.49
10/01/2011	MONTHLY ASSESSMENTS	168.81		5,720.30
10/01/2011	LATE CHARGE	10.00		5,740.30
11/01/2011	MONTHLY ASSESSMENTS	168.81		5,909.11

1 OWNERS -

REPORT BALANCE AS OF: 12/31/2011

5,909.11

A&K-060

RUN DATE: 06/27/2011

SHADOW WOOD
ACCOUNT HISTORY REPORT
FOR THE PERIOD 07/01/2010 TO 12/31/2011
SINGLE OWNER

PAGE: 1

000109-01 FEDEL, VIRGINIA

3923 GOGO WAY #109

TRX DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
06/30/2010	BEGINNING BALANCE			2,879.34
07/01/2010	MONTHLY ASSESSMENTS	168.81		3,048.15
07/01/2010	LATE CHARGE	10.00		3,058.15
07/31/2010	LATE CHARGE	10.00		3,068.15
08/01/2010	MONTHLY ASSESSMENTS	168.81		3,236.96
08/31/2010	LATE CHARGE	10.00		3,246.96
09/01/2010	MONTHLY ASSESSMENTS	168.81		3,415.77
10/01/2010	MONTHLY ASSESSMENTS	168.81		3,584.58
10/01/2010	LATE CHARGE	10.00		3,594.58
10/31/2010	LATE CHARGE	10.00		3,604.58
11/01/2010	MONTHLY ASSESSMENTS	168.81		3,773.39
12/01/2010	MONTHLY ASSESSMENTS	168.81		3,942.20
12/01/2010	LATE CHARGE	10.00		3,952.20
12/31/2010	LATE CHARGE	10.00		3,962.20
01/01/2011	MONTHLY ASSESSMENTS	168.81		4,131.01
01/31/2011	LATE CHARGE	10.00		4,141.01
02/01/2011	MONTHLY ASSESSMENTS	168.81		4,309.82
03/01/2011	MONTHLY ASSESSMENTS	168.81		4,478.63
03/03/2011	LATE CHARGE	10.00		4,488.63
03/31/2011	LATE CHARGE	10.00		4,498.63
04/01/2011	MONTHLY ASSESSMENTS	168.81		4,667.44
05/01/2011	MONTHLY ASSESSMENTS	168.81		4,836.25
05/01/2011	LATE CHARGE	10.00		4,846.25
05/31/2011	LATE CHARGE	10.00		4,856.25
06/01/2011	MONTHLY ASSESSMENTS	168.81		5,025.06
07/01/2011	MONTHLY ASSESSMENTS	168.81		5,193.87

1 OWNERS -

REPORT BALANCE AS OF: 12/31/2011

5,193.87

A&K-061

APP000893

NOV/08/2010/MON 09:25 PM

P. 004

RUN DATE: 11/09/2010

SHADOW WOOD
ACCOUNT HISTORY REPORT
FOR THE PERIOD 11/01/2009 TO 12/31/2010
SINGLE OWNER

PAGE: 1

000109-01 FREDEL, VIRGINIA

3923 GOGO WAY #109

STOP PAYMENT

TRX DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
10/31/2009	BEGINNING BALANCE			1,450.86
11/01/2009	MONTHLY ASSESSMENTS	168.81		1,627.67
12/01/2009	MONTHLY ASSESSMENTS	168.81		1,796.48
12/01/2009	LATE CHARGE	10.00		1,806.48
12/31/2009	LATE CHARGE	10.00		1,816.48
01/01/2010	MONTHLY ASSESSMENTS	168.81		1,985.29
01/31/2010	LATE CHARGE	10.00		1,995.29
02/01/2010	MONTHLY ASSESSMENTS	168.81		2,164.10
03/01/2010	MONTHLY ASSESSMENTS	168.81		2,332.91
03/03/2010	LATE CHARGE	10.00		2,342.91
03/31/2010	LATE CHARGE	10.00		2,352.91
04/01/2010	MONTHLY ASSESSMENTS	168.81		2,521.72
05/01/2010	MONTHLY ASSESSMENTS	168.81		2,690.53
05/01/2010	LATE CHARGE	10.00		2,700.53
05/31/2010	LATE CHARGE	10.00		2,710.53
06/01/2010	MONTHLY ASSESSMENTS	168.81		2,879.34
07/01/2010	MONTHLY ASSESSMENTS	168.81		3,048.15
07/01/2010	LATE CHARGE	10.00		3,058.15
07/31/2010	LATE CHARGE	10.00		3,068.15
08/01/2010	MONTHLY ASSESSMENTS	168.81		3,236.96
08/31/2010	LATE CHARGE	10.00		3,246.96
09/01/2010	MONTHLY ASSESSMENTS	168.81		3,415.77
10/01/2010	MONTHLY ASSESSMENTS	168.81		3,584.58
10/01/2010	LATE CHARGE	10.00		3,594.58
11/01/2010	MONTHLY ASSESSMENTS	168.81		3,763.39

1 OWNERS -

REPORT BALANCE AS OF: 12/31/2010

3,763.39

A&K-062

APP000894

RUN DATE: 11/21/2008

SHADOW WOOD
ACCOUNT HISTORY REPORT
FOR THE PERIOD 01/01/2008 TO 12/31/2008
SINGLE OWNER

PAGE: 1

126608

000109-01 RETRELLA, RUTH

TRX DATE	DESCRIPTION	CHARGES	CREDITS	BALANCE
	BEGINNING BALANCE			50.00
01/01/2008	MONTHLY ASSESSMENTS	153.46		103.46
02/01/2008	MONTHLY ASSESSMENTS	153.46		256.92
03/01/2008	MONTHLY ASSESSMENTS	153.46		410.38
03/19/2008	LOCKBOX PAYMENT CK: 10132		460.30	50.00-
04/01/2008	MONTHLY ASSESSMENTS	153.46		103.46
04/15/2008	LOCKBOX PAYMENT CK: 10171		153.46	50.00-
05/01/2008	MONTHLY ASSESSMENTS	153.46		103.46
06/01/2008	MONTHLY ASSESSMENTS	153.46		256.92
06/16/2008	LATE CHARGE	10.00		266.92
06/16/2008	REVERSE LATE CHARGE		10.00	256.92
06/25/2008	LOCKBOX PAYMENT CK: 10238		256.92	0.00
07/01/2008	MONTHLY ASSESSMENTS	153.46		153.46
08/01/2008	MONTHLY ASSESSMENTS	153.46		306.92
09/01/2008	MONTHLY ASSESSMENTS	153.46		460.38
10/01/2008	MONTHLY ASSESSMENTS	153.46		613.84
11/01/2008	MONTHLY ASSESSMENTS	153.46		767.30
	ENDING BALANCE			767.30
12/08	m. assessments	153.46		920.76
	1 OWNERS - REPORT BALANCE AS OF 12/31/2008			767.30

2723 Gogway #109

RECEIVED NOV 24 2008

A&K-063

Exhibit "L"

Naomi Eden

From: Naomi Eden
Sent: Wednesday, February 08, 2012 11:29 AM
To: 'dianna.palmer-hopkins@mynycb.com'
Subject: 3923 Gogo 109

Hi Dianna,

The management company received a check in the amount of \$6783.16. The total due on the demand is \$9017.39. Would you like me to return this check so a new one can be issued with the proper amount?

Thanks,

Naomi Eden, J.D.

Alessi & Koenig, LLC
www.alessikoenig.com

Our Office closes at 2 pm on Fridays

Las Vegas Office
9500 W. Flamingo Road, Suite 205
Las Vegas, NV 89147
Telephone: (702) 222-4033
Facsimile: (702) 222-4043

Reno Office
1135 Terminal Way, Suite 106A
Reno, NV 89502
Telephone: (775) 626-2323
Facsimile: (775) 222-4043

Los Angeles Office
28914 Roadside Dr., Suite F-4
Agoura Hills, CA 91301
Telephone: (818) 735-9600
Facsimile: (818) 735-0096

Alessi & Koenig is a debt collector and any information obtained will be used for that purpose.

Naomi Eden

From: Naomi Eden
Sent: Tuesday, February 14, 2012 8:55 AM
To: 'Michael Moretti'
Subject: FW: 3923 Gogo 109
Attachments: Breakdown of Fees - Super Priority_1232012_12668.snp Gogo.pdf; Ledger 1-23-12 Dues Gogo.pdf

Here you go.

From: Dianna Palmer-Hopkins [<mailto:Dianna.Palmer-Hopkins@mynycb.com>]
Sent: Friday, February 10, 2012 1:35 PM
To: Naomi Eden
Subject: RE: 3923 Gogo 109

Ok, I will need a new statement with that amount.

From: Naomi Eden [<mailto:naomi@alessikoenig.com>]
Sent: Friday, February 10, 2012 11:47 AM
To: Dianna Palmer-Hopkins
Subject: RE: 3923 Gogo 109

Ok, but the amount due is \$9017.39, not \$6445.54.

From: Dianna Palmer-Hopkins [<mailto:Dianna.Palmer-Hopkins@mynycb.com>]
Sent: Friday, February 10, 2012 5:52 AM
To: Naomi Eden
Subject: RE: 3923 Gogo 109

Hello,

The amount on the ledger that was sent to me 01/23/12 had the amount of 6445.54 through 02/01/12. We actually paid more so that we could be caught up until April.

Thanks,
Dianna

From: Naomi Eden [<mailto:naomi@alessikoenig.com>]
Sent: Wednesday, February 08, 2012 2:29 PM
To: Dianna Palmer-Hopkins
Subject: 3923 Gogo 109

Hi Dianna,

The management company received a check in the amount of \$6783.16. The total due on the demand is \$9017.39. Would you like me to return this check so a new one can be issued with the proper amount?

Thanks,

Naomi Eden, J.D.

Alessi & Koenig, LLC
www.alessikoenig.com

Our Office closes at 2 pm on Fridays

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Las Vegas, NV 89147
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Reno, NV 89502
Telephone: (775) 626-2323
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28914 Roadside Dr., Suite. F-4
Agoura Hills, CA 91301
Telephone: (818) 735-9600
Facsimile: (818) 735-0096

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EXHIBIT 4

EXHIBIT 4

**PITE
DUNCAN
LLP**

Steven W. Pite CA/NV/WA
John D. Duncan CA/TX/WA
Peter J. Salmon
CA/ID/UT/WA
David E. McAllister
AZ/CA/HI/OR/UT/WA
Laurel I. Handley
AZ/CA/ID/NV

Rochelle L. Stanford
AZ/CA/OR/WA
Josephine E. Salmon
AK/AZ/CA/NY
Eddie R. Jimenez CA/NV/TX
Susan L. Petit AK/CA/HI/WA
Cuong M. Nguyen CA/NV
Casper Rankin CA/ID/OR/WA
Charles A. Correia CA
Brian A. Paine AZ/CA/TX/WA
Christopher McDermott CA
Jillian A. Benbow CA
Drew A. Callahan CA
Natalie T. Nguyen CA
Genail M. Anderson CA
Ellen Cha CAMN
Erin L. Laney CA
William L. Partridge CA/ID
Christopher L. Peterson CA
Jason W. Short CA
Joseph C. Delmotte CA
Balpreet K. Thara CA
Catherine T. Vinh CA
Gregg A. Hubley NV
Ace C. Van Patten ID/NV
Christopher A. J. Swift CANV
Claire A. Mock CA/TX
Spencer Macdonald UT
Jesse Baker ID/OR/UT/WA
Carrie Thompson Jones AZ
Gilbert R. Yabes CA
Matthew M. McArthur NV
Matthew R. Clark, III CA
Arnold L. Graff CA/WI
Phillip J. Giles CA
Parada Kovadi CA
Gagan G. Vaideeswaran CA
Todd S. Gagan CA
Michael J. Krahenbuhl CA
Brandon M. Love CA
K. Alexandra Cavin NV
Christian Fenton CA/HI
Justin S. Moyer CA
Paul A. Hoefker TX
Crystal M. Tatco NV
Hunter B. Zook OR
Tracy J. Frazier OR/WA
Elisa S. Magnuson CA/ID
Eric L. Cook AZ
Eric Tsai CA/NV/OR
Michael Baker CA
Julia A. Bahner WA
Jamin S. Neil AZ
Bryan S. Fairman CA
Ryan A. Farmer OR
Megan Lees CA
Olga S. Panchenko TX
Mark G. Torabi TX
Lloyd T. Workman CA/HI
Irina C. Ribeiro CA
Greg Campbell CA
Elizabeth C. Thompson CA
Stephen T. Kitagawa CA
Kimberley V. Deede CA
Diane E. Bond CA
Brad S. Behrens CA
Anh P. Nguyen TX
Dhruv M. Sharma CA
Robert P. Zahradka CA
Tim R. Pomeroy CA/DC
Casey J. O'Connell CA
David J. Boulanger OR
Brian M. Sheehan WA
Robert A. Schauble CA/HI
Edmund H. Lee WA
Shannon K. Calt AK/OR/WA
Gina J. Kim CA
Jenelle C. Arnold CA
Jonathan C. Cahill CA
Danielle M. Graham CA
Adam O. Miles CA
Rebecca P. Kern NV
David B. Rosen HI
Of Counsel

Mailing
4375 Jutland Drive, Suite 200
P.O. Box 17935
San Diego, CA 92177-0935
Overnight
4375 Jutland Drive, Suite 200
San Diego, CA 92117
Ph.: (858) 750-7600
Fax: (619) 590-1385

February 27, 2013

Via U.S. mail
Via facsimile at: (702) 222-4023

Ryan Kerbow, Esq.
ALESSI & KOENIG, LLC
9500 W. Flamingo, Suite 205
Las Vegas, Nevada 89147

Re: New York Community Bank v. Shadow Wood Homeowners' Association, et al.
Case No.: A-12-660328-C
Loan No.: 3401602
Property: 3923 Gogo Way #109, Las Vegas, NV 89103
Our File No.: 000338-000410

Dear Ryan:

I am writing to respectfully request that your firm withdraw from further representation of the Defendants in this matter or allow substitution by other legal counsel chosen by the Defendants. As you know, I briefly referenced my concerns at the pretrial conference on February 13, 2013, before Judge Silver. As indicated during that pretrial conference, in addition to the possibility of an actual conflict, I have genuine concerns about how your office's representation will impact my client's case.

NRPC 3.7(a) provides that a lawyer cannot act as an advocate at a trial in which the lawyer is likely to be a necessary witness unless the testimony concerns an uncontested issue, the testimony relates to the nature/value of legal services rendered, or disqualification would work substantial hardship on the client. NRPC 3.7(b) goes on to provide that a lawyer can act as an advocate at trial if "another lawyer in the lawyer's firm is likely to be called as a witness" unless this is precluded by NRPC 1.7 or 1.9.

The very first trial witness you identified (Thomas Bayard, Esq.) is a partner with your firm. In addition, you were corresponding with my client prior to the HOA foreclosure sale about the amount of the super priority lien that your client was asserting. Indeed, the figures that you provided in written correspondence are the subject of serious dispute in this case. As you appeared at the pretrial conference and at all other proceedings in this matter, it is my understanding that you will act as trial counsel. Both you and Mr. Bayard, therefore, are fact witnesses, and obviously I cannot obtain information from you or Mr. Bayard about communications that you had with your clients which would be protected by the attorney client privilege. I do not believe any of the exceptions to NRPC 3.7(a) are applicable as the amount you claimed in written correspondence is very heavily contested (indeed, it is the basis for my client's position in this case), your testimony (or presumably that of Mr. Bayard) would not be limited to the value of legal services rendered, and clearly your clients can obtain substitute counsel. Moreover, I think that there are genuine issues under NRPC 1.7 as well.

NRPC 1.7 prohibits counsel from representing clients when there is a concurrent conflict of interest. Respectfully, I believe that there is a serious prospect of such a conflict with your representation of Shadow Wood and Gogo Way Trust. In this matter, you are representing both the seller (Shadow Wood) and the purchaser (Gogo Way Trust) at a foreclosure sale. Moreover, your firm acted as the trustee at that same foreclosure sale. This, in itself, constitutes an actual conflict.

February 27, 2013
Page 2

Obviously, the buyer and seller at a sale have substantially different interests. Moreover, if my client prevails, the HOA sale will be set aside, and Gogo Way Trust may have civil claims against Shadow Wood or your office (as trustee) for any issues involved in the HOA foreclosure and sale.

Please understand that I make this request not to be difficult or to cause unnecessary delay or expense, but because I have a genuine concern over how your continued representation will impact my client's case. I have never asked an attorney to withdraw or filed a Motion to Disqualify. Unfortunately, under the facts of this case, I believe that withdrawal or disqualification is necessary to protect my client's interests. Please respond by next Wednesday, March 6, 2013, to advise of your position in this respect. If you do not withdraw, I will have no choice but to file a Motion to Disqualify. If you would like to discuss this in greater detail, please do not hesitate to contact me directly at (702) 991-4632.

Very truly yours,

PITE DUNCAN, LLP


Gregg A. Hubley
ghubley@piteduncan.com

EXHIBIT 5

EXHIBIT 5

Nicole L. Schlanderer

From: Nicole L. Schlanderer
Sent: Monday, March 11, 2013 1:47 PM
To: Nicole L. Schlanderer
Subject: FW: NYCB v A&K et al

From: Ryan Kerbow [mailto:rmkerbow@gmail.com]
Sent: Friday, March 01, 2013 1:38 PM
To: Gregg A. Hubley
Subject: NYCB v A&K et al

Gregg,

I received your letter. In response to your concerns, I'll come off this case and it will be taken over by another attorney in our firm, Huong Lam, who is not a potential witness. This will happen immediately after today, since our opposition to Plaintiff's MSJ is due today. In the event discovery is reopened, which the Court seemed inclined to do, I'll be available for a deposition.

With respect to Gogo Way Trust, at this point, we have viewed the defendants' interests as being aligned (i.e. the object is to have the sale upheld). Certainly, in the event the court sets aside the sale, a conflict would arise and the Trust would need new counsel. But given your concerns, we'll reexamine the issues and make a decision.

Ryan

EXHIBIT 6

EXHIBIT 6

Nicole L. Schlanderer

From: Nicole L. Schlanderer
Sent: Monday, March 11, 2013 1:51 PM
To: Nicole L. Schlanderer
Subject: FW: NYCB v A&K et al

From: Gregg A. Hubley
Sent: Monday, March 04, 2013 10:39 AM
To: 'Ryan Kerbow'
Subject: RE: NYCB v A&K et al

Hi, Ryan. I appreciate the response. However, I do not think that having another attorney from your firm will resolve the problems. I also appreciate your willingness to undergo a deposition, but I will be prevented from obtaining information about your communications with your clients (the HOA and GOGO WAY TRUST) due to the attorney client privilege. These communications are essential to my client's case, as I have questions about the amount of the lien at issue and the way that this amount was ascertained and communicated between the interested parties (i.e., the seller and the trustee), as well as any communications between the trustee and the purchaser, who is also your client. This effectively puts you in a position of refusing to testify or violating a client confidence. I would presume that you would refuse to testify (and would likewise instruct your clients to do the same), which ultimately prevents me from obtaining patently discoverable information.

I do appreciate your willingness to cooperate and would not ask for a disqualification unless I genuinely believed it was essential to my client's right to obtain discovery. Unfortunately, I do believe that it is essential. Please let me know by the end of the week if you will reconsider. Otherwise, I will file the Motion for Disqualification and we will let Judge Silver make the decision.

Gregg A. Hubley, Esq.

Attorney at Law
PITE DUNCAN, LLP
701 E. Bridger Avenue, #700
Las Vegas, Nevada 89101
702.991.4632 (Tel.)
702.685.6342 (Fax)

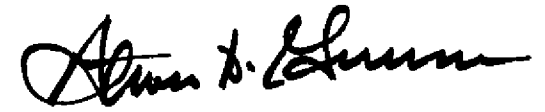
From: Ryan Kerbow [mailto:rmkerbow@gmail.com]
Sent: Friday, March 01, 2013 1:38 PM
To: Gregg A. Hubley
Subject: NYCB v A&K et al

Gregg,

I received your letter. In response to your concerns, I'll come off this case and it will be taken over by another attorney in our firm, Huong Lam, who is not a potential witness. This will happen immediately after today, since our opposition to Plaintiff's MSJ is due today. In the event discovery is reopened, which the Court seemed inclined to do, I'll be available for a deposition.

With respect to Gogo Way Trust, at this point, we have viewed the defendants' interests as being aligned (i.e. the object is to have the sale upheld). Certainly, in the event the court sets aside the sale, a conflict would arise and the Trust would need new counsel. But given your concerns, we'll reexamine the issues and make a decision.

Ryan



CLERK OF THE COURT

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ROPP
ALESSI & KOENIG, LLC
Huong Lam, Esq. (SB #10916)
9500 W. Flamingo Road, Suite #205
Las Vegas, Nevada 89147
(702)-222-4033
Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANCORP,
INC.,

Plaintiff,

v.

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

Defendants.

DEFENDANTS' REPLY TO
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Case No.: A-12-660328-C

Dept. No.: XV

ALESSI & KOENIG, LLC
9500 W. Flamingo Road #205 § Las Vegas, Nevada 89147
Phone: 702.222.4033 § Fax: 702.222.4023

1 assessment payments to the Association. As a sophisticated party, Plaintiff should have known about
2 its obligation to do these things. However, Plaintiff did neither. After going nearly a year without
3 making monthly assessment payments or paying off the Association's lien for past due assessments,
4 at the eleventh hour, Plaintiff contacted the foreclosure agent, A&K, to inquire about making
5 payment. When Plaintiff did tender payment, *the payment was incorrect by any measure*, as Plaintiff
6 paid the amount from the ledger showing the entire history of unpaid assessments on the account,
7 not the amount from the breakdown that A&K generated. When Plaintiff was informed about the
8 error, Plaintiff did nothing about it for three weeks, which resulted in the subject foreclosure sale
9 going forward.
10
11

12 Before the foreclosure sale, Plaintiff never gave any indication that it objected to the
13 calculation of the Association's lien. If Plaintiff objected to the calculation, Plaintiff could have
14 taken action to enjoin the sale. Alternatively, Plaintiff could have stopped the foreclosure sale by
15 paying the amount demanded, then filed a lawsuit regarding the disputed portion. Even in Plaintiff's
16 complaint, Plaintiff does not object to the calculation A&K used in its demand, instead merely
17 alleging that the foreclosure notices were not mailed (while, in reality, they were mailed) and that
18 the property sold for a commercially unreasonable price. Plaintiff did not even raise the issue in its
19 Motion for Summary Judgment. Only now, in its opposition Defendant's motion for summary
20 judgment, has Plaintiff raised an issue about the calculation Defendant used for the Association's
21 lien. Moreover, Plaintiff bases its lien calculation on a fundamentally flawed advisory opinion from
22 the Nevada Real Estate Division that fails to take into account that home owners association have
23 a contractual lien for attorney's fees and costs pursuant to their CC&Rs.
24
25
26

27 Plaintiff's actions are too little, too late. Without a showing of actual fraud – and there is no
28

1 such showing – the court has no ability to set aside the subject foreclosure sale.

2
3 **IV. ARGUMENT**

4 **A. A Dispute Over The Association’s Lien Calculation Brought Long After The Foreclosure**
5 **Sale Occurred Is Not A Basis To Set Aside The Sale Against A Bona Fide Purchaser**

6
7 As the Nevada Supreme Court explained in *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528
8 (1982):

9
10 Mere inadequacy of price is not sufficient to justify setting aside a foreclosure sale,
11 absent a showing of fraud, unfairness or oppression.” *Turner v. Dewco Services,*
12 *Inc.*, 87 Nev. 14, 479 P.2d 462 (1971); *Brunzell v. Woodbury*, 85 Nev. 29, 449 P.2d
13 158 (1969); *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963), cert. denied,
14 382 U.S. 844, 86 S.Ct. 89, 15 L.Ed.2d 85 (1965).
15

16
17 Furthermore, Nevada has statutory law that determines when a foreclosure sale may be set aside
18 against a bona fide purchaser. NRS 645F.440 provides as follows:

- 19
20 1. “[...] [i]f a foreclosure purchaser engages in any *conduct that operates as a*
21 *fraud or deceit upon a homeowner* in connection with a transaction that is subject
22 to the provisions of NRS 645F.300 to 645F.450, inclusive, including, without
23 limitation, a foreclosure reconveyance, the transaction in which the foreclosure
24 purchaser acquired title to the residence in foreclosure may be rescinded by the
25 homeowner within 2 years after the date of the recording of the conveyance.
26
27
28

1 (Emphasis added.) Further, Nevada law contains significant protection for home owners
2 associations that foreclose on their assessment liens. NRS 116.31166 provides a conclusive
3 presumption that default occurred and that the foreclosure notices were issued. This is greater
4 protection than the general “substantial compliance” standard of NRS 107.080.
5

6 Plaintiff simply has not offered any evidence of fraud or collusion that could serve as a basis
7 for setting aside the foreclosure sale. Plaintiff points to varying amounts in the demands, but as
8 shown in Defendants’ opposition, there was only one harmless error in the Notice of Delinquent
9 Assessment that A&K issued in June of 2011, long before the foreclosure sale occurred. Without
10 fraud, and specifically, without fraud on the part of the foreclosure purchaser, Gogo Way Trust, the
11 sale to the Gogo Way Trust may not be set aside. As such, the sale should be upheld as a matter
12 of law.
13
14
15

16 **B. The Advisory Opinion From The Real Estate Division Fails To Take Into Account**
17 **That Associations May Have A Contractual Lien For Attorney’s Fees And Costs**

18 Plaintiff makes the mistake of regarding the non-binding advisory opinion issued by the
19 Nevada Real Estate Division (the “NRED”) as the ultimate determination of the law in this state.
20 For an unexplained reason, Plaintiff disregards the earlier advisory opinion issued by the
21 Commission, even though the Commission, like the NRED, has statutory authority to issue advisory
22 opinions regarding the interpretation of NRS 116.
23

24 The NRED’s opinion is unique in that it interprets the statutory language in a way that no
25 court has before. The dispute in Nevada, and other states that have adopted the Uniform Common
26 Interest Ownership Act, such as Colorado and Connecticut, has been whether the portion of an
27
28

1 Association's lien for collection fees and costs survives a mortgage foreclosure by the first mortgage
2 lender. Some court's, such as the Supreme Court of Connecticut, hold that the "super priority"
3 portion of an association's lien does, in fact, include the fees and costs of collection. (See Hudson
4 House Condominium Ass'n, Inc. V. Brooks, 223 Conn. 610, 611 A.2d 862). Other courts have
5 ruled that the lien for fees and costs is not included in the super priority portion. (See First Atlantic
6 Mortg., LLC v. Sunstone North Homeowners Ass'n, 121 P.3d 254, 255-56 (Colo. App., 2005).
7

8 Nobody besides the NRED has ruled that there is no lien for collection fees and costs
9 *whastoever*, regardless of where there has been a mortgage foreclosure. The NRED gives a highly
10 questionable interpretation of the statute. In sum, NRS 116.3116(1) states that an assessment lien
11 includes certain items in addition to assessments, such as "penalties, fees, charges, late charges,
12 fines and interest [...]" The NRED believes that the word "fees" is not broad enough to include
13 "attorney's fees." It concludes, therefore, that no Nevada home owners association has a lien for
14 attorney's fees and costs of collection.
15
16

17 The NRED's interpretation is highly questionable. Moreover, the NRED errs in failing to
18 consider that associations might have a contractual basis to assert a lien for attorney's fees and
19 costs. In fact, probably every CC&Rs, including the CC&Rs for the Association in the present
20 case, states that the Association's assessment lien includes the amount of attorney's fees and costs
21 incurred in attempting to collect on that lien. Specifically, the Association's CC&Rs section 4.01
22 provides in pertinent part:
23

24 The annual and special assessments, together with interest, costs and reasonable
25 attorney's fees, shall be a charge on the Condominium Unit and shall be a
26
27
28

1 continuing lien upon the Condominium Unit against which each such assessment
2 is made.

3 (See Amended and Restated Declaration of Covenants, Conditions and Restrictions for
4 Shadow Wood Condominiums, Clark County Recorder, Document No. 2185340)

5
6 Clearly, Plaintiff is relying on a flawed advisory opinion that does not withstand scrutiny.
7 At the very least, the Association's lien would include nine months of assessments, plus all the
8 assessments and collection fees and costs related to Plaintiff's failure to make monthly assessments
9 to the Association. If Plaintiff believed A&K's lien calculation was erroneous, it should have taken
10 reasonable steps to protect its interest rather than wait until the last minute to tender payment and
11 then *do nothing* as the weeks leading up to the foreclosure sale came and went.
12

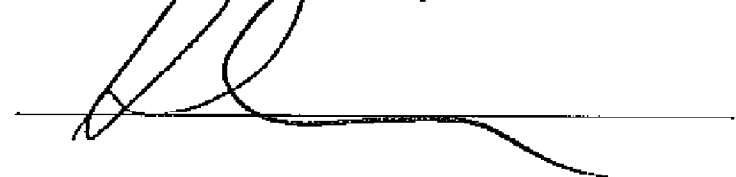
13
14 **III. CONCLUSION**

15
16 Here, there are \$2,001.00 in excess proceeds. Specifically, the amount of the Association's
17 lien was \$9,017.39, while the amount paid by Gogo Way Trust was \$11,018.39. The excess
18 proceeds have been held in A&K's trust account since the sale in light of the present litigation.
19

20 Since there is no showing of fraud, this Court must uphold the foreclosure sale, at which
21 point the excess proceeds will be distributed to Plaintiff.

22 DATED this 11th day of March, 2013.

23 ALESSI & KOENIG, LLC

24 

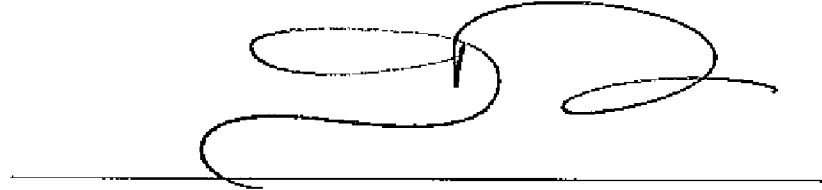
25
26 Hung Lam, Esq.

CERTIFICATE OF MAILING

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I HEREBY CERTIFY that I am an associate attorney at ALESSI & KOENIG, LLC, and that on the 12th day of March, 2013, I caused a true and correct copy of the *Reply to Opposition to Motion for Summary Judgment* to be personally delivered to the address shown below.

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



**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.

Pltf's Attorney

Lam, Huong

Def't's 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 Def't's Response to the Pltf'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.

12068

NEW YORK COMMUNITY BANK
T.S. NO. NV08000227-10-1
1801 E. NINTH STREET
SUITE 200
CLEVELAND, OH 44114

NEW YORK COMMUNITY BANK
T.S. NO. NV08000227-10-1
3923 Gogo Wy #109
LAS VEGAS, NV 89103

MTC FINANCIAL, INC dba TRUSTEE CORP
T.S. NO. NV08000227-10-1
17100 GILLETTE AVE
IRVINE, CA 92614

FIRST AMERICAN NATIONAL DEFAULT TI
T.S. NO. NV08000227-10-1
3 FIRST AMERICAN WAY
SANTA ANA, CA 92707

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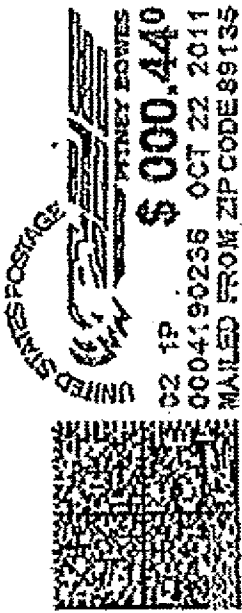
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2984 2070 0251
FD01

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A&K-010

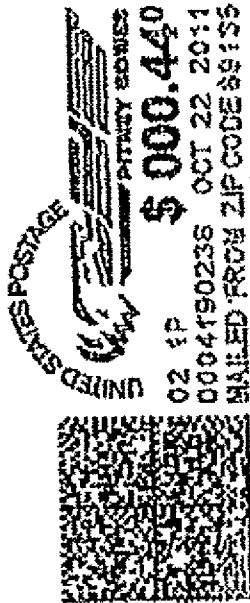
**A & K
K O E N I G**
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

FIRST AMERICAN NATIONAL DEFAULT FI
T.S. NO. NV0800227-10-1
3 FIRST AMERICAN WAY
SANTA ANA, CA 92707



**A & K
K O E N I G**
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

MFC FINANCIAL, INC dba TRUSTEE CORP
T.S. NO. NV0800227-10-1
17100 GILLETTE AVE
IRVINE, CA 92614



A&K-011

Receipt/Conformed Copy

Requestor:
JUNES LEGAL SERVICES
06/03/2009 12:38:07 T20090194197
Book/Instr: 20090603-0003427
Default Page Count: 1
Fees: \$14.00 H/C Fee: \$0.00
Debbie Conway
Clark County Recorder

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, Nevada 89147
Phone: 702-222-4033

WWW.ALESSIKOENIG.COM

A.P.N. 162-18-613-029

Trustee Sale No. 12668-3923-109

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default is recorded. The date of recordation appears on this notice. The amount due is \$2,259.81 as of May 13, 2009 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Shadow Wood, c/o Alessi & Koenig, LLC, 9500 West Flamingo Road, Suite 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on December 3, 2008 as document number 03006, of Official Records in the County of Clark, State of Nevada.

Owner(s): Virginia Fedel

Of Unit 109, as per map recorded in Book 33, Pages 44, as shown on the Condominium Plan, Recorded on as document number Pending as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada.

PROPERTY ADDRESS: 3923 Gogo Wy #109, Las Vegas, NV 89103

If you have any questions, you should contact an attorney or the Association that maintains the right of assessment upon your property. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.

NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated December 3, 2008, executed by Shadow Wood to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions. A breach of, and default in, the obligation for which said Covenants, Conditions, and Restrictions as security has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, Association's fees and costs, trustee's fees and costs, and attorney's fees and costs.

Dated: May 13, 2009

Stephanie Knickerbocker, Alessi & Koenig, LLC on behalf of Shadow Wood.

VIRGINIA V FEDEL
3923 GOGO WY 109
LAS VEGAS, NV 89103

VIRGINIA V FEDEL
7180 POLLACK DR
LAS VEGAS NV 89119-9003

12668
CCSF, LLC
DBA GREYSTONE FINANCIAL
GROUP
7180 POLLOCK DRIVE, SUITE 100
LAS VEGAS, NV 89119
LOAN#237-0800703

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POE

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P.O. BOX 2026
FLINT, MI 48601-2026
LOAN#237-0600703

US Form 3800, August 2008 See Reverse for Instructions

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERBOW****
* Admitted to the California Bar
** Admitted to the California, Nevada
and Colorado Bars
*** Admitted to the Nevada Bar
**** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-843-6590

Nevada Licensed Qualified Collection Manager
AMANDA LOWHR

Pre-Notice of Trustee Sale Notification

September 21, 2009

Virginia Fedel
3923 Gogo Wy #109
Las Vegas, NV 89103

Re: Shadow Wood/3923 Gogo Wy #109/HO #12668

Dear Virginia Fedel:

Please be informed that as of today's date our office has not received payment pursuant to the Notice of Delinquent Assessment Lien recorded against your property on December 3, 2008 & the Notice of Default and Election to Sell recorded on June 3, 2009. Please understand that failure to bring your account current or failure to contact this office by October 6, 2009 will result in the continuation of foreclosure proceedings against your property and will include a minimum of \$1165.00 in additional charges.

The total amount currently due is \$2,813.86. Please submit payment to our offices at the below listed Nevada address, made payable to the Alessi & Koenig.

Again, it is extremely important that we receive your payment by October 6, 2009. Should you fail to bring your delinquent account current, you could lose ownership of your home.

Should you have any questions, please contact this office at 702-222-4033.

Yours very truly,

ALESSI & KOENIG, LLC

Stephanie Knickerbocker
Legal Assistant

A&K-014

APP000837

Inst #: 201004220000852

Fees: \$14.00

N/C Fee: \$0.00

04/22/2010 09:33:21 AM

Receipt #: 321592

Requestor:

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Recorded By: ARO Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 100
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 162-18-613-029

Title No. 052209-20-JTSN 12668-3923-109

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On May 12, 2010, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on December 3, 2008, as instrument number 03006, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.

The street address and other common designation, if any, of the real property described above is purported to be: 3923 Gogo Wy #109, Las Vegas, NV 89103. The owner of the real property is purported to be: Virginia Fedel

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,628.86. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: April 14, 2010 

By: Branko Jetic on behalf of Shadow Wood

A&K-015

APP000838

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 100
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 162-18-613-029
Title No. 052209-20-J TSN 12668-3923-109

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL The Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On **May 12, 2010**, Alessi & Koenig as duly appointed Trustees pursuant to a certain lien, recorded on **December 3, 2008**, as Instrument number **03006**, of the official records of Clark County, Nevada, **WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 4:00 P.M. at 930 S. 4th Street, Las Vegas Nevada 89101.**

The street address and other common designation, if any, of the real property described above is purported to be: **3923 Gugo Wy #109, Las Vegas, NV 89103.** The owner of the real property is purported to be: **Virginia Fedel**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made implied, regarding title, possession or encumbrances, to homeowner's assessment or other obligation secured by this therein: plus advances, if any, under the terms thereof and expenses, of the Trustee and trust created by said lien. The obligation secured by the property to be sold and reasonable est of the initial publication of the Notice of Sale is **\$3,628.86**. Pay on a state or national bank, a check drawn by a state bank or federal savings and loan association, savings association, or Financial Code and authorized to do business in this state.

Date: April 14, 2010

By: Branko Jestic on behalf of Shadow Wood

7005 2320 0001 2749 5220

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Street, Apt. No.	LAS VEGAS, NV 89104
or PO Box No.	RE: GORDAN MILDEN
City, State, Zip	
PS Form 3800, August 2006 See Reverse for Instructions	

A&K-016

VIRGINIA V FEDEL
3923 GOGO WY 109
LAS VEGAS, NV 89103

VIRGINIA V FEDEL
7180 POLLACK DR
LAS VEGAS NV 89119-9003

CCSF, LLO
DBA GREYSTONE FINANCIAL GROUP
7180 POLLOCK DRIVE, SUITE 100
LAS VEGAS, NV 89119
LOAN#237-0600703

12668

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P.O. BOX 2026
FLINT, MI 48501-2026
LOAN#237-0600703

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RE: GORDAN MILDEN

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Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	

Postmark Here
FLAMINGO ROAD 89137
APR 23 2010
POE

Total Postage & Fees
Sent To: VIRGINIA V FEDEL
3923 GOGO WY 109
LAS VEGAS, NV 89103
City, State, ZIP+4[®]

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service[™]
CERTIFIED MAIL[™] RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	

Postmark Here
FLAMINGO ROAD 89137
APR 23 2010
POE

Total Postage & Fees
Sent To: MERS
P.O. BOX 2026
FLINT, MI 48501-2026
City, State, ZIP+4[®] LOAN#237-0600703

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service[™]
CERTIFIED MAIL[™] RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	

Postmark Here
FLAMINGO ROAD 89137
APR 23 2010
POE

Total Postage & Fees
Sent To: VIRGINIA V FEDEL
7180 POLLACK DR
LAS VEGAS NV 89119-9003
City, State, ZIP+4[®]

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service[™]
CERTIFIED MAIL[™] RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	

Postmark Here
FLAMINGO ROAD 89137
APR 23 2010
POE

Total Postage & Fees
Sent To: CCSF, LLC
DBA GREYSTONE FINANCIAL GROUP
7180 POLLOCK DRIVE, SUITE 100
LAS VEGAS, NV 89119
City, State, ZIP+4[®] LOAN#237-0600703

PS Form 3800, August 2006 See Reverse for Instructions

A&K-017

Exhibit "C"

Inst #: 201105240003017
Fee: \$15.00 N/C Fee: \$0.00
RPTT: \$234.00 Ex: #
06/24/2011 11:02:46 AM
Receipt #: 787078
Requestor:
PASION TITLE SERVICES
Recorded By: BOA Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

④-1

A.P.N. # 162-18-813-029

[RECORDING REQUESTED BY:]

First American Title Company *AS AN*
on Behalf of Trustee Corps *ACCOMMODATION*
ONLY.

[WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO:]
NEW YORK COMMUNITY BANK,
1801 E. NINTH STREET
SUITE 200

CLEVELAND, OH 44114 THE UNDERSIGNED HEREBY AFFIRMS THAT
~~There is no~~ SOCIAL SECURITY NUMBER [REDACTED] ED IN THIS DOCUMENT

37

[Space above this line for recorder's use only]

Trustee Sale No. NV08000227-10-1 Title Order No. 4459625

TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:

- 1) The Grantee herein was the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with costs was: **\$142,712.99**
- 3) The amount paid by the grantee at the trustee sale was: **\$45,900.00**
- 4) The documentary transfer tax is: **\$234.60**
- 5) Said property is in the city of: LAS VEGAS

and MTC FINANCIAL INC. dba TRUSTEE CORPS, herein called "Trustee", as Trustee (or as Successor Trustee) of the Deed of Trust hereinafter described, hereby grants and conveys, but without covenant or warranty, express or implied, to NEW YORK COMMUNITY BANK, herein called "Grantee", the real property in the County of Clark, State of Nevada, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE APART HEREOF

This deed is made pursuant to the authority and powers given to Trustee (or to Successor Trustee) by law and by that certain Deed of Trust dated April 25, 2007, made to VIRGINIA V. FEDEL, A WIDOW and recorded on April 27, 2007, as Instrument No. 20070427-0004835 Book . Page . of Official Records in the office of the Recorder of Clark County, Nevada, Trustee (or Successor Trustee) having complied with all applicable statutory provisions and having performed all of his duties under the said Deed of Trust.

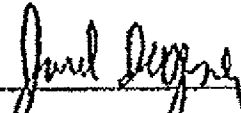
NEW YORK COMMUNITY BANK
1801 E. NINTH STREET
SUITE 200
CLEVELAND, OH 44114

A&K-018

All requirements of law and of said Deed of Trust relating to this sale and to notice thereof having been complied with, Pursuant to the Notice of Trustee's Sale, the above described property was sold by Trustee (or Successor Trustee) at public auction on 05/09/2011 at the place specified in said Notice, to Grantee who was the highest bidder therefor, for \$45,900.00 cash, in lawful money of the United States, which has been paid.

Dated: 05/09/2011

MTC FINANCIAL INC. dba TRUSTEE CORPS


By: Jared Degener, as authorized signer

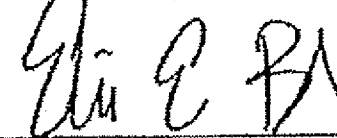
State of CALIFORNIA

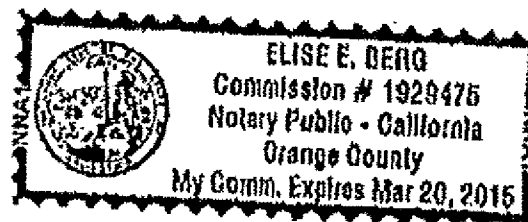
County of ORANGE

On 5/23/11 before me, Elise E. Berg, a notary public personally appeared Jared Degener who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


Notary Public in and for said County and State



A&K-019

APP000843

EXHIBIT "A"

PARCEL ONE (1):

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

PARCEL TWO (2):

AN UNDIVIDED 7.348% INTEREST IN AND TO THE COMMON AREA AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA ON DECEMBER 3, 1986, IN BOOK 2226 OF OFFICIAL RECORDS AS DOCUMENT NO. 2186340.

EXCEPTING THEREFROM THE FOLLOWING:

ALL LIVING UNITS AS SHOWN UPON THE MAP HEREINABOVE REFERRED TO AND AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA ON DECEMBER 3, 1986 IN BOOK 2226 OF OFFICIAL RECORDS, AS DOCUMENT NO. 2186340.

AND FURTHER EXCEPTING THEREFROM:

THE EXCLUSIVE RIGHT TO POSSESSION OF ALL THOSE "RESTRICTED COMMON AREAS AND/OR EXCLUSIVE USE AREA", AS DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, HEREINABOVE, REFERRED TO, AND AS SET FOR ON THE SUBDIVISION MAP OF SILVERADO VILLAS II.

PARCEL THREE (3):

THE EXCLUSIVE RIGHT TO POSSESSION AND OCCUPANCY OF THOSE PORTIONS OF THE COMMON AREAS, ABOVE DESCRIBED, DESIGNATED AS "RESTRICTED COMMON AREAS AND/OR EXCLUSIVE USE AREAS", AS APPURTENANT TO PARCEL ONE (1) AND TWO (2), ABOVE DESCRIBED, AS DELINEATED ON THE AFOREMENTIONED MAP AND AS DEFINED ON THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, HEREINABOVE REFERRED.

A&K-020

APP000844

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)
 a. 162-18-613-029
 b. _____
 c. _____
 d. _____

2. Type of Property:
 a Vacant Land b Single Fam. Res.
 c Condo/Twnhse d 2-4 Plex
 e Apt. Bldg f Comm' Wind'l
 g Agricultural h Mobile Home
 Other _____

FOR RECORDER'S OPTIONAL USE ONLY
 Book: _____ Page: _____
 Date of Recording: _____
 Notes: _____

3. a. Total Value/Sales Price of Property \$45,900.00 price is cost + bid
 b. Deed in Lieu of Foreclosure Only (value of property) _____
 c. Transfer Tax Value: \$45,900.00 price is cost + bid
 d. Real Property Transfer Tax Due: \$ 234.60

4. If Exemption Claimed:
 a. Transfer Tax Exemption per NRS 375.090, Section _____
 b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %
 The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Joan Dezyne Capacity Grantor (Trustee)
 Signature Joan Dezyne Capacity Grantee (Agent for Grantee)

SELLER (GRANTOR) INFORMATION (REQUIRED)
 Print Name: TRUSTEE CORPS
 Address: 17100 GILLETTE AVENUE
 City: IRVINE
 State: CA Zip: 92614

BUYER (GRANTEE) INFORMATION (REQUIRED)
 Print Name: NEW YORK COMMUNITY BANK
 Address: 1801 E. NINTH STREET
 City: CLEVELAND
 State: OH Zip: 44114

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
 Print Name: FIRST AMERICAN NATIONAL Escrow #: 4459625
 Address: DEFAULT TITLE
 City: 3 FIRST AMERICAN WAY State: _____ Zip: _____
SANTA ANA, CA 92707

As a public record this form may be recorded/microfilmed

Exhibit “D”

DAVID ALESSI*
 THOMAS DAYARD*
 ROBERT KOENIG**
 RYAN KERBOW***
 * Admitted to the California Bar
 ** Admitted to the California, Nevada
 and Colorado Bars
 *** Admitted to the Nevada and California Bar

ALESSI & KOENIG
A Multi-Jurisdictional Law Firm
 9500 W. Flamingo Road, Suite 100
 Las Vegas, Nevada 89147
 Telephone: 702-222-4033
 Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS CA
 PHONE: 818-735-9600

RENO NV
 PHONE: 775-626-2323

DIAMOND BAR CA
 PHONE: 909-861-8300

June 29, 2011

LIEN LETTER
VIA REGULAR AND CERTIFIED MAIL

BANK NEW YORK COMMUNITY
 3923 Gogo Wy #109
 Las Vegas, NV 89103

Re: Shadow Wood Homeowners' Association, Inc/3923 Gogo Wy #109/HO #12668

Dear BANK NEW YORK COMMUNITY :

Our office has been retained by Shadow Wood Homeowners' Association, Inc to collect the past due assessment balances on your account. Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of Shadow Wood Homeowners' Association, Inc on June 29, 2011. The total amount due by August 3, 2011 is \$8,238.87. Please note that the total amount due may differ from the amount shown on the enclosed lien. Please submit payment to our Nevada mailing address listed above by August 3, 2011. Payment must be in the form of a cashier's check or money order and made payable to Alessi & Koenig.

Unless you, within thirty days after receipt of this notice, dispute the validity of this debt, or any portion thereof, our office will assume the debt is valid. If you notify our office in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and a copy of such verification will be mailed to you. Upon receipt of your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Please note the law does not require me to wait until the end of the thirty-day period before proceeding to the next step in the collection process. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period that begins with your receipt of this letter, the law requires me to suspend my efforts to collect the debt until I mail the requested information to you. You have the right to inspect the association records.

In the event Alessi & Koenig, LLC does not receive payment of \$8,238.87 by August 3, 2011, a Notice of Default will be recorded; resulting in additional fees and costs. Should you fail to pay the debt, we will file for a lien on the ownership of your property.

Sincerely,

ALESSI & KOENIG
 Naomi Eden, Legal A

Please be advised that Alessi & Koenig, LLC is a debt collector the information obtained will be used for collection purposes.

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

FLAMINGO ROAD 89147
 PO BOX 109
 LAS VEGAS, NV 89103
 JUN 30 2011

PS Form 3825, August 2008

A&K-022

DAVID ALESSI*
 THOMAS DAYARD*
 ROBERT KOENIG**
 RYAN KERHOW***

* Admitted to the California Bar
 ** Admitted to the California, Nevada
 and Colorado Bars
 *** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100
 Las Vegas, Nevada 89147
 Telephone: 702-222-4033
 Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS CA
 PHONE: 818-735-9600

RENO NV
 PHONE: 775-626-2323

DIAMOND BAR CA
 PHONE: 909-861-8100

June 29, 2011

LIEN LETTER
VIA REGULAR AND CERTIFIED MAIL

BANK NEW YORK COMMUNITY
 1801 E NINTH ST #200
 CLEVELAND, OH 44114

Re: Shadow Wood Homeowners' Association, Inc/3923 Gogo Wy #109/HO #12668

Dear BANK NEW YORK COMMUNITY :

Our office has been retained by Shadow Wood Homeowners' Association, Inc to collect the past due assessment balance on your account. Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of Shadow Wood Homeowners' Association, Inc on June 29, 2011. The total amount due by August 3, 2011 is \$8,238.87. Please note that the total amount due may differ from the amount shown on the enclosed lien. Please submit payment to our Nevada mailing address listed above by August 3, 2011. Payment must be in the form of a cashier's check or money order and made payable to Alessi & Koening.

Unless you, within thirty days after receipt of this notice, dispute the validity of this debt, or any portion thereof, our office will assume the debt is valid. If you notify our office in writing within the thirty-day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt and a copy of such verification will be mailed to you. Upon receipt of your written request within the thirty-day period, we will provide you with the name and address of the original creditor, if different from the current creditor. Please note the law does not require me to wait until the end of the thirty-day period before proceeding to the next step in the collection process. If, however, you request proof of the debt or the name and address of the original creditor within the thirty-day period that begins with your receipt of this letter, the law requires me to suspend my efforts to collect the debt until I mail the requested information to you. Please be advised that you have the right to inspect the association records.

In the event Alessi & Koening, LLC does not receive costs of \$8,238.87 by August 3, 2011, a Notice of Default will be recorded, resulting in additional fees and costs. Should you lose ownership of your property.

Sincerely,

ALESSI & KOENIG
 Naomi Eden, Legal

Please be advised that Alessi & Koening, LLC is a debt collector and any communications obtained will be used for

U.S. Postal Service	
CERTIFIED MAIL [®] RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com .	
OFFICIAL USE	
Postage \$	
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
To: BANK NEW YORK COMMUNITY	
At: 1801 E NINTH ST #200	
CLEVELAND, OH 44114	
PS Form 3800, August 2010	See Reverse for Instructions

A&K-023

Inst #: 201107070002436
Fees: \$14.00
NIC Fee: \$0.00
07/07/2011 09:56:50 AM
Receipt #: 836895
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: TAH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

ALESSI & KOENIG, L.L.C.
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 162-18-613-029

Trustee Sale # 12668-3923-109

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, **Shadow Wood Homeowners' Association, Inc** HOA has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **3923 Gogo Wy #109, Las Vegas, NV 89103** and more particularly legally described as: **Unit 109 Book 33 Page 44** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **BANK NEW YORK COMMUNITY**

The mailing address(es) is: **3923 Gogo Wy #109, Las Vegas, NV 89103**

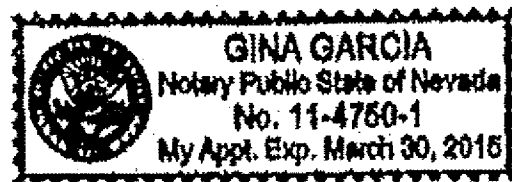
The total amount due through today's date is: **\$8,238.87**. Of this total amount **\$8,003.87** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$235.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **June 29, 2011**

By: 
Naomi Eden - Legal Assistant
Alessi & Koenig, LLC on behalf of **Shadow Wood Homeowners' Association, Inc**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me June 29, 2011

(Seal)



(Signature)


NOTARY PUBLIC

A&K-024

APP000849

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KIRBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bar

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818-735-9600

RINO NV
PHONE: 775-626-2323
&
DIAMOND BAR CA
PHONE: 909-861-8300

August 13, 2011

Pre-Notice of Default

BANK NEW YORK COMMUNITY
1801 E NINTH ST #200
CLEVELAND, OH 44114

Regarding: Shadow Wood Homeowners' Association, Inc/3923 Gogo Wy #109/HO #12668

Dear BANK NEW YORK COMMUNITY :

Please be informed that as of today's date our office has not received payment pursuant to the Notice of Delinquent Assessment Lien recorded against your property on July 7, 2011. Please understand that failure to bring your account current or failure to contact this office by August 28, 2011 will result in the initiation of foreclosure proceedings on your property and include a minimum \$750.00 in additional charges.

The total amount currently due is \$8,527.68. Please submit payment to our offices at the above listed Nevada address, made payable to the Alessi & Koenig, LLC.

Again, it is extremely important that we receive your payment by August 28, 2011. Should you fail to bring your delinquent account current, you could lose ownership of your home.

Should you have any questions, please contact this office at 702-222-4033.

Yours very truly,

ALESSI & KOENIG, LLC

Naomi Eden
Legal Assistant

A&K-025

APP000850

Inst #: 201110130001665
Fees: \$14.00
N/C Fee: \$0.00
10/13/2011 08:40:20 AM
Receipt #: 845349
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MAT Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. 162-18-613-029


Trustee Sale No. 12668-3923-109

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$6,608.34 as of August 29, 2011 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Shadow Wood Homeowners' Association, Inc, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on July 7, 2011 as document number 2436, of Official Records in the County of Clark, State of Nevada. Owner(s): BANK NEW YORK COMMUNITY, of Unit 109, as per map recorded in Book 33, Pages 44, as shown on the Condominium Plan, Recorded on as document number Pending as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 3923 Gogo Wy #109, Las Vegas, NV 89103. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated July 7, 2011, executed by Shadow Wood Homeowners' Association, Inc to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: August 29, 2011


Naomi Eden, Alessi & Koenig, LLC on behalf of Shadow Wood Homeowners' Association, Inc

A&K-026

APP000851

12008

NEW YORK COMMUNITY BANK
T.S. NO. NV08000227-10-1
1801 E. NINTH STREET
SUITE 200
CLEVELAND, OH 44114

NEW YORK COMMUNITY BANK
T.S. NO. NV08000227-10-1
3923 Gogo Wy #109
LAS VEGAS, NV 89103

MTG FINANCIAL, INC dba TRUSTEE CORP
T.S. NO. NV08000227-10-1
17100 GILLETTE AVE
IRVINE, CA 92614

FIRST AMERICAN NATIONAL DEFAULT TI
T.S. NO. NV08000227-10-1
3 FIRST AMERICAN WAY
SANTA ANA, CA 92707

7011 1570 0002 4887 0454

U.S. Postal Service[™]
CERTIFIED MAIL[™] RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$
Certified Fee	851
Return Receipt Fee (Endorsement Required)	
Registered Delivery Fee (Endorsement Required)	
Total	

Postmark Here

NEW YORK COMMUNITY BANK
T.S. NO. NV08000227-10-1
3923 Gogo Wy #109
LAS VEGAS, NV 89103

PS Form 3800, August 2006 See Reverse for Instructions

7011 1570 0002 4887 0447

U.S. Postal Service[™]
CERTIFIED MAIL[™] RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com.

OFFICIAL USE

Postage	\$
Certified Fee	5850
Return Receipt Fee (Endorsement Required)	
Registered Delivery Fee (Endorsement Required)	
Total	

Postmark Here

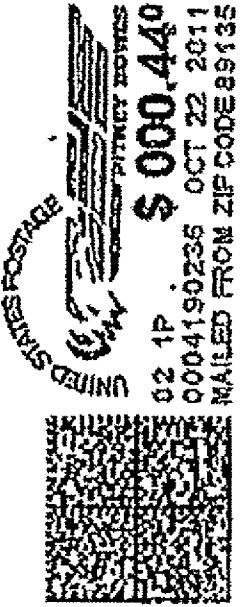
NEW YORK COMMUNITY BANK
T.S. NO. NV08000227-10-1
1801 E. NINTH STREET
SUITE 200
CLEVELAND, OH 44114

PS Form 3800, August 2006 See Reverse for Instructions

A&K-027

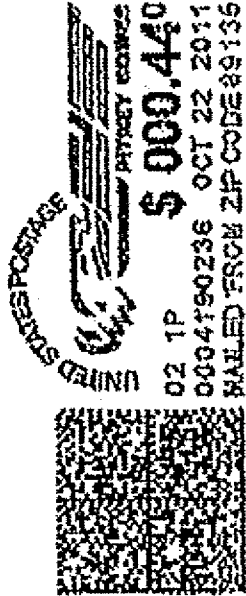
A&K
K O E N I G
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

FIRST AMERICAN NATIONAL DEFAULT T1
T.S. NO. NV0800227-10-1
3 FIRST AMERICAN WAY
SANTA ANA, CA 92707



A&K
K O E N I G
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147

MTC FINANCIAL, INC DBA TRUSTEE CORP
T.S. NO. NV0800227-10-1
17100 GILLETTE AVE
IRVINE, CA 92614



A&K-028

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERBOW***
* Admitted to the California Bar
** Admitted to the California, Nevada
and Colorado Bars
*** Admitted to the Nevada Bar
**** Admitted to the Nevada and California Bar

**ALESSI
&
KOENIG**
A Multi-Jurisdictional Law Firm
9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-843-6590

Nevada Licensed Qualified Collection Manager
AMANDA LOWER

Pre-Notice of Trustee Sale Notification

September 21, 2009

Virginia Fedel
7180 Pollack Dr
Las Vegas, NV 89119

Re: Shadow Wood/3923 Gogo Wy #109/HO #12668

Dear Virginia Fedel:

Please be informed that as of today's date our office has not received payment pursuant to the Notice of Delinquent Assessment Lien recorded against your property on December 3, 2008 & the Notice of Default and Election to Sell recorded on June 3, 2009. Please understand that failure to bring your account current or failure to contact this office by October 6, 2009 will result in the continuation of foreclosure proceedings against your property and will include a minimum of \$1165.00 in additional charges.

The total amount currently due is \$2,813.86. Please submit payment to our offices at the below listed Nevada address, made payable to the Alessi & Koenig.

Again, it is extremely important that we receive your payment by October 6, 2009. Should you fail to bring your delinquent account current, you could lose ownership of your home.

Should you have any questions, please contact this office at 702-222-4033.

Yours very truly,

ALESSI & KOENIG, LLC

Stephanie Knickerbocker
Legal Assistant

A&K-029

APP000854

Inst #: 201201270002208
Fees: \$17.00
N/C Fee: \$0.00
01/27/2012 09:32:34 AM
Receipt #: 1049121
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: SOL Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 162-18-613-029

TSN 12668-3923-109

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On February 22, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on July 7, 2011, as instrument number 2436, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONBY OF THE UNITED STATES, OR A CASHIERS CHECK at 2:00 PM, at 9500 W Flamingo Suite 205, Las Vegas, NV 89147 (Alessi&Koenig, LLC Office Building).

The street address and other common designation, if any, of the real property described above is purported to be: 3923 Gogo Wy #109, Las Vegas, NV 89103. The owner of the real property is purported to be: BANK NEW YORK COMMUNITY

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$8,539.77. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: January 18, 2012


By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Shadow Wood Homeowners' Association, Inc

A&K-030

APP000855

HO # 12668

NEW YORK COMMUNITY BANK
T.S. NO. NV08000227-10-1
1801 E. NINTH STREET
SUITE 200
CLEVELAND, OH 44114

NEW YORK COMMUNITY BANK
T.S. NO. NV08000227-10-1
3923 Gogo Wy #109
LAS VEGAS, NV 89103

MTC FINANCIAL, INC dba TRUSTEE COR
T.S. NO. NV08000227-10-1
17100 GILLETTE AVE
IRVINE, CA 92614

FIRST AMERICAN NATIONAL DEFAULT TI
T.S. NO. NV08000227-10-1
3 FIRST AMERICAN WAY
SANTA ANA, CA 92707

OMBUDSMANS OFFICE
GORDAN MILDEN
251 E. SAHARA AVE. #205
LAS VEGAS, NV 89104

NOTS MAILINGS

7196 9008 9111 4262 4750

TO: NEW YORK COMMUNITY BANK
1801 E. NINTH STREET
SUITE 200
CLEVELAND, OH 44114

TSN #: 12668-3923-109

SENDER:

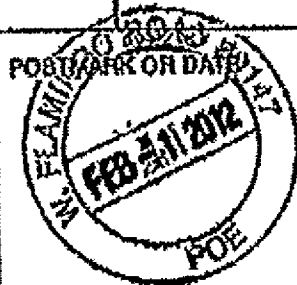
REFERENCE:

PS Form 3800, January 2008

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service®
Receipt for Certified Mail™

No Insurance Coverage Provided
Do Not Use for International Mail



7196 9008 9111 4262 4767

TO: NEW YORK COMMUNITY BANK
3923 Gogo Wy #109
LAS VEGAS, NV 89103

TSN #: 12668-3923-109

SENDER:

REFERENCE:

PS Form 3800, January 2008

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service®
Receipt for Certified Mail™

No Insurance Coverage Provided
Do Not Use for International Mail



A&K-031

7196 9008 9111 4262 4798

TO: OMBUDSMANS OFFICE
251 E. SAHARA AVE. #205
LAS VEGAS, NV 89104

TSN #: 12668-3923-109

SENDER:

REFERENCE:

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service®
Receipt for Certified Mail™
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE
FEB-1 2012
IN FLAMINGO ROAD
POE

7196 9008 9111 4262 4781

TO: FIRST AMERICAN NATIONAL DEFAULT TITLE
3 FIRST AMERICAN WAY
SANTA ANA, CA 92707

TSN #: 12668-3923-109

SENDER:

REFERENCE:

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service®
Receipt for Certified Mail™
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE
FEB-1 2012
IN FLAMINGO ROAD
POE

7196 9008 9111 4262 4774

TO: MTC FINANCIAL, INC dba TRUSTEE CORPS
17100 GILLETTE AVE
IRVINE, CA 92614

TSN #: 12668-3923-109

SENDER:

REFERENCE:

PS Form 3800, January 2005

RETURN RECEIPT SERVICE	Postage	
	Certified Fee	
	Return Receipt Fee	
	Restricted Delivery	
	Total Postage & Fees	

US Postal Service®
Receipt for Certified Mail™
No Insurance Coverage Provided
Do Not Use for International Mail

POSTMARK OR DATE
FEB-1 2012
IN FLAMINGO ROAD
POE

A&K-032

Exhibit "E"



Inst #: 201203010004775
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$58.65 Ex: #
03/01/2012 04:20:12 PM
Receipt #: 1083608
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MJM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
Gogo Way Trust
PO Box 36208
Las Vegas, NV 89133

A.P.N. No.162-18-613-029

TS 12668-3923-109

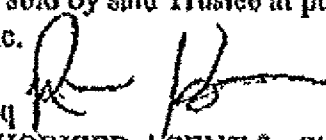
TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: Gogo Way Trust
The Foreclosing Beneficiary herein was: Shadow Wood Homeowners' Association, Inc
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): \$11,018.39
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$11,018.39
The Documentary Transfer Tax: \$58.65
Property address: 3923 Gogo Wy #109, Las Vegas, NV 89103
Said property is in [] unincorporated area: City of Las Vegas
Trustor (Former Owner that was foreclosed on): BANK NEW YORK COMMUNITY

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded July 7, 2011 as instrument number 2436, in Clark County, does hereby grant, without warranty expressed or implied to: Gogo Way Trust (Grantee), all its right, title and interest in the property legally described as: Unit 109, as per map recorded in Book 33, Pages 44 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:


This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on February 22, 2012 at the place indicated on the Notice of Trustee's Sale.

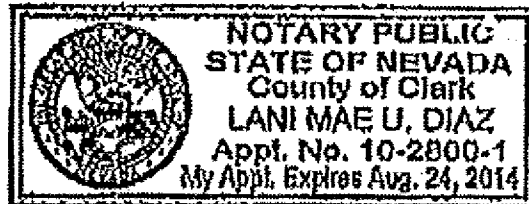
Robert Koenig, Esq. 
Signature of AUTHORIZED AGENT for Shadow Wood Homeowners'
Association, Inc

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me March 1, 2012

WITNESS my hand and official seal.
(Seal)


(Signature)



STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 192-18-013-029
- b. _____
- c. _____
- d. _____

2. Type of Property:

- | | |
|---|--|
| a. <input type="checkbox"/> Vacant Land | b. <input type="checkbox"/> Single Fam. Res. |
| c. <input checked="" type="checkbox"/> Condo/Twnhse | d. <input type="checkbox"/> 2-4 Plex |
| e. <input type="checkbox"/> Apt. Bldg | f. <input type="checkbox"/> Comm/Ind'l |
| g. <input type="checkbox"/> Agricultural | h. <input type="checkbox"/> Mobile Home |
| <input type="checkbox"/> Other | |

FOR RECORDERS OPTIONAL USE ONLY	
Book _____	Page: _____
Date of Recording: _____	
Notes: _____	

- 3.a. Total Value/Sales Price of Property \$ 11,010.00
- b. Deed in Lieu of Foreclosure Only (value of property (_____))
- c. Transfer Tax Value: \$ 11,010.00
- d. Real Property Transfer Tax Due \$ 89.65

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
- b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100.00 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Alessi&Koenig, LLC
 Address: 9500 W Flamingo # 205
 City: Las Vegas
 State: NV Zip: 89147

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Gogo Way Trust
 Address: PO Box 36208
 City: Las Vegas
 State: NV Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Alessi&Koenig, LLC
 Address: 9500 W Flamingo #205
 City: Las Vegas

Escrow # N/A Foreclosure
 State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Exhibit "F"

Afessi & Koenig, LLC
TSN#12668-3923-109

AFFIDAVIT OF SERVICE

State of Nevada)
County of Clark)

I, Gregory Brown, state:

That at all times herein I have been a citizen of the United States, over 18 years of age, and am not a party to, or interested in, the proceeding in which this affidavit is made.

I served Bank New York Community with a copy of the Notice of Trustee's Sale, on 1/26/2012 at approximately 10:25AM, by:

Personally posting a copy of the Notice of Trustee's Sale in the manner prescribed pursuant to NRS 107.087, in a conspicuous place on the property, upon information and belief, at least 15 days before the date of sale, which is located at:

Trust Property:
3923 Gogo Wy #109
Las Vegas, NV 89103

I posted a copy of the Notice of Trustee's Sale pursuant to NRS 107.080, for 20 days consecutively, in a public place in the county where the property is situated, to wit:

Nevada Legal News:
930 S. 4th St
Las Vegas, NV 89101

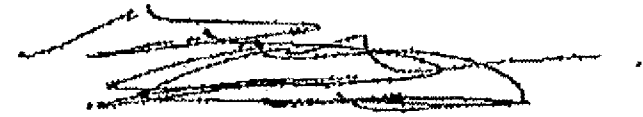
Regional Justice Center:
200 Lewis Ave
Las Vegas, NV 89101

Clark County Law Library:
309 S. 3rd St
Las Vegas, NV 89101

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

Dated 2/10/2012

Junes Legal Service

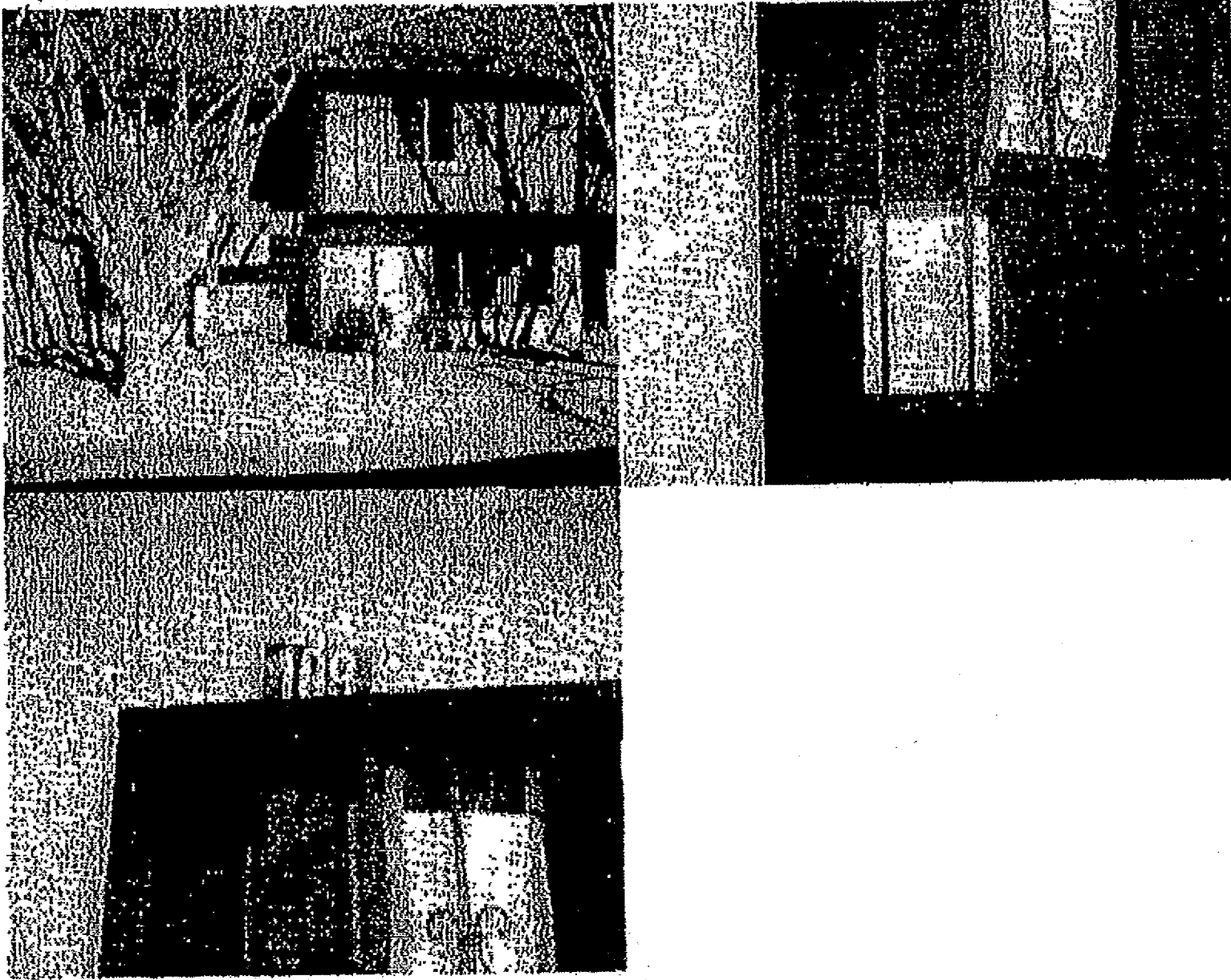


Gregory Brown
630 S. 10th St, Ste B
Las Vegas, NV 89101
702-579-6300
Nevada Lic #1068

COUNTY OF SERVICE: CLARK
SERVER: Gregory Brown

A&K-035

APP000862



Photos taken by: Gregory Brown County: Clark
Photo date: 1/26/2012 Time: 10:25am
Primary borrower: Bank New York Community
Property address: 3923 Gogo Wy #109, Las Vegas, NV 89103

Junes Legal Service
630 S. 10th St, Ste B
Las Vegas, NV 89101
702-579-6300 Lic. #1068

Alessi & Koenig, LLC TS#12668-3923-109

A&K-036

APP000863

Exhibit "G"

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-820-8907 IMMEDIATELY.

NOTICE IS HEREBY GIVEN THAT:

On February 22, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on July 7, 2011, as instrument number 2436, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at 2:00 PM, at 9500 W Flamingo Suite 205, Las Vegas, NV 89147 (Alessi&Koenig, LLC Office Building).

The street address and other common designation, if any, of the real property described above is purported to be: 3923 Gogo Wy #109, Las Vegas, NV 89103. The owner of the real property is purported to be: BANK NEW YORK COMMUNITY.

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$8,630.77. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5402 of the Financial Code and authorized to do business in this state.

Date: January 18, 2012

By: Ryan Korbow, Esq. of Alessi & Koenig LLC
on behalf of Shadow Wood Homeowners'
Association, Inc

PUBLISHED
01/27/2012, 02/03/2012 & 02/10/2012

CLARK COUNTY LEGAL NEWS
NYE & CLARK COUNTY, NEVADA
CCLN FILE 12012701.xps

Certification of Publication

This is to confirm that, on the aforementioned dates, the attached Legal Notice was published in the Clark County Legal News newspaper, a newspaper of general and subscription circulation in Clark County, Nevada.

Per NRS 238.030, the Clark County Legal News newspaper is printed and published in whole or in part in both Clark County and Nye County, Nevada.

WITNESS my hand on this

02/10/2012
DATE

Jeremiah J. Donovan

JEREMIAH J. DONOVAN, publisher,
Clark County Legal News newspaper

A&K-037

APP000865

Exhibit “H”

PRINTED ON LINE MARK PAPER. HOLD TO LIGHT TO VIEW FOR ADDITIONAL SECURITY FEATURES. SEE BACK.

000241 11-24
Office AU # 1210(8)

CASHIER'S CHECK

0024100117

Operator I.D.: rono0181 rono2146

February 22, 2012

PAY TO THE ORDER OF ***ALESSI & KOENIG***
RE: 3923 GOGO WAY UNIT #109

***\$11,018.39**

Eleven thousand eighteen dollars and 39 cents

WELLS FARGO BANK, N.A.
4076 S FORT APACHE RD
LAS VEGAS, NV 89147
FOR INQUIRIES CALL (480) 394-3122

VOID IF OVER \$ 11,018.39

AUTHORIZED SIGNATURE

A&K-038

Exhibit "I"

DAVID ALESSI*
 THOMAS BAYARD*
 ROBERT KOENIG**
 RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
 and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm
 9500 W. Flamingo Road, Suite 205
 Las Vegas, Nevada 89147
 Telephone: 702-222-4033
 Facsimile: 702-222-4043
 www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
 PHONE: 818-735-9600

RENO NV
 PHONE: 775-626-2323

&
 DIAMOND BAR CA
 PHONE: 909-861-8300

FACSIMILE COVER LETTER

To:	dfanna.palmer-hopkins@mynycb.com	Re:	3923 Gogo Wy #109/HO #12668
From:	Ryan Kerbow	Date:	Tuesday, November 15, 2011
Fax No.:		Pages:	1, including cover
		HO #:	12668

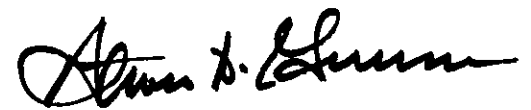
Dear dfanna.palmer-hopkins@mynycb.com:

This cover will serve as a nine month super priority demand on behalf of Shadow Wood Homeowners' Association, Inc for the above referenced escrow; property located at 3923 Gogo Wy #109, Las Vegas, NV. The date of foreclosure was May 9, 2011. The total amount due through December, 15, 2011 is \$7,314.77. The breakdown of fees, interest and costs is as follows:

6/29/2011	Notice of Delinquent Assessment Lien -- Nevada	(2)	\$650.00
8/29/2011	Notice of Default	(2)	\$800.00
4/14/2010	Notice of Trustee's Sale		\$275.00
8/13/2011	Pre NOD		\$90.00
9/21/2009	Pre-Notice of Trustee's Sale		\$90.00
8/25/2010	Postponement of Trustees Sale		\$75.00
6/2/2010	Monitoring Foreclosure		\$100.00
11/9/2010	Demand Fee		\$150.00
11/15/2011	Update Demand Fee		\$75.00
	Trustee Deed Preparation & Recordation		\$0.00
Total			\$2,305.00

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

A&K-039



CLERK OF THE COURT

1 **MDQA**
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: Ghublely@piteduncan.com

5 Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

6
7
8
9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 NEW YORK COMMUNITY BANK,

13 Plaintiff,

14 v.

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

17 Defendants.

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

**MOTION TO DISQUALIFY COUNSEL
FOR DEFENDANTS/
COUNTERCLAIMANTS**

Date of Hearing:
Time of Hearing:

18 GOGO WAY TRUST,

19 Counterclaimant,

20 v.

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

23 Counterdefendants.
24

25 **MOTION TO DISQUALIFY COUNSEL FOR DEFENDANTS/COUNTERCLAIMANTS**

26 COMES NOW Plaintiff/Counterdefendant, NEW YORK COMMUNITY BANK
27 (hereinafter, "Plaintiff" or "NYCB"), by and through its attorneys of record, Pite Duncan, LLP, and
28 respectfully submits its Motion to Disqualify counsel for Defendants/Counterclaimants, SHADOW

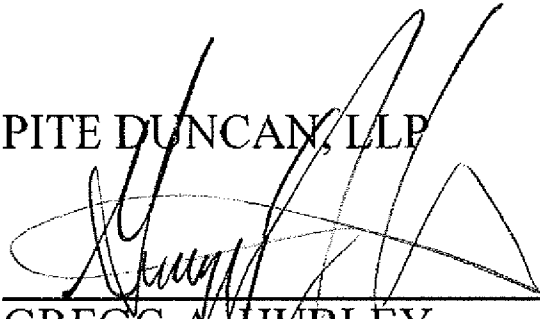
1 WOOD HOMEOWNERS' ASSOCIATION, INC. ("Shadow Wood") and GOGO WAY TRUST
2 ("Gogo Way") (collectively, "Defendants").

3 This Motion is made and based upon the following Memorandum of Points and Authorities,
4 the pleadings and papers on file herein, the arguments of counsel at hearing, and upon such other
5 papers, arguments, evidence and other matters the Court may consider.

6 **NOTICE OF MOTION**

7 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing **MOTION**
8 **TO DISQUALIFY COUNSEL FOR DEFENDANTS/COUNTERCLAIMANTS** on for hearing
9 before the above-entitled Court on the 17 day of April, 2013, at 9 o'clock
10 a .m. of said day, or as soon thereafter as counsel may be heard.

11 DATED this 11th day of March, 2013.

12 PITE DUNCAN, LLP
13 
14 _____
15 GREGG A. HUBLEY
16 *Attorneys for Plaintiff/Counterdefendant NEW*
17 *YORK COMMUNITY BANK*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I.**

18 **INTRODUCTION**

19 Counsel for Defendants is in the untenable position of representing parties who have adverse
20 interests in these proceedings. Further, Defense counsel may well be in a position where it (Alessi
21 & Koenig) is in a position that is adverse to its current clients. Moreover, counsel for Defendants
22 was actively involved in negotiations with NYCB prior to the HOA foreclosure sale challenged
23 herein, and in fact trial counsel for Defendants prepared written correspondence to NYCB that is also
24 being challenged, making trial counsel a witness in the proceedings. Additionally, the very first fact
25 witness identified by counsel for Defendants in their List of Trial Witnesses and Exhibits is a partner
26 with the firm representing Defendants. There are a host of actual conflicts that prevent Defendants'
27 counsel from further participating in these proceedings, and, additionally, counsel's ongoing
28 representation will put it in the position of acting as witness and advocate at trial. If this matter

1 proceeds beyond the pending Motion for Summary Judgment on file by NYCB, the ongoing
2 representation by Defendants' counsel will effectively prevent NYCB from obtaining necessary
3 discovery. Consequently, pursuant to Nevada law, the Court should grant this Motion to Disqualify
4 and require other law firms, fully independent and separate from Alessi & Koenig, to take over and
5 act as legal counsel for Defendants.

6 **II.**

7 **STATEMENT OF FACTS**

8 This case has been thoroughly briefed to the Court on the pending Motion for Summary
9 Judgment, and the undersigned will be as brief as possible in setting forth the facts relative to this
10 Motion for Disqualification.

11 This matter stems from NYCB's Complaint for Declaratory Relief and Quiet Title claims,
12 which resulted from an HOA foreclosure sale. NYCB has alleged that Defendant Shadow Wood,
13 which was the HOA and the "seller" at the HOA foreclosure sale, improperly went forward with the
14 sale as NYCB paid more than the amount necessary to satisfy the HOA's foreclosure lien before the
15 foreclosure sale. Defendant Gogo Way was the "purchaser," at the HOA foreclosure sale, and claims
16 to have extinguished NYCB's prior recorded interest in the subject property, asserting that its title
17 and rights to the subject property that are superior to NYCB's interests. Alessi & Koenig, counsel
18 for all Defendants, acted as Shadow Wood's collections agent prior to the HOA foreclosure sale,
19 communicating with NYCB about the existence of the HOA lien and the amount required to satisfy
20 the lien. An associate of Alessi & Koenig, Ryan Kerbow, Esq., exchanged written communications
21 with NYCB, claiming an exaggerated amount of the HOA's super-priority lien (which has been
22 challenged herein) was necessary for NYCB to avoid the HOA foreclosure sale. **See, Exhibit "1,"**
23 for a true copy of the correspondence prepared by Mr. Kerbow to NYCB demanding these amounts.
24 Alessi & Koenig also acted as the trustee at the foreclosure sale. **See, Exhibit "2,"** for true copies
25 of the Notice of Delinquent Assessment Lien, Notice of Default, Notice of Sale (also signed by Mr.
26 Kerbow), and Trustee's Deed Upon Sale prepared by Alessi & Koenig.

27 After NYCB's Complaint was served, Ryan Kerbow, Esq., of Alessi & Koenig entered an
28 appearance on behalf of all Defendants, and filed an Answer and Counterclaim on behalf of all

1 Defendants. Unfortunately, under NYCB's Complaint, which specifically requests that the subject
2 HOA sale be rescinded/set aside based upon improper/unlawful acts of Shadow Wood, there exists
3 an actual conflict between Shadow Wood and Gogo Way. Specifically, if the HOA foreclosure sale
4 is set aside due to improprieties or mishandling by Shadow Wood and/or its agents, the purchaser
5 at the HOA foreclosure sale, Gogo Way, could have actionable claims against Shadow Wood for
6 negligence, among other potential claims. Candidly, it is unknown whether Shadow Wood and
7 Gogo Way signed an informed consent to the representation, as required by NRPC 1.7(4).

8 After NYCB filed its Complaint and discovery ensued, NYCB's counsel discovered a
9 number of issues with the HOA foreclosure sale which was initiated at Shadow Wood's request, and
10 appears to have been handled by Defendants' counsel, Alessi & Koenig. Specifically (and as
11 thoroughly briefed in NYCB's Motion for Summary Judgment), Shadow Wood, its other agents, and
12 Alessi & Koenig repeatedly provided inconsistent and varying amounts of the HOA's purported
13 foreclosure lien. Ultimately, NYCB paid more than it was legally required to pay under NRS
14 116.3116(2) to satisfy the HOA's purported lien, and Defendants have admitted that payment was
15 received and rejected by the HOA and its agents, including Alessi & Koenig. As illustrated by
16 **Exhibit "1,"** Alessi & Koenig was actively communicating with NYCB prior to the improper HOA
17 foreclosure sale, and the amounts demanded by Alessi & Koenig have been repeatedly challenged
18 herein, and will constitute factual issues at trial if summary judgment to NYCB is not granted.
19 Additionally, Defendants have identified a partner at the law office of Alessi & Koenig as their first
20 trial witness. **See, Exhibit "3,"** for a true copy of Defendants' List of Trial Witnesses and Exhibits.

21 Counsel for NYCB brought up these very real concerns at the February 13, 2013, pre-trial
22 conference with this Court. Since then, the undersigned has communicated with Defendants'
23 counsel in an attempt to resolve this issue without the need for further law and motion practice. On
24 February 27, 2013, the undersigned sent a letter to Mr. Kerbow formally requesting that Alessi &
25 Koenig withdraw under NRPC 1.7 and NRPC 3.7. **See, Exhibit "4."** On March 4, 2013, Mr.
26 Kerbow responded that another attorney at Alessi & Koenig will take over the handling of this case
27 forward, and Mr. Kerbow represented that he would "...be available for a deposition[,] if needed.
28 **See, Exhibit "5."** Mr. Kerbow further recognized that a "...conflict would arise," if this Court set

1 aside the improperly-held HOA sale, and that "...the Trust [Gogo Way] would need new counsel."
2 **Id.** Mr. Kerbow indicated that Alessi & Koenig would reexamine the issues surrounding a potential
3 conflict and make a decision later. **Id.** On the same day (March 4, 2013), the undersigned responded
4 via e-mail, advising that a deposition of Mr. Kerbow would be extremely impractical as Mr. Kerbow
5 would be put in the position of refusing to testify or violating a client confidence, and could simply
6 refuse to testify under the attorney-client privilege. **See, Exhibit "6."** The undersigned went on to
7 indicate that there is a genuine belief that these Defendants need completely new counsel to prevent
8 unfair obstacles to NYCB's right to obtain discovery, and requested that Defendants' counsel
9 respond by Friday, March 8, 2013, to avoid the filing of a Motion for Disqualification. No response
10 has been received.

11 III.

12 LEGAL ARGUMENT

13 A. **CONTINUED REPRESENTATION BY DEFENDANTS' COUNSEL VIOLATES** 14 **NRPC 3.7 AND NRPC 1.7.**

15 NRPC 3.7 provides:

16 "(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a
17 necessary witness unless:

- 17 (1) The testimony relates to an uncontested issue;
- 18 (2) The testimony relates to the nature and value of legal services rendered
19 in the case; or
- 19 (3) Disqualification of the lawyer would work substantial hardship on the
20 client.

20 (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's
21 firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or
22 Rule 1.9."

22 Mr. Kerbow has appeared on all pleadings and motions up to this point in the case, attended
23 the deposition of Mr. Marks (President of MP Management Association) on behalf of Defendants,
24 and attended the pretrial conference as trial counsel for Defendants. As noted above, Mr. Kerbow
25 was actively corresponding/negotiating with NYCB before the challenged foreclosure, and provided
26 the super-priority lien payoff figures that have been disputed by NYCB since before the foreclosure.
27 Indeed, Mr. Kerbow sent the last lien payoff demand sent to NYCB prior to the HOA foreclosure
28 sale. Mr. Kerbow would be a necessary witness at trial, and his testimony would relate to the

1 computation of the lien payoff demand(s) that he provided to NYCB, along with any other
2 communications that he had with NYCB representatives. Mr. Kerbow worked in the capacity of
3 attorney for Shadow Wood and foreclosure trustee for Shadow Wood, so his testimony would
4 likewise involve the communications that he had with Shadow Wood (or its agents) that was used
5 in computing the payoff demands that he executed. Mr. Kerbow's testimony at trial does not relate
6 to an uncontested issue, but one that has been challenged and disputed since before this litigation was
7 filed. Obviously, the testimony sought from Mr. Kerbow does not relate to the "nature or value of
8 legal services" rendered in this litigation. Finally, it can hardly be claimed that disqualification
9 would work substantial hardship on Shadow Wood or Gogo Way. As the Court advised at the
10 pretrial conference, if this matter is not resolved on summary judgment, the trial will likely be
11 continued so that further discovery and pleadings can be completed. Thus, any subsequently retained
12 counsel would have more than adequate time to review the case and prepare for trial. Consequently,
13 none of the three (3) exceptions to NRPC 3.7 apply, requiring the disqualification of Alessi &
14 Koenig.

15 In DiMartino v. Eighth Judicial Dist. Court, 119 Nev. 119, 66 P.3d 945 (2003), the Nevada
16 Supreme Court discussed the issue of disqualification of an attorney who may be called as a witness.
17 Candidly, the Court (interpreting prior Nevada Supreme Court Rule 178) held that the Rule does not
18 "...mandate complete disqualification of an attorney who may be called as a witness[,] [but] simply
19 prohibits the attorney from appearing as trial counsel." Id., at p. 121. The Court went on to note that
20 other jurisdictions have disqualified counsel at the pretrial stage, but declined to follow this strict
21 application, opting instead to follow ABA Model Rule of Professional Conduct 3.7, which allows:

22 "...a lawyer who is expected to testify at trial to represent his client in pretrial
23 proceedings, with consent, *although the lawyer may not appear in any situation*
24 *requiring the lawyer to argue his own veracity to a court or other body*, whether in
a hearing on a preliminary motion, an appeal or other proceeding." Id., at p. 122.
(Emphasis Supplied)

25 Ultimately, the DiMartino Court found that the district court's decision did not balance the parties'
26 interest or address the hardship disqualification could have, as required by the Rule, and directed the
27 district court to vacate the order disqualifying the attorney. Notably, the Supreme Court also
28 perceived an element of gamesmanship, stating that it was "...loathe to allow a party to wholly

1 disqualify opposing counsel ... by simply listing that counsel as a witness two years into the
2 litigation[.]” Id. In DiMartino, counsel moved for disqualification years into the case on the basis
3 that the attorney sought to be disqualified had been a shareholder and member of the board of the
4 directors of a company in which the parties were or had been shareholders. The Nevada Supreme
5 Court held, under these circumstances, that interpreting the Rule to require total disqualification
6 “...would invite the rule’s misuse as a tactical ploy[.]” although the Court also held that the Rule
7 “...may prevent Singer from representing DiMartino at trial, if the underlying action proceeds to
8 trial[.]” Id., at 123 and 119, respectively.

9 The case at bar is distinguishable from DiMartino. First, under the Model Rule (quoted with
10 favor by the Nevada Supreme Court), an attorney cannot appear in any situation where the attorney
11 has to argue his own veracity to the Court. The DiMartino case did not involve written
12 communications by the challenged attorney, containing figures that were the essence of the dispute,
13 to one of the parties. In this case, however, Mr. Kerbow did prepare and send such correspondence
14 to NYCB, and his veracity and motivations could obviously become an issue. Moreover, Mr.
15 Kerbow appeared at the pretrial conference as *trial attorney* in this matter, although he is now
16 offering to transfer that role to another member of his office. Finally, unlike the attorney in
17 DiMartino, Mr. Kerbow is, indeed, “...likely to be a necessary witness.” DiMartino, at 121. The
18 testify that he will need to provide is “...relevant, material, and unobtainable elsewhere.” Machea
19 Transport Co. v. Philadelphia Indemnity Company, 463 F.3d 827, 833 (8th Cir. 2006).

20 The real problem, and resulting prejudice to NYCB, if the Court does not grant the Motion
21 to Disqualify is the curious way in which this foreclosure transpired and the alignment of parties with
22 clearly competing interests. As noted above, Alessi & Koenig worked apparently as both counsel
23 for Shadow Wood prior to the HOA foreclosure sale, and as Shadow Wood’s foreclosure trustee.
24 Discussions between Mr. Kerbow and his client about the amount of the super-priority portion of
25 the HOA lien, clearly relevant to this matter, can be protected by the assertion of the attorney client
26 privilege, effectively preventing NYCB from ascertaining how the myriad of problems (and differing
27 payoff figures) occurred. Thereafter, Alessi & Koenig acted as legal counsel for *both* buyer (Gogo
28 Way) and seller (Shadow Wood) at this HOA sale, which Alessi & Koenig also acted in as trustee.

1 Mr. Kerbow's commitment to undergo a deposition and make the transition from Defendants'
2 trial counsel to a trial witness, with another attorney at Alessi & Koenig acting as trial counsel, does
3 not resolve the issue since there are apparent and actual conflicts under NRPC 1.7. NRPC 1.7
4 provides:

5 "(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the
6 representation involves a concurrent conflict of interest. A concurrent conflict of
interest exists if:

(1) The representation of one client will be directly adverse to another client;

7 or

(2) There is a significant risk that the representation of one or more clients
8 will be materially limited by the lawyer's responsibilities to another client, a
former client or a third person or by a personal interest of the lawyer.

9 (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph
(a), a lawyer may represent a client if:

10 (1) The lawyer reasonably believes that the lawyer will be able to provide
competent and diligent representation to each affected client;

11 (2) The representation is not prohibited by law;

12 (3) The representation does not involve the assertion of a claim by one client
against another client represented by the lawyer in the same litigation or other
proceeding before a tribunal; and

13 (4) Each affected client gives informed consent, confirmed in writing."

14 NRPC 1.10 imputes a conflict not only to other members of the law firm, but also to staff of the law
15 firm.

16 It can hardly be argued that Shadow Wood, Gogo Way, and Alessi & Koenig for that matter,
17 do not have potentially adverse positions at stake herein. A buyer and seller at a foreclosure sale
18 probably never have aligned interests, as each is supposed to be working to obtain the best possible
19 price from their perspective. As the undersigned pointed out to Mr. Kerbow, if this litigation
20 resolves in NYCB's favor, and this foreclosure sale is set aside because it was improperly handled,
21 Gogo Way may have civil claims against both Shadow Wood and its foreclosure trustee, Alessi &
22 Koenig. Moreover, Shadow Wood may have its own independent claims against Alessi & Koenig,
23 if it takes the position that the mistakes and oppressive conduct in holding the HOA foreclosure sale
24 (despite receiving payment that more than satisfied its foreclosure lien) were the fault of Alessi &
25 Koenig. Indeed, this brings into question sub-section (a)(2) of NRPC 1.7, since a concurrent conflict
26 of interest can result if the lawyer's representation is materially limited by responsibilities owed to
27 another client "...or by a personal interest of the lawyer." Frankly, there are a myriad of conflicts

28 ///

1 between the Defendants themselves, and potentially between them and their attorneys, which require
2 disqualification.

3 Admittedly, standing to assert a conflict of interest under NRPC 1.7 is generally limited to
4 current or former clients. In Liapis v. Second Judicial Dist. Court, 282 P.3d 733, 737, 128
5 Nev.Adv.Op. 39 (2012), the Nevada Supreme Court addressed this issue of standing. The Court
6 discussed situations in which "...courts have permitted nonclients to bring a motion to disqualify an
7 attorney in limited circumstances." Id., at 737. For example, when the breach "...so infects the
8 litigation in which disqualification is sought that it impacts the [nonclient] moving party's interest
9 in a just and lawful determination of her claims, she may have the ... standing needed to bring a
10 motion to disqualify based on a third-party conflict of interest or other ethical violation." Id.,
11 *quoting*, Colyer v. Smith, 50 F.Supp.2d 966, 971-72 (C.D. Cal. 1999). Further, a breach of a duty
12 owed by the attorney to the complaining party may confer standing to seek disqualification. "Thus,
13 some sort of confidential or fiduciary relationship must exist or have existed before a party may
14 disqualify an attorney predicated on the actual or potential disclosure of confidential information."
15 Id., at 738, *quoting*, Great Lakes Const., Inc. v. Burman, 186 Cal.App.4th 1347, 114 Cal.Rptr.3d 301,
16 at 308 (2010).

17 Here, the triumvirate of Shadow Wood, Gogo Way, and Alessi & Koenig, and the unusual
18 and irregular relationship of these parties effectively infects this litigation and impacts NYCB's
19 interest in a lawful determination of its claims. Because Alessi & Koenig represents both buyer and
20 seller at the HOA foreclosure sale, questions as to communications about the amount of the
21 foreclosure lien payoff, or whether this information [i.e., the attempted payment of many times the
22 foreclosure lien payoff by NYCB before sale] was communicated to Gogo Way is effectively non-
23 discoverable as attorney-client privileged.

24 Moreover, as noted in NYCB's Motion for Summary Judgment, Shadow Wood and its
25 foreclosure agent/trustee, Alessi & Koenig, owed a duty to NYCB under NRS 116.1113 and UCIOA,
26 Section 1-113, which was adopted in Nevada. NRS 116.1113 imposes an obligation of good faith
27 upon an HOA on every duty applicable to the HOA when attempting to foreclose on an HOA lien.
28 The official comment to Section 1-113 of the UCIOA additionally requires "honesty in fact" and

1 “reasonable standards of fair dealing” by the HOA. Consequently, Shadow Wood, and its
2 foreclosure agent/trustee, Alessi & Koenig, owed duties to NYCB to act in good faith, and the
3 Defendant and its foreclosure trustee failed to do so by providing inconsistent and varying
4 foreclosure lien payoff amounts and rejecting payment, before sale, of more than Shadow Wood was
5 entitled to collect. Thus, this fiduciary relationship operates to confer standing to NYCB to assert
6 a conflict of interest, particularly in light of the prejudice that will attend to NYCB through these
7 inter-connected entities right to avoid providing discoverable information.

8 **B. THE NEVADA SUPREME COURT HAS HELD THAT DOUBT CONCERNING**
9 **DISQUALIFICATION SHOULD BE RESOLVED IN FAVOR OF**
10 **DISQUALIFICATION.**

11 The Nevada Supreme Court has repeatedly and consistently held that determining whether
12 to disqualify counsel is a delicate task, but that “...doubts should generally be resolved in favor of
13 disqualification[.]” Brown v. Eighth Judicial Dist. Court, 116 Nev. 1200, 14 P.3d 1266, 1270 (2000).
14 It is respectfully submitted that the record before the Court demonstrates a reasonable possibility that
15 a violation of NRPC 1.7 and NRPC 3.7 has occurred, and the likelihood of “public suspicion or
16 obloquy outweighs the social interests which will be served by a lawyer’s continued participation[.]”
17 in this particular case. Id. Consequently, the Court should grant this Motion for Disqualification.

18 **IV.**

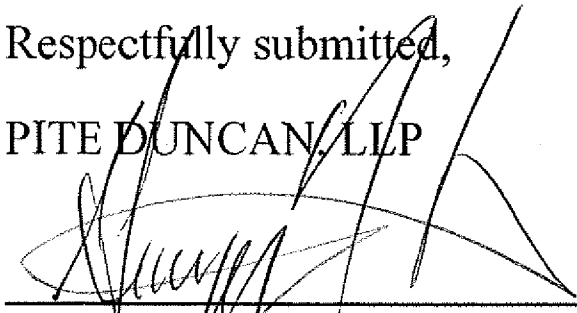
19 **CONCLUSION**

20 Counsel for NYCB respectfully requests that the Court grant this Motion, and Order the
21 disqualification of Alessi & Koenig as counsel for the Defendants.

22 DATED this 11th day of March, 2013.

23 Respectfully submitted,

24 PITE DUNCAN LLP

25 
GREGG A. HUBLEY

26 *Attorneys for Plaintiff/Counterdefendant NEW*
27 *YORK COMMUNITY BANK*

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

3 DECLARATION OF SERVICE

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

6 On March 11, 2013, I served the following document(s):

7 **MOTION TO DISQUALIFY COUNSEL FOR DEFENDANTS/
8 COUNTERCLAIMANTS**

8 on the parties in this action addressed as follows:

9
10 **Huong Lam, Esq.**
11 **ALESSI & KOENIG, LLC**
12 9500 West Flamingo Road, Suite 205
13 Las Vegas, Nevada 89147
14 *Attorneys for Defendants Shadow Wood Homeowners'*
15 *Association, Inc. and Gogo Way Trust*

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

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

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

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

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

24 Executed this 11th day of March 2013, at Las Vegas, Nevada.


25
26 
27 **NICOLE L. SCHLANDERER**
28

EXHIBIT 1

EXHIBIT 1

DAVID ALESSI*
 THOMAS BAYARD*
 ROBERT KOENIG**
 RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
 and Colorado Bars

*** Admitted to the Nevada and California Bar

**ALESSI
 KOENIG**

A Multi-Jurisdictional Law Firm

9500 W. Flamingo Road, Suite 205
 Las Vegas, Nevada 89147
 Telephone: 702-222-4033
 Facsimile: 702-222-4043
 www.alessikoenig.com

ADDITIONAL OFFICES IN

AGOURA HILLS, CA
 PHONE: 818-735-9600

RENO NV
 PHONE: 775-626-2123
 &

DIAMOND BAR CA
 PHONE: 909-861-8300

FACSIMILE COVER LETTER

To:	dianna.palmer-hopkins@mynycb.com	Re:	3923 Gogo Wy #109/HO #12668
From:	Ryan Kerbow	Date:	Monday, January 23, 2012
Fax No.:		Pages:	1, including cover
		HO #:	12668

Dear dianna.palmer-hopkins@mynycb.com:

This cover will serve as a nine month super priority demand on behalf of Shadow Wood Homeowners' Association, Inc for the above referenced escrow; property located at 3923 Gogo Wy #109, Las Vegas, NV. The date of foreclosure was May 9, 2011. The total amount due through February, 29, 2012 is \$9,017.39. The breakdown of fees, interest and costs is as follows:

6/29/2011	Notice of Delinquent Assessment Lien -- Nevada	(2)	\$650.00
8/29/2011	Notice of Default	(2)	\$800.00
4/14/2010	Notice of Trustee's Sale	(2)	\$550.00
8/13/2011	Pre NOD		\$90.00
9/21/2009	Pre-Notice of Trustee's Sale		\$90.00
8/25/2010	Postponement of Trustees Sale	(3)	\$225.00
6/2/2010	Monitoring Foreclosure		\$100.00
11/9/2010	Demand Fee		\$150.00
1/23/2012	Update Demand Fee	(2)	\$150.00
	Trustee Deed Preparation & Recordation		\$0.00
1/18/2012	Foreclosure Fee		\$150.00
Total			\$2,955.00

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

NYCB000039

APP000808

DAVID ALESSI*
THOMAS HAYARD*
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



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ADDITIONAL OFFICES IN

AGOURA HILLS, CA
PHONE: 818-735-0600

RENO, NV
PHONE: 775-626-3323
&
DIAMOND BAR, CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

1. Attorney and/or Trustees fees:	\$2,955.00
2. Notary, Recording, Copies, Mailings, and PACER	\$625.00
3. Assessments August 9, 2010 Through February 29, 2012	\$3,252.39
4. Late Fees Through February 29, 2012	\$190.00
5. Fines Through January 23, 2012	\$0.00
6. Interest Through February 29, 2012	\$0.00
7. RPIR-GI Report	\$170.00
8. Title Research (10-Day Mailings per NRS 116.31163)	\$550.00
9. Management Company Advanced Audit Fee	\$150.00
10. Management Account Setup Fee	\$300.00
11. Publishing and Posting of Trustee Sale	\$700.00
13. Conduct Foreclosure Sale	\$125.00
14. Capital Contribution	\$0.00
15. Progress Payments:	\$0.00
Sub-Total:	\$9,017.39
Less Payments Received:	\$0.00
Total Amount Due:	\$9,017.39

Please have a check in the amount of \$9,017.39 made payable to the Alessi & Koenig, LLC and mailed to the above listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

NYCB000040

APP000809

EXHIBIT 2

EXHIBIT 2

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 162-18-613-029

Trustee Sale # 12668-3923-109

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, **Shadow Wood Homeowners' Association, Inc HOA** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **3923 Gogo Wy #109, Las Vegas, NV 89103** and more particularly legally described as: **Unit 109 Book 33 Page 44** in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): **BANK NEW YORK COMMUNITY**

The mailing address(es) is: **3923 Gogo Wy #109, Las Vegas, NV 89103**

The total amount due through today's date is: **\$8,238.87**. Of this total amount **\$8,003.87** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **\$235.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **June 29, 2011**

By:



Naomi Eden – Legal Assistant

Alessi & Koenig, LLC on behalf of Shadow Wood Homeowners' Association, Inc

State of Nevada

County of Clark

SUBSCRIBED and SWORN before me June 29, 2011

(Seal)

(Signature)

NOTARY PUBLIC

Inst #: 201110130001665

Fees: \$14.00

N/C Fee: \$0.00

10/13/2011 09:49:20 AM

Receipt #: 945349

Requestor:

ALESSI & KOENIG LLC (JUNES

Recorded By: MAT Pgs: 1

DEBBIE CONWAY

CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. 162-18-613-029


Trustee Sale No. 12668-3923-109

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$6,608.34 as of August 29, 2011 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Shadow Wood Homeowners' Association, Inc, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on July 7, 2011 as document number 2436, of Official Records in the County of Clark, State of Nevada. Owner(s): BANK NEW YORK COMMUNITY, of Unit 109, as per map recorded in Book 33, Pages 44, as shown on the Condominium Plan, Recorded on as document number Pending as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 3923 Gogo Wy #109, Las Vegas, NV 89103. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated July 7, 2011, executed by Shadow Wood Homeowners' Association, Inc to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: August 29, 2011


Naomi Eden, Alessi & Koenig, LLC on behalf of Shadow Wood Homeowners' Association, Inc

Inst #: 201201270002208
Fees: \$17.00
N/C Fee: \$0.00
01/27/2012 09:32:34 AM
Receipt #: 1049121
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: SOL Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:
Alessi & Koenig, LLC
9500 West Flamingo Rd., Suite 205
Las Vegas, NV 89147
Phone: 702-222-4033

APN: 162-18-613-029

TSN 12668-3923-109

NOTICE OF TRUSTEE'S SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL Alessi & Koenig at 702-222-4033. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

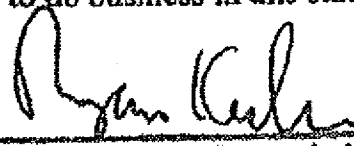
NOTICE IS HEREBY GIVEN THAT:

On February 22, 2012, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on July 7, 2011, as instrument number 2436, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 PM, at 9500 W Flamingo Suite 205, Las Vegas, NV 89147 (Alessi&Koenig, LLC Office Building).

The street address and other common designation, if any, of the real property described above is purported to be: 3923 Gogo Wy #109, Las Vegas, NV 89103. The owner of the real property is purported to be: BANK NEW YORK COMMUNITY

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein: plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$8,539.77. Payment must be in cash, a cashier's check drawn on a state or national bank, a check drawn by a state bank or federal credit union, or a check drawn by a state or federal savings and loan association, savings association, or savings bank specified in section 5102 of the Financial Code and authorized to do business in this state.

Date: January 18, 2012



By: Ryan Kerbow, Esq. of Alessi & Koenig LLC on behalf of Shadow Wood Homeowners' Association, Inc

Inst #: 201203010004775
Fees: \$17.00 N/C Fee: \$0.00
RPTT: \$58.65 Ex: #
03/01/2012 04:20:12 PM
Receipt #: 1083603
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MJM Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
Gogo Way Trust
PO Box 36208
Las Vegas, NV 89133

A.P.N. No.162-18-613-029

TS 12668-3923-109


TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **Gogo Way Trust**
The Foreclosing Beneficiary herein was: **Shadow Wood Homeowners' Association, Inc**
The amount of unpaid debt together with costs (Real Property Transfer Tax Value): \$11,018.39
The amount paid by the Grantee (Buyer) at the Trustee's Sale: \$11,018.39
The Documentary Transfer Tax: \$58.65
Property address: **3923 Gogo Wy #109, Las Vegas, NV 89103**
Said property is in [] unincorporated area: **City of Las Vegas**
Trustor (Former Owner that was foreclosed on): **BANK NEW YORK COMMUNITY**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded July 7, 2011 as instrument number 2436, in Clark County, does hereby grant, without warranty expressed or implied to: **Gogo Way Trust (Grantee)**, all its right, title and interest in the property legally described as: **Unit 109**, as per map recorded in Book 33, Pages 44 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:


This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **February 22, 2012** at the place indicated on the Notice of Trustee's Sale.

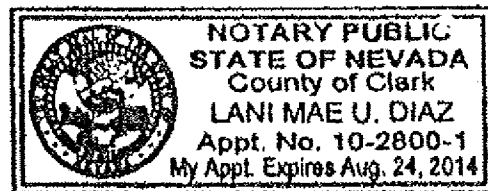
Robert Koenig, Esq 
Signature of AUTHORIZED AGENT for Shadow Wood Homeowners'
Association, Inc

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN to before me March 1, 2012

WITNESS my hand and official seal.
(Seal)


(Signature)



STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)

- a. 162-16-613-029
- b. _____
- c. _____
- d. _____

2. Type of Property:

- | | |
|---|--|
| a. <input type="checkbox"/> Vacant Land | b. <input type="checkbox"/> Single Fam. Res. |
| c. <input checked="" type="checkbox"/> Condo/Twnhse | d. <input type="checkbox"/> 2-4 Plex |
| e. <input type="checkbox"/> Apt. Bldg | f. <input type="checkbox"/> Comm'/Ind'l |
| g. <input type="checkbox"/> Agricultural | h. <input type="checkbox"/> Mobile Home |
| Other _____ | |


FOR RECORDERS OPTIONAL USE ONLY	
Book _____	Page: _____
Date of Recording: _____	
Notes: _____	

- 3.a. Total Value/Sales Price of Property \$ 11,018.39
- b. Deed in Lieu of Foreclosure Only (value of property(_____))
- c. Transfer Tax Value: \$ 11,018.39
- d. Real Property Transfer Tax Due \$ 58.65

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
- b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100.00 %
 The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity: Grantor

Signature _____ Capacity: _____

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: Alessi&Koenig, LLC
 Address: 9500 W Flamingo # 205
 City: Las Vegas
 State: NV Zip: 89147

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Gogo Way Trust
 Address: PO Box 36208
 City: Las Vegas
 State: NV Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Alessi&Koenig, LLC
 Address: 9500 W Flamingo #205
 City: Las Vegas

Escrow # N/A Foreclosure
 State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 3

EXHIBIT 3

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

DISTRICT COURT
CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANCORP,
INC.,

Plaintiff,

vs.

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

Defendants.

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

Hearing date:
Hearing time:

**DEFENDANTS/
COUNTERCLAIMANTS SHADOW
WOOD HOMEOWNERS'
ASSOCIATION, INC'S and GOGO
WAY TRUST'S LIST OF TRIAL
WITNESSES AND EXHIBITS**

AND RELATED CROSS-CLAIMS

COME NOW, Defendants/Counterclaimants SHADOW WOOD HOMEONWERS
ASSOCIATION, INC and GOGO WAY TRUST, by and through their attorneys of record,
Ryan Kerbow, Esq. of ALESSI & KOENIG, LLC, and hereby makes the following pretrial
disclosure of witnesses and exhibits, pursuant to NRCP 16.1(a)(3):

///

///

I. WITNESSES

- 1. Thomas Bayard, Esq.
c/o Alessi & Koenig, LLC
9500 W. Flamingo Rd. #205
Las Vegas, NV 89147
(702) 222-4033

Mr. Bayard is expected to testify regarding his knowledge of the facts and circumstances surrounding this litigation.

- 2. Iyad Haddad
c/o Alessi & Koenig, LLC
9500 W Flamingo Rd #205
Las Vegas, NV 89147
(702) 222-4033

Mr. Haddad is expected to testify regarding his knowledge of the facts and circumstances surrounding this litigation, including the Gogo Way Trust's purchase of the subject real property.

- 3. Person Most Knowledgeable
MP Association Management, Inc.
6029 S Fort Apache Rd #130
Las Vegas, NV 89148
(702) 304-9455

This person is expected to testify regarding his or her knowledge of the facts and circumstances surrounding this litigation, including the assessment account for the subject real property.

- 4. Person Most Knowledgeable of New York Community Bancorp, Inc.
c/o Grett A. Hubley
PITE DUNCAN, LLP
701 East Bridger Avenue, Suite 700
Las Vegas, NV 89101
(702) 991-4628

This person is expected to testify regarding his or her knowledge of the facts and circumstances surrounding this litigation.

1 Defendants reserve the right to call any or all Custodians of Records for their respective
2 organizations to authenticate any exhibits identified herein.

3 Defendants reserve the right to call any and or all witness identified by the any other
4 parties pursuant to NRCP 16.1 and NRCP 33. Defendants further reserve the right to call such
5 other witnesses as may be necessary for purposes of rebuttal, impeachment, or both.
6

7 II. DOCUMENTS

- 8 A. Breakdowns.
- 9 B. Various foreclosure documents and proofs of mailing.
- 10 C. Trustee's Deed Upon Sale recorded on May 24, 2011 in the Official Records of
11 Clark County, Nevada as Instrument No. 201105240003017.
- 12 D. Various foreclosure notices and proofs of mailing for the subject real property.
- 13 E. Trustee's Deed Upon Sale recorded on March 1, 2012 in the Official Records of
14 Clark County, Nevada as Instrument No. 201203010004775.
- 15 F. Affidavit of Gregory Brown regarding posting copy of Notice of Trustee's Sale
16 on the subject real property.
- 17 G. Certification of Publication in Clark County Legal News.
- 18 H. Cashier's Check, dated February 22, 2012.
- 19 I. Breakdowns of HOA lien emailed to dianna.palmer-hopkins@mynycb.com.
- 20 J. Record Property Information Report for the subject real property.
- 21 K. HOA ledgers for the subject real property.
- 22 L. Email communications with Naomi Eden regarding the subject real property.
- 23 M. Demonstrative exhibits which include, but not limited to:
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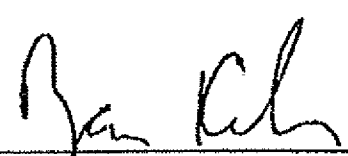
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- a. Any demonstrative exhibits necessary for proper presentation of the evidence;
- b. Video, story board and/or PowerPoint images, specifically related to the Plaintiffs' injuries;
- c. PowerPoint production which will include images, drawings, diagrams, animations, and/or story boards, of the parties involved and the location of the accident;
- d. Diagrams and drawings of the building where the subject accident occurred;
- e. Any other demonstrative exhibits, as needed.

- N. Any other documents disclosed by Defendants;
- O. All documents disclosed by Plaintiff;
- P. Any documents necessary for impeachment or rebuttal purposes.

DATED this 13th day of February, 2013.

ALESSI & KOENIG, LLC



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

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of February, 2013, I caused service of a true and correct copy of the foregoing **DEFENDANTS/ COUNTERCLAIMANTS SHADOW WOOD HOMEOWNERS' ASSOCIATION, INC'S and GOGO WAY TRUST'S LIST OF TRIAL WITNESSES AND EXHIBITS** to be made by ~~depositing same in the United States~~ ^{personal service to:}

~~Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:~~

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.



An employee of Alessi & Koenig

Exhibit "A"

DAVID ALESSI*
 THOMAS DAYARD*
 ROBERT KOENIG**
 RYAN KERROW****

* Admitted to the California Bar
 ** Admitted to the California, Nevada
 and Colorado Bars
 *** Admitted to the Nevada Bar
 **** Admitted to the Nevada and California Bar

**ALESSI
 &
 KOENIG**
 AGOUR
A Multi-Jurisdictional Law Firm
 9500 W. Flamingo Road, Suite 100
 Las Vegas, Nevada 89147
 Telephone: 702-222-4033
 Facsimile: 702-222-4043
 www.alessikoenig.com

ADDITIONAL OFFICES IN

AHLS, CA
 PHONE: 818-735-9600

RENO NV
 PHONE: 775-626-2323
 &
 DIAMOND BAR CA
 PHONE: 909-843-6590

Nevada Licensed Qualified Collection
 Manager

AMANDA LOWER

FACSIMILE COVER LETTER

To:	Virginia Fadol	Re:	3923 Gogo Wy #109/HO #12688
From:	Stephanie Knickerbocker	Date:	Wednesday, May 05, 2010
Fax No.:		Pages:	1, including cover
		HO #:	12688

Dear Virginia:

This cover will serve as an amended demand on behalf of Shadow Wood for the above referenced escrow; property located at 3923 Gogo Wy #109, Las Vegas, NV. The total amount due through June, 1, 2010 is \$5,144.34. The breakdown of fees, interest and costs is as follows:

11/24/2008	Notice of Delinquent Assessment Lien -- Nevada	\$345.00
6/3/2009	Notice of Default	\$395.00
4/14/2010	Notice of Trustee's Sale	\$395.00
9/21/2009	Pre-Notice of Trustee's Sale	\$150.00
4/14/2010	Trustees Fees	\$420.00
5/5/2010	Postponement of Trustees Sale	\$0.00
Total		\$1,705.00
1.	Attorney and/or Trustees fees:	\$1,705.00
2.	Costs (Notary, Recording, Copies, Mailings, Publication and Posting)	\$160.00
3.	Interest Through June, 1, 2010	\$0.00
4.	Title Research (10-Day Mailings per NRS 116.31163)	\$240.00
5.	Management Company Advanced Audit Fee	\$75.00
6.	Management Document Processing & Transfer Fee	\$0.00
7.	Late Fees Through June, 1, 2010	\$20.00
8.	Fines Through May, 4, 2010	\$0.00
9.	Assessments Through June, 1, 2010 @ \$168.81 per month	\$2,859.34
10.	Progress Payments:	\$0.00
12.	RPIR-GI Report	\$85.00
Sub-Total:		\$5,144.34
Less Payments Received:		\$0.00
Total Amount Due:		\$5,144.34

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

A&K-001

DAVID ALESSI*
THOMAS BAYARD*
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada Bar

**** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm
9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES IN

A HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323

&
DIAMOND BAR CA
PHONE: 909-343-6590

Nevada Licensed Qualified Collection
Manager

AMANDA LOWHR

FACSIMILE COVER LETTER

Please have a check in the amount of \$5,144.34 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

A&K-002

APP000824

DAVID ALESSI*

THOMAS DAYARD*

ROBERT KOENIG**

RYAN KREDOV***

* Admitted to the California Bar

** Admitted to the California, Nevada and Colorado Bars

*** Admitted to the Nevada and California Bar



AGOUR

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9500 W. Flamingo Road, Suite 100
 Las Vegas, Nevada 89147
 Telephone: 702-222-4033
 Facsimile: 702-222-4043
 www.alessikoenig.com

ADDITIONAL OFFICES IN

A HILLS, CA
 PHONE: 818-735-9600

RENO NV
 PHONE: 775-626-2323

&
 DIAMOND BAR CA
 PHONE: 909-861-8309

FACSIMILE COVER LETTER

To:	Ruth Petrella	Re:	3923 Gogo Wy #109/HO #12668
From:	Stephanie Knickerbocker	Date:	Friday, August 27, 2010
Fax No.:	702-932-2210	Pages:	1, including cover
		HO #:	12668

Dear Ruth Petrella:

This cover will serve as an amended demand on behalf of Shadow Wood for the above referenced escrow; property located at 3923 Gogo Wy #109, Las Vegas, NV. The total amount due through September, 30, 2010 is \$6,284.58. The breakdown of fees, interest and costs is as follows:

11/24/2008	Notice of Delinquent Assessment Lien -- Nevada	\$345.00
6/3/2009	Notice of Default	\$395.00
4/14/2010	Notice of Trustee's Sale	\$395.00
9/21/2009	Pre-Notice of Trustee's Sale	\$150.00
4/14/2010	Trustees Fees	\$420.00
8/25/2010	Postponement of Trustees Sale	\$150.00
6/2/2010	Monitoring Foreclosure	\$100.00
Total		\$1,955.00
1.	Attorney and/or Trustees fees:	\$1,955.00
2.	Costs (Notary, Recording, Copies, Mailings, Publication and Posting)	\$160.00
3.	Assessments Through September 30, 2010	\$3,384.58
4.	Late Fees Through September 30, 2010	\$210.00
5.	Fines Through August 26, 2010	\$0.00
6.	Interest Through September 30, 2010	\$0.00
7.	RPIR-GI Report	\$85.00
8.	Title Research (10-Day Mailings per NRS 116.31163)	\$240.00
9.	Management Company Advanced Audit Fee	\$75.00
10.	Management Document Processing & Transfer Fee	\$175.00
11.	Progress Payments:	\$0.00
	Sub-Total:	\$6,284.58
	Less Payments Received:	\$0.00
	Total Amount Due:	\$6,284.58

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

A&K-003

DAVID ALUSSI*
THOMAS DAYARD*
ROBERT KOENIG**
RYAN KERBOW***

* Admitted to the California Bar

** Admitted to the California, Nevada
and Colorado Bars

*** Admitted to the Nevada and California Bar



A Multi-Jurisdictional Law Firm
9500 W. Flamingo Road, Suite 100
Las Vegas, Nevada 89147
Telephone: 702-222-4033
Facsimile: 702-222-4043
www.alessikoenig.com

ADDITIONAL OFFICES IN

A HILLS, CA
PHONE: 818-735-9600

RENO NV
PHONE: 775-626-2323
&
DIAMOND BAR CA
PHONE: 909-861-8300

FACSIMILE COVER LETTER

Please have a check in the amount of \$6,284.58 made payable to the Alessi & Koenig, LLC and mailed to the below listed NEVADA address. Upon receipt of payment a release of lien will be drafted and recorded. Please contact our office with any questions.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose.

A&K-004

Exhibit "B"

DAVID ALESSI*
 THOMAS BAYARD*
 ROBERT KOENIG**
 CHARLES GRISUNDORF***
 * Admitted to the California Bar
 ** Admitted to the California, Nevada
 and Colorado Bars
 *** Admitted to the Nevada Bar
 Nevada Licensed Qualified Collection Manager
 AMANDA LOWRIE

**ALESSI
 KOENIG**
A Multi-Jurisdictional Law Firm
 9500 W. Flamingo Road, Suite 100
 Las Vegas, Nevada 89147
 Telephone: 702-222-4033
 Facsimile: 702-222-4043
www.alessikoenig.com

CALIFORNIA OFFICE
 28914 Roadside Drive Suite F-4
 Agoura Hills, California 91301
 Telephone: (818) 735-9600
 Facsimile: (818) 735-0096

ADDITIONAL OFFICES IN
 RENO NV
 PHONE: 775-626-2323
 &
 DIAMOND BAR CA
 PHONE: 909-843-6590

November 24, 2008

**LIEN LETTER
 VIA REGULAR AND CERTIFIED MAIL**

Virginia Fedel
 7180 Pollack Dr
 Las Vegas, NV 89119

Re: Shadow Wood/3923 Gogo Wy #109

Dear Virginia Fedel:

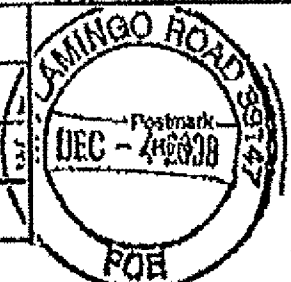
Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of Shadow Wood on November 24, 2008. The total amount due by December 29, 2008 is \$1,390.76. Please note that the total amount due may differ from the amount shown on the enclosed lien. Please submit payment to our Nevada mailing address listed below by December 29, 2008. Payment must be in the form of a cashier's check or money order and made payable to the Alessi & Koenig.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose. We will assume that the debt referenced herein is valid unless you notice us that you are disputing the validity of the debt, or any portion thereof, within thirty (30) days of receipt of this notice. If you notify Alessi & Koenig within the thirty-day period that the debt, or any portion thereof, is disputed, we will cease collection of the debt until verification of the debt or a copy of a judgment against you is obtained and mailed to you by us. Upon your request we will provide you with the name and address of the original creditor, if different from

In the event Alessi & Koenig, LLC does not receive payment by the date indicated above, a pre-notice of default letter will be recorded in the office of the County Recorder. Should you continue to fail to reinstate your account, you

Very truly

ALESSI &
 Kristy Diaz, T

U.S. Postal Service™		CERTIFIED MAIL™ RECEIPT	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>			
For delivery information visit our website at www.usps.com			
OFFICIAL USE			
Postage \$			
Certified Fee			
Return Receipt Fee (Endorsement Required)			
Restricted Delivery Fee (Endorsement Required)			
VIRGINIA FEDEL			
7180 POLLACK DR			
LAS VEGAS, NV 89119			
RE: SHADOW WOOD			
PS Form 3800, August 2006		See Reverse for Instructions	

A&K-005

DAVID ALESSI*
 THOMAS BAYARD*
 ROBERT KOENIG**
 CHARLES GIBSONDORP***
 * Admitted to the California Bar
 ** Admitted to the California, Nevada
 and Colorado Bars
 *** Admitted to the Nevada Bar
 Nevada Licensed Qualified Collection Manager
 AMANDA LOWER

**ALESSI
 &
 KOENIG**
A Multi-Jurisdictional Law Firm
 9500 W. Flamingo Road, Suite 100
 Las Vegas, Nevada 89147
 Telephone: 702-222-4033
 Facsimile: 702-222-4043
www.alessikoendig.com

CALIFORNIA OFFICE
 28914 Roadside Drive Suite F-4
 Agoura Hills, California 91301
 Telephone: (818) 735-9600
 Facsimile: (818) 735-0096

ADDITIONAL OFFICES IN
 RENO NV
 PHONE: 775-626-2323
 &
 DIAMOND BAR CA
 PHONE: 909-843-6590

November 24, 2008

LIEN LETTER
VIA REGULAR AND CERTIFIED MAIL

Virginia Fedel
 3923 Gogo Wy #109
 Las Vegas, NV 89103

Re: Shadow Wood/3923 Gogo Wy #109

Dear Virginia Fedel:

Please find the enclosed Notice of Delinquent Assessment (Lien), signed and dated on behalf of Shadow Wood on November 24, 2008. The total amount due by December 29, 2008 is \$1,390.76. Please note that the total amount due may differ from the amount shown on the enclosed lien. Please submit payment to our Nevada mailing address listed below by December 29, 2008. Payment must be in the form of a cashier's check or money order and made payable to the Alessi & Koenig.

Please be advised that Alessi & Koenig, LLC is a debt collector that is attempting to collect a debt and any information obtained will be used for that purpose. We will assume that the debt referenced herein is valid unless you notice us that you are disputing the validity of the debt, or any portion thereof, within thirty (30) days of receipt of this notice. If you notify Alessi & Koenig within the thirty-day period that the debt, or any portion thereof, is disputed, we will cease collection of the debt until verification of the debt or a copy of a judgment against you is obtained and mailed to you by us. Upon your request, we will provide you with a copy of the original creditor's name and address of the original creditor, if different from the name and address of Alessi & Koenig, LLC.

In the event Alessi & Koenig, LLC does not receive payment by the date indicated above, a pre-notice of default letter will be mailed to you. Should you fail to reinstate your account, your name will be recorded in the office of the County Recorder. Should you continue to fail to reinstate your account, you could be liable for collection costs.

Very truly

ALESSI & KOENIG
 Kristy Diaz, Trustee

U.S. Postal ServiceTM
CERTIFIED MAILTM RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

W FLAMINGO ROAD
 POST OFFICE
 HERRING NV
 NOV 24 2008
 POE

VIRGINIA FEDEL
 3923 GOGO WY 109
 LAS VEGAS, NV 89103
 RE: SHADOW WOOD

PS Form 3800, August 2009 For Instructions

A&K-006

Receipt/Conformed Copy

Requestor:
JUNES LEGAL SERVICES
12/03/2008 13:05:03 T20080297811
Book/Instr: 20081203-0003006
Lien Page Count: 1
Fees: \$14.00 H/C Fee: \$0.00

Debbie Conway
Clark County Recorder

When recorded return to:

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 162-18-613-029

Trustee Sale # 12668-3923-109

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, Shadow Wood HOA has a lien on the following legally described property.


The property against which the lien is imposed is commonly referred to as 3923 Gogo Wy #109, Las Vegas, NV 89103 and more particularly legally described as: Unit 109 Book 33 Page 44 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are): Virginia Fedel

The mailing address(es) is: 7180 Pollack Dr, Las Vegas, NV 89119

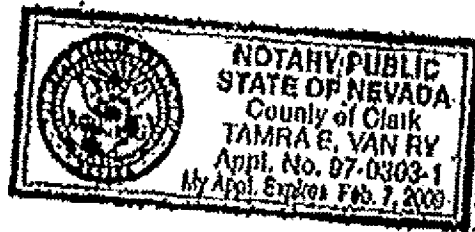
The total amount due through today's date is: \$1,237.30. Of this total amount \$420.00 represent Collection and/or Attorney fees and \$50.00 represent collection costs, late fees, service charges and interest. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: November 24, 2008

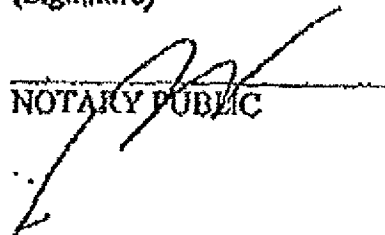
By: 
Kristy Diaz - Trustee Sale Officer
Alessi & Koenig, LLC on behalf of Shadow Wood

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me November 24, 2008

(Seal)



(Signature)


NOTARY PUBLIC

A&K-007

Receipt/Conformed Copy

When recorded mail to:
THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, Nevada 89147
Phone: 702-222-4033

WWW.ALESSIKOENIG.COM

Requestor:
JONES LEGAL SERVICES
01/30/2009 11:52:47 T20090033311
Book/Instr: 20090130-0003019
Default Page Count: 1
Fees: \$14.00 N/C Fee: \$0.00

Debbie Conway
Clark County Recorder

A.P.N. 162-18-613-029

Trustee S

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default is recorded. The date of recordation appears on this notice. The amount due is \$2,135.76 as of 1/13/2009 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Shadow Wood, c/o Alessi & Koenig, LLC, 9500 West Flamingo Road, Suite 100, Las Vegas, NV 89147.

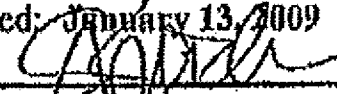
THIS NOTICE pursuant to that certain Assessment Lien, recorded on December 3, 2008 as document number 03006, of Official Records in the County of Clark, State of Nevada.
Owner(s): Virginia Fedel

Of Unit 109, as per map recorded in Book 33, Pages 44, as shown on the Condominium Plan, Recorded on as document number Pending as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada.

PROPERTY ADDRESS: 3923 Gogo Wy #109, Las Vegas, NV 89103

If you have any questions, you should contact an attorney or the Association that maintains the right of assessment upon your property. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. **REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION.**

NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated December 3, 2008, executed by Shadow Wood to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions. A breach of, and default in, the obligation for which said Covenants, Conditions, and Restrictions as security has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, Association's fees and costs, trustee's fees and costs, and attorney's fees and costs.

Dated: January 13, 2009


Stephanie Knickerbocker, Alessi & Koenig, LLC on behalf of Shadow Wood.

12068

VIRGINIA V FEDEL
3923 GOGO WY 109
LAS VEGAS, NV 89103

VIRGINIA V FEDEL
7180 POLLACK DR
LAS VEGAS NV 89119-9003

CCSF, LLC
DBA GREYSTONE FINANCIAL
GROUP
7180 POLLOCK DRIVE, SUITE 100
LAS VEGAS, NV 89119
LOAN#237-0600703

MERS
P.O. BOX 2026
FLINT, MI 48501-2026
LOAN#237-0600703

7008 3230 0001 1428 3715

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OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **VIRGINIA V FEDEL**

Sent To **3923 GOGO WY 109**
LAS VEGAS, NV 89103

PS Form 3800, August 2005 See Reverse for Instructions

7008 3230 0001 1428 3725

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **VIRGINIA V FEDEL**

Sent To **7180 POLLACK DR**
LAS VEGAS NV 89119-9003

PS Form 3800, August 2005 See Reverse for Instructions

7008 3230 0001 1428 3707

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Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **CCSF, LLC**

Sent To **DBA GREYSTONE FINANCIAL GROUP**
7180 POLLOCK DRIVE, SUITE 100
LAS VEGAS, NV 89119
LOAN#237-0600703

PS Form 3800, August 2005 See Reverse for Instructions

7008 3230 0001 1428 3707

U.S. Postal Service
CERTIFIED MAILTM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
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Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Total Postage & **MERS**

Sent To **P.O. BOX 2026**
FLINT, MI 48501-2026
LOAN#237-0600703

PS Form 3800, August 2005 See Reverse for Instructions

A&K-009

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
LAW OFFICES OF
3 MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 125
4 Las Vegas, Nevada 89119
(702) 642-3113 / (702) 642-9766 FAX
5 Attorney for appellant/plaintiff
6

Electronically Filed
Dec 05 2013 10:23 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

7
8 SUPREME COURT COURT

9 STATE OF NEVADA

10 GOGO WAY TRUST; SHADOW WOOD
HOMEOWNERS' ASSOCIATION, INC

CASE NO.: 63180

11 Appellant

12 vs.

13
14 NEW YORK COMMUNITY BANK.

15 Respondent.
16

17 **JOINT APPENDIX 5**
18

19
20 Michael F. Bohn, Esq.
Law Office of Michael F. Bohn, Esq., Ltd.
376 East Warm Springs Road, Ste. 125
21 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
22

Gregg A. Hubley, Esq.
PITE DUNCAN, LLP
701 East Bridger Ave., Suite 700
Las Vegas, NV 89101

Attorney for Respondents

23 Attorney for Appellant Gogo Way Trust

24 Ryan Kerbow, Esq.
ALESSI & KOENIG, LLC
9500 West Flamingo Rd, Ste 205
25 Las Vegas, NV 89146

26 Attorney for Appellant Shadow Wood
Homeowners' Association, Inc.
27
28

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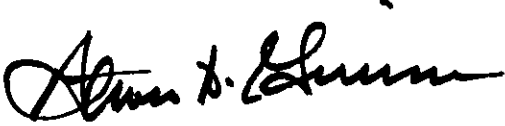
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1 **RPLY**
GREGG A. HUBLEY (NV Bar #007386)
2 **PITE DUNCAN, LLP**
701 East Bridger Avenue, Suite 700
3 Las Vegas, Nevada 89101
Telephone: (702) 991-4628
4 Facsimile: (702) 685-6342
E-mail: Ghubleyley@piteduncan.com
5


CLERK OF THE COURT

6 Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK
7
8
9

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

12 NEW YORK COMMUNITY BANK,

13 Plaintiff,

14 v.

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

17 Defendants.

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

**REPLY TO DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

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

18 GOGO WAY TRUST,

19 Counterclaimant,

20 v.

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

23 Counterdefendants.
24

25 **REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR**
26 **SUMMARY JUDGMENT**

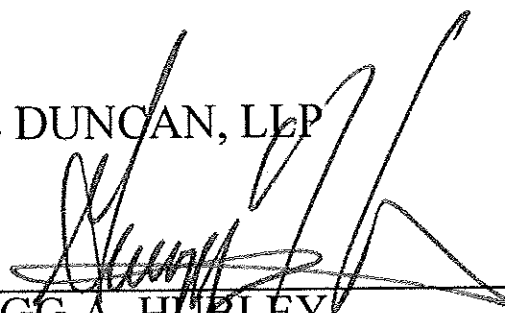
27 COMES NOW Plaintiff, NEW YORK COMMUNITY BANK, ("NYCB"), by and through
28 its counsel of record, PITE DUNCAN, LLP, and respectfully submits the following Reply in Support

1 of its Motion for Summary Judgment against Defendants/Counterclaimants (collectively,
2 “Defendants”), SHADOW WOOD HOMEOWNERS’ ASSOCIATION (“Shadow Wood”), and
3 GOGO WAY TRUST (“Gogo Way”).

4 This Reply is made and based upon the following Memorandum of Points and Authorities,
5 the Motion for Summary Judgment filed by NYCB on February 8, 2013, and the Supplemental
6 Memorandum in Support of Plaintiff’s Motion for Summary Judgment filed by NYCB on March 1,
7 2013, the pleadings and papers on file herein, the arguments of counsel at hearing, and upon such
8 other papers, arguments, evidence and other matters as the Court may consider.

9 DATED this 7th day of March, 2013.

10 PITE DUNCAN, LLP

11 
12 _____
13 GREGG A. HUBLEY
14 CHRISTOPHER A.J. SWIFT
15 *Attorneys for Plaintiff/Counterdefendant NEW*
16 *YORK COMMUNITY BANK*

15 **POINTS AND AUTHORITIES**

16 **I. INTRODUCTION**

17 Defendants’ Opposition to NYCB’s pending Motion for Summary Judgment ignores the
18 fundamental law and questions, and is premised upon a shaky foundation. Defendants claim that
19 NYCB’s Motion and the supporting Affidavit contains “a large amount of false information[,]” but
20 the very documents that Defendants use to support their position are internally inconsistent. Put
21 simply, the Defendants claim that they responded to NYCB’s two requests for payoff information,
22 but the documents Defendants produce to support this proposition show that the Defendants sent the
23 payoff information to *counsel’s own staff*, not NYCB. Defendants completely ignore the fact that
24 Shadow Wood was only allowed to foreclose for the nine months of regular assessments preceding
25 the Notice of Delinquent Assessment (dated June 29, 2011) and that NYCB paid far more than
26 Shadow Wood was entitled use as the basis for a foreclosure proceeding under NRS 116.3116(2).
27 Defendants *still* seem to contend that they were allowed to seek/collect thousands of dollars in fees,
28 late assessments, costs of collection, penalties, etc., even though the statute does not provide for this

1 and the Advisory Opinion of the Real Estate Division specifically prohibits the addition of any fees,
2 late assessments, collection costs, or penalties in the super-priority portion of the HOA lien.

3 Finally, the Defendants proffer an argument that effectively asserts that the HOA sale was
4 valid because the HOA sale was valid, contending that under NRS 116.31164 the HOA is entitled
5 to a conclusive presumption that the sale was valid. However, Defendants fail to correctly cite or
6 interpret the statute, so this argument fails at its premise. In like manner, Defendants cite to Nevada
7 common law to argue that the inadequacy of price at a foreclosure sale is insufficient alone to justify
8 setting aside the sale, but they incompletely ignore the history of improprieties, the rejection of more
9 than Shadow Wood was entitled to legally, and the bait and switch game that they played with
10 NYCB to obtain more than they were legally entitled to use as the basis for a foreclosure. Frankly,
11 it is ridiculous that Defendants would blindly argue on these facts that NYCB has failed to show
12 fraud, unfairness or oppression.¹

13 More disturbingly, as the undersigned advised at the pre-trial conference, there are clear
14 conflicts of interest that require the disqualification of counsel for Defendants. The undersigned has
15 asked counsel for Defendants (Alessi & Koenig) to withdraw and/or substitute another law office
16 under the circumstances, but counsel for Defendants is apparently unwilling to do so. While this will
17 be handled by a separate Motion to Disqualify, it cannot be emphasized enough at this point that
18 there is a very real problem in defense counsel's continued representation. Put succinctly, defense
19 counsel is representing the seller (Shadow Wood) and the buyer (Gogo Way) at this HOA
20 foreclosure sale. Completing the triumvirate of conflict, defense counsel acted as the foreclosure
21 trustee in this HOA foreclosure sale, and communicated with NYCB representatives directly before
22 the foreclosure sale. It could not be clearer that the seller and buyer have adverse positions. Indeed,
23 the seller and buyer likely have adverse positions with respect to their own counsel. If NYCB
24 prevails in setting aside the sale, Gogo Way may have legal claims against both Shadow Wood and
25

26 ¹ Indeed, Defendants concede having made an error in relaying the payoff information in their
27 Opposition, attempting to explain that there was only one "variance" that occurred because counsel
28 for Defendants included the "...entire amount of delinquent assessments rather than eliminate a
portion of the past due assessments under Nevada's 'super priority' statute." See, Defendant's
Opposition, p. 10, ll. 9-13.

1 Alessi & Koenig (as trustee) for improprieties in handling the foreclosure that led to damages to
2 Gogo Way. Moreover, under this circumstance, Shadow Wood may potentially have legal claims
3 against Alessi & Koenig (as trustee). As the Motion to Disqualify will lay out, defense counsel's
4 ongoing representation effectively prevents NYCB from conducting discovery needed to ascertain
5 how the Defendants communicated with one another about the outstanding fees and the events at sale
6 since defense counsel represents both parties and will be able to assert the attorney client privilege.

7 **II. NYCB'S RESPONSE TO THE DEFENDANTS' "FACTS" AS ASSERTED IN THE**
8 **AFFIDAVIT IN SUPPORT OF THEIR OPPOSITION**

9 Illustrating the depth of the conflict issues referenced above, an employee of defense counsel,
10 Naomi Eden, executed the Affidavit in support of the Defendants' Opposition. No Affidavit has
11 been submitted by anyone from Shadow Wood or Gogo Way, but Defendants rely upon the Affidavit
12 of their counsel's employee. Ms. Eden essentially relates, in conclusory fashion, that Alessi &
13 Koenig did everything lawfully in scheduling and holding this HOA foreclosure sale, and that there
14 "...was no collusion or any other impropriety involved between Alessi & Koenig, the Association,
15 the buyer or any other parties." See, Affidavit of Naomi Eden, p. 5, ll. 3-5. Ms. Eden also states that
16 the Affidavit of Sarah Artino (REO/Short Sale Manager for NYCB who submitted an Affidavit in
17 support of NYCB's Motion for Summary Judgment) "...contains false information." *Id.*, at p. 4, ll.
18 4-5. Ms. Eden attached documents to her Affidavit that allegedly support her statements that Alessi
19 & Koenig responded to all of NYCB's payoff statement requests. *Id.*, at p. 4, ll. 5-7. However, the
20 documents provided by Ms. Eden and attached to her Affidavit illustrate that Ms. Eden's
21 representations are the ones that are false.

22 Specifically, Ms. Eden alleges that she sent an e-mail to Dianna Palmer-Hopkins (NYCB's
23 representative who was communicating with defense counsel and attempting to pay off the HOA
24 super priority lien before the HOA foreclosure sale) on December 5, 2011, which indicated the
25 following:

26 "Hi Diana,
27 I setn [sic] you a demand on 11-15 that expires 12-15. I have attached a copy. If you
28 need an updated demand, please let me know.
Thank you" See, Exhibit "7," attached to Ms. Eden's Affidavit, at p. 5.

1 Unfortunately, as the e-mail produced by Ms. Eden itself indicates, this correspondence was sent to
2 Ana Calabrese, the receptionist at Alessi & Koenig, and not to Dianna Palmer-Hopkins at NYCB.²

3 **Id.**

4 Moreover, Ms. Eden claims in her Affidavit that she "...sent a fax to Dianna Palmer-Hopkins
5 on December 15, 2011 that contained a copy of a breakdown of the Association's lien and a
6 statement of the delinquent assessment history." **Id.**, at p. 4, ll. 7-10. Unfortunately, in the
7 "supporting documents" Ms. Eden attached to her Affidavit, she has provided only a "Facsimile
8 Cover Letter," but no facsimile confirmation to illustrate that this was actually sent to NYCB. **See,**
9 Exhibit "7," to Naomi Eden's Affidavit, pp. 1-2. It is also noteworthy that the "Account History
10 Report" that Ms. Eden alleges she did send to NYCB contains a different balance than the amount
11 referenced on her "Facsimile Cover Letter." **Id.**, at pp. 1-4 of Exhibit "7," to Naomi Eden's
12 Affidavit. Specifically, the "Account History Report" references a "Report Balance" as of 12/31/211
13 in the amount of \$5,909.11, but the "Facsimile Cover Letter" demands payment of \$7,314.77. **Id.**

14 In addition to these obvious mistakes, Ms. Eden goes on to admit that she made an error in
15 the Notice of Lien. Specifically, she relates that the amount on the Notice of Lien "...overstates the
16 amount as a result of one simple mistake." **Id.**, at p. 3, ll. 21-22. She concedes that the "...the
17 calculation [she] did for the assessment lien shown on the Notice of Delinquent Assessment included
18 the full amount of past due assessments." **Id.**, at p. 3, ll. 24-26.

19 As outlined in detail in the Motion for Summary Judgment filed by NYCB, the figures
20 referenced by Ms. Eden differ drastically from the figures provided by MP Association
21 Management, which is the management company hired by Shadow Wood which was responsible for
22 handling all of the financials and the assessments for Shadow Wood. Indeed, these entities could
23 not even keep the amount of the regular monthly assessment straight. Although the balance ledger
24 provided by MP Association Management indicated that the monthly regular assessment was
25 \$168.81, Gerald Marks (President of MP Association Management) testified that the regular monthly

27 ² The e-mail produced by Ms. Eden and attached to her Affidavit indicates that it was "From:"
28 Naomi Eden, and sent "To:" Ana Calabrese, even though it is addressed to Diana [sic], which
apparently is supposed to be Dianna Palmer-Hopkins.

1 assessment was \$164.47, and he confirmed this in writing to Ticor Title prior to the HOA foreclosure
2 sale. **See, Exhibit “2,”** for true copies of Mr. Marks’ deposition testimony (p. 37, ll. 8-10), and
3 **Exhibit “3,”** for a true copy of the document Mr. Marks signed (dated December 28, 2011), in which
4 he represented that the regular monthly assessment was \$164.47. Mr. Marks also testified that the
5 subject property had not been referred to collection, that there were no special assessments due, that
6 the delinquency on the subject property amounted to \$328.94 as of December 28, 2011, that no lien
7 had been recorded on the subject property, and that the information supplied by Mr. Marks
8 constituted a “demand” for payment of the HOA assessments. **See, Exhibit “2,”** at p. 38, ll. 4-7, p.
9 39, ll. 29-24, p. 40, ll. 15-22, p. 41, ll. 3-8, p. 42, ll. 5-16. Indeed, Mr. Marks denied that NYCB sent
10 the payment of \$6,783.16 to MP Association Management (**Id.**, at pp. 68-69), but Naomi Eden
11 testifies in her Affidavit that NYCB “...tendered an amount of \$6,445.54,”³ which was received by
12 the “management company.” **See, Affidavit of Naomi Eden**, p. 4, ll. 23-25, and Exhibit “8,” attached
13 to Naomi Eden’s Affidavit, p. 1. It is unknown why this is inconsistent with the figures on the
14 balance ledger (\$168.81) prepared and maintained by Defendants, or why Shadow Wood’s
15 “management company” had no idea of the existence of the lien, the fact that the property had been
16 referred to Alessi & Koenig for collections, or that the delinquent amount was \$328.94, as opposed
17 to the \$9,017.39 figure claimed by Shadow Wood and its other agents. When trying to explain the
18 discrepancies, Mr. Marks put it best:

19 “— I really don’t. I don’t know.” **See, Exhibit “2,”** at p. 73, ll. 2-24.

20 Finally, it has to be noted that MP Association Management failed or refused to provide the
21 document attached hereto as **Exhibit “3,”** in response to a lawful subpoena duces tecum from the
22 office of the undersigned. **See, Certification of Counsel**, attached. The document attached as
23 **Exhibit “3,”** was provided by NYCB and attached to NYCB’s disclosures, and it was thereafter
24 obtained by subpoena to Ticor Title. **Id.** It is unknown why MP Association Management did not
25 produce this document in response to the subpoena, although it is clear that the information

27 ³ This is yet another mistake (this one contained in sworn testimony), as NYCB paid \$6,783.16 to
28 satisfy the claimed HOA lien, which Ms. Eden admitted in the e-mail attached to her Affidavit.
(**See, Affidavit of Naomi Eden**, Exhibit “8,” p. 1.)

1 contained within this document is incredibly inconsistent with the Defendants' theory of the case.
2 Mr. Marks could not answer whether MP Association Management produced this document in
3 response to the subpoena, just stating that "...we would give you anything that we had in the file that
4 was relevant to that." See, Exhibit "2," p. 44, ll. 2-11. Again, however, this rather significant
5 document was missing from its production, causing NYCB's counsel to wonder whether this was
6 intentional withholding of a document in response to a subpoena because the document was not
7 helpful to the Defendants' case.⁴

8 In a nutshell, NYCB's every effort to pay the super-priority portion of Shadow Wood's HOA
9 lien was frustrated by gross negligence at best, or intentional fraud, oppression and misconduct at
10 worst. The figures provided by Shadow Wood and its counsel/foreclosure trustee were consistently
11 inconsistent, and seemed to change without explanation by the day. Some of the figures may have
12 been sent to NYCB, and others appear to have been sent from defense counsel to defense counsel's
13 employees instead of NYCB. As NYCB argued in the Motion for Summary Judgment, this debacle
14 had every appearance of a shell game and it was used to prop up an unlawful HOA foreclosure sale.

15 **III. LEGAL ARGUMENT**

16 **A. DEFENDANTS' OPPOSITION CONCEDES THAT SHADOW WOOD AND ITS**
17 **COUNSEL/FORECLOSURE TRUSTEE SOUGHT AMOUNTS THAT ARE NOT**
18 **PERMITTED AS A PORTION OF NEVADA'S SUPER-PRIORITY LIEN, AND**
19 **REJECTED PAYMENT THAT WOULD SATISFY THE SUPER-PRIORITY LIEN,**
20 **REQUIRING AN AWARD OF SUMMARY JUDGMENT TO NYCB AND AN**
21 **ORDER SETTING ASIDE THE HOA FORECLOSURE SALE.**

22 The Defendants' Opposition proves the Plaintiff's case for Declaratory Relief. Defendants
23 apparently continue to maintain that Shadow Wood's super-priority lien can encompass fees and
24 costs of collection, which is clearly inconsistent with Nevada law. As the Defendants' Opposition
25 concedes (1) that Shadow Wood sought fees and costs *in addition to* the nine months of regular
26 monthly assessments preceding the Notice of Delinquent Assessment, and (2) that Shadow Wood
27 (through its agent/counsel/foreclosure trustee) rejected an amount in excess of the nine months of

27 ⁴ In addition to the Certification of Counsel, attached, NYCB's counsel will have the complete
28 response provided by MP Association Management to NYCB's subpoena to demonstrate to the
Court and Defendants' counsel that this document was not provided.

1 regular monthly assessments, NYCB is entitled to summary judgment and the HOA foreclosure sale
2 must be set aside.

3 For some reason, Defendants continue to ignore the actual language of the statute under
4 which they assert Shadow Wood's right to foreclose to collect its super-priority lien. The language
5 of the statute very clearly limits the super-priority lien to the nine months of regular monthly
6 assessments preceding the Notice of Delinquency, and, if there is any legitimate dispute about the
7 clarity of this statute (which is disputed), legislative history supports this interpretation.⁵ Moreover,
8 the State of Nevada Department of Business and Industry, Real Estate Division, further supports this
9 interpretation. Finally, as the Court suggested at the pretrial conference, the Court itself has adopted
10 this interpretation of the statute.

11 Notwithstanding Nevada law, Defendants finally admit that their alleged super-priority lien
12 is based upon something other than the nine months of regular monthly assessments. The
13 Defendants state that NYCB "...chose to pay the amount shown on the assessment account history
14 [which was \$6,719.58], not the breakdown prepared by A&K (Alessi & Koenig)." See, Defendants'
15 Opposition, at p. 2, ll. 24-26. The Defendants go on to argue that the amount on the "assessment
16 account history" was incorrect because "...it did not take into account the Association's lien for
17 collection fees and costs or the elimination of a portion of the past due assessments under the 'super
18 priority' statute." See, Defendants' Opposition, at p. 3, ll. 1-2 (Emphasis Supplied).

19 As detailed in NYCB's Motion for Summary Judgment and Supplemental Brief, NRS
20 116.3116(2) allows an HOA lien to have priority over a prior recorded security interest only to the
21 extent of two (2) well-defined situations. First, the HOA lien has priority with respect to "...any
22 charges incurred by the association" for nuisance abatement costs (under NRS 116.310312). Second,
23 the statute permits the HOA lien to take priority:

24 "...to the extent of the assessments for common expenses based on the periodic
25 budget adopted by the association which would have become due in the absence

26 ⁵ Assemblywoman Ellen Spiegel made this clear when she stated on March 6, 2009:
27 "Assessments covered under A.B. 204 are the regular monthly or quarterly dues for their home.
28 I carefully put this bill together to make sure it did not include any assessments for penalties,
finer or late fees. The bill covers the basic monies the association uses to build its regular
budgets." See, Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-fifth
Session, May 8, 2009, at 27 (Emphasis Supplied).

1 of acceleration during the 9 months immediately preceding institution of an action
2 to enforce the lien[.]” NRS 116.3116(2).

3 Respectfully, this language could not be clearer. The HOA’s rights to foreclose and take priority
4 over a senior interest is far from unlimited. Indeed, the same chapter of the same statute specifically
5 provides that an HOA cannot foreclose on a lien by sale based upon a “...fine or penalty for a
6 violation of the governing documents of the association unless:

7 (a) The *violation poses an imminent threat of causing a substantial adverse effect*
8 *on the health, safety or welfare of the units’ owners* or residents of the common
interest community; or

9 (b) The penalty is imposed for failure to adhere to a schedule required pursuant to
10 NRS 116.310305 [which deals with construction penalties for failure to complete an
improvement].” NRS 116.31162(4) (Emphasis Supplied).

11 The Defendants have made no allegation that the HOA lien was based upon some imminent threat
12 of an adverse effect on the health, safety or welfare of the units owners. Instead, the Defendants
13 claim that the amount they rejected, and the basis for their HOA foreclosure sale, was largely the
14 “...Association’s lien for collection fees and costs[.]” See, Defendant’s Opposition, at p. 3, ll. 1-2.

15 This precise dispute (i.e., the limits of the HOA’s super-priority lien) has been the subject
16 of debate and lawsuits over the last year, prompting the State of Nevada Department of Business and
17 Industry, Real Estate Division, (hereinafter, “Division”) to prepare and publish an Advisory Opinion
18 only two (2) months ago, explaining the parameters of the HOA’s super-priority rights.

19 On December 12, 2012, the Division formally adopted the exact same position that this Court
20 identified at the pretrial conference. Specifically, the Division has stated that the “super-priority”
21 HOA lien “...consists of unpaid assessments based on the association’s budget and NRS 116.310312
22 charges (i.e., nuisance abatement charges) [and] nothing more.” See, **Exhibit “1,”** for a true copy
23 of the Division’s Advisory Opinion, at p. 2. Moreover, this amount “...may not exceed 9 months of
24 assessments as reflected in the association’s budget, and it may not include penalties, fees, late
25 charges, fines or interest.” **Id.** The Division found that the 9 month time line begins with the
26 mailing of the notice of delinquent assessment, and found, “At that point, the immediately preceding
27 9 months of assessments based on the association’s budget determine the amount of the super
28 priority lien.” **Id.**, at p. 18.

1 The Division made it plain that other costs, fees and fines did not permissibly make up the
2 super priority portion of the HOA's lien, and could not be used to take the property to foreclosure
3 sale. "[T]he plain language of NRS 116.3116(1) does not incorporate costs of collecting into the
4 association's lien." *Id.*, at p. 5. "Assessments can be foreclosed pursuant to NRS 116.31162, ***but***
5 ***liens for fines and penalties may not be foreclosed*** unless they satisfy the requirements of NRS
6 116.31162(4) [cited on p. 7, above]." *Id.*, at p. 3 (Emphasis Supplied). "[W]hile the association's
7 *lien* may include any penalties, fees, charges, late charges, fines and interest charged pursuant to
8 NRS 116.3102(1)(j) to (n), inclusive, the total amount of the *super priority lien* attributed to the
9 assessments is no more than 9 months of the monthly assessment reflected in the association's
10 budget." *Id.*, at p. 12 (Emphasis in original). "It is also unreasonable to expect that fines (which
11 cannot be foreclosed generally) survive a foreclosure of the first security interest." *Id.*, at p. 13.
12 Nonetheless, as outlined in the Supplemental Briefing to NYCB's Motion for Summary Judgment,
13 the Defendants apparently take the position that the fines, late fees, penalties, costs of collection, etc.,
14 that accrued ***prior to*** NYCB's foreclosure not only ***survived*** that foreclosure, but must be paid by
15 NYCB to avoid the HOA's later foreclosure. This interpretation is simply not supported by Nevada
16 law.

17 The Division took a particularly specific and dispositive position in this regard, and, while
18 the Advisory Opinion is admittedly not precedential, the Nevada Supreme Court has expressly
19 recognized the Division's power to interpret and administer Nevada law relative to the rights of an
20 HOA to foreclose. In Dep't. of Bus. & Indus. v. Nev. Ass'n Servs., Inc., 128 Nev. Adv. Op. 34, at
21 *4 (2012), the Nevada Supreme Court held that the Division is "...responsible for regulating and
22 administering [NRS Chapter 116]." The Nevada Supreme Court went on to hold that under Chapter
23 116, "...[t]he Division shall provide by regulation for the filing and prompt disposition of petitions
24 for declaratory orders and advisory opinions as to the applicability ***or interpretation*** of: (a) [a]ny
25 provision of [NRS 116] or chapter 116A or 116B of NRS." *Id.* (Emphasis Supplied). **See also**, NRS
26 116.623(1)(a). Even more significantly, the Nevada Supreme Court held that:

27 "...the responsibility for determining which fees may be charged, the maximum
28 amount of such fees, ***and whether they maintain a priority***, rests with the Real
Estate Division and the CCICCH." *Id.*, at *4. (Emphasis Supplied).

1 In light of Nevada statute, the Division's Advisory Opinion, and Supreme Court case law
2 regarding the power of the Division to interpret the statute relating to the HOA's super-priority lien,
3 Shadow Wood may have been able to foreclose based upon 9 months of the regular monthly
4 assessments that preceded the Notice of Delinquent Assessment Lien, which was recorded on July
5 7, 2011. As noted in NYCB's Supplemental Briefing, the amount that Shadow Wood could have
6 used to support a foreclosure under chapter 116 was \$1,519.29 (9 months of assessments at \$168.81
7 per month).

8 Nonetheless, Shadow Wood and/or its agent/counsel/foreclosure trustee rejected NYCB's
9 payment of \$6,783.16, which was admittedly received by Shadow Wood's agent *before* the HOA
10 foreclosure sale. As the Defendants have conclusively admitted that Shadow Wood was attempting
11 to collect *the Association's lien for collection fees and costs*, which is not allowed under Nevada
12 law, and used this as the basis to reject the payment made by NYCB and proceed with a foreclosure,
13 they have implicitly admitted that they foreclosed in violation of Nevada law. Consequently, there
14 is no genuine dispute as to material facts, and NYCB is entitled to judgment as a matter of law,
15 which includes setting aside the HOA foreclosure sale to Gogo Way, which never should have
16 occurred.

17 **B. THE FACTS AND ADMISSIONS FROM DEFENDANTS/THEIR COUNSEL**
18 **ILLUSTRATE THAT THE HOA SALE WAS ACCOMPLISHED THROUGH**
19 **UNFAIRNESS AND OPPRESSION AT LEAST.**

20 At this point, this issue has been thoroughly briefed. Without belaboring this issue any more,
21 the undersigned respectfully submits that the Defendants' Opposition also demonstrates that the
22 HOA sale to Gogo Way was initiated and held unfairly and oppressively. Again, the Defendants
23 now finally concede that there were errors made by them or their agents (in recorded documents, no
24 less) in identifying the super-priority payoff figures. Moreover, the very documents presented by
25 Defendants in their Opposition demonstrate that they did not send the payoff information to NYCB,
26 as they have previously maintained (instead, they sent the payoff information to themselves).
27 Finally, the Defendants have conclusively admitted that they held this HOA sale based, at least in
28 part, upon their purported right to collect penalties, fees, collection costs, late charges, and interest,
when Nevada law specifically prohibits an HOA from using these as the basis for a foreclosure sale.

1 Blacks Law Dictionary defines “oppression,” in part as, “The act or an instance of unjustly
2 exercising authority or power.” *Black’s Law Dictionary* (9th ed. 2009). This definition could not be
3 more apropos. Shadow Wood essentially attempted to extort more money from NYCB than it was
4 legally entitled to use as the basis for a foreclosure sale. Even worse, Shadow Wood received nearly
5 five times (5X) the amount it was permitted to use as a super-priority lien to force a sale (even
6 though a great deal of this amount had been wiped out by NYCB’s prior foreclosure sale), but still
7 exercised its ‘authority or power’ to proceed to the foreclosure sale. Providing vastly different
8 payoff figures (and, in some cases, admittedly failing to provide those figures), rejecting payment
9 of an amount in excess of the permitted lien, and proceeding to a foreclosure sale for issues that an
10 HOA is statutorily prevented from using as the basis of a foreclosure undoubtedly qualifies as unfair
11 and oppressive.

12 Compounding these examples of oppression and unfairness, Shadow Wood had a history of
13 permitting owners to make partial payment plans to avoid foreclosure, accepting far less than NYCB
14 paid as a partial payment. Mr. Marks testified that the HOA’s board of directors “...allow the trustee
15 company to make payment arrangements and take partial payments.” **See, Exhibit “2,”** p. 66, ll. 15-
16 17. He further agreed that this is “...a relatively common occurrence.” **Id.**, at ll. 18-20. The prior
17 owner (Ms. Fedel) had been in delinquency on her HOA dues from Jul, 2008, to July, 2009, but the
18 HOA accepted payments of \$500.00, \$250.00, and \$500.00 in February, 2009, April, 2009, and July,
19 2009, respectively, as partial payments instead of foreclosing. **Id.**, pp. 66-68, l. 17. To the contrary,
20 however, Shadow Wood and/or its trustee/agents rejected NYCB’s payment of \$6,783.16 (more than
21 five times (5X) Ms. Fedel’s combined payments) and proceeded to foreclosure.

22 NYCB’s counsel has identified the statute and UCIOA provision that requires an HOA to use
23 good faith in its pursuit of foreclosure proceedings based upon an HOA lien. It has further identified
24 sections of the UCIOA that require HOA to hold a sale in a commercially reasonable manner by
25 using “honesty in fact” and “reasonable standards of fair dealing.” Providing markedly different
26 payoff amounts that the HOA is not legally allowed to use as the basis for a foreclosure proceeding
27 does not constitute honesty in fact or reasonable standards of fair dealing. Counsel has further cited
28 case law from other states (this matter has apparently not been resolved by the Nevada Supreme

1 Court) that interprets the UCIOA as requiring the HOA to attempt to sell the property for the best
2 price available and to remit any excess to the former owner or secured interest holder. The
3 Defendants have chosen not to even respond to these citations in an attempt to distinguish or
4 differentiate them.

5 Frankly, it is nothing short of desperation to argue on this record that the HOA sale was
6 performed fairly and lawfully. The HOA and/or its agents violated clear Nevada law and treated
7 NYCB unfairly and differently than they treated the former owner, Ms. Fedel. Summary Judgment
8 to NYCB must be granted and this sale must be set aside.

9 **C. DEFENDANTS MISREPRESENT OR FAIL TO UNDERSTAND THE LIMITS OF
10 THE CONCLUSIVE PRESUMPTION, WHICH, BY THEIR DEFINITION, WOULD
11 APPROVE A FORECLOSURE SALE EVEN IF IT HAD BEEN
12 COMPLETED/CONDUCTED IN A RACIALLY DISCRIMINATORY MANNER.**

12 Under the Defendants' interpretation of NRS 116.3166, once a Trustee's Deed Upon Sale
13 ("TDUS") is prepared, a foreclosure sale can never be challenged regardless of the circumstances
14 that led to sale due to an alleged "...conclusive presumption that Defendants satisfied all foreclosure
15 requirements." See, Defendants' Opposition, p. 8, ll. 24-26. This broad-based interpretation is
16 inaccurate, misleading, and inconsistent with the actual language used in the statute. NRS
17 116.31166 provides in full:

18 **116.31166. Foreclosure of liens: Effect of recitals in deed; purchaser not
19 responsible for proper application of purchase money; title vested in purchaser
20 without equity or right of redemption.**

20 1. The recitals in a deed made pursuant to NRS 116.31164 of:

21 (a) Default, the mailing of the notice of delinquent assessment, and the recording of
22 the notice of default and election to sell;

23 (b) The elapsing of the 90 days; and

24 (c) The giving of notice of sale,

25 are conclusive proof of the matters recited.

26 2. Such a deed containing these recitals is conclusive against the unit's former
27 owner, his or her heirs and assigns, and all other persons. The receipt for the
28 purchase money contained in such a deed is sufficient to discharge the purchaser
from obligation to see to the proper application of the purchase money.

3. The sale of a unit pursuant to NRS 116.31162, 116.31163, and 116.31164 vests
in the purchaser the title of the unit's owner without equity or right of redemption."
(Emphasis Supplied).

Pursuant to the statute, the TDUS is conclusive proof that the recitals (that mailing/recording
of the notice of delinquent assessment was performed, that 90 days elapsed thereafter, and that notice

1 of sale was given) occurred. Defendants counsel apparently then argues that once it is shown that
2 the mailing/recording occurred and the 90 day time period passed, a foreclosure sale can never be
3 challenged regardless of the circumstances that led to the sale. In support, of this far-fetched
4 contention, the Defendants cite to Hankins v. Administrator of Veterans Affairs, 92 Nev. 578, 555
5 P.2d 483 (1976), for the proposition that all that is required to uphold the validity of a foreclosure
6 is mailing of the notices. This misleading inference is inaccurate and the holding of the Hankins case
7 is distinguishable, and, indeed, a proper reading of the Hankins decision supports NYCB's position.

8 In Hankins, the former owners alleged (1) that the seller's custodian lacked personal
9 knowledge of the accuracy of the affidavit or publication of the notice of sale, (2) that the former
10 owners did not receive notice of sale, and (3) that the notice incorrectly cited the location of the sale.
11 Based upon these limited arguments, the Nevada Supreme Court held that, "Mailing of the notice
12 is all that the statute requires." Id., 92 Nev. 578, at 580. The Court went on to explain that actual
13 notice is not required. Furthermore, the Court added:

14 "[The former owners] previous experience with the same property dilutes the [former
15 owners'] contention that they lacked knowledge of the proceedings *nor do they show
16 that they were misled by the payment notices or the mistake in reciting the place
17 of foreclosure.*" Id. (Emphasis Supplied).

18 NYCB is not claiming a lack of knowledge of the HOA's foreclosure. Indeed, all of the
19 documents submitted to the Court in these summary judgment proceedings illustrate that not only
20 did NYCB know of the HOA foreclosure activities, but that it was actively trying to satisfy the
21 HOA's claimed lien, exaggerated though it was. That said, what was missing in Hankins is clearly
22 evident here. NYCB has, indeed, shown that it was misled by the repeated mistakes and changes in
23 the figures supplied by Defendants. Notwithstanding these repeated mistakes and ongoing
24 inconsistencies, NYCB attempted in good faith to pay the amount demanded by Shadow Wood.
25 Shadow Wood did not accept the payment, either in full or as a partial payment, although it had done
26 so with the former owner. Instead, Shadow Wood and/or its trustee/agents decided to proceed to
27 foreclosure sale, where it could and did add additional fees for the costs of holding the sale.

28 Under the Defendants' interpretation of NRS 116.31166, no foreclosure sale could ever be
set aside as long as a TDUS was prepared and recorded. If a foreclosure sale was set up and held,

1 for example, under the pretext of removing a minority family from an all white, Anglo Saxon
2 Protestant neighborhood, the prior owner could not challenge the sale as long as the HOA's trustee
3 prepared a TDUS. The preparation of a TDUS operates under the statute as proof that the Notice
4 of Default was recorded, that the owner was given notice of the delinquent assessment and sale, and
5 that 90 days elapsed before sale. The TDUS does not operate as conclusive proof "...that Defendants
6 satisfied all foreclosure requirements[,]” as Defendants allege. The idea of this statutory provision
7 is to ensure that proper notice is given and to protect a sale from the allegations of inadequate notice.
8 It does not operate to give a seller/trustee carte blanche to base a foreclosure upon unlawful activities
9 (e.g., the right to foreclose to collect fees, penalties, fines, collection costs) or to restrict a former
10 owner from challenging the foreclosure based upon violations of Nevada law.

11 **D. DEFENDANTS LIKEWISE MISCONSTRUE THE PROPER APPLICATION OF**
12 **NRS 645F.300, RELATING TO BONA FIDE PURCHASERS AT A FORECLOSURE**
13 **SALE.**

13 The Defendants attempt to persuade the Court via a hyper-technical reading of NRS
14 645F.300 that summary judgment cannot be granted to NYCB because Shadow Wood and/or its
15 trustee/counsel/agent (Alessi & Koenig) acted unlawfully, as opposed to allegations that Gogo Way
16 acted unlawfully. In fact, NYCB alleged in its Complaint that Gogo Way purchased the subject
17 property for a commercially unreasonable price (which alone defeats its proclaimed bona fide
18 purchaser status) and reinforced this position in its Supplemental Briefing, which indicated that
19 NYCB does not know whether this "...was a sweetheart deal under which financial and/or other
20 benefits were exchanged so that the HOA foreclosure sale could go forward and the property could
21 be purchased for a fraction of its actual value.” See, NYCB's Supplemental Briefing, at pp. 8-9, fn.
22 4. In any event, Defendants' interpretation and argument is misplaced because it presumes that the
23 HOA sale was properly held under Nevada law and that Gogo Way was a bona fide purchaser⁶.
24 Neither of these presumptions is supported by the undisputed facts of this case or the application of
25 Nevada law.

26 /././

27
28 ⁶ In fact, counsel for Defendants specifically argued at the pre-trial conference that Gogo Way was a
"bona fide purchaser."

1 Defendants claim that the HOA sale at issue cannot be set aside because NYCB has alleged
2 that Shadow Wood and/or Alessi & Koenig (as trustee) acted unlawfully, but the statute applies only
3 to unlawful conduct by the “purchaser” at the sale. Defendants’ reliance upon NRS 645F.300 is
4 misplaced, since HOA foreclosures are governed by Chapter 116, and NRS 645F is applicable only
5 to foreclosure sales conducted by a mortgagee under a deed of trust against the mortgagor.
6 Defendants correctly cite NRS 645F.330, which does indeed define a “foreclosure purchaser” as “...a
7 person who, in the course of his or her business, vocation or occupation, acquires or attempts to
8 acquire title to a residence in foreclosure from a homeowner.” (Emphasis Supplied.) Moreover,
9 NRS 645F.440 does state that a foreclosure sale may be rescinded/set aside when the “...foreclosure
10 purchaser engages in any conduct that operates as a fraud or deceit upon a homeowner in connection
11 with a transaction that is subject to the provisions of NRS 645F.300 to 645F.450[.]”

12 However, Defendants fail to provide the Court with the statutory definition of “homeowner,”
13 which is limited to foreclosure under a deed of trust. NRS 645F.360 defines “Homeowner” as:

14 “...the record owner of a residence, including, without limitation, the record owner
15 of a residence in foreclosure at the time the notice of the pendency of an action for
16 foreclosure is recorded pursuant to NRS 14.010 [i.e., judicial foreclosure action] or
the notice of default and election to sell is recorded pursuant to NRS 107.080 [i.e.,
non-judicial foreclosure NOT involving an HOA lien].”

17 Moreover, NRS 645F.370 further reinforces that Chapter 645F is inapplicable (and cannot be used
18 as the basis for the assertion of the bona fide purchaser argument) as it also limits the definition of
19 a “residence in foreclosure” to judicial foreclosure actions or non-judicial foreclosures under a deed
20 of trust. NRS 645F.370 defines “Residence in foreclosure” as:

21 “...residential real property consisting of not more than four family dwelling units and
22 against which there is an outstanding notice of the pendency of an action for
23 foreclosure recorded pursuant to NRS 14.010 or notice of default and election to sell
recorded pursuant to NRS 107.080.”

24 Neither Shadow Wood nor its trustee/counsel, Alessi & Koenig, recorded a Notice of Lis Pendens
25 under NRS 14.010, or filed a judicial foreclosure. Moreover, the Notice of Default recorded by
26 Alessi & Koenig on behalf of Shadow Wood is specifically titled “Notice of Default and Election
27 to Sell Under Homeowners Association Lien,” and it references the HOA’s purported right to
28 foreclose as stemming from “...the terms contained in the Declaration of Covenants, Conditions, and

1 Restrictions (CC&Rs)[,]" and is based upon payments that had not been made "...of homeowners
2 assessments due from [blank in original] and all subsequent assessments, late charges, interest,
3 collection and/or attorney fees and costs." See, Exhibit "4." NRS 116.3116 defines an HOA's
4 ability to foreclose for the collection of assessments (9 months worth, and nothing more), and NRS
5 107.080 does not reference an HOA's foreclosure rights. Consequently, Defendants' position that
6 Gogo Way is somehow a bona fide purchaser under NRS 645F.350, NRS 645F.330, and NRS
7 645F.440 is misplaced as HOA foreclosures are independently governed by Chapter 116, and
8 Chapter 645F applies to foreclosures under a deed of trust.

9 Moreover, even if the Court were to interpret Chapter 645F as applicable to an HOA
10 foreclosure sale, Gogo Way was not a bona fide purchaser as that term is defined by statute and case
11 law. Defendants repeatedly urge that Gogo Way is a bona fide purchaser, so imply that under NRS
12 645F.450(5) and (6)⁷, the HOA sale at issue herein cannot be set aside. However, this position is
13 also provably wrong by simply reading the language of the statute that Defendants proffer.
14 Defendants claim that Gogo Way was a foreclosure purchaser, which, as detailed above, is
15 inaccurate. However, even assuming *arguendo* that this is the case, NRS 645F.450(5) and (6) do
16 not apply to Gogo Way. Subsection (5) applies when a "foreclosure purchaser" transfers the
17 property to a third party. Subsection (6) defines "bona fide purchaser" as a "person" who purchases
18 an interest in property "from a foreclosure purchaser in good faith and for valuable consideration[.]"
19 Here, Gogo Way has not transferred the subject property to another third party, so these proffered
20 "bona fide purchaser" defenses under NRS 645F.450 do not apply.

21 Finally, a party who purchases property at an HOA foreclosure sale is not a "bona fide
22 purchaser" simply because the party is listed on the TDUS. "A buyer at a foreclosure sale is a bona
23 fide purchaser if he (1) bought the property for fair value; and (2) had no knowledge or notice of
24 anyone else's rights to the property." United States v. Countrywide Home Loans, 408 F.App'x 3,

25
26 ⁷ NRS 645F.450(5) provides: "A transaction may not be rescinded pursuant to this section if the
foreclosure purchaser has transferred the property to a to a bona fide purchaser.
27 NRS 645F.450(6) provides: "As used in this section, 'bona fide purchaser' means any person
who purchases an interest in a residence in foreclosure from a foreclosure purchaser in good faith
28 and for valuable consideration and who does not know or have reasonable cause to believe that the
foreclosure purchaser engaged in conduct which violated subsection 1."

1 2010 WL 3938095 (9th Cir. 2010)⁸, *citing*, 5 *Miller & Starr*, § 11:50. The undisputed facts
2 demonstrate that Gogo Way purportedly purchased the subject property on February 22, 2012, for
3 \$11,018.39. The same property had sold ten (10 months earlier for more than four hundred
4 percent (400%) of this amount, and that sale had been recorded in a TDUS on May 24, 2011, noting
5 that NYCB had purchased the subject property for \$45,900.00 on May 9, 2011. **See, Exhibit “5.”**
6 It can hardly be argued with a straight face that \$11,018.39 is “fair value” for a property that was
7 purchased only ten (10) months earlier for more than four times that amount. Moreover, Gogo Way
8 could and should have researched the record of title to discover that NYCB had purchased the
9 property at a foreclosure sale only ten (10) months beforehand for a much greater price. Thus, Gogo
10 Way should not now be heard to complain that it lacked knowledge of another potential interest in
11 or rights to the property. While inadequacy in price alone may not be sufficient grounds to set aside
12 an HOA foreclosure sale, inadequacy in price when coupled with clear acts of oppression and
13 unfairness by the HOA and its trustee certainly provide the necessary justification to set this sale
14 aside.

15 **IV. CONCLUSION**

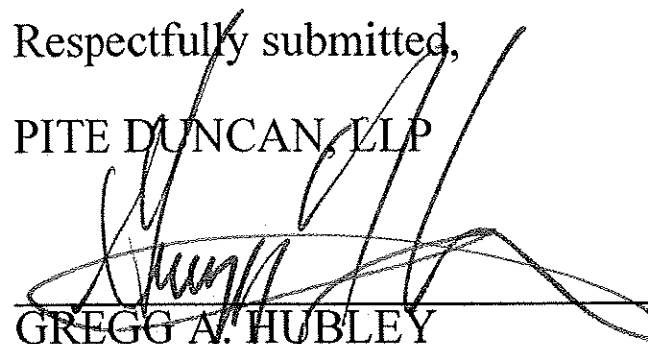
16 It is crystal clear that the right hand had no idea what the left hand was doing in relation to
17 the scheduling of this HOA foreclosure sale and the amount needed to pay off the HOA’s super
18 priority lien. Shadow Wood’s management company (MP Association Management) provided
19 payoff figures and other information (e.g., there was no lien recorded, the account had not been sent
20 to collection, the delinquencies totaled \$328.94 - **Exhibit “3”**) that were completely inconsistent
21 with the information and figures provided by the HOA’s other agent/trustee/legal counsel. Indeed,
22 the information supplied by MP Association Management was internally inconsistent, as was the
23 information from Alessi & Koenig, some of which was admittedly “mistaken.” Aside from all of
24 the inconsistencies supplied by Shadow Wood and its various agents, which independently constitute

25
26 ⁸ This case was not selected for publication in the Federal Reporter. Nonetheless, FRAP 32.1(a)
27 provides that, “A court may not prohibit or restrict the citation of federal judicial opinions, orders,
28 judgments, or other written dispositions that have been:
(i) designated as ‘unpublished,’ ‘not for publication,’ ‘non-precedential,’ ‘not precedent,’
or the like; and
(ii) issued on or after January 1, 2007.”

1 unfairness to NYCB's genuine efforts to pay off the HOA's inflated lien, it is now undisputed that
2 the HOA based its foreclosure upon amounts that it is restricted from using to foreclose on an HOA
3 lien. The Defendants' Opposition finally admits that its foreclosure was based upon thousands of
4 dollars in fines, penalties, collection costs and other fees, when Nevada statute specifically prohibited
5 it from using these items as the basis for an HOA foreclosure. The Defendants further admit that
6 they rejected payment from NYCB of many times the amount needed to satisfy a legitimate super
7 priority lien. These facts constitute oppression under any definition.

8 Pursuant to the undisputed facts, NYCB is entitled to judgment as a matter of law. The HOA
9 foreclosure sale to Gogo Way must be rescinded, NYCB should be granted the declaratory and quiet
10 title relief requested in the Complaint, and title should be restored to NYCB.

11 DATED this 20 day of March, 2013.

12 Respectfully submitted,
13 PITE DUNCAN LLP
14 
15 GREGG A. HUBLEY
16 Attorneys for Plaintiff/Counterdefendant NEW
17 YORK COMMUNITY BANK
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**AFFIDAVIT/CERTIFICATION OF GREGG A. HUBLEY, ESQ. IN SUPPORT OF
REPLY TO DEFENDANTS' OPPOSITION TO MOTION FOR SUMMARY
JUDGMENT**

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Gregg A. Hubley, being duly sworn, depose and say:

1. I am the managing attorney of Pite Duncan's Las Vegas office, and my office represents Plaintiff NYCB in the instant action. I have personal knowledge of the facts contained herein and I am competent to testify thereto, and as to factual statements made on information and belief, I believe them to be true.

2. My office served a subpoena duces tecum on MP Association Management, requesting the following documents:

True and correct copies of any and all documents and records, for the time period commencing May 1, 2011, to the present time, including but not limited to: Covenants, Conditions and Restrictions, Rules and Regulations, homeowner association demands, ledgers, invoices, payment records, reports, notes, communications of any kind, e-mails, statements, and any and all records maintained for any account(s), whether opened or closed, for the following individuals, account, property address and/or entities:

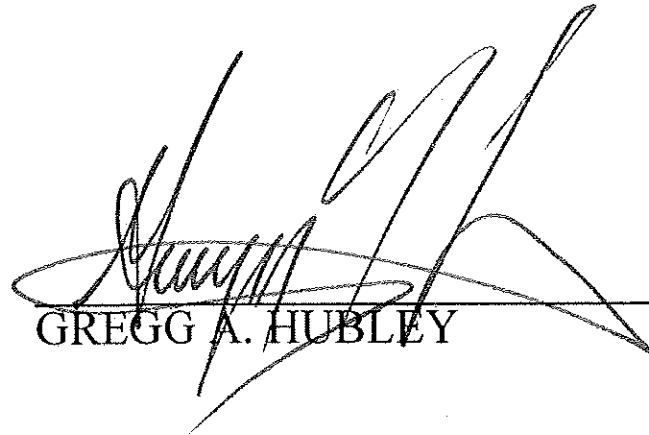
- 1) VIRGINIA V. FEDEL;
- 2) NEW YORK COMMUNITY BANK;
- 3) ESCROW FILE NO. 11142269TLC; and
- 4) 3923 GOGO WAY, #109, LAS VEGAS, NV 89103.

3. MP Association Management provided documents in response, which consisted of the balance ledger, rules and regulations and CC&Rs. MP Association Management failed to provide the document attached to this Reply as **Exhibit "3,"** even though that document clearly fell within the request (i.e., "demands," "communications of any kind," and "all records maintained for any account(s)," related to the subject property). Clearly, **Exhibit "3"** was sent to Ticor Title by MP Association Management, and MP Association Management presumably kept a copy of the document (which was signed by its President) in the file related to the subject property. The information contained within **Exhibit "3"** is clearly inconsistent with the positions taken by Defendant Shadow Wood and by Defendants' counsel, leading NYCB's counsel to question the reasons for which this document was not supplied in response to a lawful subpoena. MP Association

1 Management's President, Gerald Marks, could not explain why this document had not been provided
2 in response to NYCB's subpoena duces tecum.

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

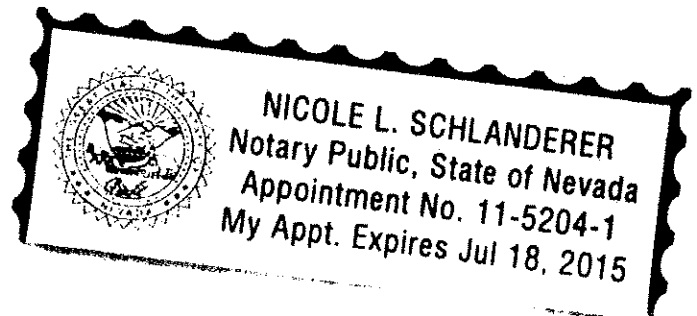
5 Executed this 7th day of March, 2013.

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GREGG A. HUBLEY

9 SUBSCRIBED AND SWORN to before me
10 on this 7th day of March, 2013.

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NOTARY PUBLIC in and for said
COUNTY and STATE.



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

3 **DECLARATION OF SERVICE**

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

6 On March 7, 2013, I served the following document(s):

7 **REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR**
8 **SUMMARY JUDGMENT**

9 on the parties in this action addressed as follows:

10 Robert Koenig
Ryan Kerbow
11 **ALESSI & KOENIG, LLC**
9500 West Flamingo Road, Suite 205
Las Vegas, Nevada 89147
12 *Attorneys for Defendants Shadow Wood Homeowners'*
Association, Inc. and Gogo Way Trust

13

14 **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
15 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
16 cancellation date or postage meter date is more than one day after date of deposit for mailing
in affidavit.

17

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

18

BY FACSIMILE: I personally sent to the addressee's facsimile number a true copy of the
19 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
20 mailed as indicated above.

21

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
22 processing correspondence for Federal Express delivery and that the documents served are
deposited with Federal Express this date for overnight delivery.

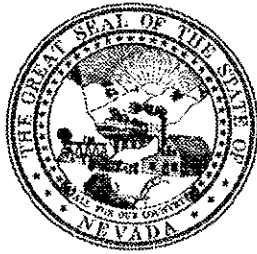
23 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
24 is true and correct.

25 Executed this 7th day of March 2013, at Las Vegas, Nevada.

26 
27 NICOLE L. SCHLANDERER

EXHIBIT 1

EXHIBIT 1



STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
REAL ESTATE DIVISION
ADVISORY OPINION

Subject: The Super Priority Lien	Advisory No. 13-01	21 pages
	Issued By: Real Estate Division	
	Amends/Supersedes	N/A
Reference(s): NRS 116.3102; ; NRS 116.310312; NRS 116.310313; NRS 116.3115; NRS 116.3116; NRS 116.31162; Commission for Common Interest Communities and Condominium Hotels Advisory Opinion No. 2010-01	Issue Date: December 12, 2012	

QUESTION #1:

Pursuant to NRS 116.3116, may the portion of the association's lien which is superior to a unit's first security interest (referred to as the "super priority lien") contain "costs of collecting" defined by NRS 116.310313?

QUESTION #2:

Pursuant to NRS 116.3116, may the sum total of the super priority lien ever exceed 9 times the monthly assessment amount for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115, plus charges incurred by the association on a unit pursuant to NRS 116.310312?

QUESTION #3:

Pursuant to NRS 116.3116, must the association institute a "civil action" as defined by Nevada Rules of Civil Procedure 2 and 3 in order for the super priority lien to exist?

SHORT ANSWER TO #1:

No. The association's lien does not include "costs of collecting" defined by NRS 116.310313, so the super priority portion of the lien may not include such costs. NRS 116.310313 does not say such charges are a lien on the unit, and NRS 116.3116 does not make such charges part of the association's lien.

SHORT ANSWER TO #2:

No. The language in NRS 116.3116(2) defines the super priority lien. The super priority lien consists of unpaid assessments based on the association's budget and NRS 116.310312 charges, nothing more. The super priority lien is limited to: (1) 9 months of assessments; and (2) charges allowed by NRS 116.310312. The super priority lien based on assessments may not exceed 9 months of assessments as reflected in the association's budget, and it may not include penalties, fees, late charges, fines, or interest. References in NRS 116.3116(2) to assessments and charges pursuant to NRS 116.310312 define the super priority lien, and are not merely to determine a dollar amount for the super priority lien.

SHORT ANSWER TO #3:

No. The association must *take action* to enforce its super priority lien, but it need not institute a civil action by the filing of a complaint. The association may begin the process for foreclosure in NRS 116.31162 or exercise any other remedy it has to enforce the lien.

ANALYSIS OF THE ISSUES:

This advisory opinion – provided in accordance with NRS 116.623 – details the Real Estate Division's opinion as to the interpretation of NRS 116.3116(1) and (2). The Division hopes to help association boards understand the meaning of the statute so they are better equipped to represent the interests of their members. Associations are encouraged to look at the entirety of a situation surrounding a particular deficiency and evaluate the association's best option for collection. The first step in that analysis is to understand what constitutes the association's lien, what is not part of the lien, and the status of the lien compared to other liens recorded against the unit.

Subsection (1) of NRS 116.3116 describes what constitutes the association's lien; and subsection (2) states the lien's priority compared to other liens recorded against a unit. NRS 116.3116 comes from the Uniform Common Interest Ownership Act (1982) (the "Uniform Act"), which Nevada adopted in 1991. So, in addition to looking at the language of the relevant Nevada statute, this analysis includes references to the Uniform Act's equivalent provision (§ 3-116) and its comments.

I. NRS 116.3116(1) DEFINES WHAT THE ASSOCIATION'S LIEN CONSISTS OF.

NRS 116.3116(1) provides generally for the lien associations have against units within common-interest communities. NRS 116.3116(1) states as follows:

The association has a lien on a unit for **any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, any assessment levied against that unit or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments** under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

(emphasis added).

Based on this provision, the association's lien includes assessments, construction penalties, and fines imposed against a unit when they become due. In addition – unless the declaration otherwise provides – penalties, fees, charges, late charges, fines, and interest charged pursuant to NRS 116.3102(1)(j) through (n) are also part of the association's lien in that such items are enforceable as if they were assessments. Assessments can be foreclosed pursuant to NRS 116.31162, but liens for fines and penalties may not be foreclosed unless they satisfy the requirements of NRS 116.31162(4). Therefore, it is important to accurately categorize what comprises each portion of the association's lien to evaluate enforcement options.

A. "COSTS OF COLLECTING" (DEFINED BY NRS 116.310313) ARE NOT PART OF THE ASSOCIATION'S LIEN

NRS 116.3116(1) does not specifically make costs of collecting part of the association's lien, so the determination must be whether such costs can be included under the incorporated provisions of NRS 116.3102. NRS 116.3102(1)(j) through (n) identifies five very specific categories of penalties, fees, charges, late charges, fines, and interest associations may impose. This language encompasses all penalties, fees,

charges, late charges, fines, and interest that are part of the lien described in NRS 116.3116(1).

NRS 116.3102(1)(j) through (n) states:

1. Except as otherwise provided in this section, and subject to the provisions of the declaration, the association may do any or all of the following: ...

(j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.

(k) Impose charges for late payment of assessments pursuant to NRS 116.3115.

(l) Impose construction penalties when authorized pursuant to NRS 116.310305.

(m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.

(n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(emphasis added).

Whatever charges the association is permitted to impose by virtue of these provisions are part of the association's lien. Subsection (k) – emphasized above – has been used – the Division believes improperly – to support the conclusion that associations may include costs of collecting past due obligations as part of the association's lien. The Commission for Common Interest Communities and Condominium Hotels issued Advisory Opinion No. 2010-01 in December of 2010. The Commission's advisory concludes as follows:

An association may collect as a part of the super priority lien (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any statements of unpaid assessments and (d) the "costs of collecting" authorized by NRS 116.310313.

Analysis of what constitutes the *super priority lien* portion of the association's lien is discussed in Section III, but the Division agrees that the association's lien does include items noted as (a), (b) and (c) of the Commission's advisory opinion above. To support item (d), the Commission relies on NRS 116.3102(1)(k) which gives associations the power to: "Impose charges for late payment of assessments pursuant to NRS 116.3115." This language would include interest authorized by statute and late fees if authorized by the association's declaration.

"Costs of collecting" defined by NRS 116.310313 is too broad to fall within the parameters of charges for late payment of assessments.¹ By definition, "costs of collecting" relate to the collection of past due "obligations." "Obligations" are defined as "any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner."² In other words, costs of collecting includes more than "charges for late payment of assessments."³ Therefore, the plain language of NRS 116.3116(1) does not incorporate costs of collecting into the association's lien. Further review of the relevant statutes and legislative action supports this conclusion.

B. PRIOR LEGISLATIVE ACTION SUPPORTS THE POSITION THAT COSTS OF COLLECTING ARE NOT PART OF THE ASSOCIATION'S LIEN DESCRIBED BY NRS 116.3116(1).

The language of NRS 116.3116(1) allows for "charges for late payment of assessments" to be part of the association's lien.⁴ "Charges for late payments" is not the same as "costs of collecting." "Costs of collecting" was first defined in NRS 116 by the adoption of NRS 116.310313 in 2009. NRS 116.310313(1) provides for the association's

¹ Charges for late payment of assessments comes from NRS 116.3102(1)(k) and is incorporated into NRS 116.3116(1).

² NRS 116.310313.

³ "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court. NRS 116.310313(3)(a).

⁴ NRS 116.3102(1)(k) (incorporated into NRS 116.3116(1)).

right to charge a unit owner “reasonable fees to cover the costs of collecting any past due obligation.” NRS 116.310313 is not referenced in NRS 116.3116 or NRS 116.3102, nor does NRS 116.310313 specifically provide for the association’s right to lien the unit for such costs.

In contrast, NRS 116.310312, also adopted in 2009, allows an association to enter the grounds of a unit to maintain the property or abate a nuisance existing on the exterior of the unit. NRS 116.310312 specifically provides for the association’s expenses to be a lien on the unit and provides that the lien is prior to the first security interest.⁵ NRS 116.3102(1)(j) was amended to allow these expenses to be part of the lien described in NRS 116.3116(1). And NRS 116.3116(2) was amended to allow these expenses to be included in the association’s super priority lien.

The Commission’s advisory opinion from December 2010 also relies on changes to the Uniform Act from 2008 to support the notion that collection costs should be part of the association’s super priority lien. Nevada has not adopted those changes to the Uniform Act. Since the Commission’s advisory opinion, the Nevada Legislature had an opportunity to clarify the law in this regard.

In 2011, the Nevada Legislature considered Senate Bill 174, which proposed changes to NRS 116.3116. S.B. 174 originally included changes to NRS 116.3116(1) such that the association’s lien would specifically include “costs of collecting” as defined in NRS 116.310313. S.B. 174 proposed changes to NRS 116.3116 (1) and (2) to bring the statute in line with the changes to the same provision in the Uniform Act amended in 2008.

The Uniform Act’s amendments were removed from S.B. 174 by the first reprint. As amended, S.B. 174 proposed changes to NRS 116.3116(2) expanding the super priority lien amount to include costs of collecting not to exceed \$1,950, in addition to 9 months

⁵ See NRS 116.310312(4) and (6).

of assessments. S.B. 174 was discussed in great detail and ultimately died in committee.⁶

Also in 2011, Senate Bill 204 – as originally introduced – included changes to NRS 116.3116(1) to expand the association’s lien to include attorney’s fees and costs and “any other sums due to the association.”⁷ The bill’s language was taken from the Uniform Act amendments in 2008. All changes to NRS 116.3116(1) were removed from the bill prior to approval.

The Nevada Legislature’s actions in the 2009 and 2011 sessions are indicative of its intent not to make costs of collecting part of the lien. The Nevada Legislature could have made the costs of collecting part of the association’s lien, like it did for costs under NRS 116.310312. It did not do so. In order for the association to have a right to lien a unit under NRS 116.3116(1), the charge or expense must fall within a category listed in the plain language of the statute. Costs of collecting do not fall within that language. Based on the foregoing, the Division concludes that the association’s lien does not include “costs of collecting” as defined by NRS 116.310313.

A possible concern regarding this outcome could be that an association may not be able to recover their collection costs relating to a foreclosure of an assessment lien. While that may seem like an unreasonable outcome, a look at the bigger picture must be considered to put it in perspective. NRS 116.31162 through NRS 116.31168, inclusive, outlines the association’s ability to enforce its lien through foreclosure. Associations have a lien for assessments that is enforced through foreclosure. The association’s expenses are reimbursed to the association from the proceeds of the sale. NRS 116.31164(3)(c) allows the proceeds of the foreclosure sale to be distributed in the following order:

- (1) The reasonable expenses of sale;

⁶ See <http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=423>.

⁷ Senate Bill No. 204 – Senator Copening, Sec. 49, ln. 1-16, February 28, 2011.

- (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
- (3) Satisfaction of the association's lien;
- (4) Satisfaction in the order of priority of any subordinate claim of record;
- and
- (5) Remittance of any excess to the unit's owner.

Subsections (1) and (2) allow the association to receive its expenses to enforce its lien through foreclosure *before* the association's lien is satisfied. Obviously, if there are no proceeds from a sale or a sale never takes place, the association has no way to collect its expenses other than through a civil action against the unit owner. Associations must consider this consequence when making decisions regarding collection policies understanding that every delinquent assessment may not be treated the same.

II. NRS 116.3116(2) ESTABLISHES THE PRIORITY OF THE ASSOCIATION'S LIEN.

Having established that the association has a lien on the unit as described in subsection (1) of NRS 116.3116, we now turn to subsection (2) to determine the lien's priority in relation to other liens recorded against the unit. The lien described by NRS 116.3116(1) is what is referred to in subsection (2). Understanding the priority of the lien is an important consideration for any board of directors looking to enforce the lien through foreclosure or to preserve the lien in the event of foreclosure by a first security interest.

NRS 116.3116(2) provides that the association's lien is prior to all other liens recorded against the unit *except*: liens recorded against the unit before the declaration; first security interests (first deeds of trust); and real estate taxes or other governmental assessments. There is one exception to the exceptions, so to speak, when it comes to priority of the association's lien. This exception makes a portion of an association's lien prior to the first security interest. The portion of the association's lien given priority status to a first security interest is what is referred to as the "super priority lien" to

distinguish it from the other portion of the association's lien that is subordinate to a first security interest.

The ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. An association can foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security. NRS 116.3116 is found in the Uniform Act at § 3-116. Nevada adopted the original language from § 3-116 of the Uniform Act in 1991. From its inception, the concept of a super priority lien was a novel approach. The Uniform Act comments to § 3-116 state:

[A]s to prior first security interests the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant departure from existing practice, the 6 months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders. As a practical matter, secured lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit. If the lender wishes, an escrow for assessments can be required.

This comment on § 3-116 illustrates the intent to allow for 6 months of assessments to be prior to a first security interest. The reason this was done was to accommodate the association's need to enforce collection of unpaid assessments. The controversy surrounding the super priority lien is in defining its limit. This is an important consideration for an association looking to enforce its lien. There is little benefit to an association if it incurs expenses pursuing unpaid assessments that will be eliminated by an imminent foreclosure of the first security interest. As stated in the comment, it is also likely that the holder of the first security interest will pay the super priority lien amount to avoid foreclosure by the association.

III. **THE AMOUNT OF THE SUPER PRIORITY LIEN IS LIMITED BY THE PLAIN LANGUAGE OF NRS 116.3116(2).**

NRS 116.3116(2) states:

A lien under this section is prior to all other liens and encumbrances on a unit except:

(a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;

(b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

(c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(emphasis added)

Having found previously that costs of collecting are not part of the lien means they are not part of the super priority lien. The question then becomes what can be included as part of the super priority lien. Prior to 2009, the super priority lien was limited to 6 months of assessments. In 2009, the Nevada legislature changed the 6 months of

assessments to 9 months and added expenses for abatement under NRS 116.310312 to the super priority lien amount. But to the extent federal law applicable to the first security interest limits the super priority lien, the super priority lien is limited to 6 months of assessments.

The emphasized language in the portion of the statute above identifies the portion of the association's lien that is prior to the first security interest, i.e. what comprises the super priority lien. This language states that there are two components to the super priority lien. The first is "to the extent of any charges" incurred by the association pursuant to NRS 116.310312. NRS 116.310312(4) makes clear that the charges assessed against the unit pursuant to this section are a lien on the unit and subsection (6) makes it clear that such lien is prior to first security interests. These costs are also specifically part of the lien described in NRS 116.3116(1) incorporated through NRS 116.3102(1)(j). This portion of the super priority lien is specific to charges incurred pursuant to NRS 116.310312. Payment of those charges relieves their super priority lien status. There does not seem to be any confusion as to what this part of the super priority lien is. Analysis of the super priority lien will focus on the second portion.

A. THE SUPER PRIORITY LIEN ATTRIBUTABLE TO ASSESSMENTS IS LIMITED TO 9 MONTHS OF ASSESSMENTS AND CONSISTS ONLY OF ASSESSMENTS.

The second portion of the super priority lien is "to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien."

The statute uses the language "to the extent of the assessments" to illustrate that there is a limit on the amount of the super priority lien, just like the language concerning expenses pursuant to NRS 116.310312, but this portion concerns assessments. The limit on the super priority lien is based on the assessments for

common expenses reflected in a budget adopted pursuant to NRS 116.3115 which would have become due in 9 months. The assessment portion of the super priority lien is no different than the portion derived from NRS 116.310312. Each portion of the super priority lien is limited to the specific charge stated and nothing else.

Therefore, while the association's *lien* may include any penalties, fees, charges, late charges, fines and interest charged pursuant to NRS 116.3102 (1) (j) to (n), inclusive, the total amount of the *super priority lien* attributed to assessments is no more than 9 months of the monthly assessment reflected in the association's budget. Association budgets do not reflect late charges or interest attributed to an anticipated delinquent owner, so there is no basis to conclude that such charges could be included in the super priority lien or in addition to the assessments. Such extraneous charges are not included in the association's super priority lien.

NRS 116.3116 originally provided for 6 months of assessments as the super priority lien. Comments to the Uniform Act quoted previously support the conclusion that the original intent was for 6 months of the assessments alone to comprise the super priority lien amount and not the penalties, charges, or interest. It is possible that an argument could be made that the language is so clear in this regard one should not look to legislative intent. But considering the controversy surrounding the meaning of this statute, the better argument is that legislative intent should be used to determine the meaning.

The Commission's advisory opinion of December 2010 concluded that assessments *and* additional costs are part of the super priority lien. The Commission's advisory opinion relies in part on a Wake Forest Law Review⁸ article from 1992 discussing the Uniform Act. This article actually concludes that the Uniform Act language limits the

⁸ See James Winokur, *Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Interest Ownership Act*, 27 WAKE FOREST L. REV. 353, 366-69 (1992).

amount of the super priority lien to 6 months of assessments, but that the super priority lien does not necessarily consist of only delinquent assessments.⁹ It can include fines, interest, and late charges.¹⁰ The concept here is that all parts of the lien are prior to a first security interest and that reference to assessments for the super priority lien is only to define a specific dollar amount.

The Division disagrees with this interpretation because of the unreasonable consequences it leaves open. For example, a unit owner may pay the delinquent assessment amount leaving late charges and interest as part of the super priority lien. If the super priority lien can encompass more than just delinquent assessments in this situation, it would give the association the right to foreclose its lien consisting only of late charges and interest prior to the first security interest. It is also unreasonable to expect that fines (which cannot be foreclosed generally) survive a foreclosure of the first security interest. Either the lender or the new buyer would be forced to pay the prior owner's fines. The Division does not find that these consequences are reasonable or intended by the drafters of the Uniform Act or by the Nevada Legislature. Even the 2008 revisions to the Uniform Act do not allow for anything other than assessments and costs incurred to foreclose the lien to be included in the super priority lien. Fines, interest, and late charges are not *costs* the association incurs.

In 2009, the Nevada Legislature revised NRS 116.3116 to expand the association's super priority lien. Assembly Bill 204 sought to extend the super priority lien of 6 months of assessments to 2 years of assessments.¹¹ The Commission's chairman, Michael Buckley, testified on March 6, 2009 before the Assembly Committee on Judiciary on A.B. 204 that the law was unclear as to whether the 6 month priority can

⁹ See *id.* at 367 (referring to the super priority lien as the "six months assessment ceiling" being computed from the periodic budget).

¹⁰ See *id.*

¹¹ See <http://leg.state.nv.us/Session/75th2009/Reports/history.cfm?ID=416>.

include the association's costs and attorneys' fees.¹² Mr. Buckley explained that the Uniform Act amendments in 2008 allowed for the collection of attorneys' fees and costs incurred by the association in foreclosing the assessment lien as part of the super priority lien. Mr. Buckley requested that the 2008 change to the Uniform Act be included in A.B. 204. Mr. Buckley's requested change to A.B. 204 to expand the super priority lien never made it into A.B. 204. Ultimately, A.B. 204 was adopted to change 6 months to 9 months, but commenting on the intent of the bill, Assemblywoman Ellen Spiegel stated:

Assessments covered under A.B. 204 are the regular monthly or quarterly dues for their home. I carefully put this bill together to make sure it did not include any assessments for penalties, fines or late fees. The bill covers the basic monies the association uses to build its regular budgets.

(emphasis added).¹³

It is significant that the legislative intent in changing 6 months to 9 months was with the understanding that no portion of that amount would be for penalties, fines, or late fees and that it only covers the basic monies associations use to build their regular budgets. It does make sense that a lien superior to a first security interest would not include penalties, fines, and interest. To say that the super priority lien includes more than just 9 months of assessments allows several undesirable and unreasonable consequences.

B. NEVADA HAS NOT ADOPTED AMENDMENTS TO THE UNIFORM ACT TO ALTER THE ORIGINAL INTENT OF THE SUPER PRIORITY LIEN.

The changes to the Uniform Act support the contention that only what is referenced as the super priority lien in NRS 116.3116(2) is what comprises the super priority lien. In 2008, § 3-116 of the Uniform Act was revised as follows:

¹² See Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-fifth Session, March 6, 2009 at 44-45.

¹³ See Minutes of the Senate Committee on Judiciary, Seventy-fifth Session, May 8, 2009 at 27.

SECTION 3-116. LIEN FOR ASSESSMENTS; SUMS DUE ASSOCIATION; ENFORCEMENT.

(a) The association has a statutory lien on a unit for any assessment levied ~~against~~ attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this [act], or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

~~(i)~~(1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances ~~which~~ that the association creates, assumes, or takes subject to; ;

~~(ii)~~(2) except as otherwise provided in subsection (c), a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and

~~(iii)~~(3) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(c) ~~A~~ The lien under this section is also prior to all security interests described in subsection (b)(2) clause (ii) above to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien. ~~This subsection~~ Subsection (b) and this subsection ~~does~~ do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [The A lien under this section is not subject to the provisions of [insert appropriate reference to state homestead, dower and curtesy, or other exemptions].]

Explaining the reason for the changes to these sections, the Uniform Act includes the following comments:

Associations must be legitimately concerned, as fiduciaries of the unit owners, that the association be able to collect periodic common charges from recalcitrant unit owners in a timely way. To address those concerns, the section contains these 2008 amendments:

First, subsection (a) is amended to add the cost of the association's reasonable attorneys fees and court costs to the total value of the association's existing 'super lien' – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; see C.G.S. Section 47-258(b). The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state.

The Uniform Act's amendment in 2008 is very telling about § 3-116's original intent. The comments state reasonable attorneys' fees and court costs are *added* to the super priority lien stating that it is currently 6 months of regular common assessments. The Uniform Act adds attorneys' fees and costs to subsection (a) which defines the association's lien. Those attorneys' fees and costs attributable to foreclosure efforts are also added to subsection (c) which defines the super priority lien amount.

If the association's lien ever included attorneys' fees and court costs as "charges for late payment of assessments" or if such sum was part of the super priority lien, there would be no reason to add this language to subsection (a) and (c). Or at a minimum, the comments would assert the amendment was simply to make the language more clear. It is also clear by the language that only what is specified as part of the super priority lien can comprise the super priority lien. The additional language defining the super priority lien provides for costs that are *incurred* by the association foreclosing the lien. This is further evidence that the super priority lien does not and never did consist of interest, fines, penalties or late charges. These charges are not incurred by the association and they should not be part of any super priority lien.

The Nevada Legislature had the opportunity to change NRS 116.3116 in 2009 and 2011 to conform to the Uniform Act. It chose not to. While the revisions under the

Uniform Act may make sense to some and they may be adopted in other jurisdictions, the fact of the matter is, Nevada has not adopted those changes. The changes to the Uniform Act cannot be insinuated into the language of NRS 116.3116. Based on the plain language of NRS 116.3116, legislative intent, and the comments to the Uniform Act, the Division concludes that the super priority lien is limited to expenses stemming from NRS 116.310312 and assessments as reflected in the association's budget for the immediately preceding 9 months from institution of an action to enforce the association's lien.

IV. "ACTION" AS USED IN NRS 116.3116 DOES NOT REQUIRE A CIVIL ACTION ON THE PART OF THE ASSOCIATION.

NRS 116.3116(2) provides that the super priority lien pertaining to assessments consists of those assessments "which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien." NRS 116.3116 requires that the association take action to enforce its lien in order to determine the immediately preceding 9 months of assessments. The question presented is whether this action must be a civil action.

During the Senate Committee on Judiciary hearing on May 8, 2009, the Chair of the Committee, Terry Care, stated with reference to AB 204:

One thing that bothers me about section 2 is the duty of the association to enforce the liens, but I understand the argument with the economy and the high rate of delinquencies not only to mortgage payments but monthly assessments. Bill Uffelman, speaking for the Nevada Bankers Association, broke it down to a 210-day scheme that went into the current law of six months. Even though you asked for two years, I looked at nine months, thinking the association has a duty to move on these delinquencies.

NRS 116 does not require an association to take any particular action to enforce its lien, but that it institutes "an action." NRS 116.31162 provides the first steps to foreclose the association's lien. This process is started by the mailing of a notice of delinquent

assessment as provided in NRS 116.31162(1)(a). At that point, the immediately preceding 9 months of assessments based on the association's budget determine the amount of the super priority lien. The Division concludes that this action by the association to begin the foreclosure of its lien is "action to enforce the lien" as provided in NRS 116.3116(2). The association is not required to institute a civil action in court to trigger the 9 month look back provided in NRS 116.3116(2). Associations should make the delinquent assessment known to the first security holder in an effort to receive the super priority lien amount from them as timely as possible.

ADVISORY CONCLUSION:

An association's lien consists of assessments, construction penalties, and fines. Unless the association's declaration provides otherwise, the association's lien also includes all penalties, fees, charges, late charges, fines and interest pursuant to NRS 116.3102(1)(j) through (n). While charges for late payment of assessments are part of the association's lien, "costs of collecting" as defined by NRS 116.310313, are not. "Costs of collecting" defined by NRS 116.310313 includes costs of collecting any *obligation*, not just assessments. Costs of collecting are not merely a charge for a late payment of assessments. Since costs of collecting are not part of the association's lien in NRS 116.3116(1), they cannot be part of the super priority lien detailed in subsection (2).

The super priority lien consists of two components. By virtue of the detail provided by the statute, the super priority lien applies to the charges incurred under NRS 116.310312 and up to 9 months of assessments as reflected in the association's regular budget. The Nevada Legislature has not adopted changes to NRS 116.3116 that were made to the Uniform Act in 2008 despite multiple opportunities to do so. In fact, the Legislative intent seems rather clear with Assemblywoman Spiegel's comments to A.B. 204 that changed 6 months of assessments to 9 months. Assemblywoman Spiegel stated that she "carefully put this bill together to make sure it did not include any

assessments for penalties, fines or late fees.” This is consistent with the comments to the Uniform Act stating the priority is for assessments based on the periodic budget. In other words, when the super priority lien language refers to 9 months of assessments, assessments are the only component. Just as when the language refers to charges pursuant to NRS 116.310312, those charges are the only component. Not in either case can you substitute other portions of the entire lien and make it superior to a first security interest.

Associations need to evaluate their collection policies in a manner that makes sense for the recovery of unpaid assessments. Associations need to consider the foreclosure of the first security interest and the chances that they may not be paid back for the costs of collection. Associations may recover costs of collecting unpaid assessments if there are proceeds from the association’s foreclosure.¹⁴ But costs of collecting are not a lien under NRS 116.310313 or NRS 116.3116(1); they are the personal liability of the unit owner.

Perhaps an effective approach for an association is to start with foreclosure of the assessment lien after a nine month assessment delinquency or sooner if the association receives a foreclosure notice from the first security interest holder. The association will always want to enforce its lien for assessments to trigger the super priority lien. This can be accomplished by starting the foreclosure process. The association can use the super priority lien to force the first security interest holder to pay that amount. The association should incur only the expense it believes is necessary to receive payment of assessments. If the first security interest holder does not foreclose, the association will maintain its assessment lien consisting of assessments, late charges, and interest. If a loan modification or short sale is worked out with the owner’s lender, the association is better off limiting its expenses and more likely to recover the assessments. Adding unnecessary costs of collection – especially after a short period of delinquency – can

¹⁴ NRS 116.31164.

make it all the more impossible for the owner to come current or for a short sale to close.

This situation does not benefit the association or its members.

The statements in this advisory opinion represent the views of the Division and its general interpretation of the provisions addressed. It is issued to assist those involved with common interest communities with questions that arise frequently. It is not a rule, regulation, or final legal determination. The facts in a specific case could cause a different outcome.

EXHIBIT 2

EXHIBIT 2

1 Q So you were familiar with this type of
2 request for an identification of delinquent HOA
3 payments?

4 A Correct.

5 Q And you have prepared, I'm sure, a number
6 of responses to this type of a question?

7 A Many.

8 Q Page 2, Mr. Marks, Page 2 indicates that
9 monthly dues applicable to the subject property are
10 \$164.47, right?

11 A For this particular unit. Shadow Wood has
12 various assessments.

13 Q Okay.

14 A They have different size units. So their
15 assessments are different.

16 Q For this particular unit, the subject
17 property, that is the assessment that would have
18 been applied monthly?

19 A That's the figure I got down there, I'm
20 going to assume that's it.

21 Q The next line indicates that the dues had
22 been paid through to November 31, 2011, correct?

23 A Paid 11/31/11 to '12 -- oh, that's --
24 yeah. They're paid through then. I believe that's
25 what that means. And the next payment is due in

1 12/01.

2 Q That was my next question --

3 A Yes --

4 Q -- the next payment was due on want
5 12/1/11? It indicates that there are delinquencies
6 of \$328.94?

7 A Correct.

8 Q And that the late charges of \$10 will
9 accrue after 15 days?

10 A Yes, that is correct. That is what the
11 late charges are.

12 Q And 15 days from what? Would it be from
13 the date of this?

14 A It's from the date -- no. It's 15 days
15 from -- when we send you out a statement, your
16 dues -- your assessments are due on the first of the
17 month. And we gave you 15 days. So it would be on
18 the 16th day actually. The computer automatically
19 puts on late charges.

20 Q In relation to this one, where it says,
21 "The next payment is due 12/1/2011", the late charge
22 would accrue on December 16th --

23 A Correct.

24 Q -- 2011?

25 Okay. The next line indicates, no

1 transfer fees to the HOA are owed?

2 A Right.

3 Q And then the next line says management
4 company followed by the amount \$300?

5 A That's the transfer fees. It's a new
6 owner set up fee.

7 Q So is that the same with every new owner?

8 A Everybody. Every association.

9 Q And that fee represents just a new owner
10 taking over?

11 A Yes. What we have to do in our office.

12 Q And that is paid to --

13 A Us directly.

14 Q Okay. Good. Is there a statement,
15 contract or any other document setting forth this
16 \$300 management fee?

17 A In our contract.

18 Q In your contract?

19 A With the association.

20 Q Perfect. The response goes on to say --
21 and there is a check -- that no dues have been
22 referred to a collection agency?

23 A No amount of dues have been set -- at this
24 point, no.

25 Q Okay. And I guess my next question is --

1 maybe you already answered it. Okay. But I'm not
2 clear: Can MP refer an account to collection on
3 behalf of Shadow Wood? Does MP have that right?

4 A We -- yeah. Per the collection policy we
5 have the right because we're following the
6 collection policy of the association.

7 Q Got you. Does MP refer past due accounts
8 to collection on a regular basis?

9 A Almost every month, unfortunately.

10 Q I think you already answered this. My
11 question was: At what point is an account referred
12 to collection? I think you said it was two months,
13 right.

14 A It is after 60 days.

15 Q And according to the exhibits in front of
16 you, this account, this property, the HOA dues owed
17 by New York Community Bank, Corp. had not been
18 referred to collection?

19 A At that point.

20 Q And this also says there are no special
21 assessments due?

22 A At that time, there was not.

23 Q And then it identifies an insurance agent?

24 A Right.

25 Q Indicates that there is no sub or master

1 association, right?

2 A Correct.

3 Q Also indicates that no liens have been
4 filed?

5 A Correct.

6 Q And you're -- you have done this for a
7 number of years. You understood what a lien meant?

8 A Correct.

9 Q I think you wrote, need copy deed?

10 A Yes. What that means is that, when it's
11 transferred, the property transfers, we will not
12 make any changes until we get a grant deed.

13 Q Okay.

14 A Showing the new owner's name on it.

15 Q And again, that is your signature, right?

16 A Correct.

17 Q On Page 2, you wrote in the telephone
18 number and the address of MP at the time?

19 A Correct.

20 Q And that is your current address, correct?

21 A That is current.

22 Q And obviously, I'm assuming since you
23 signed this, that everything in it was true and
24 correct to the best of your knowledge?

25 A Correct.

1 Q And did you then send this or did someone
2 in --

3 A Well, it would be faxed over to Ticor
4 Title.

5 Q Above your signature on Page 2, it's in
6 small print so I apologize, but do you see where it
7 says, and I'm quoting, "Your response to the above
8 constitutes a demand", and it goes on and on --

9 A Right.

10 Q -- but do you see where I'm talking about?

11 A Yes.

12 Q And it also goes on to say, and I'm
13 quoting, "If any of the foregoing should change,
14 please call us with corrected information
15 immediately". Do you see that?

16 A Yes.

17 Q Is that pretty standard for these type of
18 request --

19 A Yes. This is a very standard form.

20 Q It's a form, right?

21 A It's a form.

22 Q It's a boiler plate?

23 A You got it.

24 Q And the please call us is all in caps --

25 A Yes.

1 needed to make them aware of.

2 Q Do you know whether, Mr. Marks, this
3 document, Exhibit 4 was attached to the documents
4 that you sent in response to our subpoena?

5 A I'm not sure. Like I said, I'm not sure
6 exactly what was sent. Other than the main
7 governing documents that I know was sent over.

8 Q You're not sure --

9 A This particular piece of paper or
10 anything -- we would give you anything that we had
11 in the file that was relevant to that.

12 Q I think you already answered the question,
13 Mr. Marks, but you don't recall that you would have
14 consulted with anyone before --

15 A Correct --

16 Q -- preparing Exhibit 4?

17 A Yes.

18 Q So I am going to hand you what has been
19 marked as Exhibit 5 to the deposition. Do you
20 recognize that document?

21 A That's the status report.

22 Q Exhibit 5 is the status report. Is that
23 something that MP prepares and generates?

24 A This comes out of our computers.

25 Q Is that what you -- earlier, you mentioned

1 A No, sir.

2 Q From your experience, Mr. Marks, has MP or
3 Shadow Wood HOA accepted partial payment from
4 owners?

5 A Yes. Payment plans, partial payments.

6 Q What are the circumstances, to your
7 knowledge, that allow for acceptance of a partial
8 payment instead proceeding with foreclosure, for
9 example?

10 A The board has the right to make the
11 decision.

12 Q But are there any circumstances that you
13 have encountered where that is -- where a partial
14 payment plan, for example, is accepted?

15 A My understanding, the boards allow the
16 trustee company to make payment arrangements and
17 take partial payments.

18 Q Okay. Would you say it's a relatively
19 common occurrence?

20 A Yes.

21 Q One more time, I'm going to ask you to go
22 back Exhibit 5, the ledger. And we're going to stay
23 on Page 1. And Page 1, it looks like there were a
24 number of credits applied in 2009. It looks like
25 there was a \$500 credit February 9, 2009. \$250 on

1 April 17, 2009 and \$500 July 2, 2009. First of all,
2 did I read those figures correctly?

3 A Correct.

4 Q Is it your understanding that these were
5 payments made by the former owner?

6 A Yes, because it's on her account.

7 Q And they were certainly accepted and
8 applied to the balance?

9 A Correct.

10 Q Now, between July 1st of 2008, according
11 to Exhibit 5, the ledger, on July 2, 2009 this
12 account always had a past due balance; didn't it?

13 A Well, up until -- well, June '08 is when
14 it had a zero balance -- actually, no. It had a --
15 it had a credit. It had a credit back in 3/19 of
16 '08, \$50 credit.

17 Q Right. Right. But my question was
18 between July 1, 2008 and July 2, 2009 --

19 A Okay.

20 Q -- there was always a past due balance,
21 correct?

22 A Correct.

23 Q Do you have any idea, as you sit here
24 today, why MP or Shadow Wood or Alessi Koenig
25 initiated HOA foreclosure proceedings during that

1 time period -- I'm sorry. Strike that.

2 Do you have any idea whether MP or
3 Shadow Wood initiated HOA foreclosure proceedings
4 during that time period, between July 1, 2008 and on
5 July 2, 2009?

6 A Well, on my I end, I don't see anything.

7 Q Would it be your impression, after having
8 reviewed Exhibit 5, the ledger, that the reason
9 foreclosure proceedings were not proceeded during
10 that time period is because the former owner was
11 making partial payments?

12 A Correct. I can't assume that there was a
13 payment plan or anything. It's just the way the
14 payments were coming in. That someone was making a
15 payment in that period of time. I don't know who
16 was making the payment because it was going to the
17 lock box.

18 Q Someone was making a payment?

19 A Correct.

20 Q And they were being credited?

21 A Correct.

22 Q Is it true, Mr. Marks, that MP received a
23 payment of \$6783.16 from New York Community Bancorp
24 in a check dated January 31, 2012 related to this
25 property?

1 A Correct.

2 Q Would you agree with me, Mr. Marks, after
3 reviewing the figures that we have gone through
4 today, that there are some significant discrepancies
5 in the amount of the HOA assessments that were
6 claimed?

7 A I cannot honestly say that. Because with
8 our statement is what we turned over. That is how
9 much that I know. Whatever they're saying is
10 something different, I can't -- I can't get into
11 that.

12 Q Well --

13 A I'm saying that our figures that we
14 produced on a ledger are true and correct.

15 Q But isn't it true that you also provided
16 the letter to Ticor --

17 A Yeah --

18 Q -- that indicated --

19 A Yes. That was my error. Evidently, that
20 was my error in somehow putting that figure down.
21 And I'm not quite sure where it came from to be
22 honest with you --

23 Q I understand --

24 A -- I really don't. I don't know.

25 Q I understand. You would agree with me,

EXHIBIT 3

EXHIBIT 3



December 28, 2011

Shadow Wood HOA FAX: 304-9458
C/O Mp Assoc Mgmt
8010 W Sahara Ste 160
Las Vegas, NV 89117

RE: Escrow No: 11142269TLC

Property Owner: Bank New York Community
Property Address: 3923 Gogo Way #109, Las Vegas, NV 89103

Gentlemen:

Ticor Title of Nevada, Inc. is the escrow agent for the sale and purchase of the above referenced property. The seller in the transaction acquired the property via a non-judicial foreclosure by the beneficiary of the first deed of trust.

As escrow agent we are requesting herewith a demand which reflects all funds owed by OUR SELLER ONLY and not those funds which might have been owed by the prior owner of the subject property. Please also include TRANSFER FEES due the association for the TRANSFER OF ACCOUNT from the above referenced SELLER to the NEW PURCHASER. Ticor Title will not be responsible for any transfer fees that are not listed on the demand statement sent to us.

As we are sure you are aware, under traditional property law, the HOA's lien would be completely extinguished by a foreclosure of the first deed of trust, and the new property owner would not be responsible for any past assessments. However, under Nevada's "super priority" lien statute (NRS § 116.3116), a lien for assessment for delinquent "common expenses based on the periodic budget adopted by the association" will survive the foreclosure sale. This means that the new owner, in this case our seller, remains responsible for association dues, common area maintenance dues, etc. incurred up to nine (9) months prior to the foreclosure sale. Landscape violations, which are NOT an assessment for a common area, do not fall under the purview of the statute, do not have priority over the mortgage company's interest, and therefore do not survive the foreclosure sale and are not chargeable to the new owner.

We would anticipate that upon receipt of the funds owed pursuant to your demand, you will provide us with a Release of Lien. However, if you are unwilling to prepare such a release document, we have enclosed for your convenience, a RELEASE OF REAL PROPERTY FROM LIEN. If you will sign this document before a Notary Public and return it with your demand, we will assume the responsibility for recording same after payment of the amounts owed. This document will release the subject property from the lien but WILL NOT release any rights or claims which you may legally have against the former owner.

If you should have any questions regarding this matter, please do not hesitate to contact the undersigned.

Sincerely,

Tami Coop
Escrow Officer

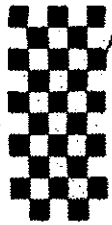
THE ABOVE INFORMATION HAS BEEN PROVIDED BY:

YOUR NAME: J. Marks TELEPHONE NO.: 304-9455

MAIL CHECKS TO:

Mp Assoc Mgmt
6029 S. 7th Apache #130
Las Vegas NV 89148

PLEASE RETURN VIA FAX TO: (702) 938-8771



12/28/2011/WED 01:21 AM

P. 001/002

DEC. 28. 2011 1:10PM

TICOR TITLE OF NEVADA

NO. 7193 P. 2



December 28, 2011

Shadow Wood HOA FAX: 304-9458
C/O Mgr Assoc Mgmt
8010 W Sahara Ste 160
Las Vegas, NV 89117

RE: Escrow No: 11142269TLC

Property Owner: Bank New York Community
Property Address: 3923 Gogo Way #109, Las Vegas, NV 89103

Dear Sir/Madam:

With reference to the above, we have a pending transaction which, if complete, will require the following information regarding the Homeowners dues:

MONTHLY QUARTERLY YEARLY DUES \$ 164.47
PAID TO 11-31-11 NEXT PAYMENT DUE 12-01-11
DELINQUENCIES (IF ANY) \$ 328²⁴ LATE CHARGES \$ 10⁰⁰ AFTER 15 Days
TRANSFER FEE: HO ASSN. \$ 0 MANAGEMENT CO. \$ 300⁰⁰

NO AMOUNT OR NO DUES HAVE BEEN SENT TO ANY COLLECTION AGENCY

A PORTION OF THIS ACCOUNT HAS BEEN SENT TO COLLECTIONS. OUR COLLECTION AGENCY IS:

SPECIAL ASSESSMENTS none

BLANKET INSURANCE AGENT Brown + Brown Insurance

IS THERE A SUB-ASSOCIATION OR MASTER ASSOCIATION?: no

ANY LIENS FILED? no

ADDITIONAL REQUIREMENTS FOR THE NEW PROPERTY OWNER, IF ANY:
need copy deed

Your response to the above constitutes a DEMAND on our escrow and will be complied with accordingly; therefore, if any of the foregoing should change, PLEASE CALL US WITH CORRECTED INFORMATION IMMEDIATELY.

If your Association has "FIRST RIGHT OF REFUSAL" or "RIGHT TO APPROVE ANY PROPOSED BUYER" or any similar rights, this letter will serve to comply with the provision that your Association be notified. If our escrow is not served with written notice of your Association's intention to exercise those rights herein above set forth, on or before TEN (10) days from the date of this notice, your silence will be deemed evidence of your approval of the sale, and waiver of those rights for this transaction. In the event you should require information concerning the pending sale which is the subject of this escrow, you may wish to contact Tami Coop at (702) 938-8770.

THE ABOVE INFORMATION HAS BEEN PROVIDED BY:

YOUR NAME: [Signature] TELEPHONE NO: 304-9455

MAIL CHECKS TO: Mp Assoc Mgmt
6029 S. 7th Apache #130
Las Vegas Nev 89148

PLEASE RETURN VIA FAX TO: (702) 938-8771

EXHIBIT 4

EXHIBIT 4

Inst #: 201110130001665
Fees: \$14.00
N/C Fee: \$0.00
10/13/2011 09:49:20 AM
Receipt #: 945349
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: MAT Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 100
Las Vegas, Nevada 89147
Phone: 702-222-4033

A.P.N. 162-18-613-029

Trustee Sale No. 12668-3923-109

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is \$6,608.34 as of August 29, 2011 and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: Shadow Wood Homeowners' Association, Inc, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on July 7, 2011 as document number 2436, of Official Records in the County of Clark, State of Nevada. Owner(s): BANK NEW YORK COMMUNITY, of Unit 109, as per map recorded in Book 33, Pages 44, as shown on the Condominium Plan, Recorded on as document number Pending as shown on the Subdivision map recorded in Maps of the County of Clark, State of Nevada. PROPERTY ADDRESS: 3923 Gogo Wy #109, Las Vegas, NV 89103. If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated July 7, 2011, executed by Shadow Wood Homeowners' Association, Inc to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: August 29, 2011


Naomi Eden, Alessi & Koenig, LLC on behalf of Shadow Wood Homeowners' Association, Inc

EXHIBIT 5

EXHIBIT 5

4-1

Inst #: 201105240003017
Fees: \$16.00 N/C Fee: \$0.00
RPTT: \$234.60 Ex: #
05/24/2011 11:52:46 AM
Receipt #: 787078
Requestor:
PASION TITLE SERVICES
Recorded By: SCA Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

A.P.N. # 162-18-613-029

[RECORDING REQUESTED BY:]

First American Title Company *AS AN*
on Behalf of Trustee Corps *ACCOMMODATION*
ONLY.

[WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO:]

NEW YORK COMMUNITY BANK

1801 E. NINTH STREET

SUITE 200

CLEVELAND, OH 44114 THE UNDERSIGNED HEREBY AFFIRMS THAT
~~THERE IS NO~~ SOCIAL SECURITY NUMBER ████████ ED IN THIS DOCUMENT

37

[Space above this line for recorder's use only]

Trustee Sale No. NV08000227-10-1

Title Order No. 4459625

TRUSTEE'S DEED UPON SALE

The undersigned grantor declares:

- 1) The Grantee herein was the foreclosing beneficiary.
- 2) The amount of the unpaid debt together with costs was: **\$142,712.99**
- 3) The amount paid by the grantee at the trustee sale was: **\$45,900.00**
- 4) The documentary transfer tax is: **\$ 234.60**
- 5) Said property is in the city of: LAS VEGAS

and **MTC FINANCIAL INC. dba TRUSTEE CORPS**, herein called "Trustee", as Trustee (or as Successor Trustee) of the Deed of Trust hereinafter described, hereby grants and conveys, but without covenant or warranty, express or implied, to **NEW YORK COMMUNITY BANK**, herein called "Grantee", the real property in the County of Clark, State of Nevada, described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE APART HEREOF

This deed is made pursuant to the authority and powers given to Trustee (or to Successor Trustee) by law and by that certain Deed of Trust dated April 25, 2007, made to **VIRGINIA V. FEDEL, A WIDOW** and recorded on April 27, 2007, as Instrument No. 20070427-0004835 Book . Page . of Official Records in the office of the Recorder of Clark County, Nevada, Trustee (or Successor Trustee) having complied with all applicable statutory provisions and having performed all of his duties under the said Deed of Trust.

NEW YORK COMMUNITY BANK

1801 E. NINTH STREET

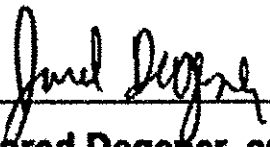
SUITE 200

CLEVELAND, OH 44114

All requirements of law and of said Deed of Trust relating to this sale and to notice thereof having been complied with. Pursuant to the Notice of Trustee's Sale, the above described property was sold by Trustee (or Successor Trustee) at public auction on 05/09/2011 at the place specified in said Notice, to Grantee who was the highest bidder therefor, for \$45,900.00 cash, in lawful money of the United States, which has been paid.

Dated: 05/09/2011

MTC FINANCIAL INC. dba TRUSTEE CORPS



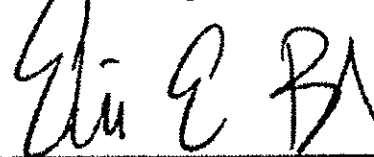
By: Jared Degener, as authorized signer

State of CALIFORNIA
County of ORANGE

On 5/23/11 before me, Elise E. Berg, a notary public personally appeared Jared Degener who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary Public in and for said County and State

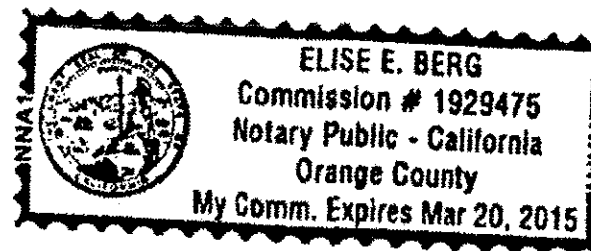


EXHIBIT "A"

PARCEL ONE (1):

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

PARCEL TWO (2):

AN UNDIVIDED 7.345% INTEREST IN AND TO THE COMMON AREA AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA ON DECEMBER 3, 1985, IN BOOK 2226 OF OFFICIAL RECORDS AS DOCUMENT NO. 2185340.

EXCEPTING THEREFROM THE FOLLOWING:

ALL LIVING UNITS AS SHOWN UPON THE MAP HEREINABOVE REFERRED TO AND AS DEFINED IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA ON DECEMBER 3, 1985 IN BOOK 2226 OF OFFICIAL RECORDS, AS DOCUMENT NO. 2185340.

AND FURTHER EXCEPTING THEREFROM:

THE EXCLUSIVE RIGHT TO POSSESSION OF ALL THOSE "RESTRICTED COMMON AREAS AND/OR EXCLUSIVE USE AREA", AS DEFINED IN THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, HEREINABOVE, REFERRED TO, AND AS SET FOR ON THE SUBDIVISION MAP OF SILVERADO VILLAS II.

PARCEL THREE (3):

THE EXCLUSIVE RIGHT TO POSSESSION AND OCCUPANCY OF THOSE PORTIONS OF THE COMMON AREAS, ABOVE DESCRIBED, DESIGNATED AS "RESTRICTED COMMON AREAS AND/OR EXCLUSIVE USE AREAS", AS APPURTENANT TO PARCEL ONE (1) AND TWO (2), ABOVE DESCRIBED, AS DELINEATED ON THE AFOREMENTIONED MAP AND AS DEFINED ON THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, HEREINABOVE REFERRED.

**STATE OF NEVADA
DECLARATION OF VALUE FORM**

1. Assessor Parcel Number(s)
a. 162-18-613-029
b. _____
c. _____
d. _____

2. Type of Property:
a Vacant Land b Single Fam. Res.
c Condo/Twnhse d 2-4 Plex
e Apt. Bldg f Comm'l/Ind'l
g Agricultural h Mobile Home
 Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. a. Total Value/Sales Price of Property \$45,900.00 price is cost + bid
b. Deed in Lieu of Foreclosure Only (value of property) (_____)
c. Transfer Tax Value: \$45,900.00 price is cost + bid
d. Real Property Transfer Tax Due \$ 234.60

4. **If Exemption Claimed:**
a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %
The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Janet Deegen Capacity Grantor (Trustee)
Signature Janet Deegen Capacity Grantee (Agent for Grantee)

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: TRUSTEE CORPS
Address: 17100 GILLETTE AVENUE
City: IRVINE
State: CA Zip: 92614

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: NEW YORK COMMUNITY BANK
Address: 1801 E. NINTH STREET
City: CLEVELAND
State: OH Zip: 44114

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name: FIRST AMERICAN NATIONAL Escrow #: 4459625
Address: DEFAULT TITLE
City: 3 FIRST AMERICAN WAY State: _____ Zip: _____
SANTA ANA, CA 92707

As a public record this form may be recorded/microfilmed