

Electronically Filed  
JUL 17 2013 09:21 a.m.  
CLERK OF THE COURT  
Tracie K. Lindeman  
Clerk of Supreme Court

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

7  
8  
9 DISTRICT COURT  
CLARK COUNTY, NEVADA

10  
11 DAISY TRUST  
12 Plaintiff,

CASE NO.: A679095  
DEPT NO.: XXIII

13 vs.

14 WELLS FARGO BANK NA, MTC  
FINANCIAL, INC., dba TRUSTEE CORPS,  
15 DONALD K. BLUME and CYNTHIA S.  
BLUME  
16 Defendants.

17  
18 **NOTICE OF APPEAL**

19 NOTICE IS HEREBY GIVEN that plaintiff, Daisy Trust, hereby appeals to the Supreme Court  
20 of Nevada from the order denying plaintiff's motion for preliminary injunction and granting the  
21 defendants motion to dismiss entered on July 9<sup>th</sup>, 2013.

22 DATED this 11th day of July 2013.

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

24  
25 By: /s/ /Michael F. Bohn, Esq./  
MICHAEL F. BOHN, ESQ.  
26 376 E. Warm Springs Road, Suite 125  
Las Vegas, Nevada 89119  
27 Attorney for plaintiff

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**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 11<sup>th</sup> day of July 2013, I served a photocopy of the foregoing **NOTICE OF APPEAL** 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:

Robin E. Perkins  
Snell & Wilmer, LLP  
3883 Howard Hughes Pkwy # 1100  
Las Vegas, NV 89169

Richard J. Reynolds  
Burke Williams & Sorensen  
1851 E. First St. # 1550  
Santa Ana, Ca 92705-4067  
  
Michael E. Sullivan  
Robison, Belaustegui, Sharp & Low  
71 Washington St  
Reno, NV 89503

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

DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. A-13-679095-C**

**Daisy Trust, Plaintiff(s)**  
**vs.**  
**Wells Fargo Bank, Defendant(s)**

§  
§  
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§  
§

Location: **Department 23**  
Judicial Officer: **Miley, Stefany**  
Filed on: **03/28/2013**  
Case Number History:  
Conversion Case Number: **A679095**

CASE INFORMATION

**Statistical Closures**  
05/06/2013 Transferred - Civil

Case Type: **Title to Property**  
Subtype: **Quiet Title**  
Case Flags: **Appealed to Supreme Court**  
**Automatically Exempt from Arbitration**

DATE

CASE ASSIGNMENT

**Current Case Assignment**

Case Number	A-13-679095-C
Court	Department 23
Date Assigned	04/25/2013
Judicial Officer	Miley, Stefany




PARTY INFORMATION

		<i>Lead Attorneys</i>
<b>Plaintiff</b>	<b>Daisy Trust</b>	<b>Bohn, Michael F</b> <i>Retained</i> 702-642-3113(W)
<b>Defendant</b>	<b>Blume, Cynthia S</b> Removed: 05/07/2013 Dismissed	
	<b>Blume, Donald K</b>	
	<b>MTC Financial Inc</b>	<b>Sullivan, Michael E.</b> <i>Retained</i> 7027862862(W)
	<b>Wells Fargo Bank</b>	<b>Sorenson, Amy F.</b> <i>Retained</i> 702-784-5200(W)













DATE

EVENTS & ORDERS OF THE COURT

INDEX

03/28/2013	 Ex Parte Motion Filed By: Plaintiff Daisy Trust <i>Ex parte motion for temporary restraining order; or alternatively for order to show cause why a preliminary injunction should not issue</i>
03/28/2013	 Complaint Filed By: Plaintiff Daisy Trust <i>Complaint</i>
03/28/2013	Case Opened
03/29/2013	 Ex Parte Motion Filed By: Plaintiff Daisy Trust <i>Ex Parte Motion for Temporary Restraining Order; or Alternatively, for Order to Show Cause Why a Preliminary Injunction Should Not Issue</i>

DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. A-13-679095-C**

04/10/2013	 Supplement Filed by: Plaintiff Daisy Trust <i>Supplement to Ex Parte Motion</i>
04/16/2013	 Declaration Filed By: Plaintiff Daisy Trust <i>Declaration of Michael F Bohn in Support of Motion for Temporary Restraining Order</i>
04/16/2013	 Affidavit Filed By: Plaintiff Daisy Trust <i>Affidavit of Iyad Haddad in Support of Motion for Temporary Restraining Order</i>
04/17/2013	 Temporary Restraining Order Filed by: Plaintiff Daisy Trust <i>Temporary Restraining Order</i>
04/19/2013	 Notice of Posting Bond Filed By: Plaintiff Daisy Trust <i>Notice of Posting Security</i>
04/25/2013	 Initial Appearance Fee Disclosure Filed By: Defendant Wells Fargo Bank <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
04/25/2013	 Peremptory Challenge Filed by: Defendant Wells Fargo Bank <i>Peremptory Challenge of Judge</i>
04/25/2013	 Notice of Department Reassignment
04/30/2013	 Order <i>Order Extending Temporary Restraining Order</i>
05/01/2013	 Summons Issued Party: Plaintiff Daisy Trust <i>Summons - Civil</i>
05/06/2013	 Removal to Federal Court Filed by: Defendant Wells Fargo Bank <i>Notice of Removal to Federal Court</i>
05/07/2013	 Notice of Dismissal Filed By: Plaintiff Daisy Trust <i>Notice of Dismissal of Defendant Cynthia S. Blime</i>
05/07/2013	<b>CANCELED Preliminary Injunction Hearing (11:00 AM) (Judicial Officer: Barker, David)</b> <i>Vacated - Case Closed</i> <i>Temporary Restraining Order</i>
05/07/2013	<b>Judgment of Dismissal - Entry by Clerk</b> (Judicial Officer: Miley, Stefany) Debtors: Cynthia S Blume (Defendant) Creditors: Daisy Trust (Plaintiff) Judgment: 05/07/2013, Docketed: 05/14/2013

DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. A-13-679095-C**

05/10/2013	 Order of Remand from Federal Court <i>Order</i>
05/16/2013	 Stipulation and Order Filed by: Defendant Wells Fargo Bank <i>Stipulation and Order to Set Hearing on Order to Show Cause Why a Preliminary Injunction Should not Issue and Set Briefing Schedule and Continue Temporary Restraining Order</i>
05/17/2013	 Initial Appearance Fee Disclosure Filed By: Defendant MTC Financial Inc <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
05/17/2013	 Answer to Complaint Filed by: Defendant MTC Financial Inc <i>Answer to Complaint by Defendant MTC Financial Inc, dba Trustee Corps Sued as MTC Financial, Inc., dba Trustee Corps</i>
05/20/2013	 Notice of Entry of Stipulation and Order Filed By: Defendant Wells Fargo Bank <i>Notice of Entry of Stipulation and Order to Show Cause Why a Preliminary Injunction Should not Issue and Set Briefing Schedule and Continue Temporary Restraining Order</i>
05/21/2013	 Request for Judicial Notice Filed By: Defendant Wells Fargo Bank <i>Request for Judicial Notice</i>
05/21/2013	 Opposition and Countermotion Filed By: Defendant Wells Fargo Bank <i>Wells Fargo Bank, N.A.'s Combined Opposition to Ex Parte Motion for Temporary Restraining Order; or Alternatively for Order to Show Cause and Countermotion to Dismiss</i>
05/22/2013	 Joinder to Opposition to Motion Filed by: Defendant MTC Financial Inc <i>Defendant MTC Financial Inc. dba Trustee Corps' Notice of Joinder in and to the Following: Defendant Wells Fargo Bank, N.A.'s Combined Opposition to Ex Parte Motion for Temporary Restraining Order; Or Alternatively for Order to Show Cause; and Defendant Wells Fargo Bank, N.A.'s Countermotion to Dismiss</i>
05/22/2013	 Summons Issued Party: Plaintiff Daisy Trust <i>Summons - Civil</i>
05/22/2013	 Affidavit of Service Filed By: Plaintiff Daisy Trust Party Served: Defendant Blume, Donald K <i>Affidavit of Service to Donald K Blume</i>
05/30/2013	 Notice of Non Opposition Filed By: Defendant Wells Fargo Bank <i>Notice of Non-Opposition to Wells Fargo Bank, N.A.'s Countermotion to Dismiss</i>
06/03/2013	 Opposition to Motion to Dismiss Filed By: Plaintiff Daisy Trust <i>Response to opposition to motion for preliminary injunction; and opposition to countermotion</i>

DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. A-13-679095-C**

*to dismiss*

06/25/2013



Reply in Support

Filed By: Defendant Wells Fargo Bank

*WELLS FARGO BANK, N.A.'S REPLY IN SUPPORT OF ITS COUNTERMOTION TO DISMISS*

06/27/2013



Supplement

Filed by: Defendant Wells Fargo Bank

*Wells Fargo Bank, N.A.'s Supplement to Request for Judicial Notice*

06/27/2013



Supplement

Filed by: Defendant Wells Fargo Bank

*Supplement to Wells Fargo Bank, N.A.'s Reply in Support of Its Countermotion to Dismiss*

06/27/2013



Joinder

Filed By: Defendant MTC Financial Inc

*Defendant MTC Financial Inc. dba Trustee Corps' Notice of Joinder in and to the Following: Defendant Wells Fargo Bank, N.A.'s Reply in Support of its Countermotion to Dismiss*

07/02/2013

**Motion for Preliminary Injunction** (9:30 AM) (Judicial Officer: Miley, Stefany)

Events: 03/28/2013 Ex Parte Motion

03/28/2013 Complaint

03/29/2013 Ex Parte Motion

04/10/2013 Supplement

04/16/2013 Declaration

04/16/2013 Affidavit

04/17/2013 Temporary Restraining Order

04/30/2013 Order

*Plaintiff's Ex Parte Motion for Temporary Restraining Order, or Alternatively, for Order to Show Cause Why a Preliminary Injunction Should Not Issue*

07/02/2013

**Opposition and Countermotion** (9:30 AM) (Judicial Officer: Miley, Stefany)

Events: 05/21/2013 Opposition and Countermotion

*Wells Fargo Bank, N.A.'s Combined Opposition to Ex Parte Motion for Temporary Restraining Order; or Alternatively for Order to Show Cause and Countermotion to Dismiss*

07/02/2013

**Joinder** (9:30 AM) (Judicial Officer: Miley, Stefany)

Events: 05/22/2013 Joinder to Opposition to Motion

*Defendant MTC Financial Inc. dba Trustee Corps' Notice of Joinder in and to the Following: Defendant Wells Fargo Bank, N.A.'s Combined Opposition to Ex Parte Motion for Temporary Restraining Order; Or Alternatively for Order to Show Cause; and Defendant Wells Fargo Bank, N.A.'s Countermotion to Dismiss*

07/02/2013



**All Pending Motions** (9:30 AM) (Judicial Officer: Miley, Stefany)

07/09/2013



Decision

*Decision*

07/10/2013



**Minute Order** (2:11 PM) (Judicial Officer: Miley, Stefany)

07/11/2013



Notice of Entry

Filed By: Defendant Wells Fargo Bank

*Notice of Entry of Decision Granting Wells Fargo's Motion to Dismiss*

07/11/2013



Notice of Entry of Order

Filed By: Defendant Wells Fargo Bank

DEPARTMENT 23  
**CASE SUMMARY**  
**CASE NO. A-13-679095-C**

07/12/2013	<i>Notice of Entry of Minute Order Regarding Plaintiff's Request for Temporary Injunctive Relief</i>  Notice of Appeal Filed By: Plaintiff Daisy Trust <i>Notice of appeal</i>	
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DATE	FINANCIAL INFORMATION	
	<b>Defendant</b> MTC Financial Inc Total Charges Total Payments and Credits <b>Balance Due as of 7/16/2013</b>	223.00 223.00 <b>0.00</b>
	<b>Defendant</b> Wells Fargo Bank Total Charges Total Payments and Credits <b>Balance Due as of 7/16/2013</b>	223.00 223.00 <b>0.00</b>
	<b>Plaintiff</b> Daisy Trust Total Charges Total Payments and Credits <b>Balance Due as of 7/16/2013</b>	294.00 294.00 <b>0.00</b>
	<b>Plaintiff</b> Daisy Trust TEMPORARY RESTRAINING ORDER Balance as of 7/16/2013	<b>500.00</b>

CIVIL COVER SHEET **A- 13- 679095- C**  
**CLARK** County, Nevada **XVI I I**

Case No. \_\_\_\_\_  
(Assigned by Clerk's Office)

**I. Party Information**

Plaintiff(s) (name/address/phone): <b>DAISY TRUST</b>	Defendant(s) (name/address/phone): <b>WELLS FARGO BANK, NA, MTC FINANCIAL INC., dba TRUSTEE CORPS, DONALD K. BLUME AND CYNTHIA S. BLUME</b>
Attorney (name/address/phone): <b>MICHAEL F. BOHN, Esq. 376 E. Warm Springs Road Suite 125 Las Vegas, NV 89119 (702) 642-3113</b>	Attorney (name/address/phone):

**II. Nature of Controversy** (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

**Civil Cases**

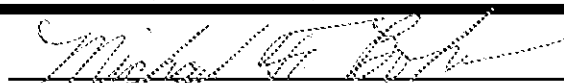
Real Property	Negligence	Torts
<input type="checkbox"/> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> <b>Title to Property</b> <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/>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

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

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
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**MARCH 28, 2013**

Date



Signature of initiating party or representative

See other side for family-related case filings.



  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

DAISY TRUST,

Plaintiff,

v.

CASE NO: A679095  
DEPARTMENT XXIII

WELLS FARGO BANK NA, MTC  
FINANCIAL, INC., dba TRUSTEE  
CORPS, DONALD K. BLUME and  
CYNTHIA S. BLUME,

Defendants.

**DECISION**

This matter was last before the court on July 2, 2013 on Daisy Trust's Ex Parte Motion for Temporary Restraining Order; Or Alternatively for Order to Show Cause. Wells Fargo filed an Opposition and Countermotion to Dismiss, with MTC, Inc. filing a Joinder properly thereto. Daisy Trust subsequent filed an Opposition and Wells Fargo countered with a Reply in Support of their motion. At the hearing, Michael Bohn, Esq. was present for Plaintiff Daisy Trust, Richard Reynolds, Esq. appeared telephonically on behalf of Defendant MTC Financial, Inc., and Robin Perkins, Esq. and Richard Gordon, Esq. appeared on behalf of the Defendant Wells Fargo Bank, N.A.

After considering the oral argument of counsel as well as all papers and pleadings on file, the Court denied the Preliminary Injunction and the Countermotion to Dismiss was taken under advisement. The court now finds as follows.

1  
2  
3 **A. Statement of Facts**

4 This matter concerns property commonly known as 10209 Dove Row Avenue,  
5 Las Vegas, NV and legally described as: Cliffs Edge POD 115 116 & 117 Unit 1B, Plat  
6 book 133, Page 56, Lot 46, Block A Clark County. COURT adopts Defendant Wells  
7 Fargo Bank, N.A.'s statement of the relevant factual background as laid out in their  
8 Countermotion to Dismiss.

9 **B. Standard of Review for Motion to Dismiss**

10 Defendant asserts that plaintiff's quiet title claim fails to "establish a claim upon  
11 which relief can be granted." NRCP 12(b) (5). It is well-settled that a district court order  
12 granting an NRCP 12(b) (5) motion to dismiss is subject to rigorous appellate review.  
13 *See Sanchez v. Wal-Mart Stores*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (citing  
14 *Lubin v. Kunin*, 117 Nev. 107, 110-11, 17 P.3d 422, 425 (2001)). This court must  
15 accept the plaintiff's factual allegations as true; however the allegations must be legally  
16 sufficient to constitute the elements of the claim asserted. *Id.*, citing *Malfabon v.*  
17 *Garcia*, 111 Nev. 793, 796, 898 P.2d 107, 108 (1995). Furthermore, the court must  
18 draw every reasonable inference in the plaintiff's favor. *Id.*

19  
20 The law in Nevada remains that a cause of action should not be dismissed  
21 "unless it appears beyond a doubt that the plaintiff could prove no set of facts . . . [that]  
22 would entitle him [or her] to relief." *Vacation Village v. Hitachi America*, 110 Nev.  
23 481, 484, 874 P.2d 744, 746 (1994).

24 **C. Statutory Interpretation of NRS §116.3116**

25 The question before the court is a clear-cut issue of statutory interpretation.  
26 Homeowner's association liens are governed by NRS §116.3116. Here, Plaintiff argues  
27 that a foreclosure under NRS §116.3116 extinguishes the senior deed of trust. Defendant  
28

1 argues that this interpretation of the statute is erroneous and would lead to absurd  
2 results.

3  
4 The Court construes the statute under common methods of statutory  
5 construction. The court also considers NRS §116.3116 *in paria materia* with other  
6 foreclosure statutes. *See, e.g., Williams v. United Parcel Services*, 129 Nev. Adv. Op. 41  
7 (2013) (stating that statutory provisions are read as a whole, with effect given to each  
8 word or phrase); *Barney v. Mt. Rose Heating & Air Conditioning*, 192 P.3d 730 (2008)  
9 (statutes must read in context, policy can be considered as an interpretive aid.); *State,*  
10 *Dept. of Business and Industry v. Nevada Ass'n Srvcs., Inc.*, 294 P.3d 1223 (Nev.,  
11 2012) (court considered NRS Chapter 116 and NRS Chapter 649 in a way that  
12 harmonizes them as a whole).

13  
14 The statute states in relevant part that an association's lien "is prior to all other  
15 liens and encumbrances on a unit except... (b) A first security interest on the unit  
16 recorded before the date on which the assessment sought to be enforced became  
17 delinquent." *NRS §116.3116 (2)(b)*. The statute also creates a super priority interest for  
18 assessments "which would have become due in the absence of acceleration during the 9  
19 months immediately preceding institution of an action to enforce the lien." *Id.* Any  
20 amounts superfluous to the nine months are not afforded a super priority. *Id.*

21  
22 The Nevada Supreme Court has not addressed what an "action" means under  
23 NRS 116.3116(2)(c). Black's Law Dictionary defines action as "a lawsuit brought in a  
24 court; a formal complaint within the jurisdiction of a court of law." BLACK'S LAW  
25 DICTIONARY 28 (6<sup>th</sup> ed. 1990). Other departments in the Eighth Judicial District Court  
26 Department have held that an action, in the context of §116 means a civil action. *See*  
27  
28

1 e.g., *Deutsche Bank National Trust Comp. v. The Foothills at Macdonald Ranch*, Case  
2 No. A-13-680505 (Nev. 2013); *SFR Investments Pool 1, LLC v. U.S. Bank, N.A., et al*,  
3 Case No. A-13-678814, (Nev. 2013); *Daisy Trust v. Wells Fargo Bank, N.A., et al*, Case  
4 No. A-13-675183 (Nev. 2013).  
5

6 Furthermore, this interpretation is consistent with Nevada federal district court  
7 decisions. *Diakonos Holdings, LLC v. Countrywide Home Loans, Inc.*, 2013 WL  
8 531092, at \*3 (D. Nev. Feb. 11, 2013) (holding that when an HOA holds a non-judicial  
9 foreclosure sale, the buyer takes the property subject to the first security interest);  
10 *Weeping Hollow Ave. Trust v. Spencer.*, 2013 WL 2296313, 5 (D.Nev. May 24, 2013)  
11 (stating that the super priority lien does not extinguish the first position deed of trust.);  
12 *Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC.*, 2013 WL 2460452, \*4 (D.  
13 Nev. June 6, 2013) (stating that foreclosure of neither a super-priority lien nor a first  
14 mortgage will extinguishes the other, but first proceeds must go to the super-priority  
15 lien); *Salvador v. National Default Servicing Corp.*, 2013 WL 3049084, at \*5-6 (D.  
16 Nev. June 13, 2013) (denying preliminary injunction for failure to establish likelihood  
17 of success on the merits because statute does not eliminate the first security interest as a  
18 matter of law). Therefore, action under *NRS §116.3116* means a civil action filed by  
19 either the bank or the HOA.  
20  
21

22 COURT FINDS that the first security interest Deed of Trust was recorded on  
23 September 28, 2007 prior to the home owner's association lien which was recorded on  
24 August 5, 2010 and the notice of default filed September 30, 2010.  
25

26 COURT FINDS the home owner's association super-priority lien only creates a  
27 priority to payment from foreclosure proceeds.  
28

1 COURT FINDS, NRS §116.3116 refers to a judicial foreclosure action and is  
2 not applicable when the home owner's association forecloses under the non-judicial  
3 foreclosure statutes.  
4

5 COURT FURTHER FINDS that the home owner's association foreclosure sale  
6 of its lien, under NRS §116.3116, cannot extinguish Wells Fargo's deed of trust  
7 because it was recorded prior to the home owner association's lien and Plaintiff Daisy  
8 Trust purchased the property with notice of the first in time deed of trust.  
9

10 In light of the foregoing, COURT ORDERS, Defendant Wells Fargo Bank,  
11 N.A.'s Countermotion to Dismiss with Joinder by MTC Financial Inc., GRANTED.  
12

13 IT IS SO ORDERED.  
14

15 DATED this gku day of July, 2013.  
16

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19 HONORABLE STEFANY A. MILEY  
20 DISTRICT COURT JUDGE  
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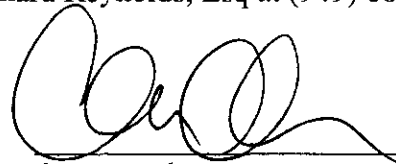
**CERTIFICATE OF FACSIMILE & MAILING**

I hereby certify that: On the 9<sup>th</sup> day of July, 2013:

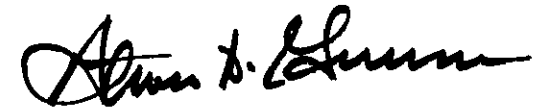
☒ I faxed the foregoing Decision to:

Michael F. Bohn, Esq. at (702) 642-9766; to Richard Reynolds, Esq at (949) 863-3350  
and to Richard Gordon, Esq. at (702) 784-5252.

By:



Carmen Alper  
Judicial Executive Assistant



CLERK OF THE COURT

1 NEO  
2 Amy F. Sorenson, Esq.  
3 Nevada Bar No. 12495  
4 Richard C. Gordon, Esq.  
5 Nevada Bar No. 9036  
6 Robin E. Perkins, Esq.  
7 Nevada Bar No. 9891  
8 SNELL & WILMER L.L.P.  
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14 [rgordon@swlaw.com](mailto:rgordon@swlaw.com)  
15 [rperkins@swlaw.com](mailto:rperkins@swlaw.com)

16 *Attorneys for Defendant Wells Fargo Bank, N.A.*

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAISY TRUST,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.; MTC  
FINANCIAL, INC., dba TRUSTEE  
CORPS, DONALD K. BLUME and  
CYNTHIA S. BLUME,

Defendants.

CASE NO. A-13-679095-C  
DEPT. XXIII

**NOTICE OF ENTRY OF DECISION  
GRANTING WELLS FARGO'S MOTION  
TO DIMISS**

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1 PLEASE TAKE NOTICE that a Decision granting Wells Fargo's Motion to Dismiss was  
2 entered in the above-captioned matter on July 9, 2013. A copy of said Decision is attached hereto  
3 as Exhibit 1.

4 DATED this 11 day of July, 2013.

5 SNELL & WILMER L.L.P.

6  
7 By: Robin E. Perkins  
8 Amy F. Sorenson, Esq.  
9 Richard C. Gordon, Esq.  
10 Robin E. Perkins, Esq.  
11 3883 Howard Hughes Parkway  
12 Suite 1100  
13 Las Vegas, Nevada 89169

14 *Attorneys for Defendant Wells Fargo Bank, N.A.*  
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Snell & Wilmer  
L.L.P.  
LAW OFFICES  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89169  
702.734.5100



**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF DECISION GRANTING WELLS FARGO'S MOTION TO DIMISS** by the method indicated:

      X       U.S. Mail  
                     U.S. Certified Mail  
                     Facsimile Transmission  
                     Overnight Mail  
                     Federal Express  
                     Hand Delivery  
                     Electronic Filing

and addressed to the following:

Michael F. Bohn, Esq.  
Law Offices of Michael F. Bohn, Esq., Ltd.  
376 E. Warm Springs Rd., Ste. 125  
Las Vegas, NV 89119  
mbohn@bohnlawfirm.com  
*Attorneys for Plaintiff*

Richard J. Reynolds, Esq.  
Burke, Williams & Sorensen, LLP  
1851 E. First St., Ste. 1550  
Santa Ana, CA 92705  
rreynolds@bwslaw.com  
*Attorneys for MTC Financial Inc. dba Trustee Corps*

Michael E Sullivan, Esq.  
Robison, Belaustegui, Sharp & Low  
71 Washington St.  
Reno, NV 89503  
msullivan@rbsllaw.com  
*Attorneys for MTC Financial Inc. dba Trustee Corps*

DATED this 11 day of July, 2013

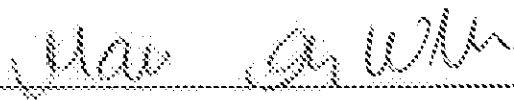
  
\_\_\_\_\_  
An Employee of Snell & Wilmer LLP

EXHIBIT 1

EXHIBIT 1

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

DAISY TRUST,

Plaintiff,

v.

CASE NO: A679095  
DEPARTMENT XXIII

WELLS FARGO BANK NA, MTC  
FINANCIAL, INC., dba TRUSTEE  
CORPS, DONALD K. BLUME and  
CYNTHIA S. BLUME,

Defendants.

DECISION

This matter was last before the court on July 2, 2013 on Daisy Trust's Ex Parte Motion for Temporary Restraining Order; Or Alternatively for Order to Show Cause. Wells Fargo filed an Opposition and Countermotion to Dismiss, with MTC, Inc. filing a Joinder properly thereto. Daisy Trust subsequent filed an Opposition and Wells Fargo countered with a Reply in Support of their motion. At the hearing, Michael Bohn, Esq. was present for Plaintiff Daisy Trust, Richard Reynolds, Esq. appeared telephonically on behalf of Defendant MTC Financial, Inc., and Robin Perkins, Esq. and Richard Gordon, Esq. appeared on behalf of the Defendant Wells Fargo Bank, N.A.

After considering the oral argument of counsel as well as all papers and pleadings on file, the Court denied the Preliminary Injunction and the Countermotion to Dismiss was taken under advisement. The court now finds as follows.

STEFANY A. MILEY  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
LAS VEGAS NV 89101-2400

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**A. Statement of Facts**

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This matter concerns property commonly known as 10209 Dove Row Avenue, Las Vegas, NV and legally described as: Cliffs Edge POD 115 116 & 117 Unit 1B, Plat book 133, Page 56, Lot 46, Block A Clark County. COURT adopts Defendant Wells Fargo Bank, N.A.'s statement of the relevant factual background as laid out in their Countermotion to Dismiss.

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**B. Standard of Review for Motion to Dismiss**

Defendant asserts that plaintiff's quiet title claim fails to "establish a claim upon which relief can be granted." NRCP 12(b) (5). It is well-settled that a district court order granting an NRCP 12(b) (5) motion to dismiss is subject to rigorous appellate review. *See Sanchez v. Wal-Mart Stores*, 125 Nev. 818, 823, 221 P.3d 1276, 1280 (2009) (citing *Lubin v. Kunin*, 117 Nev. 107, 110-11, 17 P.3d 422, 425 (2001)). This court must accept the plaintiff's factual allegations as true; however the allegations must be legally sufficient to constitute the elements of the claim asserted. *Id.*, citing *Malfabon v. Garcia*, 111 Nev. 793, 796, 898 P.2d 107, 108 (1995). Furthermore, the court must draw every reasonable inference in the plaintiff's favor. *Id.*

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**C. Statutory Interpretation of NRS §116.3116**

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The question before the court is a clear-cut issue of statutory interpretation. Homeowner's association liens are governed by NRS §116.3116. Here, Plaintiff argues that a foreclosure under NRS §116.3116 extinguishes the senior deed of trust. Defendant

1 argues that this interpretation of the statute is erroneous and would lead to absurd  
2 results.  
3

4 The Court construes the statute under common methods of statutory  
5 construction. The court also considers NRS §116.3116 *in paria materia* with other  
6 foreclosure statutes. *See, e.g., Williams v. United Parcel Services*, 129 Nev. Adv. Op. 41  
7 (2013) (stating that statutory provisions are read as a whole, with effect given to each  
8 word or phrase); *Barney v. Mt. Rose Heating & Air Conditioning*, 192 P.3d 730 (2008)  
9 (statutes must read in context, policy can be considered as an interpretive aid.); *State,*  
10 *Dept. of Business and Industry v. Nevada Ass'n Svcs., Inc.*, 294 P.3d 1223 (Nev.,  
11 2012) (court considered NRS Chapter 116 and NRS Chapter 649 in a way that  
12 harmonizes them as a whole).  
13

14 The statute states in relevant part that an association's lien "is prior to all other  
15 liens and encumbrances on a unit except... (b) A first security interest on the unit  
16 recorded before the date on which the assessment sought to be enforced became  
17 delinquent." *NRS §116.3116 (2)(b)*. The statute also creates a super priority interest for  
18 assessments "which would have become due in the absence of acceleration during the 9  
19 months immediately preceding institution of an action to enforce the lien." *Id.* Any  
20 amounts superfluous to the nine months are not afforded a super priority. *Id.*  
21

22 The Nevada Supreme Court has not addressed what an "action" means under  
23 NRS 116.3116(2)(c). Black's Law Dictionary defines action as "a lawsuit brought in a  
24 court; a formal complaint within the jurisdiction of a court of law." BLACK'S LAW  
25 DICTIONARY 28 (6<sup>th</sup> ed. 1990). Other departments in the Eighth Judicial District Court  
26 Department have held that an action, in the context of §116 means a civil action. *See*  
27  
28

1 e.g., *Deutsche Bank National Trust Comp. v. The Foothills at Macdonald Ranch*, Case  
2 No. A-13-680505 (Nev. 2013); *SFR Investments Pool 1, LLC v. U.S. Bank, N.A., et al*,  
3 Case No. A-13-678814, (Nev. 2013); *Daisy Trust v. Wells Fargo Bank, N.A., et al*, Case  
4 No. A-13-675183 (Nev. 2013).

5  
6 Furthermore, this interpretation is consistent with Nevada federal district court  
7 decisions. *Diakonos Holdings, LLC v. Countrywide Home Loans, Inc.*, 2013 WL  
8 531092, at \*3 (D. Nev. Feb. 11, 2013) (holding that when an HOA holds a non-judicial  
9 foreclosure sale, the buyer takes the property subject to the first security interest);  
10 *Weeping Hollow Ave. Trust v. Spencer*, 2013 WL 2296313, 5 (D.Nev. May 24, 2013)  
11 (stating that the super priority lien does not extinguish the first position deed of trust.);  
12 *Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC*, 2013 WL 2460452, \*4 (D.  
13 Nev. June 6, 2013) (stating that foreclosure of neither a super-priority lien nor a first  
14 mortgage will extinguishes the other, but first proceeds must go to the super-priority  
15 lien); *Salvador v. National Default Servicing Corp.*, 2013 WL 3049084, at \*5-6 (D.  
16 Nev. June 13, 2013) (denying preliminary injunction for failure to establish likelihood  
17 of success on the merits because statute does not eliminate the first security interest as a  
18 matter of law). Therefore, action under *NRS §116.3116* means a civil action filed by  
19 either the bank or the HOA.

20  
21  
22 COURT FINDS that the first security interest Deed of Trust was recorded on  
23 September 28, 2007 prior to the home owner's association lien which was recorded on  
24 August 5, 2010 and the notice of default filed September 30, 2010.

25  
26 COURT FINDS the home owner's association super-priority lien only creates a  
27 priority to payment from foreclosure proceeds.

28  
STEPHANY A. MILEY  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
435 VEGAS NV 89101-2400

1 COURT FINDS, NRS §116.3116 refers to a judicial foreclosure action and is  
2 not applicable when the home owner's association forecloses under the non-judicial  
3 foreclosure statutes.  
4

5 COURT FURTHER FINDS that the home owner's association foreclosure sale  
6 of its lien, under NRS §116.3116, cannot extinguish Wells Fargo's deed of trust  
7 because it was recorded prior to the home owner association's lien and Plaintiff Daisy  
8 Trust purchased the property with notice of the first in time deed of trust.  
9

10 In light of the foregoing, COURT ORDERS, Defendant Wells Fargo Bank,  
11 N.A.'s Countermotion to Dismiss with Joinder by MTC Financial Inc., GRANTED.  
12

13 IT IS SO ORDERED.  
14

15 DATED this 9<sup>th</sup> day of July, 2013.  
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HONORABLE STEFANY A. MILEY  
DISTRICT COURT JUDGE

STEFANY A. MILEY  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
AS VEGAS NV 00101-2408

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5 CERTIFICATE OF FACSIMILE & MAILING

6 I hereby certify that: On the 9<sup>th</sup> day of July, 2013:

7 ☒ I faxed the foregoing Decision to:

8 Michael F. Bohn, Esq. at (702) 642-9766; to Richard Reynolds, Esq at (949) 863-3350  
9 and to Richard Gordon, Esq. at (702) 784-5252.

10 By: 

11 Carmen Alper  
12 Judicial Executive Assistant  
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STEPHANY A. MILEY  
DISTRICT JUDGE

DEPARTMENT TWENTY THREE  
AS VEGAS NV 89101-2408



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**July 02, 2013**

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A-13-679095-C      Daisy Trust, Plaintiff(s)  
vs.  
Wells Fargo Bank, Defendant(s)

---

**July 02, 2013**

**9:30 AM**

**All Pending Motions**

**HEARD BY:** Miley, Stefany

**COURTROOM:** RJC Courtroom 12C

**COURT CLERK:** Anntoinette Naumec-Miller

**RECORDER:** Maria Garibay

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Michael Bohn, Esq., present on behalf of Plaintiff.  
Richard Reynolds, Esq., present telephonically on behalf of Defendant MTC Financial Inc.  
Robin Perkins, Esq., and Richard Gordon, Esq., present on behalf of Defendant Wells Fargo Bank.

Wells Fargo Bank, N.A.'s Combined Opposition to Ex Parte Motion for Temporary Restraining Order; or Alternatively for Order to Show Cause and Countermotion to Dismiss...Defendant MTC Financial Inc. dba Trustee Corps' Notice of Joinder in and to the Following: Defendant Wells Fargo Bank, N.A.'s Combined Opposition to Ex Parte Motion for Temporary Restraining Order; or Alternatively for Order to Show Cause and Countermotion to Dismiss...Plaintiff's Ex Parte Motion for Temporary Restraining Order, or Alternatively, for Order to Show Cause Why a Preliminary Injunction Should Not Issue

With respect to Wells Fargo Bank, N.A.'s Countermotion and Defendant MTC Financial Inc. dba Trustee Corp's Joinder, COURT ORDERED, Motion CONTINUED FOR CHAMBERS DECISION.

With respect to Plaintiff's Motion, arguments by Mr. Bohn and request for a thirty day stay, if the Court denies the Preliminary Injunction, from the date of the Court order to file an appeal with the Supreme Court. Arguments by Mr. Gordon. COURT stated its FINDINGS and ORDERED, Motion DENIED. Mr. Bohn requested any foreclosure stayed for thirty days to take the matter to the

Supreme Court. Ms. Perkins advised she believes the foreclosure is set for mid August. Court advised if it grants the request, it will include it in the order.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**July 10, 2013**

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A-13-679095-C

Daisy Trust, Plaintiff(s)

vs.

Wells Fargo Bank, Defendant(s)

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**July 10, 2013**

**2:11 PM**

**Minute Order**

**HEARD BY:** Miley, Stefany

**COURTROOM:**

**COURT CLERK:** Anntoinette Naumec-Miller

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- No Parties Present.

This case was set for a hearing on July 2, 2013. At the time of the hearing an oral request was made by the Plaintiff for a stay of foreclosure proceedings for thirty (30) days. The Court took this request under advisement.

After considering the oral argument in this case, exhibits and pleadings, the COURT ORDERS the request DENIED.

CLERK'S NOTE: A copy of this Minute Order was faxed to: Michael Bohn, Esq., at (702) 642-9766, Richard Reynolds, Esq., at (949) 863-3350 and Robin Perkins, Esq., and Richard Gordon, Esq., at (702) 784-5252. anm/7/10/13



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

MICHAEL F. BOHN, ESQ.  
376 E. WARM SPRINGS RD., STE. 125  
LAS VEGAS, NV 89119

DATE: July 16, 2013  
CASE: A679095

RE CASE: DAISY TRUST vs. WELLS FARGO BANK, N.A.; MTC FINANCIAL, INC. dba  
TRUSTEE CORPS; DONALD K. BLUME

NOTICE OF APPEAL FILED: July 12, 2013

**YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.**

PLEASE NOTE: DOCUMENTS NOT TRANSMITTED HAVE BEEN MARKED:

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

---

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

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

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

# Certification of Copy

State of Nevada }  
County of Clark } SS:

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

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; DECISION; NOTICE OF ENTRY OF DECISION GRANTING WELLS FARGO'S MOTION TO DISMISS; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

DAISY TRUST,

Plaintiff(s),

vs.

WELLS FARGO BANK, N.A.; MTC  
FINANCIAL, INC. dba TRUSTEE CORPS;  
DONALD K. BLUME,

Defendant(s),

Case No: A679095

Dept No: XXIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 16 day of July 2013.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk