

CLERK OF THE COURT

1 **OPPM**
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10 Attorney for Appellant Gogo Way Trust

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 NEW YORK COMMUNITY BANK, ;

14 Plaintiff

15 vs.

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

18 Defendants

CASE NO.: A660328
DEPT. NO. XV

Date of hearing: September 25, 2013
Time of hearing: 9:00 a.m.

19 **DEFENDANT GOGO WAY TRUST'S OPPOSITION TO**
20 **MOTION FOR ATTORNEYS FEES**

21 Defendant/Counterclaimant Gogo Way Trust's opposes the plaintiffs motion for attorneys fees
22 as follows.

23 **POINTS AND AUTHORITIES**

24 Virtually, the entirety of the written opinion granting summary judgment in this case involves and
25 acts and omissions of co-defendant Shadow Wood Homeowners Association and it's attorneys Alessi &
26 Koenig. Defendant/counterclaimant Gogo Way Trust sole involvement in this litigation as the purchaser
27 of the subject real property at a foreclosure sale. Gogo Way Trust did not perform any of the acts or
28 omissions which led to this litigation. Any award of attorneys fees should be assessed against the co-
defendant and not Gogo Way Trust.

1 Gogo Way Trust has claimed protections as a bona fide purchaser. Although this court did find
2 that Gogo Way Trust was not a bona fide purchaser, those findings are not supported with any evidence
3 in this court's opinion.

4 In the case of Firato v. Tuttle, 48 Cal.2d 136, 308 P.2d 333 (1957), the California Supreme Court
5 stated:

6 Instruments which are wholly void cannot ordinarily provide the foundation for good title
7 even in the hands of an innocent purchaser, as where a deed has been forged or has not
8 been delivered. Trout v. Taylor, 220 Cal. 652, 656, 32 P.2d 968. It does not appear,
9 however, that section 870 of the Civil Code should necessarily make the unauthorized
10 reconveyance by a trustee void as to such a purchaser. Section 2243 of that code states:
11 'Everyone to whom property is transferred in violation of a trust, holds the same as an
12 involuntary trustee under such trust, unless he purchased it in good faith, and for a
13 valuable consideration.' (Emphasis added.) This section was also enacted in 1872 and has
14 been treated as correlative to section 870. Chapman v. Hughes, 134 Cal. 641, 657, 58 P.
15 298, 60 P. 974, 66 P. 982.

16 **The rule indicated by section 2243, which would protect innocent purchasers for**
17 **value who take without any notice that the conveyance by the trustee was**
18 **unauthorized, is in accord with the rule protecting such purchasers who acquire**
19 **their interests from one who holds a general power and who makes a conveyance for**
20 **an unauthorized purpose, see Alcorn v. Buschke, 133 Cal. 655, 66 P. 15, and cases**
21 **cited, or from a trustee under a secret trust. Ricks v. Reed, 19 Cal. 551; Rafferty v.**
22 **Kirkpatrick, 29 Cal.App.2d 503, 508, 85 P.2d 147; Civil Code, s 869. The protection of**
23 **such purchasers is consistent 'with the purpose of the registry laws, with the settled**
24 **principles of equity, and with the convenient transaction of business.' Williams v.**
25 **Jackson, 107 U.S. 478, 484, 2 S.Ct. 814, 819, 27 L.Ed. 529. It also finds support in the**
26 **better reasoned cases from other jurisdictions which have dealt with similar**
27 **problems upon general equitable principles and in the absence of statutory**
28 **provisions. Simpson v. Stern, 63 App.D.C. 161, 70 F.2d 765, certiorari denied 292**
U.S. 649, 54 S.Ct. 859, 78 L.Ed. 1499; Williams v. Jackson, supra, 107 U.S. 478, 2 S.Ct.
814; Town of Carbon Hill v. Marks, 204 Ala. 622, 86 So. 903; Lennartz v. Quilty, 191 Ill.
174, 60 N.E. 913; Millick v. O'Malley, 47 Idaho 106, 273 P. 947; Day v. Brenton, 102
Iowa 482, 71 N.W. 538; Willamette Collection & Credit Service v. Gray, 157 Or. 79, 70
P.2d 39; Locke v. Andrasko, 178 Wash. 145, 34 P.2d 444.

23 As section 2243 of the Civil Code must be read with section 870 of the same code and
24 because of the obvious desirability of protecting innocent purchasers for value who rely
25 in good faith upon recorded instruments under the circumstances presented here, we
26 conclude that plaintiffs were required to plead that respondents were not such innocent
27 purchasers for value in order to state a cause of action against them. In the absence of such
28 allegations, the trial court properly sustained respondents' demurrers to plaintiffs' first
amended complaint.

27 The burden of proof to prove that the purchaser was not a bona fide purchaser lies on the party
28 challenging the sale. In re Farmer's Market 22 B.R. 71, (9th Cir. BAP 1982).

The bona fide purchaser doctrine protects a purchaser's title against competing legal or equitable claims of which the purchaser had no notice at the time of the conveyance. See 25 Corp., Inc. v. Eisenman Chemical Co. 101 Nev. 664, 709 P.2d 164 (1985). As far back as 1880, the Nevada Supreme Court, in the case of Moresi v. Swift 15 Nev. 215 (1880) stated:

The rule that a man who advances money bona fide and without notice, will be protected in equity, applies equally to real estate, chattels, and personal estate.

The plaintiff's status of a bona fide purchaser protects the plaintiff from the defendant's claim that the defendant tendered the cure amount to the trustee but was rejected.

The court's findings do not set forth any acts or omissions on the part of Gogo Way Trust, only Shadow Wood Homeowners Association and its law firm. Any attorneys fees in this case should be assessed against the party whose actions caused the damage, not the innocent purchaser.

DATED this 20th day of September, 2013.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
Michael F. Bohn, Esq.
376 E. Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
Attorney for Gogo Way Trust

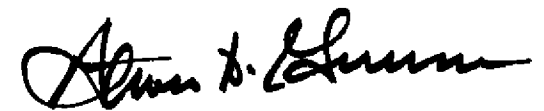
1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that on the 20th day of September 2013, I served a photocopy of the
3 foregoing by placing the same in a sealed envelope with first-class postage fully prepaid thereon and
deposited in the United States mails addressed as follows:

4 Gregg A. Hubley, Esq.
Pite Duncan, LLP
5 701 E. Bridger Ave # 700
Las Vegas, NV 89101
6

ALESSI & KOENIG, LLC
Ryan Kerbow, Esq.
Alessi & Koenig,
9500 W. Flamingo, Ste. 205
Las Vegas, NV 89147

7
8 /s/ /Esther Maciel-Thompson/
9 An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
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CLERK OF THE COURT

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

Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

DISTRICT COURT

CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK,

Plaintiff,

v.

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

Defendants.

Case No.: A-12-660328-C

Dept. No.: XV

JUDGMENT

Date of Hearing: September 23, 2013

Time of Hearing: In Chambers

GOGO WAY TRUST,

Counterclaimant,

v.

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

Counterdefendants.

JUDGMENT

This matter having come on for hearing in Chambers on September 23, 2013, in Department XV of the above-entitled Court, before the Honorable Abbi Silver, District Court Judge, on Plaintiff's Motion for Attorney's Fees and Supplemental Memorandum in Support thereof. The Court having reviewed and considered the pleadings on file herein, and the moving papers, including the Plaintiff's Memorandum in Support of Attorney's Fees, Defendant GOGO WAY TRUST'S Opposition thereto, and Plaintiff's Reply to GOGO WAY TRUST'S Opposition:

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for
2 Attorney's Fees filed by Plaintiff, NEW YORK COMMUNITY BANK, is GRANTED in its entirety
3 for the reasons set forth in Plaintiff's Memorandum in Support of Attorney's Fees and Plaintiff's
4 Reply to Defendant GOGO WAY TRUST'S Opposition to Motion for Attorney's Fees, as the
5 Plaintiff has established that the fees requested and awarded are reasonable pursuant to Brunzell v.
6 Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969);

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff recover from
8 Defendants, SHADOW WOOD HOMEOWNERS' ASSOCIATION, INC., and GOGO WAY
9 TRUST, the sum of \$41,130.00, with interest thereon at a rate equal to the prime rate of the largest
10 bank in Nevada, and adjusted January 1 and July 1, plus two percent (2%). The amount of
11 \$41,130.00 is hereby reduced to judgment in Plaintiff's favor and against the Defendants, SHADOW
12 WOOD HOMEOWNERS' ASSOCIATION, INC. and GOGO WAY TRUST, and Defendants shall
13 be jointly and severally liable therefor; and

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that attorney's fees shall
15 continue to accrue at the maximum legal rate, from the entry of judgment forward until paid in full
16 and that this judgment may be augmented in the amount of said attorney's fees expended in
17 collecting said judgment by execution or otherwise.

18
19 
DISTRICT COURT JUDGE Abby Silver
9-30-13

20 Respectfully Submitted by:

21 PITE DUNCAN, LLP

22 
23 GREGG A. HUBLEY

24 ANTHONY R. SASSI

25 PITE DUNCAN, LLP

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27 Las Vegas, Nevada 89101

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1 **NEOJ**

GREGG A. HUBLEY (NV Bar #007386)

2 ANTHONY R. SASSI (NV Bar #012486)

PITE DUNCAN, LLP

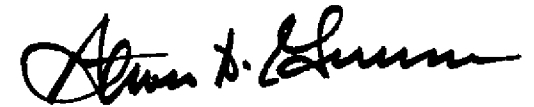
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CLERK OF THE COURT

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.

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

Case No.: A-12-660328-C

Dept. No.: XV

NOTICE OF ENTRY OF JUDGMENT

25 **NOTICE OF ENTRY OF JUDGMENT**

26 PLEASE TAKE NOTICE that a Judgment was entered in the above-entitled matter on the

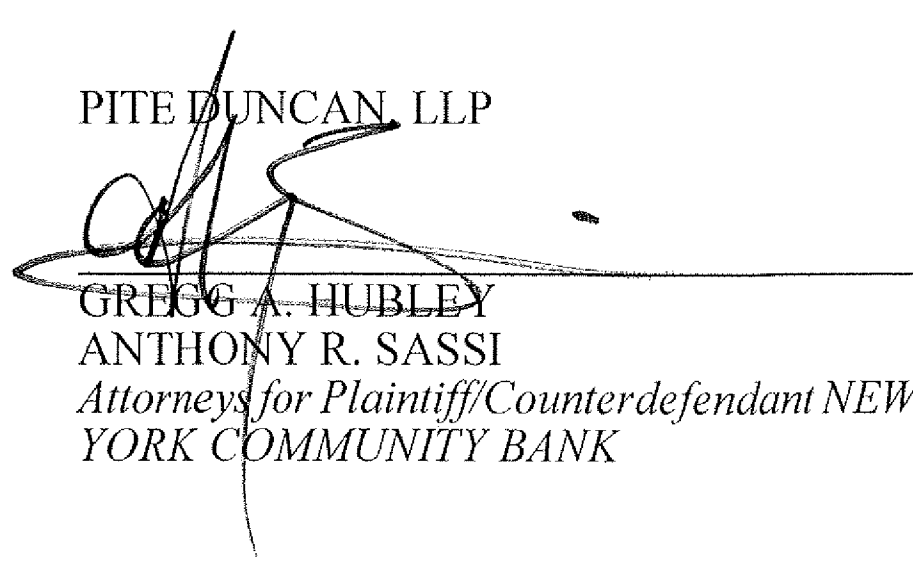
27 9th day of October, 2013.

28 /././

1 A true and correct copy of said Judgment is attached hereto as Exhibit 1.

2 DATED this 10th day of October, 2013.

3 PITE DUNCAN, LLP

4
5  GREGG A. HUBLEY

6 ANTHONY R. SASSI

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

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 October 10, 2013, I served the following document(s):

7 **NOTICE OF ENTRY OF JUDGMENT**

8 on the parties in this action addressed as follows:

9 Michael F. Bohn
10 **LAW OFFICES OF MICHAEL F. BOHN**
11 376 East Warm Springs Road, Suite 125
12 Las Vegas, Nevada 89119
13 *Attorney for Defendant Gogo Way Trust*

Bradley Bace, Esq.
ALESSI & KOENIG, LLC
9500 West Flamingo Road, Suite 205
Las Vegas, Nevada 89147
*Attorneys for Defendant Shadow Wood
Homeowners' Association, Inc.*

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.

16 **BY ELECTRONIC MAIL:** I electronically mailed the above-described document to the
17 email address above.

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 10th day of October 2013, at Las Vegas, Nevada.

25
26 
27 NICOLE L. SCHLANDERER
28

EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

JUDGE
GREGG A. HUBLEY (NV Bar #007386)
PITE DUNCAN, LLP
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Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

DISTRICT COURT

CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK,

Plaintiff,

v.

SHADOW WOOD HOMEOWNERS'
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and DOES 1 through 20, inclusive,

Defendants.

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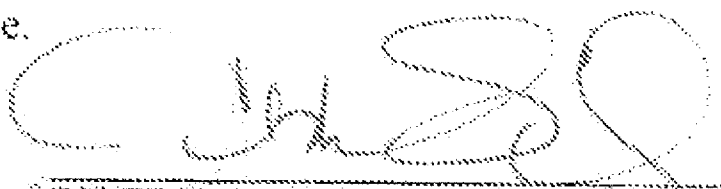
JUDGMENT

This matter having come on for hearing in Chambers on September 23, 2013, in Department XV of the above-entitled Court, before the Honorable Abbi Silver, District Court Judge, on Plaintiff's Motion for Attorney's Fees and Supplemental Memorandum in Support thereof. The Court having reviewed and considered the pleadings on file herein, and the moving papers, including the Plaintiff's Memorandum in Support of Attorney's Fees, Defendant GOGO WAY TRUST'S Opposition thereto, and Plaintiff's Reply to GOGO WAY TRUST'S Opposition:

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion for
2 Attorney's Fees filed by Plaintiff, NEW YORK COMMUNITY BANK, is GRANTED in its entirety
3 for the reasons set forth in Plaintiff's Memorandum in Support of Attorney's Fees and Plaintiff's
4 Reply to Defendant GOGO WAY TRUST'S Opposition to Motion for Attorney's Fees, as the
5 Plaintiff has established that the fees requested and awarded are reasonable pursuant to Brunzell v.
6 Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (1969);

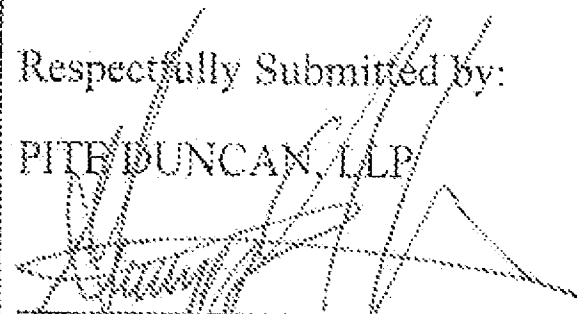
7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff recover from
8 Defendants, SHADOW WOOD HOMEOWNERS' ASSOCIATION, INC., and GOGO WAY
9 TRUST, the sum of \$41,130.00, with interest thereon at a rate equal to the prime rate of the largest
10 bank in Nevada, and adjusted January 1 and July 1, plus two percent (2%). The amount of
11 \$41,130.00 is hereby reduced to judgment in Plaintiff's favor and against the Defendants, SHADOW
12 WOOD HOMEOWNERS' ASSOCIATION, INC. and GOGO WAY TRUST, and Defendants shall
13 be jointly and severally liable therefor; and

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that attorney's fees shall
15 continue to accrue at the maximum legal rate, from the entry of judgment forward until paid in full
16 and that this judgment may be augmented in the amount of said attorney's fees expended in
17 collecting said judgment by execution or otherwise.

18
19 
DISTRICT COURT JUDGE Abdul Silver
9-30-13

20 Respectfully Submitted by:

21 PITE DUNCAN, LLP

22 
23 GREGG A. HUBLEY

24 ANTHONY R. SASSI

25 PITE DUNCAN, LLP

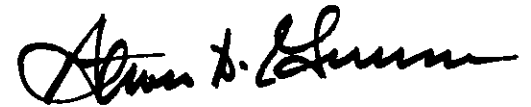
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CLERK OF THE COURT

SUPP

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Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

DISTRICT COURT

CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK,

Plaintiff,

v.

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

Defendants.

Case No.: A-12-660328-C

Dept. No.: XV

**PLAINTIFF'S MEMORANDUM IN
SUPPORT OF ATTORNEY'S FEES
AWARD**

Date of Hearing: September 25, 2013

Time of Hearing: 9:00 a.m.

GOGO WAY TRUST,

Counterclaimant,

v.

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

Counterdefendants.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF AWARD OF ATTORNEY'S FEES

COMES NOW Plaintiff/Counterdefendant, NEW YORK COMMUNITY BANK
(hereinafter, "Plaintiff" or "NYCB"), by and through its attorneys of record, PITE DUNCAN, LLP,
and respectfully submits its Supplemental Memorandum in Support of Award of Attorney's Fees.

1 This Memorandum is made and based upon the Points and Authorities attached hereto, the
2 exhibits attached hereto, the pleadings and papers on file herein, and any oral argument this Court
3 may entertain.

4 POINTS AND AUTHORITIES

5 I.

6 INTRODUCTION

7 This Court has determined that Defendants SHADOW WOOD HOMEOWNERS
8 ASSOCIATION ("Shadow Wood") and GOGO WAY TRUST ("Gogo Way Trust," and together
9 with Shadow Wood "Defendants") maintained their defenses and counterclaims against NYCB in
10 bad faith simply to harass NYCB. As a result the Court has ordered that NYCB is entitled to an
11 award of the attorney's fees it incurred after being forced to initiate and maintain litigation to recover
12 the property at issue ("Subject Property"). Pursuant to the Court's Order, the only issue left to be
13 decided is the amount of attorney's fees that NYCB should be awarded under the factors articulated
14 in *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969). (Order on Plaintiff's
15 Motion for Attorney's Fees, attached hereto as Ex. "1") The Court requested specific information
16 as to the break-down of attorney's fees incurred by NYCB, and that information is provided herein.

17 The *Brunzell* factors favor an award to NYCB of the full amount of attorney's fees it incurred
18 in litigation to reclaim the Subject Property. Foundationally, NYCB is entitled to recover the full
19 amount of attorney's fees incurred because it should never have been necessary to initiate this
20 litigation in the first place. Shadow Wood's foreclosure sale ("HOA Foreclosure"), was, at best, a
21 result of grossly negligent actions by Shadow Wood and its foreclosure trustee, which were
22 seemingly unable to work together to obtain an accurate accounting of the legitimate fees and costs
23 that Shadow Wood was seeking for its asserted lien. These entities were likewise unable or
24 unwilling to communicate the amounts to NYCB, the owner of the property. At worst, the HOA
25 Foreclosure was a bi-product of intentional bad faith, as the undisputed facts illustrated that the HOA
26 repeatedly changed the amount of its asserted HOA lien (even admittedly using amounts that had
27 been wiped out by NYCB's foreclosure of the Subject Property) and ultimately refused to accept
28 payment from NYCB that constituted four times (4x) more than the HOA was legitimately entitled

1 to collect as a super-priority lien. Ultimately, NYCB had no option other than to initiate this
2 litigation and incur all the attendant attorney's fees. Fortunately, it was able to resolve this litigation
3 as expeditiously as possible, through a motion for summary judgment, before incurring the additional
4 attorney's fees that would have become necessary had this case proceeded to trial. Unfortunately,
5 it was not able to avoid the attorney's fees required to respond to each of Defendant's meritless
6 defenses and counterclaims and obtain the facts necessary to move forward with the Motion for
7 Summary Judgment.

8 II.

9 ARGUMENT

10 A. THE AMOUNT OF FEES SOUGHT BY NYCB IS REASONABLE AND 11 APPROPRIATE.

12 When determining the reasonable value of an attorney's services, a court should consider the
13 following factors:

14 (1) the qualities of the advocate: his ability, his training, education, experience,
15 professional standing and skill; (2) the character of the work to be done: its difficulty,
16 its intricacy, its importance, time and skill required, the responsibility imposed and
17 the prominence and character of the parties where they affect the importance of the
litigation; (3) the work actually performed by the lawyer: the skill, time and attention
given to the work; (4) the result: whether the attorney was successful and what
benefits were derived.

18 *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349-50, 455 P.2d 31, 33 (1969). Here, each of the
19 *Brunzell* factors weighs in favor of awarding NYCB the full amount of its attorney's fees.

20 1. NYCB's Counsel Is Experienced and Skilled.

21 Counsel for NYCB, Pite Duncan, LLP ("Pite Duncan"), and lead attorney, Gregg A. Hubley,
22 Esq., have extensive experience advocating on behalf of creditors, particularly in relation to secured
23 interests in real property. Mr. Hubley received his Bachelor's Degree, *Magna Cum Laude*, in 1994,
24 and obtained his law degree from the University of Illinois College of Law, where he was a finalist
25 in a National Moot Court competition. He is the managing attorney of Pite Duncan's Las Vegas
26 office and is in his fourteenth (14th) year of practice in Nevada.

27 Mr. Hubley has handled dozens of litigated cases relating to homeowners associations liens
28 and the resulting foreclosure sale, and has years of experience in civil litigation involving secured

1 transactions. In addition to his practical experience, Mr. Hubley regularly presents at seminars on
2 legal issues related to real property, and has taught Continuing Legal Education classes specifically
3 on title issues, issues relating to foreclosure, and ethical considerations in foreclosure actions. He
4 has also authored published articles and has participated in many Nevada Supreme Court appeals
5 that resulted in published opinions. Pite Duncan and Mr. Hubley were particularly qualified to
6 represent NYCB in this matter. For its services, Pite Duncan charged NYCB an hourly rate of
7 \$225/per hour, an amount that is likely below the market value for similarly skilled and experienced
8 representation in Clark County, Nevada. (See, Billing Invoices, attached hereto as **Exhibit "2."**)¹

9 **2. The Issues Presented in this Litigation Were Complex and Involved**
10 **Undeveloped Areas of Law.**

11 The nature of the issues presented in this litigation were complex and involved the
12 interpretation and application of NRS 116.3116, with little guidance in the way of binding authority
13 interpreting the statute. As the Court is well aware, the central issues of this case involved the
14 application of the Super-Priority Lien, determining the amount of the Super-Priority Lien, and
15 whether a homeowners association must accept payment of the Super-Priority Lien by a lender
16 before proceeding to foreclosure sale. None of these questions have been addressed by the Nevada
17 Supreme Court. Developing arguments and drafting a Motion for Summary Judgment on these
18 topics required extensive research of un-reported cases, case law from other jurisdictions,
19 administrative opinions, and legislative history related to the enactment of NRS 116.3116.

20 Additionally, the facts of this particular case were convoluted. To fully understand the facts
21 and their impact on the application of law, NYCB had to understand the relationships and roles of
22

23 ¹ Plaintiff has attached partially redacted versions of invoices it has received from
24 Pite Duncan for services rendered in connection with this matter. In redacting
25 portions of the invoices, Plaintiff has attempted to balance the Court's need to
26 review detailed invoices for the work performed while omitting portions of the
27 invoices that contain attorney-client privileged communications. Consequently,
28 Plaintiff has redacted the portions of the invoices that identify the substance of
communications between NYCB and Pite Duncan. For reference in reviewing the
attached invoices, Beth Selmsenberger is an Executive Vice President of NYCB,
Samantha Joseph is In-House Counsel for NYCB, Sara Artino is the REO/Short
Sale Manager of NYCB, and Rowenna Souter is a Default Risk Assistant for
NYCB.

Shadow Wood, its management agent, the title company, and, most importantly, Alessi and Koenig with its tripartite role as attorney for Shadow Wood, attorney for Gogo Way Trust, and HOA Foreclosure Trustee. It was necessary to issue subpoenas to various third party entities (including the HOA's management company) and to depose the person most knowledgeable of the HOA's management company. It was likewise necessary to go through numerous contradictory statements and ledgers provided by the HOA, its management company, and its trustee/legal counsel. Before counsel could even begin to prepare NYCB's Motion for Summary Judgment, it had to unwind the events leading up to the HOA Foreclosure and determine each party's relative roles and responsibilities. The complex, intertwined relationships between the various entities involved, increased the time NYCB's counsel required to move forward with a dispositive Motion.

3. The Work Actually Performed by NYCB's Counsel Demonstrated Skill, Experience and Attention to Detail.

In evaluating the skill counsel demonstrated, the ultimate result (an order granting summary judgment and unwinding the HOA Foreclosure) is an important consideration. Achieving all of NYCB's goals through summary judgment is, at least in part, a result of the skill and diligence with which NYCB's counsel worked on this matter. It is respectfully submitted that the quality of the documents prepared and filed by the undersigned during the summary judgment proceeding (including a Motion for Summary Judgment, Supplemental Memorandum in Support of Summary Judgment, and Reply to the Defendants' Opposition) demonstrate the skill, time and attention that was given to the work. A more thorough review would reveal that the undersigned devoted the same attention to detail to the other documents prepared and filed in this matter, the review and analysis of the documents exchanged in discovery, and the deposition of Shadow Wood's managing agent.

In total, NYCB's counsel prepared for and attended several hearings before this Court. In total, counsel spent 163.6 hours resolving this case in NYCB's favor. (See, Ex. "2.")² In addition, counsel has spent an additional 14.5 hours preparing the current Motion for Attorney's Fees, reviewing Defendants' Opposition, drafting the Reply in support thereof, and drafting this

² The attached invoices also include charges for appellate work performed in connection with this matter. Those amounts have not been included in Plaintiff's calculation of the fees it has incurred.

1 Supplemental Memorandum. (Id.) NYCB's counsel also spent 4.6 hours to re-take possession of
2 the Subject Property, including contacting the tenant leasing the Subject Property from Gogo Way
3 Trust, contacting Gogo Way Trust's property management company, engaging in discussions with
4 Gogo Way's newly-retained counsel regarding the removal of the tenant, and coordinating the
5 tenant's departure. (Id.) In total, counsel spent 182.8 hours on this matter. Considering the amount
6 of time spent working on this matter, and the skill demonstrated by counsel, the resulting fees are
7 modest, if anything.

8 **4. Counsel's Efforts Resulted in Complete Victory.**

9 While no one factor is more important than any other, the fact that an attorney's efforts result
10 in complete success justifies awarding substantial attorney's fees. *See Prostack v. Songailo*, 97 Nev.
11 38, 40, 623 P.2d 978, 980 (1981); *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. As stated above, NYCB
12 recovered the Subject Property and, in doing so, avoided trial and the added costs associated with
13 trying this case. NYCB's counsel established that the HOA Foreclosure was conducted in bad faith
14 and demonstrated that Defendants had no reasonable basis on which to maintain their defenses.
15 Simply put, counsel's advocacy resulted in a complete vindication of NYCB's rights, and culminated
16 in this Court unwinding Shadow Wood's foreclosure sale. The work performed by NYCB's counsel
17 was reasonable, necessary, and helped NYCB once more take ownership and possession of the
18 Subject Property. In light of all of the above, an award of \$41,130.00 (182.8 hours x \$225/hour) is
19 reasonable, appropriate and warranted.

20 **III.**

21 **CONCLUSION**

22 Based upon the foregoing, it is respectfully requested that the Court award NYCB attorney's
23 fees in the amount of \$41,130.00.00, which should be reduced to judgment against Defendants,
24 jointly and severally.

25 DATED this 12th day of August, 2013.

26 PITE DUNCAN, LLP

27 GREGG A. HUBLEY

28 Attorneys for Plaintiff/Counterdefendant NEW
YORK COMMUNITY BANK

1 Shadow Wood HOA v. NYCB, et al.
Nevada Supreme Court
2 **Case No.: 63380**

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 August 12, 2013, I served the following document(s):

7 **PLAINTIFF'S MEMORANDUM IN SUPPORT OF ATTORNEY'S FEES AWARD**

8 on the parties in this action addressed as follows:

9 Michael F. Bohn
10 **LAW OFFICES OF MICHAEL F. BOHN, LTD.**
376 East Warm Springs Road. Suite 125
Las Vegas, Nevada 89119
11 *Attorney for Defendants*

12 ☒ **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
13 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
14 cancellation date or postage meter date is more than one day after date of deposit for mailing
in affidavit.

15 _____ **BY ELECTRONIC MAIL:** I electronically mailed the above-described document to the
16 email address above.

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

19 _____ **BY FEDERAL EXPRESS:** I placed a true copy in a sealed Federal Express envelope
20 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
21 deposited with Federal Express this date for overnight delivery.

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

23 Executed this 12th day of August 2013, at Las Vegas, Nevada.

24
25 
NICOLE L. SCHLANDERER
26
27
28

EXHIBIT 1

EXHIBIT 1

1 **ORDR**

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: Ghubley@piteduncan.com

6 Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK.

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.

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.

Case No.: A-12-660328-C

Dept. No.: XV

**ORDER ON PLAINTIFF'S MOTION
FOR ATTORNEY'S FEES**

Date of Hearing: June 10, 2013

Time of Hearing: In Chambers

25 **ORDER ON PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**

26 This matter having come on for hearing in Chambers on June 10, 2013, in Department XXV
27 of the above-entitled Court before the Honorable Abbi Silver, on Plaintiff's Motion for Attorney's

28 /././

1 Fees. The Court having reviewed and considered the pleadings on file herein and the moving papers,
2 and finding the Plaintiff's arguments to have merit, enters the following findings:

3 **FINDINGS OF FACT**

4 **THE COURT HEREBY FINDS** that Defendants' had no reasonable ground up which to
5 base their defense and, further, their conduct was indicative of bad faith and an attempt to harass the
6 Plaintiff.

7 **THE COURT FURTHER FINDS** that Defendants' based their entire defense on an
8 erroneous interpretation of Nevada Revised Statute ("NRS") 116.3116.

9 **THE COURT FURTHER FINDS** that Defendant, SHADOW WOOD HOMEOWNERS
10 ASSOCIATION ("Shadow Wood"), exhibited bad faith by failing to provide the Plaintiff with an
11 accurate accounting of the lien amounts that Plaintiff was attempting to pay in order to protect its
12 interest in the Subject Property, and rejecting a payment that far exceeding the assessments Shadow
13 Wood was entitled to collect under NRS 116.3116 from Plaintiff.

14 **THE COURT FURTHER FINDS** that an award of attorney's fees is appropriate, and with
15 respect to the award of Plaintiff's attorney's fees, the Motion is GRANTED.

16 **CONCLUSIONS OF LAW**

17 NRS18.010 permits an award of attorney's fees "when the court finds that the claim or
18 defense of the opposing party was brought or maintained without reasonable ground or to harass the
19 prevailing party." When determining the reasonableness of fees, the court is to consider the qualities
20 of the advocate, the character of the work to be done, the work actually performed, and the result of
21 that work. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

22 Based thereon, the Court concludes that Defendants maintained a defense in this action that
23 was not based on any sound legal reasoning, but rather was calculated to abuse the judicial process
24 in an attempt to lengthen the proceedings and avoid a final judgment.

25 /././

26 /././

27 /././

28 /././

1 Thereupon, the Court being fully advised in these premises, hereby enters the following
2 Orders:

3 **ORDER**

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Attorney's Fees is GRANTED in
5 part and CONTINUED for further briefing to ascertain the amount of the attorney's fees award
6 pursuant to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

7 **IT IS FURTHER ORDERED** that this matter is continued to September 25, 2013, for
8 hearing at 9:00 a.m.

9 **IT IS FURTHER ORDERED** that Plaintiff is directed to submit detailed invoices for the
10 Court to allow for an adequate evaluation of the *Brunzell* factors, no later than August 12, 2013, at
11 5:00 p.m.

12 **IT IS FURTHER ORDERED** that Defendants are directed to file any opposition to the
13 nature and amount of fees sought no later than September 3, 2013,

14 DATED this ____ day of August, 2013.

15
16 DISTRICT COURT JUDGE

17 Respectfully Submitted by:

18 PITE DUNCAN, LLP

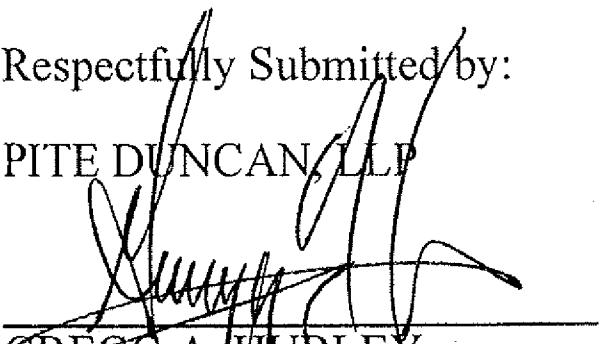
19
20 
21 GREGG A. HUBLEY
22 ANTHONY R. SASSI
23 Attorneys for Plaintiff
24
25
26
27
28

EXHIBIT 2

EXHIBIT 2

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

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San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bancorp, Inc.

Samantha Joseph

1111 Chester Avenue

Cleveland, OH 44114

Statement Date:

May 22, 2012

Closing Date:

April 30, 2012

Invoice Number:

4210754

Matter ID:

000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees			Hours	Rate	Amount
4/4/2012	LIH	Analyze message recommending complaint for judicial foreclosure as well as approval to proceed with filing the judicial action seeking to set aside the prior HOA foreclosure sale.	0.30	225.00	67.50
4/4/2012	GAH	Analyzed e-mails from S. Joseph and S. Salupo re Prepared e-mail correspondence to S. Joseph and S. Salupo in	1.20	225.00	270.00
4/6/2012	CMT	Analyze e-mail exchanges with client, S. Joseph,	0.10	225.00	22.50
4/10/2012	CMT	Analyze Clark County Recorder's online database and recorded documents to determine outstanding liens/encumbrances and verify chain of title. Analyze communications with Defendants coordinating payoff amount. Analyze Nevada case law involving HOA Trustee, Alessi Koenig Prepare Complaint for Declaratory Relief and Quiet Title.	5.50	225.00	1,237.50
4/11/2012	GAH	Analyzed e-mail correspondence from S. Joe ; Analyzed Litigation Guarantee.	0.30	225.00	67.50
4/11/2012	CMT	Ongoing preparation of Complaint for Quiet Title and Declaratory Relief.	2.60	225.00	585.00
4/12/2012	CMT	Analyze litigation guarantee to identify Defendants with interest in Subject Property. Prepare Notice of Pendency of Action/Lis Pendens.	1.20	225.00	270.00
4/12/2012	GAH	Analyzed and revised Complaint to Quiet Title and for	1.20	225.00	270.00

E-Mail

APP001090

Declaratory Relief; Prepared e-mail correspondence to S. Joseph and B. Selmensberger

4/13/2012	CMT	Prepare response to client, S. Joseph regarding	0.50	225.00	112.50
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4/13/2012	GAH	Analyzed e-mail correspondence from S. Joseph re	0.20	225.00	45.00
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Analyzed and revised e-mail correspondence to S. Joseph re

4/16/2012	CMT	Analyzed Secretary of State records for information needed to effect service on GoGo Trust.	0.70	225.00	157.50
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4/16/2012	GAH	Analyzed e-mail correspondence from S. Joseph re Analyzed and revised Final Draft of Complaint Prepared e-mail correspondence to S. Joseph and B. Selmensberger re	0.40	225.00	90.00
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4/18/2012	GAH	Telephone conference with S. Joseph re	0.60	225.00	135.00
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Prepared note to file and coordinated acquisition of letter from HOA attorney; Finalized and executed Complaint for filing with Court; Analyzed e-mail from B. Selmensberger re

4/18/2012	CMT	Analyze and revise Lis Pendens. E-mail exchange with clients, S. Joseph and B. Selmensberger,	0.30	225.00	67.50
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4/19/2012	CMT	Prepare and execute Summons to the Complaint and Lis Pendens. Analyze miscellaneous document package received from B. Selmensberger.	1.00	225.00	225.00
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Sub-total Fees: 3,622.50

Rate Summary

Laurel I. Handley	0.30 hours at \$225.00/hr	67.50
Gregg A. Hubley	3.90 hours at \$225.00/hr	877.50
Crystal M. Tatco	11.90 hours at \$225.00/hr	2,677.50

Total hours: 16.10

E-Mail

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 3
Matter ID: 000338-000410

Expenses

4/5/2012	Westlaw Database Research.	75.00
4/11/2012	Document Retrieval - Obtain copies of recorded documents from County Recorder's office.	7.34
4/18/2012	Filing Fee.	281.60
4/20/2012	Litigation Guarantee.	438.30
4/20/2012	Filing Fee.	7.00

Sub-total Expenses: 809.24

Total Due on This Invoice: 4,431.74

Additional Invoices Outstanding On: May 22, 2012

Statement Number	Statement Date	Paid Amount	Balance
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Additional Billing Notes

E-mail

E-Mail

APP001092

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Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bancorp, Inc.

Samantha Joseph

1111 Chester Avenue

Cleveland, OH 44114

Statement Date:

June 18, 2012

Closing Date:

May 31, 2012

Invoice Number:

4213176

Matter ID:

000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees			Hours	Rate	Amount
5/9/2012	CMT	Analyze correspondence with Report to Court regarding status of service of process. Prepare e-mail to process server requesting Affidavit of Due Diligence due to failure to serve co-defendant, Gogo Way Trust.	0.20	225.00	45.00
5/10/2012	CMT	Telephone conference with opposing counsel, Ryan Kerbow, from Alessi Koenig regarding status of case.	0.20	225.00	45.00
5/10/2012	GAH	Analyzed issues relative to inability to serve Defendant GoGo Way and need for Affidavit of Due Diligence to allow for service by publication; Analyzed file to prepare for telephone conference with counsel for HOA, Alessi/Koenig, re attempt to settle; Telephone call to HOA counsel.	0.80	225.00	180.00
5/11/2012	CMT	Analyze Affidavit of Due Diligence provided by process server regarding attempts to serve Gogo Way Trust.	0.10	225.00	22.50
5/14/2012	GAH	Analyzed Answer filed by counsel for Defendant Shadow Wood HOA; Developed strategy re scheduling required Early Case Conference after service is effected on GoGo Way Trust, and coordinated preparation of update to client.	0.30	225.00	67.50
5/15/2012	CMT	Analyze Defendant Shadow Wood HOA's Answer to Complaint. Prepare status update to client regarding Prepare letter to opposing counsel, R. Kerbow, with estimated time frame of early case conference.	0.70	225.00	157.50
5/17/2012	CMT	Telephone conference with opposing counsel, R. Kerbow, requesting conformed copy of Answer to Complaint.	0.20	225.00	45.00
5/18/2012	CMT	E-mail exchange with opposing counsel, R. Kerbow, requesting copy of file stamped Answer.	0.10	225.00	22.50

E-Mail

APP001093

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 2
Matter ID: 000338-000410

5/18/2012	GAH	Analyzed e-mails exchanged with B. Selmsberger re	0.10	225.00	22.50
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Sub-total Fees: 607.50

Rate Summary

Gregg A. Hubley	1.20 hours at \$225.00/hr	270.00
Crystal M. Tatco	1.50 hours at \$225.00/hr	337.50
Total hours:	<u>2.70</u>	

Expenses

5/9/2012	Certified copy of Conformed Notice of Pendency of Action.	5.00
5/9/2012	Recording Certified Copy of Conformed Notice of Pendency of Action.	19.00
5/10/2012	Filing Fee.	7.00
5/23/2012	Summons & Complaint Service Fee - Shadow Wood Homeowner's Association.	105.00

Sub-total Expenses: 136.00

Total Due on This Invoice: 743.50

Additional Invoices Outstanding On: June 18, 2012

Statement Number	Statement Date	Paid Amount	Balance
4210754	May 22 2012	0.00	4431.74

Additional Billing Notes

E-mail 225

E-Mail

APP001094

Pite Duncan, LLP

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Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bancorp, Inc.

Samantha Joseph

1111 Chester Avenue

Cleveland, OH 44114

Statement Date:

July 23, 2012

Closing Date:

June 30, 2012

Invoice Number:

4215998

Matter ID:

000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees

			Hours	Rate	Amount
6/1/2012	CMT	Place telephone call to opposing counsel, R. Kerbow, to discuss file.	0.10	225.00	22.50
6/4/2012	CMT	Place telephone call to R. Kerbow regarding settlement of case.	0.10	225.00	22.50
6/5/2012	CMT	Place telephone call to R. Kerbow to discuss resolution of case.	0.10	225.00	22.50
6/6/2012	CMT	Telephone conference with R. Kerbow regarding case and possible settlement options. Prepare e-mail to R. Kerbow regarding scheduling of ECC after service has been effected upon Gogo Way Trust.	0.40	225.00	90.00
6/7/2012	GAH	Analyzed e-mails exchanged with opposing counsel re service on Gogo Way Trust, scheduling of Early Case Conference; Coordinated review of documents to produce in initial disclosure and identification of relevant witnesses; Analyzed e-mail correspondence from opposing counsel clarifying that it will represent Gogo Trust and will accept service.	0.20	225.00	45.00
6/7/2012	CMT	Multiple telephone conferences with R. Kerbow to determine if firm will represent Gogo Way Trust. E-mail exchange with R. Kerbow regarding representation of Gogo Way Trust and acceptance of service.	0.30	225.00	67.50
6/13/2012	CMT	E-mail exchange with client regarding status of case. Place telephone call to opposing counsel, R. Kerbow, regarding Gogo Way's willingness to settle suit.	0.20	225.00	45.00
6/14/2012	CMT	Telephone conference with R. Kerbow regarding schedule of Early Case Conference. Analyze and revise status update to client regarding Prepare and execute Notice of Early Case Conference.	0.50	225.00	112.50
6/21/2012	CMT	Analyze Affidavit of Service prepared by process server	1.80	225.00	405.00

E-Mail

APP001095

		confirming service upon Gogo Way Trust. Telephone conference with client, B. Selmensberger, regarding Prepare for and attend Early Case Conference.			
6/22/2012	CMT	Analyze e-mail from B. Selmensberger regarding telephone conference with B. Selmensberger regarding	0.20	225.00	45.00
6/25/2012	GAH	Analyzed and revised status update to client re-	0.30	225.00	67.50
6/26/2012	GAH	Analyzed e-mail correspondence from S. Joseph re	0.10	225.00	22.50
6/27/2012	CMT	Analyze voicemail received from S. Joseph. Telephone conference with S. Joseph regarding	0.40	225.00	90.00
6/27/2012	GAH	Telephone conference with S. Joseph re	0.30	225.00	67.50
6/28/2012	CMT	E-mail exchange with client, S. Joseph, regarding Place telephone call to R. Kerbow to discuss counter-offer and determine occupancy of Subject Property.	0.30	225.00	67.50
6/28/2012	GAH	Analvzed e-mail correspondence from S. Joseph re Coordinated strategy for conducting settlement negotiations,	0.30	225.00	67.50
6/29/2012	CMT	Place telephone call to opposing counsel, R. Kerbow, to confirm occupancy and provide counter offer. Prepare e-mail to client, S. Joseph, regarding occupancy of Subject Property.	0.20	225.00	45.00

Sub-total Fees: 1,305.00

Rate Summary

Gregg A. Hubley	1.20 hours at \$225.00/hr	270.00
Crystal M. Tatco	4.60 hours at \$225.00/hr	1,035.00
Total hours:	5.80	

E-Mail

APP001096

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 3
Matter ID: 000338-000410

Expenses

6/15/2012	Postage.	0.45
6/18/2012	Summons & Complaint Service Fee.	40.00
6/19/2012	Filing Fee.	3.50

Sub-total Expenses: 43.95

Total Due on This Invoice: 1,348.95

Additional Invoices Outstanding On: July 23, 2012

Statement Number	Statement Date	Paid Amount	Balance
4213176	Jun 18 2012	0.00	743.50

Additional Billing Notes

E-mail 225

E-Mail

APP001097

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4375 Jutland Drive, Suite 200

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San Diego, CA 92177-0935

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Federal Tax ID: 33-0881441

New York Community Bancorp, Inc.

Samantha Joseph

1111 Chester Avenue

Cleveland, OH 44114

Statement Date:

August 27, 2012

Closing Date:

July 31, 2012

Invoice Number:

4218892

Matter ID:

000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees

			Hours	Rate	Amount
7/2/2012	CMT	Telephone conference and e-mail exchange with opposing counsel, R. Kerbow, regarding occupancy of Subject Property and client's intentions for possible settlement and develop subsequent strategy for proceeding.	0.50	225.00	112.50
7/3/2012	CMT	Prepare follow-up e-mail to opposing counsel, R. Kerbow, regarding new tenant. Prepare status update to client, S. Joseph, regarding	0.70	225.00	157.50
7/5/2012	CMT	Analyze e-mail from S. Joseph regarding Place telephone call to R. Kerbow regarding new tenant in Subject Property. Prepare and execute initial disclosures. Prepare Joint Case Conference Report. Prepare e-mail to opposing counsel, R. Kerbow with draft Joint Case Conference Report for execution.	2.00	225.00	450.00
7/5/2012	GAH	Analysis of strategy in light of information from HOA's counsel that property has apparently been rented to a tenant post-sale, and need to ensure HOA's counsel understands that occupant must vacate for settlement to proceed and that any rental payments collected would be used to mitigate any damages alleged by HOA; Analyzed file to pull documents to provide in required NRCP 16.1 initial disclosure of witnesses and documents; Analyzed and revised e-mail correspondence to HOA counsel re status of tenancy, settlement, and Joint Case Conference Report.	0.90	225.00	202.50
7/9/2012	CMT	Prepare e-mail to R. Kerbow requesting response to queries regarding tenancy on Subject Property.	0.10	225.00	22.50
7/9/2012	GAH	Analysis of status of matter, including failure of opposing	0.10	225.00	22.50

E-Mail

APP001098

		counsel to respond to settlement counteroffer and deadline for filing Motion for Summary Judgment if opposing counsel fails to respond.			
7/10/2012	CMT	E-mail exchange with opposing counsel, R. Kerbow, regarding settlement prospects and filing Answer for Gogo Way and 16.1 disclosures. Analyze Joint Case Conference Report provided by R. Kerbow and prepare e-mail requesting original signature page. Prepare status updates to clients regarding	0.50	225.00	112.50
7/11/2012	GAH	Analyzed e-mail correspondence from R. Kerbow, counsel for HOA and Gogo Way Trust re tenant in possession, Defendants plan to prepare/file an Answer; Analysis of strategy of proceeding Analyzed and revised e-mail correspondence to S. Joseph/B. Selmensberger	0.40	225.00	90.00
7/12/2012	CMT	E-mail exchange with client, S. Joseph regarding Analyze Clark County website to determine filing fees for filing Motion for Summary Judgment. Execute Joint Case Conference Report.	0.30	225.00	67.50
7/12/2012	GAH	Analyzed e-mail correspondence from S. Joseph re	0.10	225.00	22.50
7/20/2012	CMT	Analyze Gogo Way Trust's Answer to the Complaint. Prepare e-mail to clients with E-mail exchange with client, B. Selmensberger, telephone conference with and analyze e-mail from R. Kerbow regarding little possibility of settlement and anticipated motion.	0.50	225.00	112.50
7/24/2012	CMT	Prepare Motion for Summary Judgment.	3.30	225.00	742.50
7/25/2012	CMT	Ongoing preparation of Motion for Summary Judgment. E-mail to clients, S. Joseph and B. Selmensberger, to	0.20	225.00	45.00
7/25/2012	GAH	Analysis of need to obtain valuation/appraisal to proceed with Motion for Summary Judgment.	0.10	225.00	22.50
7/26/2012	CMT	Analyze appraisal and listing documents for Subject Property in preparation of Motion for Summary Judgment.	0.30	225.00	67.50

E-Mail

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 3
Matter ID: 000338-000410

7/29/2012	CMT	Ongoing preparation of Motion for Summary Judgment.	3.00	225.00	675.00
Sub-total Fees:					2,925.00

Rate Summary		
Gregg A. Hubley	1.60 hours at \$225.00/hr	360.00
Crystal M. Tatco	11.40 hours at \$225.00/hr	2,565.00
Total hours:	13.00	

Expenses

7/6/2012	Postage.	3.15
7/13/2012	Postage.	0.65
7/23/2012	Postage.	0.65
7/25/2012	Westlaw Database Research.	75.00
Sub-total Expenses:		79.45

Total Due on This Invoice: 3,004.45

Additional Invoices Outstanding On: August 27, 2012

Statement Number	Statement Date	Paid Amount	Balance
4215998	Jul 23 2012	0.00	1348.95

Additional Billing Notes

E-mail 225

E-Mail

APP001100

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(858) 750-7600

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Federal Tax ID: 33-0881441

New York Community Bancorp, Inc.

Samantha Joseph

1111 Chester Avenue

Cleveland, OH 44114

Statement Date:

September 30, 2012

Closing Date:

August 31, 2012

Invoice Number:

4222832

Matter ID:

000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees			Hours	Rate	Amount
8/1/2012	GAH	Analyzed required NRCP 16.1 disclosures made by counsel for Defendants, identifying relevant witnesses and documents.	0.20	225.00	45.00
8/2/2012	CMT	Ongoing preparation of Motion for Summary Judgment. E-mail exchange with client, B. Selmsenberger, regarding	2.70	225.00	607.50
8/6/2012	CMT	Ongoing preparation of Motion for Summary Judgment.	2.50	225.00	562.50
8/7/2012	CMT	Analyze and revise Motion for Summary Judgment. Prepare correspondence to client, B. Selmsenberger, regarding	2.50	225.00	562.50
8/8/2012	CMT	Ongoing preparation of Motion for Summary Judgment. Prepare e-mail to client, B. Selmsenberger, regarding	2.90	225.00	652.50
8/15/2012	CMT	Analyze opposing counsel's 16.1 disclosures, particularly affidavit of service confirming service of NOTS. and develop strategy Analyze Order Setting Civil Non-Jury Trial and Calendar Call.	0.40	225.00	90.00
8/17/2012	CMT	Prepare status update to client regarding	0.40	225.00	90.00
8/20/2012	CMT	Place telephone call to and e-mail exchange with client. B. Selmsenberger regarding	0.10	225.00	22.50
8/20/2012	CAJS	Analyze and revise Motion for Summary Judgment.	0.60	225.00	135.00
8/21/2012	CMT	Analyze and revise Motion for Summary Judgment. Prepare status update to client	2.00	225.00	450.00

E-Mail

APP001101

Pite Duncan, LLP

New York Community Bancorp, Inc.

Page: 2

MatterID: 000338-000410

8/23/2012	CMT	E-mail exchange with client, S. Joseph, regarding	0.40	225.00	90.00
8/27/2012	CMT	Prepare e-mail to client, S. Joseph, regarding	0.20	225.00	45.00
8/28/2012	CMT	Analyze e-mail from client, B. Selmensberger, regarding	0.10	225.00	22.50
8/29/2012	CMT	Analyze Nevada law to determine whether amendment of complaint or substitution of parties is warranted. Telephone conference and e-mail exchange with client B. Selmensberger regarding	1.00	225.00	225.00
8/29/2012	GAH	Analyzed e-mails with B. Selmensberger and S. Joseph re	0.40	225.00	90.00
8/30/2012	CMT	Prepare Amended Complaint and revise Motion for Summary Judgment. Telephone conference with and E-mail exchange with opposing counsel, R. Kerbow, regarding stipulation to Amend Complaint.	0.70	225.00	157.50
8/31/2012	CMT	Prepare e-mail to clients, B. Selmensberger and S. Joseph, regarding	0.10	225.00	22.50
8/31/2012	GAH	Analyzed opposing counsel's agreement to execute Stipulation to Amend and coordinated preparation of e-mail correspondence to B. Selmensberger and S. Joseph re stipulation.	0.10	225.00	22.50

Sub-total Fees: 3,892.50**Rate Summary**

Gregg A. Hubley	0.70 hours at \$225.00/hr	157.50
Christopher A. J. Swift	0.60 hours at \$225.00/hr	135.00
Crystal M. Tatco	16.00 hours at \$225.00/hr	3,600.00
Total hours:	<u>17.30</u>	

Expenses

8/2/2012	Document Retrieval - Obtain copies of recorded documents from County Recorder's office.	7.34
8/7/2012	Westlaw Database Research.	75.00
8/20/2012	Postage.	1.95

E-Mail

APP001102

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 3
Matter ID: 000338-000410

Sub-total Expenses: 84.29

Total Due on This Invoice: **3,976.79**

Additional Invoices Outstanding On: **September 30, 2012**

Statement Number	Statement Date	Paid Amount	Balance
4218892	Aug 27 2012	0.00	3004.45

Additional Billing Notes

E-mail 225

E-Mail

APP001103

Pite Duncan, LLP

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Federal Tax ID: 33-0881441

New York Community Bank
900 Merchants Concourse
Westbury, NY 11590

Statement Date: October 23, 2012

Closing Date: September 30, 2012

Invoice Number: 4224474

Matter ID: 000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees			Hours	Rate	Amount
9/4/2012	CMT	Analyze and execute signed Stipulation and Order.	0.10	225.00	22.50
9/5/2012	GAH	Analyzed and revised proposed Amended Complaint; Analyzed and revised draft of Motion for Summary Judgment.	3.50	225.00	787.50
9/5/2012	CMT	Prepare affidavit of counsel. Analyze Nevada law and admissibility of evidence in support of MSJ. Analyze Nevada case law to determine foundation for evidentiary support of exhibits/attachments to Motion for Summary Judgment.	1.50	225.00	337.50
9/6/2012	CMT	Analyze Clark County Recorder's online database to determine chain of title. Further analysis of foreclosure documents by Alessi & Koenig, title company, and correspondences with trustee and develop strategy for Analyze Nevada law to determine possible statutory violations committed by trustee, Alessi & Koenig, for inflating payoff statement and failing to accept payment of HOA payoff amount. Prepare extensive status update to clients	3.00	225.00	675.00
9/10/2012	GAH	Analyzed e-mails exchanged with S. Joseph and B. Selmsenberger re	0.30	225.00	67.50
9/17/2012	CMT	Prepare and execute Notice of Entry of Order.	0.10	225.00	22.50
9/26/2012	CMT	Analyze e-mail from client, S. Joseph, analyze correspondences between realtor and NYCB. Analyze	1.50	225.00	337.50

E-Mail

APP001104

9/27/2012	CMT	Coordinate and develop strategy	1.00	225.00	225.00
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9/28/2012	GAH	Analyzed e-mail correspondence to S. Joseph and B. Selmensberger re	0.10	225.00	22.50
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Sub-total Fees: 2,497.50

Rate Summary

Gregg A. Hubley	3.90 hours at \$225.00/hr	877.50
Crystal M. Tatco	7.20 hours at \$225.00/hr	1,620.00
Total hours:	11.10	

Expenses

9/6/2012	Westlaw Database Research.	75.00
9/17/2012	Filing Fee.	3.50
9/17/2012	Filing Fee.	3.50
9/18/2012	Postage.	1.50

Sub-total Expenses: 83.50

Total Due on This Invoice: 2,581.00

Additional Invoices Outstanding On: October 23, 2012

Statement Number	Statement Date	Paid Amount	Balance
4222832	Sep 30 2012	0.00	3976.79

Additional Billing Notes

E-mail 225

E-Mail

APP001105

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Federal Tax ID: 33-0881441

New York Community Bank
900 Merchants Concourse
Westbury, NY 11590

Statement Date: October 29, 2012

Closing Date: September 30, 2012

Invoice Number: 4225063

Matter ID: 000338-000410

New York Community Bancorp. Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees	Hours	Rate	Amount
8/7/2012 CMT Analyze Nevada law regarding declaratory relief, quiet title, and commercial reasonableness standard in preparation of Motion for Summary Judgment. New York Community Bancorp. Inc. v. Shadow Wood Homeowners' PD No. 000338-000410.	2.50	225.00	562.50

Sub-total Fees: 562.50

Rate Summary

Crystal M. Tatco

2.50 hours at \$225.00/hr

562.50

Total hours: 2.50

Total Due on This Invoice: 562.50

Additional Invoices Outstanding On: October 29, 2012

Statement Number	Statement Date	Paid Amount	Balance
4222832	Sep 30 2012	0.00	3976.79
4224474	Oct 23 2012	0.00	2581.00

Additional Billing Notes

E-mail 225

Invoices go to:

E-Mail

APP001106

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Federal Tax ID: 33-0881441

New York Community Bank
900 Merchants Concourse
Westbury, NY 11590

Statement Date: November 27, 2012

Closing Date: October 31, 2012

Invoice Number: 4227827

Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees

			Hours	Rate	Amount
10/3/2012	CMT	Coordinate preparation of subpoena upon Ticor Title of Nevada.	0.10	225.00	22.50
10/4/2012	CMT	Telephone conference with opposing counsel's assistant and prepare e-mail to opposing counsel, R. Kerbow, regarding amendment of First Amendment Complaint. Telephone conference with client, B. Selmensberger regarding Prepare status updates to client regarding	0.50	225.00	112.50
10/5/2012	CMT	E-mail exchange with opposing counsel, R. Kerbow, regarding revisions to Amended Complaint. Analyze Summons and Complaint by Defendant Gogo Way.	0.20	225.00	45.00
10/5/2012	GAH	Analysis of strategy	1.50	225.00	337.50
		Telephone call to S. Joseph to discuss Exchanged e-mail with S. Joseph re			
		Analyzed e-mail correspondence from B. Selmensberger w			
10/8/2012	GAH	Prepared Subpoena Duces Tecum to Ticor Title; Prepared Subpoena Duces Tecum to MP Association Management.	0.50	225.00	112.50
10/9/2012	CMT	Analyze e-mail from client, B. Selmensberger Analyze listing history. Telephone	0.40	225.00	90.00

E-Mail

APP001107

		conference with H. Lam, counsel for Gogo Way Trust regarding underlying district court action and recommendation to file amended answer and counterclaim and to dismiss new action. Prepare e-mail to H. Lam with copy of NYCB's Amended Complaint and memorializing agreement not to default NYCB.			
10/9/2012	GAH	Analyzed Complaint filed by counsel for Go-Go Way (which mirrors claims by same counsel for HOA) and developed strategy for	0.40	225.00	90.00
		Analyzed e-mails exchanged with B. Selmensberger			
10/10/2012	CMT	Analyze e-mails from B. Selmensberger regarding	0.20	225.00	45.00
10/11/2012	CMT	E-mail exchange with client, S. Joseph, regarding new Complaint.	0.20	225.00	45.00
10/11/2012	GAH	Analyzed e-mails exchanged with S. Joseph and B. Selmensberger re	0.20	225.00	45.00
10/15/2012	CMT	Prepare e-mail to opposing counsel, H. Lam, regarding dismissal/consolidation of new action. Telephone conference with R. Kerbow regarding dismissal of suit.	0.30	225.00	67.50
10/15/2012	GAH	Analyzed e-mails exchanged with B. Selmensberger	0.10	225.00	22.50
10/16/2012	CMT	E-mail exchange with client, B. Selmensberger and S. Joseph regarding	0.20	225.00	45.00
10/16/2012	GAH	Analyzed multiple e-mails exchanged with S. Joseph and B. Selmensberger re	0.20	225.00	45.00
10/19/2012	CMT	Analyze voicemail from and telephone conference with Gerald Marks of MP Management Association regarding	0.30	225.00	67.50

E-Mail

		requirements for production of documents, if attendance is necessary, and expected delivery of subpoenaed documents.			
10/23/2012	CMT	Analyze documents provided by MP Management Association. Analyze court docket to determine if new suit has been dismissed. Prepare e-mail to opposing counsel regarding deadline for filing Answer and Counterclaim.	1.70	225.00	382.50
10/24/2012	GAH	Analysis of status, including opposing counsel's failure to file Answer to First Amended Complaint and coordinated follow-up with opposing counsel.	0.10	225.00	22.50
10/26/2012	CMT	Prepare follow-up e-mail to opposing counsel regarding status of dismissal of new action and filing of Answer and Counterclaim.	0.10	225.00	22.50
10/27/2012	CMT	Analyze e-mail from opposing counsel, R. Kerbow regarding filing of Answer and Counterclaim and dismissal of new suit.	0.10	225.00	22.50
10/30/2012	GAH	Analyzed e-mail correspondence from B. Selmsberger re Analysis of strategy to employ re need to depose person who signed Ticor Title document on behalf of MP Association Management with indication that HOA dues were current because document in question does not appear in documents obtained by way of subpoena to MP Association; Telephone conference with M. Watkins, counsel for Ticor, re difficulty locating subpoenaed documents and request for extension of time to provide subpoenaed documents.	0.70	225.00	157.50
10/30/2012	CMT	Analyze court records to determine if new action has been dismissed. Prepare status update to client regarding . E-mail exchange with opc regarding dismissal of suit and filing answer/counterclaim. E-mail to clients regarding	0.70	225.00	157.50
10/30/2012	GAH	Telephone conference with M. Watkins, counsel for Ticor Title, re production of documents and extension of time to provide subpoenaed documents.	0.40	225.00	90.00
10/31/2012	CMT	Analyze e-mail from client regarding Place telephone call to opposing counsel, R. Kerbow, regarding scheduling of deposition.	0.10	225.00	22.50
Sub-total Fees:				2,070.00	

E-Mail

Rate Summary		
Gregg A. Hubley	4.10 hours at \$225.00/hr	922.50
Crystal M. Tatco	5.10 hours at \$225.00/hr	1,147.50
Total hours:	<u>9.20</u>	

Expenses

10/2/2012	Filing Fee.	3.50
10/2/2012	Filing Fee.	3.50
10/5/2012	Filing Fee.	3.50
10/5/2012	Witness Fees Associated with Subpoena and Deposition Notice.	34.00
10/8/2012	Witness Fees Associated with Subpoena and Deposition Notice.	33.05
10/22/2012	Attorney service costs - Service of subpoena notice of taking deposition - MP Association Management, Inc.	68.00
10/25/2012	Attorney service costs - Service of subpoena notice of taking deposition - Ticor Title of Nevada, Inc.	157.50

Sub-total Expenses: 303.05

Total Due on This Invoice: 2,373.05

Additional Invoices Outstanding On: November 27, 2012

Statement Number	Statement Date	Paid Amount	Balance
4224474	Oct 23 2012	0.00	2581.00
4225063	Oct 29 2012	0.00	562.50

Additional Billing Notes

E-mail 225
Invoices go to:

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APP001110

Pite Duncan, LLP

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Federal Tax ID: 33-0881441

New York Community Bank
900 Merchants Concourse
Westbury, NY 11590

Statement Date: December 21, 2012
Closing Date: November 30, 2012
Invoice Number: 4230789
Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees

			Hours	Rate	Amount
11/1/2012	GAH	Analyzed e-mails exchanged with S. Joseph re	0.10	225.00	22.50
11/1/2012	CMT	Prepare e-mail to client, S. Joseph, regarding	0.10	225.00	22.50
11/6/2012	CMT	Place telephone call to opposing counsel regarding scheduling of deposition date.	0.10	225.00	22.50
11/7/2012	CMT	Telephone conferences with opposing counsel, R. Kerbow regarding scheduling of deposition date for Gerald Marks. Analyze court docket to determine if suit by Gogo Way has been dismissed.	0.20	225.00	45.00
11/9/2012	CMT	Prepare and execute Notice of Deposition of Gerald Marks. Prepare and compile First Supplement Disclosure of Documents.	0.20	225.00	45.00
11/12/2012	CMT	Prepare status update to clients regarding Analyze correspondence from legal counsel for Ticor Title, M. Watkins granting extension.	0.50	225.00	112.50
11/13/2012	CMT	Prepare Reply to Counterclaim. Prepare outline of deposition questions for Gerald Marks. Analyze documents received by Ticor Title.	5.90	225.00	1,327.50
11/14/2012	CMT	Analyze documents received from Ticor Title. Ongoing preparation for deposition of Gerald Marks. E-mail exchange with client regarding	2.50	225.00	562.50
11/14/2012	GAH	Analyzed e-mails exchanged with B. Selmensberger re	0.10	225.00	22.50

E-Mail

APP001111

11/15/2012	CMT	E-mail exchange with client, B. Selmensberger, regarding Analyze court docket to confirm if Gogo Way's action has been dismissed.	0.50	225.00	112.50
11/15/2012	CAJS	Analyze and revise Reply to Counter-claim.	0.50	225.00	112.50
11/15/2012	GAH	Revised outline of issues and questions for deposition of G. Marks, and added exhibits to be marked to deposition to question G. Marks about; Deposed G. Marks; Multiple conferences with R. Kerbow, opposing counsel, re potential for settlement, testimony by G. Marks, numerous inconsistencies in documents to NYCB showing different amounts allegedly due.	4.60	225.00	1,035.00
11/16/2012	CMT	E-mail exchange with clients, B. Selmensberger regarding Execute Reply to Counterclaim and coordinate filing of the same.	2.20	225.00	495.00
11/16/2012	GAH	Analyzed e-mails exchanged with B. Selmensberger re	0.20	225.00	45.00
11/19/2012	GAH	Analyzed and revised extensive e-mail correspondence to S. Joseph and B. Selmensberger re	0.40	225.00	90.00
11/19/2012	CMT	Place telephone call to opposing counsel, R. Kerbow regarding settlement options.	0.10	225.00	22.50
11/30/2012	CMT	Prepare e-mail to opposing counsel, R. Kerbow, regarding prospects for settlement	0.90	225.00	202.50
11/30/2012	GAH	Analyzed e-mail correspondence from B. Selmensberger re	0.10	225.00	22.50
Sub-total Fees:					4,320.00

Rate Summary

Gregg A. Hubley	5.50 hours at \$225.00/hr	1,237.50
Christopher A. J. Swift	0.50 hours at \$225.00/hr	112.50
Crystal M. Tatco	13.20 hours at \$225.00/hr	2,970.00

E-Mail

Total hours: 19.20

Expenses

11/9/2012	Filing Fee.	3.50
11/9/2012	Filing Fee.	3.50
11/9/2012	Fees Associated with Producing Documents in Response to a Subpoena from Fidelity National Financial, Inc.	43.52
11/16/2012	Filing Fee.	3.50
11/27/2012	Postage.	2.90
11/27/2012	Postage.	0.45
11/27/2012	Postage.	1.70
11/28/2012	Postage.	0.65

Sub-total Expenses: 59.72

Total Due on This Invoice: 4,379.72

Additional Invoices Outstanding On: December 21, 2012

Statement Number	Statement Date	Paid Amount	Balance
4224474	Oct 23 2012	0.00	2581.00
4225063	Oct 29 2012	0.00	562.50
4227827	Nov 27 2012	0.00	2373.05

Additional Billing Notes

E-mail 225
Invoices go to:

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APP001113

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Federal Tax ID: 33-0881441

New York Community Bank
900 Merchants Concourse
Westbury, NY 11590

Statement Date: January 18, 2013

Closing Date: December 31, 2012

Invoice Number: 4233475

Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees			Hours	Rate	Amount
12/3/2012	CMT		0.10	225.00	22.50
12/5/2012	CMT		0.20	225.00	45.00
12/10/2012	CMT	Prepare follow-up e-mail to opposing counsel, R. Kerbow, regarding settlement prospects.	0.10	225.00	22.50
12/12/2012	GAH	Analyzed e-mails exchanged with R. Kerbow, counsel for opposing parties, re potential for settlement, need to depose R. Kerbow and other Alessi Koenig employees if matter does not settle, and coordinated strategy for follow-up if opposing counsel fails to respond.	0.30	225.00	67.50
12/21/2012	GAH	Analyzed e-mail correspondence from B. Selmsberger re :	0.10	225.00	22.50
12/28/2012	GAH	Analyzed e-mail correspondence from B. Selmsberger re :	0.10	225.00	22.50

Sub-total Fees: 202.50

Rate Summary

Gregg A. Hubley 0.50 hours at \$225.00/hr 112.50

Crystal M. Tatco 0.40 hours at \$225.00/hr 90.00

Total hours: 0.90

Total Due on This Invoice: 202.50

E-Mail

APP001114

Additional Invoices Outstanding On: January 18, 2013

Statement Number	Statement Date	Paid Amount	Balance
4227827	Nov 27 2012	0.00	2373.05
4230789	Dec 21 2012	0.00	4379.72

Additional Billing Notes

E-mail 225
Invoices go to:

E-Mail

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New York Community Bank
900 Merchants Concourse
Westbury, NY 11590

Statement Date: February 15, 2013
Closing Date: January 31, 2013
Invoice Number: 4237160
Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees			Hours	Rate	Amount
1/2/2013	GAH	Telephone conference with Yvette, court reporter, re status of deposition transcript of G. Marks.	0.20	225.00	45.00
1/4/2013	GAH	Exchanged e-mails with B. Selmsberger re	0.30	225.00	67.50
1/15/2013	KAC	Analyze transcript of Testimony of Gerald Marks.	1.50	225.00	337.50
1/24/2013	KAC	Correspond with opposing counsel re: negotiating a continuance for dispositive motion deadline. Prepare and execute Stipulation re: extended deadline.	0.40	225.00	90.00
1/24/2013	GAH	Analyzed e-mail correspondence from C. Davis re deposition of G. Marks and status of Motion for Summary Judgment.	0.10	225.00	22.50
1/27/2013	KAC	Continue preparation of Motion for Summary Judgment/incorporate Gerald Marks Deposition into Motion.	1.50	225.00	337.50
1/29/2013	GAH	Analyzed e-mail correspondence from B. Selmsberger and S. Joseph re	0.10	225.00	22.50
1/31/2013	KAC	Revise Motion for Summary Judgment. Analyze discrepancies in document produced by opposing counsel.	0.80	225.00	180.00
1/31/2013	GAH	Exchanged telephone calls with B. Selmsberger re ; Analyzed and revised Motion for Summary Judgment.	1.70	225.00	382.50
Sub-total Fees:					1,485.00

E-Mail

APP001116

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 2
MatterID:000338-000410

	Rate Summary	
K. Alexandra Cavin	4.20 hours at \$225.00/hr	945.00
Gregg A. Hubley	2.40 hours at \$225.00/hr	540.00
Total hours:	6.60	

Total Due on This Invoice:	1,485.00
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Additional Invoices Outstanding On: February 15, 2013

Statement Number	Statement Date	Paid Amount	Balance
4233475	Jan 18 2013	0.00	202.50

Additional Billing Notes

E-mail 225
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APP001117

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New York Community Bank
900 Merchants Concourse
Westbury, NY 11590

Statement Date: March 18, 2013

Closing Date: February 28, 2013

Invoice Number: 4239959

Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees			Hours	Rate	Amount
2/1/2013	KAC	Prepare Motion for Summary Judgment. Prepare Affidavit of Sara Artino.	0.60	225.00	135.00
2/1/2013	GAH	Analyzed e-mail correspondence from B. Selmensberger re	0.10	225.00	22.50
2/4/2013	GAH	Exchanged e-mails with B. Selmensberger re Revised Affidavit of S. Alupo per	0.30	225.00	67.50
2/4/2013	KAC	Revise Affidavit and send Affidavit to client for execution.	0.10	225.00	22.50
2/5/2013	GAH	Further revisions to Motion for Summary Judgment re proper identification of S. Artino	0.40	225.00	90.00
2/5/2013	KAC	Analyze and respond to inquiry from client re.	0.10	225.00	22.50
2/8/2013	KAC	Follow up with client in re: Analyze and respond to inquiry from client in re:	0.20	225.00	45.00
2/8/2013	GAH	Analyzed e-mails from B. Selmensberger and S. Joseph re	0.20	225.00	45.00
2/9/2013	KAC	Analyze Shadow Wood Homeowner Association, Inc.'s Motion for Summary Judgment. Strategize action going forward in re:	0.80	225.00	180.00
2/12/2013	KAC	Prepare and execute Notice of Hearing on MSJ. Prepare and execute Notice of Submission of Affidavit.	0.50	225.00	112.50

E-Mail

APP001118

2/13/2013	LIH	Analyze status of the motion for summary judgment and pre-trial conference and strategize	0.90	225.00	202.50
2/13/2013	KAC	Strategize action going forward in re	0.30	225.00	67.50
2/13/2013	GAH	Exchanged e-mails with B. Selmensberger re	4.30	225.00	967.50
		Attended pretrial conference hearing with extensive oral argument about priority of HOA liens and Judge's opinions/decisions in this regard; Conference with R. Kerbow, opposing counsel, re potential need for Motion to Disqualify counsel acting as witness/advocate in same proceeding; Prepared detailed e-mail correspondence to B. Selmensberger re outcome			
		; Legal research re disqualification.			
2/14/2013	GAH	Exchanged e-mails with B. Selmensberger re	0.20	225.00	45.00
2/17/2013	KAC	Prepare and finalize Notice of Entry and Stipulation and Order to Extend Dispositive Motion Deadline. .	0.30	225.00	67.50
2/17/2013	KAC	Prepare supplemental memorandum in support of plaintiff's motion for summary judgment and in opposition to defendant's motion for summary judgment.	0.80	225.00	180.00
2/18/2013	KAC	Continue preparing supplemental memorandum in support of plaintiff's motion for summary judgment and in opposition to defendant's motion for summary judgment.	2.00	225.00	450.00
2/21/2013	GAH	Exchanged e-mails with B. Selmensberger re	0.10	225.00	22.50
2/21/2013	KAC	Correspond with opposing counsel re: negotiate extension of deadline for MSJ oppositions.	0.10	225.00	22.50
2/22/2013	GAH	Legal research to confirm inability to pursue FDCPA claims against HOA/Alessi & Koenig for attempting to collect on uncollectable debt that was wiped out in NYCB foreclosure sale due to requirement of	0.80	225.00	180.00

E-Mail

"consumer" status.

2/23/2013	GAH	Prepared e-mail correspondence to B. Selmensberger re	0.10	225.00	22.50
2/25/2013	GAH	Analyzed e-mails from B. Selmensberger re	0.10	225.00	22.50
2/26/2013	GAH	Analyzed and extensive revisions to Opposition to Defendants' Motion for Summary Judgment and Supplemental Briefing in support of client's Motion for Summary Judgment.	8.30	225.00	1,867.50
2/27/2013	GAH	Prepared correspondence to R. Kerbow detailing concerns with representation of Defendants by Alessi & Koenig and requesting withdrawal to avoid Motion to Disqualify; Analyzed e-mail correspondence from B. Selmensberger re	1.30	225.00	292.50
2/28/2013	GAH	Prepared pretrial memorandum as required by local Rule (EDCR 2.67); Prepared detailed status update for B. Selmensberger.	2.30	225.00	517.50

Sub-total Fees: 5,670.00**Rate Summary**

K. Alexandra Cavin	5.80 hours at \$225.00/hr	1,305.00
Laurel I. Handley	0.90 hours at \$225.00/hr	202.50
Gregg A. Hubley	18.50 hours at \$225.00/hr	4,162.50
Total hours:	<u>25.20</u>	

Expenses

2/8/2013	Filing Fee.	3.50
2/8/2013	Filing Fee.	209.50
2/12/2013	Filing Fee.	3.50
2/12/2013	Filing Fee.	3.50
2/13/2013	Westlaw Database Research.	75.00
2/14/2013	Filing Fee.	3.50
2/19/2013	Filing Fee.	3.50

E-Mail

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 4
Matter ID: 000338-000410

Sub-total Expenses: 302.00

Total Due on This Invoice: 5,972.00

Additional Invoices Outstanding On: March 18, 2013

Statement Number	Statement Date	Paid Amount	Balance
4237160	Feb 15 2013	0.00	1485.00

Additional Billing Notes

*E-mail 225
Invoices go to:*

E-Mail

APP001121

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank
900 Merchants Concourse
Westbury, NY 11590

Statement Date: April 16, 2013
Closing Date: March 31, 2013
Invoice Number: 4243074
Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees			Hours	Rate	Amount
3/1/2013	GAH	Analyzed e-mail correspondence from R. Kerbow indicating that another attorney at Alessi & Koenig will take over representation of buyer and seller, and R. Kerbow will make himself available for deposition.	0.20	225.00	45.00
3/4/2013	GAH	Prepared e-mail correspondence to R. Kerbow re need to file Motion for Disqualification if Alessi & Koenig does not withdraw.	0.40	225.00	90.00
3/5/2013	GAH	Analyzed Opposition to Motion for Summary Judgment filed by counsel for Defendants; Analyzed voluminous Affidavit of N. Eden accompanying Opposition, with exhibits attached, and noted inconsistencies/inaccuracies in Affidavit; Legal research on cases cited by opposing counsel and to distinguish/limit the alleged application of the bona fide purchaser argument.	2.10	225.00	472.50
3/6/2013	GAH	Prepared Reply to Defendants' Opposition to NYCB's Motion for Summary Judgment; Additional legal research to bolster arguments and legislative history to show HOA super priority lien does not include fees, costs of collection, penalties, etc.	4.20	225.00	945.00
3/7/2013	GAH	Continued preparation of Reply to Defendants' Opposition to NYCB's Motion for Summary Judgment; Pulled/flagged all exhibits to be attached to Reply.	5.50	225.00	1,237.50
3/8/2013	GAH	Prepared Motion for Disqualification of Alessi & Koenig.	4.40	225.00	990.00
3/12/2013	GAH	Analyzed Reply to NYCB's Opposition to Defendants' Motion for Summary Judgment re preparation for hearing on 3/13/13.	0.90	225.00	202.50
3/13/2013	GAH	Analyzed competing Motions for Summary Judgment, NYCB's Supplement to Motion for Summary Judgment/Opposition to Defendants' Motion for	5.80	225.00	1,305.00

E-Mail

APP001122

Summary Judgment, and Replies filed by both parties re preparation for hearing on NYCB's Motion for Summary Judgment; Attended/argued Motion for Summary Judgment; Multiple conferences with H. Lam, new counsel from Alessi & Koenig representing HOA and Third Party Purchaser, re Court's decision to grant Summary Judgment to NYCB, terms of proposed Order; Prepared detailed e-mail correspondence to S. Joseph and B. Selmsensberger

Analyzed e-mail correspondence from B. Selmsensberger

3/18/2013	GAH	Prepared detailed Findings of Fact, Conclusions of Law and Order granting NYCB's Motion for Summary Judgment and denying Defendants' Motion for Summary Judgment per Court's instructions for detailed Order; Coordinated submission to B. Selmsensberger and S. Joseph	4.10	225.00	922.50
		Analyzed e-mail correspondence from H. Lam, counsel for Defendants, re status of proposed Order.			
3/19/2013	GAH	Exchanged e-mails with H. Lam, counsel for Defendants, re proposed Order granting NYCB summary judgment; Analyzed e-mails from S. Joseph and B. Selmsensberger	0.90	225.00	202.50
		Prepared e-mail correspondence to S. Joseph and B. Selmsensberger re			
3/20/2013	GAH	Analyzed e-mails from B. Selmsensberger re	0.20	225.00	45.00
3/25/2013	GAH	Exchanged e-mails with H. Lam, counsel for HOA and third party purchaser, re status of finalizing proposed Order.	0.10	225.00	22.50
3/26/2013	GAH	Analyzed multiple e-mails from H. Lam, counsel for Defendants, with requested changes to proposed Order granting NYCB summary Judgment; Prepared e-mail correspondence to H. Lam in response, explaining in detail why the proposed changes are inaccurate/inapplicable, and indicating that proposed	3.30	225.00	742.50

E-Mail

Order will be submitted to the Court independently if counsel does not agree to sign today; Exchanged additional e-mails with H. Lam re counsel for Defendants will not approve/sign proposed Order unless changes are made, request that our office prepare separate Order with the language requested by opposing counsel, and threat to file Motion for Clarification; Prepared correspondence to Judge Silver, outlining dispute as to language of proposed Order and containing copies of e-mail correspondence exchanged and reasons why the proposed Order accurately sets forth Court's findings/Orders, and request that Court sign and file proposed Order.

Sub-total Fees: 7,222.50

	Rate Summary	
Gregg A. Hubley	32.10 hours at \$225.00/hr	7,222.50
Total hours:	32.10	

Expenses

2/13/2013	Travel Costs - Hearing.	8.00
3/1/2013	Filing Fee.	7.00
3/1/2013	Postage.	5.32
3/6/2013	Westlaw Database Research.	75.00
3/11/2013	Filing Fee.	7.00
3/11/2013	Postage.	5.32
3/13/2013	Travel Costs - Hearing.	10.00
3/17/2013	Postage.	3.12

Sub-total Expenses: 120.76

Total Due on This Invoice: 7,343.26

Additional Invoices Outstanding On: April 16, 2013

Statement Number	Statement Date	Paid Amount	Balance
4239959	Mar 18 2013	0.00	5972.00

Additional Billing Notes

E-mail 225
Invoices go to

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Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank
900 Merchants Concourse
Westbury, NY 11590

Statement Date: June 26, 2013
Closing Date: May 31, 2013
Invoice Number: 4251053
Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees	Hours	Rate	Amount
5/8/2013 LIH Analyze status of appeal and recommendation for demand for disgorgement and motion for attorneys fees.	0.20	225.00	45.00
5/8/2013 GAH Analyzed Notice of Appeal and Case Appeal Statement filed by counsel for HOA and Gogo Way; Prepared detailed e-mail correspondence to S. Joseph and B. Selmensberger re	0.70	225.00	157.50
Exchanged e-mails with B. Selmensberger re			
5/9/2013 GAH Prepared Motion for Attorney's Fees for filing with Court; Prepared Affidavit of Gregg Hubley to attach to Motion for Attorney's Fees.	3.30	225.00	742.50
5/17/2013 GAH Prepared Notice of Hearing on Motion for Attorney's Fees to be filed and served on opposing counsel.	0.20	225.00	45.00
5/20/2013 GAH Analyzed e-mail correspondence from R. Souter and B. Selmensberger re	0.40	225.00	90.00
; telephone conference with N. Eden, of Alessi & Koenig, counsel/Trustee for HOA, re making future payments.			
5/24/2013 GAH Analyzed Notice prepared, filed and served by NV Supreme Court referring appeal to Supreme Court settlement program; Analyzed docket in District Court action to ascertain whether opposing counsel filed Opposition to Motion for Attorney's Fees.	0.20	225.00	45.00
5/28/2013 GAH Analyzed e-mail correspondence from B. Selmensberger re	0.10	225.00	22.50

E-Mail

Pitz Duncan, LLP

New York Community Bancorp, Inc.

Page: 2

MatterID:000338-000410

5/29/2013	GAH	Exchanged e-mails with B. Selmensberger re	0.40	225.00	90.00
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; Analyzed

District Court docket to confirm that Opposition to Motion for Attorney's Fees was filed (although not yet served) re preparation of e-mail to B. Selmensberger and preparation of Reply to Opposition.

5/29/2013	ARS	Analyze opposition to Motion for Attorney fees in preparation of drafting reply in support of motion for attorneys fees.	1.00	225.00	225.00
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5/31/2013	ARS	Legal research for reply in support of motion for attorneys fees.	0.40	225.00	90.00
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Sub-total Fees:	1,552.50
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Rate Summary

Laurel I. Handley	0.20 hours at \$225.00/hr	45.00
Gregg A. Hubley	5.30 hours at \$225.00/hr	1,192.50
Anthony R. Sassi	1.40 hours at \$225.00/hr	315.00
Total hours:	6.90	

Expenses

5/7/2013	Recording Fees.	26.00
5/7/2013	Certified copy.	5.00
5/9/2013	Postage.	2.52
5/10/2013	Filing Fee.	3.50
5/17/2013	Postage.	2.72
5/21/2013	Filing Fee.	3.50

Sub-total Expenses:	43.24
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Total Due on This Invoice:	1,595.74
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Additional Invoices Outstanding On: June 26, 2013

Statement Number	Statement Date	Paid Amount	Balance
4248466	May 31 2013	0.00	394.78

Additional Billing Notes

E-mail 225
Invoices go to:

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APP001126

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank
900 Merchants Concourse
Westbury, NY 11590

Statement Date: July 23, 2013
Closing Date: June 30, 2013
Invoice Number: 4254070
Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et

Loan Number:

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees	Hours	Rate	Amount
6/1/2013 ARS Draft reply in support of motion for attorneys fees.	2.10	225.00	472.50
6/2/2013 ARS Continue to draft reply in Support of Motion for Attorney's Fees.	0.60	225.00	135.00
6/3/2013 ARS Continue to draft reply in Support of Motion for Attorney's Fees.	0.70	225.00	157.50
6/3/2013 GAH Analyzed e-mail correspondence from B. Selmsensberger re: Analyzed and revised Reply to Opposition to Motion for Attorney's Fees.	1.20	225.00	270.00
6/4/2013 GAH Analyzed e-mail correspondence from R. Souter and B. Selmsensberger re: ; Telephone calls to H. Lam and R. Kerbow of Alessi & Kerbow re current HOA dues needed so NYCB can maintain payments.	0.20	225.00	45.00
6/5/2013 ARS Analyze letter from Settlement Judge requesting confidential settlement statement; develop strategies and arguments to include in settlement statement; Begin drafting confidential settlement statement.	2.10	225.00	472.50
6/5/2013 GAH Analyzed correspondence and e-mails from D. Gould, Settlement Conference Judge appointed by NV Supreme Court, re logistics for pre-settlement conference telephone discussion, preparation of confidential settlement conference statement; Telephone conference with D. Gould re scheduling of settlement conference and whether D. Gould will require in person attendance by NYCB representative; Exchanged e-mails with B. Selmsensberger.	0.80	225.00	180.00

E-Mail

APP001127

6/6/2013	ARS	Analyze notice of appeal re issues appealed by HOA; analyze HOA's previous arguments on issues being appealed and develop strategies and arguments for inclusion in settlement statement; draft settlement statement including arguments in opposition to issues raised by HOA; phone conversation with Settlement Judge re status and timing of appellants docketing statement; research re orders issued by various departments in eighth judicial district on the amount and priority of the HOA lien.	3.40	225.00	765.00
6/6/2013	GAH	Analyzed e-mail correspondence from B. Selmensberger re Analyzed time frames/deadlines imposed by settlement conference judge (re settlement statement due within days of docketing statement by appellants) and potential need to push out deadline for submitting settlement statement so it can address issues raised by appellants, and coordinated follow-up telephone conference with D. Gould, settlement conference judge.	0.10	225.00	22.50
6/7/2013	ARS	Phone conversation with current tenant of Gogo Way re status of property ownership and vacating premises; email to client re ; raft settlement statement.	3.10	225.00	697.50
6/7/2013	GAH	Analyzed e-mail correspondence from M. Bohn, counsel for Gogo Way, re tenant served with eviction notice and request to stay eviction and escrow rent proceeds, and coordinated update to S. Joseph and B. Selmensberger; Telephone conference with M. Bohn re awaiting client instructions but unlikely to stay eviction.	0.40	225.00	90.00
6/8/2013	ARS	Email correspondence to client re	0.20	225.00	45.00
6/10/2013	ARS	Draft confidential settlement statement for submission to settlement judge; phone call to tenant of property re additional time to vacate premises; draft agreement with tenant to vacate property in exchange for additional time to remain on property; phone call with agent for property management company hired by Gogo Way Trust re status of tenancy and deadline for vacating; draft demand letter to Gogo Way Trust re accounting of rental income during period Gogo Way Trust was in possession of property and turnover of rental income; phone conversation with M. Bohn re substitution of counsel and status of tenant in property; Email	1.40	225.00	315.00

E-Mail

		correspondence to current tenant re offer to remain on property for one week in exchange for agreeing to vacate property; discuss strategies for proceeding with GAH re tenant occupying property and possible representation by counsel for Gogo Way Trust.			
6/10/2013	GAH	Analyzed and revised written agreement with tenant to vacate property without unlawful detainer action if additional several days to vacate were given tenants, and noted need for release as to NYCB and broom swept requirement to include; Analyzed multiple communications with tenant and M. Bohn, counsel who will be substituting in for Gogo Way, including apparent communications from M. Bohn to tenants advising tenants that they do not have to vacate and he will seek a stay; Coordinated strategy to move forward with unlawful detainer filing if tenant does not sign and return agreement by COB on 6/11/13; Analyzed e-mail correspondence from S. Joseph re : Prepared detailed e-mail correspondence to B. Selmensberger	1.20	225.00	270.00
6/11/2013	ARS	Draft confidential settlement statement for submission to settlement judge; email correspondence with tenant re extension of time to remain on property; phone conversation with tenant re extension of time on property and potential interference from property manager; email correspondence to property management re cease and desist interference with possession of property.	1.20	225.00	270.00
6/11/2013	GAH	Analysis of ongoing communications with tenant re vacating premises, tenant wants to vacate but property management company has threatened to sue tenant for breach of contract if tenant vacates, and developed strategy for advising property management company that any lease with tenant is void and further attempts to obstruct NYCBs right to possession of the property may be met with lawsuit; Analyzed e-mail correspondence (with written correspondence attached) from D. Gould, settlement judge appointed by NV Supreme Court, re pre-mediation telephone conference.	0.40	225.00	90.00
6/12/2013	GAH	Analyzed e-mails from M. Bohn, new counsel for Gogo Way Trust, and D. Gould, Supreme Court Settlement Judge, re substitution of counsel for Gogo Way Trust; Analyzed Substitution of Counsel filed with NV Supreme Court; Coordinated close monitoring to ensure that tenants vacate as promised and that locks are changed immediately thereafter so client has possession/control of property; Analyzed e-mail correspondence from R.	0.10	225.00	22.50

E-Mail

		Kerbow, counsel for HOA, re his unfamiliarity with appellate procedure and request for other parties to join in the docketing statement.			
6/14/2013	GAH	Analyzed voluminous Docketing Statement filed by counsel for HOA with NV Supreme Court.	0.40	225.00	90.00
6/17/2013	GAH	Coordinated follow up to confirm that tenants have vacated and that vendor is contacted to change the locks immediately to ensure that client acquires possession/control of the property; Telephone conference with B. Selmensberger re	0.50	225.00	112.50
6/18/2013	GAH	Analyzed and revised Confidential Settlement Statement; Telephone conference with B. Selmensberger re	3.30	225.00	742.50
6/20/2013	ARS	Prepare for and attended pre-settlement conference call re potential for settlement and scheduling of settlement conference; email to client re date and time of settlement conference including notice of early case assessment report setting time and location of settlement conference.	1.50	225.00	337.50
6/20/2013	GAH	Analysis of status and strategy re telephone conference with Supreme Court Settlement Conference Judge, D. Gould, and counsel for HOA and third party purchaser, positions to take with respect to settlement position, and questions to ask of Settlement Conference Judge and opposing counsel re briefing and parameters of settlement conference, and outcome of telephone conference, including demand that client appear in person; Analyzed e-mail correspondence from D. Gould re pre-mediation telephone conference and analyzed Early Case Assessment Report prepared by D. Gould and submitted to NV Supreme Court.	0.30	225.00	67.50
6/25/2013	ARS	Phone conversation with S. Artino	0.10	225.00	22.50
Sub-total Fees:					5,692.50

Rate Summary

Gregg A. Hubley	8.90 hours at \$225.00/hr	2,002.50
Anthony R. Sassi	16.40 hours at \$225.00/hr	3,690.00
Total hours:	25.30	

E-Mail

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 5
MatterID:000338-000410

Expenses

6/3/2013	Filing Fee.	3.50
6/10/2013	Westlaw Database Research.	75.00
6/10/2013	Postage.	0.46
Sub-total Expenses:		78.96

Total Due on This Invoice: 5,771.46

Additional Invoices Outstanding On: July 23, 2013

Statement Number	Statement Date	Paid Amount	Balance
4248466	May 31 2013	0.00	394.78
4251053	Jun 26 2013	0.00	1595.74

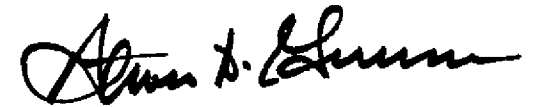
Additional Billing Notes

E-mail 225
Invoices go to:

E-Mail

APP001131

1 **ROC**
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



CLERK OF THE COURT

6 Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 NEW YORK COMMUNITY BANK,

10 Plaintiff,

11 v.

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

14 Defendants.

15 GOGO WAY TRUST,

16 Counterclaimant,

17 v.

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

20 Counterdefendants.
21

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

RECEIPT OF COPY

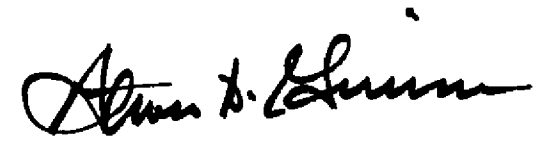
22 **RECEIPT of *PLAINTIFF'S MEMORANDUM IN SUPPORT OF ATTORNEY'S FEES***

23 **AWARD**, is hereby acknowledged this 27th day of August, 2013.

24 ALESSI & KOENIG, LLC



26 HUONG X. LAM, ESQ.
27 9500 West Flamingo Road, Suite 205
Las Vegas, Nevada 89147
28



CLERK OF THE COURT

OPPM

MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
LAW OFFICES OF
MICHAEL F. BOHN, ESQ. LTD.
376 E. Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
(702) 642-3113 / (702) 642-9766 FAX
Attorney for Appellant Gogo Way Trust

DISTRICT COURT
CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK, ;
Plaintiff

vs.

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

CASE NO.: A660328
DEPT. NO. XV

Date of hearing: September 25, 2013
Time of hearing: 9:00 a.m.

DEFENDANT GOGO WAY TRUST'S OPPOSITION TO
MOTION FOR ATTORNEYS FEES

Defendant/Counterclaimant Gogo Way Trust's opposes the plaintiffs motion for attorneys fees as follows.

POINTS AND AUTHORITIES

Virtually, the entirety of the written opinion granting summary judgment in this case involves and acts and omissions of co-defendant Shadow Wood Homeowners Association and it's attorneys Alessi & Koenig. Defendant/counterclaimant Gogo Way Trust sole involvement in this litigation as the purchaser of the subject real property at a foreclosure sale. Gogo Way Trust did not perform any of the acts or omissions which led to this litigation. Any award of attorneys fees should be assessed against the

1 co-defendant and not Gogo Way Trust.

2

3 Gogo Way Trust has claimed protections as a bona fide purchaser. Although this court did find
4 that Gogo Way Trust was not a bona fide purchaser, those findings are not supported with any evidence in
5 this court's opinion.

6

7 In the case of Firato v. Tuttle, 48 Cal.2d 136, 308 P.2d 333 (1957), the California Supreme
8 Court stated:

9 Instruments which are wholly void cannot ordinarily provide the foundation for good
10 title even in the hands of an innocent purchaser, as where a deed has been forged or
11 has not been delivered. Trout v. Taylor, 220 Cal. 652, 656, 32 P.2d 968. It does not
12 appear, however, that section 870 of the Civil Code should necessarily make the
13 unauthorized reconveyance by a trustee void as to such a purchaser. Section 2243 of
14 that code states: ¶Everyone to whom property is transferred in violation of a trust,
15 holds the same as an involuntary trustee under such trust, unless he purchased it in
16 good faith, and for a valuable consideration.¶ (Emphasis added.) This section was also
17 enacted in 1872 and has been treated as correlative to section 870. Chapman v.
18 Hughes, 134 Cal. 641, 657, 58 P. 298, 60 P. 974, 66 P. 982.

19 **The rule indicated by section 2243, which would protect innocent purchasers for**
20 **value who take without any notice that the conveyance by the trustee was**
21 **unauthorized, is in accord with the rule protecting such purchasers who acquire**
22 **their interests from one who holds a general power and who makes a conveyance**
23 **for an unauthorized purpose, see Alcorn v. Buschke, 133 Cal. 655, 66 P. 15, and**
24 **cases cited, or from a trustee under a secret trust. Ricks v. Reed, 19 Cal. 551;**
25 **Rafferty v. Kirkpatrick, 29 Cal.App.2d 503, 508, 85 P.2d 147; Civil Code, s 869. The**
26 **protection of such purchasers is consistent ¶with the purpose of the registry laws, with**
27 **the settled principles of equity, and with the convenient transaction of business.¶**
28 **Williams v. Jackson, 107 U.S. 478, 484, 2 S.Ct. 814, 819, 27 L.Ed. 529. It also**
finds support in the better reasoned cases from other jurisdictions which have
dealt with similar problems upon general equitable principles and in the absence
of statutory provisions. Simpson v. Stern, 63 App.D.C. 161, 70 F.2d 765,
certiorari denied 292 U.S. 649, 54 S.Ct. 859, 78 L.Ed. 1499; Williams v. Jackson,
supra, 107 U.S. 478, 2 S.Ct. 814; Town of Carbon Hill v. Marks, 204 Ala. 622, 86 So.
903; Lennartz v. Quilty, 191 Ill. 174, 60 N.E. 913; Millick v. O'Malley, 47 Idaho 106,
273 P. 947; Day v. Brenton, 102 Iowa 482, 71 N.W. 538; Willamette Collection &
Credit Service v. Gray, 157 Or. 79, 70 P.2d 39; Locke v. Andrasko, 178 Wash. 145, 34
P.2d 444.

25 As section 2243 of the Civil Code must be read with section 870 of the same code and
26 because of the obvious desirability of protecting innocent purchasers for value who
27 rely in good faith upon recorded instruments under the circumstances presented here,
28 we conclude that plaintiffs were required to plead that respondents were not such
innocent purchasers for value in order to state a cause of action against them. In the

1 absence of such allegations, the trial court properly sustained respondents' demurrers to
2 plaintiffs' first amended complaint.

3 The burden of proof to prove that the purchaser was not a bona fide purchaser lies on the party
4 challenging the sale. In re Farmer's Market 22 B.R. 71, (9th Cir. BAP 1982).

5 The bona fide purchaser doctrine protects a purchaser's title against competing legal or
6 equitable claims of which the purchaser had no notice at the time of the conveyance. See 25 Corp.,
7 Inc. v. Eisenman Chemical Co. 101 Nev. 664, 709 P.2d 164 (1985). As far back as 1880, the
8 Nevada Supreme Court, in the case of Moresi v. Swift 15 Nev. 215 (1880) stated:

9 The rule that a man who advances money bona fide and without notice, will be
10 protected in equity, applies equally to real estate, chattels, and personal estate.

11 The plaintiffs status of a bona fide purchaser protects the plaintiff from the defendants claims
12 that the defendant tendered the cure amount to the trustee but was rejected.

13 The court's findings do not set forth any acts or omissions on the part of Gogo Way Trust,
14 only Shadow Wood Homeowners Association and it's law firm. Any attorneys fees in this case
15 should be assessed against the party whose actions caused the damage, not the innocent purchaser.

16 DATED this 27th day of August, 2013.

17 LAW OFFICES OF
18 MICHAEL F. BOHN, ESQ., LTD.

19
20 By: / s / Michael F. Bohn, Esq. /
21 Michael F. Bohn, Esq.
22 376 E. Warm Springs Road, Ste. 125
23 Las Vegas, Nevada 89119
24 Attorney for Gogo Way Trust

24 CERTIFICATE OF MAILING

25 I HEREBY CERTIFY that on the 27th day of August 2013, I served a photocopy of
26 the foregoing by placing the same in a sealed envelope with first-class postage fully prepaid thereon
and deposited in the United States mails addressed as follows:

27 Gregg A. Hubley, Esq.
Pite Duncan, LLP

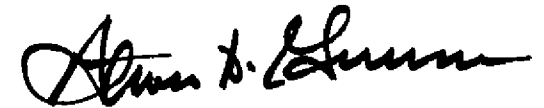
701 E. Bridger Ave # 700
Las Vegas, NV 89101

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ALESSI & KOENIG, LLC

Ryan Kerbow, Esq.
Alessi & Koenig,
9500 W. Flamingo, Ste. 205
Las Vegas, NV 89147

/s/ /Esther Maciel-Thompson/
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.



CLERK OF THE COURT

NNOP
GREGG A. HUBLEY (NV Bar #007386)
ANTHONY R. SASSI (NV Bar #012486)
PITE DUNCAN, LLP
701 East Bridger Avenue, Suite 700
Las Vegas, Nevada 89101
Telephone: (702) 991-4628
Facsimile: (702) 685-6342
E-mail: Ghublely@piteduncan.com

Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

DISTRICT COURT

CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK,

Plaintiff,

v.

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

Defendants.

Case No.: A-12-660328-C

Dept. No.: XV

**NOTICE OF NON-OPPOSITION TO
PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF
ATTORNEY'S FEES**

Date of Hearing: September 25, 2013

Time of Hearing: 9:00 a.m.

GOGO WAY TRUST,

Counterclaimant,

v.

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

Counterdefendants.

**NOTICE OF NON-OPPOSITION TO PLAINTIFF'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF ATTORNEY'S FEES**

COMES NOW Plaintiff/Counterdefendant, NEW YORK COMMUNITY BANK ("NYCB"),
by and through its attorney of record, Pite Duncan, LLP, and hereby provides notice to the Court and

1 all interested parties of Defendant, SHADOW WOOD HOMEOWNERS' ASSOCIATION, INC.'s
2 ("Defendant" or "Shadow Wood HOA"), failure to file a response in opposition to NYCB's
3 Supplemental Memorandum in Support of its Motion for Attorney's Fees ("Supplemental
4 Memorandum").

5 On July 25, 2013, the Court ordered NYCB to file a Supplemental Memorandum in support
6 of its Motion for Attorney's fees on or before August 12, 2013, and ordered Defendants to file an
7 opposition to Plaintiff's Supplemental Memorandum on or before September 3, 2013. NYCB filed
8 its Supplemental Memorandum on August 12, 2013. The Supplemental Memorandum was served
9 on counsel for Defendant, Shadow Wood HOA, via hand delivery, on August 27, 2013, and Shadow
10 Wood HOA's response was required to be filed and served by September 10, 2013. To date,
11 Defendant has not yet filed a response to the Supplemental Memorandum.

12 Failure of the opposing party to serve and file a written opposition may be construed as an
13 admission that the motion and/or joinder is meritorious and a consent to granting of the same. See
14 EDCR 2.20(e). In light of Defendant's failure to file and serve a response to the Supplemental
15 Memorandum, NYCB requests that the Court construe this as a concession that the Supplemental
16 Memorandum is meritorious and a consent to granting the same by awarding NYCB all requested
17 attorneys fees from Defendant.

18 In accordance with EDCR 2.20(e), Defendant's failure to oppose Defendant's Supplemental
19 Memorandum constitutes consent to the granting thereof. Therefore, NYCB respectfully requests
20 that this Court award NYCB its attorney's fees as requested in the Supplemental Memorandum.

21 DATED this 17th day of September, 2013.

22 PITE DUNCAN, LLP

23
24 /s/ Anthony R. Sassi
GREGG A. HUBLEY
ANTHONY R. SASSI
25 Attorneys for Plaintiff/Counterdefendant NEW
26 YORK COMMUNITY BANK
27
28

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

4 **DECLARATION OF SERVICE**

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

8 On September 17, 2013, I served the following document(s):

9 **NOTICE OF NON-OPPOSITION TO PLAINTIFF'S SUPPLEMENTAL**
10 **MEMORANDUM IN SUPPORT OF ATTORNEY'S FEES**

11 on the parties in this action addressed as follows:

12 Michael F. Bohn
13 **LAW OFFICES OF MICHAEL F. BOHN**
14 376 East Warm Springs Road, Suite 125
15 Las Vegas, Nevada 89119
16 *Attorney for Defendant Gogo Way Trust*

Bradley Bace, Esq.
ALESSI & KOENIG, LLC
9500 West Flamingo Road, Suite 205
Las Vegas, Nevada 89147
Attorneys for Defendant Shadow Wood
Homeowners' Association, Inc.

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

23 **BY ELECTRONIC MAIL:** I electronically mailed the above-described document to the
24 email address above.

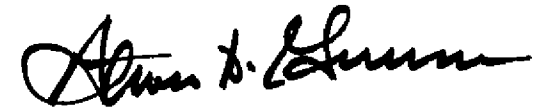
25 **BY FACSIMILE:** I personally sent to the addressee's facsimile number a true copy of the
26 above-described document(s). I verified transmission with a confirmation printed out by the
27 facsimile machine used. Thereafter, I placed a true copy in a sealed envelope addressed and
28 mailed as indicated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

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

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

Executed this 17th day of September 2013, at Las Vegas, Nevada.

/s/ Nicole L. Schlanderer
NICOLE L. SCHLANDERER



CLERK OF THE COURT

RPLY
GREGG A. HUBLEY (NV Bar #007386)
ANTHONY R. SASSI (NV Bar #012486)
PITE DUNCAN, LLP
701 East Bridger Avenue, Suite 700
Las Vegas, Nevada 89101
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Facsimile: (702) 685-6342
E-mail: Ghubley@piteduncan.com

Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

DISTRICT COURT

CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK,

Plaintiff,

v.

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

Defendants.

Case No.: A-12-660328-C

Dept. No.: XV

**PLAINTIFF'S REPLY TO DEFENDANT
GOGO WAY TRUST'S OPPOSITION
TO MOTION FOR ATTORNEYS FEES**

Date of Hearing: September 25, 2013

Time of Hearing: 9:00 a.m.

GOGO WAY TRUST,

Counterclaimant,

v.

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

Counterdefendants.

**PLAINTIFF'S REPLY TO DEFENDANT GOGO WAY TRUST'S OPPOSITION TO
MOTION FOR ATTORNEYS FEES**

COMES NOW Plaintiff/Counterdefendant, NEW YORK COMMUNITY BANK ("NYCB"),
by and through its attorneys of record, PITE DUNCAN, LLP, and respectfully submits its Reply To
Defendant Gogo Way Trust's ("Gogo Way") Opposition to Motion for Attorneys Fees.

1 This Motion is made and based upon the Points and Authorities attached hereto, the exhibits
2 attached hereto, the pleadings and papers on file herein, the exhibits attached to NYCB's
3 Supplemental Memorandum in Support of Attorney's Fees Award, and any oral argument this Court
4 may entertain.

5 **POINTS AND AUTHORITIES**

6 **I.**

7 **INTRODUCTION**

8 Once again, Gogo Way has rinsed off its bona fide purchaser argument hoping that the third
9 time will be the charm. Despite the fact that this Court has already determined that (a) Gogo Way
10 was not a bona fide purchaser and (b) that this defense was frivolous and meritless, it now hopes to
11 use the same tired argument to deflect the attorney's fees award onto Defendants Shadow Wood
12 Home Owner's Association ("Shadow Wood"). Gogo Way now claims that because it was a bona
13 fide purchaser it is an innocent party and that "[it] did not perform any of the acts or omissions
14 which led to this litigation." Therefore, it believes it should be immune from paying any of the
15 attorney's fees award, whatever that amount may be. However, Gogo Way conveniently ignores
16 the role it played in prolonging the litigation and maintaining the meritless and frivolous claims.
17 Gogo Way points the finger at Shadow Wood and its attorney Alessi & Koenig, but fails to
18 acknowledge that Alessi & Koenig were counsel of record for Gogo Way until very recently,
19 including during the briefing on the NYCB's Motion for Attorney's Fees and subsequent hearing.
20 Not only is this argument unpersuasive at any level, it is completely irrelevant in the context of this
21 motion - determining the appropriate amount of attorney's fees to award to NYCB.

22 Ultimately, the Court's Order on Plaintiff's Motion for Attorney's Fees is very clear. The
23 parties were to submit "... further briefing to ascertain the amount of the attorney's fees award
24 pursuant to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 455 P.2d 31 (1969)." Gogo Way's
25 Opposition fails to even mention *Brunzell*, let alone address any of the factors set forth in that
26 opinion. By this omission, Gogo Way gives its tacit admission that the nature and amount of fees
27 requested by NYCB are appropriate.

28 /././

1 II.

2 ARGUMENT

3 A. **GOGO WAY WAS EQUALLY RESPONSIBLE FOR MAINTAINING THIS**
4 **PROTRACTED AND NEEDLESS LITIGATION.**

5 Gogo Way's argument as to why it should be immune from paying NYCB's attorney's fees
6 is premised on a basic misconception of why the attorney's fees were awarded in the first place. The
7 Court did not award NYCB attorney's fees as part of a cause of action. Instead the Court awarded
8 attorney's fees under NRS 18.010, which allows for an award of attorney's fees "when the court
9 finds that the claim or defense of the opposing party was brought or maintained without reasonable
10 ground or to harass the prevailing party." Specifically, the Court concluded that "Defendants [both
11 Shadow Wood and Gogo Way] maintained a defense in this action that was not based on any sound
12 legal reasoning, but rather was calculated to abuse the judicial process in an attempt to lengthen the
13 proceedings and avoid a final judgment." See, Order on Plaintiff's Motion for Attorney's Fees at
14 p. 2 lns. 22-24. Simply put, attorney's fees were awarded because of Defendants' action after the
15 litigation was initiated, not its actions before.

16 Gogo Way cannot deny that its actions during the litigation served to prolong the litigation
17 rather than end it. As much as it may wish to distance itself from Alessi & Koenig, the fact remains
18 that Gogo Way was represented by Alessi & Koenig throughout this litigation, and only retained its
19 current counsel after the Court awarded NYCB its attorney's fees. It is disingenuous to look back
20 now and claim that the Alessi & Koenig's action are attributable only to Shadow Wood. Similarly,
21 Gogo Way cannot deny that it rejected NYCB's settlement offers, nor can it claim that it was
22 Shadow Wood that caused settlement discussions to fail. Finally, as is well chronicled at this point,
23 Gogo Way alone maintained its bona fide purchaser defense, which Shadow Wood did not and could
24 not claim. In claiming that Shadow Wood alone maintained frivolous defenses and needlessly
25 prolonged this litigation, Gogo Way asks this Court to ignore Gogo Way's actions during this
26 litigation.

27 ././

28 ././

1 **B. GOGO WAY IS STILL NOT A BONA FIDE PURCHASER.**

2 Seemingly unconvinced by this Court's two previous rulings to the contrary, Gogo Way still
3 claims to be a bona fide purchaser. What is even more amazing is that it also believes arguing this
4 point for a third time will somehow save it from paying the attorney's fees that NYCB incurred in
5 litigating against the meritless defense. Instead it seems to be more indicative of the stubborn
6 manner in which Gogo Way litigated this case. Rather than accepting that it had no legitimate
7 defense, Gogo Way prefers to push the issue hoping the Court will confuse Gogo Way's obstinance
8 for merit. However, the only difference between this iteration of the argument and the previous ones,
9 is the fact that Gogo Way now relies on inapplicable California statutes and case law. Nonetheless,
10 in the end, the result is no different than the last, and Gogo Way is still not a bona fide purchaser.

11 **III.**

12 **CONCLUSION**

13 Based upon the foregoing, it is respectfully requested that the Court award NYCB attorney's
14 fees in the amount of \$41,130.00, which should be reduced to judgment against Defendants, jointly
15 and severally.

16 DATED this 17th day of September, 2013.

17 PITE DUNCAN, LLP

18 /s/ Anthony R. Sassi

19 GREGG A. HUBLEY

20 ANTHONY R. SASSI

21 *Attorneys for Plaintiff/Counterdefendant NEW*
22 *YORK COMMUNITY BANK*

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

4 **DECLARATION OF SERVICE**

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

8 On September 18, 2013, I served the following document(s):

9 **PLAINTIFF'S REPLY TO DEFENDANT GOGO WAY TRUST'S OPPOSITION TO**
10 **MOTION FOR ATTORNEYS FEES**

11 on the parties in this action addressed as follows:

12 Michael F. Bohn
13 **LAW OFFICES OF MICHAEL F. BOHN**
14 376 East Warm Springs Road, Suite 125
15 Las Vegas, Nevada 89119
16 *Attorney for Defendant Gogo Way Trust*

Bradley Bace, Esq.
ALESSI & KOENIG, LLC
9500 West Flamingo Road, Suite 205
Las Vegas, Nevada 89147
Attorneys for Defendant Shadow Wood
Homeowners' Association, Inc.

17 X **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above. I am
18 readily familiar with the firm's practice of collection and processing correspondence for
19 mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course
20 of business. I am aware that on motion of party served, service is presumed invalid if postal
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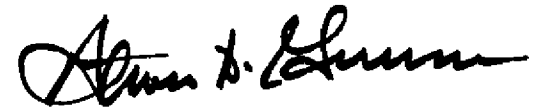
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addressed as indicated above. I am familiar with the firm's practice of collection and
processing correspondence for Federal Express delivery and that the documents served are
deposited with Federal Express this date for overnight delivery.

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

Executed this 18th day of September 2013, at Las Vegas, Nevada.

/s/ Nicole L. Schlanderer
NICOLE L. SCHLANDERER



CLERK OF THE COURT

1 **OPPM**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ. LTD.
7 376 E. Warm Springs Road, Ste. 125
8 Las Vegas, Nevada 89119
9 (702) 642-3113 / (702) 642-9766 FAX
10 Attorney for Appellant Gogo Way Trust

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 NEW YORK COMMUNITY BANK, ;
14 Plaintiff

15 vs.

16 SHADOW WOOD HOMEOWNERS
17 ASSOCIATION, INC.; GOGO WAY TRUST
18 Defendants

CASE NO.: A660328
DEPT. NO. XV

Date of hearing: September 25, 2013
Time of hearing: 9:00 a.m.

19 **DEFENDANT GOGO WAY TRUST'S OPPOSITION TO**
20 **MOTION FOR ATTORNEYS FEES**

21 Defendant/Counterclaimant Gogo Way Trust's opposes the plaintiffs motion for attorneys fees
22 as follows.

23 **POINTS AND AUTHORITIES**

24 Virtually, the entirety of the written opinion granting summary judgment in this case involves and
25 acts and omissions of co-defendant Shadow Wood Homeowners Association and it's attorneys Alessi &
26 Koenig. Defendant/counterclaimant Gogo Way Trust sole involvement in this litigation as the purchaser
27 of the subject real property at a foreclosure sale. Gogo Way Trust did not perform any of the acts or
28 omissions which led to this litigation. Any award of attorneys fees should be assessed against the co-
defendant and not Gogo Way Trust.

1 Gogo Way Trust has claimed protections as a bona fide purchaser. Although this court did find
2 that Gogo Way Trust was not a bona fide purchaser, those findings are not supported with any evidence
3 in this court's opinion.

4 In the case of Firato v. Tuttle, 48 Cal.2d 136, 308 P.2d 333 (1957), the California Supreme Court
5 stated:

6 Instruments which are wholly void cannot ordinarily provide the foundation for good title
7 even in the hands of an innocent purchaser, as where a deed has been forged or has not
8 been delivered. Trout v. Taylor, 220 Cal. 652, 656, 32 P.2d 968. It does not appear,
9 however, that section 870 of the Civil Code should necessarily make the unauthorized
10 reconveyance by a trustee void as to such a purchaser. Section 2243 of that code states:
11 'Everyone to whom property is transferred in violation of a trust, holds the same as an
12 involuntary trustee under such trust, unless he purchased it in good faith, and for a
13 valuable consideration.' (Emphasis added.) This section was also enacted in 1872 and has
14 been treated as correlative to section 870. Chapman v. Hughes, 134 Cal. 641, 657, 58 P.
15 298, 60 P. 974, 66 P. 982.

16 **The rule indicated by section 2243, which would protect innocent purchasers for**
17 **value who take without any notice that the conveyance by the trustee was**
18 **unauthorized, is in accord with the rule protecting such purchasers who acquire**
19 **their interests from one who holds a general power and who makes a conveyance for**
20 **an unauthorized purpose, see Alcorn v. Buschke, 133 Cal. 655, 66 P. 15, and cases**
21 **cited, or from a trustee under a secret trust. Ricks v. Reed, 19 Cal. 551; Rafferty v.**
22 **Kirkpatrick, 29 Cal.App.2d 503, 508, 85 P.2d 147; Civil Code, s 869. The protection of**
23 **such purchasers is consistent 'with the purpose of the registry laws, with the settled**
24 **principles of equity, and with the convenient transaction of business.' Williams v.**
25 **Jackson, 107 U.S. 478, 484, 2 S.Ct. 814, 819, 27 L.Ed. 529. It also finds support in the**
26 **better reasoned cases from other jurisdictions which have dealt with similar**
27 **problems upon general equitable principles and in the absence of statutory**
28 **provisions. Simpson v. Stern, 63 App.D.C. 161, 70 F.2d 765, certiorari denied 292**
U.S. 649, 54 S.Ct. 859, 78 L.Ed. 1499; Williams v. Jackson, supra, 107 U.S. 478, 2 S.Ct.
814; Town of Carbon Hill v. Marks, 204 Ala. 622, 86 So. 903; Lennartz v. Quilty, 191 Ill.
174, 60 N.E. 913; Millick v. O'Malley, 47 Idaho 106, 273 P. 947; Day v. Brenton, 102
Iowa 482, 71 N.W. 538; Willamette Collection & Credit Service v. Gray, 157 Or. 79, 70
P.2d 39; Locke v. Andrasko, 178 Wash. 145, 34 P.2d 444.

23 As section 2243 of the Civil Code must be read with section 870 of the same code and
24 because of the obvious desirability of protecting innocent purchasers for value who rely
25 in good faith upon recorded instruments under the circumstances presented here, we
26 conclude that plaintiffs were required to plead that respondents were not such innocent
27 purchasers for value in order to state a cause of action against them. In the absence of such
28 allegations, the trial court properly sustained respondents' demurrers to plaintiffs' first
amended complaint.

27 The burden of proof to prove that the purchaser was not a bona fide purchaser lies on the party
28 challenging the sale. In re Farmer's Market 22 B.R. 71, (9th Cir. BAP 1982).

1 The bona fide purchaser doctrine protects a purchaser's title against competing legal or equitable
2 claims of which the purchaser had no notice at the time of the conveyance. See 25 Corp., Inc. v.
3 Eisenman Chemical Co. 101 Nev. 664, 709 P.2d 164 (1985). As far back as 1880, the Nevada Supreme
4 Court, in the case of Moresi v. Swift 15 Nev. 215 (1880) stated:

5 The rule that a man who advances money bona fide and without notice, will be protected
6 in equity, applies equally to real estate, chattels, and personal estate.

7 The plaintiff's status of a bona fide purchaser protects the plaintiff from the defendant's claims that
8 the defendant tendered the cure amount to the trustee but was rejected.

9 The court's findings do not set forth any acts or omissions on the part of Gogo Way Trust, only
10 Shadow Wood Homeowners Association and its law firm. Any attorney's fees in this case should be
11 assessed against the party whose actions caused the damage, not the innocent purchaser.

12 DATED this 20th day of September, 2013.

13 LAW OFFICES OF
14 MICHAEL F. BOHN, ESQ., LTD.

15
16 By: / s / Michael F. Bohn, Esq. /
17 Michael F. Bohn, Esq.
18 376 E. Warm Springs Road, Ste. 125
19 Las Vegas, Nevada 89119
20 Attorney for Gogo Way Trust
21
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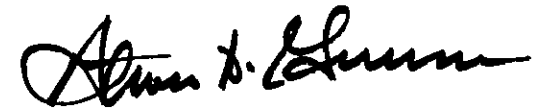
1 **CERTIFICATE OF MAILING**

2 I HEREBY CERTIFY that on the 20th day of September 2013, I served a photocopy of the
3 foregoing by placing the same in a sealed envelope with first-class postage fully prepaid thereon and
deposited in the United States mails addressed as follows:

4 Gregg A. Hubley, Esq.
Pite Duncan, LLP
5 701 E. Bridger Ave # 700
Las Vegas, NV 89101
6

ALESSI & KOENIG, LLC
Ryan Kerbow, Esq.
Alessi & Koenig,
9500 W. Flamingo, Ste. 205
Las Vegas, NV 89147

7
8 /s/ /Esther Maciel-Thompson/
9 An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
10
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CLERK OF THE COURT

1 **OPPM**
2 **ALESSI & KOENIG, LLC**
3 Robert A. Koenig, Esq. (SB #3203)
4 Ryan M. Kerbow, Esq. (SB #11403)
5 9500 W. Flamingo Road, Suite #205
6 Las Vegas, Nevada 89147
7 (702)-222-4033
8 Attorneys for Defendants

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

11
12 **NEW YORK COMMUNITY BANCORP,**
13 **INC.,**

14
15
16 **Plaintiff,**

17 **v.**

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

21 **Defendants.**

DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
ATTORNEYS FEES; AFFIDAVIT IN
SUPPORT

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

OPPOSITION TO MOTION FOR ATTORNEY'S FEES

I. INTRODUCTION/SUMMARY OF ARGUMENT

Plaintiff brings a motion for attorney's fees arguing, under NRS 18.010, that Defendants maintained a defense without reasonable grounds. Even now, Plaintiff fails to articulate or understand the issues involved in this case, let alone the facts.

At its core, this case involves two issues: (1) whether Plaintiff's tender of \$6,455.45 on January 31, 2012 was sufficient to arrest the foreclosure proceedings that A&K was processing as a result of Plaintiff's failure to pay assessments to the Association ever since Plaintiff obtained title to the Property on May 9, 2011; and (2) if the tender of that amount was sufficient, whether the circumstances warrant invalidating the sale as against a bona fide purchaser without notice (i.e. the Gogo Way Trust).

Rather than focusing on these issues, Plaintiff's motion focuses instead on certain conflicting information about the delinquent assessment amount that Plaintiff obtained from the Association's professional community manager, MP Association Management, who is not a party to this case. Plaintiff further argues that the attorneys fees charged for issuing the Notice of Default are "exorbitant," even though the fees charged were consistent with the statutory regulation of fees for issuing said notice (namely, NRS 116.310313). Plaintiff alleges that it tendered payment based upon an assessment ledger it received from A&K showing an amount of \$6445.54, when in reality, the assessment ledger was accompanied with a break down that contained instructions to pay an amount which eliminated a portion of the unpaid assessments reflected in the ledger under the 9-month super priority rule and which included costs of collection as permitted pursuant to NRS 116.3116 and the

1 Association's CC&Rs. Finally, Plaintiff takes the position consistent with the Nevada Real Estate
2 Division's advisory opinion that an association's assessment lien never includes fees and costs
3 associated with the collection of the delinquent assessments. Oddly, this is the position this Court
4 adopted in this case, even though at the pretrial conference on February 13, 2013, Judge Silver
5 gratuitously distributed a ruling to counsel that she issued in a prior case, *Peccole Ranch Community*
6 *Association v. Elsinore, LLC*. (Affidavit of Ryan Kerbow.) The *Peccole Ranch* decision
7 completely contradicts the NRED Advisory Opinion. At the pretrial conference, Judge Silver
8 informed counsel that she had already made up her mind regarding the issues associated with super
9 priority liens, and that her opinion was reflected in the *Peccole Ranch* decision. (Affidavit of Ryan
10 Kerbow.)
11
12

13 To grant Plaintiff attorney's fees, this Court must conclude that the defense was maintained
14 without reasonable grounds. Here, Plaintiff prevailed for two reasons. First, the Court entered a
15 ruling that is contradictory to the interpretation of NRS 116.3116 in rulings issued by Judge Scann,
16 Judge Denton, and, interestingly, Judge Silver. Second, for an unknown reason, the Court
17 summarily ruled without providing any explanation that the Gogo Way Trust was not a bona fide
18 purchaser.
19
20

21 With respect to the first issue, it was not unreasonable for Defendants to take the position that
22 the Association's lien included 9 months of pre-foreclosure assessments, all the unpaid assessment
23 during the time that Plaintiff owned the Property, and all the collection fees and costs incurred during
24 the numerous months Plaintiff owned the Property but failed to pay assessments. However, the
25 Court in this case issued a highly unusual ruling that Plaintiff was obligated to pay only an amount
26 equal to 9 months of assessments – despite the fact that Plaintiff had owned the Property for months
27
28

1 without paying any assessments during which time the Association incurred additional foreclosure
2 fees, costs and assessments. With regard to the second issue, it was not unreasonable for
3 Defendants to take the position that, under these circumstances, bona fide purchaser protections
4 applied to the Gogo Way Trust. This Court did not explain how it reached its ruling to the contrary,
5 nor has Plaintiff explained how it was unreasonable for Defendants to take the position that Gogo
6 Way Trust was a bona fide purchaser.

8 Finally, Plaintiff did not raise the super priority issue (i.e. the issue through which Plaintiff
9 prevailed) in its complaint, its amended complaint, or its motion for summary judgment filed on
10 February 8, 2013. In fact, Plaintiff did not raise the super priority issue until it filed the
11 Supplemental Memorandum in Support of Plaintiff's Motion for Summary Judgment on March 1,
12 2013, which was filed after Judge Silver's gratuitous comments at the Final Status Conference of
13 February 13, 2013. As a result, the issue was present in this case *for a total of thirteen days* – from
14 March 1, 2013 when Plaintiff filed its supplemental brief until March 13, 2013 when the Court
15 granted summary judgment for Plaintiff. It is disingenuous for Plaintiff to argue that Defendant
16 defended this case without reasonable grounds when Plaintiff only raised the issue it ultimately
17 prevailed on for a period of 13 days. Before, Plaintiff's case was based on a theory that the Property
18 sold for a commercially unreasonable price and that there were inconsistencies in the amount of
19 assessments claimed by different people at different times.
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25 IV. ARGUMENT

26 A. DEFENDANTS' POSITION ON THE SUPER PRIORITY LIEN ISSUE WAS NOT
27 UNREASONABLE, WHILE THIS COURT BASED ITS RULING ON THE NRED'S
28

1 UNIQUE INTERPRETATION OF THE STATUTE WHICH CONTRADICTS ALL
2 PRIOR RULINGS

3 In its Supplemental Memorandum to Plaintiff's Motion for Summary Judgment and in
4 Opposition to Defendants' Motion for Summary Judgment, Plaintiff argued as follows:
5

6 [T]he State of Nevada Department of Business and Industry, Real Estate Division,
7 (hereinafter, "Division") published an Advisory Opinion on December 12, 2012, in
8 which the Division formally adopted the exact same position that this Court has
9 used in its prior cases. Specifically, the Division has stated that the "super-priority"
10 HOA lien "...consists of unpaid assessments based on the association's budget and
11 NRS 116.310312 charges (i.e. nuisance abatement charges) [and] nothing more."

12 (Supplemental Memorandum, page 7, lines 6-11.) More precisely, the NRED concluded as follows:
13

14 The association's lien does not include "costs of collecting" defined by NRS
15 116.310313, so the super priority portion of the lien may not include such costs.
16 NRS 116.310313 does not say such charges are a lien on the unit, and NRS
17 116.3116 does not make such charges part of the association's lien."
18

19 (NRED Advisory Opinion, page 1.)

20 The NRED advisory opinion drastically departs from rulings issued by Judge Scann, Judge
21 Denton, and Judge Silver. In those rulings, the Court held that the assessment lien includes fees and
22 cost of collection, but that those fees and costs of collection do not survive a foreclosure by a first
23 deed of trust. (See Affidavit of Ryan Kerbow, Exhibits "C," "D," and "E.") This is drastically
24 different from the NRED's opinion that the fees and costs of collection are not part of the
25 assessment lien in the first place.
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1 However, in this case, the Court saw fit to adopt the NRED's position. Even though
2 Plaintiff failed to pay monthly assessments since purchasing the Property in May of 2011, and
3 foreclosure proceedings were processed as a result, this court agreed with the NRED that, as a
4 matter of law, those fees and costs of foreclosure were not part of the Association's assessment lien.
5
6 Specifically, this court ruled:

7 Although not precedential, the State of Nevada Department of Business and
8 Industry, Real Estate Division ("Real Estate Division") published an Advisory
9 Opinion on December 12, 2012, setting forth that costs of collection cannot properly
10 be included in an HOA's super-priority lien, and stating that "liens for fines and
11 penalties may not be foreclosed unless they satisfy the requirements of NRS
12 116.31162(4)." [...]

13
14 NYCB's payment of \$6,783.16 more than satisfied the nine (9) months of
15 assessments (\$1,519.29) on which Shadow Wood could have legitimately based a
16 super-priority lien, and would have netted Shadow Wood more than it ultimately
17 collected. The Court believes, based upon the papers and pleadings submitted, as
18 well as oral argument at the hearing of this matter, that Shadow Wood and/or its
19 agents were attempting to profit off the subject HOA foreclosure by including
20 exorbitant fees and costs that could not be used as the basis for an HOA foreclosure
21 sale in this matter.

22 (Order Granting Motion for Summary Judgment, paragraphs 5, 10.) This Court's ruling is
23 extraordinary in that it flies in the face of every ruling before it: from the rulings issued by the
24 supreme courts of Connecticut and Colorado, to the numerous rulings issued by the Clark County
25 District Court. While courts have disagreed over whether the lien for collection fees and costs
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1 survives a foreclosure by a first mortgage holder, nobody besides the NRED (and now this Court)
2 has ruled that the assessment lien does not include collection fees and costs in the first place.

3 Perhaps equally extraordinary, at the pretrial conference of February 13, 2013, Judge Silver
4 gratuitously distributed to counsel a copy of her prior opinion from the case of *Peccole Ranch v.*
5 *Elsinore, LLC*, an opinion that was consistent with opinions issued by Judge Scann and Judge
6 Denton. Namely, the opinion held that collection fees and costs are included in the assessment lien
7 but do not survive a first mortgage foreclosure. Judge Silver distributed the opinion and informed
8 counsel that she had already made up her mind on the issue – even though the issue had never
9 before been raised in this case. (**Affidavit of Ryan Kerbow.**) Despite distributing the *Peccole*
10 *Ranch* decision to counsel in this case and representing to counsel that she would not change her
11 mind on the issue, Judge Silver entered a ruling in this case consistent with the NRED opinion and
12 contradictory to the *Peccole Ranch* decision.
13

14
15 The issue of whether the assessment lien includes fees and costs was a material issue in this
16 case. Here, the Court ruled that only nine months of assessments was due and owing at the time
17 Plaintiff tendered a payment. However, under the interpretation previously proffered by Judge
18 Silver and others, the assessment lien should have included: (1) nine months of pre-foreclosure
19 assessments, (2) all unpaid assessments, late charges and interest that came due since Plaintiff took
20 ownership of the Property, and (3) the reasonable collection fees and costs incurred since Plaintiff
21 took ownership of the Property. This Court never made any findings of fact concerning what that
22 amount would be, instead simply adopting the NRED's unique advisory opinion.
23
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25

26 Defendants certainly had reasonable grounds to take the position that the Association's
27 assessment lien included, in addition to the above-referenced amounts, the collection fees and costs
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1 incurred prior to Plaintiff's purchase of the property. This position is supported by substantial legal
2 authority, including the *Korbel* decision issued by Judge Glass, the *Hudson House* decision issued
3 by the Connecticut supreme court, and the Advisory Opinion issued by Nevada's Commission for
4 Common Interest Communities. Even if this Court were to reject that position and issue a ruling
5 consistent with prior rulings from judges Scann, Denton and Silver, issues of fact remain as to what
6 the assessment lien should have totaled at the time Plaintiff tendered payment. As such, the defense
7 in this case was not made without reasonable grounds.
8
9

10
11 B. THE SUPER PRIORITY ISSUE, ON WHICH PLAINTIFF PREVAILED, WAS NOT
12 RAISED UNTIL AFTER THE FINAL STATUS CONFERENCE WHERE JUDGE
13 SILVER GRATUITOUSLY DISTRIBUTED TO COUNSEL AN OPINION SHE HAD
14 RECENTLY ISSUED IN AN UNRELATED CASE
15

16 Plaintiff argues that it should be granted an award for attorneys fees because Defendants did
17 not have reasonable grounds for a defense in this case. However, Plaintiff's position in this case
18 – even up through Plaintiff's motion for summary judgment filed on February 8, 2013 – concerned
19 a theory that the Gogo Way Trust purchased the Property for a “commercially unreasonable price”
20 and the allegation that there had been inconsistent statements regarding the amount of delinquent
21 assessments.
22

23 Even if Plaintiff is correct that there had been inconsistent statements regarding the amount
24 of unpaid assessments, this presented issues of fact that needed to be resolved. This was not a basis
25 for granting a summary judgment motion.
26
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1 Furthermore, this case was filed on April 18, 2012. In the Complaint, the only theories
2 plead were (1) A&K failed to issue statutorily required foreclosure notices, and (2) the Property sold
3 for a commercially unreasonable price at the Association's foreclosure sale. The first theory was
4 frivolous and not borne out by the evidence. The second issue was not germane to this Court's
5 ruling. In fact, Plaintiff never raised the super priority issue until the Court – unprompted by
6 anything either counsel said – brought up the issue at the Final Status Conference of February 13,
7 2013. The super priority issue did not even appear in Plaintiff's Motion for Summary Judgement
8 filed on February 8, 2013, five days prior to the Final Status Conference. (Affidavit of Ryan
9 Kerbow.) Since the super priority issue was only raised in this case for a period of thirteen days,
10 and this was the issue on which Plaintiff prevailed, it cannot be said that Defendants did not have
11 reasonable grounds to defend this case.
12
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16 C. THE BONA FIDE PURCHASER ISSUE IS A LEGITIMATE ISSUE AND NOT AN
17 UNREASONABLE GROUND FOR A DEFENSE IN THIS CASE

18 NRS 645F.300 *et seq* provides the law that governs where a foreclosure sale may be set
19 aside against a purchaser of the foreclosure property. NRS 645F.350 defines "foreclosure sale" as
20 "the sale of real property to enforce an obligation secured by a mortgage or lien on the property,
21 including the exercise of a trustee's power of sale pursuant to NRS 107.080." Here, the Association
22 foreclosed on the subject property pursuant to its lien under the CC&Rs and NRS 116. Thus, the
23 subject foreclosure sale falls within NRS 645F.350.
24
25

26 NRS 645F.330 defines "foreclosure purchaser" as "a person who, in the course of his or her
27 business, vocation or occupation, acquires or attempts to acquire title to a residence in foreclosure
28

1 from a homeowner.” Here, the Gogo Way Trust purchased the property at the foreclosure sale of
2 February 22, 2012, and fits the definition of a foreclosure purchaser.

3 NRS 645F.440 provides as follows:

4 1. “[...] [i]f a foreclosure purchaser engages in any *conduct that operates as a*
5 *fraud or deceit upon a homeowner* in connection with a transaction that is subject
6 to the provisions of NRS 645F.300 to 645F.450, inclusive, including, without
7 limitation, a foreclosure reconveyance, the transaction in which the foreclosure
8 purchaser acquired title to the residence in foreclosure may be rescinded by the
9 homeowner within 2 years after the date of the recording of the conveyance.
10
11

12
13 (Emphasis added.) Here, Plaintiff did not provide any evidence whatsoever that the Gogo Way
14 Trust, or any representative of the Gogo Way Trust, engaged in any fraud or deceit upon the
15 homeowner. In fact, Plaintiff provided no evidence whatsoever to support the position that
16 statutory or common law bona fide purchaser protections do not apply to the Gogo Way Trust’s
17 purchase of the property. Clearly, this case presented a legitimate issue as to whether bona fide
18 purchase protections were triggered. Defendant therefore has no basis to assert that this case was
19 defended without reasonable grounds.
20
21

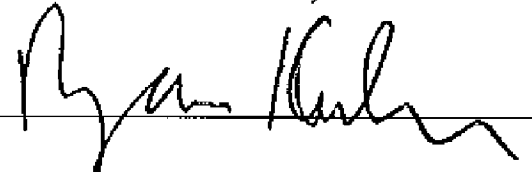
22 23 V. CONCLUSION

24 For the foregoing reasons, Defendants respectfully request that Plaintiff’s motion for
25 attorney’s fees be denied.
26

27 DATED this 28th day of May, 2013.
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ALESSI & KOENIG, LLC

A handwritten signature in black ink, appearing to read "Ryan Kerbow", is written over a horizontal line.

Ryan Kerbow, Esq.

AFFIDAVIT OF RYAN KERBOW

I, Ryan Kerbow, hereby declare:

1. I am an attorney duly licensed to practice law in the State of Nevada. My Nevada state bar number is 11403.

2. On behalf of Defendants, I attended the Final Status Conference in this case on February 13, 2013 before Judge Abby Silver. Prior to that date, the issue of how the Association's super priority lien was calculated had never been raised in this lawsuit. In fact, the issue was not even raised in Plaintiff's Motion for Summary Judgment filed on February 8, 2013.

3. At the Final Status Conference, neither myself nor counsel for Plaintiff, Mr. Hubley, mentioned the super priority issue. However, Judge Silva brought up the topic herself, stating that she had recently issued a ruling on the issue and offering to provide myself and Mr. Hubley copies of the ruling, which she did provide to us. She explained that she had ruled that the super priority portion of an association's assessment lien is capped at an amount equal to nine months of assessments. She also stated, "I don't know whether that helps you." Mr. Hubley replied, "It helps me."

4. On March 1, 2013, Plaintiff filed a Supplemental Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendants' Motion for Summary Judgment. In it, Plaintiff raises the super priority issue, arguing that the Advisory Opinion issued by the Nevada Real Estate Division on December 12, 2012 offers the correct interpretation of NRS 116.3116, and that the Association's assessment lien was therefore limited to 9 months of assessments and excluded any collection charges. The Court granted Plaintiff's motion for summary judgment on March 13, 2013. That means the super priority issue had been raised in this

1 case – evidently as a result of prompting by the Court itself – for a total of 13 days. Before that
2 period of 13 days, the case concerned a total of three issues: (1) whether A&K issued foreclosure
3 notices required by statute; (2) whether the Property sold for a commercially unreasonable price;
4 and (3) whether there was inconsistency in the amounts of assessments claimed, as evidenced by
5 statements from Mr. Marks of MP Association Management (the Association’s professional
6 community manager) and apparently inconsistent amounts stated in the foreclosure notices A&K
7 issued.
8

9 5. Attached hereto as **Exhibit “A”** is a true and correct copy of the NRED’s Advisory Opinion
10 issued on December 12, 2012.
11

12 6. Attached hereto as **Exhibit “B”** is a true and correct copy of the fee schedule which
13 regulates fees that may be charged to process a non-judicial foreclosure under NRS 116.
14

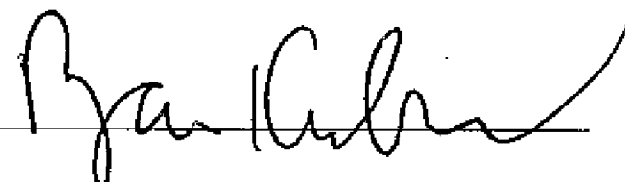
15 7. Attached hereto as **Exhibit “C”** is a true and correct copy of a ruling issued by Judge
16 Denton in case number A-11-647850-C. In it, Judge Denton held that a home owners association’s
17 assessment lien includes collection fees and costs, but the portion of the assessment lien that
18 survives a first mortgage foreclosure is capped at an amount equal to nine months worth of
19 assessments.
20

21 8. Attached hereto as **Exhibit “D”** is a true and correct copy of a ruling issued by Judge Scann
22 in case number A-11-651107-B. In it, Judge Scann held that a home owners association’s
23 assessment lien includes collection fees and costs, but the portion of the assessment lien that
24 survives a first mortgage foreclosure is capped at an amount equal to nine months worth of
25 assessments.
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1 9. Attached hereto as **Exhibit "E"** is a true and correct copy of a ruling issued by Judge Silver
2 in case number A-12-658044-C. In it, Judge Silver held that a home owners association's
3 assessment lien includes collection fees and costs, but the portion of the assessment lien that
4 survives a first mortgage foreclosure is capped at an amount equal to nine months worth of
5 assessments.
6

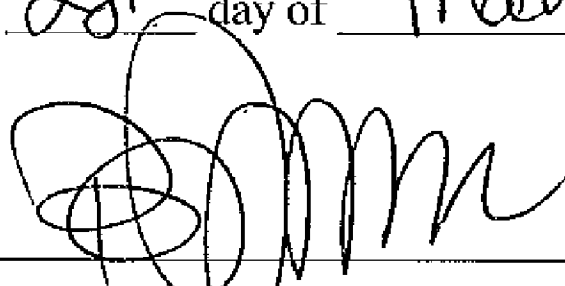
7 I hereby declare under penalty of perjury of the laws of the State of Nevada that the
8 foregoing is true and correct, and that I have personal knowledge thereof.

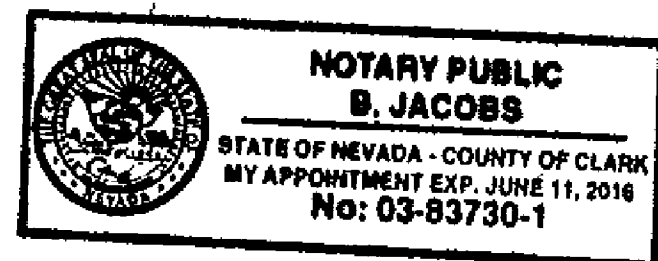
9 DATED: May 28, 2013

10
11 
12 Ryan Kerbow, Esq.

13
14 SUBSCRIBED and SWORN to before me

15 this 28th day of May, 2013.

16
17 
18
19 NOTARY PUBLIC for said County and State



CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am an associate attorney at ALESSI & KOENIG, LLC, and that
on the 28th day of May, 2013, I caused a true and correct copy of the *Opposition to Motion for
Attorney's Fees; Affidavit in Support* to be personally delivered to the address shown below.

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

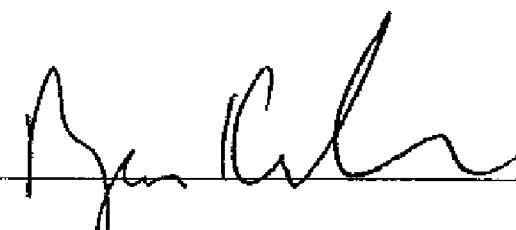

Ryan Kerbow, Esq.

Exhibit “A”



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.

1. 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 116.3116(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.

Exhibit “B”

**ADOPTED REGULATION OF THE
COMMISSION FOR COMMON-INTEREST
COMMUNITIES AND CONDOMINIUM HOTELS**

LCB File No. R199-09

Effective May 5, 2011

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §1, NRS 116.310313.

A REGULATION relating to common-interest communities; establishing provisions concerning fees charged by an association or a person acting on behalf of an association to cover the costs of collecting a past due obligation of a unit's owner; and providing other matters properly relating thereto.

Section 1. Chapter 116 of NAC is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 5, to cover the costs of collecting any past due obligation of a unit's owner, an association or a person acting on behalf of an association to collect a past due obligation of a unit's owner may not charge the unit's owner fees in connection with a notice of delinquent assessment pursuant to paragraph (a) of subsection 1 of NRS 116.31162 which exceed a total of \$1,950, plus the costs and fees described in subsections 3 and 4.

2. An association or a person acting on behalf of an association to collect a past due obligation of a unit's owner may not charge the unit's owner fees in connection with a notice

of delinquent assessment pursuant to paragraph (a) of subsection 1 of NRS 116.31162 which exceed the following amounts:

<i>(a) Demand or intent to lien letter</i>	<i>\$150</i>
<i>(b) Notice of delinquent assessment lien</i>	<i>325</i>
<i>(c) Intent to notice of default letter.....</i>	<i>90</i>
<i>(d) Notice of default.....</i>	<i>400</i>
<i>(e) Intent to notice of sale letter</i>	<i>90</i>
<i>(f) Notice of sale.....</i>	<i>275</i>
<i>(g) Intent to conduct foreclosure sale.....</i>	<i>25</i>
<i>(h) Conduct foreclosure sale.....</i>	<i>125</i>
<i>(i) Prepare and record transfer deed.....</i>	<i>125</i>
<i>(j) Payment plan agreement - One-time set-up fee.....</i>	<i>30</i>
<i>(k) Payment plan breach letter.....</i>	<i>25</i>
<i>(l) Release of notice of delinquent assessment lien.....</i>	<i>30</i>
<i>(m) Notice of rescission fee</i>	<i>30</i>
<i>(n) Bankruptcy package preparation and monitoring.....</i>	<i>100</i>
<i>(o) Mailing fee per piece for demand or intent to lien letter, notice of delinquent assessment lien, notice of default and notice of sale.....</i>	<i>2</i>
<i>(p) Insufficient funds fee.....</i>	<i>20</i>
<i>(q) Escrow payoff demand fee.....</i>	<i>150</i>
<i>(r) Substitution of agent document fee</i>	<i>25</i>

(s) Postponement fee.....	75
(t) Foreclosure fee	150

3. *If, in connection with an activity described in subsection 2, any costs are charged to an association or a person acting on behalf of an association to collect a past due obligation by a person who is not an officer, director, agent or affiliate of the community manager of the association or of an agent of the association, including, without limitation, the cost of a trustee's sale guarantee and other title costs, recording costs, posting and publishing costs, sale costs, mailing costs, express delivery costs and skip trace fees, the association or person acting on behalf of an association may recover from the unit's owner the actual costs incurred without any increase or markup.*

4. *If an association or a person acting on behalf of an association is attempting to collect a past due obligation from a unit's owner, the association or person acting on behalf of an association may recover from the unit's owner:*

- (a) Reasonable management company fees which may not exceed a total of \$200; and*
- (b) Reasonable attorney's fees and actual costs, without any increase or markup, incurred by the association for any legal services which do not include an activity described in subsection 2.*

5. *If an association or a person acting on behalf of an association to collect a past due obligation of a unit's owner is engaging in the activities set forth in NRS 116.31162 to 116.31168, inclusive, with respect to more than 25 units owned by the same unit's owner, the association or person acting on behalf of an association may not charge the unit's owner fees*

to cover the costs of collecting a past due obligation which exceed a total of \$1,950 multiplied by the number of units for which such activities are occurring, as reduced by an amount set forth in a resolution adopted by the executive board, plus the costs and fees described in subsections 3 and 4.

6. For a one-time period of 15 business days immediately following a request for a payoff amount from the unit's owner or his or her agent, no fee to cover the cost of collecting a past due obligation may be charged to the unit's owner, except for the fee described in paragraph (q) of subsection 2 and any other fee to cover any cost of collecting a past due obligation which is imposed because of an action required by statute to be taken within that 15-day period.

7. As used in this section, "affiliate of the community manager of the association or of an agent of the association" means any person who controls, is controlled by or is under common control with a community manager or such agent. For the purposes of this subsection:

(a) A person "controls" a community manager or agent if the person:

(1) Is a general partner, officer, director or employer of the community manager or agent;

(2) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the community manager or agent;

(3) Controls in any manner the election of a majority of the directors of the community manager or agent; or

(4) Has contributed more than 20 percent of the capital of the community manager or its agent.

(b) A person "is controlled by" a community manager or agent if the community manager or agent:

(1) Is a general partner, officer, director or employer of the person;

(2) Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote or holds proxies representing, more than 20 percent of the voting interest in the person;

(3) Controls in any manner the election of a majority of the directors of the person; or

(4) Has contributed more than 20 percent of the capital of the person.

(c) Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

Exhibit “C”


CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

23 IKON HOLDINGS, LLC, a Nevada limited liability
24 company,

25 Plaintiff,

26 vs.

27 HORIZONS AT SEVEN HILLS HOMEOWNERS
28 ASSOCIATION, and DOES 1 through 10 and ROE
ENTITIES 1 through 10 inclusive,

Defendant.

Case No: A-11-647850-C
Dept: No. 13

ORDER

29 This matter came before the Court on December 12, 2011 at 9:00 a.m., upon the Plaintiff's
30 Motion for Summary Judgment on Claim of Declaratory Relief and Defendant's Counter Motion for
31 Summary Judgment on Claim of Declaratory Relief. James R. Adams, Esq., of Adams Law Group,
32 Ltd., and Puoy K. Premsrirut, Esq., of Puoy K. Premsrirut, Esq., Inc., appeared on behalf of the
33 Plaintiff. Eric Hinchley, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on behalf of the
34 Defendant. The Honorable Court, having read the briefs on file and having heard oral argument, and
35 for good cause appearing hereby rules:

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff has asserted a claim of right under NRS §116.3116 (the "Super Priority Lien" statute)
3 against Defendant and Defendant has an interest in contesting said claim, the present controversy
4 is between persons or entities whose interests are adverse, both parties seeking declaratory relief
5 have a legal interest in the controversy (i.e., a legally protectible interest), and the issue involved in
6 the controversy (the meaning of NRS 116.3116) is ripe for judicial determination as between the
7 parties. *Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948); and

8 WHEREAS Plaintiff and Defendant, the contesting parties hereto, are clearly adverse and
9 hold different views regarding the meaning and applicability of NRS §116.3116 (including whether
10 Defendant demanded from Plaintiff amounts in excess of that which is permitted under the NRS
11 §116.3116); and

12 WHEREAS Plaintiff has a legal interest in the controversy as it was Plaintiff's money which
13 had been demanded by Defendant and it was Plaintiff's property that had been the subject of a
14 homeowners' association statutory lien by Defendant; and

15 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
16 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
17 parties hereto; and

18 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
19 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
20 controversy giving rise to the present proceeding; and

21 WHEREAS, pursuant to NRS §30.040 Plaintiff and Defendant are parties whose rights,
22 status or other legal relations are affected by NRS §116.3116 and they may, therefore, have
23 determined by this Court any question of construction or validity arising under NRS §116.3116 and
24 obtain a declaration of rights, status or other legal relations thereunder; and

25 WHEREAS, the Court is persuaded that Plaintiff's position is correct relative to the
26 components of the Super Priority Lien (exterior repair costs and 9 months of regular assessments)
27 and the cap relative to the regular assessments, but it is not persuaded relative to Plaintiff's position
28

1 concerning the need for a civil action to trigger a homeowners' association's entitlement to the Super
2 Priority Lien.

3 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
4 follows:

- 5 1. Plaintiff's Motion for Partial Summary Judgment on Declaratory Relief is granted in
6 part and Defendant's Motion for Summary Judgment on Declaratory Relief is granted
7 in part.
- 8 2. NRS §116.3116 is a statute which creates for the benefit of Nevada homeowners'
9 associations a general statutory lien against a homeowner's unit for (a) any
10 construction penalty that is imposed against the unit's owner pursuant to NRS
11 §116.310305, (b) any assessment levied against that unit, and (c) any fines imposed
12 against the unit's owner from the time the construction penalty, assessment or fine
13 becomes due (the "General Statutory Lien"). The homeowners' associations'
14 General Statutory Lien is noticed and perfected by the recording of the associations'
15 declaration and, pursuant to NRS §116.3116(4), no further recordation of any claim
16 of lien for assessment is required.
- 17 3. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory
18 Lien is junior to a first security interest on the unit recorded before the date on which
19 the assessment sought to be enforced became delinquent ("First Security Interest")
20 except for a portion of the homeowners' association's General Statutory Lien which
21 remains superior to the First Security Interest (the "Super Priority Lien").
- 22 4. Unless an association's declaration otherwise provides, any penalties, fees, charges,
23 late charges, fines and interest charged pursuant to NRS 116.3102(1)(j) to (n),
24 inclusive, are enforceable in the same manner as assessments are enforceable under
25 NRS §116.3116. Thus, while such penalties, fees, charges, late charges, fines and
26 interest are not actual "assessments," they may be enforced in the same manner as

assessments are enforced, i.e., by inclusion in the association's General Statutory Lien against the unit.

5. Homeowners' associations, therefore, have a Super Priority Lien which has priority over the First Security Interest on a homeowners' unit. However, the Super Priority Lien amount is not without limits and NRS §116.3116 is clear that the amount of the Super Priority Lien (which is that portion of a homeowners' associations' General Statutory Lien which retains priority status over the First Security Interest) is limited "to the extent" of those assessments for common expenses based upon the association's adopted periodic budget that would have become due in the 9 month period immediately preceding an association's institution of an action to enforce its General Statutory Lien (which is 9 months of regular assessments) and "to the extent of" external repair costs pursuant to NRS §116.310312.

6. The base assessment figure used in the calculation of the Super Priority Lien is the unit's un-accelerated, monthly assessment figure for association common expenses which is wholly determined by the homeowners association's "periodic budget," as adopted by the association, and not determined by any other document or statute. Thus, the phrase contained in NRS §116.3116(2) which states, "... 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..." means a maximum figure equaling 9 times the association's regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus external repair costs pursuant to NRS §116.310312.

7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than," which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded.

1 8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may
2 be included within the Super Priority Lien, in no event can the total amount of the
3 Super Priority Lien exceed an amount equaling 9 times the homeowners'
4 association's regular monthly assessment amount to unit owners for common
5 expenses based on the periodic budget which would have become due immediately
6 preceding the association's institution of an action to enforce the lien, plus external
7 repair costs pursuant to NRS 116.310312.

8 9. Further, if regulations adopted by the Federal Home Loan Mortgage Corporation or
9 the Federal National Mortgage Association require a shorter period of priority for the
10 lien (i.e., shorter than 9 months of regular assessments,) the shorter period shall be
11 used in the calculation of the Super Priority Lien, except that notwithstanding the
12 provisions of the regulations, that shorter period used in the calculation of the Super
13 Priority Lien must not be less than the 6 months immediately preceding institution
14 of an action to enforce the lien.

15 10. Moreover, ^{the need for the institution of an actual civil action} the Super Priority Lien can exist only if an "action" is instituted by the
16 association to enforce its General Statutory Lien. ^{In order to enforce the Super Priority Lien can be obtained if the} The term "action" as used in NRS
17 155.015 is otherwise properly used in the court, as is the situation here where
18 ^{foreclosure in effect constitutes an action within the meaning of} §116.3116(2) (as opposed to the term "action" as contained in NRS §116.3116(1)), does
19 not mean a "civil action" as that phrase is defined in NRCP 2 and NRCP 3 (i.e.,
20 ^{NRS 116.3116(2)(c)),} "action" as used in NRS §116.3116(2) does not mean the filing of a complaint with
21 the court).

22 IT IS SO ORDERED.

23 
DISTRICT COURT JUDGE

Date 

24 Submitted by 

25 JAMES R. ADAMS, ESQ.
26 Nevada Bar No. 6874
27 ASSLY SAYYAR, ESQ.
28

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Exhibit “D”

1 **ORDER**

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10 Attorneys for Plaintiff and the Class

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 PREM DEFERRED TRUST, on behalf of
14 itself and as representatives of the class herein
15 defined

16 Plaintiff,

17 vs.

18 ALIANTE MASTER ASSOCIATION, and
19 DOES 1 through 10 and ROE ENTITIES 1
20 through 10 inclusive,

21 Defendant.

CASE NO. A-11-651107-B

DEPT. NO 29

ORDER

22 This matter came before the Court on 07/24/2012, at 10:00 a.m., on Plaintiff and the Class'
23 MOTION FOR SUMMARY JUDGMENT ON DECLARATORY RELIEF and Defendant Aliante
24 Master Association's OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
25 ON CLAIM FOR DECLARATORY RELIEF AND COUNTER-MOTION FOR SUMMARY
26 JUDGMENT. James R. Adams, Esq., of Adams Law Group, Ltd., appeared on behalf of the
27 Plaintiff and the Class. Kurt Bonds, Esq., of Alverson, Taylor, Mortensen & Sanders appeared on
28 behalf of the Defendant. Patrick Reilly, Esq., of Holland and Hart appeared on behalf of Nevada
Association Services, Inc., and RMI Management, Inc., as Amici Curiae of the Court.

After review and consideration of all the pleadings and briefs of Plaintiff, Defendant and the
Amici Curiae, including all exhibits attached thereto, and including the oral arguments of Counsel
for Plaintiff and the Class, Counsel for Defendant and Counsel for the Amici Curiae, the Honorable
Court hereby rules:

42905

1 WHEREAS, the Court has determined that a justiciable controversy exists in this matter as
2 Plaintiff and the Class have asserted a claim of right under NRS §116.3116(2) (the "Super Priority
3 Lien" statute) against Defendant and Defendant has an interest in contesting said claim. The issue
4 contained in the briefing is, therefore, ripe for determination. Further, the present controversy is
5 between persons or entities whose interests are adverse and who have a legal interest in the
6 controversy (*Kress v. Corey* 65 Nev. 1, 189 P.2d 352 (1948)); and

7 WHEREAS Plaintiff, the Class and the Defendant, the contesting parties hereto, are clearly
8 adverse and hold different views regarding the meaning and applicability of NRS §116.3116; and

9 WHEREAS Plaintiff and the Class, and the Defendant have a legal interest in the controversy
10 as it is Plaintiffs and the Class' property that is the subject of Defendant's Super Priority Lien and
11 all parties, therefore, have a legal interest in a determination of to what extent the Super Priority Lien
12 can exist; and

13 WHEREAS the issue of the meaning, application and interpretation of NRS §116.3116 is
14 ripe for determination in this case as the present controversy is real, it exists now, and it affects the
15 parties hereto; and

16 WHEREAS, therefore, the Court finds that issuing a declaratory judgment relating to the
17 meaning and interpretation of NRS §116.3116 would terminate some of the uncertainty and
18 controversy giving rise to the present proceeding; and

19 WHEREAS, pursuant to NRS §30.040 Plaintiff, the Class and the Defendant are parties
20 whose rights, status or other legal relations are affected by NRS §116.3116 and they may, therefore,
21 have determined by this Court any question of construction or validity arising under NRS §116.3116
22 and obtain a declaration of rights, status or other legal relations thereunder.

23 THE COURT, THEREFORE, DECLARES, ORDERS, ADJUDGES AND DECREES as
24 follows:

- 25 1. Plaintiff's and the Class' MOTION FOR SUMMARY JUDGMENT ON CLAIM OF
26 DECLARATORY RELIEF is granted.
- 27 2. Defendant's COUNTER-MOTION FOR SUMMARY JUDGMENT is denied.

28

- 1 3. NRS §116.3116(1) is a statute which creates for the benefit of Nevada homeowners'
2 associations a statutory lien against a homeowner's unit for (a) any construction penalty that
3 is imposed against the unit's owner pursuant to NRS §116.310305, (b) any assessment levied
4 against that unit, and (c) any fines imposed against the unit's owner from the time the
5 construction penalty, assessment or fine becomes due (the "General Statutory Lien").
- 6 4. Pursuant to NRS §116.3116(2), the homeowners' association's General Statutory Lien is
7 junior to a first security interest on the unit recorded before the date on which the assessment
8 sought to be enforced became delinquent ("First Security Interest") except for a portion of
9 the homeowners' association's General Statutory Lien which remains superior to the First
10 Security Interest (the "Super Priority Lien").
- 11 5. Defendant, as a Nevada homeowners' association, therefore, has a Super Priority Lien which
12 has payment priority over the First Security Interest on a homeowners' unit. However, the
13 Super Priority Lien amount is not without limits and NRS §116.3116(2) is clear that the
14 amount of the Super Priority Lien (that portion of the General Statutory Lien which retains
15 a priority payment status over the First Security Interest) is limited "to the extent" of a
16 homeowners' association's assessments for common expenses based upon the association's
17 periodic budget that would have become due, in the absence of acceleration, in the 9 month
18 period immediately preceding Defendant's institution of an action to enforce its General
19 Statutory Lien (which is 9 months of regular, common assessments) and "to the extent of"
20 external repair costs pursuant to NRS §116.310312 unless regulations adopted by the Federal
21 Home Loan Mortgage Corporation or the Federal National Mortgage Association require a
22 shorter period of priority for the lien.
- 23 6. The base assessment figure used in the calculation of the Super Priority Lien is the unit's
24 un-accelerated, monthly assessment figure for association common expenses which is wholly
25 determined by the homeowners association's "periodic budget," as adopted by the
26 association, and not determined by any other document or statute. Thus, the phrase contained
27 in NRS §116.3116(2) which states, "... to the extent of the assessments for common expenses
28

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..." means a maximum figure equaling 9 months of an association's regular, monthly (not annual) assessments. If assessments are paid quarterly, then 3 quarters of assessments (i.e., 9 months) would equal the Super Priority Lien, plus external repair costs pursuant to NRS §116.310312.

7. The words "to the extent of" contained in NRS §116.3116(2) mean "no more than," which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded.

8. Thus, while assessments, penalties, fees, charges, late charges, fines and interest may be included within the Super Priority Lien, in no event can the total amount of the Super Priority Lien exceed an amount equaling 9 months of the Defendant's regular monthly assessment amount to unit owners for common expenses based on the periodic budget which would have become due immediately preceding the association's institution of an action to enforce the lien, plus external repair costs pursuant to NRS 116.310312.

9. In addition to the arguments of counsel contained in the briefs on file, in rendering this decision, the Court considered all exhibits appended to such all briefs, including but not limited to law review articles, the legislative history of NRS 116.3116, the history of the Uniform Common Interest Ownership Act, intermediate appellate and supreme court case law of other states, and the Commission on Common-Interest Communities & Condominium Hotels' Advisory Opinion which opined that a homeowners' association may collect as a part of the Super Priority Lien interest, late fees or charges, and the costs of collecting, but did not directly opine upon the issue of whether there was a maximum limit to the Super Priority Lien regardless of the constituent elements thereof, which was the question before this Court.


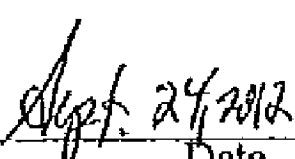
10. While the Court considered all such supporting materials, the Court is bound by the precedent of the Nevada Supreme Court which directs trial courts that, "[W]here a statute is clear on its face, a court may not go beyond the language of the statute in determining the

legislature's intent." *Diaz v. Eighth Judicial Dist. Court ex rel. County of Clark*, 116 Nev. 88, 94, 993 P.2d 50 (2000).

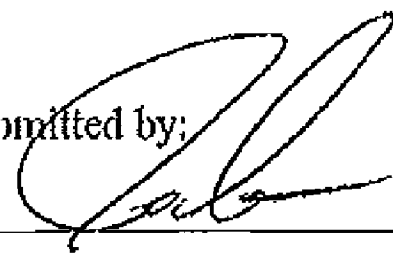
11. The Court finds that NRS 116.3116 is clear on its face. After the foreclosure by a first security interest on a unit recorded before the date on which the assessment sought to be enforced became delinquent, a portion of a homeowners' association's statutory lien under NRS 116.3116(1) is prior to the first security interest only to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 (exterior repair costs) and only to the extent of the assessments for common expenses which are 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. The 9 month figure is derived by taking the monthly assessment figure for common expenses as contained in the association's periodic budget which existed immediately prior to the association's institution of an action to enforce its lien, and multiplying by 9.

12. Prior to the October 1, 2009, amendment increasing the Super Priority Lien, the maximum amount of the Super Priority Lien was limited to the extent of the assessments for common expenses which are 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 6 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.

IT IS SO ORDERED.


DISTRICT COURT JUDGE

Date

Submitted by:



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Exhibit “E”

ORDER
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Attorneys for Elsinore, LLC
Defendant | Counterclaimant

DISTRICT COURT
CLARK COUNTY, NEVADA

PECCOLE RANCH COMMUNITY
ASSOCIATION, a domestic non-profit
homeowners association corporation,

Plaintiff,

vs.

ELSINORE, LLC, a Nevada Limited Liability
Company,

Defendant.

ELSINORE, LLC., on behalf of itself and as
representatives of the class herein defined

Counter Claimant,

vs.

PECCOLE RANCH COMMUNITY
ASSOCIATION, and DOES 1 through 10 and
ROE ENTITIES 1 through 10 inclusive,

Counter Defendant.

CASE NO. A-12-658044-C

DEPT. NO. XV

Date of Hearing: August 29, 2012
Time of Hearing: 9:00 a.m.

**ORDER DENYING IN PART AND
GRANTING IN PART PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

SEP 07 2012

1 This matter came before the Court on August 29, 2012, at 9:00 a.m., upon the Plaintiff's
2 MOTION FOR PARTIAL SUMMARY JUDGMENT. James R. Adams, Esq., of ADAMS LAW
3 GROUP, LTD., and Puoy K. Premsrut, Esq., of PUOY K. PREMSRIRUT, ESQ., INC., appeared
4 on behalf of the Defendant/Counter Claimant. Don Springmeyer, Esq., of WOLF, RIFKIN,
5 SHAPIRO, SCHULMAN & RABKIN, LLP., appeared on behalf of the Plaintiff/Counter Defendant.
6 The Honorable Court, having read the briefs on file and having heard oral argument, and for good
7 cause appearing hereby, DECLARES, ORDERS, ADJUDGES AND DECREES that Plaintiff's
8 Motion for Partial Summary Judgment is denied in part and granted in part.

9 WHEREAS, the undisputed facts are as follows: Plaintiff is a Nevada homeowners
10 association. Defendant was an owner of residential real property located within the Peccole Ranch
11 Community Association. In particular, Defendant purchased the property located at 2209 Storkspur,
12 Las Vegas, NV, at a foreclosure sale on or about September 8, 2008. Defendant had obtained title
13 to the property through a trustee's sale whereby a secured first trust deed holder foreclosed on the
14 property thereby extinguishing Plaintiff's statutory general homeowners' association lien against the
15 property, but for the super priority portion of that general lien. According to Defendant, the
16 Association by itself or through its authorized agents, demanded and collected amounts from the
17 Defendant. The amount demanded was \$2,580.70. The amount allegedly paid by Defendant was
18 \$2,649.90.

19 IT IS FURTHER ORDERED that NRCP 56(b) provides as follows: A party against whom
20 a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any
21 time, move with or without supporting affidavits for a summary judgment in the party's favor as to
22 all or any part thereof.

23 The Court may enter summary judgment on questions of law where the facts are not in
24 dispute. *Exchange Bank v. Strout Realty*, 94 Nev. 86, 525 P.2d 589 (1978). Thus, this Court may
25 issue partial summary judgment on the declaratory issues pertaining to NRS 116.3116 and CC&Rs
26 Section 8.3. Summary judgment is appropriate only when the pleadings, depositions, answers to
27 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
28

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. NRCP 56(c); *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 713 (2002). "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Wood v. Safeway, Inc.*, 121 Nev. 724, 731 (2005). The substantive law controls which factual disputes are material and will preclude summary judgment; factual disputes not germane and central to the claims for relief are irrelevant. *Id.* The burden to establish the absence of a triable issue of fact is on the moving party, and the court is obligated to construe the evidence in the light most favorable to the party against whom the motion is directed. *Butler v. Bogdonovich*, 101 Nev. 449, 451 (1985); *Hidden Wells Ranch, Inc. v. Strip Realty, Inc.*, 83 Nev. 143, 145 (1967). Where the party moving for summary judgment will bear the burden of persuasion at trial, it must present evidence that would entitle it to judgment as a matter of law in the absence of contrary evidence. *Francis v. Wynn Las Vegas, LLC*, 127 Nev. Adv. Rep. 60 (2011) (quoting *Cuzze v. Univ. & Comm. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03 (2007)). If the nonmoving party will bear the burden of persuasion at trial, the moving party may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim or (2) pointing out ... that there is an absence of evidence to support the nonmoving party's case. *Id.* In such instances, the nonmoving party must do more than simply show that there is some metaphysical doubt as to the operative facts to defeat a motion for summary judgment. *Wood, supra* (quoting *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574 (1986)). When the motion is made and supported as required by Rule 56, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact. *Francis*, 262 P.3d at 714-15. The non-moving party's documentation must be admissible evidence, and he or she is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture. *Posadas v. City of Reno*, 109 Nev. 448, 452 (1993) (quoting *Collins v. Union Fed. Savings & Loan*, 99 Nev. 284 (1983)). In considering a motion for summary judgment, the court should not regard Rule 56 as a disfavored procedural shortcut, but should instead view it as an integral part of the ... Rules [of Civil Procedure] as a whole, which are designed to secure the just,

1 speedy and inexpensive determination of every action. *Wood*, 121 Nev. at 730-31 (quoting *Celotex*
2 *Corp. v. Catrett*, 477 U.S. 317, 327 (1986)). Accordingly, when the movant has met the standard and
3 the non-moving party has failed to establish a genuine issue of material fact, it is incumbent upon
4 the court to grant the judgment sought forthwith. NRCP 56(c); *Dzack v. Marshall*, 80 Nev. 345
5 (1964).

6 The Plaintiff Association requested the following relief:

- 7 1. That pursuant to NRS 116.3116, the Association has a Super Priority Lien over a first
8 security interest recorded against the property for nine (9) months of assessments
9 immediately preceding institution of an action to enforce the lien.
- 10 2. That the Association's Super Priority Lien Amount pursuant to NRS 116.3116
11 includes interest, late fees and costs of collection, which are in addition to, not
12 capped by, the applicable period of common expense assessments.
- 13 3. That the Association's Super Priority Lien Amount pursuant to NRS 116.3116(2)
14 includes costs of collection, which pursuant to NRS 116.310313 may include any fee,
15 including legal fees and costs, and
- 16 4. That NRS 116.3116 supersedes the provisions of Section 8.3 of the Association's
17 CC&Rs.

18 The Court finds that, in accordance with recent rulings by the Eighth Judicial District Court
19 Honorable Judges Gonzalez, Denton, and Scann, Summary Judgment on requests numbers 1, 2 and
20 3 are DENIED.

21 Summary judgment on Plaintiff's request number 4 is GRANTED.

22 Pursuant to NRS 116.3116(2), the Association's Statutory Lien has priority over a first
23 security interest on the unit recorded before the date on which the assessment sought to be enforced
24 became delinquent the (First Security Interest) only to the extent of those assessments for common
25 expenses based upon the Association's periodic budget that would have become due in the 9 month
26 period immediately preceding an the Association's institution of an action to enforce its statutory
27 general lien and to the extent of external repair pursuant to NRS 116.310312. This portion will be
28

referred to as the "Super Priority Lien". The Super Priority Lien amount is not without limits. The Association's Super Priority Lien Amount pursuant to NRS 116.3116 may include interest, late fees and costs of collection, but is capped by the applicable period of common expense assessments, i.e., a figure equaling 9 months of common expense assessments based upon the Association's periodic budget. The words to the extent of contained in NRS 116.3116(2) mean no more than, which clearly indicates a maximum figure or a cap on the Super Priority Lien which cannot be exceeded.

Therefore, after the foreclosure by a First Security Interest holder of a unit located within a homeowners' association, pursuant to NRS 116.3116(2), the monetary limit of a homeowners' association's Super Priority Lien is limited to a maximum amount equaling 9 times the homeowners' association's monthly assessment amount to unit owners for common expenses based on the periodic budget which would have become due immediately preceding the institution of an action to enforce the lien, plus external repair costs pursuant to NRS 116.310312.

For the foregoing reasons, the Court denies Plaintiff's Motion for Partial Summary Judgment on requests 1, 2 and 3 and grants request 4.

IT IS SO ORDERED.

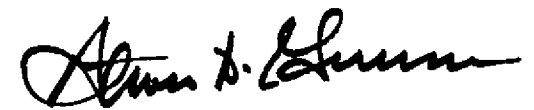
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CLERK OF THE COURT

RPLY

GREGG A. HUBLEY (NV Bar #007386)

ANTHONY R. SASSI (NV Bar #12486)

PITE DUNCAN, LLP

701 East Bridger Avenue, Suite 700

Las Vegas, Nevada 89101

Telephone: (702) 991-4628

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Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

DISTRICT COURT

CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK,

Plaintiff,

v.

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

Defendants.

Case No.: A-12-660328-C

Dept. No.: XV

**PLAINTIFF'S REPLY IN SUPPORT OF
ITS MOTION FOR ATTORNEY'S FEES**

Date of Hearing: June 10, 2013

Time of Hearing: In Chambers

GOGO WAY TRUST,

Counterclaimant,

v.

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

Counterdefendants.

PLAINTIFF'S REPLY IN SUPPORT OF ITS MOTION FOR ATTORNEY'S FEES

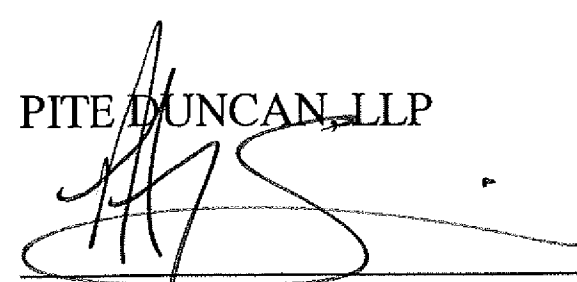
COMES NOW Plaintiff/Counterdefendant, NEW YORK COMMUNITY BANK (hereinafter, "Plaintiff" or "NYCB"), by and through its attorneys of record, PITE DUNCAN, LLP, and respectfully submits the following Reply in Support of Its Motion for Attorney's Fees against

1 Defendants, SHADOW WOOD HOMEOWNERS' ASSOCIATION, INC. ("Shadow Wood") and
2 GOGO WAY TRUST ("Gogo Way") (collectively, "Defendants"), pursuant to NRCP 54(d)(2).

3 This Motion is made and based upon the Points and Authorities attached hereto, the
4 pleadings and papers on file herein, and any oral argument this Court may entertain.

5 DATED this 30th day of June, 2013.

6 PITE DUNCAN, LLP

7 
8 GREGG A. HUBLEY

9 ANTHONY R. SASSI

10 *Attorneys for Plaintiff/Counterdefendant NEW*
11 *YORK COMMUNITY BANK*

12 POINTS AND AUTHORITIES

13 I. INTRODUCTION

14 Defendants' Opposition ("Opposition") to the current motion is far more remarkable for what
15 it does not address than for what it does. First, it should be noted that absent from Defendants'
16 Opposition is any challenge to the amount of the fees requested. By this omission, Defendants
17 concede that if attorney's fees are awarded, the amount requested by NYCB is reasonable. The
18 second, and more shocking, omission is any explanation or justification for the manner in which
19 Defendants participated in this litigation. Defendants simply fail to identify a legitimate reason why
20 they pursued their claims and defenses - and wasted the Court's valuable time - even after NYCB
21 offered to settle the case for **more than** Shadow Wood was owed.

22 Instead, Defendants choose to cut-and-paste arguments from their Opposition to Plaintiff's
23 Motion for Summary Judgment and simply rehash what was considered and adjudicated during the
24 summary judgment proceedings. This Court has already heard and rejected these arguments. The
25 bottom line is that Defendants fail to demonstrate that their frivolous claims and defenses were
26 maintained for any reason other than to vex or annoy NYCB, or, perhaps, to draw the proceeding out
27 further so that one of their clients (GOGO WAY TRUST) could profit from the continued collection
28

1 of rental payments, which would be a similarly improper purpose/motivation.¹ Defendants fail to
2 explain why they pursued these ultimately unpersuasive arguments, particularly under the facts of
3 this case where they were paid (and rejected) *before the sale* much more than they would have been
4 entitled to use as the basis for a foreclosure. Even more disturbingly, Defendants make the bold
5 move of attempting to justify their position by misrepresenting this Court's own words, cavalierly
6 arguing that this Court had predetermined its summary judgment decision ("...Judge Silver informed
7 counsel that she had already made up her mind regarding the issues associated with super priority
8 liens[.]" See, Defendant's Opposition, p. 3, ll. 8-11.). In fact, Defendants leave out the important
9 statement that this Court made at the pre-trial conference that the Court was not deciding the
10 summary judgment motions before they were briefed and argued and that, while the Court had made
11 other rulings in other super-priority cases, counsel could potentially convince her otherwise in this
12 case.

13 The Defendants' tactics and the resulting waste of judicial resources and attorney's fees are
14 the precise reasons for which Nevada statute permits an award of attorney's fees. Defendants should
15 not be rewarded for drawing out this litigation, all the while collecting rental income from the
16 improper use of the Subject Property. Instead, this Court should award NYCB its attorney's fees to
17 deter Defendants from attempting similar tactic in the future and to compensate NYCB for the fees
18 it incurred defending against Defendants' illegitimate quest.

19 **II. LEGAL ARGUMENT**

20 Defendants' Opposition rests on three equally flawed arguments. Each of these positions
21 is easily dispatched when viewed in a proper context and in light of an accurate factual background.

22 */././*

23 */././*

24

25

26 ¹ If this was the reason for the continued maintenance of their frivolous position,
27 then the conflict discussed in Plaintiff's Motion to Disqualify (which was vacated
28 as moot after Plaintiff's Motion for Summary Judgment was granted) was real and
significant. Protracting litigation so that one client could collect rent it was not
entitled to collect while putting the other client in a position of expending further
attorney's fees and the prospect of a judgment for the opponent's attorney's fees
would be the law school example of an actual conflict.

1 **A. Defendants Misconstrue This Court’s, and Other Courts’, Prior Rulings, And Such**
2 **Misconception Provides No Justification for Defendants Claims.**

3 Defendants first claim that it was reasonable to maintain its defenses and claims because of
4 this Court’s ruling in *Peccole Ranch Community Assoc. v. Elsinore, LLC*, Case No. A-12-658044-C.
5 (Opp’n at 4-5.) However, Defendants’ reliance on that decision, and the others cited in the
6 Opposition, is completely misplaced. In fact, none of the orders stands for the proposition that
7 Defendants claim. Defendants go one step further, and even assert that this Court’s Order granting
8 NYCB’s Motion for Summary Judgment “...drastically departs” from a prior ruling of this Court.²
9 (Opp’n at 5, ll. 20-21.) Nothing could be further from the truth.

10 In its prior ruling in *Peccole Ranch*, this Court unequivocally and in no uncertain terms stated
11 that the super priority lien that survives a foreclosure sale by a first deed “...is capped by the
12 applicable period of common expense assessments, i.e., a figure equaling 9 months of common
13 expense assessments based on the Association’s periodic budget.” (Order Denying in Part and
14 Granting Plaintiff’s Motion for Partial Summary Judgment [hereinafter “Peccole Order”] at 5,
15 attached to Opp’n as Ex. E) The Peccole Order continues on to state that the language of NRS
16 116.3116(2) “...clearly indicates a maximum figure or cap on the Super Priority Lien, **which cannot**
17 **be exceeded.**” (*Id.*) (emphasis added). Amazingly, Defendants now claim that it was reasonable
18 for them to rely on this language to maintain a claim against NYCB for amounts that dwarfed (by
19 nearly ten times) the amount allowed by the Super-Priority Lien. Under the *Peccole Ranch*
20 interpretation of NRS 116.3116(2), and consistent with the Order granting Summary Judgment in
21 this matter, once NYCB foreclosed on the Subject Property, the only possible lien claim Shadow
22 Wood could have against NYCB was for an amount equaling nine (9) months worth of assessments,
23 or \$1,519.29. (Findings of Fact, Conclusions of Law, and Order Granting Plaintiff’s Motion for
24 Summary Judgment [hereinafter “NYCB Order”] at 9).

25 In a late attempt to bring some legitimacy to their claims, Defendants argue that Shadow

26 ² Even more troubling is Defendants claims that this Court stated at the pretrial
27 conference that it “had already made up [its] mind regarding the issues associated
28 with the super priority lien...” (Opp’n at 3:8-9). As the Court is aware, the Court
stated that it had previously ruled on similar issues, i.e. *Peccole Ranch*, but the
previous ruling did not mean the Court’s opinion could not be changed.

1 Wood's lien included the Super-Priority Lien that survived the NYCB Foreclosure Sale, as well as
2 "...all the unpaid assessment [sic] during the time that Plaintiff owned the Property, and all the
3 collection fees and costs incurred during the numerous months Plaintiff owned the Property but
4 failed to pay assessments." (Opp'n at 3, ll. 21-25.) However, the facts of this case reveal the
5 absurdity of that position. The NYCB Foreclosure Sale occurred on May 9, 2011. (NYCB Order
6 at 3, ll. 3-5) One month later, on June 29, 2011, Shadow Wood recorded its Notice of Lien in the
7 amount of \$8,238.87. (NYCB Order at 3, ll. 17-21.) Subtracting out the amount of the Super Priority
8 Lien (i.e., 9 months of assessments preceding June 29, 2011), Defendants' position requires this
9 Court to believe that in one month NYCB incurred other assessments and late fees in the amount of
10 \$6,719.58. Respectfully, this is simply a ridiculous and frivolous position.

11 In reality, Shadow Wood's claims were simply an attempt to collect on the late fees and
12 penalties incurred by the original homeowner, all of which had been extinguished by NYCB
13 foreclosure sale. Even more realistically, the claims were an attempt by the Defendants' counsel
14 (Alessi & Koenig), which also acted as Shadow Wood's trustee, to collect incredibly exaggerated
15 fees that dwarfed the assessments that actually accrued. As the Court may recall during the hearing
16 on the Motion for Summary Judgment, the Defendants were seeking (among other exaggerated
17 fees/penalties) the sum of \$800.00 for the preparation of two Notices of Default. The subject
18 Notices of Default are one (1) page, form/boilerplate documents. (See, Exhibit "1," attached
19 hereto, for the Notice of Default prepared/recorded by Defendants on October 13, 2011, and the
20 Facsimile Cover Letter prepared by counsel for Defendants and dated January 23, 2012, both of
21 which were contained in Exhibit "23," to Plaintiff's Motion for Summary Judgment.) The
22 Defendants' pursuit of these previously extinguished collection costs, fees, and fines, as well as their
23 attempt to collect exorbitant and outrageous fees, is not only unreasonable but also flies directly in
24 the face of NRS 116.3116(2) and the *Peccole Ranch* Order. Frankly, Defendants knew quite well
25 that pursuing those amounts was unreasonable.

26 Perhaps the most telling example of the Defendants' unreasonable and vexatious approach
27 to this case is the fact that it was based upon their adamant refusal to allow NYCB to pay off their
28 asserted lien. Notably, the Defendants avoid any discussion of the factual background of this matter.

1 The very foundation of this case is the Defendants' steadfast refusal to accept NYCB's payment,
2 which the Defendants admit receipt and rejection of prior to the sale. This rejection is in spite of the
3 fact that the same HOA accepted partial payments from a prior owner of the same subject property
4 in amounts that represented a fraction of the payment NYCB tendered. As the Court noted in the
5 Order, not only did Shadow Wood fail to provide an accounting of the ever changing lien amount
6 but, through its agent, specifically rejected a check for \$6,783.16. (NYCB Order at p. 4, ll. 24-26.)
7 This amount was \$5,263.87 more than the amount Shadow Wood was entitled to collect under NRS
8 116.3116(2) and was \$337.62 more than even Shadow Wood's own records indicated it was owed.
9 The Defendants could not explain why their approach differed so drastically with NYCB than with
10 the prior owner (Ms. Fedel); Shadow Wood accepted payments from Ms. Fedel of as little as
11 \$250.00 as "partial payments," instead of foreclosing. Notwithstanding NYCB's attempts to resolve
12 this dispute through settlement, Shadow Wood was determined to foreclose on the Subject Property.
13 It is unknown whether this determination was motivated by a desire to sell this property to a repeat
14 client of Defendants' counsel (the trustor of GOGO WAY TRUST) at a fraction of its value,
15 securing further good will with that client, but the office of the undersigned cannot discern a more
16 realistic motivation. In any event, Defendants' counsel and Defendants themselves were clearly
17 aware of the tortured history in which this HOA foreclosure was handled, and the unreasonable
18 refusal to accept far more than Defendants would have been entitled to collect via a proper NRS 116
19 HOA foreclosure.

20 It is not surprising that the Defendants shy away from any review of the facts. The factual
21 background, however, is patently relevant to the pending Motion for Attorney's Fees. The
22 Defendants threw caution to the wind in an attempt to exploit this money-making-machine. The
23 HOA went forward with the foreclosure sale against the bank (NYCB) that purchased the property
24 (while it would not do so against the former owner) so that it could collect amounts it was not
25 legitimately allowed to collect under statute.³ The purchaser (GOGO WAY TRUST) chose to turn
26

27 ³ As noted during oral argument on the Motion for Summary Judgment (and based
28 upon Exhibit 24 to the Plaintiff's Motion for Summary Judgment), it appears that
Shadow Wood ultimately collected \$3,442.39 (and wrote off \$3,013.15 as "bad

(continued...)

1 its head since it was collecting rent, so, the longer these proceedings dragged on, the more rental
2 proceeds it would have in its coffers. And the trustee/counsel for the Defendants got away with
3 charging \$400.00 to prepare a one-page boilerplate form (**See, Exhibit “1”**) that likely took five
4 minutes for a legal assistant to create. This scheme, however, is actually an exploitation of Nevada
5 statute and became an exploitation of the Plaintiff as well as the Court’s resources. The Defendants
6 knew all of this going in, but chose to ignore the facts and avoid settlement discussions.

7 **B. The Manner in Which NYCB Prevailed Does Not Excuse Defendant’s Frivolous**
8 **Claims.**

9 The next warped arrow in Defendant’s quiver also fails to hit its mark. Defendants argue that
10 it was reasonable of them to maintain this action for as long as they did because NYCB did not raise
11 the Super-Priority issue until it moved for summary judgment. Notably, Defendants prepared/served
12 no written discovery, served no subpoenas, and did not attempt to take any depositions in this action
13 to ascertain the basis of Plaintiff’s positions. Moreover, Plaintiff’s Motion for Summary Judgment
14 specifically argues that the HOA sale did not extinguish Plaintiff’s interest (including case law for
15 that proposition) and the unreasonableness under Chapter 116 of the Defendants’ actions.
16 Apparently, Defendants are under the mistaken assumption that Plaintiff is obliged to provide its trial
17 strategy and arguments to Defendants, even without any specific discovery request, before making
18 arguments for summary judgment to this Court. Seemingly, under Defendants’ theory, a party is
19 required to specifically explain to the opposing counsel why the opposing party’s position is
20 frivolous.

21 This simply is not the rule under NRS 18.010, and Defendants, and their counsel, are
22 presumed to know what they are doing, and, in fact, are charged under NRCP 11 with the obligation
23 to pursue *and maintain* only those claims that are not frivolous. As NRS 18.010(2)(b) states, the
24 Legislature’s intent in providing for attorney’s fees is “...to punish for and deter frivolous or
25 vexatious claims and defenses **because such claims and defenses overburden limited judicial**
26 **resources, hinder the timely resolution of meritorious claim and increase the costs of engaging**
27

28 ³(...continued)
debt write off”) when it was only entitled to \$1,519.29 under statute.

1 **in business and providing professional services to the public.”** (Emphasis Added.) It is the
2 party’s responsibility (and that of his/her attorney) to make and maintain a claim or defense only if
3 it has merit. Defendants’ argument that the frivolous nature of its positions should be ignored
4 because NYCB not erect a billboard to advertise its trial strategy and inform Defendants of Nevada
5 law is itself a frivolous claim. In any event, this position is also factually inaccurate, as counsel for
6 the parties specifically discussed the problems with Defendants’ positions and the need to pursue
7 settlement after the deposition of Shadow Wood’s managing agent, Gerald Marks, and after the pre-
8 trial conference. Unfortunately, GOGO WAY TRUST was not in a position to consider settlement
9 because it was too busy collecting rent on a property that it improperly purchased.

10 **C. NRS 645F.440 Is Inapplicable To Gogo Way and Defendants Cannot Legitimately**
11 **Argue Otherwise.**

12 In their final attempt to save their sinking ship, Defendants rehash their bona fide purchaser
13 defense. Hoping the second time will fair better than the first, Defendants literally cut-and-paste a
14 portion of their argument from their Opposition to Plaintiff’s Motion for Summary Judgment.
15 (Compare, pending Opp’n 9:18-10:16, to Opp’n to Pl.’s Mot. for Summary Judgment at 11:2-27).
16 However, this repeat of the argument proves even less persuasive than the first and must meet the
17 same fate. Defendants’ argument fails to even address the applicability, or rather the complete lack
18 thereof, of the defense to Gogo Way. The argument relies on a hyper-technical reading of a limited
19 portion of the NRS 645F.440, but ignores other provisions that specifically exclude purchasers at
20 a foreclosure sale pursuant to NRS 116.3116.

21 Specifically, homeowners association foreclosure sales are governed by NRS Chapter 116,
22 while NRS Chapter 645F is applicable only to foreclosure sales conducted by a mortgagee under a
23 deed of trust against the mortgagor. In fact, a number of provisions in NRS Chapter 645F limit its
24 applicability to judicial foreclosure sales pursuant to NRS 14.010 and non-judicial foreclosure sales
25 not involving a homeowners association pursuant to NRS 107.080. *See e.g.* NRS 645F.360 (defining
26 “Homeowner”); NRS 645F.370 (defining “Residence in foreclosure”). Nothing in the chapter
27 extends this protection to purchasers at foreclosure sales pursuant to NRS Chapter 116. *See* NRS
28 645.330 *et seq.*

1 Ultimately, this claim is nothing more than another defense Defendants knows is inapplicable
2 and meritless. It is the proverbial throwing of everything but the kitchen sink at the Court. This
3 tactic, like those exhibited by Defendants since this lawsuit was filed (and, indeed, since the
4 Defendants rejected NYCB's payment prior to the HOA foreclosure sale) have done nothing but
5 drive up the cost of doing business for NYCB and waste this Court's valuable time.

6 **III. CONCLUSION**

7 The Defendants have not contested the legitimacy or reasonableness of the fees necessarily
8 incurred by NYCB in this travesty of a lawsuit that the Defendants caused. Instead, the Defendants
9 choose to misrepresent what this Court did and said, ignore the factual background of this case, re-
10 assert the same arguments that they made during the Summary Judgment proceeding, and blame
11 Plaintiff for not advising Defendants of its trial strategy sooner. Were it not for the unreasonable and
12 exploitative actions of Defendants, this lawsuit would never have been necessary. Were it not for
13 the refusal of one Defendant (whose position arguably conflicted with that of the other Defendants)
14 to consider settlement because it was collecting rental income, this case would have never made it
15 to the Summary Judgment stage. Nonetheless, despite the uncontested factual background (error
16 after error having been committed by these Defendants in their quest to foreclose and sell/purchase
17 property for a fraction of its value), the Defendants simply stuck their heads in the sand and refused
18 to genuinely and honestly review the frivolous positions they maintained. The Defendants ignored
19 the thin ice upon which they stood until it broke, and then responded by blaming the Plaintiff *and*
20 *the Court* after they fell in the cold water. Plaintiffs respectfully request that the Court award
21 Plaintiff attorney's fees in the amount of \$36,810.00, which should be reduced to judgment against
22 Defendants, jointly and severally.

23 DATED this 3rd day of June, 2013.

24 PITE DUNCAN, LLP

25
26 
GREGG A. HUBLEY
ANTHONY R. SASSI

27 Attorneys for Plaintiff/Counterdefendant NEW
28 YORK COMMUNITY BANK

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

4 **DECLARATION OF SERVICE**

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

8 On June 3, 2013, I served the following document(s):

9 **REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES**

10 on the parties in this action addressed as follows:

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

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

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

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

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

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

Executed this 3rd day of June 2013, at Las Vegas, Nevada.

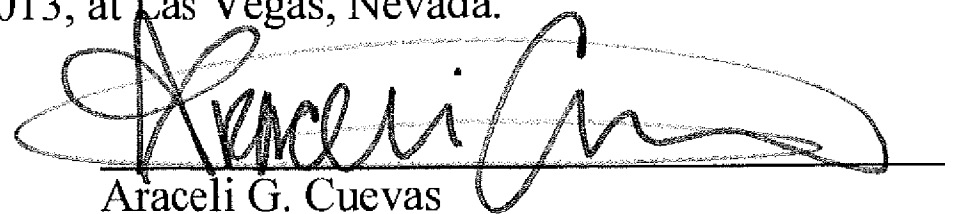

Araceli G. Cuevas

EXHIBIT 1

EXHIBIT 1

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

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

AGORA HILLS, CA
PHONE: 818-735-9600

RENO, NV
PHONE: 775-626-2323

&
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.

Δ π EXHIBIT 10	
Deponent	Marks
Date	1/18/12
WWW.DEPOBOOK.COM	

APP001076

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

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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:	\$2,955.00
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.

APP001077

1 MICHAEL F. BOHN, ESQ.
Nevada Bar No.: 1641
2 mbohn@bohnlawfirm.com
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Tracie K. Lindeman
Clerk of Supreme Court

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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 6**
18

19
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ALPHABETICAL INDEX TO JOINT APPENDIX 1-6

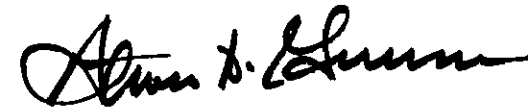
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CLERK OF THE COURT

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

NEW YORK COMMUNITY BANK,

Plaintiff,

vs.

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

Defendants.

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

NOTICE OF APPEAL

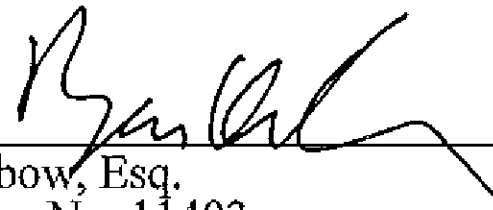
AND RELATED CROSS-CLAIMS

Notice is hereby given that Shadow Wood Homeowners Association, Inc., and Gogo Way Trust, defendants above named, hereby appeals to the Supreme Court of Nevada from the following:

1. Findings of Fact, Conclusions of Law, and Order Granting Plaintiff's Motion for
Summary Judgment entered in this action on April 10, 2013 and for which written
notice of entry was served on Defendants, by U.S. Mail on April 16, 2013.

DATED this 17th day of May, 2013.


ALESSI & KOENIG, LLC

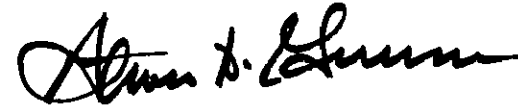


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DISTRICT COURT
CLARK COUNTY, NEVADA

NEW YORK COMMUNITY BANK,

Plaintiff,

vs.

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

Defendants.

AND RELATED CROSS-CLAIMS

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

CASE APPEAL STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 7 day of May, 2013.

ALESSI & KOENIG, LLC


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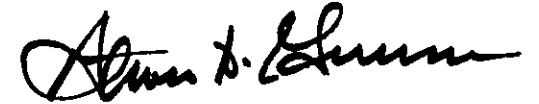
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6 Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK, CLERK OF THE COURT

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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

**PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES**

Date of Hearing:
Time of Hearing:

18 GOGO WAY TRUST,
19 Counterclaimant,

20 v.

21 NEW YORK COMMUNITY BANCORP,
22 INC.; DOE Individuals I through X; and ROE
Corporations XI through XX,
23 Counterdefendants.
24

25 **PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**

26 COMES NOW Plaintiff/Counterdefendant, NEW YORK COMMUNITY BANK
27 (hereinafter, "Plaintiff" or "NYCB"), by and through its attorneys of record, PITE DUNCAN, LLP,
28 and respectfully moves this Court for an award of Attorney's Fees against Defendants, SHADOW

1 WOOD HOMEOWNERS' ASSOCIATION, INC. ("Shadow Wood") and GOGO WAY TRUST
2 ("Gogo Way") (collectively, "Defendants"), pursuant to NRCP 54(d)(2).

3 This Motion is made and based upon the Points and Authorities attached hereto, the
4 pleadings and papers on file herein, and any oral argument this Court may entertain.

5 **NOTICE OF MOTION**

6 PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing for on for
7 hearing before the above-entitled Court on the 10 day of June, 2013, at
8 In Chambers.m. of said day, or as soon thereafter as counsel may be heard.

9 DATED this 9th day of May, 2013.

10 PITE/DUNCAN, LLP

11 
12 GREGG A. HUBLEY

13 *Attorneys for Plaintiff/Counterdefendant NEW*
14 *YORK COMMUNITY BANK*

14 **POINTS AND AUTHORITIES**

15 **I.**

16 **STATEMENT OF FACTS**

17 **A. New York Community Bank's Foreclosure.**

18 This matter has been thoroughly briefed, and the Court is well aware of the procedural and
19 substantive history of this matter. In summary, however, the Plaintiff received an Assignment of the
20 beneficial interest in the Deed of Trust that secured the mortgage loan on property located at 3923
21 Gogo Way, #109, Las Vegas, Nevada, 89103 ("Subject Property"). The Assignment was executed
22 on May 27, 2010, and recorded in the Official Records of Clark County on July 7, 2010. The former
23 owner, Virginia V. Fedel, who was a party to the original Note and Deed of Trust on the Subject
24 Property, defaulted on her loan obligations and Plaintiff purchased the Subject Property at a
25 Trustee's Sale on May 9, 2011. On May 24, 2011, First American Title Company, on behalf of
26 Trustee Corps, recorded a Trustee's Deed Upon Sale in the Official Records of Clark County,
27 transferring all interest in the Subject Property to Plaintiff.

28 /././

1 Subsequently, on June 29, 2011, Defendant Shadow Wood, through its agent, Alessi &
2 Koenig, executed a Notice of Delinquent Assessment Lien ("Notice of Lien"). The Notice of Lien
3 stated that Shadow Wood had a lien against the Subject Property in the amount of \$8,238.87,
4 consisting of collection and/or attorney fees, assessments, interest, late fees, service charges, and
5 collection costs. The Notice of Lien was recorded in the Official Records of Clark County, Nevada
6 on July 7, 2011.

7 On or about August 29, 2011, Shadow Wood, through its agent, Alessi & Koenig, executed
8 a Notice of Default and Election to Sell under Homeowners Association Lien (hereinafter, "HOA
9 NOD"). The HOA NOD was recorded in the Official Records of Clark County, Nevada on October
10 13, 2011.

11 After the recording of the HOA NOD, Plaintiff attempted multiple times to identify the
12 amount of the HOA's lien, but received no response from Shadow Wood. Plaintiff then attempted
13 to obtain this information through its realtor, seeking a payoff statement and a W-9. On December
14 28, 2011, Ticor Title then sent the demand to Shadow Wood's management company, MP
15 Association Management, which responded and advised that the monthly HOA dues attributable to
16 the Subject Property had been paid through the end of November, 2011, that the next payment due
17 was for December 1, 2011, and that the delinquency amounted to only \$328.94.

18 Ultimately, despite the attempts to pay off the HOA's lien request, Shadow Wood proceeded
19 to record a Notice of Trustee's Sale, scheduling the sale for February 22, 2012. The Notice of
20 Trustee's Sale (hereinafter, "HOA NOS") listed the unpaid balance as \$8,539.77

21 On January 19, 2012, NYCB made another request to Alessi & Koenig for a "detailed
22 statement...[to] pay the past due amount." Despite NYCB's unanswered requests, on or about
23 January 18, 2012, Shadow Wood, through its agent Alessi & Koenig, executed a Notice of Trustee's
24 Sale (hereinafter "HOA NOS"), scheduling a trustee's sale for February 22, 2012, at 2:00 p.m. The
25 HOA NOS was recorded on January 27, 2012, in the Official Records of Clark County, Nevada as
26 Instrument No. 20120127-0002208 and lists an unpaid balance, as of the initial publication, in the
27 amount of \$8,539.77.

28 /./

1 After more requests for a payoff statement, on January 23, 2012, Plaintiff received a ledger
2 of past due amounts from Alessi & Koenig listing an outstanding balance of \$6,445.54, good through
3 February 1, 2012. On January 31, 2012, Plaintiff sent a check in the amount of \$6,783.16 to Alessi
4 & Koenig as payment of the outstanding balance reflected on the January 23, 2012, ledger and
5 payment of future assessments through April 1, 2012. Unfortunately, on February 8, 2012, Alessi
6 & Koenig rejected the payment and advised that the amount owed had now climbed to \$9,017.39.
7 Plaintiff attempted to ascertain the basis for the change, but, instead of postponing the sale or
8 accepting the \$6,783.16 payment as a partial payment (as the evidence showed Shadow Wood had
9 done in the past with much smaller payments), Shadow Wood proceeded to an HOA foreclosure sale
10 on February 22, 2012. There, the Subject Property was purportedly sold to Gogo Way Trust for
11 \$11,018.39 (hereinafter, "HOA Sale").

12 On April 18, 2012, Plaintiff commenced this action against Defendants. A First Amended
13 Complaint was filed on October 5, 2012. After completing discovery, NYCB filed a Motion for
14 Summary Judgment, which was heard by this Court on March 13, 2013. Notably, however,
15 Plaintiff's counsel attempted repeatedly to discuss settlement with the Defendants, even after the
16 deposition of the HOA's managing agent, who testified in detail about the multiple problems and
17 inconsistent information about the HOA assessments owed before the sale. Indeed, up to the time
18 of the pretrial conference (on February 13, 2013), Plaintiff's counsel requested that the Defendants
19 consider settlement under the circumstances, and respond with a settlement demand. Defendants
20 failed and refused to do so, and the hearing on the Motion for Summary Judgment went forward.

21 The Court granted Plaintiff's Motion for Summary Judgment and entered judgment against
22 Defendants and in favor of Plaintiff. On April 16, 2013, a Notice of Entry of Findings of Fact,
23 Conclusions of Law, and Order Granting Plaintiff's Motion for Summary Judgment was filed with
24 the Court. This Motion follows.

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II.

LEGAL ARGUMENT

A. Attorney's Fees Should be Awarded Pursuant to NRS 18.010 and NRCP 54.

The Nevada Supreme Court has held that "attorney's fees are only available when authorized by a rule, statute, or contract." Flamingo Realty Inc. v. Midwest Development, Inc., 110 Nev. 984, 991, 879 P.2d 69 (1994). Pursuant to NRS 18.010(2), attorney's fees can be recovered when the prevailing party has not recovered more than \$20,000.00, or:

"[w]ithout regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claim and increase the costs of engaging in business and providing professional services to the public."

"The award of attorney's fees resides within the discretion of the court[,]" and its decision will not be overturned unless there is a manifest abuse of discretion. County of Clark v. Blanchard Contr. Co., 98 Nev. 488, 492, 653 P.2d 1217, 1220 (1982). As long as there is evidence in the record to support the proposition that the Complaint was brought, or defense maintained, without reasonable grounds or to harass the other party, an award of attorney's fees under NRS 18.010(2)(b) will be reviewed under an abuse of discretion standard. Semenza v. Caughlin Crafted Homes, 11 Nev. 1089, 1095, 901 P.2d 684 (1995).

Here, Plaintiff is clearly the prevailing party. Moreover, the Court should consider the background facts of this matter when adjudicating this request for attorney's fees. Shadow Wood's lien assessment demand changed repeatedly and seemingly without explanation, even after this lawsuit was filed. The assessment demand consisted almost entirely of alleged collection costs, attorney's fees, and other unreasonable fees that are not authorized by NRS 116.3116(2). For example, as argued during the hearing on the Motion for Summary Judgment (and based upon the documents submitted to the Court with the Motion for Summary Judgment), the HOA was seeking payment of \$400.00 for the preparation of a one-page, boilerplate Notice of Default, which likely

1 took ten (10) minutes of preparation by a legal assistant. At this rate, the HOA's counsel/trustee,
2 Alessi & Koenig, was effectively billing \$2,400.00 per hour, a wholly unreasonable amount for the
3 type of pre-litigation, default services provided.¹ In any event, the lion's share of the fees sought the
4 HOA violated NRS 116.3116(2), which limits the super-priority portion of an HOA foreclosure lien
5 to 9 months of regular monthly assessments and, where applicable, nuisance abatement costs.

6 In addition, Shadow Wood conceded that it or its agents made at least one "mistake" in
7 providing payoff figures and overstated the amount of its lien. Thereafter, Shadow Wood proceeded
8 to sale, despite Plaintiff's good faith efforts to pay off the lien in spite of the varying and inexplicable
9 figures provided. Even after the lawsuit was filed, the Defendants effectively stuck their proverbial
10 heads in the sand, refusing to reasonably respond to Plaintiff's settlement advances even after
11 knowing all of the inconsistencies and related problems involved in this HOA foreclosure. Finally,
12 after over a year of litigation, and finding themselves unable to explain why the HOA received such
13 a tiny fraction of the \$11,018.39 received at the HOA Sale, the Defendants advised for the first time
14 that they retained \$2,001.00 in "excess proceeds" (in Reply to Plaintiff's Opposition to Defendants'
15 Countermotion for Summary Judgment, signed by counsel on March 11, 2013).

16 The Defendants, respectively, sold and purchased the Subject Property for a fraction of its
17 fair market value, retained and concealed the proceeds that exceeded the lien, and benefitted from
18 the wrongful sale of the Subject Property through the collection of rental income. The Defendants,
19 including Gogo Way Trust, knew that their defense was maintained without reasonable grounds, but
20 chose to proceed anyway, probably so that Gogo Way Trust could continue collecting rent on the
21 Subject Property, which had been unlawfully sold. Pursuant to NRS 18.010(2)(b), an award of
22 attorney's fees to Plaintiff is warranted and deserved. Plaintiff had to go through litigation to unwind
23 this unlawful sale, but, even during the process, continued to try to discuss reasonable settlement
24 alternatives, all of which fell on deaf ears.

25 As of today's date, Plaintiff has incurred the sum of \$36,810.00 in attorney's fees. (See,
26 Affidavit of Counsel, attached hereto as **Exhibit 1**.)

27 ¹ In contrast, the office of the undersigned billed the Plaintiff the rate of \$225.00 per hour for
28 litigation work.

1 **B. The Amount of Fees Sought by Plaintiff is Reasonable and Appropriate.**

2 “In Nevada, ‘the method upon which a reasonable fee is determined is subject to the
3 discretion of the court,’ which ‘is tempered only by reason and fairness.’ Shuette v. Beazer Homes
4 Holdings Corp., 121 Nev. 837, 864, 124 P.3d 530 (2005), *quoting* University of Nevada v.
5 Tarkanian, 110 Nev. 581, 594, 879 P.2d 1180, 1188 (1994). In determining the amount of fees to
6 award, the court is not limited to one specific approach; its analysis may begin with any method
7 rationally designed to calculate a reasonable amount, including those based on a “lodestar amount”
8 or a contingency fee. Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 864, 124 P.3d 530
9 (2005).

10 The “lodestar amount” is calculated by multiplying the number of hours spent on the case,
11 by a “reasonable” hourly rate. King v. Caesar’s World, Inc., 781 F.Supp. 1497, 1500 (D.Nev 1992).
12 Appropriate factors to consider determining whether the hourly rate is reasonable include “...the time
13 and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform
14 the legal service properly and the experience, reputation, and ability of the lawyers involved.”
15 Harvey v. United Pacific Ins. Co., 109 Nev. 621, 624, 856 P.2d 240 (1993).

16 Even where the award of attorney’s fees exceeded the amount of the benefits received, the
17 Nevada Supreme Court has held that this does not mean the fees were unreasonable. U.S. Design
18 & Const. Corp v. IBEW, 118 Nev. 458, 464, 50 P.3d 170 (2002). Moreover, the District Court
19 should weigh the equities of the action in determining the award of attorney’s fees, and the Nevada
20 Supreme Court upheld the District Court’s ability to award attorney’s fees under NRS 18.010(2).
21 First Interstate Bank of Nevada v. Green, 101 Nev. 113, 116, 694 P.2d 496 (1985).

22 Here, prior to drafting the instant Motion, attorneys for the Plaintiff expended 163.6 attorney
23 hours related to this litigation. The hourly rate charged by Pite Duncan, LLP to the Plaintiff was
24 \$225.00 per hour. Therefore, 163.6 hours, multiplied by \$225.00 per hour, equals \$36,810.00. (See,
25 Affidavit of Counsel, attached hereto as **Exhibit 1.**) In addition, Plaintiff’s counsel has expended
26 3.3 hours drafting this Motion. (See, Affidavit of Counsel, attached hereto as **Exhibit 1.**)

27 The amount of time spent working on this case is reasonable. Plaintiff’s counsel was retained
28 more than one (1) year ago, on April 4, 2012. Since being retained, counsel has drafted numerous

1 pleadings, motions and correspondence, engaged in numerous telephone conferences with
2 Defendants' counsel and other entities, served subpoenas, deposed Shadow Wood's managing agent,
3 analyzed hundreds of pages of discovery documents, and successfully worked this case to reclaim
4 Plaintiff's rightful possession to the Subject Property. In addition, Plaintiff's counsel has prepared
5 for and attended several hearings before this Court. Considering the length of time that counsel has
6 worked on this case to achieve the judgment, the amount of time spent working on this matter and
7 the resulting fees sought are modest, if anything. Ultimately, the fees expended amount to
8 approximately 13.6 hours per month since the Complaint was filed.

9 Pursuant to the above outlined authorities and analysis, and the Affidavit of Counsel attached
10 hereto, the appropriate "lodestar" amount of attorney's fees which Defendants should pay is
11 reasonable and appropriate. Plaintiff respectfully requests that the Court award Plaintiff the sum of
12 \$36,810.00 in attorney's fees.

13 **III.**

14 **CONCLUSION**

15 Based upon the foregoing, it is respectfully requested that the Court award Plaintiff attorney's
16 fees in the amount of \$36,810.00, which should be reduced to judgment against Defendants, jointly
17 and severally.

18 DATED this 9th day of May, 2013.

19 PITE DUNCAN, LLP

20
21 
22 GREGG A. HUBLEY

23 Attorneys for Plaintiff/Counterdefendant NEW
24 YORK COMMUNITY BANK
25
26
27
28

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

4 **DECLARATION OF SERVICE**

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

8 On May 9, 2013, I served the following document(s):

9 **PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**

10 on the parties in this action addressed as follows:

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

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

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

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

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

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

Executed this 9th day of May 2013, at Las Vegas, Nevada.


NICOLE L. SCHLANDERER

EXHIBIT 1

EXHIBIT 1

1 **AFFT**
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: Ghubley@piteduncan.com
5

6 Attorneys for Plaintiff/Counterdefendant NEW YORK COMMUNITY BANK

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 NEW YORK COMMUNITY BANK,

10 Plaintiff,

11 v.

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

14 Defendants.

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

**AFFIDAVIT OF GREGG A. HUBLEY
IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES**

15 GOGO WAY TRUST,

16 Counterclaimant,

17 v.

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

20 Counterdefendants.
21

22 **AFFIDAVIT OF GREGG A. HUBLEY IN SUPPORT OF PLAINTIFF'S MOTION FOR**
23 **ATTORNEY'S FEES**

24 STATE OF NEVADA)
) ss:
25 COUNTY OF CLARK)

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

27 1. I am an attorney at law duly licensed to practice law in the State of Nevada, and
28 before this Court, and I am the Managing Attorney for the Las Vegas office of Pite Duncan, LLP,

1 counsel of record for Plaintiff/Counterdefendant, NEW YORK COMMUNITY BANK ("Plaintiff"),
2 in the above-captioned matter.

3 2. I am aware of and have personal knowledge of the facts contained herein and
4 surrounding this litigation.

5 3. The Court granted summary judgment in Plaintiff's favor against Defendants,
6 SHADOW WOOD HOMEOWNERS' ASSOCIATION, INC. and GOGO WAY (collectively,
7 "Defendants") on April 10, 2013. The Court Ordered the rescission of the HOA sale deed to Gogo
8 Way Trust, retroactive to the date of the sale on the basis that the sale was improperly and unlawfully
9 held.

10 4. That Plaintiff has established that it is the holder of the fee title interest in property
11 commonly known as 3923 Gogo Way, #109, Las Vegas, Nevada 89103 ("Subject Property").

12 5. That Plaintiff prevailed on its Motion for Summary Judgment and, therefore, is the
13 prevailing party in this lawsuit. Plaintiff's counsel attempted numerous times to open up the
14 dialogue for settlement with counsel for Defendants, most recently after the deposition of Gerald
15 Marks and at the pre-trial conference. Defendants' counsel never responded with any settlement
16 position.

17 6. That Pite Duncan, LLP's hourly attorney rate is \$225.00 per hour in this matter.

18 7. That as of May 3, 2013, Pite Duncan, LLP has expended 163.6 attorney hours related
19 to the litigation herein for a total amount of \$36,810.00 in fees.

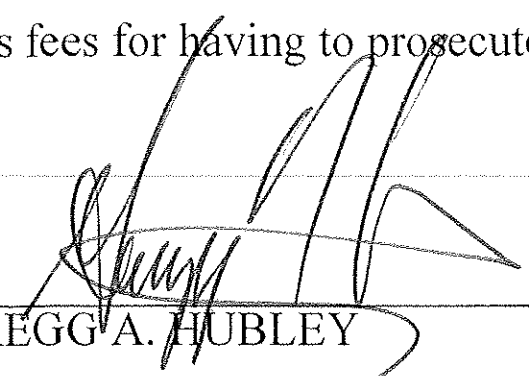
20 8. That the billing statements attached hereto (in redacted format) represent a true and
21 correct rendition of all work performed by Pite Duncan, LLP on behalf of Plaintiff since its initial
22 retainer more than one (1) year ago, and that the Plaintiff is responsible for paying to Pite Duncan
23 the total amount reflected therein.¹ It is my professional opinion that the work performed and
24 services provided to the Plaintiff by the office of the undersigned were necessary, and that the
25 amount of the hourly fee is reasonable, given the nature and quality of the work performed, the
26 prevailing rate for this type of legal service, and the other Lodestar elements.

27 _____
28 ¹ Unredacted billing statements will be submitted to Department 15 for the Court's *in camera*
review.

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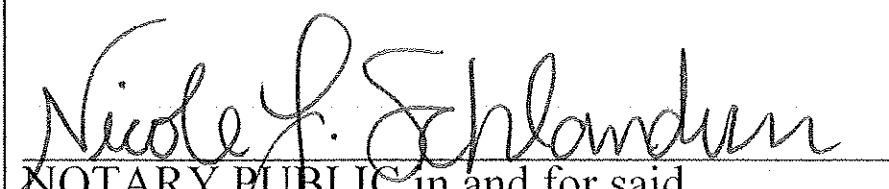
9. Accordingly, Plaintiff seeks its attorney's fees for having to prosecute this matter.

DATED this 9th day of May, 2013.

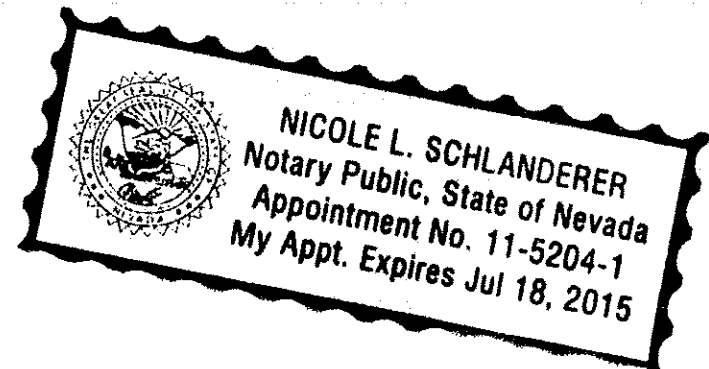


GREGG A. HUBLEY

SUBSCRIBED AND SWORN to before me
on this 9th day of May, 2013, by Gregg A. Hubley.



NOTARY PUBLIC in and for said
COUNTY and STATE.



Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bancorp, Inc.

Statement Date: May 22, 2012

Closing Date: April 30, 2012

Invoice Number: 4210754

Matter ID: 000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees		Hours	Rate	Amount
4/4/2012	LIH	0.30	225.00	67.50
4/4/2012	GAH	1.20	225.00	270.00
4/6/2012	CMT	0.10	225.00	22.50
4/10/2012	CMT	5.50	225.00	1,237.50
4/11/2012	GAH	0.30	225.00	67.50
4/11/2012	CMT	2.60	225.00	585.00
4/12/2012	CMT	1.20	225.00	270.00
4/12/2012	GAH	1.20	225.00	270.00

E-Mail

APP000963

4/13/2012	CMT	0.50	225.00	112.50
4/13/2012	GAH	0.20	225.00	45.00
4/16/2012	CMT	0.70	225.00	157.50
4/16/2012	GAH	0.40	225.00	90.00
4/18/2012	GAH	0.60	225.00	135.00
4/18/2012	CMT	0.30	225.00	67.50
4/19/2012	CMT	1.00	225.00	225.00

Sub-total Fees: 3,622.50

Rate Summary

Laurel I. Handley	0.30 hours at \$225.00/hr	67.50
Gregg A. Hubley	3.90 hours at \$225.00/hr	877.50
Crystal M. Tatco	11.90 hours at \$225.00/hr	2,677.50

Total hours: 16.10

E-Mail

APP000964

Pite Duncan, LLP

New York Community Bancorp, Inc.

Page: 3

Matter ID: 000338-000410

Expenses

4/5/2012	Westlaw Database Research.	75.00
4/11/2012	Document Retrieval - Obtain copies of recorded documents from County Recorder's office.	7.34
4/18/2012	Filing Fee.	281.60
4/20/2012	Litigation Guarantee.	438.30
4/20/2012	Filing Fee.	7.00

Sub-total Expenses: 809.24

Total Due on This Invoice 4,431.74

Additional Invoices Outstanding On: *May 22, 2012*

<i>Statement Number</i>	<i>Statement Date</i>	<i>Paid Amount</i>	<i>Balance</i>
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Additional Billing Notes

E-mail

E-Mail

APP000965

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bancorp, Inc.

Statement Date: June 18, 2012

Closing Date: May 31, 2012

Invoice Number: 4213176

Matter ID: 000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees		Hours	Rate	Amount
5/9/2012	CMT	0.20	225.00	45.00
5/10/2012	CMT	0.20	225.00	45.00
5/10/2012	GAH	0.80	225.00	180.00
5/11/2012	CMT	0.10	225.00	22.50
5/14/2012	GAH	0.30	225.00	67.50
5/15/2012	CMT	0.70	225.00	157.50
5/17/2012	CMT	0.20	225.00	45.00
5/18/2012	CMT	0.10	225.00	22.50

E-Mail

APP000966

Pite Duncan, LLP

New York Community Bancorp, Inc.

Page: 2

MatterID: 000338-000410

5/18/2012 GAH

0.10 225.00 22.50

Sub-total Fees: 607.50

Rate Summary

Gregg A. Hubley	1.20 hours at \$225.00/hr	270.00
Crystal M. Tatco	1.50 hours at \$225.00/hr	337.50
Total hours:	2.70	

Expenses

5/9/2012	Certified copy of Conformed Notice of Pendency of Action.	5.00
5/9/2012	Recording Certified Copy of Conformed Notice of Pendency of Action.	19.00
5/10/2012	Filing Fee.	7.00
5/23/2012	Summons & Complaint Service Fee - Shadow Wood Homeowner's Association.	105.00

Sub-total Expenses: 136.00

Total Due on This Invoice 743.50

Additional Invoices Outstanding On: June 18, 2012

Statement Number	Statement Date	Paid Amount	Balance
4210754	May 22 2012	0.00	4431.74

Additional Billing Notes

E-mail 225

E-Mail

APP000967

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bancorp, Inc.

Statement Date: July 23, 2012

Closing Date: June 30, 2012

Invoice Number: 4215998

Matter ID: 000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees		Hours	Rate	Amount
6/1/2012	CMT	0.10	225.00	22.50
6/4/2012	CMT	0.10	225.00	22.50
6/5/2012	CMT	0.10	225.00	22.50
6/6/2012	CMT	0.40	225.00	90.00
6/7/2012	GAH	0.20	225.00	45.00
6/7/2012	CMT	0.30	225.00	67.50
6/13/2012	CMT	0.20	225.00	45.00
6/14/2012	CMT	0.50	225.00	112.50
6/21/2012	CMT	1.80	225.00	405.00

E-Mail

APP000968

6/22/2012	CMT	0.20	225.00	45.00
6/25/2012	GAH	0.30	225.00	67.50
6/26/2012	GAH	0.10	225.00	22.50
6/27/2012	CMT	0.40	225.00	90.00
6/27/2012	GAH	0.30	225.00	67.50
6/28/2012	CMT	0.30	225.00	67.50
6/28/2012	GAH	0.30	225.00	67.50
6/29/2012	CMT	0.20	225.00	45.00

Sub-total Fees: 1,305.00

Rate Summary

Gregg A. Hubley
Crystal M. Tatco

1.20 hours at \$225.00/hr 270.00
4.60 hours at \$225.00/hr 1,035.00

Total hours: 5.80

E-Mail

APP000969

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 3
Matter ID: 000338-000410

Expenses

6/15/2012	Postage.	0.45
6/18/2012	Summons & Complaint Service Fee.	40.00
6/19/2012	Filing Fee.	3.50
Sub-total Expenses:		43.95

Total Due on This Invoice 1,348.95

Additional Invoices Outstanding On: July 23, 2012

Statement Number	Statement Date	Paid Amount	Balance
4213176	Jun 18 2012	0.00	743.50

Additional Billing Notes

E-mail 225

E-Mail

APP000970

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bancorp, Inc.

Statement Date: August 27, 2012

Closing Date: July 31, 2012

Invoice Number: 4218892

Matter ID: 000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees	Hours	Rate	Amount
7/2/2012 CMT	0.50	225.00	112.50
7/3/2012 CMT	0.70	225.00	157.50
7/5/2012 CMT	2.00	225.00	450.00
7/5/2012 GAH	0.90	225.00	202.50
7/9/2012 CMT	0.10	225.00	22.50
7/9/2012 GAH	0.10	225.00	22.50

E-Mail

APP000971

7/10/2012	CMT	0.50	225.00	112.50
7/11/2012	GAH	0.40	225.00	90.00
7/12/2012	CMT	0.30	225.00	67.50
7/12/2012	GAH	0.10	225.00	22.50
7/20/2012	CMT	0.50	225.00	112.50
7/24/2012	CMT	3.30	225.00	742.50
7/25/2012	CMT	0.20	225.00	45.00
7/25/2012	GAH	0.10	225.00	22.50
7/26/2012	CMT	0.30	225.00	67.50

E-Mail

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 3

Matter ID: 000338-000410

7/29/2012 CMT

3.00 225.00 675.00

Sub-total Fees: 2,925.00

Rate Summary

Gregg A. Hubley	1.60 hours at \$225.00/hr	360.00
Crystal M. Tatco	11.40 hours at \$225.00/hr	2,565.00
Total hours:	13.00	

Expenses

7/6/2012	Postage.	3.15
7/13/2012	Postage.	0.65
7/23/2012	Postage.	0.65
7/25/2012	Westlaw Database Research.	75.00

Sub-total Expenses: 79.45

Total Due on This Invoice 3,004.45

Additional Invoices Outstanding On: August 27, 2012

Statement Number	Statement Date	Paid Amount	Balance
4215998	Jul 23 2012	0.00	1348.95

Additional Billing Notes

E-mail 225

E-Mail

APP000973

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bancorp, Inc.

Statement Date: September 30, 2012

Closing Date: August 31, 2012

Invoice Number: 4222832

Matter ID: 000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees		Hours	Rate	Amount
8/1/2012	GAH	0.20	225.00	45.00
8/2/2012	CMT	2.70	225.00	607.50
8/6/2012	CMT	2.50	225.00	562.50
8/7/2012	CMT	2.50	225.00	562.50
8/8/2012	CMT	2.90	225.00	652.50
8/15/2012	CMT	0.40	225.00	90.00
8/17/2012	CMT	0.40	225.00	90.00
8/20/2012	CMT	0.10	225.00	22.50
8/20/2012	CAJS	0.60	225.00	135.00
8/21/2012	CMT	2.00	225.00	450.00

E-Mail

APP000974

8/23/2012	CMT	0.40	225.00	90.00
8/27/2012	CMT	0.20	225.00	45.00
8/28/2012	CMT	0.10	225.00	22.50
8/29/2012	CMT	1.00	225.00	225.00
8/29/2012	GAH	0.40	225.00	90.00
8/30/2012	CMT	0.70	225.00	157.50
8/31/2012	CMT	0.10	225.00	22.50
8/31/2012	GAH	0.10	225.00	22.50

Sub-total Fees: 3,892.50

Rate Summary

Gregg A. Hubley	0.70 hours at \$225.00/hr	157.50
Christopher A. J. Swift	0.60 hours at \$225.00/hr	135.00
Crystal M. Tatco	16.00 hours at \$225.00/hr	3,600.00
Total hours:	17.30	

Expenses

8/2/2012	Document Retrieval - Obtain copies of recorded documents from County Recorder's office.	7.34
8/7/2012	Westlaw Database Research.	75.00
8/20/2012	Postage.	1.95

E-Mail

Pite Duncan, LLP

New York Community Bancorp, Inc.

Page: 3

Matter ID: 000338-000410

Sub-total Expenses: 84.29

Total Due on This Invoice 3,976.79

Additional Invoices Outstanding On: September 30, 2012

Statement Number	Statement Date	Paid Amount	Balance
4218892	Aug 27 2012	0.00	3004.45

Additional Billing Notes

E-mail 225

E-Mail

APP000976

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank

Statement Date: October 23, 2012

Closing Date: September 30, 2012

Invoice Number: 4224474

Matter ID: 000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way#109, Las Vegas, NV 89103

Professional Fees		Hours	Rate	Amount
9/4/2012	CMT	0.10	225.00	22.50
9/5/2012	GAH	3.50	225.00	787.50
9/5/2012	CMT	1.50	225.00	337.50
9/6/2012	CMT	3.00	225.00	675.00
9/10/2012	GAH	0.30	225.00	67.50
9/17/2012	CMT	0.10	225.00	22.50
9/26/2012	CMT	1.50	225.00	337.50

E-Mail

APP000977

9/27/2012	CMT	1.00	225.00	225.00
9/28/2012	GAH	0.10	225.00	22.50

Sub-total Fees: 2,497.50

	Rate Summary	
Gregg A. Hubley	3.90 hours at \$225.00/hr	877.50
Crystal M. Tatco	7.20 hours at \$225.00/hr	1,620.00
Total hours:	11.10	

Expenses

9/6/2012	Westlaw Database Research.	75.00
9/17/2012	Filing Fee.	3.50
9/17/2012	Filing Fee.	3.50
9/18/2012	Postage.	1.50
Sub-total Expenses:		83.50

Total Due on This Invoice 2,581.00

Additional Invoices Outstanding On: October 23, 2012

Statement Number	Statement Date	Paid Amount	Balance
4222832	Sep 30 2012	0.00	3976.79

Additional Billing Notes

E-mail 225

E-Mail

APP000978

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank

Statement Date: October 29, 2012

Closing Date: September 30, 2012

Invoice Number: 4225063

Matter ID: 000338-000410

New York Community Bancorp, Inc. v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees	Hours	Rate	Amount
8/7/2012 CMT	2.50	225.00	562.50

Sub-total Fees: 562.50

Rate Summary

Crystal M. Tatco

2.50 hours at \$225.00/hr

562.50

Total hours: 2.50

Total Due on This Invoice: 562.50

Additional Invoices Outstanding On: October 29, 2012

Statement Number	Statement Date	Paid Amount	Balance
4222832	Sep 30 2012	0.00	3976.79
4224474	Oct 23 2012	0.00	2581.00

Additional Billing Notes

E-mail 225
Invoices go to

E-Mail

APP000979

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank

Statement Date: November 27, 2012

Closing Date: October 31, 2012

Invoice Number: 4227827

Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees

		Hours	Rate	Amount
10/3/2012	CMT	0.10	225.00	22.50
10/4/2012	CMT	0.50	225.00	112.50
10/5/2012	CMT	0.20	225.00	45.00
10/5/2012	GAH	1.50	225.00	337.50
10/8/2012	GAH	0.50	225.00	112.50
10/9/2012	CMT	0.40	225.00	90.00

E-Mail

APP000980

10/9/2012	GAH	0.40	225.00	90.00
10/10/2012	CMT	0.20	225.00	45.00
10/11/2012	CMT	0.20	225.00	45.00
10/11/2012	GAH	0.20	225.00	45.00
10/15/2012	CMT	0.30	225.00	67.50
10/15/2012	GAH	0.10	225.00	22.50
10/16/2012	CMT	0.20	225.00	45.00
10/16/2012	GAH	0.20	225.00	45.00
10/19/2012	CMT	0.30	225.00	67.50

E-Mail

APP000981

10/23/2012	CMT	1.70	225.00	382.50
10/24/2012	GAH	0.10	225.00	22.50
10/26/2012	CMT	0.10	225.00	22.50
10/27/2012	CMT	0.10	225.00	22.50
10/30/2012	GAH	0.70	225.00	157.50
10/30/2012	CMT	0.70	225.00	157.50
10/30/2012	GAH	0.40	225.00	90.00
10/31/2012	CMT	0.10	225.00	22.50
Sub-total Fees:				2,070.00

E-Mail

APP000982

Rate Summary

Gregg A. Hubley	4.10 hours at \$225.00/hr	922.50
Crystal M. Tatco	5.10 hours at \$225.00/hr	1,147.50
Total hours:	9.20	

Expenses

10/2/2012	Filing Fee.	3.50
10/2/2012	Filing Fee.	3.50
10/5/2012	Filing Fee.	3.50
10/5/2012	Witness Fees Associated with Subpoena and Deposition Notice.	34.00
10/8/2012	Witness Fees Associated with Subpoena and Deposition Notice.	33.05
10/22/2012	Attorney service costs - Service of subpoena notice of taking deposition - MP Association Management, Inc.	68.00
10/25/2012	Attorney service costs - Service of subpoena notice of taking deposition - Ticor Title of Nevada, Inc.	157.50

Sub-total Expenses: 303.05

Total Due on This Invoice 2,373.05**Additional Invoices Outstanding On:** November 27, 2012

Statement Number	Statement Date	Paid Amount	Balance
4224474	Oct 23 2012	0.00	2581.00
4225063	Oct 29 2012	0.00	562.50

Additional Billing Notes

E-mail 225

Invoices go to:

E-Mail

APP000983

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank

Statement Date: December 21, 2012

Closing Date: November 30, 2012

Invoice Number: 4230789

Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees		Hours	Rate	Amount
11/1/2012	GAH	0.10	225.00	22.50
11/1/2012	CMT	0.10	225.00	22.50
11/6/2012	CMT	0.10	225.00	22.50
11/7/2012	CMT	0.20	225.00	45.00
11/9/2012	CMT	0.20	225.00	45.00
11/12/2012	CMT	0.50	225.00	112.50
11/13/2012	CMT	5.90	225.00	1,327.50
11/14/2012	CMT	2.50	225.00	562.50
11/14/2012	GAH	0.10	225.00	22.50

E-Mail

APP000984

11/15/2012	CMT	0.50	225.00	112.50
11/15/2012	CAJS	0.50	225.00	112.50
11/15/2012	GAH	4.60	225.00	1,035.00
11/16/2012	CMT	2.20	225.00	495.00
11/16/2012	GAH	0.20	225.00	45.00
11/19/2012	GAH	0.40	225.00	90.00
11/19/2012	CMT	0.10	225.00	22.50
11/30/2012	CMT	0.90	225.00	202.50
11/30/2012	GAH	0.10	225.00	22.50
Sub-total Fees:				4,320.00

Rate Summary

Gregg A. Hubley	5.50 hours at \$225.00/hr	1,237.50
Christopher A. J. Swift	0.50 hours at \$225.00/hr	112.50
Crystal M. Tatco	13.20 hours at \$225.00/hr	2,970.00

E-Mail

APP000985

Total hours: 19.20

Expenses

11/9/2012	Filing Fee.	3.50
11/9/2012	Filing Fee.	3.50
11/9/2012	Fees Associated with Producing Documents in Response to a Subpoena from Fidelity National Financial, Inc.	43.52
11/16/2012	Filing Fee.	3.50
11/27/2012	Postage.	2.90
11/27/2012	Postage.	0.45
11/27/2012	Postage.	1.70
11/28/2012	Postage.	0.65

Sub-total Expenses: 59.72

Total Due on This Invoice 4,379.72

Additional Invoices Outstanding On: December 21, 2012

Statement Number	Statement Date	Paid Amount	Balance
4224474	Oct 23 2012	0.00	2581.00
4225063	Oct 29 2012	0.00	562.50
4227827	Nov 27 2012	0.00	2373.05

Additional Billing Notes

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Invoices go to: '

E-Mail

APP000986

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank

Statement Date: January 18, 2013

Closing Date: December 31, 2012

Invoice Number: 4233475

Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees		Hours	Rate	Amount
12/3/2012	CMT	0.10	225.00	22.50
12/5/2012	CMT	0.20	225.00	45.00
12/10/2012	CMT	0.10	225.00	22.50
12/12/2012	GAH	0.30	225.00	67.50
12/21/2012	GAH	0.10	225.00	22.50
12/28/2012	GAH	0.10	225.00	22.50
Sub-total Fees:				202.50

Rate Summary

Gregg A. Hubley 0.50 hours at \$225.00/hr 112.50
Crystal M. Tatco 0.40 hours at \$225.00/hr 90.00

Total hours: 0.90

Total Due on This Invoice: 202.50

E-Mail

APP000987

Pite Duncan, LLP

New York Community Bancorp, Inc.

Page: 2

Matter ID: 000338-000410

Additional Invoices Outstanding On: January 18, 2013

Statement Number	Statement Date	Paid Amount	Balance
4227827	Nov 27 2012	0.00	2373.05
4230789	Dec 21 2012	0.00	4379.72

Additional Billing Notes

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Invoices go to

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APP000988

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank

Statement Date: February 15, 2013

Closing Date: January 31, 2013

Invoice Number: 4237160

Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees	Hours	Rate	Amount
1/2/2013 GAH	0.20	225.00	45.00
1/4/2013 GAH	0.30	225.00	67.50
1/15/2013 KAC	1.50	225.00	337.50
1/24/2013 KAC	0.40	225.00	90.00
1/24/2013 GAH	0.10	225.00	22.50
1/27/2013 KAC	1.50	225.00	337.50
1/29/2013 GAH	0.10	225.00	22.50
1/31/2013 KAC	0.80	225.00	180.00
1/31/2013 GAH	1.70	225.00	382.50
Sub-total Fees:			1,485.00

E-Mail

APP000989

Pite Duncan, LLP
New York Community Bancorp, Inc.

Page: 2
Matter ID: 000338-000410

	Rate Summary	
K. Alexandra Cavin	4.20 hours at \$225.00/hr	945.00
Gregg A. Hubley	2.40 hours at \$225.00/hr	540.00
Total hours:	6.60	

Total Due on This Invoice	1,485.00
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Additional Invoices Outstanding On: February 15, 2013

Statement Number	Statement Date	Paid Amount	Balance
4233475	Jan 18 2013	0.00	202.50

Additional Billing Notes

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Invoices go to

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APP000990

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank

Statement Date:

March 18, 2013

Closing Date:

February 28, 2013

Invoice Number:

4239959

Matter ID:

000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees

		Hours	Rate	Amount
2/1/2013	KAC	0.60	225.00	135.00
2/1/2013	GAH	0.10	225.00	22.50
2/4/2013	GAH	0.30	225.00	67.50
2/4/2013	KAC	0.10	225.00	22.50
2/5/2013	GAH	0.40	225.00	90.00
2/5/2013	KAC	0.10	225.00	22.50
2/8/2013	KAC	0.20	225.00	45.00
2/8/2013	GAH	0.20	225.00	45.00
2/9/2013	KAC	0.80	225.00	180.00
2/12/2013	KAC	0.50	225.00	112.50

E-Mail

APP000991

2/13/2013	LIH	0.90	225.00	202.50
2/13/2013	KAC	0.30	225.00	67.50
2/13/2013	GAH	4.30	225.00	967.50
2/14/2013	GAH	0.20	225.00	45.00
2/17/2013	KAC	0.30	225.00	67.50
2/17/2013	KAC	0.80	225.00	180.00
2/18/2013	KAC	2.00	225.00	450.00
2/21/2013	GAH	0.10	225.00	22.50
2/21/2013	KAC	0.10	225.00	22.50
2/22/2013	GAH	0.80	225.00	180.00

E-Mail

APP000992

2/23/2013	GAH	0.10	225.00	22.50
2/25/2013	GAH	0.10	225.00	22.50
2/26/2013	GAH	8.30	225.00	1,867.50
2/27/2013	GAH	1.30	225.00	292.50
2/28/2013	GAH	2.30	225.00	517.50

Sub-total Fees: 5,670.00

Rate Summary

K. Alexandra Cavin	5.80 hours at \$225.00/hr	1,305.00
Laurel I. Handley	0.90 hours at \$225.00/hr	202.50
Gregg A. Hubley	18.50 hours at \$225.00/hr	4,162.50
Total hours:	<u>25.20</u>	

Expenses

2/8/2013	Filing Fee.	3.50
2/8/2013	Filing Fee.	209.50
2/12/2013	Filing Fee.	3.50
2/12/2013	Filing Fee.	3.50
2/13/2013	Westlaw Database Research.	75.00
2/14/2013	Filing Fee.	3.50
2/19/2013	Filing Fee.	3.50

E-Mail

APP000993

Pite Duncan, LLP

New York Community Bancorp, Inc.

Page: 4

MatterID:000338-000410

Sub-total Expenses: 302.00

Total Due on This Invoice 5,972.00

Additional Invoices Outstanding On: March 18, 2013

Statement Number	Statement Date	Paid Amount	Balance
4237160	Feb 15 2013	0.00	1485.00

Additional Billing Notes

E-mail 225

Invoices go to:

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APP000994

Pite Duncan, LLP

4375 Jutland Drive, Suite 200

P.O. Box 17935

San Diego, CA 92177-0935

(858) 750-7600

Fax: (619) 590-1385

Federal Tax ID: 33-0881441

New York Community Bank

Statement Date: April 16, 2013

Closing Date: March 31, 2013

Invoice Number: 4243074

Matter ID: 000338-000410

New York Community Bank v. Shadow Wood Homeowners' Association, et al.

Loan Number: 3401602

Property Address/Collateral Desc.: 3923 Gogo Way #109, Las Vegas, NV 89103

Professional Fees		Hours	Rate	Amount
3/1/2013	GAH	0.20	225.00	45.00
3/4/2013	GAH	0.40	225.00	90.00
3/5/2013	GAH	2.10	225.00	472.50
3/6/2013	GAH	4.20	225.00	945.00
3/7/2013	GAH	5.50	225.00	1,237.50
3/8/2013	GAH	4.40	225.00	990.00
3/12/2013	GAH	0.90	225.00	202.50
3/13/2013	GAH	5.80	225.00	1,305.00

E-Mail

APP000995

3/18/2013	GAH	4.10	225.00	922.50
3/19/2013	GAH	0.90	225.00	202.50
3/20/2013	GAH	0.20	225.00	45.00
3/25/2013	GAH	0.10	225.00	22.50
3/26/2013	GAH	3.30	225.00	742.50

E-Mail

APP000996

Sub-total Fees: 7,222.50

	Rate Summary	
Gregg A. Hubley	32.10 hours at \$225.00/hr	7,222.50
Total hours:	<u>32.10</u>	

Expenses

		8.00
2/13/2013	Travel Costs - Hearing.	
		7.00
3/1/2013	Filing Fee.	
		5.32
3/1/2013	Postage.	
		75.00
3/6/2013	Westlaw Database Research.	
		7.00
3/11/2013	Filing Fee.	
		5.32
3/11/2013	Postage.	
		10.00
3/13/2013	Travel Costs - Hearing.	
		3.12
3/17/2013	Postage.	

Sub-total Expenses: 120.76

Total Due on This Invoice: 7,343.26

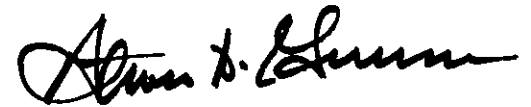
Additional Invoices Outstanding On: April 16, 2013

Statement Number	Statement Date	Paid Amount	Balance
4239959	Mar 18 2013	0.00	5972.00

Additional Billing Notes

E-mail 225
Invoices go to

E-Mail



CLERK OF THE COURT

1 **NOH**
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

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

**NOTICE OF HEARING ON
PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES**

Date of Hearing: June 10, 2013

Time of Hearing: In Chambers

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

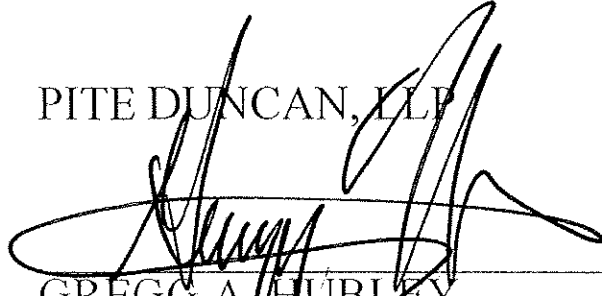
25 **NOTICE OF HEARING ON PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**

26 PLEASE TAKE NOTICE that Plaintiff New York Community Bank's **MOTION FOR**
27 **ATTORNEY'S FEES**, filed with the above-captioned Court on May 9, 2013, will come on regularly
28 for hearing on **June 10, 2013, in Chambers**, or as soon thereafter as the matter may be heard, in

1 Department XXI of the above-entitled court located at 200 Lewis Avenue, 11th Floor, Courtroom D,
2 Las Vegas, Nevada 89155.

3 DATED this 16th day of May, 2013.

4 PITE DUNCAN, LLP

5 
6 _____
7 GREGG A. HUBLEY
8 *Attorneys for Plaintiff/Counterdefendant NEW*
9 *YORK COMMUNITY BANK*

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

4 **DECLARATION OF SERVICE**

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

8 On May 17, 2013, I served the following document(s):

9 **NOTICE OF HEARING ON PLAINTIFF'S MOTION FOR ATTORNEY'S FEES**

10 on the parties in this action addressed as follows:

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

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

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

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

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

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

Executed this 17th day of May 2013, at Las Vegas, Nevada.


NICOLE L. SCHLANDERER