IN THE SUPREME COURT OF THE STATE OF NEVADA
****

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Corporation Appellants, vs. BANK OF AMERICA, N.A., a Nevada Association, MORTGAGE ELECTRONIC REGISTRATION SYSTEM; an Illinois Corporation; ARLINGTON RANCH NORTH MASTER ASSOCIATION; a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION; a Nevada Non-Profit Corporation; DOES 1 Through 25 inclusive; and ROE CORPORATIONS, I through X, inclusive. Respondents.	S .C. No.: 69072 D.C. No.: A692200

JOINT APPENDIX

APPEAL FROM EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA

The Honorable Linda Bell

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EXHIBIT 1

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

FIRST 100, LLC, Plaintiff, v. RONALD BURNS, et al., Defendants.	CASE NO.: A677693 DEPARTMENT NO. XX **ORDER DENYING DEFENDANT'S MOTION TO DISMISS**

This matter having come on for hearing on the 8th day of May, 2013; Luis A. Ayon, Esq., and Margaret E. Schmidt, Esq., appearing for and on behalf of Plaintiff; Chelsea A. Crowton, Esq., appearing for and on behalf of Defendant, U.S. Bank; Karl L. Nielson, Esq., appearing for and on behalf of Defendant, Ronald Burns; Gregory L. Wilde, Esq., appearing for and on behalf of Defendant, National Default Servicing Corporation; and the Court having hearing arguments of counsel, and being fully advised in the premises, finds:

(1) This matter comes before the Court on a Motion by Defendant U.S. Bank NA to dismiss the Complaint pursuant to Rule 12(b)(5) of the Nevada Rules of Civil Procedure ("NRCP").

(2) This dispute arises from foreclosure proceedings conducted against a residential property located at 3055 Key Largo Drive, Unit #101, Las Vegas, Nevada 89120, identified by APN 162-25-614-153 ("the Subject Property"). The Subject

JEROME TAO
DISTRICT JUDGE
DEPARTMENT XX

Property is located within a common-interest community governed by a homeowners' association as defined in NRS Chapter 116, known as the Canyon Willows Owners Association (HOA). The prior owners of the property (who are not parties to this action) failed to pay all monthly assessments due under the operating documents of the common-interest community. In response, the HOA asserted a lien against the Subject Property and initiated foreclosure proceedings pursuant to NRS 116.3116 et seq. which culminated in a foreclosure sale conducted on February 2, 2013.

(3) The Plaintiff is First 100 LLC, a Nevada limited-liability corporation, which alleges that it acquired the Subject Property at the February 2, 2013 public auction. According to the allegations of the Complaint, the Plaintiff properly recorded a Deed on February 4, 2013 reflecting its purchase of the Subject Property. However, two days later, on February 6, 2013, the Subject Property was re-sold by way of foreclosure and Trustee's Sale initiated by Defendant National Default Servicing Corporation, who asserted that it was the named trustee under Deed of Trust previously recorded against the Subject Property on October 30, 2006, as Instrument No. 200610300002548 (and referred to in the pleadings as the "BNC Mortgage Deed of Trust"). Defendant Robert Burns purchased the Subject Property at the February 6, 2013 Trustee's Sale.

(4) The Plaintiff's Complaint asserts three causes of action: (First) Wrongful Foreclosure against Defendant National Default Servicing Corporation; (Second) Declaratory Relief/Quiet Title against all Defendants; and (Third) Injunctive Relief against Defendant Burns.

(5) As framed by the parties' briefing and oral arguments, the issue before the Court is a straightforward question of law. The Plaintiff contends that the February 2 foreclosure sale conducted pursuant to NRS 116.3116 et seq. and based upon a lien asserted by a homeowner's association for unpaid assessments automatically extinguished, by operation of law, any and all prior encumbrances upon the Subject Property. Thus, according to the Plaintiff, the subsequent Trustee's Sale conducted on

February 6 was unlawful because the October 30, 2006 Deed of Trust against the Subject Property had been extinguished in its entirety by the February 2 foreclosure sale. Therefore, the Plaintiff alleges that it is the rightful and legal owner of the Subject Property via its purchase of the Subject Property on February 2 free and clear of all prior encumbrances.

(6) In considering a Motion to Dismiss pursuant to NRCP 12(b)(5), the Court must accept all factual allegations of the pleadings to be true and view those allegations both liberally and in the light most favorable to the non-moving party. However, the Court need not accept the parties' assertions of law as true. The Court's analysis is limited to the factual allegations contained within the four corners of the Complaint and all inferences reasonably arising therefrom. A claim can only be dismissed if it is clear beyond any reasonable doubt that the plaintiff cannot prove any set of facts at trial that would entitle it to relief. Furthermore, a complaint can be dismissed even if all of the elements of a cause of action have been technically pled so long as the Court, relying on "judicial experience and common sense," finds that the allegations of the complaint are "conclusory" or "implausible." *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009)[1].

(7) In this case, the parties do not appear to dispute that the February 2, 2013 foreclosure sale was properly conducted in accordance with all of the legal requirements of NRS Chapter 116. The parties also do not appear to dispute that the BNC Mortgage Deed of Trust was a perfected legal encumbrance upon the Subject Property properly recorded on October 30, 2006. The parties also do not appear to dispute that the lien asserted against the Subject Property by the HOA was proper and legal under the provisions of NRS Chapter 116. The parties also do not appear to dispute that, if the Plaintiff's interpretation of the legal consequences of NRS Chapter 116 is correct, the Plaintiff has properly pled the elements supporting its causes of

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[1] *Ashcroft* was decided pursuant to FRCP 12(b)(6). However, where the Nevada Rules of Civil Procedure parallel the Federal Rules of Civil Procedure, rulings of federal courts interpreting and applying the federal rules are persuasive authority for this Court in applying the Nevada Rules. *E.g., Executive Management Ltd. v. Ticor Title Ins.*, 118 Nev. 46, 53 (2002). NRCP 12(b)(5) is identical to FRCP 12(b)(6).

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DISTRICT COURT
CLARK COUNTY, NEVADA

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Company, Plaintiff, vs. BANK OF AMERICA, N.A., a Nevada Association; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, an Illinois Corporation; ARLINGTON NORTH MASTER ASSOCIATION, a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION, a Nevada Non-Profit Corporation; DOES 1 through 25 inclusive; and ROE CORPORATIONS I through X, inclusive; Defendants.	Case No.: A-13-692200-C Dept. No.: VII **DEFENDANTS MORTGAGE ELECTRONIC REGISTRATION SYSTEMS AND CHRISTIANA TRUST'S OPPOSITION TO PLAINTIFF, PROPERTY PLUS INVESTMENTS, LLC'S, MOTION FOR REHEARING OF MOTION FOR SUMMARY JUDGMENT AND TO VACATE SUMMARY JUDGMENT** **Hearing Date: 9-1-2015** **Hearing Time: 9:00 A.M.**

Defendants, Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS") and Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3, In c/o Altisource Asset Management Corporation (hereinafter "Christiana Trust") (hereinafter collectively "Defendants"), by and through its attorney of record, Chelsea A. Crowton, Esq. of the law firm of Wright, Finlay & Zak, LLP,

hereby submit their Opposition to Property Plus Investments, LLC's Motion for Rehearing of Motion for Summary Judgment and to Vacate Summary Judgment. The Opposition is based on the attached Memorandum of Points and Authorities, all papers and pleadings on file herein, all judicially noticed facts, and any oral or documentary evidence that may be presented at a hearing on this matter

DATED this 26th day of August, 2015.

WRIGHT, FINLAY & ZAK, LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff seeks to vacate summary judgment entered in favor of Defendants based on Plaintiff's misunderstanding of the tender attempt by Defendants, flawed analysis regarding the super-priority lien, and flawed analysis of a secured lien in bankruptcy. First, Plaintiff fails to provide any new evidence that proves that the Court's Decision was incorrect or flawed. Second, Defendants tendered the proper amount to discharge the super-priority lien because the HOA Sale violates NRS Chapter 116 by including additional costs and fees that are impermissible under the statute. Third, NRS Chapter 116 fails to provide proper notice to lenders and violates the constitutionally protected due process rights of Defendants. Fourth, the HOA lien and sale violates the Bankruptcy discharge of the borrower. Based on the above, the Court correctly granted Defendants' Motion for Summary Judgment regarding and correctly

deny Plaintiff's Motion for Summary Judgment. Therefore, Plaintiff's Motion for Rehearing should be denied.

II. LEGAL ARGUMENTS

A. PLAINTIFF'S MOTION FOR REHEARING SHOULD BE DENIED BECAUSE THE HOA SALE VIOLATED THE BANKRUPTCY DISCHARGE AND DEFENDANTS HAVE STANDING TO ASSERT A VIOLATION OF THE BANKRUPTCY DISCHARGE.

Plaintiff's arguments regarding the bankruptcy discharge misconstrue Defendants' legal arguments and the Court's findings and conclusions. Plaintiff relates the HOA assessments to a mortgage lien; however, Plaintiff misunderstands that the Bankruptcy Code specifically includes pre-Petition assessments in the bankruptcy discharge.

First, Plaintiff misstates Defendants' arguments regarding the HOA notices and the bankruptcy discharge. Defendants are not asserting that the super-priority lien amounts must be specifically stated in the HOA Notices. Defendants are not asserting that the bankruptcy discharge deprives the HOA from foreclosing on its lien, merely that the HOA had a statutory duty, after the bankruptcy discharge, to record new Notices that accurately reflect the correct entire lien amount and that the HOA failed to record new notices or assert the correct entire lien amount. The necessity to file new Notices is based on the fact that the pre-Petition Notice of Lien and Notice of Default included amounts and assessments that were no longer enforceable against the borrower, due to the bankruptcy discharge. The necessity to re-file new Notices is also based on NRS Chapter 116, for the statute requires an accurate description of the deficiency in payment. The deficiency in payment that formed the basis of the pre-Petition HOA notices and the HOA Sale was false due to the bankruptcy discharge and violated NRS Chapter 116. NRS 116.31162(b)(1) states that the Notice of Default must "describe the deficiency in payment." The Notice of Default recorded on October 31, 2012, violates the statute because it does not accurately describe the deficiency in payment after the bankruptcy discharge because any fees and costs incurred prior to December 2012 were discharged by the Sulliban

Bankruptcy.[1] NRS 116.311635(2)(3)(a) states that the Notice of Sale must state "The amount necessary to satisfy the lien as of the date of the proposed sale." The Notice of Sale recorded on June 21, 2013, violates the statute because it does not accurately describe the deficiency in payment after the bankruptcy discharge because any fees and costs incurred prior to December 2012 were discharged by the Sulliban Bankruptcy.[2] Based on these facts, the HOA Sale is void, statutorily defective, such that the Foreclosure Deed resulting from that sale could not have extinguished Christiana's Deed of Trust or displaced it from the first position in the chain of title.

Second, the HOA lien that High Noon foreclosed upon violated the Bankruptcy Discharge because it included fees and costs that are specifically stated in the Bankruptcy Code as being discharged. The recording of the lien does not change the fact that the HOA Sale cannot include delinquent assessments that are discharged under 11 U.S.C. §523(a)(16). The key difference overlooked by Plaintiff is that 11 U.S.C. §523(a)(16) specifically encompasses pre-Petition assessments in its discharge in direct contrast to a mortgage lien. The HOA documents clearly show that the HOA Lien, but not the secured nature of the HOA Lien.[3] The HOA Sale *did* destroy the balance of the HOA Lien though the HOA's ability to remain secured. The HOA Sale can foreclose on its lien after a bankruptcy discharge, similar to a mortgage lien, but like the inability of a lender to seek a deficiency judgment, the HOA cannot enforce discharge assessments. Therefore, the HOA Notices are statutorily defective and the HOA Sale is void and could not convey good title to Plaintiff free and clear of Defendants' Deed of Trust.

Based on the above, Plaintiff's Motion for Rehearing should be denied because the HOA Sale violated the Sulliban bankruptcy.

B. PLAINTIFF'S MOTION FOR REHEARING SHOULD BE DENIED BECAUSE THE HOA SALE VIOLATED NRS 116.31158 ET SEQ.

Plaintiff argues that summary judgment should be vacated because the HOA complied

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[1] See Exhibit A.1, pgs. 16-19; 25-28; 96-98; 138-140; 175-184; 210-213; 218-222; 287-292; 332-334; 369-371; 375-377; (collection costs- 125-126; 178-179; 372-374; 184-189; 387; 319-320) of Defendants' RJN.

[2] Id.

[3] See Exhibit A.1, pgs. 16-19; 25-28; 96-98; 138-140; 175-184; 210-213; 218-222; 287-292; 332-334; 369-371; 375-377; (collection costs- 125-126; 178-179; 372-374; 184-189; 387; 319-320) of Defendants' RJN.

with NRS 116.31158-116.31163.[4] Plaintiff bases this false argument on the fact that the Notice of Default provided contact information to allow Defendants a mechanism to determine the super-priority lien amount, information about the Ombudsman, and the fact that the Notice of Default was mailed certified.[5] However, Plaintiff fails to recognize the multiple defects in the HOA's documentation that fail to comply with NRS Chapter 116. First, Section 7 of the CC&Rs states that the Master Board by and through its agents has authority to foreclose on its lien and bring an action at law.[6] Alessi & Koenig did not have authorization from the Master Board (HOA). Alessi & Koenig provided a copy of the "Authorization to Conclude Non-Judicial Foreclosure and Conduct Trustee Sale."[7] The authorization form is not signed by the HOA and Alessi & Koenig never provided in the subpoenaed documentation any evidence that the HOA gave written authorization to Alessi & Koenig to conduct the HOA Sale pursuant to the CC&Rs and NRS 116.31162(1) and NRS 116.31165(1). Without authorization, the HOA Sale is void and should be rescinded.

Second, the accounting from Alessi & Koenig clearly shows that the lien amount is in violation of the statute and is materially in error.[8] The accounting shows that the HOA Lien included discharged fees and costs, collection costs, and fees that are past the three year statute of limitations.[9] Plaintiff admits to the material error of the HOA Notices by acknowledging that the HOA Notices clearly separate the fees, penalties, costs, etc. and that the HOA Notices clearly include improper fees and costs.[10] NRS 116.3116(6) clearly states that "A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessments became due." The accounting from Alessi & Koenig clearly shows that the HOA Lien foreclosed on in June 2013 included assessments past

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[4] See Motion for Rehearing at pgs. 15-16.
[5] Id.
[6] See pgs. 471-473 of Exhibit A.5.
[7] See pg. 99, 293 of Exhibit A.1.
[8] See Exhibit A.1, pgs. 16-19; 25-28; 96-98; 138-140; 175-184; 210-213; 218-222; 287-292; 332-334; 369-371; 375-377; (collection costs- 125-126; 178-179; 372-374; 184-189; 387; 319-320) of Defendants' RJN.
[9] Id.
[10] See Opposition at pgs. 8-10.

the three years statute of limitations, such as assessments from 2007-2010.[11] Therefore, the HOA Lien violates NRS 116.3116(6) by including assessments that were extinguished by the statute.

Third, Plaintiff fails to provide any evidence that the HOA mailed the Notice of Default by certified mail to Defendants. Plaintiff relies on the "conclusive proof" recitals in the Foreclosure Deed to establish compliance with NRS Chapter 116.[12] However, Plaintiff cannot rely on the recitals in the Foreclosure Deed when there exists clear evidence that the HOA Sale did not comply with the statute. The Exhibits reference by Plaintiff fail to provide any new evidence that the Notice of Default was mailed certified or first class to the Defendants or the predecessor and successors.[13] In fact, the documentation from Alessi & Koenig fails to show that the Notice of Default was mailed in accordance with the NRS Chapter 116 or NRS 107.090[14] Therefore, Plaintiff cannot raise any genuine issue of material fact or overcome Defendants' proof that the HOA Sale was invalid and did not comply with NRS Chapter 116.

Based on the above, Plaintiff's Motion for Rehearing should be denied because the undisputed facts before the Court show that the HOA Sale did not comply with NRS 116.31158-116.31163 and Plaintiff presented no new evidence that would contradict that proof and present a triable issue of fact.

C. THE HOA IS ONLY ENTITLED TO ONE SUPER-PRIORITY LIEN UNDER NRS 116.3116, WHICH WAS PAID AND SATISFIED.

Plaintiff repeatedly asserts throughout the Motion that it agrees with Defendants' analysis regarding a "rolling super-priority lien."[15] Despite the multiple assertions by Plaintiff that there is only one super-priority lien, Plaintiff goes to great lengths to discount the prior tender attempt by Defendants. This Court correctly ruled that the prior tender attempt by the Defendants extinguished any super-priority lien that could have encumbered the Property as it relates to

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[11] See Exhibit A.1, pgs. 16-19; 25-28; 96-98; 138-140; 175-184; 210-213; 218-222; 287-292; 332-334; 369-371; 375-377; (collection costs- 125-126; 178-179; 372-374; 184-189; 387; 319-320) of Defendants' RJN.

[12] See Motion for Rehearing at pg. 14.

[13] See Exhibits A-F attached to Plaintiff's Opposition to the Defendants' MSJ.

[14] See Exhibit A.1, pgs. 83-89 of Defendants' RJN.

[15] See Motion for Rehearing at pgs. 6-11.

Sulliban. Defendants are not arguing, as Plaintiff suggests, that new assessments and a new lien balance could not accrue after the tender attempt by Defendants – merely that the new balance does not confer the super-priority status under NRS 116.3116(2)(b). As shown by Defendants' original Motion, NRS 116.3116(2) provides that the super-priority lien consists of up to 9 months of common assessments and any nuisance abatement charges. See SFR, 334 P.3d at 410-11; see also 13-01 Op. Dep't. of Bus. & Indus., Real Estate Div. 2 (2012) (super-priority lien is limited to: (1) 9 months of assessments; and (2) [nuisance abatement] charges allowed by NRS 116.310312). **Once the super-priority amount has been paid to the association, the association's foreclosure on the remaining amounts transfer title to the unit/property subject to the first mortgage or deed of trust.** See Report of the Joint Editorial Board for Uniform Real Property Acts, "The Six-Month 'Limited Priority Lien' For Association Fees Under the Uniform Common Interest Ownership Act," pg. 3 (June 1, 2013).[16]

The principles of law and equity, including the law of real property, supplement the provisions of NRS Chapter 116, unless they are inconsistent with NRS Chapter 116. NRS 116.1108. The common law definition of tender is "an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist." Fresk v. Kraemer, 99 P.3d 282, 286-287 (Or. 2004); see also 74 Am. Jur. 2d Tender §22 (2014). Tender is satisfied where there is "an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied." 15 Williston, A Treatise on the Law of Contracts, § 1808 (3d. ed. 1972). As this Court found in granting summary judgment, a proper and sufficient tender of payment operates to discharge a lien. Segars v. Classen Garage and Service Co., 612 P.2d 293 (Ok. Ct. App. Div. 1, 1980). Further, a tender which has been made and rejected precludes foreclosure and discharges the mortgage or lien secured by property. See Bisno v. Sax, 175 Cal. App. 2d 714, 723, 346 P.2d 814; see also, Lichty v. Whitney, 80 Cal. App.2d 696, 701, 182 P.2d 582, 585 (1947) (holding

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[16] Available at, http://www.uniformlaws.org/shared/docs/jeburpa/2013jun1_JEBURPA_UCIOA%20Lien%20Priority%20Report.pdf (last visited March 9, 2015).

that "[a] tender of the amount of a debt, though refused, extinguishes the lien of a pledgee, and will defeat an action to recover the property pledged . . . [t]he creditor, by refusing to accept, does not forfeit his right to the thing tendered, but he does lose all collateral benefits or securities [and] [t]he instantaneous effect is to discharge any collateral lien, as a pledge of goods or right of distress.") (internal citations omitted); Winnett v. Roberts, 179 Cal. App. 3d 909, 921-22, 225 Cal. Rptr. 82, 88-89 (1986); McFarland v. Christoff, 120 Ind. App. 416, 421, 92 N.E. 2d 555, 557-58 (1950); In re Greenbaum, 172 Misc. 1034, 1036, 14 N.Y.S. 2d 983, 985 (1939). Therefore, the HOA can foreclosure on its 2012 lien but the lien does not include a super-priority subpart, due to the prior tender attempt, and Plaintiff took subject to the Deed of Trust.

Nevada's HOA lien statute of NRS 116.3116 is a creature of the UCIOA and thus commentary to the UCIOA aid in the interpretation of the statute. SFR, 334 P.3d at 410. Much like the UCIOA, NRS 116.3116(2)(b) elevates the priority of HOA liens over most other liens except, among others, first deeds of trust. Id. There is a partial exception to the priority of a first deed of trust commonly known as the super-priority lien. Id. at 410-11. NRS 116.3116(2) defines the super-priority lien as:

> The [HOA] lien also prior to all security interest described in paragraph (b) to the extent of any [maintenance and nuisance-abatement] charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses [i.e., HOA dues] based on the periodic budge adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately *preceding the institution of an action to enforce the lien* unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. . .Id. (Emphasis added.)

The super-priority lien thus may consist of up to nine months of assessments plus maintenance and nuisance abatement charges.[17] The UCIOA's definition of the super-priority lien contains similar language as NRS 116.3116(2). The main difference between the two (for purposes of this case) is that the UCIOA super-priority lien is

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[17] There is no contention that maintenance and nuisance abatement charges were included in the HOA lien in this case. Thus, the sole focus is on the nine months of assessments and the institution of the action to enforce the lien.

limited to six months immediately preceding the institution of an action to enforce the lien. Id.at 411, fn. 1, citing 1982 UCIOA § 3-116.

The Uniform Law Commission (ULC) has established a Joint Editorial Board for Uniform Real Property Acts (JEB), made up of members from the ULC which is responsible for monitoring the uniform real property acts including the UCIOA. Id. at 413. JEB recently released a report (hereinafter the "JEB Report") that dealt with various national issues of the super-priority lien under the UCIOA including whether an association could take successive actions to claim and enforce a super-priority lien. (See Report of the Joint Editorial Board for Uniform Real Property Acts, "The Six-Month 'Limited Priority Lien' For Association Fees Under the Uniform Common Interest Ownership Act," pgs. 10-14 (June 1, 2013))[18]. The JEB Report concluded:

> **[S]ection 3-116(c) [of the UCIOA] does not (and was not intended to) authorize an association to file successive lien enforcement actions every six months as means to extend the association's limited lien priority.** Only one action is necessary to permit the association to enforce its lien, sell the unit/parcel, and deliver clear title; accordingly, successive action would only serve to extend the association's lien priority beyond the six-month period express in section 3-116(c). Id. at 12-13; see also Drummer Boy Homes Association, Inc. v. Britton, 2011 Mass. App. Div. 186 (2011) (holding a super-priority lien is limited only to six months and that the association was not permitted to commence three successive actions to establish super-priority for 18 months of assessments as such a maneuver essentially elevates the entire lien over a first mortgage and nullifies the general priority of first mortgages). (Emphasis added.)

The JEB Report does not stop at the above analysis. The JEB Report further goes on to address whether the super-priority lien is a onetime lien, or whether it is a re-occurring lien. Id. at 13. Consistent with its conclusion that successive actions cannot be filed to extend the super-priority lien amounts, the JEB Report concludes the super-priority lien is a onetime lien and states:

> Section 3-116(c) [of the UCIOA] provides an association with first lien priority *only to the extent of the six months of unpaid common expense assessment that accrued immediately preceding a lien foreclosure action by either the association or the first mortgage* . . . the drafters of UCIOA § 3-116(c) did not contemplate the now-common scenario in which the first mortgagee's foreclosure action might

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[18] Available at http://www.uniformlaws.org/shared/docs/jeburpa/2013jun1_JEBURPA_UCIOA%20Lien%20Priority%20Report.pdf (last visited March 9, 2015).

> remain pending for two years or more. Id. at 14 (emphasis added); see also *Lake Ridge Condo. Assoc. v. Vegas*, No. NNHCV116021568S (Conn. Super. Ct. June 25, 2012) (holding that **the first mortgagee paid and satisfied the super-priority lien while its foreclosure action was pending, so the HOA was not entitled to commence a second action two years later to establish another super-priority lien** while the first mortgage foreclosure was still pending). (Emphasis added).

The JEB Report is also consistent with a recent advisory opinion from the Nevada Real Estate Division ("NRED") on the super-priority lien under NRS 116.3116(2). NRED concludes the super-priority lien is limited to nine months of assessments from the institution of an action to enforce the association's lien. See 13-01 Op. Dep't. of Bus. & Indus., Real Estate Div., p.17 (2012). NRED further concludes that NRS 116.31162 provides the first steps to foreclose, which is to mail the notice of delinquent assessment. Id. at 17-18. "At that point, the immediately preceding 9 months of assessments based on the association's budget determine the amount of the super priority lien." Id. The super-priority lien simply does not extend past nine months of assessments and cannot be re-triggered by successive actions to foreclose.

There is no question as to the following facts as to the **High Noon at Arlington Ranch Homeowners Association Lien – the *HOA Lien that Resulted in TDUS to Plaintiff*:**

1. On April 8, 2010, a Notice of Delinquent Assessment Lien was recorded by Alessi & Koenig on behalf of High Noon at Arlington Ranch Homeowners Association as Book and Instrument Number 20100408-0004587.
2. On July 1, 2010, a Notice of Default and Election to Sell under Notice of Delinquent Assessment Lien was recorded by Alessi & Koenig on behalf of High Noon at Arlington Ranch Homeowners Association as Book and Instrument Number 20100701-0000205.
3. On or about August 10, 2010, Bank of America, N.A. retained the law firm Miles, Bergstrom & Winters, LLP f/k/a Miles, Bauer, Bergstrom & Winters, LLP (hereinafter "MBW") to tender payment to the homeowners associations covering the Property and/or its agents for any super-priority lien that was being claimed on the Property.

4. On September 23, 2010, MBW sent a letter to High Noon at Arlington Ranch Homeowners Association c/o Alessi & Koenig with an enclosed check for $522.00 to satisfy the maximum nine months of common assessments that could be claimed as a super-priority lien by Alessi & Koenig or the HOA.
5. The tender was accepted by High Noon at Arlington Ranch Homeowners Association, resulting in a release of lien.
6. On August 11, 2011, High Noon at Arlington Ranch Homeowners Association recorded a Release of Lien as Book and Instrument Number 20110811-0003249.
7. On July 20, 2012, a Notice of Delinquent Assessment Lien was recorded by Alessi & Koenig on behalf of by High Noon at Arlington Ranch Homeowners Association as Book and Instrument Number 20120720-0003175.
8. On October 31, 2012, a Notice of Default and Election to Sell under Homeowners Association Lien was recorded by Alessi & Koenig on behalf of High Noon at Arlington Ranch Homeowners Association as Book and Instrument Number 20121031-0000600 on the July 20, 2012 Notice of Delinquent Assessment Lien.
9. On June 21, 2013, a Notice of Trustee's Sale was recorded by Alessi & Koenig on behalf of High Noon at Arlington Ranch Homeowners Association as Book and Instrument Number 20130621-0001581 on the July 20, 2012 Notice of Delinquent Assessment Lien.
10. On July 17, 2013, the non-judicial sale was held on the July 20, 2012 Notice of Delinquent Assessment Lien by High Noon at Arlington Ranch Homeowners Association ("HOA Sale").

Arlington Ranch North Master Association

11. On May 18, 2010, a Notice of Delinquent Assessment Lien was recorded on behalf of Arlington Ranch North Master Association as Book and Instrument Number 20100518-0002841.
12. On November 8, 2010, MBW sent a letter to Nevada Association Services, Inc. for Arlington Ranch North Master Association in response to the Notice of Default

advising of its intent to satisfy the Arlington Ranch North Master Association super-priority portion of the lien and requesting a status of the foreclosure sale.

13. On January 28, 2011, MBW sent a letter to Nevada Association Services, Inc. with a check for $236.25 enclosed to satisfy the maximum nine months of common assessments that could be claimed as a super-priority lien.

14. On or about January 28, 2011, the check for $236.25 was rejected by "Carly" at Nevada Association Services, Inc. and returned to MBW without further correspondence or explanation of any amount necessary to cure any super-priority lien.

15. On March 21, 2011, a Release of Lien and a Notice of Rescission were recorded on behalf of Arlington Ranch North Master Association and Book and Instrument Numbers 20110321-001390 and 20110321-0001391.

16. On September 2, 2011, a Notice of Delinquent Assessment Lien was recorded by Silver State Trustee Services, LLC on behalf of Arlington Ranch North Master Association.

17. On October 20, 2011, a Notice of Default and Election to Sell under Notice of Delinquent Assessment was recorded by Silver State Trustee Services, LLC on behalf of Arlington Ranch North Master Association on the September 2, 2011 Notice of Delinquent Assessment Lien.

18. There was no HOA sale on this Arlington Ranch North Master Association, and it is not subject of this suit.

19. On July 19, 2012, a Notice of Sale was recorded by Silver State Trustee Services, LLC on behalf of Arlington Ranch North Master Association on the September 2, 2011 Notice of Delinquent Assessment Lien.

In summary, BAC's agent or attorneys contacted Alessi & Koenig requesting a payoff amount for any super-priority lien being claimed by the HOA. Although Alessi & Koenig refused to provide a precise super-priority lien payoff amount, and instead provided a payoff for what appears to be for the full delinquency, BAC through its attorneys still calculated the

maximum nine months of assessments that could have been claimed by the HOA.[19] BAC then tendered $522.00 to Alessi & Koenig (and $236.25 to Nevada Association Services on an unrelated lien not subject of this suit) to satisfy the maximum nine months of common assessments that could be claimed. The Alessi & Koenig check for the amount was accepted and the NAS check was rejected and returned back to BAC's attorneys without further correspondence or explanation. In the case of the High Noon at Arlington Ranch Homeowners Association Lien, there was tender, acceptance and express release of lien. Any subsequent lien by High Noon at Arlington Ranch Homeowners Association, whether or not there was tender or acceptance or rejection, is irrelevant because there could be no super priority lien. In the case of the Arlington Ranch North Master Association Lien, there was tender, rejection of the tender but still an extinguishment of that super priority lien. In either case, there was tender and the super priority lien ceased to exist. Based on the authorities above, accepted by the Court in granting summary judgment, the tender, whether or not accepted, extinguished any super priority lien. The actions of BAC therefore discharged any super-priority lien that could have been claimed or foreclosed by the HOA or Alessi & Koenig. With no super priority lien going to sale, the statutory priority of the first Deed of Trust remained intact and superior to any interest acquired by Plaintiff – if the HOA Sale were otherwise valid, which it was not.

Plaintiff's argument fails to understand the UCIOA's analysis and prior tender attempt. It is irrelevant whether Defendants and the Court presented evidence of a tender on the 2012 lien because the HOA can only claim one super-priority lien amount. It is also irrelevant that the 2010 lien and prior liens were released because Defendants provided proof that there was a super-priority tender attempt in 2010 which discharged the super priority lien.[20] The fact that the 2010 lien was released does not diminish the legal effect and ramifications of the tender attempt. This is a correct interpretation of Nevada law and UCIOA. The super-priority was never meant to be a moving target or usurp the general priority of first mortgages or deeds of trust. Rather,

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[19] Although nuisance abatement costs can be included in a super-priority lien under NRS 116.3116, the payoff statement from Alessi & Koenig did not indicate any nuisance abatement costs were incurred or could be charged as part of any super-priority lien.

[20] See Exhibit C attached to Defendants' RJN in Support of the MSJ.

the super-priority lien was simply designed to balance equities of ensuring the association is paid at least six or nine months of assessments, while protecting the security interest of first deeds of trust.

The Court properly determined that Defendants attempted to tender the super-priority lien amount in 2010. Plaintiff attempts to create a triable issue of material fact by stating that the tender evidence is misleading and ambiguous.[21] These statements are false based on the admissions of Plaintiff in its Opposition to the Motion for Summary Judgment and documented evidence attached to Defendants' Motion for Summary Judgment. Plaintiff admitted that Bank of America tendered the super priority lien amount[22] and that the amount was paid.[23] Bank of America's tender simply discharged the super-priority portion of the HOA's lien and none of the subsequent actions taken by the HOA or HOA Trustee can be legally construed to have re-triggered a new super-priority lien. Plaintiff is correct in stating that two liens were recorded by the Master and Sub Associations at the time of the tender; however, Plaintiff is incorrect in its statements that the tender documents cannot be easily discerned. Luckily in this case, the two different liens had two different HOA Trustees. The tender documents clearly show the correspondences and checks were being sent to Alessi & Koenig and Nevada Association Services, with each check totaling different super-priority lien amounts.[24] Plus, the tender letters to the two HOA Trustees references the recorded date for the two separate Notice of Delinquent Assessments and attach the payoff for the two separate liens, clearly distinguishing the two tender checks.[25] Plaintiff attempts by its Motion to confuse the Court with "smoke and mirrors" with its use of the "Delinquent Balances," "Delinquency numbers" and "Reference Numbers." Plaintiff makes note that the "Reference Number" does not match any instrument recorded in the chain of title.[26] However, the "Reference Number" corresponds directly to the reference number

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[21] See Motion for Rehearing at pgs. 9-11.

[22] See Opposition at pgs. 7-8. See Exhibit A.8 and pgs. 381-383 of Exhibit A.1 of Defendants' RJN

[23] See Opposition at pgs. 7-8. See Exhibit A.8 and pgs. 381-383 of Exhibit A.1 of Defendants' RJN.

[24] See Exhibit C attached to Defendants' RJN in Support of the MSJ.

[25] Id.

[26] See Motion for Rehearing at pg. 11.

printed on the two lien documents filed by the HOA Trustees.[27] Therefore, the tender documents are not misleading and do not create a triable material issue of fact. The light that shines through this smoke and these mirrors are the tenders, whether or not accepted, that discharged all the super priority liens.

Lastly, Plaintiff points to allege defects in the Affidavit accompanying the tender documents. The tender documents were created and performed by Miles, Bauer, Bergstrom & Winters, LLP (hereinafter "MBW").[28] The affidavit was signed by an employee of MBW who had personal knowledge of the MBW business records and procedures for creating the business records.[29] The Affidavit complies with NRCP Rule 56(e) and clearly verifies the information attached to the Affidavit regarding the invoice from the carrier showing the rejected tender and tendered checks.

Therefore, Plaintiff's Motion for Rehearing should be denied because the tender attempt extinguished the super-priority lien.

III. CONCLUSION

Based on the above, Plaintiff's Motion for Rehearing should be denied and the Judgment in favor of Defendants should be upheld because Plaintiff fails to provide any new evidence that meets the standard for Court to reverse its decision.

DATED this 26th day of August, 2015.

WRIGHT, FINLAY & ZAK, LLP

Chelsea A. Crowton, Esq.
Nevada Bar No. 11547
7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorney for Defendants, Mortgage Electronic Registration Systems, Inc. and Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3, In c/o Altisource Asset Management Corporation

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[27] See HOA Documents attached hereto as **Exhibit A**.
[28] See Exhibit C attached to Defendants' RJN in Support of the MSJ.
[29] Id.

AFFIRMATION

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANTS MORTGAGE ELECTRONIC REGISTRATION SYSTEMS AND CHRISTIANA TRUST'S OPPOSITION TO PLAINTIFF, PROPERTY PLUS INVESTMENTS, LLC'S, MOTION FOR REHEARING OF MOTION FOR SUMMARY JUDGMENT AND TO VACATE SUMMARY JUDGMENT** filed in Case No. A-13-692200-C **does not** contain the social security number of any person.

DATED this 26th day of August, 2015.

WRIGHT, FINLAY & ZAK, LLP

Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
Chelsea A. Crowton, Esq.
Nevada Bar No. 11547
7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorney for Defendants, Mortgage Electronic Registration Systems, Inc. and Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3, In c/o Altisource Asset Management Corporation

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 26th day of August, 2015, I did cause a true copy of **DEFENDANTS MORTGAGE ELECTRONIC REGISTRATION SYSTEMS AND CHRISTIANA TRUST'S OPPOSITION TO PLAINTIFF, PROPERTY PLUS INVESTMENTS, LLC'S, MOTION FOR REHEARING OF MOTION FOR SUMMARY JUDGMENT AND TO VACATE SUMMARY JUDGMENT** be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9.

Kang & Associates, Pllc.

Contact	Email
Erica D. Loyd, Esq.	eloyd@acelawgroup.com
Jina Kang	jnk@acelawgroup.com
Patrick W. Kang, Esq.	pkang@acelawgroup.com

Leach Johnson Song & Gruchow

Contact	Email
Celeste Hernandez	chernandez@leachjohnson.com

Leach Johnson Song Gruchow

Contact	Email
Robin Callaway	rcallaway@leachjohnson.com
Ryan Hastings	rhastings@leachjohnson.com

An Employee of WRIGHT, FINLAY & ZAK, LLP

EXHIBIT A

EXHIBIT A

EXHIBIT A

Inst #: 201005180002841
Fees: $14.00
N/C Fee: $0.00
05/18/2010 01:55:20 PM
Receipt #: 355779
Requestor:
CLARK RECORDING SERVICE
Recorded By: ADF Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 176-20-714-331
N58600

17

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on March 25, 2004, as instrument number 00423 Book 20040325, of the official records of Clark County, Nevada, the Arlington Ranch North Master has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 8787 Tom Noon Ave #101 Las Vegas, NV 89178 and more particularly legally described as: High Noon at Arlington Ranch, Plat Book 115, Page 21, Unit 101, Bldg 111 in the County of Clark.

The owner(s) of record as reflected on the public record as of today's date is (are):
Megan R Sulliban

Mailing address(es):
8787 Tom Noon Ave #101, Las Vegas, NV 89178

*Total amount due through today's date is $1,049.98.
This amount includes late fees, collection fees and interest in the amount of $631.33.
* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.
Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Dated: May 14, 2010

By: Mariejo Hernandez, of Nevada Association Services, Inc., as agent for Arlington Ranch North Master.

When Recorded Mail To:
Nevada Association Services, Inc.
TS #N58600
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
Phone: (702) 804-8885 Toll Free: (888) 627-554

(2)

APN # 176-20-714-331
NAS # N58600
North American Title # 27962
PropertyAddress: 8787 Tom Noon Ave #101

Inst #: 201009270005814
Fees: $15.00
N/C Fee: $0.00
09/27/2010 10:08:46 AM
Receipt #: 517888
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: DGI Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

IMPORTANT NOTICE

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE!

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION and you may have the legal right to bring your account in good standing by paying all your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. No sale date may be set until ninety (90) days from the date this notice of default was mailed to you. The date this document was mailed to you appears on this notice.

This amount is $1,558.00 as of September 22, 2010 and will increase until your account becomes current.

While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions, the Arlington Ranch North Master (the Association) may insist that you do so in order to reinstate your account in good standing. In addition, the Association may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

Upon your request, this office will mail you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your Association may mutually agree in writing prior to the foreclosure sale to, among other things, 1) provide additional time in which to cure the default by transfer of the property or otherwise; 2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your Association permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your Association.

To find out about the amount you must pay, or arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact: Nevada Association Services, Inc. on behalf of Arlington Ranch North Master, 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146. The phone number is (702) 804-8885 or toll free at (888) 627-5544.

If you have any questions, you should contact a lawyer or the Association which maintains the right of assessment on your property.

NAS # N58600

Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure.

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

NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION SERVICES, INC.

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Lien, with the owner(s) as reflected on said lien being Megan R Sulliban, dated May 14, 2010, and recorded on May 18, 2010 as instrument number 0002841 Book 20100518 in the official records of Clark County, Nevada, executed by Arlington Ranch North Master, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on March 25, 2004, as instrument number 00423 Book 20040325, as security has occurred in that the payments have not been made of homeowner's assessments due from July 01, 2009 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

That by reason thereof, the Association has deposited with said agent such documents as the Covenants Conditions and Restrictions and documents evidencing the obligations secured thereby, and declares all sums secured thereby due and payable and elects to cause the property to be sold to satisfy the obligations.

Nevada Association Services, Inc. is a debt collector. Nevada Association Services, Inc. is attempting to collect a debt. Any information obtained will be used for that purpose.

Nevada Associations Services, Inc., whose address is 6224 W. Desert Inn Road, Suite A, Las Vegas, NV 89146 is authorized by the association to enforce the lien by sale.

Legal_Description: High Noon at Arlington Ranch, Plat Book 115, Page 21, Unit 101, Bldg 111 in the County of Clark

Dated: September 22, 2010

Winter Henrie

By: Winter Henrie, of Nevada Association Services, Inc.
on behalf of Arlington Ranch North Master

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146
(702) 804-8885
(888) 627-5544

Inst #: 201103210001390
Fees: $14.00
N/C Fee: $0.00
03/21/2011 09:39:00 AM
Receipt #: 711838
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: AEA Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 176-20-714-331
NAS # N58600
Title Company: North American Title
Order #: 45010-10-27962 / N58600
Accommodation

RELEASE OF NOTICE DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes, the Notice of Delinquent Assessment Lien, recorded by Arlington Ranch North Master, is satisfied and released. Said lien was recorded on May 18, 2010 as instrument number 0002841 Book 20100518, against the property legally described as: High Noon at Arlington Ranch, Plat Book 115, Page 21, Unit 101, Bldg 111 recorded in the County Recorder of Clark County, Nevada.

The owner(s) of record as reflected on said lien is (are):
Megan R Sulliban
Commonly referred to as:8787 Tom Noon Ave #101, Las Vegas, NV 89178

Dated: March 16, 2011

Brenda L Sherwood

By: Brenda Sherwood, of Nevada Association Services, Inc.
on behalf of Arlington Ranch North Master
STATE OF NEVADA)
COUNTY OF CLARK)

On March 16, 2011, before me,R. Silva, personally appeared Brenda Sherwood, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.
WITNESS my hand and seal.

(Signature)

(Seal)

R. SILVA
NOTARY PUBLIC
STATE OF NEVADA
MY COMMISSION EXPIRES: 7-7-2012
COMMISSION NO: 04-90556-1

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

Inst #: 201103210001391
Fees: $14.00
N/C Fee: $0.00
03/21/2011 09:39:00 AM
Receipt #: 711838
Requestor:
NORTH AMERICAN TITLE COMPAN
Recorded By: AEA Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 176-20-714-331
NAS # N58600
Title Company: North American Title
Order #: 45010-10-27962 / N58600
Accommodation

NOTICE OF RESCISSION

Notice is hereby given that Nevada Association Services Inc., is the duly appointed agent under the Notice of Delinquent Assessment Lien, recorded on May 18, 2010 as instrument number 0002841 Book 20100518 in the office of the Clark County Recorder. The purported real property owner(s) as indicated on said lien is/are Megan R Sulliban. The beneficiary is Arlington Ranch North Master.

The beneficiary and/or agent does hereby rescind, cancel and withdraw the Notice of Default and Election to Sale Under Homeowners Association Lien. It being understood however, that this rescission shall not in any manner be construed as waiving or affecting any breach or default, past, present, or future, under said Notice of Delinquent Assessment Lien, or as impairing any right to remedy thereunder, but is, and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Notice of Default and Election to Sale Under Homeowners Association Lien, and shall in no way jeopardize or impair any right, remedy or privilege secured to the Beneficiary and/or the agent under said Notice of Delinquent Assessment Lien, nor modify nor alter in any respect any terms, covenants, conditions or obligations thereof, and said Notice of Delinquent Assessment Lien and all obligations secured hereby shall remain in force the same as if said Notice of Default and Election to Sale Under Homeowners Association Lien had not been made and given. Said Notice of Default and Election to Sale Under Homeowners Association Lien was recorded on September 27, 2010 as document number 0005814 Book 20100927 in the County recorder of Clark.

Date: March 16, 2011

By: Brenda Sherwood, for Nevada Association Services, Inc.,
agent for Arlington Ranch North Master

When Recorded Mail To:
Nevada Association Services, Inc.
6224 W. Desert Inn Road, Suite A
Las Vegas, NV 89146

Inst #: 201108110003249
Fees: $14.00
N/C Fee: $0.00
08/11/2011 09:59:58 AM
Receipt #: 876614
Requestor:
ALESSI & KOENIG LLC (JUNES
Recorded By: TAH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded return to:

THE ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. **176-20-714-331** Trustee Sale No. **22321-8787-101**

RELEASE OF NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with the provisions of Nevada Revised Statutes chapter 116.3116 et al., the Notice of Delinquent Assessment Lien, recorded by **High Noon at Arlington Ranch Homeowner's Association**, is released. Said lien was recorded on **April 8, 2010** in Book **20100408** as instrument number **4587**, against the property legally described as **UNIT 101 BLDG 111**, as per map recorded in Book **115**, Pages **21** inclusive of maps recorded in the County recorder of **Clark** County, Nevada.

The owner(s) of record as reflected on the public record as of today's date is (are): **MEGAN SULLIBAN**

Property Address: **8787 TOM NOON AVE #101, LAS VEGAS, NV 89178**

Dated: **August 2, 2011**

By: Amanda Davis of the Alessi & Koenig, LLC on behalf of **High Noon at Arlington Ranch Homeowner's Association**

State of Nevada
County of Clark

On **August 2, 2011**, before me personally appeared Amanda Davis, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same in her authorized capacity, and that by signing her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Seal)

GINA GARCIA
Notary Public State of Nevada
No. 11-4750-1
My Appt. Exp. March 30, 2015

(Signature)
NOTARY PUBLIC

(C1)

APN: 176-20-714-331
Recording requested by and mail to:

505417
C/O THE MANAGEMENT TRUST
15661 Red Hill Ave #201
Tustin CA 92780-7300

Inst #: 201004080004587
Fees: $14.00
N/C Fee: $25.00
04/08/2010 04:28:28 PM
Receipt #: 304668
Requestor:
TRANSPACIFIC MANAGEMENT SEI
Recorded By: BRT Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

NOTICE OF DELINQUENT ASSESSMENT

NOTICE IS HEREBY GIVEN THAT High Noon At Arlington Ranch Homeowners Association, in accordance with Civil Code and the Declaration of Covenants, Conditions and Restrictions (CCR's) recorded on March 25, 2004, as Instrument # 20040325-00427, Book , Pages, of the Official Records of Clark County, Nevada, hereby claims a lien for the following amount, on the real property, described as:Unit 101, Bldg 111 of the Plat of High Noon at Arlington Ranch, Sierra Madre at Mountain Pass, a Common Interest Community, as shown by Map thereof on file in Book 115 of Plats, Page 21, in the office of the Counly Recorder of Clark County, Nevada, and purportedly known as:

8787 Tom Noon Ave #101, Las Vegas NV 89178

The amount of the Lien imposed upon said property for the delinquent assessments and other sums imposed in accordance with and authorized in the CCR's, such as interest and costs, including attorney's fees, as of April 5, 2010, is the sum shown below plus other assessments and charges which may hereafter become due:

1. Assessments:	$144.00
2. Late/Interest Charges:	$50.00
3.	
4. Collection Fees	$310.00

Total: $504.00 - Five Hundred Four and No/100 Dollars

The reputed owner(s) of the real property upon which this Assessment shall constitute a Lien is:

Megan R. Sulliban

Whose last known address is: **8787 Tom Noon Ave #101, Las Vegas NV 89178**

NOTICE IF FURTHER GIVEN THAT Alessi & Koenig, LLC
9500 W. Flamingo Rd, Suite 100
Las Vegas, NV 89147

is the duly authorized trustee to enforce said lien.

Dated: April 5, 2010 High Noon At Arlington Ranch Homeowners Association

State of Nevada)
County of Clark)

Barbara Arnold, Agent

STATE OF Califomia)
County of Orange)

On April 5, 2010 before me, Lynn Y. Allen, Notary Public, personally appeared Barbara Arnold, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and Official Seal

Signature _____ (Seal)

LYNN Y. ALLEN
Commission # 1755278
Notary Public - California
Orange County
My Comm. Expires Jul 3, 2011

Inst #: 201007010000205
Fees: $14.00
N/C Fee: $0.00
07/01/2010 08:33:21 AM
Receipt #: 409704
Requestor:
JUNES LEGAL SERVICES
Recorded By: DXI Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to:

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

A.P.N. **176-20-714-331** Trustee Sale No. **22321-8787-101**

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **$1,698.02** as of **June 28, 2010** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **High Noon @ Arlington Ranch Homeowner's Association**, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 100, Las Vegas, NV 89147.

THIS NOTICE pursuant to that certain Assessment Lien, recorded on **April 8, 2010** as document number **4587**, of Official Records in the County of **Clark**, State of Nevada. Owner(s): **MEGAN SULLIBAN**, of **UNIT 101 BLDG 111**, as per map recorded in Book **115**, Pages **21**, as shown on the Condominium Plan, Recorded on as document number as shown on the Subdivision map recorded in Maps of the County of **Clark,** State of Nevada. PROPERTY ADDRESS: **8787 TOM NOON AVE #101, LAS VEGAS, NV 89178.** If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT The Alessi & Koenig is appointed trustee agent under the above referenced lien, dated **April 8, 2010**, executed by **High Noon @ Arlington Ranch Homeowner's Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **June 28, 2010**

Miro Jeftic, Alessi & Koenig, LLC on behalf of **High Noon @ Arlington Ranch Homeowner's Association**

Electronically Filed
09/30/2015 11:36:43 AM

DAO

EIGHTH JUDICIAL DISTRICT COURT

CLERK OF THE COURT

CLARK COUNTY, NEVADA

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Company,

Plaintiff,

vs.

BANK OF AMERICA, N.A., a Nevada Association; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, an Illinois Corporation; ARLINGTON NORTH MASTER ASSOCIATION, a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION, a Nevada Non-Profit Corporation; DOES 1 through 25 inclusive; and ROE CORPORATION I through X, inclusive;

Defendant.

Case No. A-13-692200-C

Dep't No. VII

DECISION AND ORDER

This case arises from conflicting claimed interests in the real property located at 8787 Tom Noon Avenue, No. 21, Las Vegas, Nevada. Now before the Court is Plaintiff Property Plus Investments, LLC's ("Property") Motion for Rehearing of Motion for Summary Judgment and to Vacate Summary Judgment. Property asks the Court to reconsider its Order issued on July 14, 2015 that granted Defendants Mortgage Electronic Registration Systems, Inc. ("MERS") and Christiana Trust's Motion for Summary Judgment. The Court denies Property's Motion for Rehearing and Motion to Vacate because there are no sufficient grounds to reconsider the previous Order.

I. Procedural Background

Property filed its Complaint in this action on November 25, 2013. Property brought claims for quiet title, declaratory relief, and injunctive relief against the Defendants, including MERS. Property asserted that it bought the Tom Noon Property at a Homeowner

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

SEP 30 2015

Association's foreclosure sale, thus extinguishing all other parties' interests in the property. The Court subsequently granted Christiana Trust's Motion to Intervene on October 2, 2014, because Cristiana Trust is a current beneficiary under a deed of trust on the Tom Noon property.

MERS and Christiana Trust filed a Motion for Summary Judgment on March 16, 2015. The Court granted the Motion on July 14, 2015. The Court cited two main reasons for granting the Motion: "(1) the homeowners' association lien foreclosed on in this case lost its super-priority portion when the HOA and/or foreclosure agent refused Bank of America's tender of payment, and (2) the HOA lien was discharged by the United States Bankruptcy Court's proceedings regarding Ms. Sulliban prior to foreclosure."

Property filed a Motion for Rehearing of Motion for Summary Judgment and to Vacate Summary Judgment on July 30, 2015. Property asserts that the Court should reconsider its ruling because (1) Property's rejection of Bank of America's tender is irrelevant as it was tendered to the wrong lien and (2) MERS and Christiana Trust misled the Court regarding the statutes that govern discharged liens in bankruptcy. (Property's Mot. for Reh'g. 4: 8-11.) MERS and Christiana Trust filed an Opposition on August 26, 2015. They argue that (1) Property failed to produce new evidence proving that the Court's decision was incorrect, (2) Defendants tendered the proper amount to discharge the super-priority lien, and (3) the foreclosure sale of the Tom Noon property violates Sulliban's bankruptcy discharge. (MERS and Christiana Trust's Opp'n 2: 21-17.)

II. Discussion

Pursuant to EDCR 2.24, a court may reconsider a matter upon a motion filed by a party and served within ten days of notice of entry of order. However, reconsideration is only appropriate when "substantially different evidence is subsequently introduced or the decision is clearly erroneous." Masonry & Title Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Established practice does not allow litigants to raise new issues on rehearing. Cannon v. Taylor, 88 Nev. 89, 92, 493 P.2d 1313,

1314 (1972). "Rehearings are not granted as a matter of right, and are not allowed for the purposes of reargument..." Geller v. McCowan, 64 Nev. 106, 108, 178 P.2d 380, 381 (1947).

In this case, Property argues that the Court's decision to grant MERS and Christiana Trust's Motion for Summary Judgment was clearly erroneous because MERS and Christiana Trust failed to demonstrate that there was properly attempted tender of the super-priority lien in question. (Property's Mot. for Reh'g. 16: 18-21.) Property also argues that the decision was clearly erroneous because Sulliban's bankruptcy could not have eliminated Property's lien on the Tom Noon property as a matter of law. (Id. at 16: 21-23.) However, these arguments were already raised in Property's Countermotion for Summary Judgment (pp. 7-8, 10-11), and Property has not provided any substantially different evidence or binding legal authority in this Motion. Property is merely arguing that the Court made the wrong decision in granting summary judgment to MERS and Christiana Trust without providing a sufficient basis for the Court to reconsider its decision.

III. Conclusion

There is no basis for the Court to find that granting summary judgment in favor of MERS and Christiana Trust was clearly erroneous. Therefore, Property's Motion for Rehearing of Motion for Summary Judgment and to Vacate Summary Judgment is denied.

DATED this 29th day of September, 2015.

LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system or, if no e-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for:

Name	Party
Patrick Kang, Esq. Kang & Associates, PLLC.	Counsel for Property Plus Investments, LLC
Dana Nitz, Esq. Wright, Finlay, & Zak, LLP	Counsel for MERS and Christiana Trust
Ryan Hastings, Esq.	Counsel for Arlington Ranch

SHELBY DAHL
LAW CLERK, DEPARTMENT VII

AFFIRMATION
Pursuant to NRS 239B.030
The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A692200 **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell Date 09/29/15
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

NOED
WRIGHT, FINLAY & ZAK, LLP
Dana Jonathon Nitz, Esq.
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Attorneys for Defendants, Mortgage Electronic Registration Systems, Inc. and Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3, In c/o Altisource Asset Management Corporation

DISTRICT COURT
CLARK COUNTY, NEVADA

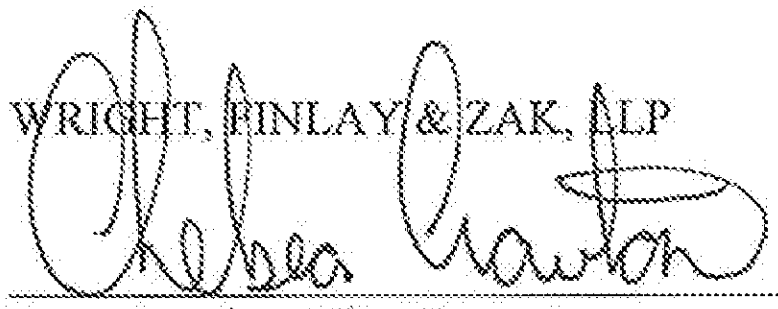
PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Company, Plaintiff, vs. BANK OF AMERICA, N.A., a Nevada Association; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, an Illinois Corporation; ARLINGTON NORTH MASTER ASSOCIATION, a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION, a Nevada Non-Profit Corporation; DOES 1 through 25 inclusive; and ROE CORPORATIONS I through X, inclusive; Defendants. CHRISTIANA TRUST, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3, In c/o Altisource Asset Management Corporation, Intervening Defendant.	Case No.: A-13-692200-C Dept. No.: 7 **NOTICE OF ENTRY OF DECISION AND ORDER**

TO ALL PARTIES:

PLEASE TAKE NOTICE that a Decision and Order granting Defendants' Motion for Summary Judgment was entered in the above-entitled Court on the 14th day of July, 2015, a copy of which is attached hereto.

DATED this 16th day of July, 2015.

WRIGHT, FINLAY & ZAK, LLP



Dana Jonathon Nitz, Esq.
Nevada Bar No. 0050
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7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendants, Mortgage Electronic Registration Systems, Inc. and Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3, In c/o Altisource Asset Management Corporation

AFFIRMATION

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **NOTICE OF ENTRY OF DECISION AND ORDER** filed in Case No. A-13-692200-C **does not** contain the social security number of any person.

DATED this 16th day of July, 2015.

WRIGHT, FINLAY & ZAK, LLP

Dana Jonathan Nitz, Esq.
Nevada Bar No. 0050
Chelsea A. Crowton, Esq.
Nevada Bar No. 11547
7785 W. Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorneys for Defendants, Mortgage Electronic Registration Systems, Inc., and Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3, In c/o Altisource Asset Management Corporation

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 16th day of July, 2015, I did cause a true copy of **NOTICE OF ENTRY OF DECISION AND ORDER** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9.

Kang & Associates, Plle.

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Erica D. Loyd, Esq.	eloyd@acelawgroup.com
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An Employee of WRIGHT, FINLAY & ZAK, LLP

NOA
PATRICK W. KANG, ESQ.
Nevada Bar No.: 010381
ERICA D. LOYD, ESQ.
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Las Vegas, Nevada 89146
P: 702.333.4223
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Attorneys for Appellant
Property Plus Investments, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Corporation Plaintiff, vs. BANK OF AMERICA, N.A., a Nevada Association, MORTGAGE ELECTRONIC REGISTRATION SYSTEM; an Illinois Corporation; ARLINGTON RANCH NORTH MASTER ASSOCIATION; a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION; a Nevada Non-Profit Corporation; DOES 1 Through 25 inclusive; and ROE CORPORATIONS, I through X, inclusive Defendants.	Case No.: A-13-692200-C Dept. No.: XIV **NOTICE OF APPEAL**

NOTICE OF APPEAL

Notice is hereby given that, PROPERTY PLUS INVESTMENTS, LLC., appellant named above hereby appeals to the Supreme Court of Nevada from the Order Granting Defendants, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS AND CHRISTINA TRUST'S Motion for Summary Judgment, which was noticed on the 8th day of October, 2015, and the Order Filed on

September 30, 2015 deny Appellant's tolling Motion for Rehearing and Vacate of Summary Judgment.

This Appeal is from all issues of law and fact.

Dated this 25th day of October, 2015.

KANG & ASSOCIATES, PLLC

PATRICK W. KANG, ESQ.
Nevada Bar No.: 010381
ERICA D. LOYD, ESQ.
Nevada Bar No.:010922
6480 W. Spring Mountain Road, Suite 1
Las Vegas, NV 89146
702.333.4223
Attorney for Appellant

KANG & ASSOCIATES, PLLC.
6480 W. SPRING MOUNTAIN ROAD, SUITE 1
LAS VEGAS, NV 89146

CERTIFICATE OF MAILING

I hereby certify that I am an employee of KANG & ASSOCIATES, PLLC., over the age of 18, neither a party to nor interested in this matter; that on this 21st day, October 2015, I served a copy of **NOTICE OF APPEAL**, as follows:

_____ by **facsimile** transmission, pursuant to NRCP(5)(b) and EDCR 7.26, to the following fax number:

_____ by **mailing** a copy thereof enclosed in a sealed envelope with postage prepaid in the United States Mail at Las Vegas, Nevada, to the counsel of record at the following address:

__X__ by **electronic** filing notification where specified on the attached service list

TO: Dana Jonathon Nitz, Esq.
Chelsea A. Crowton, Esq.
WRIGHT, FINLAY & ZAK, LLP
7785 W. Sahara Ave., Suite 200
Las Vegas, Nevada 89117
P: 702.475.7964
F: 702.946.1345
Attorneys for Defendants, Mortgage Electronic Registration Systems, Inc., and Christina Trust.

Heather Caldano
An Employee of KANG & ASSOCIATES

KANG & ASSOCIATES, PLLC.
6480 W. SPRING MOUNTAIN ROAD, SUITE 1
LAS VEGAS, NV 89146

IN THE SUPREME COURT OF THE STATE OF NEVADA
****

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Corporation

Appellants,

vs.

BANK OF AMERICA, N.A., a Nevada Association, MORTGAGE ELECTRONIC REGISTRATION SYSTEM; an Illinois Corporation; ARLINGTON RANCH NORTH MASTER ASSOCIATION; a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION; a Nevada Non-Profit Corporation; DOES 1 Through 25 inclusive; and ROE CORPORATIONS, I through X, inclusive.

Respondents.

S .C. No.: 69072
D.C. No.: A692200

JOINT APPENDIX

APPEAL FROM EIGHTH JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA

The Honorable Linda Bell

KANG & ASSOCIATES, PLLC
PATRICK W. KANG, ESQ.
Nevada Bar No.: 10381
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6480 W Spring Mountain Road
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Attorneys for Respondents

Volume 7

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07/14/2015 04:57:14 PM

ORDR

EIGHTH JUDICIAL DISTRICT COURT CLERK OF THE COURT

CLARK COUNTY, NEVADA

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Company,

Plaintiff,

vs.

BANK OF AMERICA, N.A., a Nevada Association; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, an Illinois Corporation; ARLINGTON NORTH MASTER ASSOCIATION, a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION, a Nevada Non-Profit Corporation; DOES 1 through 25 INCLUSIVE; and ROE CORPORATION I through X, inclusive;

Defendants.

Case No. A-13-692200-C
Dept No. VII

DECISION AND ORDER

This real property dispute arises from conflicting claimed rights and interests of residential property located at 8787 Tom Noon Avenue, No. 21, Las Vegas, Nevada 89178. Now before the Court are competing motions for summary judgment: the first is brought by Defendants Mortgage Electronic Registration Systems, Inc. ("MERS") and Christiana Trust; the second by Plaintiff Property Plus Investments, LLC. Both motions were heard on July 7, 2015. The Court grants the Defendants' Motion for Summary Judgment and denies Plaintiff's Motion for two reasons: (1) the homeowners' association lien foreclosed on in this case lost its super-priority portion when the HOA and/or foreclosure agent refused the bank's tender of payment, and (2) the HOA lien was discharged by the United States Bankruptcy Court prior to foreclosure.

I. Background

The residential property at 8787 Tom Noon Avenue, No. 21 is subject to the Supplemental Declaration of Covenants, Conditions and Restrictions and Reservation of

Easements for High Noon Arlington Ranch ("CC&Rs"). High Noon at Arlington Ranch Homeowners Association ("High Noon Association") recorded the CC&Rs on March 25, 2004. In addition to the High Noon Association, the Tom Noon property has at least two additional homeowners' associations—Arlington Ranch North Master Association ("Master Association") and Arlington Ranch Landscape Maintenance Association ("Landscape Association").

On April 27, 2007, three years after the High Noon CC&Rs were recorded, Megan Sulliban purchased the Tom Noon property. Ms. Sulliban's Deed of Trust for $215,000.00 was recorded on April 30, 2007, naming Defendant Bank of America, N.A. ("BofA") as the lender on the Deed of Trust. On August 10, 2010, BofA retained the law firm Miles, Bergstrom & Winters, LLP f/k/a Miles, Bauer, Bergstrom & Winters, LLP ("BofA counsel") to tender payment to the HOAs and/or their agents for the super-priority portion of any lien being claimed on the Tom Noon property.

On April 8, 2010, High Noon Association recorded a notice of lien for unpaid assessments. On May 18, 2010, Master Association recorded a notice of lien for unpaid assessments. Both High Noon Association and Master Association recorded defaults for their liens.

On September 23, 2010, BofA's counsel sent a letter to Alessi & Koenig ("A&K"), High Noon Association's agent, with an enclosed check intended to satisfy the maximum nine months of common assessments that could be claimed as a super-priority lien. On January 28, 2011, BofA's counsel sent a letter to Nevada Association Services, Inc. ("NAS"), Master Association's agent, with an enclosed check to satisfy the maximum nine months of common assessments that could be claimed as a super-priority lien. Both checks were ultimately rejected by A&K and NAS and returned to BofA's counsel without further correspondence or explanation of any amount necessary to cure any super-priority lien. Nonetheless, Master Association and High Noon Association both released their liens within a year after BofA's tender.

Then on July 20, 2012, High Noon Association recorded another notice of lien for unpaid assessments. And, on October 31, 2012, High Noon Association recorded a Notice of Default and Election to Sell under Homeowners Association Lien.

On December 19, 2012, Ms. Sulliban filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Nevada. Ms. Sulliban indicated on her Bankruptcy Petition that she was surrendering the Tom Noon property. Ms. Sulliban listed the High Noon Association lien in her Bankruptcy Petition. Ms. Sulliban received her bankruptcy discharge on March 20, 2013.

On June 21, 2013, High Noon Association recorded a Notice of Trustee's Sale foreclosing on its July 2012 lien. At the non-judicial foreclosure sale, Plaintiff Property Plus paid $7,500.00 for the Tom Noon property. On July 30, 2013, a Trustee's Deed Upon Sale was recorded naming Property Plus as the grantee.

On April 7, 2014, an Assignment of Deed of Trust was recorded. The Assignment of Deed of Trust assigned all beneficial interest in the 2007 Deed of Trust and Note to Defendant Christiana Trust.

II. Discussion

Nevada Rule of Civil Procedure 56(a) allows a party to move the Court for summary judgment. Summary judgment is only appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. See Wood v. Safeway, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). Materiality depends on the applicable substantive law, and includes only factual disputes that could change the ultimate outcome of the case. Id. 121 Nev. at 730, 121 P.3d at 1030. Furthermore, the court must review and consider all evidence in a light most favorable to the non-moving party. Id. 121 Nev. at 730, 121 P.3d at 1030.

A. Tender of Super-Priority Lien Amount

"NRS 116.3116(2) . . . splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is 'prior to' a first deed of

trust." SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408, 411 (2014), reh'g denied (Oct. 16, 2014); see also 13-01 Op. Dep't. of Bus. & Indus., Real Estate Div. 2 (2012) (super-priority lien is limited to: (1) 9 months of assessments; and (2) [nuisance abatement] charges allowed by NRS 116.310312). On the other hand, "[t]he subpriority piece, consist[s] of all other HOA fees or assessments, [and] is subordinate to a first deed of trust." Id. at 411.

The Nevada Supreme Court's SFR v. U.S. Bank decision made clear that the super-priority portion of the lien is a true super-priority lien, which will extinguish a first deed of trust if foreclosed upon pursuant to the requirements of Nevada Revised Statute chapter 116. See SFR v. U.S. at 419. However, if the super-priority amount has been paid to the association, the remaining sub-priority portion takes a junior position to earlier recorded encumbrances. An association's foreclosure on the remaining amount transfers title to the property subject to the first mortgage or deed of trust.

A party's tender of the super-priority amount is sufficient to extinguish the super-priority character of the lien, leaving only a junior lien. See Segars v. Classen Garage & Serv. Co., 1980 OK CIV APP 9, 612 P.2d 293, 295 ("a proper and sufficient tender of payment operates to discharge a lien"). The common law definition of tender is "an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist." Fresk v. Kraemer, 337 Or. 513, 522, 99 P.3d 282, 286-7 (2004); see also 74 Am. Jur. 2d Tender § 22. Tender is satisfied where there is "an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied." 15 Williston, A Treatise on the Law of Contracts, § 1808 (3d. ed. 1972). A tender which has been made and rejected precludes foreclosure and discharges the mortgage or lien secured by property. See Bisno v. Sax, 175 Cal. App. 2d 714, 724, 346 P.2d 814 (1959) ("Speaking generally, the acceptance of payment of a delinquent installment of principal or interest cures that particular default and precludes a foreclosure sale based upon such preexisting

delinquency. The same is true of a tender which has been made and rejected."); see also , Lichty v. Whitney, 80 Cal. App. 2d 696, 701, 182 P.2d 582 (1947) (holding that "[a] tender of the amount of a debt, though refused, extinguishes the lien of a pledgee, and will entitle the pledgor to recover the property pledged . . . [t]he creditor, by refusing to accept, does not forfeit his right to the thing tendered, but he does lose all collateral benefits or securities. The instantaneous effect is to discharge any collateral lien, as a pledge of goods or right of distress.")

Here, BofA through its attorneys calculated the maximum nine months of assessments that could have been claimed by the homeowners' associations. BofA then tendered to the homeowners' associations' agents, A&K and NAS, to satisfy the maximum nine months of common assessments that could be claimed. The checks were rejected and returned back to BofA's counsel without further correspondence or explanation. The actions of BofA therefore discharged any super-priority lien that could have been claimed or foreclosed by the High Noon Association, Master Association, or their agents. As such, summary judgment is proper in favor of MERS and Christiana Trust on the ground that the High Noon Association received and rejected tender of the super-priority amount of its lien prior to foreclosing on the Tom Noon property.

B. Bankruptcy Discharge

The Bankruptcy Code specifically states that any homeowners' association fees and assessments due and owing prior to the filing of the bankruptcy petition are dischargeable. The United States Bankruptcy Code states,

> (a) A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt—
>
> for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

> association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case.

11 U.S.C. § 523(a)(16) (emphasis added).

MERS and Christiana Trust argue that, though 11 U.S.C. § 523(a)(16) does not preclude High Noon Association from foreclosing on its lien, it read in conjunction with Nevada Revised Statute chapter 116 imputed a statutory duty on the High Noon Association to record new notices that accurately reflected the correct lien amount. See NRS 116.1162(1)(b)(1) (association or agent must record notice of default which must "describe the deficiency in payment"); see also NRS 116.311635(3)(a) (before selling the unit, the association or agent must serve unit's owner a copy of the notice of sale that includes "[t]he amount necessary to satisfy the lien as of the date of the proposed sale"). Ms. Sulliban indicated on her Bankruptcy Petition that she was surrendering the Tom Noon property, which allowed for the discharge of HOA fees and assessments that arose before her March 2013 bankruptcy discharge. High Noon Association's July 2012 lien and October 2012 Notice of Default, included fees and costs that were ultimately discharged by Ms. Sulliban's bankruptcy. High Noon Association was therefore required to file new notices reflecting the new lien amounts to comply with the non-judicial foreclosure requirements of Nevada Revised Statute chapter 116. But, High Noon Association failed to record new notices after Ms. Sulliban's bankruptcy discharge; instead, from June to July 2013, High Noon Association moved forward with foreclosure of the discharged lien amounts.

High Noon Association foreclosed on a lien that contained fees and costs which were discharged by the Sulliban bankruptcy, therefore the High Noon Association foreclosure did not comply with the requirements of Nevada Revised Statute chapter 116. Because High Noon Association's foreclosure of the Tom Noon property was improper and illegal, summary judgment is proper in favor of MERS and Christiana Trust.

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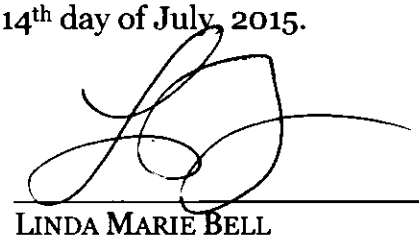
III. Conclusion

Defendants Mortgage Electronic Registration Systems, Inc.'s and Christiana Trust's Motion for Summary Judgment is granted and Plaintiff Property Plus Investments, LLC's Motion for Summary Judgment is denied because the High Noon Association lien lost its super-priority portion when the High Noon Association rejected Bank of America's tender, and the lien was discharged by the United States Bankruptcy Court prior to foreclosure.

DATED this 14th day of July, 2015.



LINDA MARIE BELL
DISTRICT COURT JUDGE

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th of July, 2015, he caused to be served the foregoing Order through the Eighth Judicial District Court EFP system or, if no E-mail was provided, by facsimile, U.S. Mail and/or placed in the Clerk's Office attorney folder(s) for counsel as listed below:

Name	Party	Phone	Contact
Patrick Kang, Esq.	Attorney for Plaintiff Property Plus Investments, LLC		pkang@alkalaw.com
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Dana Nitz, Esq.	Attorney for MERS and Christiana Trust		dnitz@wrightlegal.net

M. R. Dickerson

MICHAEL R. DICKERSON
LAW CLERK, DEPARTMENT VII

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Decision and Order filed in District Court case number A-13-692200-C **DOES NOT** contain the social security number of any person.

/s/ Linda Marie Bell Date 7/14/15
District Court Judge

LINDA MARIE BELL
DISTRICT JUDGE
DEPARTMENT VII

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DISTRICT COURT
CLARK COUNTY, NEVADA

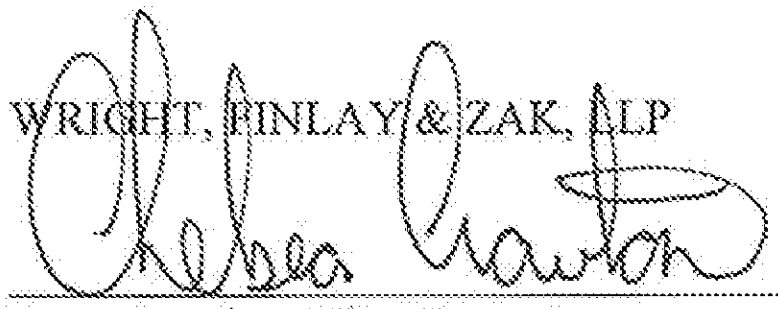
PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Company, Plaintiff, vs. BANK OF AMERICA, N.A., a Nevada Association; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, an Illinois Corporation; ARLINGTON NORTH MASTER ASSOCIATION, a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION, a Nevada Non-Profit Corporation; DOES 1 through 25 inclusive; and ROE CORPORATIONS I through X, inclusive; Defendants. CHRISTIANA TRUST, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3, In c/o Altisource Asset Management Corporation, Intervening Defendant.	Case No.: A-13-692200-C Dept. No.: 7 **NOTICE OF ENTRY OF DECISION AND ORDER**

TO ALL PARTIES:

PLEASE TAKE NOTICE that a Decision and Order granting Defendants' Motion for Summary Judgment was entered in the above-entitled Court on the 14th day of July, 2015, a copy of which is attached hereto.

DATED this 16th day of July, 2015.

WRIGHT, FINLAY & ZAK, LLP



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AFFIRMATION

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **NOTICE OF ENTRY OF DECISION AND ORDER** filed in Case No. A-13-692200-C **does not** contain the social security number of any person.

DATED this 16th day of July, 2015.

WRIGHT, FINLAY & ZAK, LLP

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK, LLP, and that on this 16th day of July, 2015, I did cause a true copy of **NOTICE OF ENTRY OF DECISION AND ORDER** to be e-filed and e-served through the Eighth Judicial District EFP system pursuant to NEFR 9.

Kang & Associates, Plle.

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Property Plus Investments

DISTRICT COURT
CLARK COUNTY, NEVADA

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Corporation

Plaintiff,

v.

BANK OF AMERICA, N.A., a Nevada Association; MORTGAGE ELECTRONIC REGISTRATION SYSTEM; an Illinois Corporation; ARLINGTON NORTH MASTER ASSOCIATION; a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION; a Nevada Non-Profit Corporation; DOES I through X, inclusive; and ROE CORPORATIONS I through X, inclusive;

Defendants.

Case No.: A-13-692200-C
Dept. No.: VII

MOTION FOR REHEARING OF MOTION FOR SUMMARY JUDGMENT AND TO VACATE SUMMARY JUDGMENT.

MOTION FOR REHEARING OF MOTION FOR SUMMARY JUDGMENT AND TO VACATE SUMMARY JUDGMENT.

COMES NOW, Plaintiff, PROPERTY PLUS INVESTMENTS, by and through its attorneys of record, PATRICK W. KANG, ESQ., and ERICA D. LOYD, ESQ., of the law firm KANG & ASSOCIATES and hereby submits this MOTION FOR REHEARING OF MOTION FOR SUMMARY JUDGMENT AND TO VACATE SUMMARY JUDGMENT pursuant to Eighth District Court Rule 2.24. Plaintiff's Motion For Rehearing of Motion for Summary Judgment and to Vacate Summary Judgment is made based upon the attached points and authorities, paper and pleadings on file herein, as well as any oral arguments deemed necessary.

DATED 30th day, July 2015.

KANG & ASSOCIATES

By:

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...

NOTICE OF MOTION

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Attorneys for Defendants, Mortgage Electronic Registration Systems, Inc., and Christina Trust.

Please take notice that the undersigned will bring the above-entitled motion for hearing before the above-entitled Court in the 1 day of September, 2015 at 9 a.m./p.m., in Department 7.

Dated this 30th day of July, 2015.

Respectfully submitted by:

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I.

POINTS AND AUTHORITIES

A. INTRODUCTION

On July 14, 2015 this Honorable Court issued a Decision and Order granting Defendant's Motion for Summary Judgment, and denying Plaintiff's Motion for Summary Judgment. That decision was based upon two findings:

1. A finding of fact that the lien was extinguished when the Plaintiff rejected Defendant's tender of payment.
2. That the Plaintiff's lien was discharged in bankruptcy.

Plaintiff requests a rehearing and to vacate summary judgment because Defendant's evidence that Plaintiff rejected its payment of tender was irrelevant as it was tendered to the wrong lien, or a different lien, because Plaintiff, denies High Noon Association or its' agents rejected tender, Plaintiff submitted evidence of that fact, and because Defendant misled the court as to statutes which it claimed discharged the lien in bankruptcy.

Therefore, prior to a hearing on the evidence presented by Plaintiff demonstrating that High Noon Association did not reject tender, and on the issues of law regarding the priority of the HOA's Lien, Summary Judgment cannot stand.

B. STANDARD FOR A MOTION FOR RECONSIDERATION.

This Honorable Court has inherent authority to reconsider its prior orders, and for sufficient cause, may amend, correct, resettle, modify, or vacate an order previously made and entered. *See, e.g.,* *Trail v. Faretto*, 91 Nev. 401 (1975).

Rehearings are appropriate when substantially different evidence is subsequently introduced or the decision is clearly erroneous. *See* *Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737 (1997). Here, sufficient cause exists for the Court to vacate its Order, as it is clearly erroneous based on the pints and authorities articulated below.

Finally, a motion for rehearing is timely only if it is filed "…within 10 days after service of written notice of the order or judgment…" *See* E.D.C.R 2.24(b). Notice of Entry of Order regarding the Order Granting Defendant's Motion for Summary Judgment was filed and served on July 20, 2015, therefore this motion is timely.

…

…

C. HIGH NOON ASSOCIATION DID NOT REJECT BANK OF AMERICA'S TENDER OF PAYMENT FOR THE RELEVANT LIEN.

The Plaintiff agrees with this Honorable Court's findings of law regarding "Tender of Super-Priority Lien Amounts," however, the *Defendant in this case offered no evidence*, that Plaintiff rejected its tender for the *balance* at issue on the superpriority portion of the Lien. Although there were numerous filings regarding delinquent balances against the Property, which were discussed in the motions by the parties, there is only one Lien relevant to this case, which is the lien that was perfected for High Noon at Arlington Ranch Homeowner's Association (the "HOA") when it filed with the Ombudsman's Office to perfect its priority position via the Declaration Filing. *See NRS 116.31158 & 116.311.63.* Similarly there is only one "superpriority lien amount," (hereafter the "Delinquent Balance") on the HOA Lien that the court need consider which is: the Delinquent Balance filed with the Assessor's office on July 20, 2012 as instrument 3175 (hereafter "Delinquency 4").[1]

The Parties agree as to the following timeline of events even if they disagree on the name for the Superpriority Lien Amount (the "Delinquencies"):

TIMELINE OF EVENTS[2]

February 9, 2009	"Delinquency 1" Recorded	Instrument 2359
April 20, 2009	Delinquency **1 Released**	Instrument 4259
April 8, 2010	"Delinquency 2" (High Noon) Recorded.	Instrument 4587
May 18, 2010	"Delinquency 3" Recorded	Instrument 2841
September 23, 2010	Defendant's Payment 1[3]	
January 28, 2011	Defendant's Payment 2[4]	
March 21, 2011	Delinquency **3 Released**	Instrument 1390
August 11, 2011	Delinquency **2 Released**	Instrument 3249
***Please note that all HOA liens to this point had been released.**		
July 20, 2012	Delinquency 4 (High Noon) Recorded	Instrument 3175
October 31, 2012	Delinquency 4 Default	Instrument 0600
June 3, 2013	Notice Mailed to Defendant[5]	

[1] See ***Exhibit A*** – *Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Exhibit A - Public Records second page; July 20th filing.*
[2] See ***Exhibit A*** – *Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Factual Background Pg 3-5; & Public Records in Exhibit A of that Motion.*
[3] See ***Exhibit B*** – *Defendant's Motion for Summary Judgment Page 5 at 14.*
[4] See ***Exhibit B*** - *Defendant's Motion for Summary Judgment Page 5 at 15.*

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June 21, 2013	Delinquency 4 Notice of Trustee's Sale	Instrument 1581
July 30, 2013	Deed Recorded	Instrument 0805
April 7, 2014	Property Assigned to Plaintiff	Instrument 0020

Defendant has not disputed any of the dates in the preceding timeline, and **Defendant does not assert that it made ANY Payment of Tender for Delinquency 4.**

Defendant's presented evidence of a rejected payment for one of the early Delinquencies in January of 2011; and assert that another payment was rejected in September of 2009.[6] There are serious questions regarding the validity of that evidence; however, *the entire argument is irrelevant* because the delinquent balances filed, which Defendants payments were for, were released prior to the existence of Delinquency 4.

If the Defendants are able to assert evidence regarding tender for Delinquency 4, then there *could* be *triable* issues of material fact as to whether rejection of tender discharged the superpriority lien held by the HOA. Otherwise, summary judgment should be granted to Plaintiffs on this issue.

D. THE SUPERPRIORITY PORTION OF THE HOA LIEN MAINTAINS PRIORITY OVER DEFENDANTS' FIRST MORTGAGE.

There there is only one Superpriority lien on a property per HOA, which is part of the lien that was established by the HOA when it filed with the Ombudsman's Office to perfect its priority position via the Declaration Filing. *See NRS 116.31158 & 116.311.63.* As HOA super-priority liens are "unprecedented," and since Defendants (understandably) are therefore at a loss as to how these operate, a brief explanation is merited here. *See* SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 412 (Nev.2014).

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[5] See ***Exhibit A*** – *Plaintiff's Opposition to Defendant's Motion for Summary Judgment, at Exhibit D –Evidence of Notice to Secured Lien Holders.*

[6] See ***Exhibit C*** – *Defendant's Evidence from its Motion for Summary Judgment.*

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E. THE BALANCE ON A LIEN CAN BE EXTINGUISHED, WITHOUT DESTROYING THE LIEN.

It may be easiest for Defendants to understand the operation of HOA liens by analogy. HOA Liens are similar to "liens for future advances" in that both types of liens are perfected and maintain a priority date that is prior to a later balance, which might become delinquent and cause a later foreclosure. *See NRS 116.3116(2) and NRS 106.37.* Both types of liens have a maximum lien balance, prescribed by statute, which is predetermined based upon either the original balance, as in the case of liens for future advances; or by statutorily prescribed calculation, as in the case of HOA liens. *See NRS 116.3116.*

F. THERE CAN BE MORE THAN ONE BALANCE ON A LIEN, AND EACH BALANCE MAY HAVE A DIFFERENT PRIORITY DATE

HOA liens are divided into balances with superpriority and balances without. See NRS 116.3116(2). HOA Liens for future advances are also similar to HOA liens because they may be bifurcated as to balances that maintain different priority dates. The proper, and general rule for determining the priority of lien balances that are bifurcated as to their proper position against an asset in Nevada is best explained in NRS 106.37 in its discussion of lien balances that are bifurcated because the future advances eventually cause the balance to exceed the original balance the lien was filed for:

> 1. The priority of a lien for future advances dates from the time that the instrument is recorded in the office of the county recorder of the county in which the property is located, whether or not the:
>
> (a) Future advances are obligatory or at the option of the lender; or
>
> (b) Lender has notice of an intervening lien.
>
> 2. If an amendment to an instrument is recorded which increases the maximum amount of indebtedness secured by the instrument, the priority of any lien for future advances of principal thereafter which exceed the maximum amount of principal of the original indebtedness dates from the time the amendment is recorded in the office of the county recorder of the county in which the property is located. *See NRS 106.37*

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The original lien priority date remains in force for the new balance up to the maximum balance amount allowed, and balances that exceed that amount, the "sub-priority lien" receive a new Priority Date on the date that they are perfected. Or in other words: **liens may have multiple perfected priority dates against an asset, each relating to separate allocations of the balance.**

G. THE SUPERPRIORITY BALANCE OF AN HOA LIEN HAS ONE PRIORITY DATE.

The HOA lien is also perfected by filing as explained by NRS 116.3116(5): "Recording of the [HOA] declaration *constitutes record notice and perfection of the lien*. **No further recordation of any claim of lien for assessment under this section is required."** The Nevada legislature made this point expressly, because many provisions regarding other lien types require secured parties to reassert their perfected security position periodically by refiling, but HOA's only have to do this once, via filing the HOA Declaration with the Ombudsman's Office, which creates a perfected lien, the superpriority portion of which is fixed for all properties within the HOA, and which is prior to all later-filed mortgage liens on the properties within the HOA, **even though at the time of filing, there is no balance on the lien.**

a. Calculation of Super Priority Lien Balances.

The HOA super lien balance is calculated by adding The Dues owed and other allowable fees for the nine months preceding the foreclosure proceeding, and may not exceed that *amount. See NRS 116.3116.* The balance can arise at any time that the HOA dues are not paid for a property, but only after the HOA has perfected its superpriority position. If the balance is paid off, the HOA can no longer enforce its superpriority position. If at some later date, the dues *become delinquent* again then the HOA begins foreclosure proceedings again. *(Id.)*

b. Determination of Maximum Lien Balance

The maximum balance on the HOA lien on a particular property, as to the superpriority position, is determined by the rules in NRS 116.3116, and includes fees beyond the HOA dues such as costs to collect the dues, and late fees:

> The lien is also prior to all security interests described in paragraph (b) [**A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent**] to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence

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of acceleration **during the 9 months immediately preceding institution of an action to *enforce* the lien.** *See NRS 116.3116.*

According to the Nevada Supreme Court the "action to enforce the lien" is the nonjudicial foreclosure proceedings. See *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 415 (2014). Thus the Balance at issue, in the Superpriority Lien, is the Balance, which accrued in the nine months prior to ***the*** nonjudicial foreclosure proceedings, which were the impetus of the case. The NRS does not define "non judicial foreclosure proceedings" however it should be obvious that they begin sometime after notifying the debtor of the delinquency and end after the foreclosure is completed, or the delinquent balance is otherwise extinguished.

H. IN THE CASE AT BAR, BY AUGUST 11, 2011 NO HOA WAS *ENFORCING* A DELINQUENT BALANCE AGAINST THE PROPERTY VIA ITS SUPERPRIORITY LIEN.

Here, any balances (not liens) prior to August 11, 2011 were released or extinguished; because Defendant's only assert that they tendered payments on September 23, 2010 and January 28, 2011. During that time period High Noon at Arlington Ranch Homeowner's Association had already released all prior balances on its Lien, except the new balance filed on April 10, 2010 via Instrument 4587. A payment on the account **was apparently not rejected** because **High Noon released the balance via Instrument 3249** with the Assessor's office, on August 11, 2011. [7]

I. ON JULY 20, 2012 HIGH NOON AT ARLINGTON RANCH HOA FILED NOTICE OF A DELINQUENT BALANCE AS TO ITS SUPERPRIORITY LIEN. DEFENDANTS' CLAIM THAT AN HOA CAN ONLY ASSERT ITS SUPERPRIORITY LIEN ONCE IS MISLEADING.[8]

Defendants are correct in stating that an HOA can only assert one superpriority lien. They are also correct that it is not a "rolling lien"[9] to the extent that the balance cannot exceed the statutory calculation for the balance. However Defendant's fail to understand that the Superpriority amount of an HOA's lien is prior to the first mortgage, regardless of the date the "amount" arises. This should be obvious to defendants since on the date of filing of an HOA Declaration, which perfects the lien, most HOA's will **not** have a property that owes it nine months of delinquent HOA fees or dues. "The lien is NRS 116.3116(2) does not speak in terms of *payment* priorities. It states that the HOA "lien ... is *prior to* " other liens and encumbrances

[7] ***Exhibit A*** *- Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Exhibit A - Public Records.*
[8] ***Exhibit B*** *– Defendant's Motion for Summary Judgment Page 7.*
[9] ***Exhibit B*** *– Defendant's Motion for Summary Judgment Page 7.*

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"except ... [a] first security interest," then adds that, "The lien is *also prior to* [first] security interests" to the extent of nine months of unpaid HOA dues and maintenance and nuisance-abatement charges. *Ibid.* (emphases added). "Prior" refers to the lien, not payment or proceeds." *See* SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 412.

J. DEFENDANTS' ARGUMENT ATTEMPTS TO SECURE FREE SERVICES TO THE DETRIMENT OF THE HOA.

Moreover, Defendant's argument, that: since Defendants paid off the Balance amount on the Superpriority of the Lien previously, that a new balance amount cannot arise on the Superpriority portion of the Lien later, is like saying that since a person paid their cable bill for 12 months in 2011, that they are not required to pay the cable bill for the 12 months in 2015 if they wish to continue getting the service for all 12 months. But the analogy must end there, because a cable company can withhold its services from the *person* who fails to make ongoing payments. However, an HOA cannot withhold its services from a *property* without damaging the value of the property, as well as the value of the surrounding properties. The Nevada Supreme court explained, citing the UCIOA comments on UCIOA § 3–116:

> An HOA's "sources of revenues are usually limited to common assessments." *414 JEB, *The Six–Month "Limited Priority Lien,"* at 4. This makes an HOA's ability to foreclose on the unpaid dues portion of its lien essential for common-interest communities. *Id.* at 1–2. Otherwise, when a homeowner walks away from the property and the first deed of trust holder delays foreclosure, the HOA has to "either increase the assessment burden on the remaining unit/parcel owners or reduce the services the association provides (e.g., by deferring maintenance on common amenities)." *Id.* at 5–6. To avoid having the community subsidize first security holders who delay foreclosure, whether strategically or for some other reason, UCIOA § 3–116 creates a true superpriority lien *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 413-14.

Lest this Honorable court become concerned about the equity of depriving Defendants of the collateral, Justice Pickering also pointed out that the UCIOA comments go further regarding the policy at issue: "As a practical matter, secured lenders will most likely pay the 6 [in Nevada, nine...] months' assessments demanded by the association *rather than having the association foreclose on the unit.*" *See* SFR Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 413. Defendants' argument would destroy the intent of the Nevada Legislature by denying HOAs the dues that are used to protect the value the HOA's properties, including Defendants' collateral.

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a. Material Issues of Triable Fact as to Rejection of Tender

Even *if* Defendants had a valid legal argument regarding the impact of rejection of tender for previous Balances on the Superpriority Lien - Delinquency 4, there would still be material issues of triable fact for a jury, because the Defendant's evidence of rejected payment is at best, barely persuasive, and at worst, intentionally misleading.

There were three HOA's with respect to the property in question. At least two of the HOA's had liens on the property for overlapping intervals at the time of the supposed payment.[10] Defendants claim that tender was "rejected without explanation." Yet Defendants' own arguments demonstrate a significant likelihood that the payments were improperly tendered, as the Defendants apparently are not sure which entity the payments were made out to, as demonstrated by the ambiguous language in its Motion for Summary Judgment, as it apparently made the checks out to the same entity, without direction as to which HOA Entity's Lien each check was for.[11] In fact, a careful reading of the motion leaves the reader wondering whether the Defendant is aware, even presently, that there was more than one HOA with a lien on the property.

Since the supposed "evidence" of tender provides no direction to the Trustee as to which lien the payment should be applied to A fact finder could easily find that the payments were not properly tendered because it would be unreasonable to expect the Trustee to *guess* which lien to apply the payments to, especially in light of the fact that the payments do not appear to match the actual balance owed, on either lien, at the time payment would have been received.[12] Even more confounding is the fact **that the "Ref#" on their document does not match any instrument ever recorded against the property.**[13] Finally, the supposed "evidence" of the rejected tender is impermissible as hearsay, since the document was completed by a courier, who didn't sign the document, and the supporting affidavit is by a party who was not present when the payment was *purportedly* rejected.

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[10] *See* the Timeline above.
[11] See ***Exhibit B*** – *Defendant's Motion For Summary Judgment, Pg. 5 at 14 and 15.*
[12] See ***Exhibit C*** – *Defendant's Evidence from its Motion for Summary Judgment.*
[13] See ***Exhibit C*** – *Defendant's Evidence from its Motion for Summary Judgment.*

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Defendants also copied two unexecuted documents onto one page without explanation, so Plaintiffs' Counsel is unclear as to what relevant evidence the Defense intended for the Court to infer from the merged documents. [14]

In Summation, the Defendants' *supposed* tender of payment was for a Balance on the Superpriority Lien, which was released prior to the existence of the Lien - Delinquency 4.[15] Even if there is some legal theory that would make the tender rejection issue relevant, and there isn't, there are material issues of fact as to whether the payment was even properly "tendered" or improperly "rejected" for trial.

K. *THE LIEN* WAS NOT DISCHARGED IN BANKRUPTCY COURT PRIOR TO THE FORECLOSURE.

The Superpriority Balance at issue: the Delinquency recorded as Instrument 3175, was not discharged in Bankruptcy court for all of the following reasons:

1) a lien on real property is not discharged in Chapter 7 Bankruptcy; and

2) Plaintiff was not required to refile its lien after Debtor's bankruptcy because NRS 311.116 provides an exact process to be followed in HOA foreclosures, and that process was followed precisely; and

3) because Defendant's misstated controlling, law by asserting that the Balance on the Superpriority Lien changed after or because of the bankruptcy; and

4) because Defendant's misstated controlling, law by asserting a nonexistent requirement for HOA's foreclosing on their liens, to file multiple times.\

L. A LIEN AGAINST REAL PROPERTY IS NOT DISCHARGED IN CHAPTER 7 BANKRUPTCY.

As Defendants must be aware, "...a bankruptcy discharge extinguishes only one mode of enforcing a claim-an *in personam* action-while leaving intact another-an *in rem* action. *Johnson v. Home State Bank, 501 U.S. 78, 79 (1991)*. Or, in other words: "A [c]reditor's right to Foreclose on a mortgage survives bankruptcy." (*Id.*) Thus the balance may be discharged, as to the Debtor, however, the lien remains because it is attached to real property. This is the entire reason Defendants even have standing in this suit, because *their* subordinate lien, and balance, survived the bankruptcy. Again NRS 116.3116(2) gives an HOA a true superpriority lien, proper foreclosure of which will ***extinguish a first deed of trust***. *(Emphasis Added). See* ***SFR***

[14] See ***Exhibit C*** – *Defendant's Evidence from its Motion for Summary Judgment.*
[15] ***Exhibit A*** - *Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Exhibit A - Public Records.*

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Investments Pool 1 v. U.S. Bank, 334 P.3d 408, 419. There can be no question that the HOA's superpriority lien, which had priority over the Defendant's lien, survived the bankruptcy if the Defendant's sub-priority lien amount remained against the property.

Defendants misconstrued the argument with a red-herring discussion about the fact that the homeowner had turned over the property in bankruptcy when Defendants cited 11 U.S.C. 523(a)16 in order to show that the fees and costs included on the Notice of default were extinguished by the bankruptcy. It then used this idea to support its claim that the HOA was required to "refile" its notice, and provide an updated balance. Plaintiff does not wish to belabor the point, but since this Honorable Court cited that argument nearly verbatim in its Order, Plaintiff will do so reluctantly.

11 U.S.C. 523(a)16 states:

> A discharge under section 727, 1141 (a), 1228 (b), or 1328 (b) of this title does not discharge **an individual debtor** from any **debt** – for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the ***debt*** of a ***debtor*** for a membership association fee or assessment for a period arising **before entry of the order** for relief in a pending or subsequent bankruptcy case.[16] (*emphasis added)*.

Even though Plaintiff concedes that bankruptcy of the prior homeowner eliminated the balance or "debt" owed by the "*debtor*," the bankruptcy did not destroy Balance on the Superpriority Lien, which runs with the land, and not with the debtor. (*Id.) Johnson v. Home State Bank*, 501 U.S. 78, 79 (1991).

M. PLAINTIFF ASSERTS THAT HIGH NOON ASSOCIATION WAS NOT REQUIRED TO REFILE ITS LIEN, OR TO ITEMIZE THE BALANCES OWED ON THE SUPERPRIORITY BALANCE AMOUNT NOTICE PROVIDED TO DEFENDANTS.

Plaintiff was not required to refile its lien, or file new disclosures after the Bankruptcy of the homeowner, because 1) the Balances owed on the Lien had already been disclosed in the prior Notice of Default, which were provided to the homeowners; and in the Notice of

[16] See ***Exhibit B*** – *Defendant's Motion For Summary Judgment, Pg. 13.*

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Delinquency, which was filed with the Assessor's office; and 2) the balance on the lien was not impacted by the homeowner's bankruptcy.

The facts of this case are nearly identical to those in the *SFR Investments Pool 1 v U.S. Bank*, as to the notice provided to the Defendant Banks. The Court pointed out that:

> U.S. Bank further complains about the content of the notice it received. It argues that due process requires specific notice indicating the amount of the superpriority piece of the lien and explaining how the beneficiary of the first deed of trust can prevent the superpriority foreclosure sale. But it appears from the record that specific lien amounts were stated in the notices, ranging from $1,149.24 when the notice of delinquency was recorded to $4,542.06 when the notice of sale was sent. **The notices went to the homeowner and other junior lienholders, not just U.S. Bank, so it was appropriate to state the total amount of the lien.** As U.S. Bank argues elsewhere, dues will typically comprise most, perhaps even all, of the HOA lien. And from what little the record contains, **nothing appears to have stopped U.S. Bank from determining the precise superpriority amount in advance of the sale or paying the entire amount and requesting a refund of the balance.** *See SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 418.

Defendants, like US Bank, complain about the notice they received, arguing that the filed notice should have showed only the Superpriority Lien amount. But as in US Bank's situation above, "**The notices went to the homeowner and other junior lienholders, not just [Defendants], so it was appropriate to state the total amount of the lien.**" *(Id.)*

Again this case is exactly like *SFR Investment Pool 1 v. US Bank*, as "**nothing appears to have stopped [Bank of America] from determining the precise superpriority amount in advance of the sale or paying the entire amount and requesting a refund of the balance.**" *(Id.)*

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N. THE STATUTORILY ENACTED PROCESS FOR HOMEOWNERS ASSOCIATIONS TO FORECLOSE ON THEIR LIENS IN NRS 116.31158 THROUGH 116.311.63 DOES NOT REQUIRE ADDITIONAL NOTICE.

The Nevada Legislature was explicit as it lay out the process for an HOA to foreclose on its superpriority lien. NRS Statutes 311.1162 through 116.31164 provide the exact process HOA's must follow, providing for each step the association must follow, including the exact time allowed for each step, thereby eliminating ambiguity regarding the process. The statutes even provide the precise verbiage of all notices, including the font thereof. *See* *SFR Investments Pool 1 v. U.S. Bank*, 130.

The legislature provided means for mortgage lienholders to protect their interests by ensuring additional opportunity for notice, via strict requirements of the foreclosure process laid out in NRS 116.31162 through NRS 116.31168. *(Id. at 334 P.3d 408, 411)* In doing so the Nevada Legislature departed from following 1982 UCIOA §§ 3–116, by creating significantly more stringent, but also more clear and specific, steps for HOAs initiating foreclosures in the Nevada statute. *(Id.)* Where the UCIOA provides for general third party notice requirements, NRS 116.31168 imposes specific timing and notice requirements. *(Id.)*

By meeting the requirements of NRS 116.31162 through 116.311.62, and reciting compliance with those statutes on the trustee's deed, the HOA ensures that that the sale upon foreclosure "is conclusive" according to NRS 116.31164. *See* *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 411-12.

But the Legislature did not stop there, for example: by requiring HOAs to perfect their priority position via the Declaration Filing with the Ombudsman's Office, subordinate lien holders such as Defendants, receive "record notice" of the HOA's priority as to security. Furthermore the Legislature has historically expected lien holders to protect their own interests as to security.[17] *See* NRS 106.210 & 106.220.

Finally, the Nevada Legislature provided an additional **failsafe** mechanism to ensure that the Mortgagee is not caught unaware by an HOA's foreclosure in NRS 116.311605, by requiring the HOA to send, "within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified,

[17] **NRS 116.3116** Recording of the declaration constitutes **record notice** and perfection of the lien. **No further recordation of any claim of lien for assessment under this section is required.**

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return receipt requested and with postage prepaid, containing a copy of the notice."[18] *See* *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408.

The HOA followed these requirements precisely.[19]

The "Notice of Default" provided to Defendants listed a contact phone number for the Trustee, and a contact phone number for the Ombudsman's Office, in case the mortgagee had questions as to how to proceed, to determine the Superpriority Balance, or to dispute the balance owed.[20] Plaintiffs provided Defendants notice by certified mail as required by the statute on June 3, 2013, and Defendants had ample opportunity, to ask for itemization of the balances on the Superpriority Lien Balance Amount and subpriority Lien Balance Amounts an updated balance or to otherwise dispute the balance.[21]

Instead, Defendants did nothing. Moreover Defendants claim to know how to calculate the Superpriority Lien, had the Defendants acted in good-faith, and paid off the Superpriority Lien Balance amount as the Nevada Legislature intended them to, they would have protected their interest in the property.

But the Defendants' unwillingness to conform with the statutes described above are the actual cause of Defendant's financial detriment in this case. As a result, Plaintiff suggests that the proper course of action for this Honorable Court is to vacate its prior Order, and to grant Summary Judgment in favor of the Plaintiff.

II.

CONCLUSION

Therefore, granting Defendant's Motion for Summary Judgment was clearly erroneous because Defendants failed to show that tender was properly tendered, or improperly rejected for the Superpriority Lien Amount or Balance in question, and, there is a genuine issue of material fact as to whether Plaintiff rejected tender by Defendants. The Order granting Summary Judgment was also clearly erroneous because because the Debtor's Bankruptcy could not have eliminated the Plaintiff's lien on the Property as a matter of law. Additionally, this court should

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[18] See ***Exhibit A*** – *Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Exhibit D – Notice to Lien Holders.*

[19] ***Exhibit A*** - *Plaintiff's Opposition to Defendant's Motion for Summary Judgment, Exhibits A through F.*

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grant a rehearing because the law regarding HOA foreclosures was severely misconstrued by Defendants, and if allowed to stand destroys equity and confounds the intent of the Nevada Legislature. Thus Plaintiff respectfully requests that this Honorable Court grant its Motion to Reconsider Summary Judgment, and Grant a Rehearing on Summary Judgment

DATED this 30th day of July, 2015.

Respectfully Submitted,

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of KANG & ASSOCIATES, over the age of 18, neither a party to nor interested in this matter; that on this 30th day, July 2015, I served a copy of **MOTION FOR REHEARING OF MOTION FOR SUMMARY JUDGMENT AND TO VACATE SUMMARY JUDGMENT**, as follows:

__X__ by **electronic** filing notification where specified on the attached service list:

_____ by **mailing** a copy thereof enclosed in a sealed envelope with postage prepaid in the United States Mail at Las Vegas, Nevada, to the counsel of record at the following address:

_____ by **facsimile** transmission, pursuant to NRCP(5)(b) and EDCR 7.26, to the following fax number:

_____ by **hand delivery**:

TO: Dana Jonathon Nitz, Esq.
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EXHIBIT A

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DISTRICT COURT
CLARK COUNTY, NEVADA

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Corporation Plaintiff, vs. BANK OF AMERICA, N.A., a Nevada Association, MORTGAGE ELECTRONIC REGISTRATION SYSTEM; an Illinois Corporation; ARLINGTON RANCH NORTH MASTER ASSOCIATION; a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION; a Nevada Non-Profit Corporation; DOES 1 Through 25 inclusive; and ROE CORPORATIONS, I through X, inclusive. Defendants.	Case No.: A-13-692200-C Dept. No.: VII

PLAINTIFF'S OPPOSITION TO DEFENDANTS' MERS AND CHRISTIANA TRUST, MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF"S COUNTERMOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiff, PROPERTY PLUS INVESTMENTS, by and through its attorneys of record, PATRICK W. KANG, ESQ., and ERICA D. LOYD, ESQ., of the law firm KANG & ASSOCIATES and hereby submits its Opposition to Defendants, MORTGAGE ELECTORNIC REGISTRATION SYSTEM and CHRISTIANA TRUST, Motion for Summary Judgment. Additionally, Plaintiff countermoves for Summary Judgment or in the alternative requests a Stay of Litigation.

Both, this Opposition to Defendants' Motion for Summary Judgment and Plaintiff's Countermotion for Summary Judgment are made based upon the attached points and authorities, paper, and pleadings on file herein, as well as any oral argument deemed necessary.

DATED 15th day, April 2015.

KANG & ASSOCIATES

By: _____

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POINTS AND AUTHORITIES IN SUPPORT OF OPPOSITION

I.

INTRODUCTION

Pursuant to the case precedent of *SFR Pool Investments v. U.S. Bank, N.A.*, 334 P. 3d 408 Nev. 2014), Nevada has stated that the first deed of trust is extinguished by an Homeowner's Association non-judicial foreclosure sale. Here, the foreclosure deed recitals coupled with the case precedent establish conclusive proof that Defendants had notice of the sale and failed to prevent the same. The notices of foreclosure as well as the foreclosure deed are presumed valid. For these reasons Summary Judgment should not be entered for the defendants but rather Plaintiff is entitled to Summary Judgment as to its' quiet title claims. Therefore, the Court should deny the Defendants' Motion for Summary Judgment; grant Summary Judgment to Plaintiff or in the alternative stay the litigation in this matter.

II.

FACTUAL BACKGROUND

A. UNDISPUTED FACTS BASED AS PROVEN BY PUBLIC RECORD DOCUMENTS

The Property at issue in this matter is real property commonly known as 8787 Tom Noon Avenue, No.:101, Las Vegas, Nevada 89178 with APN NO.: 176-20-714-331 ("subject property"). The facts as stated herein are ascertained from the Nevada Recorder's Office transaction history of for the subject property. (see ***Exhibit A***)[1]

1. N.R.S. 116.3116(s) was promulgated by the Nevada Legislature based on the Legislature's adoption of the Uniform Common Interest Ownership Act.

2. Defendants have had notice of the Homeowner's Associations lien as of March 2004 by the very nature of the CC&Rs and Amended CC&Rs running concurrently with the subject property Instrument No.: 2014-0407-00000020.

[1] Plaintiff requests that the Court pursuant to N.R.S. 47.130 take judicial notice of the publicly recorded documents contained herein this Opposition and Countermotion.

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3. The first deed of trust Instrument Nos.: 20050930002853 and 20050930002854 were recorded on September 30, 2005 which reflected ownership in the name of Christina Limberis.

4. However, on April 30, 2007, Instrument No.: 20070430006328 demonstrate that yet another deed of trust was recorded on the subject property reflecting ownership in the name of Megan Sulliban.

5. Subsequently on there was a substitution and reconveyance by Mortgage Electronic Systems to Christina Limberis on June 11, 2007.

6. The subject property has approximately 3 (three) Homeowner's Associations which include the following: Arlington Ranch North Master Association, High Noon at Arlington Ranch Homeowner's Association and Arlington Ranch Landscape Maintenance Association.

7. On February 09, 2009, Arlington Ranch North Master Association recorded a notice of lien for unpaid assessments, Instrument No.: 20090420002359. This lien was later released on April 20, 2009, Instrument No.: 20090420004245.

8. On April 08, 2010, High Noon at Arlington Ranch Homeowner's Association recorded a notice of lien for unpaid assessments, Instrument No.: 20100408000458 7.

9. On May 18, 2010, Arlington Ranch North Master Association recorded another notice of lien for unpaid assessments, Instrument No.: 20100518000284 1.

10. On July 01, 2010, High Noon at Arlington Ranch Association recorded a default for its April 2010 lien, Instrument No.: 20107010000205.

11. On September 27, 2010, Arlington Ranch North Master Association recorded default for its May 18, 2010 lien against the subject property, Instrument No.: 20100927000581 4. On March 21, 2011, Arlington Ranch North Master Association released its' lien and rescinded its default, Instrument Nos.: 20110321000139 0 and 20110321000139 1.

12. Similarly and subsequently, on August 11, 2011, High Noon at Arlington Ranch Association released its lien, Instrument No.: 20110811000324 9.

13. Approximately, a year later, High Noon at Arlington Ranch Association recorded another lien on July 20, 2012, Instrument No.: 20120720000317 5. (***see Exhibit B***)

14. On October 31, 2012, High Noon at Arlington Ranch Association recorded default for the July 20, 2012 lien, Instrument No.: 20121031000060 0. (***see Exhibit C***)

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15. On June 21, 2013, High Noon at Arlington Ranch Association recorded its notice of sale, Instrument No.: 201306210001581. (***see Exhibit D***)

16. As a result of the non-judicial foreclosure sale, on July 30, 2013, Plaintiff's deed was recorded on the subject property, Instrument No.: 201307300000805. (***see Exhibit E***)

17. On April 07, 2014, subsequent to Plaintiff's ownership and foreclosure deed, the subject property was assigned to Christiana's Trust, Instrument No.: 201404070000020.

18. Additionally, Plaintiff satisfied the Arlington Ranch North Master Association Lien recorded which resulted in a release of the same, Instrument Nos.: 201409260000513, 201409260000514, 201409260000515, 201409260000516, 201410080001608 and 201410080001609.

19. Defendant did not attempt to tender funds in satisfaction to Alessi & Koenig for High Noon at Arlington Ranch Association's July 20, 2012 lien.

20. Defendants were not present during the foreclosure sale at issue despite receiving notice of the same.

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III.

SUMMARY JUDGMENT STANDARD

"The requirement [for summary judgment] is that there be no genuine issues of material fact." *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1030 (Nev. 2005). Courts "have noted when reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the non-moving party." *Id.* at 1029. Here, Defendants allege entitlement to summary judgment as a matter of law based on unmeritorious argumentation. However, a denial of Defendant's request for summary judgment is proper because the Defendant's undisputed facts are speculative facts, untrue facts as well as unsupported by any articulable and authenticated evidence." *Id.* at 1030.

Moreover, "summary judgment is appropriate under *NRCP 56* when pleadings,

depositions, and affidavits, if any that are properly before the Court demonstrates that no genuine issues of material fact exist, and the moving party is entitled to judgment as a matter of law." *Id.* In the instant matter, the depositions, evidence and affidavit demonstrate that genuine issues of material fact exist therefore summary judgment is inappropriate in this instance. Here, "[the] factual disputes[s] are genuine [because] the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." *Id.* Here, when evaluating the specific facts of this matter, including the public record documents, coupled with the contextual facts; a reasonable trier of fact may return a decision in favor of Plaintiff rather than Defendant; hence Plaintiff's countermotion for summary judgment. Defendant argues to summarily dismiss Plaintiff's claims based on facts and other legal premises. Plaintiff is confident that through this Opposition and Countermotion, it will make clear that the allegations articulated in Defendants' Motion are insufficient to meet the standard for the grant of summary dismissal in the Defendants' favor.

Essentially, Courts have stated that "[s]ummary judgment disposes of those claims or defenses in which the moving party has shown (1) the absence of genuine issues as to the material facts, and (2) that the court may grant judgment as a matter of law. Fed.R.Civ.Pro. 56(c)." *US v. Nye County, Nev.*, 920 F. Supp. 1108, 1111 (D. Nevada 1996)(citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986)). Further, Courts have noted it will construe and draw reasonable inferences from the evidence in a light most favorable to the non-moving party. *Id.* Here, the Court, weighing the evidence in the Defendants' favor must grant summary judgment to the Plaintiff because Plaintiff is the bona fide owner as a matter of law.

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IV.

ARGUMENT

A. DEFEDNANTS' MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE DEFENDANT FAILED TO OFFER A TENDER SUBSEQUENT TO THE RECORDING OF THE JULY 20, 2012 LIEN.

In the instant case, Defendants assert that its' tender of payment of the super-priority lien voids the sale and preserves the first deed of trust on the subject property. "NRS 116.3116(2) thus splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is "prior to" a first deed of trust. The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed of trust." *SFR INVESTMENTS POOL 1 v. US Bank*, 334 P. 3d 408, 411(Nev. 2014). Defendants contend that the HOA sale at issue herein is void because of an alleged rejected tender. Here, Plaintiff asserts that it was unaware of an alleged tender. While this explanation is seemingly insufficient for the Defendants, Plaintiff asserts that the public record evidence supports that the Defendants' prior tender was accepted by the HOA as well as Defendant failed to offer a tender for the HOA sale at issue.

In the case at bar, the record reflects that High Noon at Arlington Ranch Association ("High Noon") recorded a lien in April 2010 and default of said lien in July 2010. Defendant asserts that it submitted tender in September of 2010 to Alessi & Koenig. Arguably, Defendants tender was ultimately accepted by the High Noon which resulted in the release of lien recorded in August 2011. Defendants' own documents suggest that the 2011 tender was accepted and resulted in a release of the 2010 lien. (see ***Exhibit F***) Therefore, Defendants' tender argument is unmeritorious. Moreover, Defendants offer no proof or

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evidence that it submitted a tender with regards to the High Noon lien recorded in July 2012; approximately a year from the lien release. Most notably, Defendants documents suggest that High Noon sent invoices for assessments subsequent to the lien release. The evidence demonstrates that Defendant's failed to protect its interest by making timely payments for the assessments for approximately a year which resulted in the recording of a new lien, default as well as the foreclosure sale conducted on July 30, 2013. Therefore, the Court should deny Defendants' contention that the High Noon sale is void because of the alleged rejection of a tender in 2011 which is well prior to the July 20, 2012 lien. It is the July 20, 2012 lien which supports the High Noon foreclosure sale in July 2013. This Court should deny Defendants' Motion for Summary Judgment on the basis of tender.

B. <u>DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE THE HOA LIEN IS VALID AND PURSUANT TO N.R.S. 116.3116.</u>

In the instant case, Defendants contend that the High Noon lien violates N.R.S. 116.3116(2). Again, "NRS 116.3116(2) thus splits an HOA lien into two pieces, a superpriority piece and a subpriority piece. The superpriority piece, consisting of the last nine months of unpaid HOA dues and maintenance and nuisance-abatement charges, is "prior to" a first deed of trust. The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed of trust." *<u>SFR INVESTMENTS POOL 1 v. US Bank,</u>* 334 P. 3d 408, 411(Nev. 2014). Nonetheless, The Nevada Real Estate Division ("NRED") clarifies that "based on [N.R.S. 116.3116(1), the association's lien includes assessments, construction penalties, and fines imposed against a unit when they become due. In addition – unless the declaration otherwise provides – penalties, fees, charges, late charges, fines, and interest charged pursuant to NRS 116.3102(1)(j) through (n) are also part of the

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association's lien in that such items are enforceable as if they were assessments." (***see Exhibit G***) Defendants assert that the High Noon invoices and status reports included collection costs. It is clear that the High Noon invoices only included assessments, late charges and interest as reflected by the May 2012 Lien. (***see Exhibit H***). Moreover, Defendants refer to Alessi & Koenig Invoices which are prior to the July 2011 lien release and have no bearing regarding the July 2012 lien. (***see Exhibit I***) Defendants fail to provide documents reflecting any invalidity of the July 2012 lien. Thus, there is no just cause for this Court to presume invalidity of the lien rather than validity of the same.

Moreover, the NRED 13-01 Opinion to which the Defendant cites as justification for the alleged invalidity of the lien was issued in December 12, 2012. The lien at issue herein was recorded on July 20, 2012. Therefore, it is arguable that High Noon and Alessi & Koenig lacked the knowledge or awareness that the lien could not include costs for collection. Moreover, it is clear from the NRED Opinion 13-01 that well prior to December 2012; many HOAs were under the impression that the costs of collecting were included in the HOA lien. NRED in 13-01 Opinion states, "[t]he Commission's advisory opinion from December 2010 also relies on changes to the Uniform Act from 2008 to support the notion that collection costs should be part of the association's super priority lien." Therefore, the lien herein was proper under the Nevada Law at the time of recordation.

In the alternative, the purpose of the Notice is to give persons of interest the opportunity to redeem the property. *Stranford Burt v. Sutter Creek Homeowner's Association*, et. al., Case No.: A-12-672790-C, Court Minute Order. In the Minute Order relied upon by the Defendants herein, the Court states, "the purpose of the notice, which is to give the amount necessary for redemption, is defeated if the amount is materially in

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error." Here, Plaintiff asserts the amount as stated on the Notice of Lien is not materially in error. In fact, the amount specifically delineates which part of the lien is for assessments, penalties and late charges as well as interest in order to provide Defendants with the opportunity to redeem the subject property prior to foreclosure sale as Defendant had done in 2011. Moreover, the High Noon Invoices are devoid of any collection costs for the July 2012 lien. Most importantly, here Defendants failed to do anything to redeem the subject property prior to the July 2013 foreclosure sale (i.e. pay assessments, tender, appear at sale, contest lien, etc.). Defendants failed to protect its' respective property interests and now wants the Court to unjustifiably invalidate the sale to the Plaintiff's detriment because of each Defendants respective failure to merely pay HOA monthly assessments. The evidence supports a strong inference that the Notice of Lien and subsequent notices recorded as of July 2013 were valid; thus the sale should not be rescinded in this matter. Therefore, defendant's Motion for Summary Judgment should be denied in this case.

C. <u>DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE THE HOA FORECLOSURE SALE DID NOT VIOLATE SULLIBAN'S BANKRUPTCY DISCHARGE.</u>

Defendants, next assert that the High Noon foreclosure sale is invalid because of Sulliban's bankruptcy discharge. It is well known and well rested principle that a bankruptcy discharge does not prevent a secured creditor from proceeding with foreclosure sale of a property after the bankruptcy is discharged by the U.S. Bankruptcy Court. Commonly, the filing for bankruptcy renders a stay with regards to collection or pending sale until final discharge of said bankruptcy. Defendants cite to 11 U.S.C. §523(a)(16) which states,

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> (a)A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt (16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case

Here, High Noon recorded its lien July 2012 well prior to Sulliban filing for bankruptcy.

Most notably, 11 U.S.C. §523(a)(16) does not invalidate or satisfy the liens recorded for assessments against the subject property. Moreover, though bankruptcy Sulliban merely disclaimed her personal responsibility for the payments of assessments to High Noon as well as loan payments owed to Defendants under the first deed of trust. Under Defendant's premise their first deed of trust and any subsequent lien would be invalid as well. Most importantly, Defendants lack standing to raise said issue as Defendants did not file bankruptcy nor were the trustee to the bankruptcy. Thus, Defendants Motion for Summary Judgment should be denied as the HOA sale was proper in this instance.

D. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE THE HOA FORECLOSURE SALE WAS COMMERCIALLY REASONABLE.

In another attempt to persuade this Honorable Court to grant a motion for summary judgment in its favor, Defendants allege that the sale was commercially unreasonable. This argument is unmeritorious as it is indeed circular. On one hand, the Defendant asserts that High Noon was asking for too much money to satisfy the lien yet Defendants' contend that the sale was commercially unreasonable because High Noon did not obtain a windfall of

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monies at the foreclosure sale. This circular reasoning does not support a grant of summary judgment in the Defendants' favor.

Defendant asserts that the High Noon foreclosure sale was commercially unreasonable because the foreclosure sales price of $7,500.00 in relation to the $234,000.00 loan and $72,334.00 fair market value of the property. The Nevada Supreme Court has specifically stated, "[m]ere inadequacy of price is not sufficient to justify setting aside a foreclosure sale, absent a showing of fraud, unfairness or oppression." *Long v. Towne*, 639 P. 2d 528, 530 (Nev. 1982). Additionally, "[t]he commercial reasonableness here must be assessed as of the time the sale occurred." *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, Order Denying MSJ, *5, 2015 WL 301063 (D. Nevada 2015). (***see Exhibit J***) Analogous to Bourne Valley, here Defendants

> "argument that the HOA foreclosure sale was commercially unreasonable due to the discrepancy between the sale price and the assessed value of the property ignores the practical reality that confronted the purchaser at the sale. Before the Nevada Supreme Court issued SFR Investments, purchasing property at an HOA foreclosure sale was a risky investment, akin to purchasing a lawsuit....Given these risks, a large discrepancy between the purchase price a buyer would be willing to pay and the assessed value of the property is to be expected."

Id.

In the instant case, Plaintiff took the risk of purchasing the subject property prior to the SFR decision. Moreover, the Trustee Deed Upon Sale clearly substantiates that Defendant was the highest bidder at the foreclosure sale; indicating that the sale was public and Plaintiff was amongst many bidding on the property. (***see Exhibit E***) It is clearly demonstrable from the evidence that High Noon started the bid at $2,292.67 (worth of the delinquent assessments) in good faith and successfully obtained a purchaser for triple the

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asking price which negates that the sale was commercially unreasonable in this instance. (***see Exhibit D pg. 2***) Analogous to *Bourne Valley*, in the case at bar, Defendants fail to proffer any evidence other than price that evidences that the foreclosure sale in July 2013 was commercially unreasonable. Thus, this Court should reject Defendants commercial unreasonableness argument as the Court in *Bourne Valley* rejected the same.

The Court in *Bourne Valley* rejected Defendants' arguments alleging that the HOA foreclosure sale commercially unreasonable by stating,

> "[m]oreover, [Defendants do] not point to any evidence or legal authority indicating the Court must void an HOA foreclosure sale because the purchaser bid only a fraction of the property's assessed value. [Defendants do] not point to evidence of fraud or any other procedural defects or other irregularities in the conduct of the sale that would require the Court to void the sale, or any evidence indicating the HOA acted in bad faith by selling the property for an amount that would satisfy the unpaid assessments. Nor [do Defendants] point to evidence or legal authority indicating that beyond selling the property to the highest bidder, the HOA was responsible for protecting Wells Fargo and Johnson's interests in addition to the homeowners' interests.

Id. This case is analogous to *Bourne Valley* and many cases where Nevada rejects that price alone substantiates that the foreclosure sale is unreasonable. Here, High Noon obtained a reasonable amount of money from the foreclosure sale to satisfy its lien. Obviously, if the bidding went higher High Noon would have accepted monies higher than $7,500.00. For these reasons the High Noon foreclosure sale was commercial reasonable under the totality of the circumstances. Thus, Defendants are not entitled to summary judgment to quiet title against the Plaintiff because"[u]nder the specific facts presented here, it was not[commercially unreasonable." *Id*.

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E. <u>DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE THE MORTGAGE PROTECTION CLAUSE DOES NOT VOID THE HOA FORECLOSURE SALE.</u>

Defendants, also, assert that the Plaintiff fails to be a bona fide purchaser because of the Mortgage Protection Clause contained in the High Noon CCRs. Defendant asserts that the Mortgage Saving Provision states,

> "[t]he mortgage savings clause states that "no lien created under this Article [7] [governing nonpayment of assessments], nor the enforcement of any provision of this Declaration shall defeat or render invalid the rights of the beneficiary under any Recorded first deed of trust encumbering a Unit, made in good faith and for value." It also states that "[t]he lien of the assessments, including interest and costs, shall be subordinate to the lien of any first Mortgage upon the Unit."

<u>SFR INVESTMENTS POOL 1 v. US Bank</u>, 334 P. 3d 408, 419 (Nev. 2014). Defendants' contention is unmeritorious as the Nevada Supreme Court rejected Defendants' position stating, "NRS 116.1104 defeats this argument." *<u>Id</u>*. The Nevada Supreme Court reject similar mortgage protection clauses because N.R.S. 116, et.al. specifically states, "[c]hapter 116's "provisions may not be varied by agreement, and rights conferred by it may not be waived ... [e]xcept as *expressly* provided in" Chapter 116. (*Emphasis added.*) "Nothing in [NRS] 116.3116 expressly provides for a waiver of the HOA's right to a priority position for the HOA's super priority lien."" *<u>SFR INVESTMENTS POOL 1 v. US Bank</u>*, 334 P. 3d 408, 419 (Nev. 2014)(citing N.R.S. 116). Moreover, the precedent that the mortgage protection clause in the CC&R's does not invalidate and HOA foreclosure sale or limit the HOA from foreclosing or extinguishing the first deed of trust. *<u>Bourne Valley Court Trust v. Wells Fargo Bank, N.A.</u>*, Order Denying MSJ, *6, 2015 WL 301063 (D. Nevada 2015) and *<u>7912 Limbwood Court Trust v. Wells Fargo Bank, N.A.</u>*, 979 F. Supp.2d 1142, 1153 (D. Nev. 2013). Case precedent as

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well as the facts herein support that this Court should deny Defendants' alleged entitlement to summary judgment.

F. <u>DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE THE FIRST DEED OF TRUST WAS EXTINGUISHED BY THE HOA FORECLOSURE SALE.</u>

Here, it is clear that Defendant's are not entitled to summary judgment. The foreclosure sale by High Noon was indeed a valid sale. Defendant fails to provide any evidence which substantiates that the High Noon foreclosure sale in July 2013 based on the High Noon lien recorded in July of 2012 is invalid pursuant to case law or statutory law. In this instance Plaintiff has met the burden of proof that it is a bona fide good faith purchaser of the High Noon super-priority lien which extinguished Defendants' first deed of trust. Therefore, this Court should deny Defendants' Motion for Summary Judgment in its entirety.

G. <u>THIS COURT SHOULD ENTER SUMMARY JUDGMENT IN FAVOR OF THE PLAINTIFF.</u>

In the case at bar, Plaintiff countermoves for summary judgment in its favor based on the following: Defendants received proper notices of the July 2012 High Noon lien, failed to cure the lien which resulted in the valid High Noon foreclosure sale in July 2013. Here, Plaintiff provides evidence that the High Noon Sale and foreclosure sale deed presumably valid due to Defendants' lack of providing this Court with evidence to destroy the presumed validity. Defendants do not assert that High Noon failed to adhere to the notice requirements pursuant to N.R.S. 116.3116. Most notably, similar to <u>*Bourne Valley*</u>, Plaintiff asserts that "the recitals in the Trustee's Deed Upon Sale stating there was compliance with all statutory notice requirements is conclusive proof that the HOA complied with the notice

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requirements [and the High Noon foreclosure sale was valid.]" *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, Order Denying MSJ, *3, 2015 WL 301063 (D. Nevada 2015). (***see Exhibit E***) Since, the Defendant's Motion is not supported by any articulable evidence which the Court can consider or even take judicial notice of, Plaintiff requests a denial of the Motion for Summary Judgment. Here, "[g]iven that the foreclosure deed recites there was a default, the proper notices were given, the appropriate amount of time has lapsed between notice of default and sale, and notice of the sale was given, under § 116.31166(1), the foreclosure deed constitutes "conclusive proof" that the required statutory notices were provided. [Plaintiff] therefore has met its burden of showing the required statutory notices were provided to [Defendants]." Similar to Bourne Valley, applying SFR Investments Pool decision, this Court should grant summary judgment in favor of the Plaintiff as Plaintiff has met its burden of proof to conclusively establish that Plaintiff is the owner of the subject property and is entitled to quiet title against the Defendants.

Most importantly, in addition to case law, evidence and the totality of circumstances herein, public policy supports Plaintiff is the true owner and Defendants' first deed of trust is extinguished by the High Noon foreclosure sale in 2013. It is undisputed that as long as the current dues [assessments] are being paid the HOA cannot foreclose upon its' lien. Defendants simply failed to pay the assessment in order to protect its first deed of trust and priority for the subject property. At the very least Defendants could have tender money as it did in 2011 or worst case scenario Defendants could have protected its interest by attending the properly noticed sale to prevent its first deed of trust from being extinguished if Defendants truly sought to protect its priority status and property interest in the subject property. Defendants had several opportunities to prevent the High Noon

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foreclosure sale however Defendants merely ignored the obligation to make current payments to High Noon for the subject property thus denying protection of its property rights. Therefore, this Court as the Court in *Limbwood* and the Court in *Bourne* should grant summary judgment in favor of the Plaintiff, the true owner of the subject property

V.

CONCLUSION

For the foregoing reasons, this Court should deny Defendant's Motion for Summary Judgment in its entirety and grant Plaintiff's Countermotion for Summary Judgment. In light of the facts, public records, evidence, and case law and the above matters, no just cause entitles the Defendants to a summary dismissal. However, this matter is ripe for summary judgment in the Plaintiff's favor as to its cause of action for quite title. Therefore, Plaintiff respectfully requests the Court to deny the Defendants' Motion for Summary Judgment, grant Plaintiff's Countermotion for Summary Judgment and grant any further relief that the court may deem just and proper.

DATED this 15th day of April, 2015.

Respectfully Submitted,

KANG & ASSOCIATES

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of KANG & ASSOCIATES, over the age of 18, neither a party to nor interested in this matter; that on this 15th day, April 2015, I served a copy of **PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND PLAINTIFF'S COUNTERMOTION FOR SUMMARY JUDGMENT**, as follows:

X by **electronic** filing notification where specified on the attached service list:

_____ by **mailing** a copy thereof enclosed in a sealed envelope with postage prepaid in the United States Mail at Las Vegas, Nevada, to the counsel of record at the following address:

_____ by **facsimile** transmission, pursuant to NRCP(5)(b) and EDCR 7.26, to the following fax number:

_____ by **hand delivery**:

TO: Dana Jonathon Nitz, Esq.
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EXHIBIT A

Search Results

You searched under: **Parcel Number**, for: **176-20-714-331**, with the document types of: **ALL DOCUMENTS**, between: **1/1/1900** and **4/15/2015**

Records found: 47

Refresh |

First Party Name	First Cross Party Name	Instrument #	Document Type	Modifier	Record Date	Parcel #	Remarks	Total Value
DR HORTON INC		200509300002851	ANNEXATION	AMEND	9/30/2005 12:11:14 PM	176-20-714-331		
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LIMBERIS, CHRISTINA E	DHI MORTGAGE COMPANY LTD	200509300002854	DEED OF TRUST		9/30/2005 12:11:14 PM	176-20-714-331		
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LLC	ASSOCIATION					331	
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ARLINGTON RACH NORTH MASTER ASSOCIATION	PROPERTIES PLUS INVESTMENTS LLC	201409260000514	LIEN	RELEASE	9/26/2014 9:09:40 AM	176-20-714-331	$0.00
ARLINGTON RANCH NORTH MASTER ASSOCIATION	SULLIBAN, MEGAN R	201409260000515	DEFAULT	RESCISSION	9/26/2014 9:09:40 AM	176-20-714-331	$0.00
ARLINGTON RANCH NORTH MASTER ASSOCIATION	PROPERTIES PLUS INVESTMENTS LLC	201409260000516	DEFAULT	RESCISSION	9/26/2014 9:09:40 AM	176-20-714-331	$0.00
ARLINGTON RANCH NORTH MASTERE ASSOCIATION	SULLIBAN, MEGAN R	201410080001608	LIEN	RELEASE	10/8/2014 10:40:58 AM	176-20-714-331	$0.00
ARLINGTON RANCH NORTH MASTERE ASSOCIATION	PROPERTIES PLUS INVESTMENTS LLC	201410080001609	LIEN	RELEASE	10/8/2014 10:40:58 AM	176-20-714-331	$0.00
PROPERTIES PLUS INVESTMENTS LLC	REPUBLIC SILVER STATE DISPOSAL INC	201503030004350	LIEN		3/3/2015 4:31:41 PM	176-20-714-331	$0.00

KANG & ASSOCIATES, PLLC.
6480 W. SPRING MOUNTAIN ROAD, SUITE 1
LAS VEGAS, NV 89146

EXHIBIT B

When recorded return to:

176-20-714-331

ALESSI & KOENIG, LLC
9500 W. Flamingo Rd., Suite 205
Las Vegas, Nevada 89147
Phone: (702) 222-4033

A.P.N. 176-20-714-331 Trustee Sale # 31123-8787-101

NOTICE OF DELINQUENT ASSESSMENT (LIEN)

In accordance with Nevada Revised Statutes and the Association's Declaration of Covenants, Conditions and Restrictions (CC&Rs) of the official records of Clark County, Nevada, **High Noon at Arlington Ranch Homeowner's Association** has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as **8787 Tom Noon Ave., #101, Las Vegas, NV 89178** and more particularly legally described as: **HIGH NOON AT ARLINGTON RANCH UNIT 101 BLDG 111** Book **115** Page **21** in the County of **Clark**.

The owner(s) of record as reflected on the public record as of today's date is (are): **Megan Sullivan**

The mailing address(es) is: **8787 Tom Noon Ave., #101, Las Vegas, NV 89178**

The total amount due through today's date is: **$1,887.01**. Of this total amount **$1,812.01** represent Collection and/or Attorney fees, assessments, interest, late fees and service charges. **$75.00** represent collection costs. Note: Additional monies shall accrue under this claim at the rate of the claimant's regular monthly or special assessments, plus permissible late charges, costs of collection and interest, accruing subsequent to the date of this notice.

Date: **July 3, 2012**

By: _____
Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of **High Noon at Arlington Ranch Homeowner's Association**

State of Nevada
County of Clark
SUBSCRIBED and SWORN before me July 3, 2012

(Seal)

(Signature)

_____
NOTARY PUBLIC

KANG & ASSOCIATES, PLLC.
6480 W. SPRING MOUNTAIN ROAD, SUITE 1
LAS VEGAS, NV 89146

EXHIBIT C

When recorded mail to:

THE ALESSI & KOENIG, LLC
9500 West Flamingo Rd., Ste 205
Las Vegas, Nevada 89147
Phone: 702-222-4033

Inst #: 201210310000600
Fees: $17.00
N/C Fee: $0.00
10/31/2012 08:04:08 AM
Receipt #: 1364059
Requestor:
ALESSI & KOENIG LLC
Recorded By: MAT Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

A.P.N. **176-20-714-331** Trustee Sale No. **31123-8787-101**

NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

WARNING! IF YOU FAIL TO PAY THE AMOUNT SPECIFIED IN THIS NOTICE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE! You may have the right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account. The sale may not be set until ninety days from the date this notice of default recorded, which appears on this notice. The amount due is **$3,190.45** as of **October 5, 2012** and will increase until your account becomes current. To arrange for payment to stop the foreclosure, contact: **High Noon at Arlington Ranch Homeowner's Association**, c/o Alessi & Koenig, 9500 W. Flamingo Rd, Ste 205, Las Vegas, NV 89147, (702)222-4033.

THIS NOTICE pursuant to that certain Notice of Delinquent Assessment Lien, recorded on **July 20, 2012** as document number **0003175,** of Official Records in the County of **Clark**, State of Nevada. Owner(s): **Megan Sullivan,** of **HIGH NOON AT ARLINGTON RANCH UNIT 101 BLDG 111,** as per map recorded in Book **115**, Pages **21**, as shown on the Plan and Subdivision map recorded in the Maps of the County of **Clark**, State of Nevada. PROPERTY ADDRESS: **8787 Tom Noon Ave., #101, Las Vegas, NV 89178.** If you have any questions, you should contact an attorney. Notwithstanding the fact that your property is in foreclosure, you may offer your property for sale, provided the sale is concluded prior to the conclusion of the foreclosure. REMEMBER YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT Alessi & Koenig, LLC is appointed trustee agent under the above referenced lien, dated **July 20, 2012**, on behalf of **High Noon at Arlington Ranch Homeowner's Association** to secure assessment obligations in favor of said Association, pursuant to the terms contained in the Declaration of Covenants, Conditions, and Restrictions (CC&Rs). A default in the obligation for which said CC&Rs has occurred in that the payment(s) have not been made of homeowners assessments due from and all subsequent assessments, late charges, interest, collection and/or attorney fees and costs.

Dated: **October 5, 2012**

Huong Lam, Esq. of Alessi & Koenig, LLC on behalf of **High Noon at Arlington Ranch Homeowner's Association**

KANG & ASSOCIATES, PLLC.
6480 W. SPRING MOUNTAIN ROAD, SUITE 1
LAS VEGAS, NV 89146

EXHIBIT D

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

APN: 176-20-714-331 TSN 31123-8787-101

NOTICE OF TRUSTEE'S SALE

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

NOTICE IS HEREBY GIVEN THAT:

On July 17, 2013, Alessi & Koenig as duly appointed Trustee pursuant to a certain lien, recorded on July 20, 2012, as instrument number 0003175, of the official records of Clark County, Nevada, WILL SELL THE BELOW MENTIONED PROPERTY TO THE HIGHEST BIDDER FOR LAWFUL MONEY OF THE UNITED STATES, OR A CASHIERS CHECK at: 2:00 p.m., at 9500 W. Flamingo Rd., Suite #205, Las Vegas, Nevada 89147 (Alessi & Koenig, LLC Office Building, 2nd Floor)

The street address and other common designation, if any, of the real property described above is purported to be: 8787 Tom Noon Ave., #101, Las Vegas, NV 89178. The owner of the real property is purported to be: Megan Sullivan

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is $5,019.80. Payment must be in made in the form of certified funds.

Date: JUN 0 3 2013

By: Huong Lam, Esq. of Alessi & Koenig LLC on behalf of High Noon at Arlington Ranch Homeowner's Association

DAVID ALESSI *

ROBERT KOENIG **

THOMAS BAYARD *

* Admitted in CA

** Admitted in CA, NV & CO

*** Admitted in CA & NV

**** Admitted in NV

ALESSI KOENIG

A Multi-Jurisdictional Law Firm

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

RYAN KERBOW ***

HUONG LAM ****

BRAD BACE ****

ADDITIONAL OFFICES

AGOURA HILLS, CA
PHONE: 818- 735-9600

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

AUTHORIZATION TO CONCLUDE NON-JUDICIAL FORECLOSURE AND CONDUCT TRUSTEE SALE

Dear Board of Directors and Management:

Alessi & Koenig, LLC is processing the posting and publication of a Notice of Trustee Sale for the below referenced property. Prior to the sale taking place, Alessi & Koenig requests a member of the Board of Directors, or a managing agent of the Board of Directors, sign this authorization.

If there are no bidders at the trustee sale, the property will revert to the homeowners association (HOA); and the HOA will acquire ownership of the property. Alessi & Koenig will record a Trustee's Deed Upon Sale on behalf of the HOA and advance the real property transfer tax.

Should the property revert to the HOA, Alessi & Koenig will provide an invoice for foreclosure fees and reimbursement of costs; including transfer tax and title insurance. Alessi & Koenig fees approximate $2,500 to $2,950.

Delinquent homeowner's name(s): **MEGAN R SULLIBAN**

Homeowner Association name: **High Noon at Arlington Ranch Homeowner's Association**

Delinquent homeowner's property address: **8787 TOM NOON AVE #101, LAS VEGAS, NV 89178-7792**

Estimated Trustee Sale Date: **July 17, 2013**

Approximate amount owed bank (1st mortgage): **$215,000.00*** Approx Equity: **unknown**

Approximate Amount owed HOA (delinquent assessment): **$2,292.67**

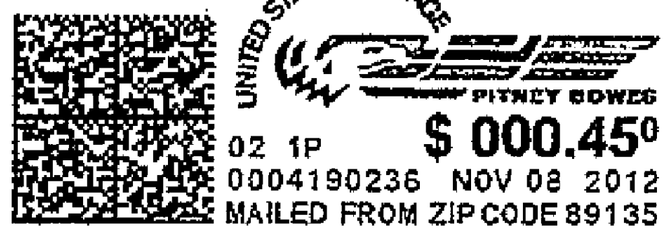
Bank Foreclosing:

The undersigned has been authorized to execute this agreement on behalf of the above referenced Homeowners Association. Execution of this agreement authorizes Alessi & Koenig to conduct a public auction via trustee sale of the above referenced property.

Signed: _____ ***Dated:*** _____

AGENT for **High Noon at Arlington Ranch Homeowner's Association** *See www.eppraisal.com

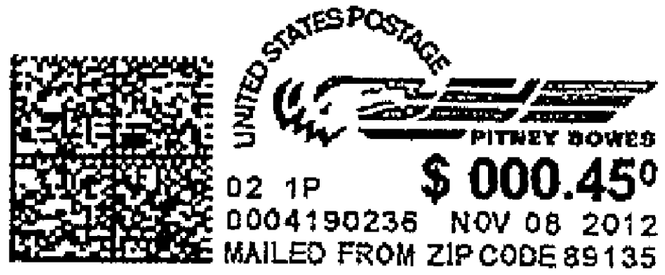
ALESSI & KOENIG
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147



Megan Sullivan
8787 Tom Noon Ave. #101

Las Vegas, NV 89178-7792

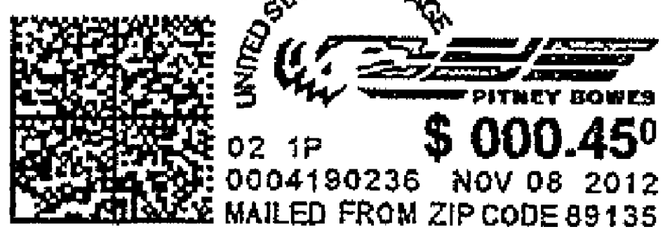
ALESSI & KOENIG
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147



Republic Services
PO Box 98508

Las Vegas, NV 89193-8508

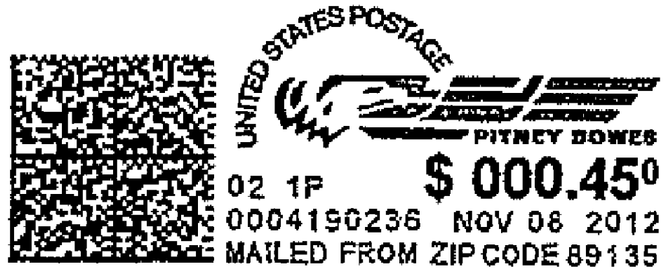
ALESSI KOENIG
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147



Silver State Trustee Services, LLC
1424 So. Jones Blvd

Las Vegas, NV 89146-1231

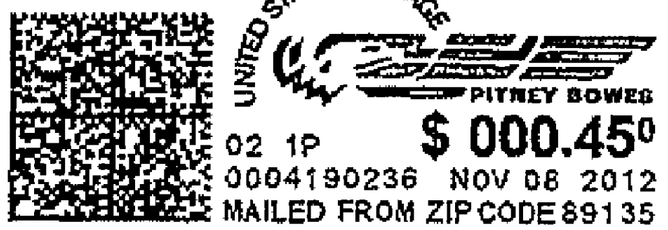
ALESSI KOENIG
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147



Homeowner Association Services, Inc.
3513 E. Russell Road

Las Vegas, NV 89120

ALESSI & KOENIG
9500 W. Flamingo Rd. Suite 205
Las Vegas, NV 89147



Bank of America, NA
275 So. Valencia Ave, 1st Floor

Brea, CA 92823-6340

MEGAN R SULLIBAN
8787 TOM NOON AVE #101

LAS VEGAS, NV 89178-7792

Homeowner Association Services, Inc.
3513 E Russell Road

Las Vegas, NV 89120-2243

Bank of America, NA
275 S Valencia Ave 1st Floor

Brea, CA 92823-6340

Republic Services
PO Box 98508

Las Vegas, NV 89193-8508

Silver State Trustee Services, LLC
1424 S Jones Blvd

Las Vegas, NV 89146-1231

OMBUDSMANS OFFICE
Attn: GORDAN MILDEN
2501 E SAHARA AVE SUITE 205

LAS VEGAS, NV 89104-4128

NOTS MAILINGS

7012 3460 0000 3080 9379

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
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For delivery information visit our website at www.usps.com®

OFFICIAL USE

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

LAS VEGAS, NV 89113-9998
JUN 14 2013
Postmark Here
USPS

Sent To: MEGAN R SULLIBAN
Street, Apt. No.; or PO Box No.: 8787 TOM NOON AVE #101
City, State, ZIP+: LAS VEGAS, NV 89178-7792

PS Form 3800

7012 3460 0000 3080 9362

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

LAS VEGAS, NV 89113-9998
JUN 14 2013
Postmark Here
USPS

Sent To: Bank of America, NA
Street, Apt. No.; or PO Box No.: 275 S Valencia Ave 1st Floor
City, State, ZIP+: Brea, CA 92823-6340

PS Form 3800

7012 3460 0000 3080 9355

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Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees ¢

LAS VEGAS, NV 89113-9998
JUN 14 2013
Postmark Here
USPS

Sent To: Silver State Trustee Services, LLC
Street, Apt. No. or PO Box No.: 1424 S Jones Blvd
City, State, ZIP+: Las Vegas, NV 89146-1231

PS Form 3800

7012 3460 0000 3080 9348

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

LAS VEGAS, NV 89113-9998
JUN 14 2013
Postmark Here
USPS

Sent To: Homeowner Association Services, Inc.
Street, Apt. No. or PO Box No.: 3513 E Russell Road
City, State, ZIP+: Las Vegas, NV 89120-2243

PS Form 3800

7012 3460 0000 3080 9331

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

LAS VEGAS, NV 89113-9998
JUN 14 2013
Postmark Here
USPS

Sent To: Republic Services
Street, Apt. No. or PO Box No.: PO Box 98508
City, State, ZIP+: Las Vegas, NV 89193-8508

PS Form 3800

7012 3460 0000 3080 9324

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

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

LAS VEGAS, NV 89113-9998
JUN 14 2013
Postmark Here
USPS

Sent To: OMBUDSMANS OFFICE
Attn: GORDAN MILDEN
Street, Apt. No. or PO Box No.: 2501 E SAHARA AVE SUITE 205
City, State, ZIP+: LAS VEGAS, NV 89104-4126

PS Form 3800

NOTS MAILINGS

KANG & ASSOCIATES, PLLC.
6480 W. SPRING MOUNTAIN ROAD, SUITE 1
LAS VEGAS, NV 89146

EXHIBIT E

Inst #: 201307300000805
Fees: $17.00 N/C Fee: $0.00
RPTT: $372.30 Ex: #
07/30/2013 08:44:26 AM
Receipt #: 1712712
Requestor:
ALESSI & KOENIG LLC
Recorded By: RNS Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
Properties Plus Investments, LLC
1785 E. Sahara Ave. #490-939
Las Vegas, NV 89104

A.P.N. No.176-20-714-331 TS No. 31123-8787-101

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: Properties Plus Investments, LLC
The Foreclosing Beneficiary herein was: High Noon at Arlington Ranch Homeowner's Association
The amount of unpaid debt together with costs: $5,979.89
The amount paid by the Grantee (Buyer) at the Trustee's Sale: $7,500.00
The Documentary Transfer Tax: $372.30
Property address: 8787 TOM NOON AVE #101, LAS VEGAS, NV 89178-7792
Said property is in [ ] unincorporated area: City of LAS VEGAS
Trustor (Former Owner that was foreclosed on): MEGAN R SULLIBAN

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded July 20, 2012 as instrument number 0003175, in Clark County, does hereby grant, without warranty expressed or implied to: Properties Plus Investments, LLC (Grantee), all its right, title and interest in the property legally described as: HIGH NOON AT ARLINGTON RANCH UNIT 101 BLDG 111, as per map recorded in Book 115, Pages 21 as shown in the Office of the County Recorder of Clark County Nevada.

TRUSTEE STATES THAT:
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on July 17, 2013 at the place indicated on the Notice of Trustee's Sale.

Huong Lam, Esq.
Signature of AUTHORIZED AGENT for Alessi & Koenig, Llc.

State of Nevada)
County of Clark)

SUBSCRIBED and SWORN before me JUL 22 2013 by Huong Lam.

WITNESS my hand and official seal.
(Seal)

NOTARY PUBLIC
HEIDI A. HAGEN
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. MAY 17, 2017
No: 13-10029-1

(Signature)

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 176-20-714-331
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☐ Single Fam. Res.
   c. ☑ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

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

3.a. Total Value/Sales Price of Property $ 7,500.00
b. Deed in Lieu of Foreclosure Only (value of property) ( )
c. Transfer Tax Value: $ 72,526.00
d. Real Property Transfer Tax Due $ 372.30

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

5. Partial Interest: Percentage being transferred: 100 %

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

Signature _____ Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Alessi & Koenig, LLC	Print Name: Properties Plus Investments
Address: 9500 W. Flamingo Rd., Ste. 205	Address: 1785 E. Sahara Ave. #490-939
City: Las Vegas	City: Las Vegas
State: NV Zip: 89147	State: NV Zip: 89104

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

Print Name: Alessi & Koenig, LLC	Escrow # N/A Foreclosure
Address: 9500 W. Flamingo Rd., Ste. 205	
City: Las Vegas	State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

KANG & ASSOCIATES, PLLC.
6480 W. SPRING MOUNTAIN ROAD, SUITE 1
LAS VEGAS, NV 89146

EXHIBIT F

Matters

File Edit View Help

Matter ID: 10-H2156 Desc: Sullivan, Hayden
Client Sort: BAC HOME LOANS SERVICING, LP (CWF) BAC v. Sullivan HOA

General | Notes | Billing | Contacts | Matters | Events | Inquiry | Settlement | Bankruptcy | Civil | Contract Info | Custom | Deed Info | EP | New Invoice

Date Staff

11/4/2010: RCVD REFERRALL; OPENED 11/04/10
11/4/2010: ENF AWB re: New Referral
11/8/2010: 11/8 ENT CLIENT WITH INITIAL LETTERS ATTACHED;
11/8/2010: Initial letters re: 10-H2156 - Sullivan.msg
12/1/2010: 12/1 ENT CLIENT HOA UPDATE WITH PD ATTACHED; FU
12/1/2010: Status Update re: 10-H2156 [Trial] - Sullivan.msg
12/2/2010: ENF Clerk re: wire submitted for 236.25 on 12/2
12/8/2010: rcvd phone call from h/o, will try to set up plan with NAS, will fax o
12/27/2010: H/O TRYING TO SET UP PAYMENT PLAN WITH NAS; F/U
1/13/2011: ENT Trustee re: asking if h/o is on payment plan
1/13/2011: ENF Trustee re: h/o not on payment plan
1/24/2011: TRUSTEE STATES H/O NOT ON PAYMENT PLAN;
1/28/2011: 1/28 CHECK SENT TO HOA; FU 2/14 SEE IF CHECK WAS
1/29/2011: ENF RKJ re: Payoff funds, 10-H2156, 8787 Tom Noon Ave, #101
2/14/2011: 2/14 CHECK RETURNED; FU 4/15 MONITOR EX PARTE
2/15/2011: ENF RKJ re: Status of Payoff funds, (Rejected), 10-H2156, 8787 Tom Noo
3/31/2011: LIEN HAS BEEN RELEASED; F/U 4/5 COPY OF LIEN
4/8/2011: ENF RKJ re: closing file
4/8/2011: ENT Clerk re: sent invoice
7/29/2011: ENTC Robert Danky and Linda Spears, regarding payment of invoices.
8/31/2011: ENT NAIRA RE: HOA INVOICES
9/2/2011: ENT NAIRA RE: HOA INVOICES- 4
9/2/2011: ENT NAIRA RE: HOA INVOICES- 2
9/2/2011: ENT NAIRA RE: HOA INVOICES- 3

KANG & ASSOCIATES, PLLC.
6480 W. SPRING MOUNTAIN ROAD, SUITE 1
LAS VEGAS, NV 89146

EXHIBIT G

High Noon @ Arlington Ranch HOA

5575 S Durango Dr #105

Las Vegas, NV 89113

Ms Megan R Sulliban (A)

7227 W Windmill LN # 168

Las Vegas, NV 89113

Property Address: 8787 Tom Noon Ave #101

Account #: 505417

Code	Date	Amount	Balance	Check#	Memo
Payment	10/30/2007	-58.00	-58.00		TMS103007.LBX
Assessment	11/1/2007	58.00	0.00		Assessment
Payment	11/12/2007	-58.00	-58.00		TSM111207.LBX
Assessment	12/1/2007	58.00	0.00		Assessment
Assessment	1/1/2008	58.00	58.00		Assessment
Payment	1/15/2008	-58.00	0.00		TMS0115082.LBX
Assessment	2/1/2008	58.00	58.00		Assessment
Payment	2/27/2008	-58.00	0.00		TMS022708.LBX
Assessment	3/1/2008	58.00	58.00		Assessment
Payment	3/27/2008	-58.00	0.00		TMS032708.LBX
Assessment	4/1/2008	58.00	58.00		Assessment
Payment	4/30/2008	-58.00	0.00		TMS0430082.LBX
Assessment	5/1/2008	58.00	58.00		Assessment
Payment	5/29/2008	-116.00	-58.00		TMS052908.LBX
Assessment	6/1/2008	58.00	0.00		Assessment
Assessment	7/1/2008	58.00	58.00		Assessment
Payment	7/15/2008	-58.00	0.00		TMS071508.LBX
Assessment	8/1/2008	58.00	58.00		Assessment
Late Fee	8/30/2008	10.00	68.00		Late Fee Processed
Assessment	9/1/2008	58.00	126.00		Assessment
Payment	9/15/2008	-58.00	68.00		TMS0915082.LBX
Assessment	10/1/2008	58.00	126.00		Assessment
Payment	10/15/2008	-58.00	68.00		TMS1015082.LBX
Assessment	11/1/2008	58.00	126.00		Assessment
Assessment	12/1/2008	58.00	184.00		Assessment
Assessment	1/1/2009	58.00	242.00		Assessment
Assessment	2/1/2009	58.00	300.00		Assessment
Payment	2/2/2009	-242.00	58.00		TMS0130092.LBX
Assessment	3/1/2009	58.00	116.00		Assessment
Assessment	4/1/2009	58.00	174.00		Assessment
Payment	4/10/2009	-58.00	116.00		TMS0410092.LBX
Late Fee	4/30/2009	10.00	126.00		Late Fee Processed
Assessment	5/1/2009	58.00	184.00		Assessment
Payment	5/30/2009	-174.00	10.00		TMS053009.LBX

High Noon @ Arlington Ranch HOA

5575 S Durango Dr #105

Las Vegas, NV 89113

Code	Date	Amount	Balance	Check#	Memo
Assessment	6/1/2009	58.00	68.00		Assessment
Payment	6/10/2009	-68.00	0.00		TMS061009.LBX
Assessment	7/1/2009	58.00	58.00		Assessment
Payment	7/15/2009	-58.00	0.00		TMS0715092.lbx
Assessment	8/1/2009	58.00	58.00		Assessment
Late Fee	8/30/2009	10.00	68.00		Late Fee Processed
Assessment	9/1/2009	58.00	126.00		Assessment
Payment	9/21/2009	-58.00	68.00		TMS092109.lbx
Late Fee	9/30/2009	10.00	78.00		Late Fee Processed
Assessment	10/1/2009	58.00	136.00		Assessment
Late Fee	10/30/2009	10.00	146.00		Late Fee Processed
Collection Costs	10/30/2009	125.00	271.00		Prelien
Assessment	11/1/2009	58.00	329.00		Assessment
Late Fee	11/30/2009	10.00	339.00		Late Fee Processed
Assessment	12/1/2009	58.00	397.00		Assessment
Payment	12/15/2009	-204.00	193.00		TMS121509.lbx
Assessment	1/1/2010	58.00	251.00		Assessment
Payment	1/6/2010	-58.00	193.00		TMS010610.lbx
Assessment	2/1/2010	58.00	251.00		Assessment
Late Fee	2/28/2010	10.00	261.00		Late Fee Processed
Assessment	3/1/2010	58.00	319.00		Assessment
Late Fee	3/30/2010	10.00	329.00		Late Fee Processed
Assessment	4/1/2010	58.00	387.00		Assessment
Lien Fees	4/13/2010	185.00	572.00		Lien Fee 4/5
Late Fee	4/30/2010	10.00	582.00		
Interest-Delinquency	4/30/2010	2.02	584.02		
Assessment	5/1/2010	58.00	642.02		Assessment
Late Fee	5/30/2010	10.00	652.02		Late Fee
Interest-Delinquency	5/30/2010	2.60	654.62		Interest
Assessment	6/1/2010	58.00	712.62		Assessment
Late Fee	6/30/2010	10.00	722.62		Late Fee
Interest-Delinquency	6/30/2010	1.39	724.01		Interest
Assessment	7/1/2010	58.00	782.01		Assessment
Late Fee	7/30/2010	10.00	792.01		Late Fee
Interest-Delinquency	7/30/2010	1.64	793.65		Interest
Assessment	8/1/2010	58.00	851.65		Assessment
Late Fee	8/30/2010	10.00	861.65		Late Fee
Interest-Delinquency	8/30/2010	1.90	863.55		Interest
Assessment	9/1/2010	58.00	921.55		Assessment
Payment	9/22/2010	-120.89	800.66	40830	Payment
Late Fee	9/30/2010	10.00	810.66		Late Fee
Interest-Delinquency	9/30/2010	1.62	812.28		Interest
Assessment	10/1/2010	58.00	870.28		Assessment

High Noon @ Arlington Ranch HOA

5575 S Durango Dr #105

Las Vegas, NV 89113

Code	Date	Amount	Balance	Check#	Memo
Late Fee	10/30/2010	10.00	880.28		Late Fee
Interest-Delinquency	10/30/2010	1.35	881.63		Interest
Assessment	11/1/2010	58.00	939.63		Assessment
Payment	11/3/2010	-120.92	818.71	42228	Payment
Payment	11/16/2010	-120.92	697.79	43829	
Late Fee	11/30/2010	10.00	707.79		Late Fee
Interest-Delinquency	11/30/2010	1.07	708.86		Interest
Assessment	12/1/2010	58.00	766.86		Assessment
Late Fee	12/30/2010	10.00	776.86		Late Fee
Interest-Delinquency	12/30/2010	0.80	777.66		Interest
Assessment	1/1/2011	65.80	843.46		Assessment
Payment	1/4/2011	-120.92	722.54	45724	
Payment	1/26/2011	-120.92	601.62	47137	Payment
Late Fee	1/30/2011	10.00	611.62		Late Fee
Interest-Delinquency	1/30/2011	0.56	612.18		Interest
Assessment	2/1/2011	65.80	677.98		Assessment
Late Fee	2/28/2011	10.00	687.98		Late Fee
Interest-Delinquency	2/28/2011	0.84	688.82		Interest
Assessment	3/1/2011	65.80	754.62		Assessment
Late Fee	3/30/2011	10.00	764.62		Late Fee
Interest-Delinquency	3/30/2011	1.13	765.75		Interest
Assessment	4/1/2011	65.80	831.55		Assessment
Payment	4/13/2011	-120.92	710.63	48672	Payment
Payment	4/13/2011	-121.15	589.48	49901	
Assessment	5/1/2011	65.80	655.28		Assessment
Payment	5/27/2011	-241.83	413.45	52360	
Assessment	6/1/2011	65.80	479.25		Assessment
Late Fee	6/30/2011	10.00	489.25		Late Fee
Interest-Delinquency	6/30/2011	0.29	489.54		Interest
Assessment	7/1/2011	65.80	555.34		Assessment
Late Fee	7/30/2011	10.00	565.34		Late Fee
Interest-Delinquency	7/30/2011	0.58	565.92		Interest
Assessment	8/1/2011	65.80	631.72		Assessment
Assessment	9/1/2011	65.80	697.52		Assessment
Late Fee	9/30/2011	10.00	707.52		Late Fee
Interest-Delinquency	9/30/2011	1.15	708.67		Interest
Assessment	10/1/2011	65.80	774.47		Assessment
Late Fee	10/30/2011	10.00	784.47		Late Fee
Interest-Delinquency	10/30/2011	1.09	785.56		Interest
Assessment	11/1/2011	65.80	851.36		Assessment
Payment	11/4/2011	-80.16	771.20	57348	Alessi
Late Fee	11/30/2011	10.00	781.20		Late Fee
Interest-Delinquency	11/30/2011	1.38	782.58		Interest

High Noon @ Arlington Ranch HOA

5575 S Durango Dr #105

Las Vegas, NV 89113

Code	Date	Amount	Balance	Check#	Memo
Assessment	12/1/2011	65.80	848.38		Assessment
Late Fee	12/30/2011	10.00	858.38		Late Fee
Interest-Delinquency	12/30/2011	1.66	860.04		Interest
Assessment	1/1/2012	65.80	925.84		Assessment
Late Fee	1/30/2012	10.00	935.84		Late Fee
Interest-Delinquency	1/30/2012	1.95	937.79		Interest
Assessment	2/1/2012	65.80	1,003.59		Assessment
Late Fee	2/29/2012	10.00	1,013.59		Late Fee
Interest-Delinquency	2/29/2012	2.24	1,015.83		Interest
Assessment	3/1/2012	65.80	1,081.63		Assessment
Late Fee	3/30/2012	10.00	1,091.63		Late Fee
Interest-Delinquency	3/30/2012	2.53	1,094.16		Interest
Assessment	4/1/2012	65.80	1,159.96		Assessment
Late Fee	4/30/2012	10.00	1,169.96		Late Fee
Interest-Delinquency	4/30/2012	2.82	1,172.78		Interest
Assessment	5/1/2012	65.80	1,238.58		Assessment
Late Fee	5/30/2012	10.00	1,248.58		Late Fee
Interest-Delinquency	5/30/2012	3.10	1,251.68		Interest
Assessment	6/1/2012	65.80	1,317.48		Assessment
Late Fee	6/30/2012	10.00	1,327.48		Late Fee
Interest-Delinquency	6/30/2012	3.39	1,330.87		Interest
Assessment	7/1/2012	65.80	1,396.67		Assessment
Late Fee	7/30/2012	10.00	1,406.67		Late Fee
Interest-Delinquency	7/30/2012	3.68	1,410.35		Interest
Assessment	8/1/2012	65.80	1,476.15		Assessment
Late Fee	8/30/2012	10.00	1,486.15		Late Fee
Interest-Delinquency	8/30/2012	3.97	1,490.12		Interest
Assessment	9/1/2012	65.80	1,555.92		Assessment
Late Fee	9/30/2012	10.00	1,565.92		Late Fee
Interest-Delinquency	9/30/2012	4.26	1,570.18		Interest
Assessment	10/1/2012	65.80	1,635.98		Assessment
Late Fee	10/30/2012	10.00	1,645.98		Late Fee
Interest-Delinquency	10/30/2012	4.54	1,650.52		Interest
Assessment	11/1/2012	65.80	1,716.32		Assessment
Late Fee	11/30/2012	10.00	1,726.32		Late Fee
Interest-Delinquency	11/30/2012	4.83	1,731.15		Interest
Assessment	12/1/2012	65.80	1,796.95		Assessment
Late Fee	12/30/2012	10.00	1,806.95		Late Fee
Interest-Delinquency	12/30/2012	5.12	1,812.07		Interest
Assessment	1/1/2013	64.00	1,876.07		Assessment
Late Fee	1/30/2013	10.00	1,886.07		Late Fee
Interest-Delinquency	1/30/2013	5.40	1,891.47		Interest
Assessment	2/1/2013	64.00	1,955.47		Assessment

High Noon @ Arlington Ranch HOA

5575 S Durango Dr #105

Las Vegas, NV 89113

Code	Date	Amount	Balance	Check#	Memo
Late Fee	2/28/2013	10.00	1,965.47		Late Fee
Interest-Delinquency	2/28/2013	5.68	1,971.15		Interest
Assessment	3/1/2013	64.00	2,035.15		Assessment
Late Fee	3/30/2013	10.00	2,045.15		Late Fee
Interest-Delinquency	3/30/2013	5.96	2,051.11		Interest
Assessment	4/1/2013	64.00	2,115.11		Assessment
Late Fee	4/30/2013	10.00	2,125.11		Late Fee
Interest-Delinquency	4/30/2013	6.24	2,131.35		Interest
Assessment	5/1/2013	64.00	2,195.35		Assessment
Late Fee	5/30/2013	10.00	2,205.35		Late Fee
Interest-Delinquency	5/30/2013	6.52	2,211.87		Interest
Assessment	6/1/2013	64.00	2,275.87		Assessment
Late Fee	6/30/2013	10.00	2,285.87		Late Fee
Interest-Delinquency	6/30/2013	6.80	2,292.67		Interest

Current	30 - 59 Days	60 - 89 Days	>90 Days	Balance:	2,292.67
16.80	80.52	80.24	2,115.11		

KANG & ASSOCIATES, PLLC.
6480 W. SPRING MOUNTAIN ROAD, SUITE 1
LAS VEGAS, NV 89146

EXHIBIT H

MAJOR DELINQUENCY ACTION REPORT

Account: 505417

Atty: Alessi

Name: Ms Megan R Sulliban
8787 Tom Noon Ave #101
Las Vegas, NV 89178

Mailing Address: Same

Date	Action Code	Comments	Balance
10/30/2009	51	Payment in full due by 12/14/09. Prelien package mailed Certified and First Class to HO.	$271.00
11/14/2009	51/66	Lien action will commence after 12/14/09.	329.00
11/17/2009	51/59	Lender NOD filed 5/6/09. The Trustees Sale is held within 120 days. The recorded Trustees Deed will be available within 160 days. Next scheduled lender action is 12/6/09.	329.00
12/16/2009	51/66	Received HO Ck #1265 for $204.00 with letter requesting prelien fee be reversed. Letter to manager for Board action.	193.00
2/7/2010	51/66	Board denied HO request to waive $125.00 prelien fee. Manager sent letter to HO.	251.00
4/3/2010	51/66	Commencing lien action.	377.00
4/20/2010	52	Lien recorded 04/08/10. Doc#201004080004587. Mailed Certified & First Class to HO.	572.00
5/11/2010	52	Assigning to Atty Alessi after 5/15/10.	642.02
5/21/2010	54	Assigned to Atty Alessi for collections.	642.02

MAJOR ACTION CODES

51 Pre-Lien Letter	55 Atty Preforeclosure	59 Lender Foreclosure	63 Lien Release
52 Lien	56 Notice of Default	60 BK-Chapter 7	64 In Escrow
53 Preforeclosure	57 Personal Judgment	61 BK-Chapter 11/13	65 Write Off
54 Atty Assignment	58 Small Claims	62 Prior Owner Balance	66 Spec Circum

ALESSI KOENIG
A Multi-Jurisdictional Law Firm

Las Vegas Office
9500 W. Flamingo Road Suite 100
Las Vegas, NV 89147
Phone (702) 222-4033
Fax (702) 254-9044

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

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

Payment Plan Detail

Owner Name: MEGAN SULLIBAN
Prepared By: Aileen Ruiz

Unit Address: 8787 TOM NOON AVE #101
HOA: High Noon @ Arlington Ranch Homeowner's A

Date Prepared: 8/5/2010
HO #: 22321

		Monthly Charges					Payoff Amounts					
Payment Month	Payment Due Date	Assess-ments	+ Late Fees	+ Interest	+ Admin Fees	= Monthly HOA Charges	Assess. Acct	+ Compliance Acct	+ Collection Fees	= Monthly Past Due Amounts	Total Monthly Payment	Running Balance
												$1,762.01
Aug 2010	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$1,615.18
Sep 2010	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$1,468.35
Oct 2010	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$1,321.52
Nov 2010	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$1,174.69
Dec 2010	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$1,027.86
Jan 2011	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$881.03
Feb 2011	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$734.20
Mar 2011	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$587.37
Apr 2011	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$440.54
May 2011	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$293.71
Jun 2011	25th	$58.00	$0.00	$3.85	$25.00	**$86.85**	$71.00	$0.00	$75.83	**$146.83**	**$233.68**	$146.88
Jul 2011	25th	$58.00	$0.00	$3.84	$25.00	**$86.85**	$71.00	$0.00	$75.88	**$146.88**	**$233.73**	$0.00

Dates

1st Month of Plan	August
Payment Due Date	25th
Payment Default Date	30th

Monthly Charges

Administrative Fees	$25.00
Monthly Assessment Amount	$58.00
Late Fees	$0.00

Amounts Owed As Of 08/05/10

Total Assessment Account	$852.00
Total Compliance Account	$0.00
Total Interest Fees	$46.19
Total Collection Fees	$910.01

NOTE: All figures contained in this document are true and accurate as of the day it was prepared. Assessments are subject to change if a new budget is approved by the Board and ratified by the Owners. Compliance Account balances reflect only that which is past due as of the date of this document. Any continuing or additional fines accrued are the responsibility of the Owner referenced above outside of this payment plan and should be handled through the Association Offices.

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Payment Plan Detail

Owner Name: MEGAN SULLIBAN
Prepared By: Aileen Ruiz

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HOA: High Noon @ Arlington Ranch Homeowner's A

Date Prepared: 8/16/2010
HO #: 22321

		Monthly Charges					Payoff Amounts					
Payment Month	Payment Due Date	Assess-ments	+ Late Fees	+ Interest	+ Admin Fees	= Monthly HOA Charges	Assess. Acct	+ Compliance Acct	+ Collection Fees	= Monthly Past Due Amounts	Total Monthly Payment	Running Balance
												$1,762.01
Aug 2010	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$1,615.18
Sep 2010	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$1,468.35
Oct 2010	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$1,321.52
Nov 2010	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$1,174.69
Dec 2010	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$1,027.86
Jan 2011	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$881.03
Feb 2011	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$734.20
Mar 2011	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$587.37
Apr 2011	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$440.54
May 2011	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$293.71
Jun 2011	25th	$58.00	$0.00	$0.00	$25.00	**$83.00**	$71.00	$0.00	$75.83	**$146.83**	**$229.83**	$146.88
Jul 2011	25th	$58.00	$0.00	($0.01)	$25.00	**$83.00**	$71.00	$0.00	$75.88	**$146.88**	**$229.88**	$0.00

Dates

1st Month of Plan	August
Payment Due Date	25th
Payment Default Date	30th

Monthly Charges

Administrative Fees	$25.00
Monthly Assessment Amount	$58.00
Late Fees	$0.00

Amounts Owed As Of 08/16/10

Total Assessment Account	$852.01
Total Compliance Account	$0.00
Total Interest Fees	$0.00
Total Collection Fees	$910.00

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MAJOR DELINQUENCY ACTION REPORT

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Atty: Alessi

Name: Ms Megan R Sulliban
8787 Tom Noon Ave #101
Las Vegas, NV 89178

Mailing Address: Same

Date	Action Code	Comments	Balance
10/30/2009	51	Payment in full due by 12/14/09. Prelien package mailed Certified and First Class to HO.	$271.00
11/14/2009	51/66	Lien action will commence after 12/14/09.	329.00
11/17/2009	51/59	Lender NOD filed 5/6/09. The Trustees Sale is held within 120 days. The recorded Trustees Deed will be available within 160 days. Next scheduled lender action is 12/6/09.	329.00
12/16/2009	51/66	Received HO Ck #1265 for $204.00 with letter requesting prelien fee be reversed. Letter to manager for Board action.	193.00
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4/20/2010	52	Lien recorded 04/08/10. Doc#201004080004587. Mailed Certified & First Class to HO.	572.00
5/11/2010	52	Assigning to Atty Alessi after 5/15/10.	642.02
5/21/2010	54	Assigned to Atty Alessi for collections.	642.02

MAJOR ACTION CODES

51 Pre-Lien Letter	55 Atty Preforeclosure	59 Lender Foreclosure	63 Lien Release
52 Lien	56 Notice of Default	60 BK-Chapter 7	64 In Escrow
53 Preforeclosure	57 Personal Judgment	61 BK-Chapter 11/13	65 Write Off
54 Atty Assignment	58 Small Claims	62 Prior Owner Balance	66 Spec Circum

KANG & ASSOCIATES, PLLC.
6480 W. SPRING MOUNTAIN ROAD, SUITE 1
LAS VEGAS, NV 89146

EXHIBIT I

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

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

QUESTION #1:

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

QUESTION #2:

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

QUESTION #3:

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

SHORT ANSWER TO #1:

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

SHORT ANSWER TO #2:

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

SHORT ANSWER TO #3:

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

ANALYSIS OF THE ISSUES:

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

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

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

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

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

(emphasis added).

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

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

NRS 116.3116(1) does not specifically make costs of collecting part of the association's lien, so the determination must be whether such costs can be included under the incorporated provisions of NRS 116.3102. NRS 116.3102(1)(j) through (n) identifies five very specific categories of penalties, fees, charges, late charges, fines, and interest associations may impose. This language encompasses all penalties, fees,

charges, late charges, fines, and interest that are part of the lien described in NRS 116.3116(1).

NRS 116.3102(1)(j) through (n) states:

> 1. Except as otherwise provided in this section, and subject to the provisions of the declaration, the association may do any or all of the following: ...
> (j) Impose and receive any payments, fees or charges for the use, rental or operation of the common elements, other than limited common elements described in subsections 2 and 4 of NRS 116.2102, and for services provided to the units' owners, including, without limitation, any services provided pursuant to NRS 116.310312.
> **(k) Impose charges for late payment of assessments pursuant to NRS 116.3115.**
> (l) Impose construction penalties when authorized pursuant to NRS 116.310305.
> (m) Impose reasonable fines for violations of the governing documents of the association only if the association complies with the requirements set forth in NRS 116.31031.
> (n) Impose reasonable charges for the preparation and recordation of any amendments to the declaration or any statements of unpaid assessments, and impose reasonable fees, not to exceed the amounts authorized by NRS 116.4109, for preparing and furnishing the documents and certificate required by that section.

(emphasis added).

Whatever charges the association is permitted to impose by virtue of these provisions are part of the association's lien. Subsection (k) – emphasized above – has been used – the Division believes improperly – to support the conclusion that associations may include costs of collecting past due obligations as part of the association's lien. The Commission for Common Interest Communities and Condominium Hotels issued Advisory Opinion No. 2010-01 in December of 2010. The Commission's advisory concludes as follows:

> An association may collect as a part of the super priority lien (a) interest permitted by NRS 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any statements of unpaid assessments and (d) the "costs of collecting" authorized by NRS 116.310313.

Analysis of what constitutes the *super priority lien* portion of the association's lien is discussed in Section III, but the Division agrees that the association's lien does include items noted as (a), (b) and (c) of the Commission's advisory opinion above. To support item (d), the Commission relies on NRS 116.3102(1)(k) which gives associations the power to: "Impose charges for late payment of assessments pursuant to NRS 116.3115." This language would include interest authorized by statute and late fees if authorized by the association's declaration.

"Costs of collecting" defined by NRS 116.310313 is too broad to fall within the parameters of charges for late payment of assessments.[1] By definition, "costs of collecting" relate to the collection of past due "obligations." "Obligations" are defined as "any assessment, fine, construction penalty, fee, charge or interest levied or imposed against a unit's owner."[2] In other words, costs of collecting includes more than "charges for late payment of assessments."[3] Therefore, the plain language of NRS 116.3116(1) does not incorporate costs of collecting into the association's lien. Further review of the relevant statutes and legislative action supports this conclusion.

B. PRIOR LEGISLATIVE ACTION SUPPORTS THE POSITION THAT COSTS OF COLLECTING ARE NOT PART OF THE ASSOCIATION'S LIEN DESCRIBED BY NRS 116.3116(1).

The language of NRS 116.3116(1) allows for "charges for late payment of assessments" to be part of the association's lien.[4] "Charges for late payments" is not the same as "costs of collecting." "Costs of collecting" was first defined in NRS 116 by the adoption of NRS 116.310313 in 2009. NRS 116.310313(1) provides for the association's

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[1] Charges for late payment of assessments comes from NRS 116.3102(1)(k) and is incorporated into NRS 116.3116(1).
[2] NRS 116.310313.
[3] "Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation. The term does not include any costs incurred by an association if a lawsuit is filed to enforce any past due obligation or any costs awarded by a court. NRS 116.310313(3)(a).
[4] NRS 116.3102(1)(k) (incorporated into NRS 116.3116(1)).

right to charge a unit owner "reasonable fees to cover the costs of collecting any past due obligation." NRS 116.310313 is not referenced in NRS 116.3116 or NRS 116.3102, nor does NRS 116.310313 specifically provide for the association's right to lien the unit for such costs.

In contrast, NRS 116.310312, also adopted in 2009, allows an association to enter the grounds of a unit to maintain the property or abate a nuisance existing on the exterior of the unit. NRS 116.310312 specifically provides for the association's expenses to be a lien on the unit and provides that the lien is prior to the first security interest.[5] NRS 116.3102(1)(j) was amended to allow these expenses to be part of the lien described in NRS 116.3116(1). And NRS 116.3116(2) was amended to allow these expenses to be included in the association's super priority lien.

The Commission's advisory opinion from December 2010 also relies on changes to the Uniform Act from 2008 to support the notion that collection costs should be part of the association's super priority lien. Nevada has not adopted those changes to the Uniform Act. Since the Commission's advisory opinion, the Nevada Legislature had an opportunity to clarify the law in this regard.

In 2011, the Nevada Legislature considered Senate Bill 174, which proposed changes to NRS 116.3116. S.B. 174 originally included changes to NRS 116.3116(1) such that the association's lien would specifically include "costs of collecting" as defined in NRS 116.310313. S.B. 174 proposed changes to NRS 116.3116 (1) and (2) to bring the statute in line with the changes to the same provision in the Uniform Act amended in 2008.

The Uniform Act's amendments were removed from S.B. 174 by the first reprint. As amended, S.B. 174 proposed changes to NRS 116.3116(2) expanding the super priority lien amount to include costs of collecting not to exceed $1,950, in addition to 9 months

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[5] See NRS 116.310312(4) and (6).

of assessments. S.B. 174 was discussed in great detail and ultimately died in committee.[6]

Also in 2011, Senate Bill 204 – as originally introduced – included changes to NRS 116.3116(1) to expand the association's lien to include attorney's fees and costs and "any other sums due to the association."[7] The bill's language was taken from the Uniform Act amendments in 2008. All changes to NRS 116.3116(1) were removed from the bill prior to approval.

The Nevada Legislature's actions in the 2009 and 2011 sessions are indicative of its intent not to make costs of collecting part of the lien. The Nevada Legislature could have made the costs of collecting part of the association's lien, like it did for costs under NRS 116.310312. It did not do so. In order for the association to have a right to lien a unit under NRS 116.3116(1), the charge or expense must fall within a category listed in the plain language of the statute. Costs of collecting do not fall within that language. Based on the foregoing, the Division concludes that the association's lien does not include "costs of collecting" as defined by NRS 116.310313.

A possible concern regarding this outcome could be that an association may not be able to recover their collection costs relating to a foreclosure of an assessment lien. While that may seem like an unreasonable outcome, a look at the bigger picture must be considered to put it in perspective. NRS 116.31162 through NRS 116.31168, inclusive, outlines the association's ability to enforce its lien through foreclosure. Associations have a lien for assessments that is enforced through foreclosure. The association's expenses are reimbursed to the association from the proceeds of the sale. NRS 116.31164(3)(c) allows the proceeds of the foreclosure sale to be distributed in the following order:

(1) The reasonable expenses of sale;

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[6] See http://leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=423.
[7] Senate Bill No. 204 – Senator Copening, Sec. 49, ln. 1-16, February 28, 2011.

> (2) The reasonable expenses of securing possession before sale, holding, maintaining, and preparing the unit for sale, including payment of taxes and other governmental charges, premiums on hazard and liability insurance, and, to the extent provided for by the declaration, reasonable attorney's fees and other legal expenses incurred by the association;
> (3) Satisfaction of the association's lien;
> (4) Satisfaction in the order of priority of any subordinate claim of record; and
> (5) Remittance of any excess to the unit's owner.

Subsections (1) and (2) allow the association to receive its expenses to enforce its lien through foreclosure *before* the association's lien is satisfied. Obviously, if there are no proceeds from a sale or a sale never takes place, the association has no way to collect its expenses other than through a civil action against the unit owner. Associations must consider this consequence when making decisions regarding collection policies understanding that every delinquent assessment may not be treated the same.

II. NRS 116.3116(2) ESTABLISHES THE PRIORITY OF THE ASSOCIATION'S LIEN.

Having established that the association has a lien on the unit as described in subsection (1) of NRS 116.3116, we now turn to subsection (2) to determine the lien's priority in relation to other liens recorded against the unit. The lien described by NRS 116.3116(1) is what is referred to in subsection (2). Understanding the priority of the lien is an important consideration for any board of directors looking to enforce the lien through foreclosure or to preserve the lien in the event of foreclosure by a first security interest.

NRS 116.3116(2) provides that the association's lien is prior to all other liens recorded against the unit *except:* liens recorded against the unit before the declaration; first security interests (first deeds of trust); and real estate taxes or other governmental assessments. There is one exception to the exceptions, so to speak, when it comes to priority of the association's lien. This exception makes a portion of an association's lien prior to the first security interest. The portion of the association's lien given priority status to a first security interest is what is referred to as the "super priority lien" to

distinguish it from the other portion of the association's lien that is subordinate to a first security interest.

The ramifications of the super priority lien are significant in light of the fact that superior liens, when foreclosed, remove all junior liens. An association can foreclose its super priority lien and the first security interest holder will either pay the super priority lien amount or lose its security. NRS 116.3116 is found in the Uniform Act at § 3-116. Nevada adopted the original language from § 3-116 of the Uniform Act in 1991. From its inception, the concept of a super priority lien was a novel approach. The Uniform Act comments to § 3-116 state:

> [A]s to prior first security interests the association's lien does have priority for 6 months' assessments based on the periodic budget. A significant departure from existing practice, the 6 months' priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of lenders. As a practical matter, secured lenders will most likely pay the 6 months' assessments demanded by the association rather than having the association foreclose on the unit. If the lender wishes, an escrow for assessments can be required.

This comment on § 3-116 illustrates the intent to allow for 6 months of assessments to be prior to a first security interest. The reason this was done was to accommodate the association's need to enforce collection of unpaid assessments. The controversy surrounding the super priority lien is in defining its limit. This is an important consideration for an association looking to enforce its lien. There is little benefit to an association if it incurs expenses pursuing unpaid assessments that will be eliminated by an imminent foreclosure of the first security interest. As stated in the comment, it is also likely that the holder of the first security interest will pay the super priority lien amount to avoid foreclosure by the association.

III. THE AMOUNT OF THE SUPER PRIORITY LIEN IS LIMITED BY THE PLAIN LANGUAGE OF NRS 116.3116(2).

NRS 116.3116(2) states:

> A lien under this section is prior to all other liens and encumbrances on a unit except:
> (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.
> ***The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien***, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(emphasis added)

Having found previously that costs of collecting are not part of the lien means they are not part of the super priority lien. The question then becomes what can be included as part of the super priority lien. Prior to 2009, the super priority lien was limited to 6 months of assessments. In 2009, the Nevada legislature changed the 6 months of

assessments to 9 months and added expenses for abatement under NRS 116.310312 to the super priority lien amount. But to the extent federal law applicable to the first security interest limits the super priority lien, the super priority lien is limited to 6 months of assessments.

The emphasized language in the portion of the statute above identifies the portion of the association's lien that is prior to the first security interest, i.e. what comprises the super priority lien. This language states that there are two components to the super priority lien. The first is "to the extent of any charges" incurred by the association pursuant to NRS 116.310312. NRS 116.310312(4) makes clear that the charges assessed against the unit pursuant to this section are a lien on the unit and subsection (6) makes it clear that such lien is prior to first security interests. These costs are also specifically part of the lien described in NRS 116.3116(1) incorporated through NRS 116.3102(1)(j). This portion of the super priority lien is specific to charges incurred pursuant to NRS 116.310312. Payment of those charges relieves their super priority lien status. There does not seem to be any confusion as to what this part of the super priority lien is. Analysis of the super priority lien will focus on the second portion.

A. THE SUPER PRIORITY LIEN ATTRIBUTABLE TO ASSESSMENTS IS LIMITED TO 9 MONTHS OF ASSESSMENTS AND CONSISTS ONLY OF ASSESSMENTS.

The second portion of the super priority lien is "to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien."

The statute uses the language "to the extent of the assessments" to illustrate that there is a limit on the amount of the super priority lien, just like the language concerning expenses pursuant to NRS 116.310312, but this portion concerns assessments. The limit on the super priority lien is based on the assessments for

common expenses reflected in a budget adopted pursuant to NRS 116.3115 which would have become due in 9 months. The assessment portion of the super priority lien is no different than the portion derived from NRS 116.310312. Each portion of the super priority lien is limited to the specific charge stated and nothing else.

Therefore, while the association's *lien* may include any penalties, fees, charges, late charges, fines and interest charged pursuant to NRS 116.3102 (1) (j) to (n), inclusive, the total amount of the *super priority lien* attributed to assessments is no more than 9 months of the monthly assessment reflected in the association's budget. Association budgets do not reflect late charges or interest attributed to an anticipated delinquent owner, so there is no basis to conclude that such charges could be included in the super priority lien or in addition to the assessments. Such extraneous charges are not included in the association's super priority lien.

NRS 116.3116 originally provided for 6 months of assessments as the super priority lien. Comments to the Uniform Act quoted previously support the conclusion that the original intent was for 6 months of the assessments alone to comprise the super priority lien amount and not the penalties, charges, or interest. It is possible that an argument could be made that the language is so clear in this regard one should not look to legislative intent. But considering the controversy surrounding the meaning of this statute, the better argument is that legislative intent should be used to determine the meaning.

The Commission's advisory opinion of December 2010 concluded that assessments *and* additional costs are part of the super priority lien. The Commission's advisory opinion relies in part on a Wake Forest Law Review[8] article from 1992 discussing the Uniform Act. This article actually concludes that the Uniform Act language limits the

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[8] See James Winokur, *Meaner Lienor Community Associations: The "Super Priority" Lien and Related Reforms Under the Uniform Common Interest Ownership Act*, 27 WAKE FOREST L. REV. 353, 366-69 (1992).

amount of the super priority lien to 6 months of assessments, but that the super priority lien does not necessarily consist of only delinquent assessments.[9] It can include fines, interest, and late charges.[10] The concept here is that all parts of the lien are prior to a first security interest and that reference to assessments for the super priority lien is only to define a specific dollar amount.

The Division disagrees with this interpretation because of the unreasonable consequences it leaves open. For example, a unit owner may pay the delinquent assessment amount leaving late charges and interest as part of the super priority lien. If the super priority lien can encompass more than just delinquent assessments in this situation, it would give the association the right to foreclose its lien consisting only of late charges and interest prior to the first security interest. It is also unreasonable to expect that fines (which cannot be foreclosed generally) survive a foreclosure of the first security interest. Either the lender or the new buyer would be forced to pay the prior owner's fines. The Division does not find that these consequences are reasonable or intended by the drafters of the Uniform Act or by the Nevada Legislature. Even the 2008 revisions to the Uniform Act do not allow for anything other than assessments and costs incurred to foreclose the lien to be included in the super priority lien. Fines, interest, and late charges are not *costs* the association incurs.

In 2009, the Nevada Legislature revised NRS 116.3116 to expand the association's super priority lien. Assembly Bill 204 sought to extend the super priority lien of 6 months of assessments to 2 years of assessments.[11] The Commission's chairman, Michael Buckley, testified on March 6, 2009 before the Assembly Committee on Judiciary on A.B. 204 that the law was unclear as to whether the 6 month priority can

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[9] See id. at 367 (referring to the super priority lien as the "six months assessment ceiling" being computed from the periodic budget).
[10] See id.
[11] See http://leg.state.nv.us/Session/75th2009/Reports/history.cfm?ID=416.

include the association's costs and attorneys' fees.[12] Mr. Buckley explained that the Uniform Act amendments in 2008 allowed for the collection of attorneys' fees and costs incurred by the association in foreclosing the assessment lien as part of the super priority lien. Mr. Buckley requested that the 2008 change to the Uniform Act be included in A.B. 204. Mr. Buckley's requested change to A.B. 204 to expand the super priority lien never made it into A.B. 204. Ultimately, A.B. 204 was adopted to change 6 months to 9 months, but commenting on the intent of the bill, Assemblywoman Ellen Spiegel stated:

> Assessments covered under A.B. 204 are the regular monthly or quarterly dues for their home. *I carefully put this bill together to make sure it did not include any assessments for penalties, fines or late fees.* The bill covers the basic monies the association uses to build its regular budgets.

(emphasis added).[13]

It is significant that the legislative intent in changing 6 months to 9 months was with the understanding that no portion of that amount would be for penalties, fines, or late fees and that it only covers the basic monies associations use to build their regular budgets. It does make sense that a lien superior to a first security interest would not include penalties, fines, and interest. To say that the super priority lien includes more than just 9 months of assessments allows several undesirable and unreasonable consequences.

B. NEVADA HAS NOT ADOPTED AMENDMENTS TO THE UNIFORM ACT TO ALTER THE ORIGINAL INTENT OF THE SUPER PRIORITY LIEN.

The changes to the Uniform Act support the contention that only what is referenced as the super priority lien in NRS 116.3116(2) is what comprises the super priority lien. In 2008, § 3-116 of the Uniform Act was revised as follows:

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[12] See Minutes of the Meeting of the Assembly Committee on Judiciary, Seventy-fifth Session, March 6, 2009 at 44-45.
[13] See Minutes of the Senate Committee on Judiciary, Seventy-fifth Session, May 8, 2009 at 27.

SECTION 3-116. LIEN FOR ~~ASSESSMENTS~~; SUMS DUE ASSOCIATION; ENFORCEMENT.

(a) The association has a statutory lien on a unit for any assessment ~~levied against~~ attributable to that unit or fines imposed against its unit owner. Unless the declaration otherwise provides, reasonable attorney's fees and costs, other fees, charges, late charges, fines, and interest charged pursuant to Section 3-102(a)(10), (11), and (12), and any other sums due to the association under the declaration, this [act], or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments under this section. If an assessment is payable in installments, the lien is for the full amount of the assessment from the time the first installment thereof becomes due.

(b) A lien under this section is prior to all other liens and encumbrances on a unit except:

~~(i)~~(1) liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances ~~which~~ that the association creates, assumes, or takes subject to~~,~~ ;

~~(ii)~~(2) except as otherwise provided in subsection (c), a first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent, or, in a cooperative, the first security interest encumbering only the unit owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent~~,~~; and

~~(iii)~~(3) liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

(c) A ~~The~~ lien under this section is also prior to all security interests described in subsection (b)(2) ~~clause (ii) above~~ to the extent of both the common expense assessments based on the periodic budget adopted by the association pursuant to Section 3-115(a) which would have become due in the absence of acceleration during the six months immediately preceding institution of an action to enforce the lien and reasonable attorney's fees and costs incurred by the association in foreclosing the association's lien. ~~This subsection~~ Subsection (b) and this subsection ~~does~~ do not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association. [~~The~~ A lien under this section is not subject to ~~the provisions of~~ [insert appropriate reference to state homestead, dower and curtesy, or other exemptions].]

Explaining the reason for the changes to these sections, the Uniform Act includes the following comments:

Associations must be legitimately concerned, as fiduciaries of the unit owners, that the association be able to collect periodic common charges from recalcitrant unit owners in a timely way. To address those concerns, the section contains these 2008 amendments:

First, subsection (a) is amended to add the cost of the association's reasonable attorneys fees and court costs to the total value of the association's existing 'super lien' – currently, 6 months of regular common assessments. This amendment is identical to the amendment adopted by Connecticut in 1991; see C.G.S. Section 47-258(b). The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state.

The Uniform Act's amendment in 2008 is very telling about § 3-116's original intent. The comments state reasonable attorneys' fees and court costs are *added* to the super priority lien stating that it is currently 6 months of regular common assessments. The Uniform Act adds attorneys' fees and costs to subsection (a) which defines the association's lien. Those attorneys' fees and costs attributable to foreclosure efforts are also added to subsection (c) which defines the super priority lien amount.

If the association's lien ever included attorneys' fees and court costs as "charges for late payment of assessments" or if such sum was part of the super priority lien, there would be no reason to add this language to subsection (a) and (c). Or at a minimum, the comments would assert the amendment was simply to make the language more clear. It is also clear by the language that only what is specified as part of the super priority lien can comprise the super priority lien. The additional language defining the super priority lien provides for costs that are *incurred* by the association foreclosing the lien. This is further evidence that the super priority lien does not and never did consist of interest, fines, penalties or late charges. These charges are not incurred by the association and they should not be part of any super priority lien.

The Nevada Legislature had the opportunity to change NRS 116.3116 in 2009 and 2011 to conform to the Uniform Act. It chose not to. While the revisions under the

Uniform Act may make sense to some and they may be adopted in other jurisdictions, the fact of the matter is, Nevada has not adopted those changes. The changes to the Uniform Act cannot be insinuated into the language of NRS 116.3116. Based on the plain language of NRS 116.3116, legislative intent, and the comments to the Uniform Act, the Division concludes that the super priority lien is limited to expenses stemming from NRS 116.310312 and assessments as reflected in the association's budget for the immediately preceding 9 months from institution of an action to enforce the association's lien.

IV. "ACTION" AS USED IN NRS 116.3116 DOES NOT REQUIRE A CIVIL ACTION ON THE PART OF THE ASSOCIATION.

NRS 116.3116(2) provides that the super priority lien pertaining to assessments consists of those assessments "which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien." NRS 116.3116 requires that the association take action to enforce its lien in order to determine the immediately preceding 9 months of assessments. The question presented is whether this action must be a civil action.

During the Senate Committee on Judiciary hearing on May 8, 2009, the Chair of the Committee, Terry Care, stated with reference to AB 204:

> One thing that bothers me about section 2 is the duty of the association to enforce the liens, but I understand the argument with the economy and the high rate of delinquencies not only to mortgage payments but monthly assessments. Bill Uffelman, speaking for the Nevada Bankers Association, broke it down to a 210-day scheme that went into the current law of six months. Even though you asked for two years, I looked at nine months, thinking the association has a duty to move on these delinquencies.

NRS 116 does not require an association to take any particular action to enforce its lien, but that it institutes "an action." NRS 116.31162 provides the first steps to foreclose the association's lien. This process is started by the mailing of a notice of delinquent

assessment as provided in NRS 116.31162(1)(a). At that point, the immediately preceding 9 months of assessments based on the association's budget determine the amount of the super priority lien. The Division concludes that this action by the association to begin the foreclosure of its lien is "action to enforce the lien" as provided in NRS 116.3116(2). The association is not required to institute a civil action in court to trigger the 9 month look back provided in NRS 116.3116(2). Associations should make the delinquent assessment known to the first security holder in an effort to receive the super priority lien amount from them as timely as possible.

ADVISORY CONCLUSION:

An association's lien consists of assessments, construction penalties, and fines. Unless the association's declaration provides otherwise, the association's lien also includes all penalties, fees, charges, late charges, fines and interest pursuant to NRS 116.3102(1)(j) through (n). While charges for late payment of assessments are part of the association's lien, "costs of collecting" as defined by NRS 116.310313, are not. "Costs of collecting" defined by NRS 116.310313 includes costs of collecting any *obligation*, not just assessments. Costs of collecting are not merely a charge for a late payment of assessments. Since costs of collecting are not part of the association's lien in NRS 116.3116(1), they cannot be part of the super priority lien detailed in subsection (2).

The super priority lien consists of two components. By virtue of the detail provided by the statute, the super priority lien applies to the charges incurred under NRS 116.310312 and up to 9 months of assessments as reflected in the association's regular budget. The Nevada Legislature has not adopted changes to NRS 116.3116 that were made to the Uniform Act in 2008 despite multiple opportunities to do so. In fact, the Legislative intent seems rather clear with Assemblywoman Spiegel's comments to A.B. 204 that changed 6 months of assessments to 9 months. Assemblywoman Spiegel stated that she "carefully put this bill together to make sure it did not include any

assessments for penalties, fines or late fees." This is consistent with the comments to the Uniform Act stating the priority is for assessments based on the periodic budget. In other words, when the super priority lien language refers to 9 months of assessments, assessments are the only component. Just as when the language refers to charges pursuant to NRS 116.310312, those charges are the only component. Not in either case can you substitute other portions of the entire lien and make it superior to a first security interest.

Associations need to evaluate their collection policies in a manner that makes sense for the recovery of unpaid assessments. Associations need to consider the foreclosure of the first security interest and the chances that they may not be paid back for the costs of collection. Associations may recover costs of collecting unpaid assessments if there are proceeds from the association's foreclosure.[14] But costs of collecting are not a lien under NRS 116.310313 or NRS 116.3116(1); they are the personal liability of the unit owner.

Perhaps an effective approach for an association is to start with foreclosure of the assessment lien after a nine month assessment delinquency or sooner if the association receives a foreclosure notice from the first security interest holder. The association will always want to enforce its lien for assessments to trigger the super priority lien. This can be accomplished by starting the foreclosure process. The association can use the super priority lien to force the first security interest holder to pay that amount. The association should incur only the expense it believes is necessary to receive payment of assessments. If the first security interest holder does not foreclose, the association will maintain its assessment lien consisting of assessments, late charges, and interest. If a loan modification or short sale is worked out with the owner's lender, the association is better off limiting its expenses and more likely to recover the assessments. Adding unnecessary costs of collection – especially after a short period of delinquency – can

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[14] NRS 116.31164.

make it all the more impossible for the owner to come current or for a short sale to close. This situation does not benefit the association or its members.

The statements in this advisory opinion represent the views of the Division and its general interpretation of the provisions addressed. It is issued to assist those involved with common interest communities with questions that arise frequently. It is not a rule, regulation, or final legal determination. The facts in a specific case could cause a different outcome.

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EXHIBIT J

2015 WL 301063
Only the Westlaw citation is currently available.
United States District Court,
D. Nevada.

BOURNE VALLEY COURT TRUST, Plaintiff,
v.
WELLS FARGO BANK, N.A., et al., Defendants.

No. 2:13–CV–00649–PMP–NJK. | Signed Jan. 23, 2015.

Attorneys and Law Firms

Michael F. Bohn, Law Office of Michael F. Bohn, Las Vegas, NV, for Plaintiff.

Chelsea Crowton, Wright, Finlay & Zak, LLP, Las Vegas, NV, for Defendants.

ORDER

PHILIP M. PRO, District Judge.

*1 Presently before the Court is Plaintiff Bourne Valley Court Trust's Motion for Summary Judgment (Doc. # 45), filed on September 26, 2014. Defendant Wells Fargo Bank, N.A. filed an Opposition (Doc. # 48) on November 3, 2014. Plaintiff Bourne Valley Court Trust filed a Reply (Doc. # 51) on December 1, 2014.

I. BACKGROUND

This case involves a dispute over whether a foreclosure sale conducted by a homeowners' association ("HOA") to collect unpaid HOA assessments extinguishes all junior liens, including a first deed of trust. The property at issue, located at 410 Horse Pointe Avenue, Las Vegas, Nevada, previously was owned by Defendant Renee Johnson. (Mot. for Summ. J. (Doc. # 45) ["MSJ"], Ex. 2 at 1.) The property was subject to a first deed of trust recorded in 2006, which identified Plaza Home Mortgage, Inc. as the lender. (Def. Wells Fargo Bank, N.A.'s Req. for Judicial Notice (Doc. # 25) ["Req. for Judicial Notice"], Ex. B at 1.) On March 7, 2011, Plaza Home Mortgage, Inc. assigned the deed of trust to Defendant Wells Fargo Bank, N.A. ("Wells Fargo"). (Req. for Judicial Notice, Ex. C at 1.) Later that same date, Plaza Home Mortgage, Inc. recorded a notice of default and election to sell based on Defendant Johnson's deed of trust. (Req. for Judicial Notice, Ex. D.)

The property is subject to Covenants, Conditions and Restrictions ("CC & Rs") recorded in 2000 by The Parks Homeowners Association ("The Parks"). (Def. Wells Fargo Bank, N.A.'s Opp'n to Pl.'s Mot. for Summ. J. (Doc. # 48) ["Opp'n"], Ex. B.) In August of 2011, The Parks recorded a notice of delinquent assessment lien with respect to Johnson's property, and in October of 2011, The Parks initiated an HOA foreclosure sale of the property pursuant to Nevada Revised Statutes § 116.3116 et seq. to recover unpaid HOA assessments. (Req. for Judicial Notice, Ex. F, Ex. G.) The sale was conducted on May 7, 2012, at which Horse Pointe Avenue Trust purchased the property for $4,145.00. (MSJ, Ex. 2.) The HOA foreclosure deed was recorded with the Clark County Recorder on May 29, 2012. (Id.) The HOA foreclosure deed states that the foreclosure sale was conducted in compliance with all applicable notice requirements. (Id. at 1.) The same date, a grant deed from Horse Pointe Avenue Trust to Plaintiff Bourne Valley Court Trust ("Bourne Valley") was recorded with the Clark County Recorder. (MSJ, Ex. 1.) According to Wells Fargo, at the time of the HOA foreclosure sale, the property's assessed value was $90,543.00. (Opp'n, Ex. A.)

Bourne Valley brought suit in Nevada state court on January 16, 2013, asserting claims for quiet title and declaratory relief against Defendants. (Pet. for Removal (Doc. # 1), Ex. A at 5–8, Ex. D at 4–6.) According to Bourne Valley, the foreclosure deed extinguished Wells Fargo's deed of trust and vested clear title in Bourne Valley, leaving Wells Fargo nothing to foreclose. (Id.) Defendant MTC Financial Inc. removed the action to this Court on April 17, 2013. (Pet. for Removal.)

*2 Bourne Valley now moves for summary judgment on its claims, arguing Nevada Revised Statutes § 116.3116 and SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408 (Nev.2014), provide an HOA with a lien for nine months' worth of unpaid HOA assessments that is superior to the first deed of trust, commonly referred to as the "super priority lien." Bourne Valley further argues that SFR Investments clarifies that under § 116.3116, foreclosure of an HOA super priority lien extinguishes all junior liens, including a first deed of trust. Bourne Valley therefore contends that Wells Fargo's first deed of trust was extinguished by the HOA foreclosure sale and that title to the property should be quieted in Bourne Valley's

name.

Wells Fargo responds that Bourne Valley is not entitled to summary judgment because it does not provide evidence indicating that the HOA sale complied with the notice requirements of Nevada Revised Statues Chapter 116. Wells Fargo further argues that the HOA foreclosure sale was commercially unreasonable and therefore was void. Wells Fargo also argues Bourne Valley is not a bona fide purchaser because it purchased the property with knowledge of the previously-recorded CC & Rs, which contain a mortgage protection clause stating that a lender's deed of trust cannot be extinguished by an HOA foreclosure sale to satisfy a lien for delinquent assessments. Finally, Wells Fargo argues that because Bourne Valley does not provide evidence the HOA complied with all statutory notice requirements, Bourne Valley has not demonstrated that constitutional due process requirements were met.

Bourne Valley replies that the recitals in the trustee's deed upon sale stating there was compliance with all statutory notice requirements are conclusive proof that the HOA complied with the notice requirements. Bourne Valley further argues that Wells Fargo does not provide any evidence indicating it did not receive the required statutory notices. Regarding Wells Fargo's argument that the HOA foreclosure sale was commercially unreasonable, Bourne Valley replies that Chapter 116 does not require an HOA foreclosure sale to be commercially reasonable. Bourne Valley further argues that the inadequacy of the price is not sufficient to void the HOA foreclosure sale when there is no evidence of fraud, procedural defects, or other irregularities in the conduct of the sale. As for Wells Fargo's mortgage protection clause argument, Bourne Valley replies that the clause is unenforceable to the extent that it attempts to limit the super priority lien given to the HOA under § 116.3116. Finally, regarding Wells Fargo's due process argument, Bourne Valley replies that no state action is involved in a nonjudicial HOA foreclosure sale. Bourne Valley further argues the trustee's deed reciting compliance with all applicable notice requirements is conclusive proof that statutory notice requirements were met, and hence Wells Fargo received all process that was due.

II. DISCUSSION

*3 Summary judgment is appropriate if the pleadings, the discovery and disclosure materials on file, and any affidavits "show[ ] that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a), (c). A fact is "material" if it might affect the outcome of a suit, as determined by the governing substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue is "genuine" if sufficient evidence exists such that a reasonable fact finder could find for the non-moving party. Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir.2002). Initially, the moving party bears the burden of proving there is no genuine issue of material fact. Leisek v. Brightwood Corp., 278 F.3d 895, 898 (9th Cir.2002). After the moving party meets its burden, the burden shifts to the non-moving party to produce evidence that a genuine issue of material fact remains for trial. Id. The Court views all evidence in the light most favorable to the non-moving party. Id.

A. Notice

Wells Fargo argues Bourne Valley is not entitled to judgment on its quiet title claim because Bourne Valley does not provide evidence indicating that the HOA sale complied with the notice requirements of Chapter 116. Bourne Valley contends that the recitals in the trustee's deed upon sale stating there was compliance with all statutory notice requirements are conclusive proof that the HOA complied with the notice requirements. Bourne Valley further argues that Wells Fargo does not provide any evidence indicating it did not receive the required statutory notices.

The Nevada statutes and case law applicable in this case are clear and conclusive. Section 116.3116(2) sets forth the priority of the HOA lien with respect to other liens on the property. Pursuant to § 116.3116(2), the HOA lien is prior to all other liens on the property except:

> (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to;
>
> (b)A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent ...; and
>
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

Although § 116.3116(2)(b) makes a first deed of trust superior to an HOA lien, the last paragraph of § 116.3116(2) gives what is commonly referred to as "super priority" status to a portion of the HOA's lien which is superior to the first deed of trust:

> The lien is also prior to all security

> interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien.... This subsection does not affect the priority of mechanics' or materialmens' liens, or the priority of liens for other assessments made by the association.

***4** Id. § 116.3116(2).

The Nevada Supreme Court recently held in SFR Investments that foreclosure of a super priority lien established pursuant to § 116.3116(2) extinguishes all junior interests, including a first deed of trust on the property. 334 P.3d at 410–14; see also 7912 Limbwood Court Trust v. Wells Fargo Bank, N.A., 979 F.Supp.2d 1142, 1149 (D.Nev.2013). SFR Investments resolves a previous division of authority among the Nevada state trial courts and decisions from the United States District Court for the District of Nevada on the question. 334 P.3d at 412.

To conduct a foreclosure on this type of lien, an HOA must comply with certain notice requirements at certain time intervals, including mailing a notice of delinquent assessment, recording and mailing a notice of default and election to sell, and providing notice of the time and place of the sale. Nev.Rev.Stat. §§ 116.31162–116.311635. Contrary to the argument advanced by Wells Fargo, a deed which recites that there was a default, that the notice of delinquent assessment was mailed, that the notice of default and election to sell was recorded, that 90 days have lapsed between notice of default and sale, and that notice of the sale was given, is "conclusive proof of the matters recited." Id. § 116.31166(1). A deed containing these recitals also "is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons." Id. § 116.31166(2).

Here, the foreclosure deed recites as follows:

> Default occurred as set forth in the Notice of Default and Election to Sell which was recorded October 12, 2011 as instrument/document number 201110120001641 in the office of the Recorder of said County. After the expiration of ninety (90) days from the recording and mailing of the copies of the Notice of Default and Election to Sell, a Notice of Trustee's Sale was recorded on April 09, 2012 as instrument/document number 201204090000179 in the Office of the Recorder of said County and the Association claimant, The Parks Homeowners Association, demanded that such sale be made.
>
> All requirements of law regarding the recording and mailing of copies of the Notice of Delinquent Assessment, Notice of Default and Election to Sell, and the recording, mailing, posting and publication of copies of the Notice of Trustee's Sale have been complied with.

(MSJ, Ex. 2 at 1.) Given that the foreclosure deed recites there was a default, the proper notices were given, the appropriate amount of time has lapsed between notice of default and sale, and notice of the sale was given, under § 116.31166(1), the foreclosure deed constitutes "conclusive proof" that the required statutory notices were provided. Bourne Valley therefore has met its burden of showing the required statutory notices were provided to Wells Fargo.

Once Bourne Valley met its burden of showing the required statutory notices were provided, Wells Fargo was required to come forward with evidence that a genuine issue of fact remains for trial as to notice. See Leisek, 278 F.3d at 898. Wells Fargo does not provide any evidence or even assert that it did not receive the required statutory notices. Nor does Wells Fargo point to any other procedural irregularities related to the HOA foreclosure sale that would explain Wells Fargo's failure to pay the HOA lien to avert its loss of security. See SFR Investments, 334 P.3d at 414; Limbwood, 979 F.Supp.2d at 1149 ("If junior lienholders want to avoid this result, they readily can preserve their security interests by buying out the senior lienholder's interest."). Therefore, no issue of fact remains as to whether the required statutory notices were provided. Given that Wells Fargo's due process arguments are premised on Bourne Valley not providing evidence that the statutory notice requirements were met, the Court likewise finds that no genuine issue of material fact remains as to whether Wells Fargo's due process rights were violated.

B. HOA Foreclosure Sale

*5 Wells Fargo next argues that even if the HOA foreclosure sale extinguished its first deed of trust on the property, the HOA foreclosure sale was "commercially unreasonable" and therefore was void. (Opp'n at 5–7.) Specifically, Wells Fargo argues the HOA foreclosure sale was not conducted in good faith because "the HOA made no effort to obtain the best price or to protect either Johnson or Wells Fargo" by selling the property for $4,145.00 when the assessed value of the property was $90,543.00. (Id. at 7.) Bourne Valley replies that Chapter 116 does not require an HOA foreclosure sale to be commercially reasonable. Bourne Valley further argues that the inadequacy of the price is not sufficient to void the HOA foreclosure sale when there is no evidence of fraud, procedural defects, or other irregularities in the conduct of the sale.

The commercial reasonableness here must be assessed as of the time the sale occurred. Wells Fargo's argument that the HOA foreclosure sale was commercially unreasonable due to the discrepancy between the sale price and the assessed value of the property ignores the practical reality that confronted the purchaser at the sale. Before the Nevada Supreme Court issued SFR Investments, purchasing property at an HOA foreclosure sale was a risky investment, akin to purchasing a lawsuit. Nevada state trial courts and decisions from the United States District Court for the District of Nevada were divided on the issue of whether HOA liens are true priority liens such that their foreclosure extinguishes a first deed of trust on the property. SFR Investments, 334 P.3d at 412. Thus, a purchaser at an HOA foreclosure sale risked purchasing merely a possessory interest in the property subject to the first deed of trust. This risk is illustrated by the fact that title insurance companies refused to issue title insurance policies on titles received from foreclosures of HOA super priority liens absent a court order quieting title. (Mot. to Remand to State Court (Doc. # 6), Decl. of Ron Bloecker.) Given these risks, a large discrepancy between the purchase price a buyer would be willing to pay and the assessed value of the property is to be expected.

Moreover, Wells Fargo does not point to any evidence or legal authority indicating the Court must void an HOA foreclosure sale because the purchaser bid only a fraction of the property's assessed value. Wells Fargo does not point to evidence of fraud or any other procedural defects or other irregularities in the conduct of the sale that would require the Court to void the sale, or any evidence indicating the HOA acted in bad faith by selling the property for an amount that would satisfy the unpaid assessments. Nor does Wells Fargo point to evidence or legal authority indicating that beyond selling the property to the highest bidder, the HOA was responsible for protecting Wells Fargo and Johnson's interests in addition to the homeowners' interests. See Carmen v. S.F. Unified Sch. Dist., 237 F.3d 1026, 1028–31 (9th Cir.2001) (stating that a court need not "comb the record" looking for a genuine issue of material fact if the party has not brought the evidence to the court's attention) (quotation omitted)). Thus, no genuine issue of material fact remains as to whether the HOA foreclosure sale was commercially unreasonable. Under the specific facts presented here, it was not.

C. CC & Rs

*6 Wells Fargo argues Bourne Valley is not a bona fide purchaser because it purchased the property with knowledge of the previously-recorded CC & Rs, which contain a mortgage protection clause. According to Wells Fargo, under the mortgage protection clause, its deed of trust cannot be extinguished by an HOA foreclosure sale to satisfy a lien for delinquent assessments. Bourne Valley replies that the clause is unenforceable to the extent that it attempts to limit the super priority lien given to the HOA under § 116.3116. The mortgage savings clause states as follows:

> [N]o lien created under this Article V [titled "Mortgage Protection"] or under any other Article of this Declaration, nor any lien arising by reason of any breach of this Declaration, nor the enforcement of any provision of this Declaration, shall defeat or render invalid the rights of the beneficiary under any Recorded Mortgage of first and senior priority now or hereafter upon a Lot, made in good faith and for value, perfected before the date on which the Assessment sought to be enforced became delinquent.

(Opp'n, Ex. B at § 5.08.) The preceding section, titled "Unpaid Assessments," provides that liens for unpaid assessments "shall be created in accordance with NRS § 116.3116 and shall be foreclosed on in the manner provided for in NRS § 116.31162–116.31168 as is now or hereafter may be in effect." (Id. at § 5.07.)

The Nevada Supreme Court held in SFR Investments that a mortgage protection clause does not affect the

application of § 116.3116(2) in an HOA super priority lien foreclosure case. 334 P.3d at 419. Specifically, "Chapter 116's 'provisions may not be varied by agreement, and rights conferred by it may not be waived ... [e]xcept as expressly provided in' Chapter 116." Id. (quoting Nev.Rev.Stat. § 116.1104) (emphasis omitted). "Nothing in [NRS] 116.3116 expressly provides for a waiver of the HOA's right to a priority position for the HOA's super priority lien." Id. (quoting Limbwood, 979 F.Supp.2d at 1153).

Given that Chapter 116's requirements cannot be varied by agreement, the mortgage protection clause in the CC & Rs does not preserve Wells Fargo's security interest in the property. Morever, by the CC & R's plain language, in § 5.07 The Parks preserved its statutory super priority lien rights by reference to § 116.3116, which is the statutory section setting forth the relative priority of the HOA's super priority and the junior liens in relation to a first deed of trust. Thus, no genuine issue of fact remains as to whether the mortgage protection clause affects the application of § 116.3116 in this case. The Court therefore will grant Bourne Valley's Motion for Summary Judgment.

III. CONCLUSION

IT IS THEREFORE ORDERED that Plaintiff Bourne Valley Court Trust's Motion for Summary Judgment (Doc. # 45) is GRANTED.

End of Document

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EXHIBIT B

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DISTRICT COURT
CLARK COUNTY, NEVADA

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Company, Plaintiff, vs. BANK OF AMERICA, N.A., a Nevada Association; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, an Illinois Corporation; ARLINGTON NORTH MASTER ASSOCIATION, a Nevada Non-Profit Corporation; ARLINGTON RANCH LANDSCAPE MAINTENANCE ASSOCIATION, a Nevada Non-Profit Corporation; DOES 1 through 25 inclusive; and ROE CORPORATIONS I through X, inclusive; Defendants.	Case No.: A-13-692200-C Dept. No.: XIV **DEFENDANTS MORTGAGE ELECTRONIC REGISTRATION SYSTEMS AND CHRISTIANA TRUST'S MOTION FOR SUMMARY JUDGMENT**

COMES NOW, Defendants, Mortgage Electronic Registration System (hereinafter "MERS") and Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 3, In c/o Altisource Asset Management Corporation (hereinafter "Christiana Trust") (hereinafter collectively "Defendants"), by and through its attorney of record, Chelsea A. Crowton, Esq. of the law firm of Wright, Finlay &

Zak, LLP, hereby submit their Motion for Summary Judgment. The Motion is based on the attached Memorandum of Points and Authorities, all papers and pleadings on file herein, all judicially noticed facts, and any oral or documentary evidence that may be presented at a hearing on this matter.

DATED this 16th day of March, 2015.

WRIGHT, FINLAY & ZAK, LLP

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NOTICE OF HEARING

PLEASE TAKE NOTICE that the undersigned will bring this **DEFENDANTS MORTGAGE ELECTRONIC REGISTRATION SYSTEMS AND CHRISTIANA TRUST'S MOTION FOR SUMMARY JUDGMENT** on the 16th day of April, 2015, at the hour of 9:30 a.m./p.m., or as soon thereafter as counsel may be heard.

DATED this 16th day of March, 2015.

WRIGHT, FINLAY & ZAK, LLP

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The above-entitled case involves the claimed rights and interests in the real property located at 8787 Tom Noon Avenue No. 21, Las Vegas, Nevada 89178, APN 176-20-714-331(hereinafter "Property"). Christiana Trust is the current beneficiary under the first Deed of Trust recorded as Book and Instrument Number 20070430-0006328,[1] wherein the Plaintiff is seeking a judicial determination that the non-judicial HOA Sale extinguished all liens and encumbrances, including a first position deed of trust. Christiana Trust by and through its agent attempted to tender the full amount of the super-priority lien prior to the HOA Sale; however, the HOA and/or its agent refused the tender, thereby violating the due process rights of Christian Trust. The HOA notices also violated NRS Chapter 116 because the HOA notices included collections costs. Lastly, the commercial unreasonableness of the HOA Sale violates the due process rights of Christiana Trust so the HOA Sale could not extinguish Christiana Trust's Deed of Trust. .

II. STATEMENT OF UNDISPUTED FACTS

1. On April 27, 2007, Megan R. Sulliban (hereinafter "Sulliban") purchased the Property.[2]
2. On April 30, 2007, the Sulliban Deed of Trust for $215,000.00 was recorded, wherein Bank of America, N.A. was stated as the Lender on the Deed of Trust.[3]
3. On September 2, 2011, a Notice of Delinquent Assessment Lien was recorded by Arlington Ranch North Master Association.[4]
4. On October 20, 2011, a Notice of Default and Election to Sell under Notice of Delinquent

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[1] A true and correct copy of the Assignment recorded in the Clark County Recorder's office as Book and Instrument Number 20140407-0000020 is attached to Defendants' Request for Judicial Notice ("RJN") as **Exhibit B.** All other recordings hereafter are recorded in the same manner and method.

[2] A true and correct copy of the Grant, Bargain, Sale Deed recorded as Book and Instrument Number 20070430-0006327 is attached to Defendants' RJN as **Exhibit C.**

[3] A true and correct copy of the Deed of Trust recorded as Book and Instrument Number 20070430-0006328 is attached to Defendants' RJN as **Exhibit D.**

[4] A true and correct copy of the Notice of Lien (HOA) recorded as Book and Instrument Number 20110902-0001737 is attached to Defendants' RJN as **Exhibit E.**

Assessment was recorded.[5]

5. On May 23, 2012, a Notice of Lien was recorded by Arlington Ranch Landscape Maintenance Association.[6]

6. On July 19, 2012, a Notice of Sale was recorded against the Property.[7]

7. On July 20, 2012, a Notice of Delinquent Assessment Lien was recorded by High Noon at Arlington Ranch Homeowners Association.[8]

8. On October 31, 2012, a Notice of Default and Election to Sell under Homeowners Association Lien was recorded.[9]

9. On June 21, 2013, a Notice of Trustee's Sale was recorded.[10]

10. On July 30, 2013, a Trustee's Deed Upon Sale was recorded, wherein the Plaintiff was stated as the Grantee and paid $7,500.00 at the HOA Sale.[11]

11. On April 7, 2014, an Assignment of Deed of Trust was recorded, wherein Christiana Trust was assigned all beneficial interest in the 2007 Deed of Trust and Note.[12]

12. The Property is subject to the Supplemental Declaration of Covenants, Conditions &Restrictions and Reservation of Easements for High Noon Arlington Ranch (the "CC&Rs") recorded on or about March 25, 2004.[13]

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[5] A true and correct copy of the Notice of Default (HOA) recorded as Book and Instrument Number 20111020-0001455 is attached to Defendants' RJN as **Exhibit F.**

[6] A true and correct copy of the Notice of Lien (HOA) recorded as Book and Instrument Number 20120523-0000539 is attached to Defendants' RJN as **Exhibit G.**

[7] A true and correct copy of the Notice of Sale (HOA) recorded as Book and Instrument Number 20120719-0001022 is attached to Defendants' RJN as **Exhibit H.**

[8] A true and correct copy of the Notice of Lien (HOA) recorded as Book and Instrument Number 20120720-0003175 is attached to Defendants' RJN as **Exhibit I.**

[9] A true and correct copy of the Notice of Default (HOA) recorded as Book and Instrument Number 20121031-0000600 is attached to Defendants' RJN as **Exhibit J.**

[10] A true and correct copy of the Notice of Sale (HOA) recorded as Book and Instrument Number 20130621-0001581 is attached to Defendants' RJN as **Exhibit K.**

[11] A true and correct copy of the TDUS recorded as Book and Instrument Number 20130730-0000805 is attached to Defendants' RJN as **Exhibit L.**

[12] A true and correct copy of the Assignment recorded in the Clark County Recorder's office as Book and Instrument Number 20140407-0000020 is attached to Defendants' RJN as **Exhibit B.**

[13] A true and correct copy of the CC&Rs recorded as Book and Instrument Number 20040325-000427 is attached to Defendants' RJN as **Exhibit A.5.**

13. On or about August 10, 2010, Bank of America, N.A. retained the law firm Miles, Bergstrom & Winters, LLP f/k/a Miles, Bauer, Bergstrom & Winters, LLP (hereinafter "MBW") to tender payment to the HOA and/or its agents for any super-priority lien that was being claimed on the Property.[14]

14. On September 23, 2010, MBW sent a letter to Alessi & Koenig with an enclosed check for $522.00 to satisfy the maximum nine months of common assessments that could be claimed as a super-priority lien by Alessi & Koenig or the HOA.[15]

15. On January 28, 2011, MBW sent a letter to Nevada Association Services, Inc. with an enclosed check for $236.25.00 to satisfy the maximum nine months of common assessments that could be claimed as a super-priority lien.[16]

16. The checks were ultimately rejected by Alessi & Koenig and Nevada Association Services, Inc. and returned to MBW without further correspondence or explanation of any amount necessary to cure any super-priority lien.[17]

III. LEGAL ARGUMENTS

A. MOTION FOR SUMMARY JUDGMENT LEGAL STANDARD.

The primary purpose of a summary judgment procedure is to secure a "just, speedy, and inexpensive determination of any action." Albatross Shipping Corp. v. Stewart, 326 F.2d 208, 211 (5th Cir. 1964); accord McDonald v. D.P. Alexander & Las Vegas Boulevard, LLC, 121 Nev. 812, 815, 123 P.3d 748, 750 (2005). Although summary judgment may not be used to deprive litigants of trials on the merits where material factual doubts exist, summary proceedings promote judicial economy and reduces litigation expenses associated with actions clearly lacking in merit. Id. Summary judgment enables the trial court to "avoid a needless trial when an appropriate showing is made in advance that there is no genuine issue of fact to be tried." Id., quoting Coray v. Hom, 80 Nev. 39, 40-41, 389 P.2d 76, 77 (1964).

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[14] A true and correct copy of Affidavit of Declaration of Adam Kendis is attached to Defendants' RJN as **Exhibit A.8.**

[15] Id.

[16] Id.

[17] Id.

"Summary judgment is appropriate if, when viewed in the light most favorable to the nonmoving party, the record reveals there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law." DTJ Design, Inc. v. First Republic Bank, 130 Nev. Adv. Op. 5, 318 P.3d 709, 710 (2014) (citing Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 713, 57 P.3d 82, 87 (2002)). The plain language of Rule 56(c) "mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2552 (1986) (adopted by Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005)). In such a situation, there can be "no genuine issue as to any material fact" because a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. Id.

While the party moving for summary judgment must make the initial showing that no genuine issue of material fact exists, where, as here, the non-moving party will bear the burden of persuasion at trial, the party moving for summary judgment need only: "(1) submit[] evidence that negates an essential element of the nonmoving party's claim, or (2) 'point[] out ... that there is an absence of evidence to support the nonmoving party's case.'" Francis v. Wynn Las Vegas, LLC, 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011). Once this showing is met, summary judgment must be granted unless "the nonmoving party [can] transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact." Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 603, 172 P.3d 131, 134 (2007).

Parties resisting summary judgment cannot stand on their pleadings once the movant has submitted affidavits or other similar materials. NRCP 56(e). Affidavits which do not affirmatively demonstrate personal knowledge are insufficient. Id.; accord Coblentz v. Hotel Employees & Rest. Employees Union Welfare Fund, 112 Nev. 1161, 1172, 925 P.2d 496, 502 (1996); see also British Airways Bd. v. Boeing Co., 585 F.2d 946, 952 (9th. Cir. 1978) (applying analogous federal rule). Likewise, "legal memoranda and oral argument are not evidence and do

not create issues of fact capable of defeating an otherwise valid motion for summary judgment." British Airways, 585 F.2d at 952; accord NRCP 56(e).

Though inferences are to be drawn in favor of the non-moving party, an opponent to summary judgment must show that he can produce evidence at trial to support his claim. Van Cleave v. Kietz-Mill Minit Mart, 97 Nev. 414, 417, 633 P.2d 1220, 1222 (1981). The Nevada Supreme Court has rejected the "slightest doubt" standard, under which any dispute as to the relevant facts defeats summary judgment. Wood v. Safeway, 121 Nev. at 731, 121 P.3d at 1031. A party resisting summary judgment "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." Collins v. Union Fed. Savings & Loan, 99 Nev. 284, 302, 622 P.2d 610, 621 (1983) (quoting Hahn v. Sargent, 523 F.2d 461, 467 (1st Cir. 1975)). Rather, the non-moving party must demonstrate specific facts as opposed to general allegations and conclusions. LaMantia v. Redisi, 118 Nev. 27, 29, 38 P.3d 877, 879 (2002); Wayment v. Holmes, 112 Nev. 232, 237, 912 P.2d 816, 819 (1996). Indeed, an opposing party "is not entitled to have [a] motion for summary judgment denied on the mere hope that at trial he will be able to discredit movant's evidence; he must at the hearing be able to point out to the court something indicating the existence of a triable issue of fact." Hickman v. Meadow Wood Reno, 96 Nev. 782, 784, 617 P.2d 871, 872 (1980) (quoting Thomas v. Bokelman, 86 Nev. 10, 14, 462 P.2d 1020, 1022-23 (1970)); see also Aldabe v. Adams, 81 Nev. 280, 285, 402 P.2d 34, 37 (1965) ("The word 'genuine' has moral overtones; it does not mean a fabricated issue."), overruled on other grounds by Siragusa v. Brown, 114 Nev. 1384, 971 P.2d 801 (1996); and Elizabeth E. v. ADT Sec. Sys. W., 108 Nev. 889, 892, 839 P.2d 1308, 1310 (1992).

Based on the facts on record and extrinsic evidence, Plaintiff cannot produce sufficient, admissible evidence from which a rational trier of fact would refute the fact that Christiana Trust's Deed of Trust remains a secured lien against the Property after the HOA Sale. Therefore, Defendants are entitled to a judgment as a matter of law on all claims.

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B. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE THE HOA'S SALE ON ANY SUPER-PRIORITY LIEN IS VOID AS A RESULT OF THE REJECTED TENDER.

BAC's tender of payment of the super-priority lien also voids the sale or serves as a basis for preserving the first deed of trust. The super-priority lien is prior to a first deed of trust "to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution." NRS 116.3116(2). The super-priority lien thus consists of up to 9 months of common assessments and any nuisance abatement charges. See SFR, 334 P.3d at 410-11; see also 13-01 Op. Dep't. of Bus. & Indus., Real Estate Div. 2 (2012) (super-priority lien is limited to: (1) 9 months of assessments; and (2) [nuisance abatement] charges allowed by NRS 116.310312). Once the super-priority amount has been paid to the association, the association's foreclosure on the remaining amounts transfer title to the unit/property subject to the first mortgage or deed of trust. See Report of the Joint Editorial Board for Uniform Real Property Acts, "The Six-Month 'Limited Priority Lien' For Association Fees Under the Uniform Common Interest Ownership Act," pg. 3 (June 1, 2013).[18]

The principles of law and equity, including the law of real property, supplement the provisions of NRS Chapter 116, unless they are inconsistent with NRS Chapter 116. NRS 116.1108. Further, NRS 116.1113 imposes an obligation of good faith in performing or enforcing any contract or duty under NRS Chapter 116. The common law definition of tender is "an offer of payment that is coupled either with no conditions or only with conditions upon which the tendering party has a right to insist." Fresk v. Kraemer, 99 P.3d 282, 286-287 (Or. 2004); see also 74 Am. Jur. 2d Tender §22 (2014). Tender is satisfied where there is "an offer to perform a condition or obligation, coupled with the present ability of immediate performance, so that if it were not for the refusal of cooperation by the party to whom tender is made, the condition or obligation would be immediately satisfied." 15 Williston, A Treatise on the Law of

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[18] Available at, http://www.uniformlaws.org/shared/docs/jeburpa/2013jun1_JEBURPA_UCIOA%20Lien%20Priority%20Report.pdf (last visited March 9, 2015).

Contracts, § 1808 (3d. ed. 1972).

A proper and sufficient tender of payment operates to discharge a lien. Segars v. Classen Garage and Service Co., 612 P.2d 293 (OK Ct. App. Div. 1, 1980). Further, a tender which has been made and rejected precludes foreclosure and discharges the mortgage or lien secured by property. See Bisno v. Sax, 175 Cal. App. 2d 714, 723, 346 P.2d 814; see also, Lichty v. Whitney, 80 Cal. App.2d 696, 701, 182 P.2d 582, 585 (1947) (holding that "[a] tender of the amount of a debt, though refused, extinguishes the lien of a pledgee, and will defeat an action to recover the property pledged . . . [t]he creditor, by refusing to accept, does not forfeit his right to the thing tendered, but he does lose all collateral benefits or securities [and] [t]he instantaneous effect is to discharge any collateral lien, as a pledge of goods or right of distress.") (internal citations omitted); Winnett v. Roberts, 179 Cal. App. 3d 909, 921-22, 225 Cal. Rptr. 82, 88-89 (1986); McFarland v. Christoff, 120 Ind. App. 416, 421, 92 N.E. 2d 555, 557-58 (1950); In re Greenbaum, 172 Misc. 1034, 1036, 14 N.Y.S. 2d 983, 985 (1939).

In this case, BAC's agent or attorneys contacted Alessi & Koenig requesting a payoff amount for any super-priority lien being claimed by the HOA. Although Alessi & Koenig refused to provide a precise super-priority lien payoff amount, and instead provided a payoff for what appears to be for the full delinquency, BAC through its attorneys still calculated the maximum nine months of assessments that could have been claimed by the HOA.[19] BAC then tendered $522.00 to Alessi & Koenig and $236.25 to Nevada Association Services to satisfy the maximum nine months of common assessments that could be claimed. The check for the amount was rejected and returned back to BAC's attorneys without further correspondence or explanation. The actions of BAC therefore discharged any super-priority lien that could have been claimed or foreclosed by the HOA or Alessi & Koenig.

Plaintiff will no doubt argue that it was unaware of the attempted tender and thus should be held on par with a bona fide purchaser for value. However, in its decision the Nevada Supreme stated that it is a common understanding that the lender would pay the HOA Lien prior

[19] Although nuisance abatement costs can be included in a super-priority lien under NRS 116.3116, the payoff statement from Alessi & Koenig did not indicate any nuisance abatement costs were incurred or could be charged as part of any super-priority lien.

to the HOA Sale.[20] If the Nevada Supreme Court assumes this fact and the HOA notices are public documents than it is a reasonable presumption that Plaintiff should have expected a tender attempt by Defendants and/or their agents prior to the HOA Sale. Plaintiff also at a minimum had constructive notice of the recorded first Deed of Trust and the Trustee's Deed Upon Sale conveys title to Plaintiff without any warranty of title. Plaintiff simply knew there were issues with the foreclosure sale and can hardly paint itself as a bona fide or good faith purchaser for value. Therefore, Plaintiff cannot shroud itself under the bona-fide purchaser shield.

Based on the above, Defendants' Motion for Summary Judgment should be granted.

C. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT SHOULD BE GRANTED BECAUSE THE HOA LIEN VIOLATES NRS 116.3116.

Under NRS Chapter 116 and the Nevada Real Estate Division's ("NRED") Advisory Opinion 13-01, a lien under NRS 116.3116(1) can only include costs and fees that are specifically enumerated in the statute. NRS Chapter 116 specifically excludes attorney's fees and the costs of collection from being included in an HOA Lien. The language in NRS 116.3102(1) lists five categories of penalties, fees, charges, late charges, fines, and interest that an HOA can include in the association's lien. The costs of collecting and attorney's fees are not listed in any of the five categories under NRS 116.3102(1). The status reports and invoices from Alessi & Koenig show that the HOA included collection costs into the HOA Lien.[21] The inclusion of attorney's fees and collection costs in the association's lien violates NRS Chapter 116; therefore, the HOA Lien is statutorily improper and the HOA Sale must be found invalid.

Several Judges in the Eighth Judicial District Court of Clark County, Nevada have issued opinions consistent with the above interpretation of NRS Chapter 116. The Court in Stanford Burt v. Sutter Creek Homeowners Association, et al., Case No. A-12-672790-C, Court Minutes, stated that an HOA Lien was statutorily improper and the foreclosure sale by the HOA should be rescinded because the HOA Lien included the costs of collection.[22] The Court in Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order,

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[20] See SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75 (Sept. 18, 2014).
[21] See HOA documents attached to the Defendants' RJN as **Exhibit A.1.**
[22] See Stanford Burt v. Sutter Creek Homeowners Association, et al., Case No. A-12-672790-C, Court Minutes, attached to the Defendants' RJN as **Exhibit A.2.**

confirms that an association's lien does not include any fees, cost of collection, or additional costs outside the scope of NRS Chapter 116. Wingbrook concluded,

> [T]he **Super Priority Lien amount is not without limits** and NRS 116.3116 provides that the amount of the Super Priority Lien (i.e. the amount of a homeowners' associations' Statutory Lien which retains priority status over the First Security Interest) is limited "to the extent" of those assessments for common expenses based upon the associations' periodic budget that would have become due in the nine (9) month period immediately preceding an associations' institution of an action to enforce its Statutory Lien and "to the extent" of external repaid costs pursuant to NRS 116.310312.[23]
>
> Therefore after the foreclosure by a First Security Interest holder of a unit located within a homeowners' association, pursuant to NRS 116.3116 the monetary limit of a homeowners' association's Super Priority Lien is limited to a maximum amount equaling nine (9) times the homeowners' association's monthly assessment amount to unit owners for common expenses based on the periodic budget which would have become due immediately preceding the institution of an action to enforce the lien plus external repair costs pursuant to NRS 116.310312.[24]

Therefore, the Court in Wingbrook and Burt reaffirm the Nevada Real Estate Opinion and statutory language in NRS Chapter 116, wherein the HOA Lien cannot include attorney's fees or collection costs.

The NRED Opinion 13-01 has also stated that attorney's fees and the costs of collecting on an HOA Lien cannot be included in the lien. In August of 2012, the Nevada Supreme Court recognized that the Nevada Real Estate Division of the Department of Business and Industry is responsible for interpreting NRS Chapter 116 and issuing advisory opinions relating to the extent and priority of the association super-priority lien. See State, Bus. & Indus. v. Nev. Ass'n Servs., 128 Nev. Adv. Op. 34, 294 P.3d 1223, 1227 (2012)("We therefore determine that the plain language of the statutes requires that the CCICCH and the Real Estate Division, and no other commission or division, interpret NRS Chapter 116."). The Nevada Supreme Court has also stated that courts generally give "great deference" to an agency's interpretation of a statute that the agency is charged with enforcing. State, Div. of Ins. v. State Farm Mut. Auto. Ins. Co., 116 Nev. 290, 293 (2000); see also Dutchess Business Services v. Nev. State Bd. Of Pharmacy, 124 Nev. 701, 709 (2008) (stating that it "defer[s] to an agency's interpretation of its governing

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[23] Id.
[24] Id.