

CLERK OF THE COURT

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May 13 2016 10:41 a.m.
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Clerk of Supreme Court

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Attorneys for Nationstar Mortgage, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 2227 SHADOW
CANYON,

Plaintiff,

v.

NATIONSTAR MORTGAGE, LLC; PATERNO
C. JURANI and REPUBLIC SILVER STATE
DISPOSAL, DBA REPUBLIC SERVICES,

Defendants.

Case No.: A-14-702938-C
Dept.: XIV

**DEFENDANT NATIONSTAR
MORTGAGE LLC'S NOTICE OF
APPEAL**

Nationstar Mortgage LLC (**Nationstar**), by and through its attorneys of record at Akerman LLP, submits its notice of appeal to the Nevada Supreme Court of the order granting plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon's motion for summary that was entered in this matter on April 7, 2016, notice of which was serve on April 8, 2016.

DATED this 6th day of May, 2014.

AKERMAN LLP

/s/ Allison R. Schmidt
ALLISON R. SCHMIDT, ESQ.
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Las Vegas, Nevada 89144

Attorneys for Nationstar Mortgage, LLC

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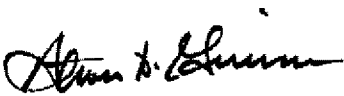
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CLERK OF THE COURT

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14 *Attorneys for Nationstar Mortgage, LLC*

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **SATICOY BAY LLC SERIES 2227 SHADOW**
18 **CANYON,**

19 **Plaintiff,**

20 **v.**

21 **NATIONSTAR MORTGAGE, LLC; PATERNO**
22 **C. JURANI and REPUBLIC SILVER STATE**
23 **DISPOSAL, DBA REPUBLIC SERVICES,**

24 **Defendants.**

Case No.: A-14-702938-C
Dept.: XIV

DEFENDANT NATIONSTAR
MORTGAGE LLC'S CASE APPEAL
STATEMENT

25 Nationstar Mortgage LLC (**Nationstar**), by and through their attorneys of record at Akerman
26 LLP, submit their Case Appeal Statement pursuant to NRAP 3(f)(3).

27 1. The appellant filing this case appeal statement is Nationstar.

28 2. The Judge entering the order appealed from was the Honorable Adriana Escobar. The
order appealed is the Order Granting Saticoy Bay LLC Series 2227 Shadow Canyon's Motion for
Summary Judgment, notice of which was entered on April 8, 2016.

3. Counsel for appellant Nationstar, are Ariel E. Stern and Allison R. Schmidt of
Akerman LLP, 1160 N. Town Center Drive, Suite 330, Las Vegas, Nevada 89144.

4. Trial counsel for respondent is Michael F. Bohn of Law Offices of Michael Bohn,
Esq., Ltd. 376 E. Warm Springs Road, Suite 140 Las Vegas, NV 89119. Appellant is unaware of
whether trial counsel will also act as appellate counsel for respondent.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 6th day of May, 2016 I caused to be served a true and correct copy of foregoing **DEFENDANT NATIONSTAR MORTGAGE LLC'S CASE APPEAL STATEMENT** in the following manner:

(ELECTRONIC SERVICE ONLY) Pursuant to Administrative Order 14-2, the above-referenced document was electronically served on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

Michael F. Bohn, Esq.
Jeff Arlitz, Esq.
LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.
376 E. Warm Springs Road, Suite 140
Las Vegas, NV 89119

Attorneys for Plaintiff

/s/ Michael Hannon

An employee of AKERMAN LLP

DEPARTMENT 14
CASE SUMMARY
CASE NO. A-14-702938-C

Saticoy Bay LLC Series 2227 Shadow Canyon, Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

§
§
§
§
§

Location: **Department 14**
Judicial Officer: **Escobar, Adriana**
Filed on: **06/24/2014**
Case Number History:
Cross-Reference Case Number: **A702938**

CASE INFORMATION

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

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-14-702938-C
Court	Department 14
Date Assigned	02/15/2016
Judicial Officer	Escobar, Adriana

PARTY INFORMATION

Plaintiff

Saticoy Bay LLC Series 2227 Shadow Canyon

Lead Attorneys

Bohn, Michael F
Retained
702-642-3113(W)

Defendant

Jurani, Paterno C, ESQ
Removed: 05/27/2015
Dismissed

Nationstar Mortgage LLC

Stern, Ariel E.
Retained
702-634-5000(W)

Republic Silver State Disposal
Removed: 07/25/2014
Dismissed

Short Trial Judge

Judge Pro Tempore

DATE

EVENTS & ORDERS OF THE COURT

INDEX

06/24/2014



Complaint

Filed By: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon
Complaint

06/24/2014

Case Opened

07/09/2014



Affidavit of Service

Filed By: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon
Affidavit of Service












07/17/2014



Affidavit of Service











Filed By: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon
Affidavit of Service

DEPARTMENT 14
CASE SUMMARY
CASE NO. A-14-702938-C




07/21/2014	 Initial Appearance Fee Disclosure Filed By: Defendant Nationstar Mortgage LLC <i>Initial Appearance Fee Disclosure</i>
07/21/2014	 Notice of Appearance Party: Defendant Nationstar Mortgage LLC <i>Notice of Appearance</i>
07/21/2014	 Answer Filed By: Defendant Nationstar Mortgage LLC <i>Defendant Nationstar Mortgage, LLC's Answer To Complaint</i>
07/25/2014	 Notice and Judgment of Dismissal Filed By: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon <i>Notice and Judgment of Dismissal</i>
07/25/2014	Judgment of Dismissal - Entry by Clerk (Judicial Officer: Ellsworth, Carolyn) Debtors: Republic Silver State Disposal (Defendant) Creditors: Saticoy Bay LLC Series 2227 Shadow Canyon (Plaintiff) Judgment: 07/25/2014, Docketed: 08/01/2014
08/07/2014	 Affidavit of Service Filed By: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon <i>Affidavit of Service</i>
08/07/2014	 Receipt of Copy Filed by: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon <i>Receipt of Copy</i>
01/15/2015	 Joint Case Conference Report Filed By: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon <i>Joint Case Conference Report</i>
01/21/2015	 Scheduling Order Filed By: Short Trial Judge Judge Pro Tempore <i>Scheduling Order</i>
01/28/2015	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial and Calendar Call</i>
05/27/2015	 Notice and Judgment of Dismissal Filed By: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon <i>Notice of Dismissal and Judgment of Dismissal for Defendant Paterno C. Jurani, Esq.</i>
05/27/2015	Judgment of Dismissal - Entry by Clerk (Judicial Officer: Ellsworth, Carolyn) Debtors: Paterno C Jurani, ESQ. (Defendant) Creditors: Saticoy Bay LLC Series 2227 Shadow Canyon (Plaintiff) Judgment: 05/27/2015, Docketed: 06/03/2015
06/03/2015	 Notice of Hearing <i>Notice of Rescheduling of Hearing</i>
08/27/2015	 Motion for Summary Judgment Filed By: Defendant Nationstar Mortgage LLC

DEPARTMENT 14
CASE SUMMARY
CASE NO. A-14-702938-C

Defendant Nationstar Mortgage, LLC's Motion For Summary Judgment

09/10/2015	 Countermotion For Summary Judgment Filed By: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon <i>Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment</i>
09/17/2015	 Notice of Hearing <i>Notice of Rescheduling of Hearing</i>
09/25/2015	 Affidavit of Service Filed By: Defendant Nationstar Mortgage LLC <i>Affidavit Of Service</i>
10/01/2015	 Calendar Call (10:00 AM) (Judicial Officer: Ellsworth, Carolyn)
10/08/2015	 Opposition Filed By: Defendant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC's Opposition to Plaintiff's Countermotion for summary judgment and Reply in Support of Motion for Summary Judgment.</i>
10/12/2015	CANCELED Bench Trial (1:30 PM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated</i>
10/22/2015	Motion for Summary Judgment (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) 10/22/2015, 01/14/2016 <i>Defendant Nationstar Mortgage, LLC's Motion For Summary Judgment</i>
10/22/2015	Opposition and Countermotion (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) 10/22/2015, 01/14/2016 <i>Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment</i>
10/22/2015	 All Pending Motions (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
11/06/2015	 Supplemental Filed by: Defendant Nationstar Mortgage LLC <i>Defendant Nationstar Mortgage, LLC's Supplemental Brief on Procedural Due Process and Commercial Reasonableness</i>
11/19/2015	 Supplement Filed by: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon <i>Plaintiff's Supplemental Brief Regarding Due Process and Commercial Reasonableness</i>
12/16/2015	 Notice of Hearing <i>Notice of Rescheduling of Hearing</i>
01/14/2016	 All Pending Motions (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>All Pending Motions: 1/14/16</i>
02/15/2016	Case Reassigned to Department 14 <i>Reassigned From Judge Ellsworth - Dept 5</i>
03/10/2016	 Calendar Call (9:30 AM) (Judicial Officer: Escobar, Adriana)

DEPARTMENT 14
CASE SUMMARY
CASE NO. A-14-702938-C

03/14/2016	CANCELED Jury Trial (1:30 PM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated - per Judge</i>
04/07/2016	 Findings of Fact, Conclusions of Law and Judgment Filed by: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon <i>Findings of Fact, Conclusions of Law, and Judgment</i>
04/07/2016	Summary Judgment (Judicial Officer: Escobar, Adriana) Debtors: Nationstar Mortgage LLC (Defendant) Creditors: Saticoy Bay LLC Series 2227 Shadow Canyon (Plaintiff) Judgment: 04/07/2016, Docketed: 04/14/2016
04/08/2016	 Notice of Entry of Judgment Filed By: Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon <i>Notice of Entry of Judgment</i>
05/06/2016	 Notice of Appeal Filed By: Defendant Nationstar Mortgage LLC <i>Defendant Nationstar Mortgage LLC's Notice Of Appeal</i>
05/06/2016	 Case Appeal Statement Filed By: Defendant Nationstar Mortgage LLC <i>Defendant Nationstar Mortgage LLC's Case Appeal Statement</i>

DATE	FINANCIAL INFORMATION	
	Defendant Nationstar Mortgage LLC	
	Total Charges	447.00
	Total Payments and Credits	447.00
	Balance Due as of 5/10/2016	0.00
	Plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon	
	Total Charges	470.00
	Total Payments and Credits	470.00
	Balance Due as of 5/10/2016	0.00

CIVIL COVER SHEET

A-14-702938-C

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)

V

I. Party InformationSATICOY BAY LLC SERIES 2227 SHADOW
CANYON

Attorney Michael F. Bohn, Esq.

376 East Warm Springs Road, Ste., 140

Las Vegas NV 89119

(702) 642-3113

Defendant, NATIONSTAR MORTGAGE LLC.;
PATERNO C. JURANI, ESQ.; and REPUBLIC
SILVER STATE DISPOSAL, DBA REPUBLIC
SERVICES

Attorney N/A

II. Nature of Controversy Exemption From Arbitration**Civil Cases**

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

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

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

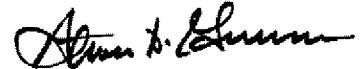
June 24th, 2014

Date

// s / Michael F. Bohn, Esq. /

Signature of initiating party or representative

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6 Attorney for plaintiff



CLERK OF THE COURT

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 2227 SHADOW
CANYON,

CASE NO.: A702938
DEPT NO.: XIV

11 Plaintiff,

12 vs.

Date of hearing: January 14, 2016
Time of hearing: 9:00 a.m.

13 NATIONSTAR MORTGAGE LLC.;
14 PATERNO C. JURANI, ESQ.; and REPUBLIC
15 SILVER STATE DISPOSAL, DBA REPUBLIC
SERVICES,

16 Defendants.

17 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

18 The motion of defendant Nationstar Mortgage, LLC ("Nationstar") for summary judgment, and
19 countermotion of plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon ("Plaintiff") having come
20 before the court on the 14th day of January, 2016, Michael F. Bohn, Esq. appearing on behalf of
21 plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon ("Plaintiff"), Ariel E. Stern, Esq., appearing on
22 behalf of Bank of America and Reconstruct Company, N.A., and the court, having reviewed the motions
23 and the oppositions and having heard the arguments of counsel, makes its findings of fact, conclusion
24 of law and judgment as follows.

25 **FINDINGS OF FACT**

- 26 1. Plaintiff is the owner of the real property commonly known as 2227 Shadow Canyon,
27
28

1 Henderson, Nevada ("the Property").

2 2. Plaintiff obtained title to the Property at foreclosure sale conducted on January 2, 2014 as
3 evidenced by foreclosure deed recorded February 3, 2014.

4 3. The foreclosure deed arose from a delinquency in assessments due from the former owner,
5 Patricia E. Evans, to the Sun City Anthem Community Association ("the HOA"), pursuant to NRS
6 Chapter 116.

7 4. Defendant Nationstar Mortgage LLC ("Nationstar") is the beneficiary of a deed of trust that
8 was recorded as an encumbrance on the Property on February 7, 2006.

9 5. The foreclosure agent recorded a notice of default on June 24, 2010. The foreclosure agent
10 then mailed a copy of the notice of default to Pulte Mortgage LLC on June 30, 2010. Pulte Mortgage
11 is the predecessor in interest to defendant Nationstar's predecessor in interest,

12 6. The foreclosure agent recorded a notice of sale on November 26, 2013. The foreclosure agent
13 then mailed a copy of the notice of sale to Pulte Mortgage LLC and defendant Nationstar on November
14 26, 2013.

15 7. Additionally, the foreclosure agent posted the notice of sale at three separate public locations
16 and published the notice of sale in Nevada Legal News.

17 8. Defendant Nationstar and its predecessor in interest, Pulte Mortgage LLC, were on actual
18 notice of the HOA foreclosure sale and failed to take any action to protect their interests in the Property.

19 9. The HOA foreclosure agent issued a deed upon sale which was recorded on February 3, 2014.

20 Default occurred as set forth in a Notice of Default and Election to Sell, recorded on
21 06/24/2010 as instrument number 0002131 Book 20100624 which was recorded in the
22 office of the recorder of said county. Red Rock Financial Services has complied with all
23 requirements of law including, but not limited to, the elapsing of 90 days, mailing of
copies of Lien for Delinquent Assessments and Notice of Default and the posting and
publication of the Notice of Sale.

24 10. Any findings of fact which should be considered to be a conclusion of law shall be treated
25 as such.

26 CONCLUSIONS OF LAW

27 1. Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories,
28

1 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any
2 material fact and that the moving party is entitled to a judgment as a matter of law.” NRCP 56. “The
3 party moving for summary judgment bears the initial burden of production to show the absence of a
4 genuine issue of material fact.” Cuzze v. U. and Community College System of Nevada, 123 Nev. 598,
5 602, 172 P.3d 131, 134 (2007). Where the moving party will carry the burden of persuasion on those
6 issues at trial, it “must present evidence that would entitle it to a judgment as a matter of law in the
7 absence of contrary evidence.” *Id.*

8 2. If the initial burden is carried, “the party opposing summary judgment assumes a burden of
9 production to show the existence of a genuine issue of material fact.” *Id.* The opposing party must
10 “transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show
11 a genuine issue of material fact.” *Id.* The opposing party is “not entitled to build a case on the gossamer
12 threads of whimsy, speculation, and conjecture.” Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d
13 1026, 1031 (2005) (citations and quotations omitted). If the opposing party fails to carry its burden,
14 summary judgment will be entered against it if the moving party is also entitled to judgment as a matter
15 of law. *See* NRCP 56(c). Since both parties have moved for summary judgment, and attach many of the
16 same real property records to their respective motions, the only issue for the Court to resolve is which
17 party is entitled to judgment as a matter of law. Based on the Court’s prior tentative, this issue reduces
18 to whether there is sufficient state action under the facts of this case to find Nevada’s HOA lien statutes
19 unconstitutional.

20 3. When ruling on a motion for summary judgment, the court may take judicial notice of the
21 public records attached to the motion. *See* Anderson v. County of Nassau, 297 F. Supp 2d 540, 544-45
22 (E.D.N.Y. 2004); In Re Bayside Prison Litig., 190 F. Supp 2d 755, 760 (D. N.J. 2002). The recorded
23 documents attached to the plaintiffs motion are referenced in the complaint and/or are public records of
24 which the Court may, and did take judicial notice. *See* NRS 47.150; Lemel v. Smith, 64 Nev. 545 (1947)
25 (Judicial Notice takes the place of proof and is of equal force.) “Documents accompanied by a certificate
26 of acknowledgment of a notary public or officer authorized by law to take acknowledgments are
27 presumed to be authentic.” NRS 52.165.

1 4. The defendant did not object to the authenticity of any of the exhibits attached to the plaintiff's
2 motion for summary judgment.

3 5. Plaintiff's complaint alleges three claims for relief against defendant Nationstar Mortgage,
4 declaratory relief, injunctive relief, and quiet title. Summary judgment in favor of the plaintiff on all of
5 plaintiff's claims for relief are appropriate.

6 6. The HOA foreclosure sale complied with all requirements of law, including but not limited
7 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the
8 recording, posting and publication of the Notice of Sale.

9 7. Nationstar's first argument is that Nevada has mandated and/or encouraged the creation of
10 HOAs to such an extent as to constitute state action. D. Supp. at 4-8. As an initial matter, it should be
11 noted that this argument mischaracterizes Nevada law with regard to the establishment of HOAs. Nevada
12 law merely requires that if a municipality approves the development of a planned unit development which
13 contains any land set aside as common open space¹ within that development, then the development must
14 be governed by a HOA. NRS 278A.130. Nothing in the Nevada statutes makes a blanket requirement that
15 HOAs be established state-wide. The State is also not involved in the operation of those HOAs, which
16 may provide more of a footing to argue state action.

17 8. Nationstar further argues that the State receives an identifiable benefit from the creation of
18 HOAs in the form of "significant government cost saving [from placing the burden of streets and the like
19 on the HOAs]." Mot. at 6-7. The legislative history cited by Nationstar belies this point though, as that
20 indicates that the State was concerned about HOAs shifting *their* maintenance costs to the *State* after the
21 HOAs had been given the right to operate by the State. Furthermore, even if this cost saving benefit could
22 constitute state action, it is not the cause of Nationstar's alleged injury and Nationstar would lack standing
23 in that regard. Constitutional standing requires, *inter alia*, "a causal connection between the injury and
24 the conduct complained of." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Here,

1 Nationstar complains of the State's shifting the cost burden of street maintenance, but this shifting did
2 not result in the loss of its first deed of trust. Hence, Nationstar's first argument should be rejected.

3 9. Nationstar next argues that the State is intimately intertwined with HOA foreclosures because
4 it created the super-priority lien right, unknown at common law, and that this is sufficient state action.
5 D. Supp. at 8-9. On this point, Nationstar cites to Culbertson v. Leland, 528 F.2d 426 (9th Cir. 1975).
6 Nationstar argues that the Ninth Circuit found sufficient state action in Arizona's enactment of a statute
7 giving hotel operators the right to a lien on evicted patrons' property because it was a right unknown at
8 common law. D. Supp. at 8. However, *Culbertson* is distinguishable from this case.

9 10. *Culbertson*'s holding was clearly couched in the fact that hotel operators had no lien at
10 common law on their patrons' belongings and that Arizona's granting that right constituted a right granted
11 by the State. 528 F.2d at 429-431. Nationstar's reliance on *Culbertson* fails to acknowledge *Culbertson*'s
12 detailed discussion beginning at page 429, as well as the fact that "the distinction between the sources
13 of...the Nevada powers of sale does not compel, or strongly support, a holding that the latter constitutes
14 state action." Charmicor v. Deaner, 572 F.2d 694, 696 (9th Cir. 1978). Therefore, the fact that Nevada's
15 HOA lien is statutorily created has no real bearing on whether the enactment of that statute constitutes
16 state action.

17 11. Nationstar also presents a second argument as to why Nevada is intimately intertwined with
18 HOA foreclosures – that the State is "overtly involved in every aspect of the HOA super priority lien
19 foreclosure, except foreclosing on the property itself." *Id.* at 9:2-3. However, the sale provided for in NRS
20 116 is *nonjudicial* and the state "has not compelled the sale of a [debtor's property and thereby the
21 extinguishment of a first priority deed of trust], but has merely announced the circumstances under which
22 its courts will not interfere with a private sale." Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 166 (1978).

23 12. Nationstar next argues that NRS 116 is intended to force first priority deed of trust holders
24 to pay HOA liens without providing a clear and certain remedy for a refund of any amount they overpay.
25 D. Supp. at 14-15. The cases it cites in support, however, both involved overpayments made to a state
26 agency. See Garcia-Rubiera v. Fortuño, 665 F.3d 261 (1st Cir. 2011) (concerning duplicate payments to
27 the Puerto Rico's state-run compulsory insurance agency); McKesson Corp. v. Div. of Alcoholic

1 Beverages & Tobacco, 496 U.S. 18 (1989) (concerning tax payments). There is no similar situation here.
2 Moreover, contrary to Nationstar's position, the Nevada Supreme Court in *SFR* made no indication that
3 the legislature *intended* first priority deed of trust holders to pay off HOA liens – it merely recognized
4 that those holders may protect their interests by paying off the HOA lien. Based on the foregoing, the state
5 need not provide a clear and certain remedy where there is no clear and direct state action in the first
6 place.

7 13. Nationstar also presents further argument as to the commercial unreasonableness of the sale.
8 Nationstar argues that the low sales price, in comparison to the fair market value of the Property, compels
9 close scrutiny of the sale. D. Supp. at 16. While this may be the case, Nationstar would still have an
10 obligation to show fraud, unfairness, or oppression to set aside the sale. See Shadow Wood
11 Homeowners Association v. New York Community Bank, 132 Nev. Ad. Op. 5 (2016) and Long v.
12 Towne, 98 Nev. 11, 639 P.2d 528 (1982). Although Nationstar sets forth a plethora of allegations on page
13 seventeen of its supplement, it provides no substantiated proof sufficient to carry its burden on a motion
14 for summary judgment.

15 14. NRS Chapter 116 provides a conclusive presumption as to the validity of an HOA lien
16 foreclosure sale, absent grounds for equitable relief. NRS 116.31166, provides:

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

20 1. The recitals in a deed made pursuant to NRS 116.31164 of:
21 (a) Default, the mailing of the notice of delinquent assessment, and the
22 recording of the notice of default and election to sell;
(b) The elapsing of the 90 days; and
(c) The giving of notice of sale,
are conclusive proof of the matters recited.

23 15. In addition to the foreclosure deed, the plaintiff also submitted proofs of mailing of the
24 notices of default and the notice of sale.

25 16. Any conclusion of law which should be a finding of fact shall be considered as such.
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IT IS FURTHER ORDERED that defendant's Nationstar's motion for summary judgment is denied.

IT IS FURTHER ORDERED that title to the real property commonly known as 2227 Shadow Canyon, Las Vegas, Nevada and legally described as:

APN 190-17-310-002

IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on January 2, 2014 and the foreclosure deed recorded on February 3, 2014 as instrument number 201402030002095, the interests of defendant Nationstar as well as its heirs or assigns in the property commonly known as 2227 Shadow Canyon, Las Vegas, Nevada are extinguished.

IT IS FURTHER ORDERED that defendants, as well as their heirs and assigns, or anyone acting on their behalf are forever enjoined from asserting any estate, right, title or interest in the real property commonly known as 2227 Shadow Canyon, Las Vegas, Nevada as a result of the deed of trust recorded as instrument number 20060207-0002596.

7


1 IT IS FURTHER ORDERED that defendants, as well as their heirs and assigns or anyone acting
2 on their behalf are forever barred from enforcing any rights against the real property commonly known
3 as 2227 Shadow Canyon, Las Vegas, Nevada as a result of the deed of trust recorded as instrument
4 number 20060207-0002596.

5 DATED this 3rd day of ^{April} ~~March~~, 2016

6
7
8 
9 DISTRICT COURT JUDGE
10 (8)

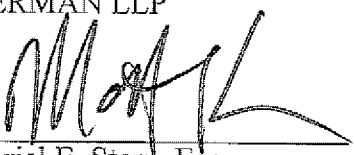
11 Respectfully submitted by:

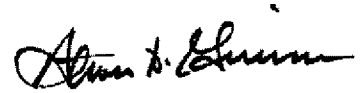
12 LAW OFFICES OF
13 MICHAEL F. BOHN, ESQ., LTD.

14 By: 
15 MICHAEL F. BOHN, ESQ.
16 376 East Warm Springs Road, Ste. 140
17 Las Vegas, Nevada 89119
18 Attorney for plaintiff

19 Reviewed by:

20 AKERMAN LLP

21 By: 
22 Ariel E. Stern, Esq.
23 1160 Town Center Drive, Ste. 330
24 Las Vegas, NV 89144
25 Attorneys for defendant Nationstar
26
27
28



CLERK OF THE COURT

1 **NJUD**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.
7 376 East Warm Springs Road, Ste. 140
8 Las Vegas, Nevada 89119
9 (702) 642-3113/ (702) 642-9766 FAX
10 Attorney for plaintiff

7 DISTRICT COURT
8 CLARK COUNTY NEVADA

9 SATICOY BAY LLC SERIES 2227 SHADOW
10 CANYON,

11 Plaintiff,

12 vs.

13 NATIONSTAR MORTGAGE LLC.; PATERNO C.
14 JURANI, ESQ.; and REPUBLIC SILVER STATE
DISPOSAL, DBA REPUBLIC SERVICES,

15 Defendants.

CASE NO.: A702938
DEPT NO.: XIV

16 **NOTICE OF ENTRY OF JUDGMENT**

17 TO: Parties above-named; and

18 TO: Their Attorney of Record

19 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that a **FINDINGS OF FACT,**
20 **CONCLUSIONS OF LAW, AND JUDGMENT** has been entered on the 7th day of April, 2016, in the
21 above captioned matter, a copy of which is attached hereto.
22

23 Dated this 8th day of April, 2016.

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

26 By: /s/ Michael F. Bohn, Esq./
27 MICHAEL F. BOHN, ESQ.
28 376 E. Warm Springs Rd., Ste. 140
Las Vegas, NV 89119
Attorney for plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
3 OFFICES OF MICHAEL F. BOHN., ESQ., and on the 8th day of April, 2016, an electronic copy of
4 the **NOTICE OF ENTRY OF JUDGMENT** was served on opposing counsel via the Court's electronic
5 service system to the following counsel of record:
6

7 Ariel E. Stern, Esq.
8 AKERMAN LLP
9 1160 Town Center Drive, Ste. 330
10 Las Vegas, NV 89144
11 Attorneys for defendant Nationstar
12
13
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By: /s/ /Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ.

1 **FFCL**
MICHAEL F. BOHN, ESQ.
2 Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
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Las Vegas, Nevada 89119
5 (702) 642-3113/ (702) 642-9766 FAX
6 Attorney for plaintiff


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 2227 SHADOW
CANYON,

11 Plaintiff,

12 vs.

13 NATIONSTAR MORTGAGE LLC.;
14 PATERNO C. JURANI, ESQ.; and REPUBLIC
15 SILVER STATE DISPOSAL, DBA REPUBLIC
SERVICES,

16 Defendants.

CASE NO.: A702938
DEPT NO.: XIV

Date of hearing: January 14, 2016
Time of hearing: 9:00 a.m.

17 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

18 The motion of defendant Nationstar Mortgage, LLC ("Nationstar") for summary judgment, and
19 countermotion of plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon ("Plaintiff") having come
20 before the court on the 14th day of January, 2016, Michael F. Bohn, Esq. appearing on behalf of
21 plaintiff Saticoy Bay LLC Series 2227 Shadow Canyon ("Plaintiff"), Ariel E. Stern, Esq., appearing on
22 behalf of Bank of America and Reconstruct Company, N.A., and the court, having reviewed the motions
23 and the oppositions and having heard the arguments of counsel, makes its findings of fact, conclusion
24 of law and judgment as follows.

25 **FINDINGS OF FACT**

26 1. Plaintiff is the owner of the real property commonly known as 2227 Shadow Canyon,
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1 Henderson, Nevada ("the Property").

2 2. Plaintiff obtained title to the Property at foreclosure sale conducted on January 2, 2014 as
3 evidenced by foreclosure deed recorded February 3, 2014.

4 3. The foreclosure deed arose from a delinquency in assessments due from the former owner,
5 Patricia E. Evans, to the Sun City Anthem Community Association ("the HOA"), pursuant to NRS
6 Chapter 116.

7 4. Defendant Nationstar Mortgage LLC ("Nationstar") is the beneficiary of a deed of trust that
8 was recorded as an encumbrance on the Property on February 7, 2006.

9 5. The foreclosure agent recorded a notice of default on June 24, 2010. The foreclosure agent
10 then mailed a copy of the notice of default to Pulte Mortgage LLC on June 30, 2010. Pulte Mortgage
11 is the predecessor in interest to defendant Nationstar's predecessor in interest,

12 6. The foreclosure agent recorded a notice of sale on November 26, 2013. The foreclosure agent
13 then mailed a copy of the notice of sale to Pulte Mortgage LLC and defendant Nationstar on November
14 26, 2013.

15 7. Additionally, the foreclosure agent posted the notice of sale at three separate public locations
16 and published the notice of sale in Nevada Legal News.

17 8. Defendant Nationstar and its predecessor in interest, Pulte Mortgage LLC, were on actual
18 notice of the HOA foreclosure sale and failed to take any action to protect their interests in the Property.

19 9. The HOA foreclosure agent issued a deed upon sale which was recorded on February 3, 2014.

20 Default occurred as set forth in a Notice of Default and Election to Sell, recorded on
21 06/24/2010 as instrument number 0002131 Book 20100624 which was recorded in the
22 office of the recorder of said county. Red Rock Financial Services has complied with all
23 requirements of law including, but not limited to, the elapsing of 90 days, mailing of
copies of Lien for Delinquent Assessments and Notice of Default and the posting and
publication of the Notice of Sale.

24 10. Any findings of fact which should be considered to be a conclusion of law shall be treated
25 as such.

26 CONCLUSIONS OF LAW

27 1. Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories,
28

1 and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any
2 material fact and that the moving party is entitled to a judgment as a matter of law.” NRCP 56. “The
3 party moving for summary judgment bears the initial burden of production to show the absence of a
4 genuine issue of material fact.” Cuzze v. U. and Community College System of Nevada, 123 Nev. 598,
5 602, 172 P.3d 131, 134 (2007). Where the moving party will carry the burden of persuasion on those
6 issues at trial, it “must present evidence that would entitle it to a judgment as a matter of law in the
7 absence of contrary evidence.” *Id.*

8 2. If the initial burden is carried, “the party opposing summary judgment assumes a burden of
9 production to show the existence of a genuine issue of material fact.” *Id.* The opposing party must
10 “transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show
11 a genuine issue of material fact.” *Id.* The opposing party is “not entitled to build a case on the gossamer
12 threads of whimsy, speculation, and conjecture.” Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d
13 1026, 1031 (2005) (citations and quotations omitted). If the opposing party fails to carry its burden,
14 summary judgment will be entered against it if the moving party is also entitled to judgment as a matter
15 of law. *See* NRCP 56(c). Since both parties have moved for summary judgment, and attach many of the
16 same real property records to their respective motions, the only issue for the Court to resolve is which
17 party is entitled to judgment as a matter of law. Based on the Court’s prior tentative, this issue reduces
18 to whether there is sufficient state action under the facts of this case to find Nevada’s HOA lien statutes
19 unconstitutional.

20 3. When ruling on a motion for summary judgment, the court may take judicial notice of the
21 public records attached to the motion. *See* Anderson v. County of Nassau, 297 F. Supp 2d 540, 544-45
22 (E.D.N.Y. 2004); *In Re Bayside Prison Litig.*, 190 F. Supp 2d 755, 760 (D. N.J. 2002). The recorded
23 documents attached to the plaintiffs motion are referenced in the complaint and/or are public records of
24 which the Court may, and did take judicial notice. *See* NRS 47.150; Lemel v. Smith, 64 Nev. 545 (1947)
25 (Judicial Notice takes the place of proof and is of equal force.) “Documents accompanied by a certificate
26 of acknowledgment of a notary public or officer authorized by law to take acknowledgments are
27 presumed to be authentic.” NRS 52.165.

1 4. The defendant did not object to the authenticity of any of the exhibits attached to the plaintiff's
2 motion for summary judgment.

3 5. Plaintiff's complaint alleges three claims for relief against defendant Nationstar Mortgage,
4 declaratory relief, injunctive relief, and quiet title. Summary judgment in favor of the plaintiff on all of
5 plaintiff's claims for relief are appropriate.

6 6. The HOA foreclosure sale complied with all requirements of law, including but not limited
7 to, recording and mailing of copies of Notice of Delinquent Assessment and Notice of Default, and the
8 recording, posting and publication of the Notice of Sale.

9 7. Nationstar's first argument is that Nevada has mandated and/or encouraged the creation of
10 HOAs to such an extent as to constitute state action. D. Supp. at 4-8. As an initial matter, it should be
11 noted that this argument mischaracterizes Nevada law with regard to the establishment of HOAs. Nevada
12 law merely requires that if a municipality approves the development of a planned unit development which
13 contains any land set aside as common open space¹ within that development, then the development must
14 be governed by a HOA. NRS 278A.130. Nothing in the Nevada statutes makes a blanket requirement that
15 HOAs be established state-wide. The State is also not involved in the operation of those HOAs, which
16 may provide more of a footing to argue state action.

17 8. Nationstar further argues that the State receives an identifiable benefit from the creation of
18 HOAs in the form of "significant government cost saving [from placing the burden of streets and the like
19 on the HOAs]." Mot. at 6-7. The legislative history cited by Nationstar belies this point though, as that
20 indicates that the State was concerned about HOAs shifting *their* maintenance costs to the *State* after the
21 HOAs had been given the right to operate by the State. Furthermore, even if this cost saving benefit could
22 constitute state action, it is not the cause of Nationstar's alleged injury and Nationstar would lack standing
23 in that regard. Constitutional standing requires, *inter alia*, "a causal connection between the injury and
24 the conduct complained of." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). Here,

1 Nationstar complains of the State's shifting the cost burden of street maintenance, but this shifting did
2 not result in the loss of its first deed of trust. Hence, Nationstar's first argument should be rejected.

3 9. Nationstar next argues that the State is intimately intertwined with HOA foreclosures because
4 it created the super-priority lien right, unknown at common law, and that this is sufficient state action.
5 D. Supp. at 8-9. On this point, Nationstar cites to Culbertson v. Leland, 528 F.2d 426 (9th Cir. 1975).
6 Nationstar argues that the Ninth Circuit found sufficient state action in Arizona's enactment of a statute
7 giving hotel operators the right to a lien on evicted patrons' property because it was a right unknown at
8 common law. D. Supp. at 8. However, *Culbertson* is distinguishable from this case.

9 10. *Culbertson*'s holding was clearly couched in the fact that hotel operators had no lien at
10 common law on their patrons' belongings and that Arizona's granting that right constituted a right granted
11 by the State. 528 F.2d at 429-431. Nationstar's reliance on *Culbertson* fails to acknowledge *Culbertson*'s
12 detailed discussion beginning at page 429, as well as the fact that "the distinction between the sources
13 of...the Nevada powers of sale does not compel, or strongly support, a holding that the latter constitutes
14 state action." Charmicor v. Deaner, 572 F.2d 694, 696 (9th Cir. 1978). Therefore, the fact that Nevada's
15 HOA lien is statutorily created has no real bearing on whether the enactment of that statute constitutes
16 state action.

17 11. Nationstar also presents a second argument as to why Nevada is intimately intertwined with
18 HOA foreclosures – that the State is "overtly involved in every aspect of the HOA super priority lien
19 foreclosure, except foreclosing on the property itself." *Id.* at 9:2-3. However, the sale provided for in NRS
20 116 is *nonjudicial* and the state "has not compelled the sale of a [debtor's property and thereby the
21 extinguishment of a first priority deed of trust], but has merely announced the circumstances under which
22 its courts will not interfere with a private sale." Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 166 (1978).

23 12. Nationstar next argues that NRS 116 is intended to force first priority deed of trust holders
24 to pay HOA liens without providing a clear and certain remedy for a refund of any amount they overpay.
25 D. Supp. at 14-15. The cases it cites in support, however, both involved overpayments made to a state
26 agency. See Garcia-Rubiera v. Fortuño, 665 F.3d 261 (1st Cir. 2011) (concerning duplicate payments to
27 the Puerto Rico's state-run compulsory insurance agency); McKesson Corp. v. Div. of Alcoholic

1 Beverages & Tobacco, 496 U.S. 18 (1989) (concerning tax payments). There is no similar situation here.
2 Moreover, contrary to Nationstar's position, the Nevada Supreme Court in *SFR* made no indication that
3 the legislature *intended* first priority deed of trust holders to pay off HOA liens – it merely recognized
4 that those holders may protect their interests by paying off the HOA lien. Based on the foregoing, the state
5 need not provide a clear and certain remedy where there is no clear and direct state action in the first
6 place.

7 13. Nationstar also presents further argument as to the commercial unreasonableness of the sale.
8 Nationstar argues that the low sales price, in comparison to the fair market value of the Property, compels
9 close scrutiny of the sale. D. Supp. at 16. While this may be the case, Nationstar would still have an
10 obligation to show fraud, unfairness, or oppression to set aside the sale. See Shadow Wood
11 Homeowners Association v. New York Community Bank, 132 Nev. Ad. Op. 5 (2016) and Long v.
12 Towne, 98 Nev. 11, 639 P.2d 528 (1982). Although Nationstar sets forth a plethora of allegations on page
13 seventeen of its supplement, it provides no substantiated proof sufficient to carry its burden on a motion
14 for summary judgment.

15 14. NRS Chapter 116 provides a conclusive presumption as to the validity of an HOA lien
16 foreclosure sale, absent grounds for equitable relief. NRS 116.31166, provides:

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

- 20 1. The recitals in a deed made pursuant to NRS 116.31164 of:
21 (a) Default, the mailing of the notice of delinquent assessment, and the
22 recording of the notice of default and election to sell;
(b) The elapsing of the 90 days; and
(c) The giving of notice of sale,
are conclusive proof of the matters recited.

23 15. In addition to the foreclosure deed, the plaintiff also submitted proofs of mailing of the
24 notices of default and the notice of sale.

25 16. Any conclusion of law which should be a finding of fact shall be considered as such.
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IT IS FURTHER ORDERED that defendant's Nationstar's motion for summary judgment is denied.

IT IS FURTHER ORDERED that title to the real property commonly known as 2227 Shadow Canyon, Las Vegas, Nevada and legally described as:

APN 190-17-310-002

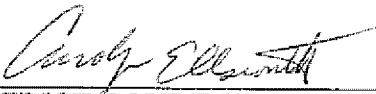
is hereby quieted in the name of Saticoy Bay LLC Series 2227 Shadow Canyon.

IT IS FURTHER ORDERED that defendants, as well as their heirs and assigns have no further right, title or claim to the real property commonly known as 2227 Shadow Canyon, Las Vegas, Nevada resulting from the deed of trust recorded as instrument number 20060207-0002596.

1. *Staphylococcus aureus*
2. *Staphylococcus aureus*
3. *Staphylococcus aureus*


1 IT IS FURTHER ORDERED that defendants, as well as their heirs and assigns or anyone acting
2 on their behalf are forever barred from enforcing any rights against the real property commonly known
3 as 2227 Shadow Canyon, Las Vegas, Nevada as a result of the deed of trust recorded as instrument
4 number 20060207-0002596.

5 DATED this 3rd day of ^{April} ~~March~~, 2016

6
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8 
9 DISTRICT COURT JUDGE
10 (Seal)

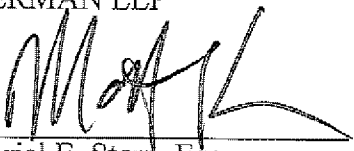
11 Respectfully submitted by:

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

14 By: 
15 MICHAEL F. BOHN, ESQ.
16 376 East Warm Springs Road, Ste. 140
17 Las Vegas, Nevada 89119
18 Attorney for plaintiff

19 Reviewed by:

20 AKERMAN LLP

21 By: 
22 Ariel E. Stern, Esq.
23 1160 Town Center Drive, Ste. 330
24 Las Vegas, NV 89144
25 Attorneys for defendant Nationstar
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27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property	COURT MINUTES	October 01, 2015
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A-14-702938-C	Saticoy Bay LLC Series 2227 Shadow Canyon, Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)
---------------	---

October 01, 2015 10:00 AM Calendar Call

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Denise Trujillo

RECORDER: Debbie Winn

REPORTER:

PARTIES

PRESENT: Bohn, Michael F Attorney

JOURNAL ENTRIES

- CALENDAR CALL

Mr. Bohn advised matter wasn't settled, but he is unsure why counsel is not present. Further, requested trial date be vacated and set on next available stack. COURT ORDERED, trial date VACATED and RESET, Court's JEA will send out amended order.

3/3/16 10 AM CALENDAR CALL

3/15/16 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 22, 2015

A-14-702938-C Saticoy Bay LLC Series 2227 Shadow Canyon, Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

October 22, 2015 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Shelley Boyle

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Bohn, Michael F Attorney
Shevorski, Steven G. Attorney
Stern, Ariel E. Attorney

JOURNAL ENTRIES

- DEFENDANT NATIONSTAR MORTGAGE, LLC'S MOTION FOR SUMMARY OF JUDGMENT...OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT

Court noted as stated in its tentative ruling, it is inclined to deny Deft. Nationstar Mortgages Motion for Summary Judgment, and grant the Pltf's Counter Motion for Summary Judgment. Mr. Schmidt argued the sale of the property in this instance is 20% below the fair market barrier; he provided expert testimony in relation to that and believes it should be dispositive. Mr. Schmidt added there was no cry out from the auctioneer telling the bidders what they are buy regarding the Deed; the Trustee withheld material information from the bidders which attributed to the low sale price. Following additional argument by Mr. Schmidt, the Court noted it may be better to allow additional briefing on the matter. Mr. Bohn made no objection. Following discussions on scheduling, COURT ORDERED, Matters CONTINUED.

CONTINUED TO: 12/17/15 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****January 14, 2016**

A-14-702938-C Saticoy Bay LLC Series 2227 Shadow Canyon, Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

January 14, 2016**9:00 AM****All Pending Motions****HEARD BY:** Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Denise Trujillo**RECORDER:** Lara Corcoran**REPORTER:****PARTIES****PRESENT:**

Bohn, Michael F
Stern, Ariel E.

Attorney
Attorney

JOURNAL ENTRIES

- DEFT'S NATIONSTAR MORTGAGE, LLC'S MTN FOR SUMMARY JUDGMENT...PLTF'S COUNTER-MOTION FOR SUMMARY JUDGMENT

Prior to hearing counsel provided with tentative ruling regarding the narrow issue counsel filed supplemental brief's on, as follows: Pltf. Saticoy Bay LLC Series 2227 Shadow Canyon (Pltf.) was transferred the real property located at 2227 Shadow Canyon Drive, Henderson, Nevada 89044 (the Property). The Property is subject to the covenants, codes, and restrictions of Shadow Canyon Homeowners Association (the HOA). Deft. Nationstar Mortgage, LLC (Nationstar) is the holder of a first priority deed of trust on the Property. The homeowner of the Property fell behind in both mortgage payments and assessments due to the HOA. The HOA recorded its HOA lien on the Property on April 16, 2010. It then recorded a Notice of Default and Election to Sell on June 24, 2010. The Property was then sold on November 26, 2013 to Pltf. for \$35,000.00. Pltf. instituted this action on June 24, 2014, seeking to quiet title to the Property against Nationstar, the former property owner, and Republic Services, a lienholder. Nationstar filed an Answer on July 21, 2014. Nationstar moved for summary judgment, and Pltf. counter-moved for summary judgment. At the hearing held October 22, 2015, the Court granted the parties supplemental briefing on one discrete issue: whether there is sufficient state action in a HOA foreclosure sale to challenge the constitutionality of Nevada s

HOA lien statutes.

II. DISCUSSION

A. Legal Standards and Applicable Statutes

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. NRCP 56. The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. *Cuzze v. U. and Community College System of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). Where the moving party will carry the burden of persuasion on those issues at trial, it must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. *Id.* If the initial burden is carried, the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. *Id.* The opposing party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact. *Id.* The opposing party is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005) (citations and quotations omitted). If the opposing party fails to carry its burden, summary judgment will be entered against it if the moving party is also entitled to judgment as a matter of law. See NRCP 56(c). Since both parties have moved for summary judgment, and attach many of the same real property records to their respective motions, the only issue for the Court to resolve is which party is entitled to judgment as a matter of law. Based on the Court's prior tentative, this issue reduces to whether there is sufficient state action under the facts of this case to find Nevada's HOA lien statutes unconstitutional.

B. Analysis

Nationstar sets forth a slew of arguments as to why there is sufficient state action here. Each will be addressed in turn, with a concluding analysis on the issue of commercial reasonableness.

1. Whether Nevada's mandate or encouragement of the creation of HOA's is sufficient state action
 Nationstar's first argument is that Nevada has mandated and/or encouraged the creation of HOA's to such an extent as to constitute state action. D. Supp. at 4-8. As an initial matter, it should be noted that this argument mischaracterizes Nevada law with regard to the establishment of HOA's. Nevada law merely requires that if a municipality approves the development of a planned unit development which contains any land set aside as common open space within that development, then the development must be governed by a HOA. NRS 278A.130. Nothing in the Nevada statutes makes a blanket requirement that HOA's be established state-wide. The State is also not involved in the operation of those HOA's, which may provide more of a footing to argue state action. Nationstar further argues that the State receives an identifiable benefit from the creation of HOA's in the form of significant government cost saving [from placing the burden of streets and the like on the HOA's]. Mot. at 6-7. The legislative history cited by Nationstar belies this point though, as that indicates that the State was concerned about HOA's shifting their maintenance costs to the State after the HOA's had been given the right to operate by the State. Furthermore, even if this cost saving benefit could constitute state action, it is not the cause of Nationstar's alleged injury and Nationstar would lack standing in that regard. Constitutional standing requires, *inter alia*, a causal connection between the injury and the conduct complained of. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). Here, Nationstar complains of the State's shifting the cost burden of street maintenance, but this

shifting did not result in the loss of its first deed of trust. Hence, Nationstar's first argument should be rejected.

2. Whether Nevada is sufficiently intertwined with HOA foreclosures to warrant a finding of state action

Nationstar next argues that the State is intimately intertwined with HOA foreclosures because it created the super-priority lien right, unknown at common law, and that this is sufficient state action. D. Supp. at 8-9. On this point, Nationstar cites to *Culbertson v. Leland*, 528 F.2d 426 (9th Cir. 1975). Nationstar argues that the Ninth Circuit found sufficient state action in Arizona's enactment of a statute giving hotel operators the right to a lien on evicted patrons' property because it was a right unknown at common law. D. Supp. at 8. However, *Culbertson* is distinguishable from this case. *Culbertson*'s holding was clearly couched in the fact that hotel operators had no lien at common law on their patrons' belongings and that Arizona's granting that right constituted a right granted by the State. 528 F.2d at 429-431. Nationstar's reliance on *Culbertson* fails to acknowledge *Culbertson*'s detailed discussion beginning at page 429, as well as the fact that the distinction between the sources of the Nevada powers of sale does not compel, or strongly support, a holding that the latter constitutes state action. *Charmicor v. Deaner*, 572 F.2d 694, 696 (9th Cir. 1978). Therefore, the fact that Nevada's HOA lien is statutorily created has no real bearing on whether the enactment of that statute constitutes state action. See also, the Court's previous discussion in its prior tentative ruling. Nationstar also presents a second argument as to why Nevada is intimately intertwined with HOA foreclosures—that the State is overtly involved in every aspect of the HOA super-priority lien foreclosure, except foreclosing on the property itself. *Id.* at 9:2-3. However, the sale provided for in NRS 116 is non-judicial and the state has not compelled the sale of a [debtor's property and thereby the extinguishment of a first priority deed of trust], but has merely announced the circumstances under which its courts will not interfere with a private sale. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 166 (1978).

3. Whether the State's lack of providing a clear and certain remedy constitutes state action

Nationstar next argues that NRS 116 is intended to force first priority deed of trust holders to pay HOA liens without providing a clear and certain remedy for a refund of any amount they overpay. D. Supp. at 14-15. The cases it cites in support, however, both involved overpayments made to a state agency. See *Garcia-Rubiera v. Fortu o*, 665 F.3d 261 (1st Cir. 2011) (concerning duplicate payments to the Puerto Rico's state-run compulsory insurance agency); *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1989) (concerning tax payments). There is no similar situation here. Moreover, contrary to Nationstar's position, the Nevada Supreme Court in *SFR* made no indication that the legislature intended first priority deed of trust holders to pay off HOA liens—it merely recognized that those holders may protect their interests by paying off the HOA lien. Based on the foregoing, the state need not provide a clear and certain remedy where there is no clear and direct state action in the first place.

4. Commercial Unreasonableness of the Sale

Nationstar lastly presents further argument as to the commercial unreasonableness of the sale. Nationstar argues that the low sales price, in comparison to the fair market value of the Property, compels close scrutiny of the sale. D. Supp. at 16. While this may be the case, Nationstar would still have an obligation to show fraud, unfairness, or oppression to set aside the sale. See *Long v. Towne*, 98 Nev. 11, 639 P.2d 528 (1982). Although Nationstar sets forth a plethora of allegations on page

seventeen of its supplement, it provides no substantiated proof sufficient to carry its burden on a motion for summary judgment. As outlined in the Court's prior tentative ruling, Pltff.'s Countermotion should be granted.

Arguments by counsel. COURT advised the issues are complex, stated findings and ORDERED, Deft's Motion for Summary Judgment is DENIED, and Pltff's Countermotion is GRANTED. Counsel to prepare order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property	COURT MINUTES	March 10, 2016
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A-14-702938-C	Saticoy Bay LLC Series 2227 Shadow Canyon, Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)
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March 10, 2016	9:30 AM	Calendar Call
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HEARD BY: Escobar, Adriana	COURTROOM: RJC Courtroom 03F
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COURT CLERK: Nora Pena

RECORDER:

REPORTER:

PARTIES

PRESENT:	Bohn, Michael F	Attorney
	Knepper, Matthew I.	Attorney

JOURNAL ENTRIES

- Mr. Bohn advised summary judgment was previously granted in Plaintiff's favor. He stated he prepared the order and sent it to counsel but he has not received it back and he asked to vacate the trial date and he file a default judgment on the other parties. Mr. Knepper advised he is signing the order now and returned it to Mr. Bohn. Upon Court's inquiry, Mr. Bohn advised the other parties are out of the case. COURT ORDERED, Trial date set for 3/14th VACATED.



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

ARIEL E. STERN, ESQ.
1160 TOWN CENTER DR., SUITE 330
LAS VEGAS, NV 89144

DATE: May 10, 2016
CASE: A-14-702938-C

**RE CASE: SATICOY BAY LLC SERIES 2227 SHADOW CANYON vs. NATIONSTAR
MORTGAGE, LLC**

NOTICE OF APPEAL FILED: May 6, 2016

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT TRANSMITTED HAVE BEEN MARKED:**

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

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

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

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

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

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

DEFENDANT NATIONSTAR MORTGAGE LLC'S NOTICE OF APPEAL;
DEFENDANT NATIONSTAR MORTGAGE LLC'S CASE APPEAL STATEMENT; DISTRICT
COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND JUDGMENT; NOTICE OF ENTRY OF JUDGMENT; DISTRICT COURT MINUTES;
NOTICE OF DEFICIENCY

SATICOY BAY LLC SERIES 2227 SHADOW
CANYON,

Plaintiff(s),

vs.

NATIONSTAR MORTGAGE, LLC,

Defendant(s),

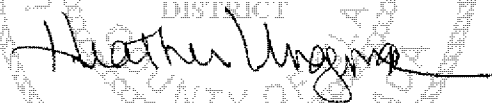
Case No: A-14-702938-C

Dept No: XIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 10 day of May 2016.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk