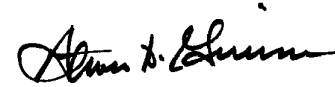


RTRAN



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

HOLM INTERNATIONAL PROPERTIES,
LLC [STEIJUM HOLDINGS, LC],

Plaintiff,

v.

BANK OF AMERICA NA,

Defendants.

CASE NO. A-15-712712-C

DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

WEDNESDAY, DECEMBER 7, 2016

**RECORDER'S TRANSCRIPT
BENCH TRIAL - DAY 1**

APPEARANCES:

For the Plaintiff: DARIUS F. RAFIE, ESQ.
 MICHAEL V. CASTILLO, ESQ.
 Mortenson & Rafie, LLP

For the Defendants ARIEL E. STERN, ESQ.
and Cross Claimants, NATALIE L. WINSLOW, ESQ.
Carrington Mortgage Akerman LLP
Holdings, LLC and
Bank of America NA:

For the Defendant KURT R. BONDS, ESQ.
Sunset Greens ADAM R. KNECHT, ESQ.
Homeowners Alverson, Taylor, Mortensen &
Association: Sanders

RECORDED BY: RACHELLE HAMILTON



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Richard Holm

118

Defendant's Witness(es):

None



1 WEDNESDAY, DECEMBER 7, 2016 AT 10:59 A.M.

2 THE COURT: -- Holdings, Carrington Holdings, Counter
3 Claimant, Sunset Greens Homeowners, Association. Can I get
4 all appearances, please?

5 MR. RAFIE: Good morning, Your Honor, Darius Rafie, on
6 behalf of Steijum.

7 THE COURT: Oh, sorry, Steijum. I will try to pronounce
8 that more correctly. Thank you.

9 MR. RAFIE: I don't even know if I'm pronouncing it
10 right.

11 MR. CASTILLO: And Mr. Rafie's associate, Michael
12 Castillo, Bar Number 11531. And Mr. Richard Holm is also
13 present, on behalf of the Plaintiff.

14 THE COURT: Okay. And -- go ahead, counsel.

15 MR. KNECHT: Adam Knecht on behalf of the Cross
16 Defendants, Sunset Greens HOA.

17 MR. BONDS: Kurt Bonds, also on behalf of Sunset Greens.

18 MR. KNECHT: Also, Jason Hoorn, as a representative of
19 the HOA.

20 THE COURT: Okay. Thank you, so very much. Go ahead.

21 MR. STERN: Good morning, Your Honor. Ariel Stern, on
22 behalf of the two Defendants and Cross Claimants, Bank of
23 American NA, and Carrington Mortgage Holdings, LLC.

24 MS. WINSLOW: Natalie Winslow for the same Defendants.
25 Also here is Diane Deloney [phonetic], our representative from



1 Bank of America, and Ms. Janine McFarland from Carrington.

2 THE COURT: Thank you. Welcome. Okay. Feel free to be
3 seated.

4 Okay. So first question before the Court is a
5 couple of administrative issues we need to deal with. There
6 was an order submitted, that was submitted on origin 9 --
7 Steijum Holdings, LLC's first motion in limine, okay.

8 And the cover letter of that stated that,

9 "Carrington Mortgage and Bank of America submit
10 the attached order. Carrington provided the order
11 to counsel for Sunset Green Homeowners Association.
12 Due to its refusal to sign, Carrington and BANA
13 submit the attached order without the HOA's
14 signature."

15 But attached to that documentation was an email, and
16 the email was a -- well, purported email. I will have to ask
17 for foundation purposes, whether it is the correct email, but
18 it appears to be an email.

19 An email from Mr. Knecht to Ms. Winslow.

20 "The draft order does not reflect what's
21 contained in the minute order, or my recollection of
22 the agreements," or excuse me,

23 "arguments at the hearing. I'm sure you
24 address the findings in your opposition, however the
25 arguments in court were very limited with Judge



1 Gonzales, basically denying the motion immediately.

2 I don't believe she addressed much more than
3 was reflected in the minutes. If you feel compelled
4 to submit it as is, place my signature, refused to
5 sign, include this email with your letter."

6 So that appeared to be potentially like I was --
7 that this Court was going to get either a competing order, or
8 something, so the Court hasn't yet signed the proposed order,
9 because I needed to know what the parties' position was with
10 regards to that. Because I never received any competing
11 order, or any communication directly to the Court, which would
12 have been cc'd to all parties.

13 So what's the status? Should I be signing this,
14 should I not be signing this; what's you all's viewpoint?

15 MR. KNECHT: We haven't submitted the -- we haven't
16 submitted competing orders.

17 THE COURT: Okay. Once again.

18 COURT RECORDER: I need that microphone on.

19 MR. KNECHT: It's on, sorry.

20 [Pause]

21 MR. KNECHT: We haven't signed -- we haven't submitted a
22 competing order, Your Honor, so --

23 THE COURT: In a month?

24 MR. KNECHT: -- we'll go ahead and withdraw. And just to
25 make it clear, I was actually looking at something else when



1 you started talking, but which order were you talking about?

2 I remember the email that I sent to Natalie.

3 THE COURT: No worries. The order denying Steijum
4 Holdings, LLC first motion in limine. Steijum seemed to agree
5 with the order.

6 MR. KNECHT: Oh, yeah.

7 THE COURT: The bank agreed with the order, but you
8 didn't agree with the order. So --

9 MR. KNECHT: Well, we'll --

10 THE COURT: I've been waiting patiently, because no one
11 brought this up at the calendar call.

12 MR. KNECHT: Do you have something I can sign there. I
13 could also --

14 THE COURT: I'm not requiring that you to sign it. I
15 guess the Court didn't sign it yet, because --

16 MR. KNECHT: Because I didn't sign it?

17 THE COURT: Well, I least wanted to know what your
18 position was?

19 MR. KNECHT: We're going to withdraw our objection,
20 whatever that was, so --

21 THE COURT: Sure. Would you like me to hand you --

22 MR. KNECHT: Sure.

23 THE COURT: Hold on a second, the Marshal will bring it
24 to you, just one sec. So Marshal, if you can hand that to
25 Mr. Knecht. Thank you so much.



1 Okay. So whatever your position is I just need to
2 know, so I can either sign it, or if I need to be -- if
3 somebody needs to be heard before the Court, determines
4 whether I should sign it, or not sign it.

5 MR. KNECHT: We agree with the -- to form, the content of
6 the order, Your Honor. So I'll sign it right now.

7 THE COURT: Okay. Thank you so very much. My Marshal
8 will take it back from you, so I can sign it in open Court.
9 And is there a request to ask my clerk to file it open court,
10 before the trial commences, by the moving party?

11 MR. RAFIE: Yes, Your Honor.

12 THE COURT: Okay. So we'll take care of that for you.
13 Thank you, so much. Just one moment. Okay.

14 So Madam Clerk, do you want to just file that in
15 open court, we need that taken care. That, once again, is you
16 all's obligation and responsibility, obviously, to make sure
17 that all orders are fully signed and effectuated before the
18 start of trial. That's the only one that we knew was in any
19 way pending. Is there anything else that's pending by any of
20 the parties, that the Court needs to address --

21 MR. KNECHT: Your Honor --

22 THE COURT: -- on any of these orders, or anything else?
23 Go ahead?

24 MS. WINSLOW: It's not on an order, but we do have a
25 stipulation that I received back from all parties, after

1 hours, yesterday. A stipulation to amend the caption, I have
2 it here with all parties' signatures, for the Court.

3 THE COURT: Okie-doke. Marshal, do you mind getting a
4 few more steps on that Fitbit? I'm just kidding, he doesn't
5 have a Fitbit.

6 Okay. A stipulation in order to amend caption.
7 Okay. It looks like I have all three signatures. So all
8 parties agree that the Court can sign this in open Court?

9 MR. RAFIE: Yes, Your Honor.

10 MR. STERN: Yes, Your Honor.

11 MR. KNECHT: Yes, Your Honor.

12 MS. WINSLOW: Yes, Your Honor.

13 THE COURT: Okay. Great, then I will do so. This one
14 says it hasn't yet been logged in. I'm going to put in my
15 pile to have my JA do a stamp for logging in, and then it will
16 get returned to you.

17 MS. WINSLOW: Thank you, Your Honor.

18 THE COURT: So I'll put that over there. Okay. So my
19 next question is --

20 MR. KNECHT: I had one --

21 THE COURT: -- the depositions that were lodged?

22 MR. KNECHT: I had one other item, Your Honor.

23 THE COURT: One other --

24 MR. KNECHT: Regarding orders.

25 THE COURT: Is it orders.



1 MR. KNECHT: It is a -- as I was going through the file I
2 noticed that we were initially brought into this case by Holm
3 International. We filed a motion to dismiss. All of our
4 claims -- all of the claims against the HOA were dismissed,
5 except for equitable indemnity.

6 THE COURT: Is this substantive as to we're going to need
7 some argument?

8 MR. KNECHT: No.

9 THE COURT: Let me just deal with the administrative
10 stuff.

11 MR. KNECHT: Okay. Fine.

12 THE COURT: If you don't mind, can I finish with this
13 administration --

14 MR. KNECHT: Sure.

15 THE COURT: -- so I just have this taken care of, then
16 we'll deal with any administrative stuff that any of the
17 counsel have?

18 MR. KNECHT: Sure.

19 THE COURT: That way my clerk, and everyone can move
20 forward. Okay. The next administrative thing from the
21 Court's standpoint was that the depositions that were provided
22 all say they were not in sealed envelopes, and they all say
23 that they were certified copies.

24 But I didn't see a stipulation between the
25 parties, and I need to be clear, I'm talking about a certified

1 copy of Monte Holm, it doesn't have a date on this, not on the
2 front page.

3 So we'll just -- Monte Holm, July 11, 2016, a
4 certified copy of Jason Holm, July 11, 2016. A certified
5 copy, Susan Moses, June 8, 2016. Certified copy, Chris
6 Yergensen, June 8, 2016.

7 Now you might need to refresh the Court's
8 recollection, there was one case, but I didn't see it
9 specifically for this case, where the parties had agreed that
10 you could use certified copies, rather than originals. Was
11 there an agreement between the parties in that regard?

12 MR. STERN: Your Honor, we have the originals. I
13 don't know --

14 THE COURT: But you all never --

15 MR. STERN: -- if we've reached that agreement.

16 MS. WINSLOW: Yeah. We --

17 MR. RAFIE: We agreed we that we would use the
18 depositions --

19 MS. WINSLOW: We --

20 MR. RAFIE: -- in the form we had them.

21 MS. WINSLOW: I don't know that that was agreed upon,
22 that we would use them in the form we have them. We don't
23 have an objection to that, but we also have the original
24 unopened deposition transcripts here today; our office does.

25 MR. STERN: So --



1 THE COURT: And they weren't brought in at the time of
2 the calendar call because?

3 MR. STERN: Because we had submitted the other exhibits,
4 Your Honor. We acknowledge that we should have been brought
5 them at that time, but we have them here.

6 THE COURT: Okay. Which --

7 MR. RAFIE: If I may be so bold --

8 THE COURT: -- version?

9 MR. RAFIE: -- because there's no --

10 THE COURT: Which version are you using?

11 MR. RAFIE: -- objection to using --

12 THE COURT: What?

13 MR. RAFIE: If I may be so bold, it's because there's no
14 objection to using the certified copy.

15 THE COURT: But what I'm trying to say, if you brought
16 originals, now I have certified copies. We just need to know
17 which ones are agreed by the parties. So the question was
18 just going to be, certified copies, fine. If you're doing
19 originals, original is fine. Once again --

20 MR. STERN: We just brought the originals, just in case.
21 We're good with certified copies, if the other parties are?

22 THE COURT: Okay. So the certified copies --

23 MR. RAFIE: I am.

24 THE COURT: -- are agreeable to be used by all parties on
25 the four depositions I just named?



1 MR. RAFIE: Yes. I missed the second one.

2 THE COURT: Sure.

3 MR. RAFIE: Can you name that one again --

4 THE COURT: Of course.

5 MR. RAFIE: -- please, Your Honor?

6 THE COURT: Well, I'm not going to do them in the same
7 order, I'm going to go from a reverse order, because I now put
8 them in the reverse order. Chris Yergensen, June 8, 2016;
9 Susan Moses, June 8, 2016; Jason Hoorm [sic throughout],
10 H-O-O-R-M, I think I called it Hoorm --

11 MR. RAFIE: Okay.

12 THE COURT: -- July 11, 2016; and Monte Holm, July 11,
13 2016.

14 MR. STERN: Okay. Thank you, Your Honor.

15 THE COURT: Sure, does that work? Counsel for the HOA,
16 is that agreeable to you as well, to use the certified copies?

17 MR. KNECHT: It is, Your Honor.

18 THE COURT: Okay. We've got that taken care of for you.
19 Okay. That's what I showed administratively from the Court,
20 as far as just kind of the simple and easy things.

21 Counsel, for the HOA, do you want us to try and push
22 that table forward a little bit forward for you, so that
23 you're able to get in and out a little better?

24 MR. KNECHT: I'm okay now. I just needed to -- there's a
25 leg right here and I was kind of right in between it, so --



1 THE COURT: Oh, no worries. You can feel free to --

2 MR. KNECHT: I'm fine.

3 THE COURT: Okay. Counsel, you had said that you had an
4 issue, so you started get up first, go ahead, let's take care
5 of yours.

6 You started to say that you had been brought
7 initially by Holm --

8 MR. KNECHT: Right.

9 THE COURT: -- things were dismissed with Judge Scann, so
10 -- well, you didn't say Judge Scann, but it was --

11 MR. KNECHT: As I --

12 THE COURT: -- Judge Scann.

13 MR. KNECHT: As I went through the record it appears as
14 though -- although Judge Scann issued a written order with
15 respect to the equitable indemnity claim, I don't think there
16 was ever a formal order that we prepared and submitted to the
17 Court, or signed.

18 THE COURT: So you've been in violation since 2013, with
19 ADCR 72.1?

20 MR. KNECHT: Apparently yes, Your Honor.

21 THE COURT: Oh. So what would you like to do about that?

22 MR. KNECHT: I'm just bringing it up for the record, Your
23 Honor, that we were dismissed from the -- the case is brought
24 by Holm International, now we were brought in again by the
25 bank, as a cross defendant, so --



1 THE COURT: Okay. Well, did you by chance bring your
2 proposed ordered that you could circulate and have the Court
3 sign, before we start?

4 MR. KNECHT: I did not bring one this morning, Your
5 Honor.

6 THE COURT: So do you want me to hear what everybody else
7 -- what's your position on what should be done, and then I'm
8 going to ask if anybody has any objection to that?

9 MR. KNECHT: What I could do is, I could call during a
10 break, I could call my office and have them prepare a quick
11 one. It's just dismissing, you know, with Mr. Rafie's
12 consent, at least, dismissing Sunset HOA from the case, from
13 the initial case, and I could have somebody bring it by the
14 end of day?

15 MR. RAFIE: Well, there's a remaining cause, correct?
16 It's the inequitable indemnity that bore the quiet title,
17 cancellation of instruments, and breach of contract claims. I
18 don't recall this, so you just have to tell me. Those were
19 the ones that were dismissed? Inequitable indemnity remain?

20 MR. KNECHT: Huh-uh. That was dismissed as well.

21 THE COURT: One was deferred.

22 MR. KNECHT: That was the one that she actually wrote an
23 opinion about, just a small brief opinion, but she wrote it.
24 So, yeah, that was dismissed as well.

25 MR. RAFIE: I misheard you earlier, sorry.



1 MR. KNECHT: Yeah.

2 THE COURT: So are you amenable --

3 MR. RAFIE: I would --

4 THE COURT: -- not amenable to that --

5 MR. RAFIE: I'm not amendable --

6 THE COURT: -- wish to further discuss --

7 MR. RAFIE: -- to that.

8 THE COURT: On what basis? Do you dispute that they were
9 dismissed, or what's the basis of --

10 MR. RAFIE: If I recall correctly, I believe Judge Scann
11 did dismiss everything. But it's been so long, that I don't
12 know for sure. I'm just being honest with the Court. I do
13 believe she did dismiss all claims. And the reason I can
14 remember that, is that's the only one that happened that way.

15 THE COURT: No, let's -- I mean, you all are hooked up on
16 the computer, can you pop on Wiznet and see it, or do you want
17 the Court to show you?

18 Well, let me hear counsel for Carrington and BANA;
19 do you have a position?

20 MR. STERN: We don't care about this particular issue,
21 Your Honor, as long as our cross claims stand, we're --

22 THE COURT: Counsel for the HOA, you're not asserting
23 anything different on the cross claims, right?

24 MR. KNECHT: No, Your Honor. No.

25 MR. RAFIE: This may be an easy --



1 MR. STERN: I have no position.

2 MR. RAFIE: -- an easy work around, Your Honor.

3 THE COURT: Sure.

4 MR. RAFIE: As long as we can agree that those equitable
5 indemnity claims are not waived, there's no prejudice. I can
6 bring those if I need to --

7 MR. KNECHT: Okay. It was --

8 MR. RAFIE: -- I believe that --

9 THE COURT: Wait a second --

10 MR. RAFIE: -- was the order.

11 THE COURT: Wait a second.

12 MR. KNECHT: That was true. It was dismissed without
13 prejudice.

14 MR. RAFIE: Correct.

15 MR. KNECHT: Yeah, correct.

16 THE COURT: Do you have a timing? Okay. First off, you
17 all gave me a stipulation order to amend caption, which you
18 all agreed that this Court was supposed to sign in open court.
19 So the court signed in open court.

20 If I were to look at that stipulated amended caption
21 again, since of course I looked at it before I signed it, if I
22 were to look at it again, it's interesting, it does include
23 Sunset Green Home Owners Association in the original action.

24 MR. KNECHT: It was included in the original action. We
25 were dismissed out of the case. All claims were dismissed



1 against Sunset Greens. However before we were dismissed from
2 the original action, there was a third -- there was a cross
3 complaint brought against the HOA. So I wasn't sure --

4 THE COURT: Okay. Where was this going? You stipulate
5 -- okay. This is one of those lovely challenging ones where
6 you all submitted all sorts of different captions on this
7 case. I'm saying it, you know, ad nauseum in pretrial
8 conferences, that all of this should have been done before, is
9 to get correct captions.

10 The very stipulation to amend the caption, that each
11 and every one of you signed, includes your client in the main
12 portion of the caption. However, several of the other
13 captions, including the caption submitted by Defendant, Bank
14 of America and Carrington Mortgage is absolutely sitting right
15 here, I can grab the other ones real handy too, does not
16 include your client in the main caption.

17 Although it was replaced --

18 MR. KNECHT: Right.

19 THE COURT: -- back in on stipulation to amend caption.
20 Now hold on a second, they get the form reversed. And the
21 proposed amending findings of fact did have. So it looks like
22 you all --

23 MR. STERN: This is --

24 THE COURT: BANA and Carrington took it out between
25 version 1 and version 2.



1 MR. STERN: Yes, Your Honor.

2 THE COURT: Okay. But yet -- I'm just looking to see
3 what the other parties did, let me double check this, because
4 obviously when I keep getting all these mixed captions I get
5 to the point of you all just need to fix it and tell me what
6 the right one is.

7 Counsel for Plaintiff included it. Does the HOA's
8 caption still include it? I was quickly trying to find it.

9 MR. KNECHT: In the proposed finding of facts.

10 THE COURT: Well, okay. Let's move on to the real world.
11 Plaintiff's counsel, are you and the HOA in a disagreement as
12 to what the procedural history was, or are you -- I'm trying
13 to understand the nature of what your objection is.

14 MR. KNECHT: I understand, Your Honor.

15 MR. RAFIE: I don't know as I stand here before the
16 Court, 100 percent. But I do believe my recollection is
17 correct, that judge -- the late Honorable Judge Scann did
18 dismiss all of our causes of action against the HOA without
19 prejudice.

20 My concern at the time was, and you kind of hit upon
21 it, and that's the reason why I'm going to talk about, is that
22 under Nevada law my argument was that the present case or
23 controversy rule, the one exception is for equitable
24 indemnity, and I was allowed to have that.

25 However, Judge Scann did not agree with me at the



1 time, but she did dismiss the claim without prejudice, so that
2 I could bring it at any time. So if there is some concern
3 about me being able to bring that at any time against the HOA,
4 I have a problem, because I do believe Judge Scann preserved
5 that right for me. That's the best I can do as I stand before
6 the Court, Your Honor, I'm sorry.

7 [Pause]

8 THE COURT: Counsel for the HOA, since I'm just scanning
9 each and every entry, if you happen to have a specific date
10 and time that would expedite things, that would be perfectly
11 helpful to the Court, that I could try and find it.

12 So I show matter taken under advisement, 8/24/15.

13 MR. KNECHT: August 24th, 2015, Your Honor. And actually
14 it was --

15 THE COURT: I think I --

16 MR. KNECHT: That was when she dismissed all of the
17 claims, except for equitable indemnity. And then on September
18 23rd, 2015 she entered an order.

19 THE COURT: Yes. Thank you. I just found it, okay.

20 So this is, "Decision and order re: Defendant,
21 Sunset Greens Homeowner Association motion to dismiss as to
22 equitable indemnity, filed on 9/23/15, 2:54:21 p.m."

23 It says,

24 "Defendant, Sunset Greens Homeowner Association
25 motion to dismiss complaint came before the Court on



1 August 24, 2015 and the motion to dismiss was
2 granted as to everything but equitable indemnity,
3 which was taken under advisement and set for
4 decision on chamber's calendar on September 2nd,
5 2015 and continued to September 23, 2105."

6 Do you want me to say who the appearances were on
7 behalf of, or do you want me to just skip over that paragraph?

8 MR. RAFIE: You can skip that.

9 MR. KNECHT: Skip over it, Your Honor.

10 THE COURT: Okay.

11 "The Court heard Defendant, Sunset Greens Homeowner
12 Association's motion dismiss on 24, took the issue
13 of whether equitable indemnity claims should be
14 dismissed under advisement. The remainder of the
15 claims against the Homeowner Association were
16 dismissed."

17 I'm not being repetitive, it's repetitive in the
18 order.

19 MR. KNECHT: Right.

20 THE COURT: Okay.

21 "Plaintiff argues equitable judgment claim is
22 entitled to remain, despite the fact no claim
23 supporting equitable indemnity have been filed
24 either of the banks named in this case. Plaintiff
25 relies on three cases, the citations admitted right



1 now for my purposes. The Court has reviewed
2 these" -- okay.

3 Well, I'll name the cases, sorry. Sailor versus
4 Arcada [phonetic], Medallion Development versus Converse
5 Consultants, and Drs. Covey, Vincent [phonetic] are cited in
6 the order. And I'm not doing the citations.

7 The next sentence starts, this is on line 13,
8 page 2.

9 "The Court has reviewed these cases and find
10 that none of them support the proposition that a
11 claim for equitable indemnity should remain where no
12 other Defendants have raised such claims. The
13 Sailor case stands for the proposition that all
14 indemnity claims have a four year statute of
15 limitations and does not support the proposition
16 that an unsupported equitable indemnity claim can
17 remain in a pleading.

18 "The Medallion case stands for the proposition
19 that implied equitable indemnity claims against
20 other tortfeasors are not barred by a good faith
21 settlement. This wholly was overturned by statute
22 in later case law."

23 "Finally, the doctor's case stands for the
24 proposition that a tortfeasors seeking equitable
25 indemnity is not required to extinguish the



1 liability of an indemnity defendant and overrules a
2 portion of the Medallion case twofold.

3 "Nothing in these cases stands for the
4 proposition that a claim for indemnity may stand
5 where the allegations upon which it could be based
6 have not been made in the case. There is no case or
7 controversy concerning the indemnity allegation."

8 "Accordingly," this is now on page 3, line 1.

9 "Accordingly the Defendant, Sunset Greens
10 Homeowner Association's motion to dismiss is
11 granted, as to the indemnity claims, without
12 prejudice. The Association's attorney is directed
13 to prepare an order reflecting this determination."

14 Was ever such an order prepared reflecting such a
15 determination?

16 MR. KNECHT: No, it was not, Your Honor.

17 THE COURT: Interesting. So I have -- well, I haven't
18 read the certificate of service. Does anyone wish me to read
19 the certificate of service? I presume the answer is no,
20 right?

21 MR. KNECHT: No, Your Honor.

22 THE COURT: So I have read the substantive portion other
23 than you all requested I not read the appearance paragraph.
24 So if anyone wants to see it, I can turn around the screen and
25 show it to you. Does anyone wish to see this written order?



1 MR. RAFIE: I'm okay, Your Honor.

2 THE COURT: Counsel for BANA and Carrington?

3 MR. STERN: We're okay, Your Honor, either way. This is
4 mostly their issue.

5 THE COURT: Not yours?

6 MR. STERN: Right.

7 THE COURT: Okay. HOA?

8 MR. KNECHT: No, Your Honor.

9 THE COURT: So you've raised the issue, counsel, for HOA.
10 What are you suggesting or requesting the Court to do, and
11 then I'm going to hear from the other parties?

12 MR. KNECHT: We could prepare an order, consistent with
13 that, with Judge Scann's order, and have it for Your Honor to
14 sign preferably tomorrow morning; is that possible?

15 THE COURT: I'd like to hear all parties' positions,
16 because as you know openings are, well, 20 minutes ago. So
17 counsel for -- anything else you wish to be heard on? If
18 not, I'm going to move on to the next counsels, and ask them
19 each their position.

20 MR. KNECHT: No, Your Honor. No.

21 THE COURT: Okay. Now I don't, and I do have a few other
22 cases on my docket, but my top of the head recollection is
23 that this issue was never brought before the Court at the
24 pretrial conference calendar call, nor is there any pending
25 motions regarding this issue that's now being brought up the



1 first time of the day, the first day of trial; is that
2 correct?

3 MR. KNECHT: I believe so, Your Honor. Yes.

4 THE COURT: Counsel for Plaintiff, your position, if any?

5 MR. RAFIE: I'm in a tough spot, because I've got to
6 protect the rights of my client. I don't want to throw
7 opposing counsel under the bus in any way. He's my friend,
8 and I expect to walk out of this courtroom, with arms around
9 him, prevailing. But at the end of the day I do believe that
10 the order is not affected because an order has not been
11 entered. And that our claim should stand, especially for
12 equitable indemnity.

13 THE COURT: Did you ever object or raise that issue
14 before today?

15 MR. RAFIE: No. But it's not my -- it's not my job to
16 enter the order. I wasn't ordered to prepare the order. And
17 my time for triggering that, in filing any kind of motion for
18 reconsideration, or any other kind of appellate right is not
19 triggered until that order is entered. So that wouldn't have
20 hit my radar.

21 THE COURT: Wasn't that a motion for reconsideration?
22 Orders to -- okay, I will now read the certificate of service
23 paragraph, since you raise the issue of motion for
24 reconsideration. Hold on one second, before I read that let
25 me -- BANA should I just continue to presume you don't have a

1 position, unless you stand up on this?

2 MR. STERN: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. RAFIE: That's right.

5 THE COURT: I keep asking you, but --

6 MR. STERN: That's right, Your Honor. To the extent
7 there's controversy between the HOA and Steijum, we take no
8 position. If there's agreement with them, as long as it's
9 about these issues, we'll stipulate to whatever they agree to.
10 It's really not our issue.

11 THE COURT: The reason why I was going to read the
12 certificate of service, and I can easily read it.

13 "I hereby certify that on the above date filed a
14 copy of foregoing decision and order." Where I'm going to
15 challenge here, and you all can appreciate my challenge is,
16 and may she rest in peace, but the judge that did this order
17 is no longer alive, so I can't check with him [sic], and it
18 wasn't me, okay. I can't check with her.

19 She's so amazingly detail oriented that I'm -- but
20 then the rest of the certificate of service in fairness, after
21 the colon, says: "Plaintiff's motion for reconsideration and
22 clarification of decision re: Defendant, National Capital
23 Insurance objection to discovery commission report and
24 recommendations." So that does appear to be just a
25 typographical error, because the parties shown as getting



1 this, are; Alverson, Taylor, Mortensen & Sanders, Kurt Brook
2 (sic), Esq., Adam Knecht; Ackerman LLP, Ariel Stern, Darren
3 Brenner, Christine Parvan; Mortenson Rafie, Darius Rafie and
4 CluAynne Corwin.

5 So you all appears to have gotten this. And the
6 typographical error on the nature of the order, which you can
7 appreciate in the, well, hundreds in any given week that we're
8 either preparing or signing, and thousands in any -- sometimes
9 in certain given months, that quick typo on a -- with the
10 nature of the order doesn't impact the substance of the order,
11 and there is a plethora. There are Nevada Supreme Court cases
12 that clearly say that.

13 So in light of your objection, Plaintiff's counsel,
14 I mean, are we talking about, I'm about to get a Rule 15
15 motion, or something? I mean, I'm trying to understand the
16 nature of your objection with regards to what impact it has on
17 the pending proceedings? Are you saying that -- oh, let me
18 look at your joint pretrial memo. Hold on one second.

19 See, they really do matter why we have to have them
20 on time before calendar calls, and why they have to be
21 completely accurate, to voice these issues. Hint, hint, hint,
22 because there's other cases I still don't have on-time ones.
23 Give me a second, please.

24 [Pause]

25 THE COURT: Would all agree that the November 30th



1 pretrial memo is the operative pretrial memo?

2 MR. STERN: Yes, Your Honor.

3 MR. CASTILLO: Yes.

4 THE COURT: HOA?

5 MR. KNECHT: Yes, Your Honor.

6 THE COURT: Okay. The reason why I'm asking, because if
7 you remember in this case you all had a prior single party
8 pretrial memo, that then it was stated at the time of the
9 calendar call, and I'm saying this because not all of you were
10 at the calendar call. So I'm trying to -- my recollection,
11 once again, I can easily go and listen to it.

12 My recollection is, that the parties specifically
13 agreed because there was issue regarding objections on some
14 other things, that the parties were going to file a compliant
15 pretrial memo from all parties. So if you all are in
16 agreement that the 1130, right? Plaintiff's counsel, you said
17 your agreement to the 1130 is the operative pretrial memo; is
18 that correct?

19 MR. CASTILLO: Yes, Your Honor.

20 MR. RAFIE: Yes.

21 THE COURT: Let's look to see what that says. One
22 moment, please.

23 [Pause]

24 THE COURT: I haven't finished reading the -- re-
25 reviewing the entirety of pretrial memo. Do you all have a



1 copy handy in front of you?

2 MR. STERN: Yes, Your Honor. It's page 3.

3 THE COURT: That's where I'm about to ask you. That's
4 why I was trying to -- counsel with the HOA, do you need to
5 share with someone? Okay.

6 I'm looking at page 3, lines 10 through 21.

7 MR. KNECHT: And that's -- are you focusing on the cross
8 claim counter?

9 THE COURT: No, I was trying to -- I got as far as
10 "claims for relief, subsection (a), Plaintiff's claims for
11 relief," and I got down to number 4, I got down to number 5,
12 and I was also looking at number 1 and 2.

13 MR. KNECHT: Yeah. I --

14 THE COURT: And then I have -- I was going to then skip
15 to the end to see if I had signatures by all the parties, that
16 you've now reaffirmed in Court that this is the operative
17 pretrial memo, which is supposed to set forth the structure of
18 the case, all signed by -- well, I forgot to look, if it's all
19 signed by all parties.

20 Do I need to -- the only reason why I would know to
21 click 22 times to get to that end page, can you all just tell
22 me, is it signed by all parties?

23 MR. RAFIE: I believe so, Your Honor. Yeah.

24 MR. KNECHT: Yeah. I'm pretty sure it is.

25 THE COURT: Okay. The clicking back and forth is the



1 least convenient way, unfortunately we have to do this. Do
2 you all need a moment to talk among yourselves, rather than --

3 MR. KNECHT: Yeah. Can you give us just a couple of
4 minutes.

5 THE COURT: Of course I can.

6 MR. RAFIE: I don't object, Your Honor?

7 THE COURT: Sure. I got two choices; 1) we can break for
8 lunch and come back at 12:30 if you think you need that much
9 time; 2) I can give you ten minutes. I'm just trying to
10 balance what you need for your needs. If you're going to take
11 the whole time, then we come back and you're breaking for
12 lunch anyway, we might as well break for lunch now.

13 MR. KNECHT: I understand. I'm just thinking maybe a
14 couple of minutes, though. I'd like to get going --

15 THE COURT: Oh, yeah, sure.

16 MR. KNECHT: -- because I really -- I think we can move
17 this case along.

18 THE COURT: No worries. Okay, so why don't we say ten
19 minutes. If you're done sooner let my marshal know and I'll
20 come back, okay?

21 MR. RAFIE: Thank you, Your Honor.

22 THE COURT: Thank you so much.

23 THE MARSHAL: All rise.

24 [Recess at 11:30 a.m.]

25 THE COURT: Thank you so much. We're missing your



1 colleague, your clients. Do we need to go back on record, or
2 do you want me to wait a moment? I'm fine from a courtesy
3 stand --

4 MR. STERN: As long as the issue -- I'm fine with us
5 going forward, Your Honor. Again, it's not my issue.

6 THE COURT: Okay. In other words, it was just from a
7 courtesy standpoint. Let make sure Madam Court Recorder is
8 back on the record.

9 THE COURT RECORDER: I am.

10 THE COURT: Okay. Wait -- yes?

11 THE COURT RECORDER: Uh-huh.

12 THE COURT: Okay. We're back on the record.

13 And the Court had just asked Defense counsel, since
14 co-counsel and their clients weren't here, that I understand
15 you still wish to go forward, because it's not really your
16 issue, at present?

17 MR. STERN: Correct, Your Honor.

18 THE COURT: And you'll let me know if at any point you
19 need to stop, because you're waiting for somebody, right?

20 MR. RAFIE: Correct, Your Honor.

21 THE COURT: Perfect. And I've got your co-counsel, I've
22 got everybody else. Okay.

23 MR. RAFIE: I'll be as skinny as I can.

24 THE COURT: No worries, I just was looking around.

25 MR. RAFIE: It's hard for me.



1 THE COURT: Okay. Go ahead. Counsel for Plaintiff, or
2 counsel for HOA; who's going to speak.

3 MR. KNECHT: We've decided that we'll allow the orders to
4 remain as they stand, which means the order that Judge Scann
5 filed as well. We're not going to -- if we have to address
6 the issue later on, which we don't think we will, but if we
7 have to later on then I guess we'll raise it. But at this
8 point in time we're going to file --

9 THE COURT: Wait a second.

10 MR. KNECHT: We're not going to file an order, I guess is
11 what I'm saying. We're not going to --

12 THE COURT: But you don't have -- so what basis do you
13 have for a notice of entry of order under the rules; are you
14 stipulating that the minute order -- I mean, I'm trying to
15 understand what you're trying to say, and then we'll have deal
16 with it --

17 MR. KNECHT: Okay.

18 THE COURT: -- what we have to deal with it, meaning --

19 MR. KNECHT: I think what we're doing is stipulating
20 that --

21 MR. RAFIE: The pretrial memoranda will control.

22 MR. KNECHT: Will control, right. That's fine. That's
23 fine.

24 THE COURT: If the pretrial memoranda controls, that
25 means there's still a breach of contract claim from Plaintiff

1 against the HOA; is that your position?

2 MR. KNECHT: That's -- I think our position --

3 MR. RAFIE: Yeah.

4 MR. KNECHT: Is our position Darius?

5 MR. RAFIE: Yes.

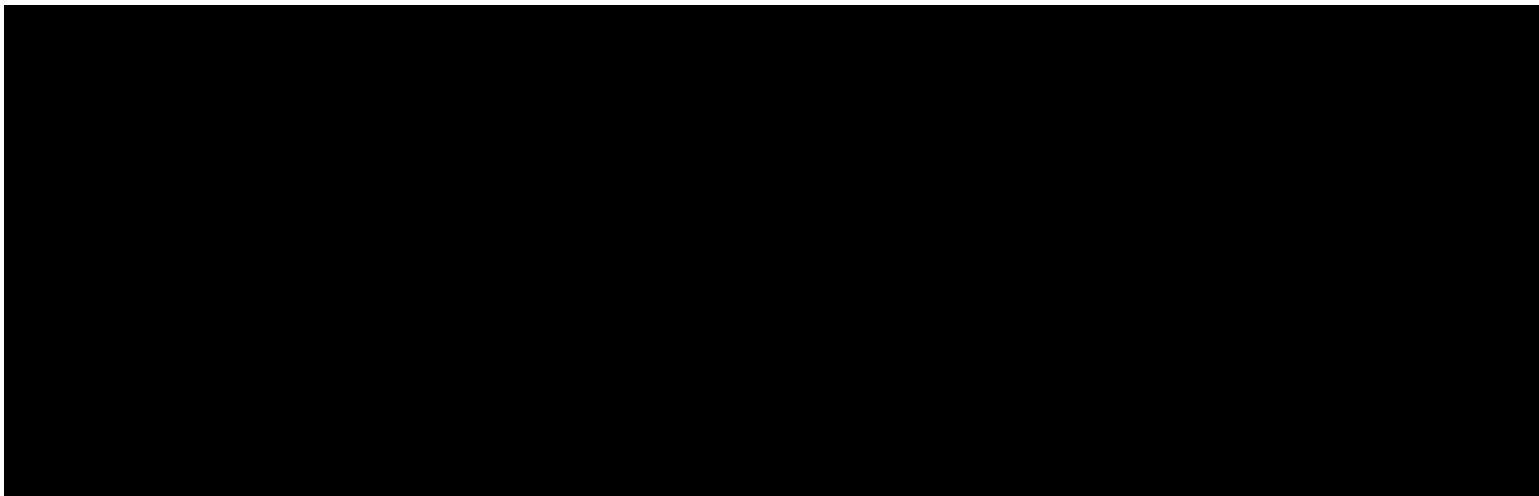
13 cause of action are moving forward against who? So I need
14 that to be clearly articulated on the record, what causes of
15 action are moving forward against who.

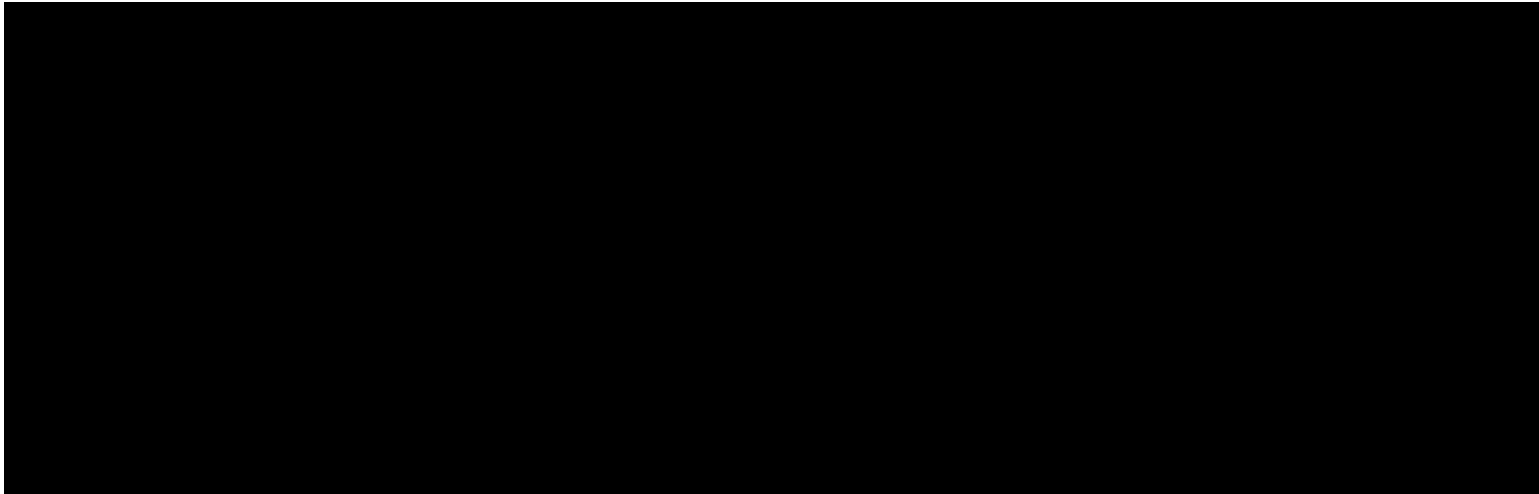
16 And if you all are saying that some decision of the
17 prior judge is ineffective, then I'm definitely going to need
18 support on that, you know what I mean, unless you stipulated
19 that you're back in on all these things. I mean, I need to
20 know basically what --

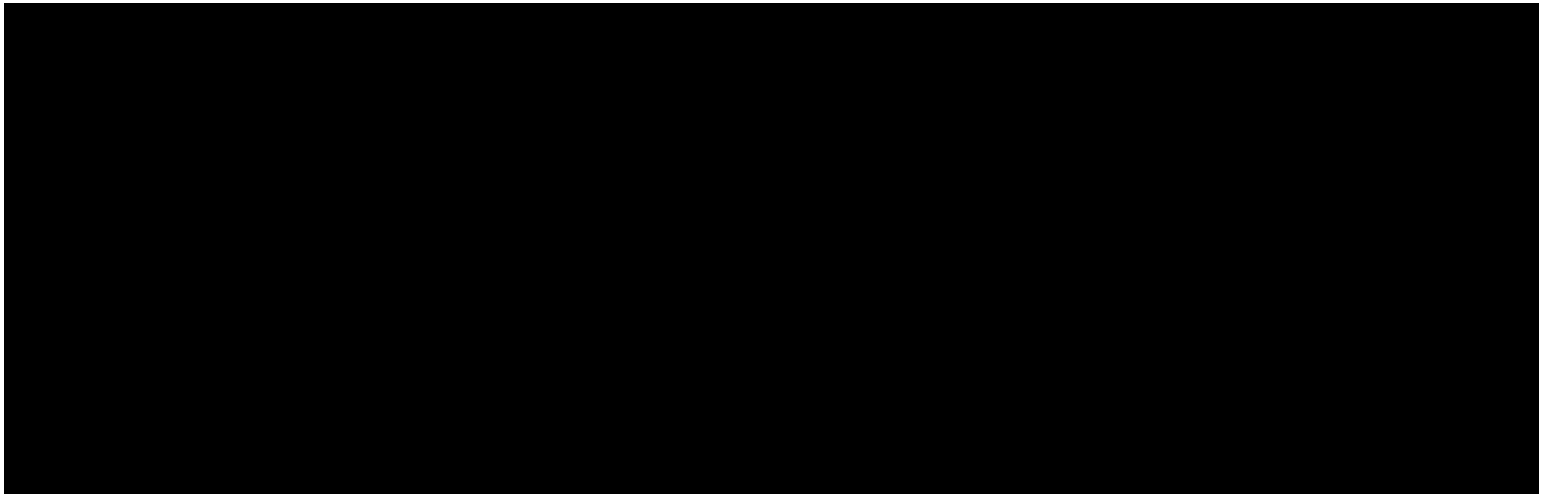
21 [Counsel confer]

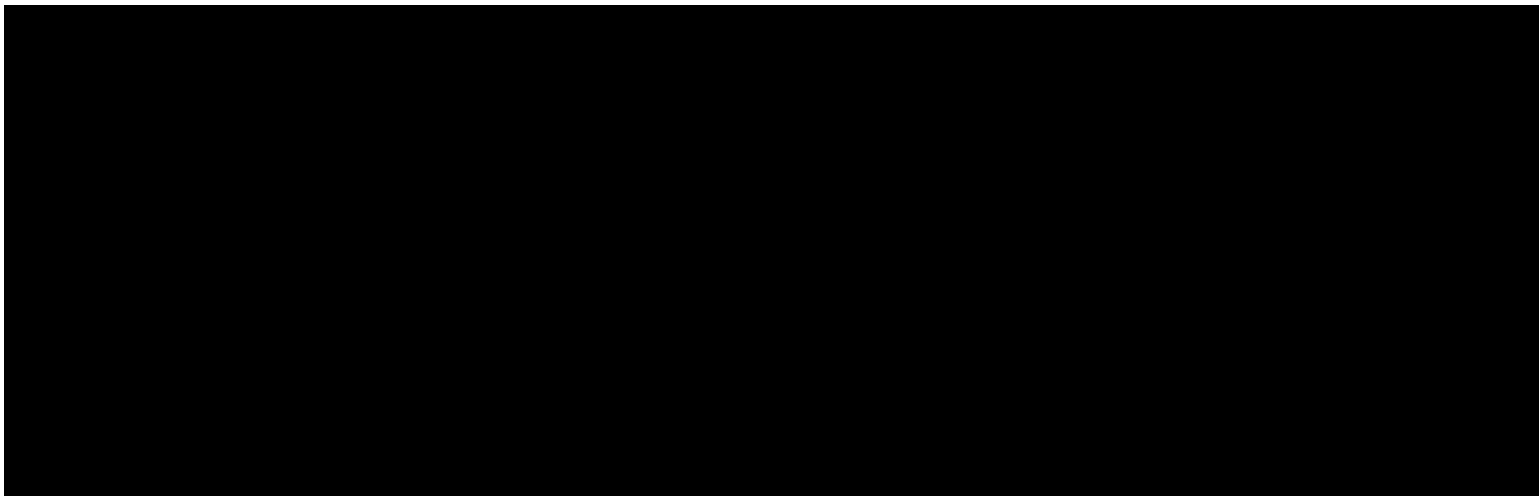
22 MR. RAFIE: Okay. So if I may? This is what we talked
23 about on the break. Just to make things easy, and to get past
24 this procedural issue, yes, there's some things that didn't
25 get done that should have got done, but at the end of day

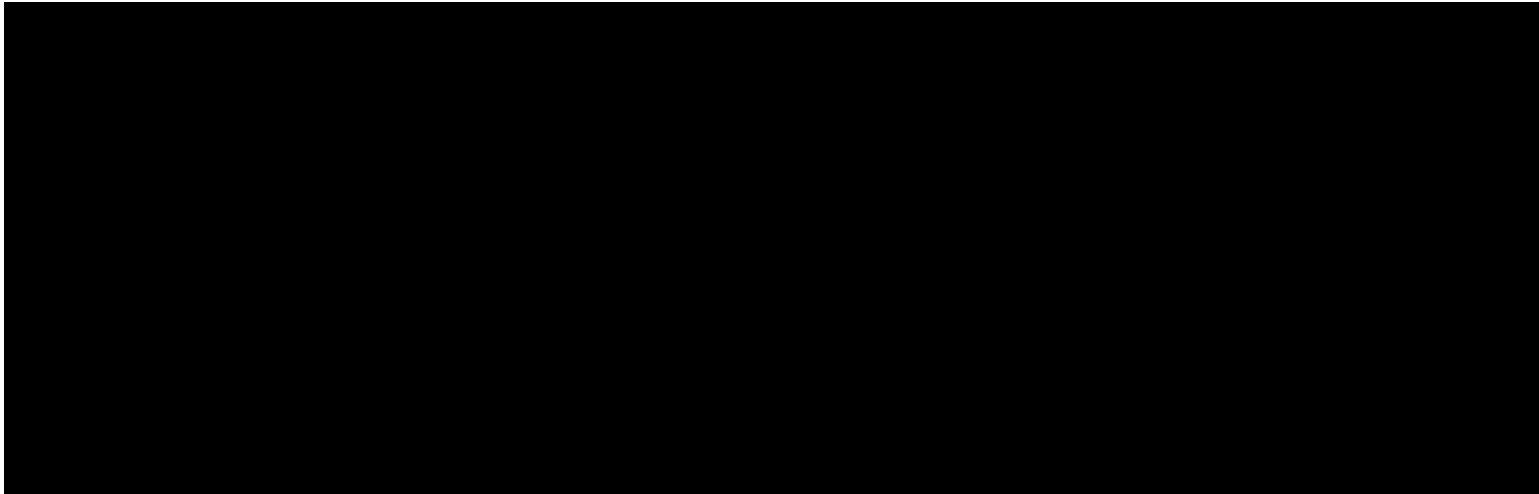


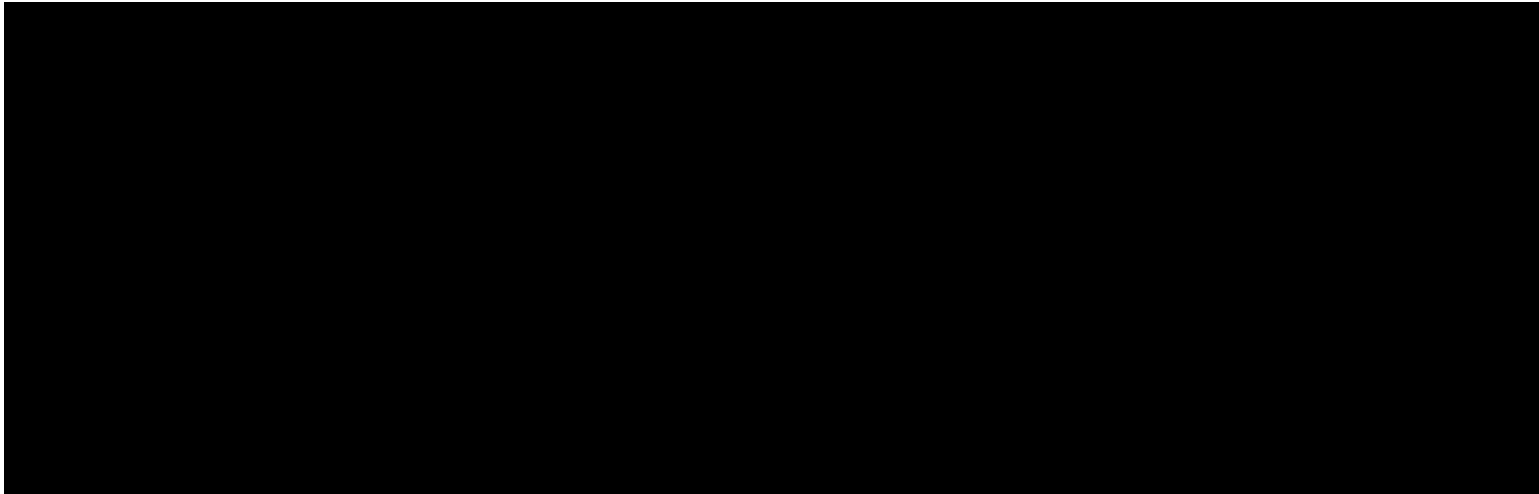


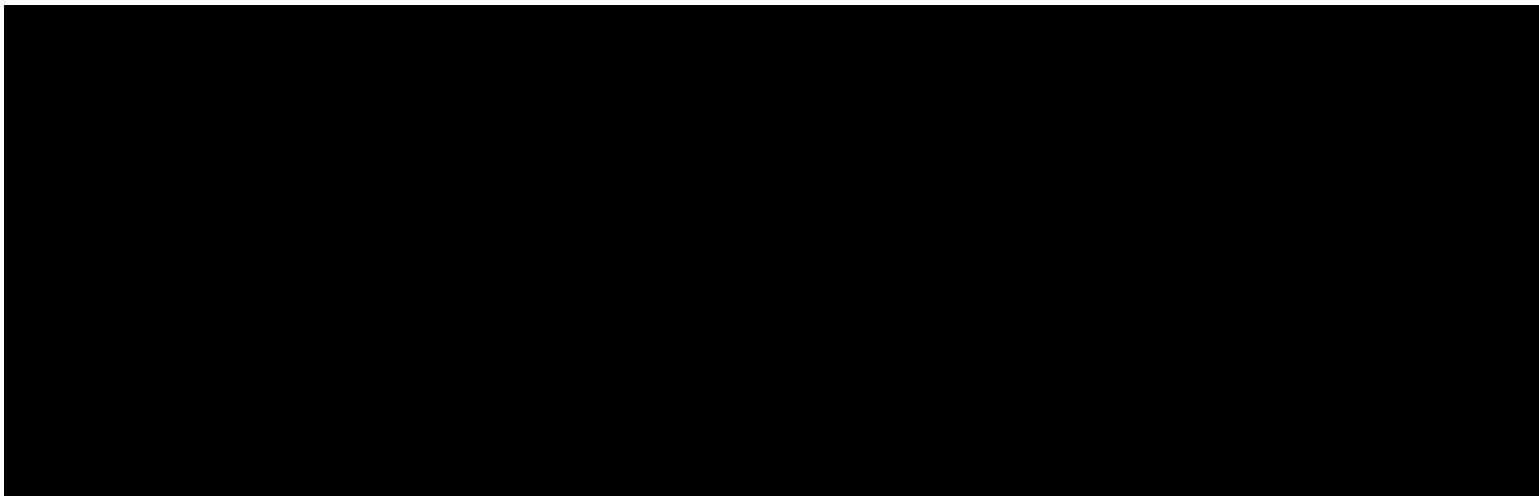


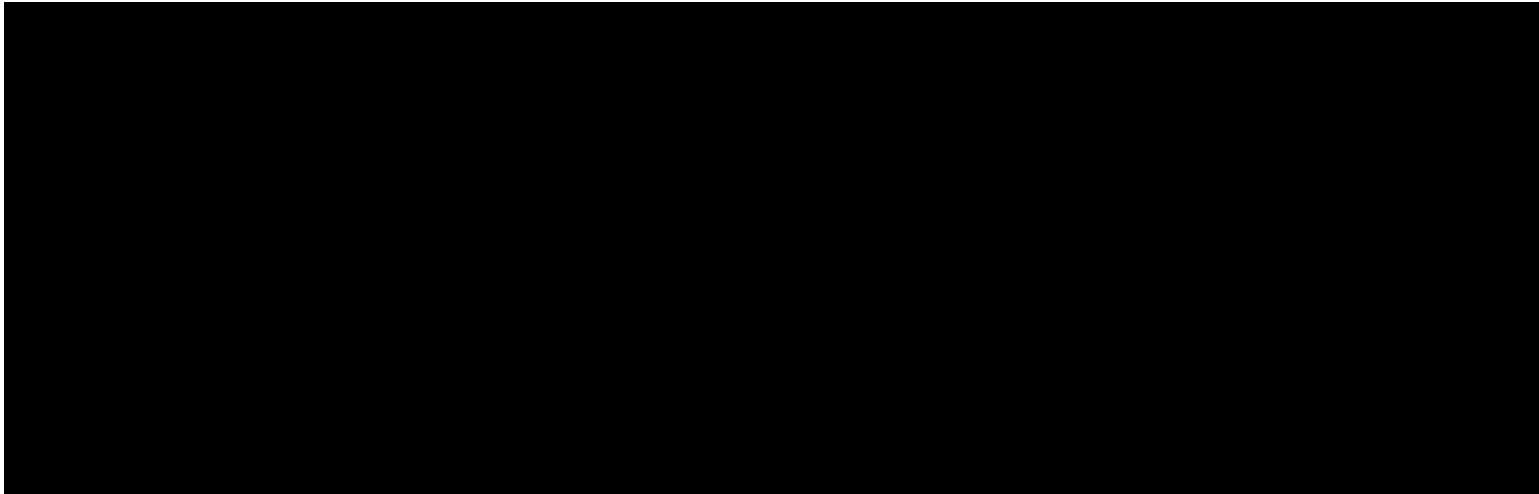


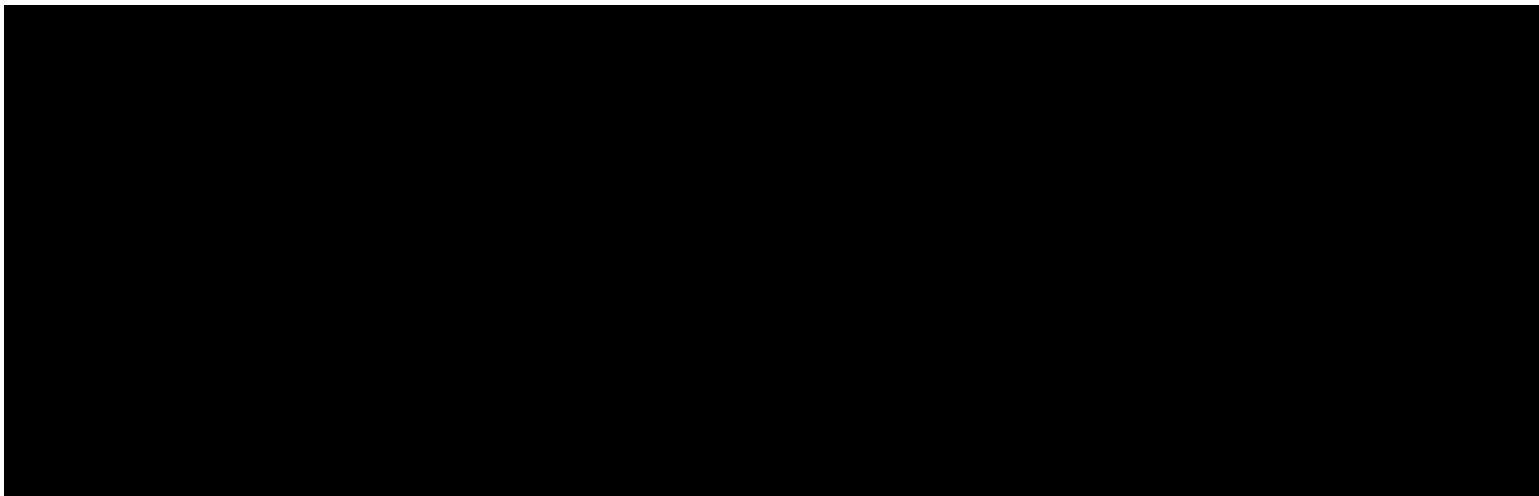


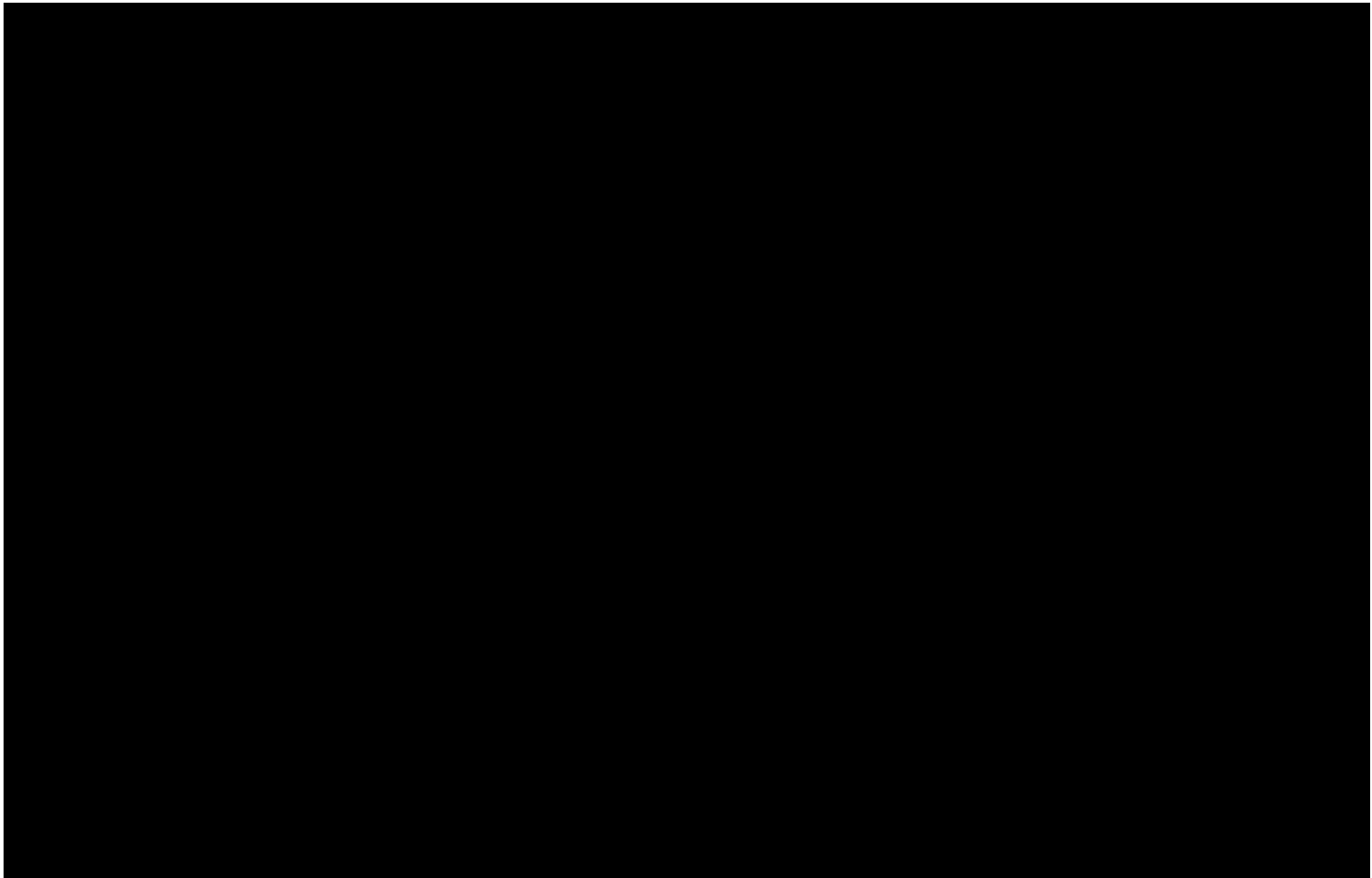


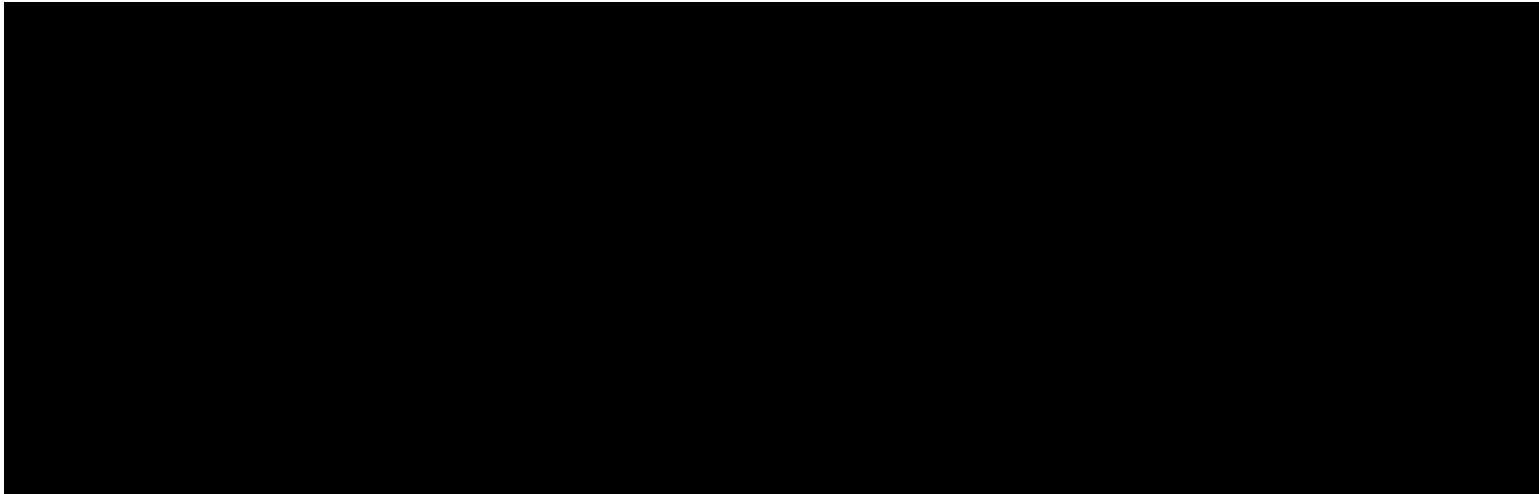


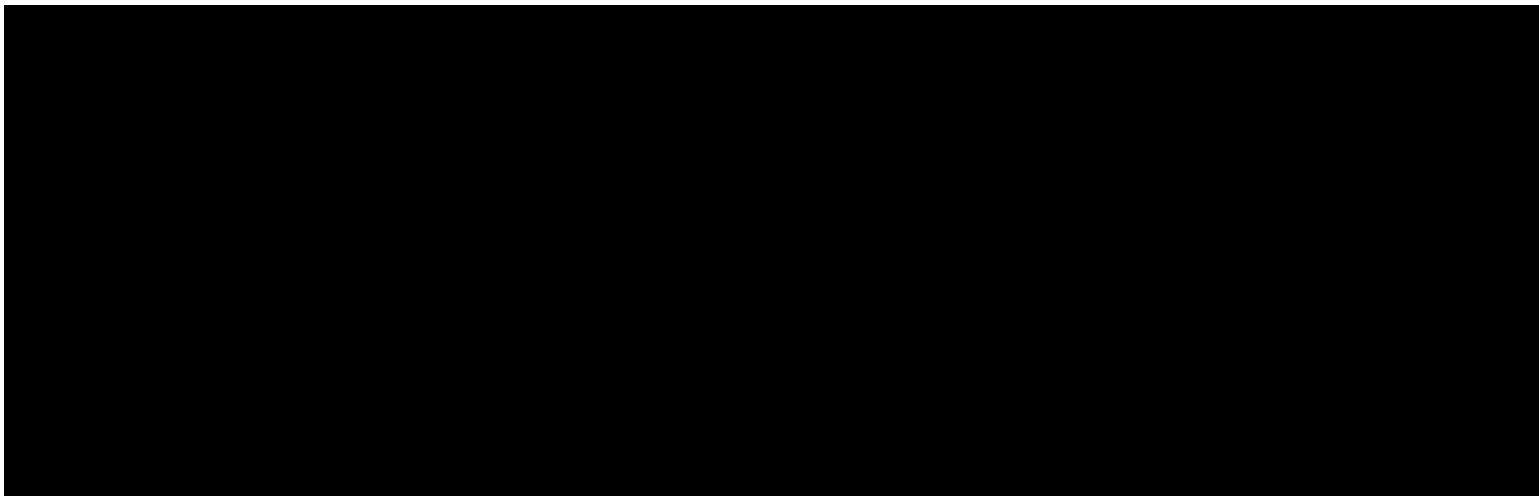




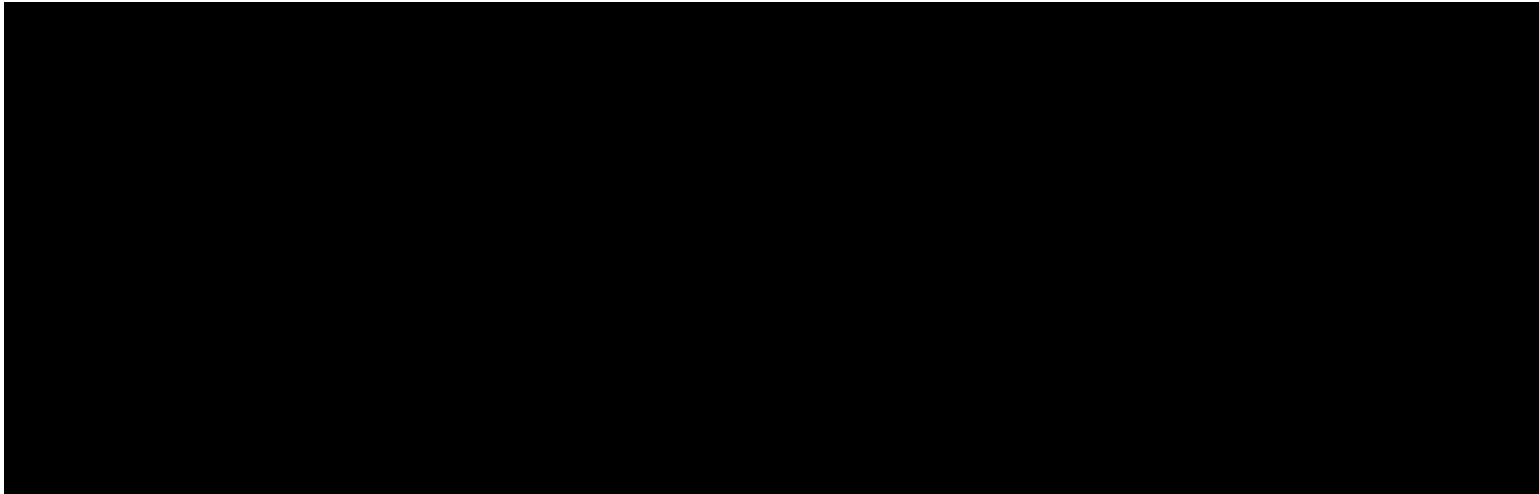


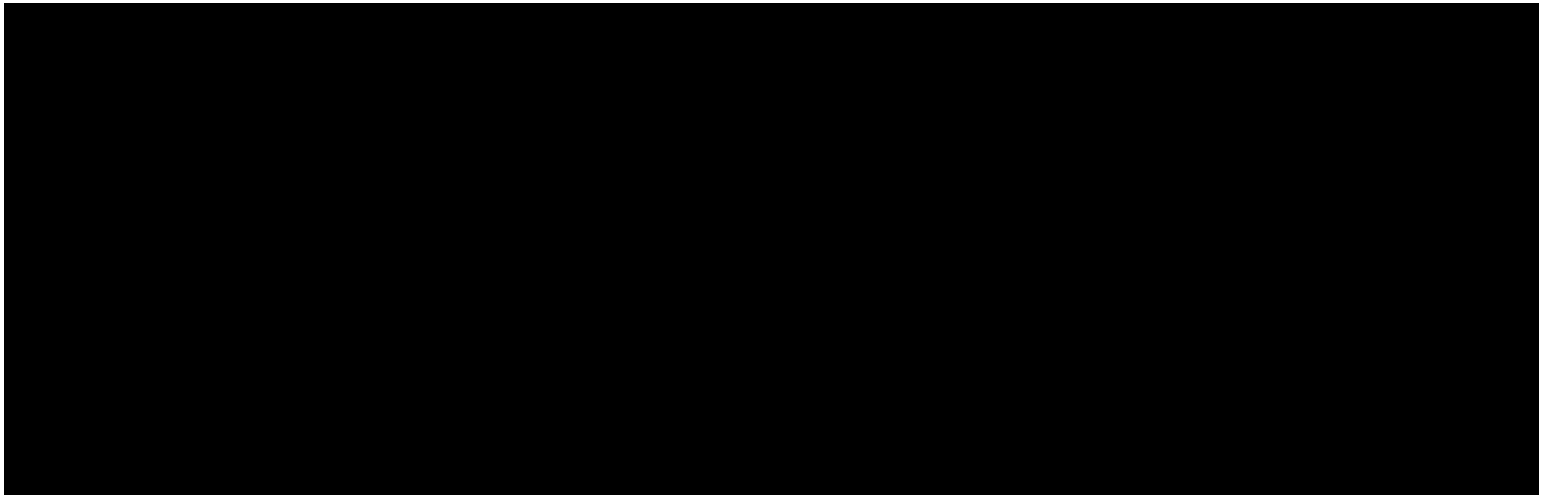


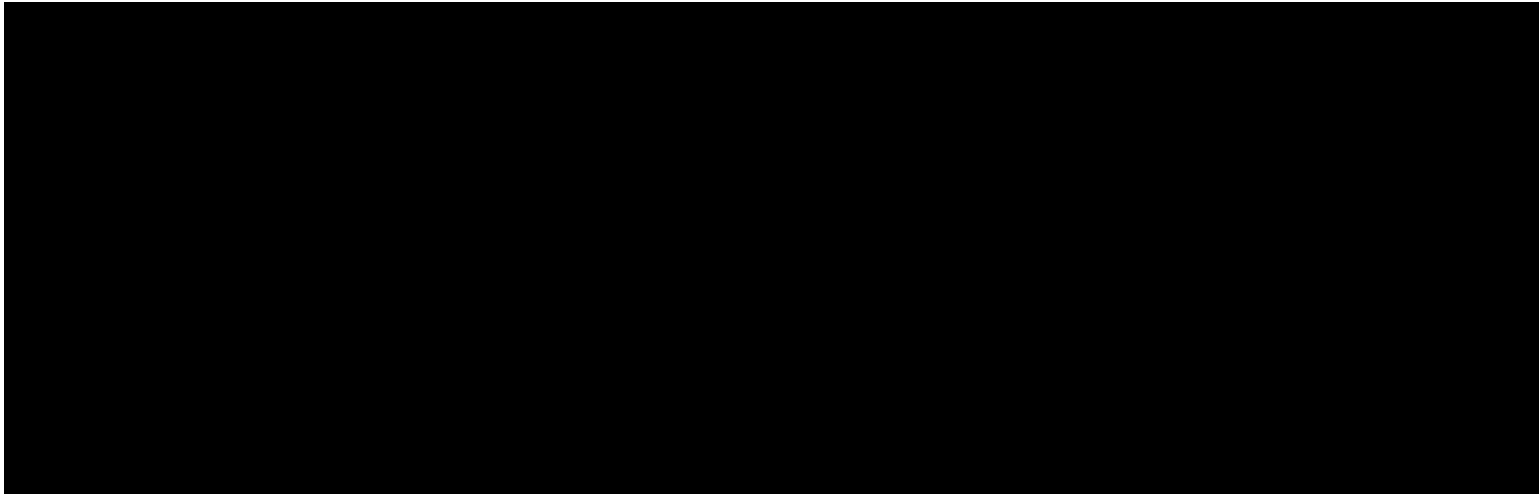


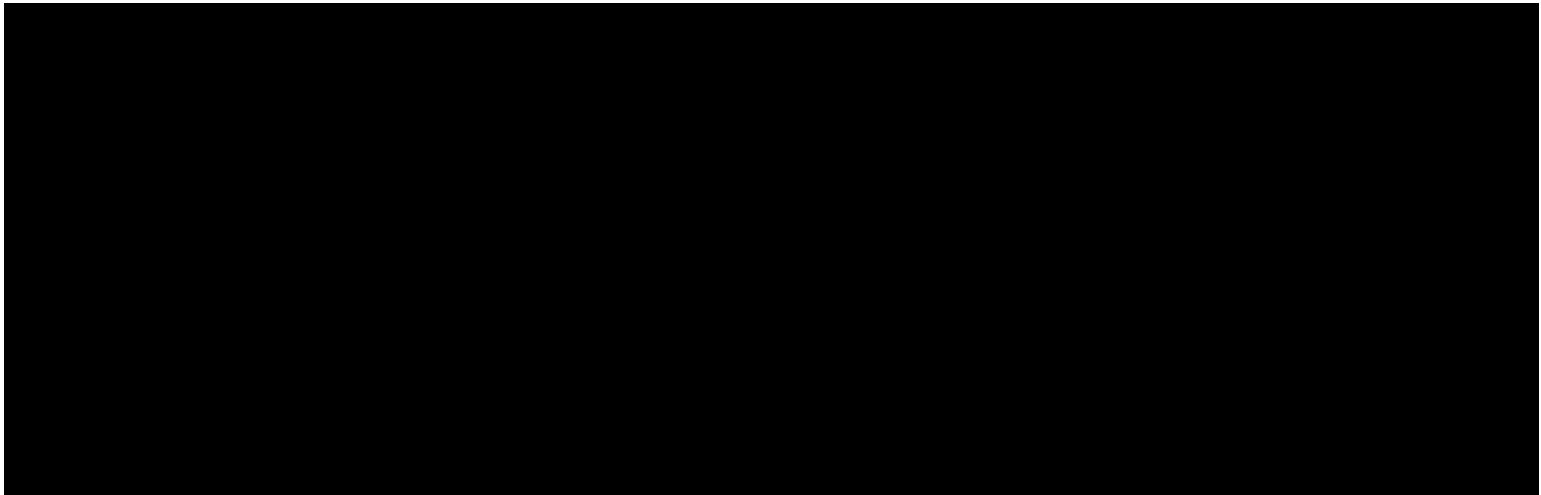












1 A Yes, we asked Nevada Title to prepare it, to do the
2 research and get it for us.

3 Q And when was that?

4 A Well, the date of this one's January 12th, of '15.

5 Q That would have been approximately a couple of

1 because you have to have a third party who's not present in
2 court.

3 MR. RAFIE: I understand.

4 THE COURT: Are -- do you have any objections you want me
5 to consider.

6 MR. RAFIE: I'm thinking.

7 THE COURT: If you remember it then let me know.

8 MR. RAFIE: No.

9 THE COURT: Huh?

10 MR. RAFIE: No.

11 THE COURT: Okay. Objection is sustained, the Court is
12 going to disregard the last answer to the extent that it
13 called for hearsay. Feel free to please either rephrase or
14 restate the question, thank you.

15 MR. RAFIE: Okay.

16 BY MR. RAFIE:

17 Q What convinced Holm that it needed to start bringing
18 proactive litigation to Quiet Title for the properties that it
19 had acquired. I'm talking generally, not just for this case.

20 A The fact that we needed to be in a position to
21 resell them at some point, and to be free and clear owner
22 would require that. It's just -- we were told by the Title
23 Company.

24 Q Were you able to obtain --

25 MS. WINSLOW: I'd like to move to strike the last part of



1 the witnesses answer as inadmissible hearsay.

2 MS. WINSLOW: Right. What he was told by the --

3 THE COURT: What he was told by the title company, person
4 of it?

5 Counsel, I'm presuming if you were joining in it
6 here, you would stand up and tell me, right?

7 MR. KNECHT: No, I'm not joining, yeah.

8 MR. BONDS: And we didn't hear what she said, that was.

9 THE COURT: Oh, no worries. Can you repeat your
10 objection, counsel for the HOA, didn't hear your objection.

11 MS. WINSLOW: Yeah, hearsay as to what the -- what was
12 told to -- by the title company, hearsay.

13 MR. KNECHT: Uh-huh. We're not joining, Your Honor.

14 THE COURT: Oh, no worries. Counsel, wish to respond?

15 MR. RAFIE: We'll argue that that's a present sense --
16 impression of statement describing or explaining or vent or
17 condition made while Mr. Holm was perceiving the event or
18 condition.

19 THE COURT: Do you wish to respond counsel?

20 MS. WINSLOW: Yeah, it's not a present sense impression
21 because it was a statement made while an event was being
22 perceived.

23 THE COURT: The Court agrees it's sustained because it
24 was saying his basis for what he did afterwards action. It
25 wasn't saying -- nature, although but if you want the



1 explanation for the reasoning. Okay. So it's sustained.
2 Please rephrase the question, and disregard just that portion
3 of the answer that says as told to by the title company.
4 Thank you so much.

5 BY MR. RAFIE:

6 Q Was Holm International able to obtain title
7 insurance for some of these properties?

8 A Yes.

9 Q For all of them?

10 A Not all of them.

11 Q How about for this specific property do you know?

12 A I don't believe it's --

13 MS. WINSLOW: Your Honor --

14 THE WITNESS: -- no.

15 THE COURT: Wait a sec -- you gotta wait until --

16 MS. WINSLOW: Your Honor, the question is asking about
17 some properties, I'm not sure what some properties are being
18 referred to. So if counsel could clear that up.

19 THE COURT: I'm going to -- so what's the basis of your
20 objection? I got good speaking, but I don't have a basis yet
21 so.

22 MS. WINSLOW: I'm going to say foundation.

23 THE COURT: Overruled. You can -- I'm going to -- you
24 can finish your answer or you can restate the question,
25 whatever you want to do.



1 BY MR. RAFIE:

2 Q You can answer -- do you remember the question?

3 A Would you ask it again?

4 Q Can you read it back please?

5 THE COURT: Since we have a court recorder, you know, you
6 can't do read backs.

7 MR. RAFIE: Can't do it.

8 THE COURT: I mean, what we can do is we can stop the
9 proceedings, you can go back to the time, and do it if you'd
10 like.

11 MR. RAFIE: No, No, I'll fix it myself, Your Honor.
12 Sorry.

13 THE COURT: Always, thank you so much.

14 BY MR. RAFIE:

15 Q Was Holm International able to obtain title
16 insurance on all of the properties that it bought at
17 foreclosure sales?

18 A No.

19 Q And what was the reason for that?

20 A Well, we're still in litigation.

21 MS. WINSLOW: Your Honor, calls for speculation.

22 THE COURT: Okay. Going to have to have those a little
23 bit quicker. You know, what I mean, before the witness is
24 answering.

25 MS. WINSLOW: Understand, Your Honor.



1 THE COURT: I'm going to overrule that based on his
2 statements of how he's been aware and what his prior testimony
3 is. So I'm going to overrule that. Go ahead.

4 BY MR. RAFIE:

5 Q So Holm International has not been able to obtain
6 title insurance for some of its properties, correct?

7 A Some of them, yes.

8 Q And what was the reason for that?

9 A Well, some are still in litigation. As I remember,
10 there's one or two we've settled. And a couple of different
11 circumstances that we've had some negotiation on in
12 settlement, and --

13 THE COURT: Wait just a sec. I'm going to -- now I'm not
14 sure. I presume witness understands that no questions are sec
15 -- there's been no waiver of attorney client privilege is
16 there?

17 MR. RAFIE: No.

18 THE COURT: Or -- okay.

19 MR. RAFIE: Okay.

20 THE COURT: So, I'm sure any questions being asked of any
21 persons not disclose any communications between counsel and
22 the client.

23 MR. RAFIE: Thank you, Your Honor.

24 THE COURT: So when he was saying the basis of settlement
25 negotiations, the Court wasn't sure if he was going to start



1 to go into discussions with counsel, but --

2 MR. RAFIE: Thank you, Your Honor.

3 THE COURT: Thank you. You can finish the answer, you
4 just can't go into discussions that you may have had with
5 counsel.

6 THE WITNESS: If -- I didn't know how to finish it any
7 further than that. I just there's -- as far as not obtaining
8 title insurance on some of the properties then I -- I have
9 been -- I have stepped back out of those management positions
10 to a degree, where I'm doing other things too. Since we
11 haven't been acquiring new properties.

12 BY MR. RAFIE:

13 Q In those situations where you can't obtain title
14 insurance -- sorry, I'm walking away from the mike.

15 THE COURT: Well, we've got a pocket mike if you want.

16 MR. RAFIE: I'm going to anchor myself here for a second,
17 because I'm almost done I think. Thank you, Your Honor.

18 BY MR. RAFIE:

19 Q In those situations where Holm International has not
20 been able to obtain title insurance, can Holm International,
21 completely and thoroughly enjoy its use of the property, in
22 those situations?

23 A No.

24 Q Why?

25 A We don't have the ability to sell for full value or



1 the best value. In many cases, we put a lot of money into
2 rehab and fixing properties up and to get the most and best
3 value out of them, that we have to have title insurance. It's
4 just -- that's just life in the real-estate world.

5 Q Is it your understanding that you can't -- Holm
6 can't -- Holm International cannot obtain title insurance
7 because of the ongoing litigation on these HOA lien
8 foreclosures?

9 MS. WINSLOW: Objection, calls for speculation.

10 THE COURT: Sustained for the way that was phrased. Do
11 you wish to be heard on it, but -- or will you rephrase it?

12 MR. RAFIE: I'm asking for his understanding of why -- if
13 the HOA litigation has affected their ability to get title
14 insurance.

15 THE COURT: The way the question was phrased, I'm going
16 to sustain the speculation. I understand what you're getting
17 at, but the way you phrased it, calls for speculation, so the
18 Court's going to sustain the objection.

19 MS. WINSLOW: Thank you.

20 BY MR. RAFIE:

21 Q What kind of rehab cost did you expend on this
22 property, do you recall?

23 A General, we did new flooring, new painting, light
24 fixtures, some doors, miscellaneous wiring. There had been --

25 Q Do you know how much that cost?



1 MS. WINSLOW: Objection, his testimony is not the best
2 evidence to what the costs are.

3 THE COURT: I'm going to overrule. The way that question
4 was phrased, is whether he knows what it cost? We don't have
5 any description yet of the cost so. You can answer.

6 BY MR. RAFIE:

7 A I know approximately what we spent on it, but not
8 exact.

9 Q What are those approximate numbers?

10 A Between 15 and 20,000.

11 Q And that's in addition to the 74,000 that you paid
12 at the foreclosure sale?

13 A Yes.

14 Q And you've also had to incur attorneys' fees and
15 costs on this case, correct?

16 A Yes.

17 MR. RAFIE: I pass the witness.

18 THE COURT: Okay. Thank you. Cross-examination,
19 counsel? And is there an agreement between the parties of
20 whether the bank will be going first or the HOA?

21 MS. WINSLOW: Yes there is.

22 MR. BONDS: They can go first.

23 MS. WINSLOW: We're going to go first.

24 THE COURT: Okay -- then. On behalf of -- when I say
25 bank, I mean jointly bank and Carrington Mortgage. Okay.



1 MS. WINSLOW: Understand.

2 THE COURT: Go ahead counsel, thank you.

3 CROSS-EXAMINATION

4 BY MS. WINSLOW:

5 Q Good afternoon, Mr. Holm, my name is Natalie
6 Winslow. I represent Carrington and the bank. I'm hoarse, so
7 please let me know if you don't -- if you can't understand the
8 question I'm asking, okay?

9 A All right.

10 Q I'm going to try my best to be as clear as possible.

11 THE COURT: We have water -- you all have water. We have
12 water available if it helps, okay. Go ahead.

13 MS. WINSLOW: Thank you.

14 BY MS. WINSLOW:

15 Q Mr. Holm, when was Holm International Properties,
16 LLC created?

17 A It was in middle 2014. That'd be the year, I don't
18 remember exact.

19 Q Was -- and what was the purpose for the creation of
20 Holm?

21 A To acquire and manage rental properties in Nevada.
22 We also have a few properties in other states that we've
23 acquired.

24 Q And Holm International owns multiple properties in
25 Nevada, is that correct?



1 A That's correct.

2 Q How many properties does Holm own in Nevada?

3 A I don't know the exact number right now. I can give
4 you an approximation, if that --

5 Q Please do.

6 A Okay. It's between 35 and 40 as I understand it
7 now.

8 Q And -- does Holm own any properties outside of
9 Nevada?

10 A Yes.

11 Q How many properties outside of Nevada does Holm own?

12 A Just two or three. They're larger raw acreage,
13 parcels.

14 Q The 35 or 40 homes that are owned here in Nevada,
15 were those all purchased at HOA foreclosure sales?

16 A Yes.

17 Q Okay. And were they purchased by you at HOA
18 foreclosure sales, you Mr. Holm?

19 A Yes, that's right.

20 Q When did Holm International first begin purchasing
21 properties at HOA foreclosure sales?

22 A I don't know exactly, approximately mid year June I
23 think, or July.

24 Q Of 2014?

25 A Yes.



1 Q So at the time that Holm International purchased the
2 property at issue in this law suit, the 1381 Sea Pines Street,
3 it had purchased other properties at HOA foreclosure sales
4 previously?

5 A That's right.

6 Q Okay. You said that you were the managing member of
7 Holm International at the time of the sale, right?

8 A Yes.

9 Q Were there any other members of Holm at the time of
10 the sale?

11 A Yes.

12 Q And who were those members?

13 A My nephew named Reggie Scout Holm. I believe
14 another brother was on there too, I can't remember at what
15 point Travis Holm was on.

16 Q Okay. And is that a brother as well?

17 A Yes.

18 Q All right. And it was you that was handling the
19 day-to-day operations of Holm. Is that correct?

20 A All of the purchasing and the coordinating of the
21 remodel and what not, yes. I didn't do all the work. There
22 were other areas of work that were -- that we had employees
23 doing.

24 Q So your primary -- the primary things you did for
25 Holm were purchasing and remodeling, was there anything else?

1 A Well, the rental management, and dealing with all
2 the -- of course, ownership issues of taxes, property taxes
3 and HOA fees, all the different management requirements,
4 insurances.

5 Q What is it that you do for a living?

6 A Real-estate management.

7 Q And do you Mr. Holm own properties outside of Holm
8 International Properties, LLC?

9 A Besides a home, then no.

10 Q You said that you had some prior real-estate
11 training, is that correct?

12 A Yes.

13 Q At some point in time you had a real-estate license?

14 A Say that again.

15 Q At some point in time you had a real-estate license?

16 A Sales license, not a brokerage license.

17 Q Okay. And during what time period did you have a
18 sales license?

19 A Early '70's.

20 Q And approximately for how long did you have a sales
21 license?

22 A Two or three years, I don't remember exactly.

23 Q And you had to undergo some training in order to get
24 that sales license, correct?

25 A That's right.



1 Q And what sort of training did you undergo?

2 A It was a real-estate class offered by one of the
3 brokers there in Salt Lake that had training.

4 Q So it was just one class?

5 A Yes. A class, and then take the test of course, for
6 -- that was given by the State.

7 Q And you took the test? You took the test?

8 A Yes, I took the test.

9 Q And you passed the test?

10 A Yes.

11 Q Okay. Now you said that Griffin Group was involved
12 for a lot of the properties that Holm purchased at foreclosure
13 sales, correct?

14 A Yes, that's correct.

15 Q Was -- I'm sorry, I interrupted you.

16 A Yes, that's correct.

17 Q Was there a particular person at Griffin Group that
18 you worked with?

19 A Yes, in particular, most purchases and a few with
20 another lady there.

21 Q What was the name of your primary contact there?

22 A Rebecca. Henson, I believe is her last name.

23 Q You said that -- I'm sorry. Was it Ms. Henson that
24 would generally send the list of properties to Holm in advance
25 of the sales?



1 A Generally the communication. There wasn't always a
2 list, fact very seldom a list. But yes, the communication was
3 there.

4 Q Okay. And approximately when would Griffin Group
5 inform Holm of the properties that were available for purchase
6 at the sale?

7 A Sometimes the afternoon before the sale. Most of
8 the time just the day of the sale.

9 Q You said that as a general policy and procedure,
10 Holm international would determine what the MLS value of a
11 property was in advance of a sale.

12 A No.

13 MR. RAFIE: Objection, misstates prior testimony.

14 THE COURT: Thank you. I have an answer and a restate.
15 So I'm going to sustain the objection. Ignore his response
16 and will have her re-ask the question. Thank you so much.

17 BY MS. WINSLOW:

18 Q You said that you would use MLS information prior to
19 a foreclosure sale, correct?

20 A Not everyone. I've made an attempt to get an
21 opinion of what it was from number 1, Rebecca; number 2, from
22 my nephew who was a licensed realtor too. He worked some for
23 us and some for another brokerage place.

24 Q And just so that we have it on the record, what is
25 your understanding of what an MLS is?



1 A Well, the Multiple Listing Service, that provides
2 value of properties in an area, many things impact a value, as
3 you know. And so MLS is a service provided for -- I think
4 it's available to anybody that goes online, you can find it.
5 I don't -- I'm not real familiar with it, but it's a multiple
6 listing service that gives information to the public at large
7 on values.

8 Q For this particular property, were you aware of what
9 the MLS value was prior to the sale?

10 A As far as the real value, I'd asked Rebecca, she
11 said something in the \$130 range that was just an interchange
12 like that. It wasn't anything that she had researched that I
13 know -- at least I didn't think she had.

14 Q Now how far in advance of the foreclosure sale did
15 you become aware that this property may be available for sale?

16 A The soonest would have been maybe the night before.
17 I don't remember exactly, but I didn't know more than a day
18 before.

19 Q And you would do -- other than get the MLS
20 information, you would generally do very little research as to
21 the particular properties, correct?

22 A That's right.

23 Q So you wouldn't check the recorders website, to see
24 what was recorded against the property?

25 A No, I didn't do that. I -- we asked the title



1 company to provide title reports, later.

2 Q And you didn't actually pull any document that was
3 recorded against the property prior to the sale as a general
4 practice, correct?

5 A That's right I did not.

6 Q And as a general practice, you would not access the
7 Clark County Assessors website prior to the sale, correct?

8 A That's right.

9 Q As a general practice, would you investigate where
10 you could obtain title insurance prior to the sale?

11 A No, not prior to. We relied on the warranties of
12 the HOA and the auction company those certifications.

13 Q You would obtain a title report generally after the
14 sale?

15 A Yes.

16 Q Why would you do that after the sale?

17 A Number one, there was not time. We didn't even know
18 about the sales coming up specifically until -- the majority
19 of the cases were the same day.

20 Q In November of 2014, the time of the foreclosure
21 sale in this case, did Holm have any understanding of whether
22 it was purchasing a clear title to the property at the
23 foreclosure sale?

24 A Could you repeat that, I've --

25 Q Sure. Did Holm have an understanding with respect



1 to this foreclosure sale whether Holm was purchasing the
2 property free and clear?

3 A At the sale or prior to? I'm just trying to
4 understand your question.

5 Q Let's go with prior to the sale, did Holm have any
6 understanding of whether it would be purchasing the property
7 free and clear.

8 A Well, as represented by the auction company, yes,
9 that's what I relied on.

10 Q I'm sorry -- as represented by?

11 A By the auction company, the trustee sale, that's
12 what I relied on.

13 Q Okay. And when you say, as represented by the
14 auction company, are you talking about the representations
15 contained within the foreclosure deed?

16 A That's right.

17 Q Okay. And in this case, you didn't receive the
18 foreclosure deed until after your purchase, though, correct?

19 A That's right a day or two later.

20 Q Okay. So what was your -- what was the basis of
21 your understanding prior to the foreclosure sale?

22 A That at the sale we would be buying a property free
23 and clear of all liens.

24 Q Okay. and what was the basis of that understanding
25 that you would be buying the property free and clear of all

1 liens?

2 MR. RAFIE: Objection, calls for a legal conclusion.

3 THE COURT: Do you want to be heard before I rule?

4 MS. WINSLOW: Yes, Your Honor, he just testified that he
5 believed he was purchasing free and clear of all liens, and
6 I'm just asking what the basis of his understanding was
7 presale.

8 THE COURT: And you're not asking for any communications
9 he may have had for any counsel, right?

10 MS. WINSLOW: No, Your Honor. If he said it was based on
11 communications with counsel, obviously that's protected under
12 attorney client privilege.

13 THE COURT: I'm just going to overrule the objection,
14 because he is asking for his reason of why he thought that.
15 It's not asking for a legal determination on that. Thank you
16 so much. You may answer the question.

17 THE WITNESS: Would you ask it again?

18 BY MS. WINSLOW:

19 Q Sure. You testified that you believed, prior to the
20 foreclosure sale in this case, that you were purchasing
21 property free and clear, correct?

22 A I believed that if I was to purchase at the sale, it
23 would be free and clear, yes. If -- just so as I understand
24 your question.

25 Q Okay. And so my current question is, what was the



1 basis of your understanding at that time presale?

2 A Well, with N.R.S. 116, what I had read and heard
3 about that, very little, but -- but also the -- at the
4 foreclosure sale, those certifications and declarations of the
5 auction company, the trustee in their sale and then also the -
6 - to me, what common sense said to me, was that if there were
7 other people of interest, they had every right to be there
8 too, and they would be there protecting their interest, so I
9 didn't know who was there bidding and who wasn't. This being
10 this particular one, being the highest we'd ever paid for a
11 property, was -- you know, it was up there to where it was a
12 little nerve racking in the sense of value.

13 Q In November of 2014, was Holm aware that in some
14 instances, a lender may offer to pay a portion of the HOAs
15 lien presale?

16 A Would you say that again, I --

17 Q Sure. In November of 2014, was Holm International
18 aware that in some instances a lender may pay a portion of the
19 HOAs lien pre foreclosure sale?

20 A Yes that was the purpose of the announcements that
21 would be made at -- as each one, the announcement being that
22 if there had been a nine month assessment paid that it would
23 be announced as each property was -- there was a list that the
24 auctioneer would go down and so there would be an announcement
25 if that nine month assessment had been paid or not.



1 Q Now you said that you had -- Holm International had
2 purchased approximately 35 to 40 properties at HOA foreclosure
3 sales, in Nevada; correct?

4 A Yes.

5 Q And those foreclosure sales, were those all
6 conducted by Nevada Association Services, the HOA trustee in
7 this case?

8 A No.

9 Q Okay. So you went to sales conducted by multiple
10 HOA trustees; is that correct?

11 A That's correct.

12 Q And were you familiar with the policy and procedure
13 of the -- well, let me back up. Do you recall the HOA
14 foreclosure trustees who sales you would attend?

15 A Do I recall the different ones?

16 Q Yes.

17 A Generally, yes. There was one I --

18 Q Okay. And --

19 A -- don't know the name of, but it's out on the west
20 side.

21 Q Okay. Can you tell me the ones that you remember?

22 A Yes. Nevada Legal News, which is right over here on
23 4th Street. The NAS, Nevada Association Services. The one
24 out -- the name's right on the tip of my tongue, out here on
25 the west side -- southwest side -- an attorney firm that has

1 handles that. I'll think of it in a minute, if you want to --
2 if you want me to interrupt when it comes to me, I will.

3 Q Well, did you attend Alessi & Koenig sales?

4 A That's it, yeah.

5 Q Okay. Any others that you can think of?

6 A The one, yes, further up to the northwest that I
7 don't remember. I think we bought one property there.

8 Q So you can think of maybe four different foreclosure
9 trustees?

10 A Yes, that's right.

11 Q Okay. And back in 2014 -- and you were purchasing
12 properties at their foreclosure sales back in 2014?

13 A That's when we started, yes.

14 Q Okay. And back in 2014 was Holm International aware
15 of each of those four foreclosure trustee's policies and
16 procedures for making an announcement at the sale regarding a
17 lender's offer to pay a portion of the lien?

18 A Are you asking if I was aware of all of them at the
19 same time or?

20 Q Were you aware of what their policies and procedures
21 were?

22 A Well, I became aware of it. I -- first auctions was
23 right here at Nevada Legal News, then NAS, and Lessy & Koenig,
24 I mean it was a beginning and a learning curve, if that helps.

25 Q So for the foreclosure sales that you attended --



1 strike that. What was your understanding in 2014, of what
2 NAS' policy or procedure was for making an announcement of a
3 lender's payment on a lien presale?

4 MR. RAFIE: Objection, calls for speculations and it's
5 vague as -- and ambiguous as to time.

6 THE COURT: Court's going to sustain it on both grounds.

7 MS. WINSLOW: Okay.

8 BY MS. WINSLOW:

9 Q Now you said that in 2014 the -- excuse me I'm
10 looking through my notes really quickly.

11 THE COURT: Always such a convenience.

12 BY MS. WINSLOW:

13 Q When you said for this particular sale, there was no
14 announcement presale that there had been any payment on the
15 HOA's lien; correct?

16 A At the start of the sale it was announced that if
17 the nine month assessment had been paid, they would say it as
18 they mentioned each property, and there was nothing on this
19 one, as this one came up.

20 Q Okay. All right. If you could turn to Exhibit 8,
21 please, in your binder, it's the joint binder.

22 A Okay.

23 Q This is the foreclosure deed that you looked at
24 earlier; correct?

25 A Yes, looks like it.



1 Q Okay. And I want to direct your attention to one of
2 the sentences in the first paragraph. It's actually the
3 second sentence, and it -- I'll read it. The previous owner,
4 as reflected on settling, is Albrand, John R. and Lois Dansie
5 Albrand. Nevada Association Services Inc. as agent for Sunset
6 Green does hereby grant and convey but without warranty,
7 expressed or implied, to Holm International Properties, LLC
8 herein called, Grantee, pursuant to N.R.S. 116.31162, N.R.S.
9 116.31163 and 116.31164 all of its right, title and interest
10 and to that certain property legally described as -- and then
11 it goes on to describe the property.

12 First of all did I read that correctly?

13 A Yes, as near as I could follow.

14 Q Okay. And you see in that second sentence that I
15 read that it says the title was granted without warranty,
16 expressed or implied; correct?

17 A It says that, yes.

18 Q Okay. So NAS was not making any sort of promise
19 concerning the nature of title conveyed to Holm; correct?

20 MR. RAFIE: Objection, calls for legal conclusion.

21 MR. KNECHT: We join in on that objection, Your Honor.

22 THE COURT: Sustained and the joinder.

23 BY MS. WINSLOW:

24 Q NAS never guaranteed to Holm that it was taking
25 title free and clear of my client's mortgage; correct?



1 MR. RAFIE: Same objection.

2 MR. KNECHT: Same joinder, Your Honor.

3 THE COURT: Let me hear your response on this one.

4 MS. WINSLOW: And the objection, I'm sorry, I?

5 MR. RAFIE: Calls for legal conclusion.

6 THE COURT: Calls for legal conclusion.

7 MR. RAFIE: If I heard it correctly.

8 MS. WINSLOW: I'm asking whether NAS made any sort of
9 guarantee to Holm International. That doesn't call for a
10 legal conclusion.

11 THE COURT: Counsel do you want to --

12 MR. RAFIE: It absolutely does. That's exactly the
13 nature of the question. And it's asking for what kind of
14 warranty and guarantee was made by NAS.

15 THE COURT: Counsel for HOA do you wish to be heard as
16 well or do you want me just to rule?

17 MR. KNECHT: No, Your Honor.

18 THE COURT: Okay. The Court's going to sustain the
19 objection, because the word -- the word guarantee can have
20 both legal and nonlegal and have it defined.

21 MS. WINSLOW: I can rephrase it.

22 THE COURT: It --

23 MS. WINSLOW: I can rephrase it.

24 THE COURT: -- one way or another. Thank you so much.

25 BY MS. WINSLOW:



1 Q NAS, didn't make any sort of assurance to Holm
2 International, that it was taking title free and clear of my
3 client's deed of trust; correct?

4 MR. RAFIE: Objection, same objections and now it's vague
5 and ambiguous.

6 MR. KNECHT: We join that objection, Your Honor.

7 THE COURT: Court overrules legal conclusion. But rules
8 it on vague and ambiguous.

9 BY MS. WINSLOW:

10 Q You can answer the question.

11 A Would you repeat it?

12 Q Sure. NAS didn't make any sort of assurance to Holm
13 International that it was -- that Holm International was
14 taking title to the property free and clear of my client's
15 interest; correct?

16 A They made representation that complied with all the
17 notifications, which I didn't know who your client was or
18 would be, but certainly they fit in the category of what I saw
19 the representation.

20 Q Thank you. But, my question is NAS didn't make an
21 assurance that title was free and clear of my client's
22 interest; correct?

23 A It didn't name your client, no. Had no idea who was
24 -- might be there as a lien holder.

25 Q Okay. Holm International knew at the time of the



1 sale that it could be taking property with some title defects;
2 correct?

3 A Yes, we would need to do a quiet title action to
4 bring out whoever else may have claims.

5 Q So you knew that other parties may have claims as to
6 the property?

7 A May, yes.

8 Q Prior to the sale though, you didn't do any sort of
9 investigation as to what parties may make claims against the
10 property; correct?

11 MR. RAFIE: Objection, misstates prior testimony.

12 MS. WINSLOW: I'm not asking about prior testimony.

13 THE COURT: Overrule the objection. She's asking whether
14 it's a correct statement or not.

15 MR. RAFIE: As to whether he's done prior research
16 regarding the property. It misstates his testimony. She
17 said, it's true that you didn't do any prior research.

18 THE COURT: Court's overruling the objection. Since she
19 asked whether it's correct or incorrect. It's to get his
20 perception of whether it's correct or not, as I can't misstate
21 it when she's asking whether that correct or not correct.

22 You can answer the question.

23 THE WITNESS: Pardon my confusion, but ask it again.

24 BY MS. WINSLOW:

25 Q So what you just testified to was that you knew that



1 you would need to do a quiet title claim; correct?

2 A Yes.

3 Q Okay. And that's because other parties may have
4 claims to the property; correct?

5 A Yes.

6 Q And you didn't do any sort of investigation presale
7 as to what parties those may be; correct?

8 A We relied on the certification of the HOA that had
9 met all publication requirements. It was plain and obvious to
10 me that if somebody that had a claim they cared about, they'd
11 have been there too.

12 Q Okay. But I'm talking about presale, prior to
13 actually purchasing this property, so prior to a foreclosure
14 deed being drafted.

15 A Well, I'm not understanding the question --

16 Q Sure. I'll ask again. I'll ask the same question
17 again.

18 A -- I was there and bought it. It was in just a few
19 minutes.

20 Q You didn't do any sort of investigation prior to
21 purchasing this property as to what parties may claim an
22 interest in the property?

23 A No, I didn't.

24 Q Prior to the foreclosure sale in this case, Holm
25 International didn't conduct any sort of investigation to



1 discover whether Bank of America had paid any portion of the
2 HOA's lien; correct?

3 A We just relied on the statement at the auction.

4 Q And the statement -- that's the statement that
5 you've already testified to?

6 A Yeah.

7 Q But you didn't do anything else; correct?

8 A That's right.

9 Q Okay. You didn't seek any information from
10 Carrington, as to whether Carrington or any of its
11 predecessors had made any sort of payment on the lien,
12 presale?

13 A No.

14 Q Now Holm International initiated this litigation
15 against Bank of America to clear title in January of 2015; is
16 that correct?

17 A I'm not familiar with the exact dates, but --

18 Q At some point in time?

19 A Yeah.

20 Q And at some point in time after initiation of the
21 litigation, Holm International quit claimed its interest to
22 Steijum; correct?

23 A That's correct.

24 Q Okay. And the property at issue in this lawsuit,
25 the 1381 Sea Pines Street, that was sold to Steijum as part of



1 a trade; correct?

2 A That's correct.

3 Q Okay. And Steijum -- I'm sorry. Holm International
4 sold the property at issue in this law suit, plus another
5 property, traded those two properties to Steijum as part of
6 this deal; correct?

7 A Yes.

8 Q Okay. And in return, Steijum traded to Holm
9 International a commercial building in Utah; correct?

10 A That's correct.

11 Q And Holm International also paid \$20,000 to Steijum
12 as part of this deal; correct?

13 A Yes.

14 Q Now as part of that deal, Holm didn't make any sort
15 of disclosure to Steijum that this property was purchased at
16 an HOA foreclosure sale; correct?

17 A Did not make?

18 Q Did not.

19 A We did.

20 Q You did?

21 A Yes.

22 Q And did Holm disclose that the property was already
23 involved in quiet title litigation?

24 A That we were involved in it, yes.

25 Q Okay. Did Holm make any sort of disclosure to



1 Stiejum that the title company would not insure the property
2 at that time?

3 A Yes.

4 Q If Steijum loses this lawsuit, are you going to give
5 Steijum back the commercial building that you traded?

6 A Haven't gone that far in considerations yet. We
7 certainly intend to be fair.

8 Q So even though you're not the Plaintiff in this
9 case, you do have an interest in Steijum winning this law
10 suit; correct?

11 A Yes, of course.

12 Q And you want Steijum to win?

13 A Yes.

14 Q Now the document that you use to transfer title to
15 this property to Steijum was through a quit claim deed;
16 correct?

17 A Yes.

18 Q We looked at that earlier? Why did you decide to
19 transfer title through a quit claim deed instead of say a
20 grant bargain and sale deed?

21 A Instead of a what deed?

22 Q Grant, bargain and sale deed.

23 A Are you referring to a warranty deed? I mean, to me
24 a warranty deed is --

25 Q Yes, yes.



1 A Okay. Quick claim is signing all right title and
2 interest. It is to basically give -- give titles that
3 currently exists knowing that the quiet title action was under
4 weigh and we needed to complete that. So that's -- that was
5 the condition.

6 Q So you didn't think it was necessary to add any
7 further assurances then what is contained within a quit claim
8 deed?

9 A I'm not understanding your question. We agreed to
10 complete the quick claim process with Steijum -- I mean in
11 that assistance and what not. Is that what you're getting at?

12 Q Well, why did you decide not to use a -- what you
13 said was a warranty deed. Why did you decide not to transfer
14 title that way?

15 MR. RAFIE: Objection, asked and answered.

16 THE COURT: Sustained.

17 MS. WINSLOW: Your Honor, I would like to request that we
18 take a break. I can -- so that I can use the restroom and
19 then I can look over my notes to make sure that I've asked
20 everything.

21 THE COURT: Of course, sure. We'll come back in ten
22 minutes at 4:00. Okay. Thank you so much.

23 THE MARSHAL: All rise for the --

24 [Recess at 3:49 p.m.]

25 THE COURT: Are we waiting for --



1 MR. KNECHT: No, he had to leave.

2 MR. CASTILLO: We can go ahead.

3 THE COURT: Then if everyone's ready, back on the record.
4 Counsel you can continue with your questioning.

5 BY MS. WINSLOW:

6 Q Mr. Holm, prior to your purchase of this property,
7 you didn't review the HOA CC&Rs, did you?

8 A No.

9 Q And you're aware of what CC&Rs are?

10 A Yes.

11 Q Okay. Now your testimony, correct, is that you
12 would not have purchased this property if you knew that a
13 lender had made a payment on the lien pre-sale, correct?

14 A Didn't hear, if who had made a payment?

15 Q The lender.

16 A If it would have been announced that there was a
17 payment made, yes, we would not have bid on it and bought it.

18 Q Okay. And even if it wasn't announced, if you knew
19 that a lender had made a payment, you wouldn't bid on that
20 property at the sale, correct?

21 A That's a good assumption, yes.

22 Q Now I know you didn't review the CC&Rs in advance of
23 the sale, but we do have them here today. Exhibit E, which is
24 in our Defense binder, which has already been admitted; do you
25 see the Defense binder? It's A, B, C, D, and E?



1 A Okay. Is that this one?

2 Q It's the --

3 MS. WINSLOW: Your Honor, can I approach and show him to
4 the right exhibit?

5 THE COURT: Of course you may. And you're just
6 referencing E, like E as in elephant, correct?

7 THE CLERK: Your Honor, I don't think I had a third copy
8 for the witness binder.

9 MR. KNECHT: Your Honor, I'm going to object on the basis
10 of foundation. He stated that he hasn't read the CC&Rs.

11 THE COURT: Okay. Sure. Let's take care of both issues.

12 MR. KNECHT: Okay.

13 THE COURT: I'll take care of the -- well, do you want to
14 be heard on the objection before I ask about looking at a
15 document that. And can you take it off the screen --

16 MS. WINSLOW: Sure.

17 THE COURT: -- for right now until I rule on the
18 objection. Thanks.

19 MS. WINSLOW: Yeah, the Exhibit E has already been
20 admitted for all purposes, Your Honor.

21 MR. KNECHT: I'm not talking about the exhibit. I'm
22 talking about the line of questioning. He stated that he
23 hadn't actually ever seen the CC&Rs. We're asking questions
24 about the CC&Rs.

25 MS. WINSLOW: My line of questioning, Your Honor, is



1 going to be whether the review of these provisions that he was
2 on constructive notice of, would that have made any difference
3 to his purchase; whether he purchased the property or not.

4 THE COURT: I have two standing up. So let me hear first
5 from the movant on the objection.

6 MR. KNECHT: He's already stated that he's never seen the
7 CC&Rs. So I'm not sure how he could answer questions about
8 the CC&Rs or any notice that he had received about the CC&Rs.
9 He's already stated that he never saw the CC&Rs.

10 THE COURT: Counsel for Plaintiff?

11 MR. RAFIE: I'll join in those objections. But also it
12 calls for a legal conclusion and calls for speculation.

13 THE COURT: Okay. I'm going to sustain it and let it --
14 well, let me go over which I'm going to sustain. I'm
15 sustaining the HOAs and I'm sustaining the joinder as to
16 speculation. Because he stated he did not see something, to
17 ask him questions what he may or may not have done on
18 something he hasn't seen would be speculation. It also would
19 not be relevant. It wouldn't be appropriate to ask him in
20 light of his prior answer to the last question prior to the
21 one that raised the objection.

22 MS. WINSLOW: Thank you.

23 THE COURT: So let me be clear. The Court's not saying
24 anything with regard to the exhibit. It was the question from
25 this witness --



1 MS. WINSLOW: I understand. I understand.

2 THE COURT: -- in light of his prior testimony. Thank
3 you so much. Go ahead.

4 BY MS. WINSLOW:

5 Q Now you said that it's your recollection for the
6 sale of this property that NAS made no announcement that a
7 lender had offered to pay the -- any portion of the lien,
8 correct?

9 A That is correct. Yes.

10 Q Okay. And if there had been an offer to pay the
11 lien, you believe that NAS would make such an announcement,
12 correct?

13 MR. KNECHT: Objection. Speculation.

14 MR. RAFIE: Same. Join.

15 THE COURT: I'm going to sustain it, because.

16 BY MS. WINSLOW:

17 Q Do you recall exactly what the script was that --
18 I'm sorry -- do you recall exactly what information was
19 provided about this particular property prior to the bidding?

20 A I know there was a statement made, that like I've
21 said in earlier testimony, that statement being that if the
22 nine month assessment had been paid, they would call it out on
23 each property.

24 Q Okay. And that statement was made at the beginning
25 of the sale?



1 A Yes. Before any properties had sold.

2 Q Okay.

3 MS. WINSLOW: No further questions.

4 THE COURT: Okay. Any cross-examination by the HOA? And
5 do you prefer me to reference you as the HOA or would you
6 prefer me to call you Sunset Gardens?

7 MR. KNECHT: It's Sunset Green, but either one, Your
8 Honor.

9 THE COURT: I'm saying gardens. I meant to say greens.
10 I'm sorry. Do you want to be called HOA or Sunset Greens?

11 MR. KNECHT: Sunset greens.

12 THE COURT: I would be glad to call you Sunset Greens.
13 Counsel for Sunset Greens, do you have any cross-examination?

14 MR. KNECHT: Just a few questions, Your Honor.

15 THE COURT: Okay. Please proceed at your convenience.

16 CROSS-EXAMINATION

17 BY MR. KNECHT:

18 Q Good afternoon, Richard.

19 A Hello.

20 Q Just a couple of questions for clarification. You
21 had stated that you attended the foreclosure that took place
22 November 7th 2013 with respect to the property; is that
23 correct?

24 A Yes.

25 Q And you had stated that there were approximately



1 eight to ten other bidders on this property?

2 A Yes, that's my memory.

3 Q And are you aware of any representative of Bank of
4 America that attended that foreclosure sale at the same time?

5 A Not aware. I had no way of knowing.

6 Q Okay. Prior to the foreclosure sale, had you had
7 any contact with the HOA?

8 A None.

9 Q Did you make any contact with any representative, I
10 guess, of the HOA, of Sunset Greens?

11 A No.

12 Q Okay. And what about National Association Services,
13 the HOA trustee; any contact before the foreclosure sale?

14 A No. None.

15 Q Did you do any research at all prior to the
16 foreclosure sale besides the information that you would have
17 received from Griffin Group?

18 A None.

19 Q You testified as well that you used the MLS, the
20 Multiple Listing Service, to check on evaluation that was
21 established by the MLS; is that correct?

22 A Well, my testimony was that I relied on my nephew,
23 who is a realtor, and also Rebecca giving me numbers. I
24 didn't personally look up their website or that, if that -- to
25 be clear on that.



1 Q Okay. Okay. The value that they would present to
2 you -- they presented a value to you?

3 A Yes.

4 Q Proposed value?

5 A Yes.

6 Q That was based on -- was that based on the MLS?

7 A Yes. It was my understanding. I mean they ...

8 Q And is it your understanding that value that was
9 presented to you reflected unseen problems with the property;
10 possible legal issues with respect to title; or the fact that
11 it was a foreclosed property?

12 A I'm not sure I understand your question. The value
13 being free and clear with all liens encumbrances by warranty
14 deed?

15 Q I'm asking you specifically about the value that
16 they would give you based on this MLS number. Did you
17 understand that to be a value that was -- that considered the
18 fact that this was a foreclosed property; maybe a property
19 that had title issues?

20 A No. That value would be perfect world type value of
21 everything having free marketable title.

22 Q And you testified earlier that the value of the
23 property -- you believe the value of the property is what you
24 paid for the property --

25 A That's right.



1 Q -- at the foreclosure sale, correct?

2 A Certainly no more than that. Yes.

3 Q Okay. Have you ever had any contact -- did you have
4 any contact prior to the foreclosure sale with the prior
5 owner; his name was John Albrand?

6 A No.

7 Q Did you have any contact prior to the foreclosure
8 sale with respect to the property with your brother, Monte
9 Holm?

10 A No.

11 Q We've reviewed Exhibit 8, which is contained in the
12 joint binder, I believe, it was Exhibit 8. It's the
13 foreclosure deed.

14 A Okay.

15 Q It's in the next one. There. Yeah. Besides the
16 assurances that you have testified to with respect to the
17 foreclosure deed, has NAS made any other assurances to you
18 with respect to the title conditions of the property?

19 A No.

20 MR. KNECHT: I don't have any further questions, Your
21 Honor.

22 THE COURT: Thank you. Redirect by Plaintiff?

23 MR. RAFIE: I'm going to try to be brief. I may not have
24 much. But I do want to ask a few questions about the MLS line
25 of questioning that you asked about.



REDIRECT EXAMINATION

1
2 BY MR. RAFIE:

3 Q When -- do you have any understanding of what is
4 shown when someone goes on the MLS?

5 A I've never personally looked up a value, no.

6 Q Do you know if that lists property values in
7 foreclosure?

8 A I certainly can't believe it would. I mean, no.

9 Q Okay. Why do you say you can't believe it would?

10 A Because that's -- if you're buying something in
11 foreclosure, you're buying a challenge, a problem. I mean, if
12 you've got some risks that can be quantified that you may deal
13 with that's a whole different story. But ...

14 Q So this is kind of why I asked you earlier when I
15 was asking you questions if you had an understanding between
16 the value of a property shown on MLS under a traditional sale
17 versus a value of a property at a foreclosure sale. Do you
18 remember that question?

19 A Yes.

20 Q And what was your answer?

21 A Well, if the actual question itself, the wording on
22 it, if you don't mind asking it again.

23 Q What is the difference between a traditional sale of
24 a property listed on MLS and the value you would pay from a
25 seller, directly from a seller, who's giving title to a



1 property clean and clear versus purchasing the value of
2 purchasing a property at a foreclosure sale, in your mind?

3 MS. WINSLOW: Objection. Form.

4 THE COURT: I thought -- wasn't your agreement that you
5 weren't doing forms or was it only outside the scope and
6 leading? And what is that noise? I'm sure it's not
7 somebody's cell phone.

8 UNIDENTIFIED SPEAKER: Sorry, I was just checking my
9 phone. I apologize. I checked on and so I turned it off and
10 it went off.

11 THE COURT: Thank you.

12 MS. WINSLOW: Well, Your Honor, it's unclear to me what
13 it is that Mr. Rafie is asking his client.

14 THE COURT: That's not an objection to form so I'm going
15 to overrule that objection. Go ahead.

16 THE WITNESS: A normal MLS listed property is going to
17 sell for approximately that number with title insurance, with
18 all claims satisfied. You're going to go through a title
19 company and get title policy of insurance and whatnot. You'll
20 have those guarantees.

21 BY MR. RAFIE:

22 Q Do you know enough about MLS to know if you go on
23 MLS whether you can look at pictures of a property?

24 A Yes.

25 Q Inside and out?



1 A Yes, there's generally pictures.

2 Q Did you have ability through the foreclosure process
3 to look at pictures inside and out of the properties?

4 A No.

5 Q When you go to a foreclosure and you identify a
6 property in foreclosure, is there any guarantee -- have you
7 ever heard of the - strike that. Have you ever heard the term
8 comp value?

9 A Yes.

10 Q What does that mean to you?

11 A Comparable value of other properties in decent
12 marketable condition.

13 Q All right. And that's how -- do you understand that
14 appraisers make value based on comp values --

15 A Yes, I do.

16 Q -- based on your experience in the real estate
17 market?

18 A Yes.

19 Q And is it your understanding that they go and they
20 find a piece of property and they look at the piece of
21 property? What does it look like on the interior and what
22 does it look on the exterior?

23 A Yes, very much.

24 Q And then with that information they go around to the
25 neighborhood and they say, okay, this is a property that seems



1 comparable in size and comparable in condition? Is that your
2 understanding of how comp value is obtained?

3 A Yes, it is. It also includes neighborhood and
4 schools, shopping, all the different things.

5 Q Did you have the ability to do any of that in a
6 foreclosure sale? In fact, isn't it true that most of the
7 properties you purchased in foreclosure sale had significant
8 costs that were associated with the rehab of those properties?

9 A Yes, it is.

10 Q Sorry.

11 A I just say yes, we've had some horror stories.

12 Q And, in fact, you testified earlier in this case
13 that you spend anywhere from 15,000 to \$20,000 rehabbing this
14 particular property, correct?

15 A Yes. Yes.

16 Q And that's in an effort to get it in a condition
17 where it becomes comparable to others in the neighborhood; is
18 that correct?

19 A Yes.

20 Q And that still leaves out other unknown factors like
21 whether you may have to try to quiet title on a property;
22 isn't that correct?

23 A That's correct.

24 Q Now when you purchase a property, any property, at
25 any time, in any situation, based on your real estate



1 experience, how often is there a deed of trust on it?

2 A Quite often.

3 Q Whether that's in a tradition sale or foreclosure
4 sale, correct?

5 A Yes.

6 Q But that's a different consideration whether there's
7 a deed of trust on a property in a foreclosure sale is a
8 different consideration as to whether there was a dispute
9 between the bank and the HOA on a payment of a lien, correct?

10 A That's right.

11 Q So just because you know there might be some deed of
12 trust that exists on a property, that's not an anomaly, is it?

13 A No. It's --

14 Q In fact, it's the norm, right?

15 A Right.

16 THE COURT: Counsel, you're talking over each other.

17 MR. RAFIE: Sorry. I'm getting carried away.

18 THE COURT: I just need to make sure you have a clear
19 record.

20 MR. RAFIE: I'll try to pause.

21 BY MR. RAFIE:

22 Q That's the norm, right?

23 A That's the norm.

24 Q And that's almost expected in every case that there
25 was some sort of deed of trust, correct?



1 A Yes.

2 Q But what we are wanting to know from you here today
3 and what is important to us here today is did you know of any
4 pre-sale dispute where the bank was claiming that it needed to
5 or should or can pay a lien portion of a HOA lien? Did you
6 know that prior to purchasing the property in this case?

7 A No, I did not.

8 Q And so although you knew in buying a foreclosure
9 property that there could be certain risks, is it accurate to
10 say that you didn't necessarily know that a bank would be
11 claiming that it had been denied a right to make a payment on
12 a super priority portion of the HOA lien, correct?

13 A Correct.

14 MR. RAFIE: I have nothing further.

15 THE COURT: Ok. Cross-examination, counsel, for bank and
16 Carrington.

17 RECROSS-EXAMINATION

18 BY MS. WINSLOW:

19 Q Back in 2014 you believed that if a bank claimed an
20 interest in a property at an HOA foreclosure sale, it would
21 show up to the sale, correct?

22 A Yes.

23 Q Okay. But you also believed that it was the norm
24 for a deed of trust to be recorded against a property,
25 correct?



1 A Yes.

2 Q Great. And you also knew that there would be a
3 quite title litigation, probably, for these HOA -- for these
4 properties you purchased in HOA foreclosure sales, correct?

5 MR. RAFIE: Objection. Calls for speculation and
6 inquires into attorney-client privilege.

7 THE COURT: Okay. I'm going to sustain to the extent
8 it's seeking in the attorney-client communication. I'm going
9 to overrule on speculation in light of his prior testimony as
10 to what he knew and his basis for bidding and what he knew at
11 that time.

12 MS. WINSLOW: Thank you. Nothing else, Your Honor.

13 THE COURT: Thank you very much. Any re-cross from
14 Sunset Greens?

15 MR. RAFIE: No, Your Honor.

16 THE COURT: Okay. So there being no additional re-cross,
17 this witness is excused. Is it subject to recall for all
18 purposes?

19 MR. RAFIE: Pursuant to our agreement, not subject to
20 recall.

21 THE COURT: Okay. I'm just -- I'm making sure.

22 MR. RAFIE: I'm making sure, too.

23 THE COURT: You all have gone back and forth on a couple
24 of different things --

25 MR. RAFIE: I know.



1 THE COURT: -- so I'm just making sure.

2 MR. RAFIE: And again, Your Honor, if I say something in
3 a cute way it's not because I'm trying to be cute or snide. I
4 just sometimes say things in a sort of --

5 THE COURT: No, no worries.

6 MR. RAFIE: Kind of put my foot right in my mouth. I
7 just am trying to be clear, too.

8 THE COURT: Okay. So you understand for all purposes at
9 the agreement of Sunset Greens and BANA and Carrington?

10 MS. STERN: Yes, Your Honor.

11 MR. RAFIE: Yes, Your Honor. Yes, to confirm, we're done
12 with this witness.

13 THE COURT: Beautiful. Thank you so very much for your
14 time.

15 THE WITNESS: Thank you all.

16 THE COURT: Sorry it took a little bit longer. Okay.
17 Counsel, at this juncture I'm going to ask Plaintiff's
18 counsel, would you like to call your next witness?

19 MR. RAFIE: I do not have another witness I'm going to
20 call.

21 THE COURT: Okay. Then at this juncture, Plaintiff, in
22 your Case in Chief, what would you like to do?

23 MR. RAFIE: I can close my Case in Chief.

24 THE COURT: So is Plaintiff resting?

25 MR. RAFIE: Resting.



1 THE COURT: Okay. So then we would move to -- who was
2 the agreement on who would be going next on their claims?

3 MR. RAFIE: Defendants or sorry the bank.

4 THE COURT: Well, no, I still -- remember, I have him
5 closing his Case in Chief. He has claims against Sunset
6 Greens. Do you have any witnesses in your defense as the
7 claims vis-à-vis Plaintiff, Defendant? You know what I mean?
8 Before I move to the counterclaims I have to finish up
9 Plaintiff claims. But I don't know -- that's why I'm asking
10 who's going first between the bank and --

11 MR. KNECHT: That's where we have problems, because our
12 agreement was that they would move to -- well, my
13 understanding was that we had been dismissed from that case.
14 But I understand that's different now. But it was that the
15 bank would go second.

16 MS. STERN: It's not set in stone because of what
17 happened to with respect to that indemnity claim if you guys
18 want to go first, that's okay with us.

19 THE COURT: I just want to know if either party is going
20 to do anything with regards to their defenses with regards to
21 any claims against them vis-à-vis Plaintiff. Or if there's
22 some other agreement, I just need to know what it is.

23 MR. KNECHT: The agreement was for the bank to go next.
24 We would go third. We would call, I mean, basically the same
25 witnesses.



1 MR. RAFIE: Just for clarity sake, I'm not alleging that
2 it was anything defective with the notice. But if it comes
3 out in the bank's case, then I want to be able to address
4 that. That's part of their defense. I'm relying on the
5 conclusive proof allowed through SFR and Shadow Wood. I think
6 the Court's aware of that. I just wanted to be clear.

7 THE COURT: All I need to know is I got -- Plaintiff
8 with, you know, based on what you told me this morning that
9 you're not disputing the equitable indemnification claim still
10 exists. And I'm not saying whether you had to, whether you
11 reserve whatever you're reserving. I just need to know who
12 goes next on any defense of case. I just need to know the
13 next --

14 MR. RAFIE: I guess, what I'm in artfully saying is that
15 I believe it should be the bank that goes next. They're
16 making the defenses to my claim. They're the ones that would
17 lead to any kind of indemnification -- equitable
18 indemnification if, in fact, they are able to prove anything
19 in terms of a defective notice.

20 THE COURT: Except for you know that the -- Bank, are you
21 going to call your first witness?

22 MS. STERN: Our first witness, well, we --

23 THE COURT: In defense of Plaintiff's claims, in light of
24 your newest structure, whatever that newest structure is?

25 MS. STERN: Your Honor, because we did not anticipate,



1 based on the earlier -- our first witness was going to be Mr.
2 Yergensen from NAS and we told him to be on call, but I don't
3 know if he's here right this minute. I'm sorry, the HOA.

4 THE COURT: He's the gentleman who left.

5 MS. STERN: And he's the gentleman who -- yeah.

6 THE COURT: Did you all know that he was your first
7 witness and you let him leave?

8 MR. KNECHT: We didn't know it was your first witness.

9 MS. STERN: No, no, we anticipated -- we did not
10 anticipate the Plaintiff was going to be -- so we can switch
11 things out a little bit in terms of our order of proof.

12 THE COURT: My gosh, did you guys talk about anything?
13 Who's --

14 MS. STERN: Yes. We talked through the Plaintiffs -- I'm
15 sorry, Your Honor.

16 THE COURT: Okay. We've got a half hour of time. Right?
17 Shouldn't we be utilizing that time with a witness? So I
18 either need Defendant to call your first witness, or I need
19 the HOA if you've got a witness on the claim against you.
20 Because the only way I can move forward on Plaintiff's claims
21 is to have somebody call a witness, right? But you didn't
22 know that the bank was planning on calling your client?

23 MR. KNECHT: We knew that the Plaintiff was going first,
24 obviously, the bank was going second, and we were the last.
25 We figured we didn't have --



1 THE COURT: And you can appreciate that I'm going to go
2 back to 2.67 saying you're supposed to talk about your
3 witnesses, the orders of witnesses?

4 MR. KNECHT: We did a little bit, but not enough,
5 obviously.

6 MR. RAFIE: Candidly, Your Honor, what happened here, --

7 THE COURT: I'm not trying to be --

8 MR. RAFIE: -- was we did not anticipate that we were
9 going to have -- that they were going to rest and that the
10 HOA's witness was going to be teed up for today. Otherwise,
11 we would have let him -- our customary practice is to let the
12 other side know the next day, here's going to be our next
13 witness. And, so that's where we are.

14 We can do a couple of things. We can either get
15 started with one of our other witnesses who is here, or at
16 this point, I do want to make a Rule 52 motion based on the
17 evidence that came in. And, I think procedurally this would
18 be an opportune time to do that as well.

19 THE COURT: Any objection from any parties in light of
20 whatever agreements may or may not be out there? Any changed
21 versions of any agreements that the Court doesn't yet know?

22 MR. KNECHT: Well, if he wants to bring it I don't have
23 any objection to him bringing it, no. At this point in time,
24 I guess, --

25 THE COURT: Okay. Plaintiff's counsel.



1 MR. STERN: With the Plaintiff having rested, I think, --

2 THE COURT: If there's no an objection by Plaintiff for
3 you to move forward with a Rule 52 motion, I'm going to hear a
4 Rule 52 motion. If there's an objection, then I'm going to
5 address the objection.

6 MR. RAFIE: I don't have an objection, Your Honor.

7 THE COURT: Okay. So Defendant, your Rule 52 motion.

8 MS. STERN: So this is a narrow ground for which we're
9 presenting the motion, but we believe that Mr. Holm made one
10 comment that disposes of the case.

11 And I'd like to start by framing, once again, who
12 the Plaintiff is here. The Plaintiff is not Mr. Holm, the Mr.
13 Holm we heard from today or his company. It's Steijum
14 Holdings. And we heard a couple of things about Steijum
15 Holdings. One is that they knew about the lawsuit. They knew
16 that the lawsuit had been filed. They knew that there was a
17 quiet title issue that was open, and they bought the property
18 anyway.

19 Having not been able to hear from Mr. Monte Holm,
20 who's not present, we don't know --

21 THE COURT: Because you objected to him.

22 MS. STERN: I understand that, Your Honor, but we don't
23 know precisely what was in his mind, precisely what research
24 he did, but we know that he knew about the case. Mr. Richard
25 Holm confirmed that today, that he told him that.



1 So Steijum Holdings has its stance before us cannot
2 be a bona fide purchaser. It purchased the property after the
3 litigation was filed with knowledge of the litigation, and, of
4 course, the litigation sets forth the quiet title issues, the
5 bank's claims, the bank's defenses, et cetera.

6 So the only way that you can clothe Steijum Holdings
7 with bona fide purchaser status is under the shelter rule, if
8 Holm International itself is a bona fide purchaser. But Mr.
9 Richard Holm said something today that makes that inquiry, in
10 our view, irrelevant. And it has to do with the quit claim
11 deed.

12 Under questioning as to why he went with a quit
13 claim deed rather than a grant/bargain/sale deed, we got a
14 little bit into, I think, he rephrased it and said, you're
15 talking about a deed of warranty? Why did I not make a
16 warranty deed? And he subsequently confirmed that the purpose
17 for giving a quit claim deed is that these issues of quiet
18 title still needed to be resolved.

19 In other words, not only did he disclose to the
20 purchaser the litigation including all of the claims that are
21 presented in litigation, but he also structured the deal using
22 an instrument, a quit claim deed, that was designed precisely
23 to disclaim the warranty because those issues were still
24 there.

25 So when we look at a bona fide purchaser, there is,



1 under Shadow Wood and under the cases cited by Shadow Wood
2 going all the way back to Allison Steel, there was a duty of
3 inquiry that it was placed on the claimant under the bona fide
4 purchaser doctrine. You can't bury your head in the sand,
5 proverbially.

6 Now, it depends on the circumstances of the case how
7 deep or how extensive that duty to the inquiry is. If you're
8 a sophisticated real estate purchaser who knows about real
9 estate, who knows what kind of documents to look for, and to
10 check, you're going to be held to a higher duty of inquiry
11 than if you're somebody who doesn't have that experience.

12 Here we know that Mr. Richard Holm disclosed the
13 litigation. He also testified today that it wasn't a
14 straight-up cash deal, but rather a swap where Holm
15 International acquired a building in exchange for two
16 properties plus \$20,000 in case.

17 So this is Steijum Holdings, now, a punitive
18 claimant of this bona fide purchaser right, who claims their
19 right, after having structured the transaction receiving a
20 quit claim deed, receiving a deed that was expressly devoid of
21 warranty because that's what a quit claim deed is, and
22 receiving a deed that was structured as such precisely because
23 of this case and this litigation. And this is what Mr.
24 Richard Holm said today.

25 So as we look at it, Steijum Holdings cannot be a



1 bona fide purchaser; cannot be a bona fide purchaser because
2 it was not the actual purchaser. Holm International, the not
3 Plaintiff is the purchaser. So coming back to the premise
4 here, the only way that they can be a bona fide purchaser,
5 that Steijum Holdings can be a bona fide purchaser, is under
6 the shelter rule.

7 You don't have to be a bona fide purchaser under the
8 shelter rule as well -- as long as you acquire from an actual
9 bona fide purchaser. That's why it's relevant whether Holm
10 International itself is a bona fide purchaser. But for
11 purposes of this motion, it doesn't matter. Because the quit
12 claim deed operated to essentially break the shelter rule.
13 Under the quit claim deed, because of disclosure and because
14 of the legal instrument being designed to disclaim warranty
15 based on the risk that was disclosed, Steijum Holding, at this
16 point, does not have the standing to apply the shelter rule.

17 The purpose of the shelter rule is to give
18 [indiscernible] to the bona fide purchaser doctrine. So that
19 if a property acquired by -- a bona fide purchaser acquires a
20 property, that property is alienable. That property can be
21 used for all purposes by the bona fide purchaser, including
22 alienating it for money or other consideration. That's the
23 purpose behind it. That's why somebody who is undisputedly
24 not a bona fide purchaser and who bought the property with
25 knowledge of claims gets the benefits of the bona fide



1 purchaser under the shelter rule.

2 But when the punitive bona fide holder here, Mr.
3 Holm's company, Mr. Richard Holm's company, Holm
4 International, itself discloses, discusses, and structures the
5 deal so that he can have a carve out and potentially can
6 recover the property. Ms. Winslow asked him if there was a --
7 what would happen if they lose. If there was any guarantee
8 made; if there was any warranty made. And he said we haven't
9 gotten that far yet. That potentially this property may be
10 coming back to Holm.

11 At this point, as it's presented here, by the
12 conduct of the parties who shared this information, Steijum
13 Holdings, the non-bona fide purchaser, in our view, cannot
14 benefit from the shelter rule. So we believe that the issue
15 of the bona fide purchaser is resolved in our favor.

16 So it leaves, in our view, really not anything left
17 for Steijum Holdings to present to the Court, because Steijum
18 Holdings has presented no testimony other than that of Richard
19 Holm. And Richard Holm's testimony is not sufficient because
20 it includes the business about the quiet title, excuse me, the
21 quit claim deed.

22 And because there's no other -- we haven't heard
23 anything else, we haven't seen any other document, Mr. Monte
24 Holm is not even here to provide any other basis on which the
25 deed of trust should be discharged with respect to his entity,

1 Steijum Holdings, there hasn't been a sufficient showing under
2 Shadow Wood, under the balancing the totality of the
3 circumstances, really, there isn't really any reason here for
4 the Court to rule in favor of Steijum Holdings.

5 Steijum Holdings has essentially no-showed for the
6 trial. The other company, Holm International, provided
7 testimony that because of the way the deal was structured it's
8 no longer relevant. And there's -- with the burden of proof
9 resting on the part of the Plaintiff, there's simply no
10 evidence here justifying a return of a verdict in their favor.
11 So we understand we haven't put any of our evidences -- excuse
12 me -- any of our defenses forth yet. We haven't discussed
13 anything with Mr. Yergensen about NAS, with the bank, with the
14 HOA.

15 But because we had a very minimalist presentation of
16 evidence without the Plaintiff providing anything, and with
17 the Plaintiff's predecessor and interest providing the only
18 evidence which was rendered moot by the way in which they
19 structured the secondary transaction, the Plaintiff hasn't met
20 its burden. And so there's no reason for you to quiet title
21 in their favor, so we ask for relief. Thank you.

22 THE COURT: Thank you. Now I have a challenge on the
23 time. Are you going to be less than -- I'm not limiting you
24 to four minutes.

25 MR. RAFIE: I'm not going to take more than five minutes.



1 THE COURT: Okay.

2 MR. RAFIE: That's what you want me to be done by, right?

3 THE COURT: I'm not limiting you.

4 MR. RAFIE: I understand.

5 THE COURT: I was going to continue and allow you to
6 argue tomorrow, because I don't want to limit. You know, when
7 you have a dispositive motion in front of you to the short
8 amount of time because of the timing of the way things are.
9 And I was going to see if Sunset Greens is also going to argue
10 or not.

11 MR. KNECHT: No, Your Honor.

12 THE COURT: Okay. It's going to be up to you.

13 MR. RAFIE: I believe I can finish within five minutes.

14 THE COURT: Well, it's not requiring you to do so, but I
15 am going to stop -- remember we said.

16 MR. RAFIE: If I go over you can stop me and I'll start
17 again tomorrow is that okay, Your Honor?

18 THE COURT: If that's what you wish, sure.

19 MR. RAFIE: All right. So the bottom line is this. This
20 is the first time we've been hearing about the shelter rule.
21 And the bank has known about Steijum's involvement in this
22 matter almost from day one. It's never been an issue. There
23 has been a disclosure of an assignment of claim that was made.
24 That was entered into evidence today.

25 Mr. Holm, Richard Holm testified about it. The



1 intent was to assign all claims and rights from Holm
2 International to Steijum. And as he stated, and I asked him
3 directly, the intent was to put Steijum in the same shoes as
4 Holm International. Simply because a property is transferred
5 to a family member and some exchange of some properties that
6 they have, does not deny the ability of Steijum to hold that
7 property with the same kind of rights and claims that Holm
8 International bought that property under.

9 Because the bank comes and has tried to challenge
10 the sale, it's rights were terminated at the foreclosure sale
11 pursuant to Chapter 116 pursuant to a clear laches example,
12 sitting on their rights to the detriment of others; to Holms,
13 first, to Holms detriment, and then now to Steijum's
14 detriment. Because they now claim that their deed of trust
15 should remain in effect when in effect it should have been
16 terminated at the foreclosure sale.

17 If the foreclosure sale operates as the legislature
18 intended it to, the deed of trust and any right by the bank is
19 extinguished at that time. It wouldn't have any -- it
20 wouldn't even remain on the property long enough to affect any
21 claim made by Steijum.

22 The bona fide purchaser status is looking at the
23 purchaser at a foreclosure sale. That is clearly what the
24 Supreme Court of Nevada has mentioned over and over and over
25 again. The Supreme Court of Nevada has never said you need to



1 look at the bona fide purchaser status down the chain of title
2 after the chapter 116 sale. What it says is you need to look
3 at the equities. And when courts look at the equities and
4 balancing the equities, let's be more specific.

5 What Shadow Wood says is this: We know, in as so
6 far we said that there is conclusive proof when you do a deed
7 recital in a foreclosure deed, that you've complied with the
8 provisions of 116. But we want to be a little more clear.
9 That doesn't mean that banks can't come or lenders can't come
10 to the courts and show why there was some defect in the notice
11 process.

12 And in that evaluation, and in determining the
13 evidence there, courts are allowed to balance the equities.
14 So that if there was some sort of defect, even in the notice,
15 you can look at the conduct of the bank and you can look at
16 the conduct of the purchaser at the foreclosure sale, and you
17 can balance the equities and balance the harm and look at what
18 they did and make a decision for it.

19 You are not to construe our SFR language of a
20 conclusive proof in the deed recital to mean that you can't
21 look at the conduct of the parties. But look at the conduct
22 of the parties in this case. You have a party now moving for
23 Rule 52 relief trying to bar the ownership rights of a company
24 that took title from a bona fide purchaser at a chapter 116
25 sale.



1 There is testimony before this court that the BFP,
2 Holm International, at the time of the sale, because they
3 didn't know of any pre-sale dispute. That is the key language
4 of Shadow Wood. The banks love to say, well, you knew about
5 some deed of trust. That's not the inquiry that the Supreme
6 Court has told us we need to look at.

7 They specifically said is there an indication that
8 the purchaser knew of the pre-sale dispute. Is there
9 something that they did to chill the bidding process? Is
10 there evidence of fraud, oppression, and unfairness that you
11 as a court can look at and say, hey, yeah, you're not entitled
12 to equitable relief, because you did something wrong. Bad
13 purchaser. No.

14 We are going to recognize, as a result of your bad
15 conduct, we're going to recognize the deed of trust. Or
16 notice was faulty. The conclusive proof has been rebutted by
17 the bank. And you then, as a court, as a district court, can
18 then say, okay. We're going to recognize the deed of trust.
19 But none of those things have happened here.

20 And so to come before the Court and claim that
21 somehow because Steijum received this property in a quit claim
22 deed, where Holm testified -- Holm International testified
23 that their agreement is we're going to continue forward and
24 clear this title, and that's our commitment to you, and where
25 they also give an assignment of claims to Steijum, there is



1 nothing that bars Steijum from standing in Holm's shoes.

2 Holm is clearly a BFB. There's not even been a
3 tender in this case, Your Honor. And the documents that have
4 been admitted into evidence will show that. Thank you.

5 THE COURT: Thank you.

6 If you want to respond it's going to be tomorrow.

7 MR. RAFIE: I'm sorry, Your Honor?

8 THE COURT: If you want to respond it's going to need to
9 be tomorrow.

10 MR. RAFIE: I would like to respond, but I can keep it
11 brief. Not that I'm saying I should do it now.

12 THE COURT: It's a quarter 'til. What -- I told you, and
13 I mean.

14 MR. RAFIE: I'm just telling you that tomorrow won't be
15 long.

16 THE COURT: I appreciate the word brief, but --

17 MR. RAFIE: I'm a lawyer. Brief means long, I know.

18 THE COURT: -- we all know that -- brief, for some people
19 means two plus hours.

20 So in that regard, we're reconvening tomorrow is Thursday
21 we said 11:00. It looks like, based on my morning calendar,
22 well, I think, I can probably do a little bit earlier. I
23 probably could do 10:30. Do you all want to come in at 10:30
24 and risk -- but the issue is if I have parties that aren't
25 here on time in my morning calendar that you might not start



1 right at 10:30. But do you want to say 10:30 we can get the
2 extra time in? Or, you all swore that that doesn't make
3 sense.

4 If not, keep it at 11:00.

5 MS. STERN: My preference, Your Honor, just because I
6 want to be sensitive to Mr. --

7 THE COURT: But you're going to want to finish your
8 arguing.

9 MS. STERN: Yes, but when I said brief, I don't know if I
10 meant it. Maybe 10:30 makes sense.

11 MR. KNECHT: Let's do 10:30.

12 THE COURT: You know that was on the record, right,
13 counsel?

14 MS. STERN: Yes. I was --

15 THE COURT: I appreciate.

16 MS. STERN: -- speaking sardonically.

17 THE COURT: Okay. So with that, then the Court's going
18 to be in recess. 10:30 tomorrow, but caveat, you know, since
19 I do have morning motions calendar it means you all have to
20 clean up your stuff. Another reason why we have to make sure
21 a member of staff is not staying overtime. Okay. You're
22 getting charged for all overtime they do stay, right? Thank
23 you so very much.

24 MR. KNECHT: Thank you.

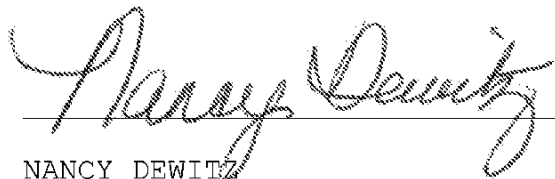
25 MS. STERN: Thank you.



1 MR. RAFIE: Thank you. Good night.
2 THE COURT: Good night. Have a good evening.
3 [Proceedings adjourned at 4:45 p.m.]
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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video recording in the above-entitled
3 case to the best of my ability.

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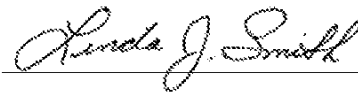
NANCY DEWITZ

Certified Transcriber

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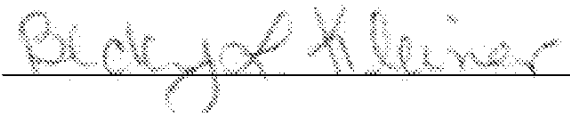
LISA FREEMAN

Certified Transcriber

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LINDA J. SMITH

Certified Transcriber

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BECKY L. KLEINER

Certified Transcriber



IN THE SUPREME COURT OF THE STATE OF NEVADA

| | |
|--|----------|
| CARRINGTON HOLDINGS, LLC, | MORTGAGE |
| Appellant, | |
| vs. | |
| STEIJUM HOLDINGS, LLC; SUNSET GREENS HOMEOWNERS ASSOCIATION, a Nevada domestic non-profit corporation | |
| Respondents. | |

Supreme Court Case No. 73609 Electronically Filed
District Court Case No. A-15-712712 Jan 22 2018 04:08 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court
The Honorable Joanna S. Kishner, District Judge
District Court Case No. A-15-712712-C

APPELLANT'S APPENDIX, VOLUME II

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, NV 89134
Telephone: (702) 634-5000

Attorneys for Appellant

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| XI | 35-26 | | Joint Trial Exhibit 26: Account Statements from Sunset Greens Homeowners Association and Nevada Association Services, Inc. from October of 2014 | AA002073 |

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| XI | 35-27 | | Joint Trial Exhibit 27: Printout from Clark County Real Property Assessor's website dated 11/7/14 and Account Statements from Sunset Greens Homeowners Association and Nevada Association Services, Inc. from November of 2014 | AA002081 |
| XI | 35-28 | | Joint Trial Exhibit 28: Nevada Association Services, Inc. Disbursement Requisition dated 11/11/14 | AA002091 |
| XI | 35-29 | | Joint Trial Exhibit 29: Letter to Sunset Greens Homeowners Association dated 11/11/14 | AA002093 |
| XI | 35-30 | | Joint Trial Exhibit 30: Letter to Randon Hansen, Esq. dated 11/11/14 | AA002100 |
| XI | 35-31 | | Joint Trial Exhibit 31: Letter to Randon Hansen, Esq. dated 11/11/14 | AA002103 |
| XI | 36-1 | | Plaintiff's Trial Exhibit 101: Assignment of Claims | AA002107 |
| XI | 36-2 | | Plaintiff's Trial Exhibits 102: Nevada Title Company – Order Number 15-01-0216-MME | AA002109 |
| XI | 37-1 | | Defendant's Trial Exhibit A: Miles Bauer Borrower Letter Affidavit | AA002126 |
| XI | 37-2 | | Defendant's Trial Exhibit B: Carrington Payment History | AA002139 |
| XI | 37-3 | | Defendant's Trial Exhibit D: Carrington Hello Letter | AA002143 |
| XII | 37-4 | | Defendant's Trial Exhibit E: Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Sunset Greens | AA002152 |
| XII | 38-1 | | Third Party Defendant's Trial Exhibit 200: NAS – Consent and Authorization (HOA and NAS), March 18, 2010 | AA002221 |

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| XII | 38-2 | | Third Party Defendant's Trial Exhibit 202: HOA – Notice to Albrand re Foreclosure Proceedings, March 9, 2011 | AA002223 |
| XII | 38-3 | | Third Party Defendant's Trial Exhibit 203: HOA – Agreement and Authorization to Commence Foreclosure Proceedings, March 25, 2011 | AA002225 |
| XII | 38-4 | | Third Party Defendant's Trial Exhibit 204: HOA – Account Ledger, March 25, 2011 | AA002227 |
| XII | 38-5 | | Third Party Defendant's Trial Exhibit 205: HOA – Notice to Albrand re Recording of Lien, April 19, 2011 (with enclosure) | AA002229 |
| XII | 38-6 | | Third Party Defendant's Trial Exhibit 206: HOA – Notice to Albrand re Recording of Lien, April 19, 2011 (certified mail receipt) | AA002233 |
| XII | 38-7 | | Third Party Defendant's Trial Exhibit 207: Demand Letter (Pre-NOD), June 21, 2011 | AA002235 |
| XII | 38-8 | | Third Party Defendant's Trial Exhibit 208: NAS – 10-Day Notice, July 12, 2011 | AA002245 |
| XII | 38-9 | | Third Party Defendant's Trial Exhibit 209: NAS – Notice of Default Correspondence, August 11, 2011 | AA002248 |
| XII | 38-10 | | Third Party Defendant's Trial Exhibit 210: NAS – Trustee's Sale Guarantee, August 17, 2011 | AA002286 |
| XII | 38-11 | | Third Party Defendant's Trial Exhibit 211: NAS – Correspondence to HOA re Authorization to Publish, September 21, 2012 | AA002299 |

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| XII | 38-12 | | Third Party Defendant's Trial Exhibit 212: NAS – Endorsement to Trustee's Sale Deed re Assignment to BANA, October 16, 2012 | AA002302 |
| XII | 38-13 | | Third Party Defendant's Trial Exhibit 213: NAS – Correspondence re Notice of Sale, October 25, 2012 | AA002306 |
| XII | 38-14 | | Third Party Defendant's Trial Exhibit 214: NAS – Correspondence re Publishing, October 26, 2012 | AA002315 |
| XII | 38-15 | | Third Party Defendant's Trial Exhibit 215: NAS – Notice of Foreclosure Sale, October 30, 2012 | AA002318 |
| XII | 38-16 | | Third Party Defendant's Trial Exhibit 216: NAS – Publishing Invoice, November 12, 2012 | AA002321 |
| XII | 38-17 | | Third Party Defendant's Trial Exhibit 217: NAS – Correspondence from HOA, November 19, 2012 | AA002323 |
| XII | 38-18 | | Third Party Defendant's Trial Exhibit 218: NAS – Certificate of Postponement, November 30, 2012 | AA002325 |
| XII | 38-19 | | Third Party Defendant's Trial Exhibit 219: NAS – Vacancy Posting Notice, dated December 5, 2012 | AA002327 |
| XII | 38-20 | | Third Party Defendant's Trial Exhibit 220: HOA – Urgent Notice re Power to Property, December 13, 2012 | AA002330 |
| XII | 38-21 | | Third Party Defendant's Trial Exhibit 221: NAS – Correspondence to HOA re foreclosure, December 17, 2012 | AA002332 |
| XII | 38-22 | | Third Party Defendant's Trial Exhibit 222: NAS – Correspondence from HOA re cancellation, December 17, 2012 | AA002334 |

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| XII | 38-23 | | Third Party Defendant's Trial Exhibit 223: NAS – Correspondence from HOA re homeowner vacated, December 17, 2012 | AA002337 |
| XII | 38-24 | | Third Party Defendant's Trial Exhibit 224: NAS – Correspondence re Hold Reminder, April 23, 2013 | AA002339 |
| XII | 38-25 | | Third Party Defendant's Trial Exhibit 225: NAS – Correspondence re Hold Reminder, August 21, 2013 | AA002341 |
| XII | 38-26 | | Third Party Defendant's Trial Exhibit 226: HOA – Virgin Valley Water District Bills, July 2013 to October 2013 | AA002343 |
| XII | 38-27 | | Third Party Defendant's Trial Exhibit 227: NAS – Correspondence re Hold Reminder, December 19, 2013 | AA002348 |
| XII | 38-28 | | Third Party Defendant's Trial Exhibit 228: NAS – Correspondence re Hold Reminder, April 18, 2014 | AA002350 |
| XII | 38-29 | | Third Party Defendant's Trial Exhibit 229: NAS – Correspondence to HOA re Authorization to Publish, September 25, 2014 | AA002352 |
| XII | 38-30 | | Third Party Defendant's Trial Exhibit 230: NAS – Correspondence re Publishing, October 13, 2014 | AA002356 |
| XII | 38-31 | | Third Party Defendant's Trial Exhibit 231: NAS – Correspondence from Nevada Legal re publishing, October 14, 2014 | AA002364 |
| XII | 38-32 | | Third Party Defendant's Trial Exhibit 232: NAS – Notice of Foreclosure Sale, October 14, 2014 | AA002367 |
| XII | 38-33 | | Third Party Defendant's Trial Exhibit 233: NAS – Advertising Invoice, October 16, 2014 | AA002382 |

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| XII | 38-34 | | Third Party Defendant's Trial Exhibit 234: NAS – Correspondence from Nevada Legal Support, October 23, 2014 | AA002384 |
| XII | 38-35 | | Third Party Defendant's Trial Exhibit 235: NAS – Correspondence from HOA, October 30, 2014 | AA002390 |
| XII | 38-36 | | Third-Party Defendant's Trial Exhibit 236: NAS – Affidavit of Publication, October 30, 2014 | AA002392 |
| XII | 38-37 | | Third Party Defendant's Trial Exhibit 237: NAS – Sales Script, November 7, 2014 | AA002394 |
| XIII | 38-38 | | Third Party Defendant's Trial Exhibit 238: NAS – Correspondence from Title, November 7, 2014 | AA002396 |
| XIII | 38-39 | | Third Party Defendant's Trial Exhibit 239: NAS – Certificate of Sale, November 7, 2014 | AA002403 |
| XIII | 38-40 | | Third Party Defendant's Trial Exhibit 240: NAS – Receipt of Funds, November 7, 2014 | AA002405 |
| XIII | 38-41 | | Third Party Defendant's Trial Exhibit 241: NAS – Disbursement Requisition, November 11, 2014 | AA002412 |
| XIII | 38-42 | | Third Party Defendant's Trial Exhibit 242: NAS – Correspondence to Title re payoff, November 11, 2014 | AA002414 |
| XIII | 38-43 | | Third Party Defendant's Trial Exhibit 243: NAS – Correspondence to Priority Posting and Publishing re payoff, November 11, 2014 | AA002417 |
| XIII | 38-44 | | Third Party Defendant's Trial Exhibit 244: NAS – Correspondence to Nevada Legal Support re payoff, November 11, 2014 | AA002420 |

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| XIII | 38-45 | | Third Party Defendant's Trial Exhibit 245: NAS – Correspondence to HOA re payoff, November 11, 2014 | AA002423 |
| XIII | 38-46 | | Third Party Defendant's Trial Exhibit 246: HOA – Account Ledger, November 11, 2014 | AA002426 |
| XIII | 38-47 | | Third Party Defendant's Trial Exhibit 247: NAS – Phone Notes, November 11, 2014 | AA002429 |
| XIII | 38-48 | | Third Party Defendant's Trial Exhibit 248: HOA – Email Correspondence with Holm, November 12, 2014 | AA002431 |
| XIII | 38-49 | | Third Party Defendant's Trial Exhibit 249: HOA – Correspondence to Holm re Purchase of Property, November 12, 2014 | AA002433 |
| XIII | 38-50 | | Third Party Defendant's Trial Exhibit 250: HOA – Email Correspondence with Steijum re Quit Claim Deed, April 7, 2015 | AA002435 |
| XIII | 38-51 | | Third Party Defendant's Trial Exhibit 252: NAS – NAS File Jacket | AA002439 |
| XIII | 38-52 | | Third Party Defendant's Trial Exhibit 253: BANA – Request for Notifications of Default, December 4, 2014 | AA002441 |
| XIII | 38-53 | | Third Party Defendant's Trial Exhibit 254: BANA – Notice of Default Correspondence received by MERS, August 11, 2011 | AA002443 |

DATED this 22nd day of January, 2018.

AKERMAN LLP

/s/Natalie L. Winslow

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

1635 Village Center Circle, Suite 200

Las Vegas, NV 89134

Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 22nd day of January, 2018, and pursuant to NRCP 5, I served a true and correct copy of the foregoing **Appellant's Appendix, Volume II**, via this Court's Electronic Filing System to the following:

Kurt R. Bonds, Esq.
Adam R. Knecht, Esq.
Alverson Taylor Mortensen & Sanders
6605 Grand Montecito Parkway, Suite 200
Las Vegas, NV 89149

Attorneys for Sunset Greens Homeowners Association

Darius F. Rafie, Esq.
Mortensen & Rafie, LLP
10781 W. Twain Ave.
Las Vegas, Nevada 89135

Attorneys for Steijum Holdings, LLC

/s/Jill Sallade

An employee of AKERMAN LLP