

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

NATIONSTAR MORTGAGE LLC,

v.

SATICOY BAY SERIES 2227 SHADOW
CANYON

No. 70382

Electronically Filed
Jun 22 2016 09:33 a.m.

DOCKETING SPECIALIST
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XIV
County Clark Judge Hon. Adriana Escobar
District Ct. Case No. A-14-702938-C

2. Attorney filing this docketing statement:

Attorney Allison R. Schmidt, Esq. Telephone 702-634-5000
Firm Akerman LLP
Address 1160 Town Center Dr.
#330
Las Vegas, NV 89144
Client(s) Nationstar Mortgage LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Michael Bohn, Esq. Telephone 702-642-3113
Firm Michael Bohn, Esq., LTD
Address 376 E. Warm Spring Rd
Suite 140
Las Vegas, Nevada 89119
Client(s) Saticoy Bay LLC Series 2227 Shadow Canyon

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

8. Nature of the action. Briefly describe the nature of the action and the result below:

This case is a quiet title/declaratory relief action that followed a Homeowners Association Sale. Saticoy Bay LLC Series 2227 Shadow Canyon (Saticoy) alleges it owns the property free and clear of Nationstar's senior deed of trust. Nationstar alleges that the sale was void or should be set aside, or that Saticoy purchased the property subject to its senior deed of trust.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- (1) whether or not the sale was commercially unreasonable
- (2) whether or not NRS 116's statutory foreclosure scheme is facially unconstitutional
- (3) whether or not NRS 116's statutory foreclosure scheme is unconstitutionally vague

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☐ N/A

☒ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☒ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: Nationstar has challenged the constitutionality of NRS 116's statutory foreclosure scheme. Additionally, Nationstar has asserted that the price obtained by the HOA at the foreclosure sale was grossly inadequate and the sale must be set aside as a result.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This case should be retained by the Supreme Court pursuant to NRAP 17(a)(13) as it presents a substantial issue of first impression as to the constitutionality of NRS 116's statutory foreclosure scheme, and seeks further clarification as to the application of the restatement's measure of "grossly inadequate" sales price to a commercial reasonableness test.

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from April 7, 2016

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served April 8, 2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed May 6, 2016

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) _____ | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The order granting summary judgment in favor of Saticoy resolved all the claims pending in the lower court.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Nationstar Mortgage LLC
Saticoy Bay LLC Series 2227 Shadow Canyon
Paterno Jurani
Republic Services

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Republic Services was dismissed on July 25, 2016
Paterno Jurani was dismissed on May 27, 2015

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Saticoy Bay's claims for quiet title and delcaratory relief.

Formally resolved April 7, 2016

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nationstar Mortgage LLC

Name of appellant

Allison R. Schmidt, Esq.

Name of counsel of record

6/21/2016

Date

Allison R. Schmidt, Esq.

Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 21st day of June, 2016, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Michael Bohn, Esq.

376 E. Warm Springs Road

Suite 140

Las Vegas, NV 89119

Dated this 21st day of June, 2016

Allison R. Schmidt

Signature



CORPORATION SERVICE COMPANY

Notice of Service of Process

null / ALL
Transmittal Number: 12684711
Date Processed: 06/30/2014

Primary Contact: Barbara Ruyle
Nationstar Mortgage LLC
350 Highland Drive
Lewisville, TX 75067

Entity:	Nationstar Mortgage LLC Entity ID Number 2050233
Entity Served:	Nationstar Mortgage LLC.
Title of Action:	Saticoy Bay LLC Series 2227 Shadow Canyon vs. Nationstar Mortgage LLC.
Document(s) Type:	Summons/Complaint
Nature of Action:	Property
Court/Agency:	Clark County District Court, Nevada
Case/Reference No:	A-14-702938-C
Jurisdiction Served:	Nevada
Date Served on CSC:	06/30/2014
Answer or Appearance Due:	20 Days
Originally Served On:	CSC
How Served:	Personal Service
Sender Information:	Jeff Arlitz 702-642-3113

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

1 **SUMM**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 MICHAEL F. BOHN, ESQ., LTD.

5 376 E. Warm Springs Road Suite 140

6 Las Vegas, NV 89119

7 (702) 642-3113

8 Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

9 SATICOY BAY LLC SERIES 2227

10 SHADOW CANYON

Plaintiff(s),

11 -vs-

CASE NO. A-14-702938-C

DEPT. NO. V

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

15 Defendant(s).

16 **SUMMONS - CIVIL**

17 **NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU**
18 **WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.**
19 **READ THE INFORMATION BELOW.**

20 NATIONSTAR MORTGAGE LLC.

21 **TO THE DEFENDANT(S):** A civil Complaint has been filed by the Plaintiff(s) against
22 you for the relief set forth in the Complaint.

- 23 1. If you intend to defend this lawsuit, within 20 days after this Summons is
24 served on you, exclusive of the day of service, you must do the following:
- 25 (a) File with the Clerk of this Court, whose address is shown below, a
26 formal written response to the Complaint in accordance with the rules
27 of the Court, with the appropriate filing fee.
 - 28 (b) Serve a copy of your response upon the attorney whose name and
address is shown below.

- 1 2. Unless you respond, your default will be entered upon application of the
2 Plaintiff(s) and failure to so respond will result in a judgment of default
3 against you for the relief demanded in the Complaint, which could result in
4 the taking of money or property or other relief requested in the Complaint.
5 3. If you intend to seek the advice of an attorney in this matter, you should do
6 so promptly so that your response may be filed on time.
7 4. The State of Nevada, its political subdivisions, agencies, officers,
8 employees, board members, commission members and legislators each
9 have 45 days after service of this Summons within which to file an Answer
10 or other responsive pleading to the Complaint.

11
12 Submitted by:

13 BY: Michael Bohn
14

15 MICHAEL F. BOHN, ESQ.
16 376 E. Warm Springs Road Suite 140
17 Las Vegas, NV 89119
18 Attorney for Plaintiff

STEVEN D. GRIERSON
CLERK OF COURT

KATHRINE BELNEEV

By: Kathrine Belneev

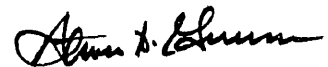
JUN 26 2014

Deputy Clerk

Date

Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

19
20 NOTE: When service is by publication, add a brief statement of the object of the
21 action. See Nevada Rules of Civil Procedure 4(b).
22
23
24
25
26
27
28



CLERK OF THE COURT

1 **COMP**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

3 JEFF ARLITZ, ESQ.

Nevada Bar No. 6558

4 jarlitz@bohnlawfirm.com

LAW OFFICES OF

5 MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

6 Las Vegas, Nevada 89119

(702) 642-3113/ (702) 642-9766 FAX

7 Attorney for plaintiff, Saticoy Bay LLC Series 2227 Shadow Canyon

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10
11 SATICOY BAY LLC SERIES 2227 SHADOW
CANYON

CASE NO.: A-14-702938-C

DEPT NO.:

V

12 Plaintiff,

13 vs.

EXEMPTION FROM ARBITRATION:
Title to real property

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

17 Defendants.

18 **COMPLAINT**

19 Plaintiff, Saticoy Bay LLC Series 2227 Shadow Creek Canyon, by and through its attorney, Jeff
20 Arlitz, Esq. alleges as follows:

21 1. Plaintiff is the owner of the real property commonly known as 2227 Shadow Canyon,
22 Henderson, Nevada.

23 2. Plaintiff obtained title by foreclosure deed recorded on February 3, 2014.

24 3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments
25 due from the former owner, Patricia E. Evans to the Sun City Anthem Community Association, pursuant
26 to NRS Chapter 116.

1 4. Defendant, Nationstar Mortgage LLC is the beneficiary of a deed of trust which was recorded
2 as an encumbrance to the subject property on February 7, 2006.

3 5. Defendant, Paterno C. Jurani, Esq. is the trustee on the deed of trust.

4 6. Defendant Republic Silver State Disposal, dba Republic Services claims a lien on the subject
5 property for solid waste collection, charges, fees and penalties charged by Republic Services.

6 7. The interest of each of the defendants has been extinguished by reason of the foreclosure sale,
7 which was properly conducted with adequate notice given to all persons and entities claiming an interest
8 in the subject property, and resulting from a delinquency in assessments due from the former owner,
9 Patricia E. Evans to the Sun City Anthem Community Association, pursuant to NRS Chapter 116.

10 8. Nonetheless, defendant Nationstar Mortgage LLC has recorded a notice of default and election
11 to sell under its deed of trust pursuant to NRS 107.080.

12 9. Plaintiff is entitled to an injunction prohibiting the foreclosure sale from proceeding.

13 10. The plaintiff is entitled to an award of attorneys fees and costs.

14 **SECOND CLAIM FOR RELIEF**

15 11. Plaintiff repeats the allegations contained in paragraphs 1 through 10.

16 12. Plaintiff is entitled to a determination from this court, pursuant to NRS 40.010 that the
17 plaintiff is the rightful owner of the property and that the defendants have no right, title, interest or claim
18 to the subject property.

19 13. The plaintiff is entitled to an award of attorneys fees and costs.

20 **THIRD CLAIM FOR RELIEF**

21 14. Plaintiff repeats the allegations contained in paragraphs 1 through 13.

22 15. Plaintiff seeks a declaration from this court, pursuant to NRS 40.010, that title in the property
23 is vested in plaintiff free and clear of all liens and encumbrances, that the defendants herein have no
24 estate, right, title or interest in the property, and that defendants are forever enjoined from asserting any
25 estate, title, right, interest, or claim to the subject property adverse to the plaintiff.

26 16. The plaintiff is entitled to an award of attorneys fees and costs.

27 WHEREFORE, plaintiff prays for Judgment as follows:

28

1. For injunctive relief;

2 2. For a determination and declaration that plaintiff is the rightful holder of title to the property,
3 free and clear of all liens, encumbrances, and claims of the defendants.

3. For a determination and declaration that the defendants have no estate, right, title, interest or claim in the property.

6 4. For a judgment forever enjoining the defendants from asserting any estate, right, title, interest
7 or claim in the property; and

8 5. For such other and further relief as the Court may deem just and proper.

9 || DATED this 24th day of June 2014.

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

By: / s / Jeff Arlitz, Esq. /
 Jeff Arlitz, Esq.
 376 East Warm Springs Road, Ste. 140
 Las Vegas, Nevada 89119
 Attorney for plaintiff

VERIFICATION

[illegible]

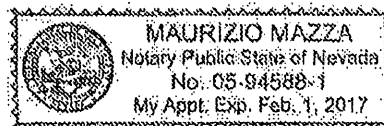
Iyad Haddad, being first duly sworn, deposes and says:

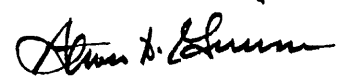
That he is the authorized representative of the plaintiff Limited Liability Company in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters therein alleged on information and belief, and as to those matters, he believes them to be true.

LYAD:HXDDAD

SUBSCRIBED and SWORN to before me
this 24 day of June, 2014

NOTARY PUBLIC in and for said
County and State:





CLERK OF THE COURT

ANS

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

ALLISON R. SCHMIDT, ESQ.

Nevada Bar No. 4642

AKERMAN LLP

1160 Town Center Drive, Suite 330

Las Vegas, Nevada 89144

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Email: allison.schmidt@akerman.com

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.: V

**DEFENDANT NATIONSTAR
MORTGAGE LLC'S ANSWER TO
COMPLAINT**

Nationstar Mortgage, LLC, (**Nationstar**), answers plaintiff SATICOY BAY LLC SERIES 2227 SHADOW CANYON's (**plaintiff**) complaint as follows:

1. Nationstar lacks sufficient knowledge or information to admit or deny the allegations set forth in paragraphs 1-3 and 5, and 6 of the complaint and denies each allegation contained in those paragraphs on that basis.

2. Nationstar denies the allegations set forth in paragraphs 7, 9, 10, 12, 13, and 16 of the complaint.

3. With respect to paragraph 4 of the complaint, Nationstar admits that it is the current beneficiary of the subject deed of trust, however, answering the remaining allegations contained in paragraph 4, Nationstar states that the document referenced speaks for itself.

{29239335;1}

AKERMAN LLP

1160 Town Center Drive, Suite 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 4. With respect to paragraph 15 of the complaint, Nationstar denies that plaintiff is
2 entitled to the relief described therein.

3 **WHEREFORE**, Nationstar prays for the following:

- 4 1. That plaintiff takes nothing by way of its complaint;
5 2. For attorney's fees and costs of defending this action; and
6 3. For such other and further relief as this Court deems just and proper.

7 **AFFIRMATIVE DEFENSES**

- 8 1. Plaintiff fails to state claims upon which relief may be granted.
9 2. The foreclosure sale at issue cannot eliminate a senior deed of trust under NRS
10 116.311635 and NRS 21.130.
11 3. The foreclosure sale at issue cannot eliminate a senior deed of trust because it was
12 commercially unreasonable.
13 4. Nationstar acted in good faith at all times.
14 5. Due to plaintiff's own actions, plaintiff is estopped from asserting the claims in the
15 complaint.
16 6. Plaintiff's claims may be barred by applicable limitations on actions, including the
17 statute of limitations.
18 7. The liability, if any, of Nationstar must be reduced by the percentage of fault of
19 plaintiff and others.
20 8. Plaintiff's claims and causes of action are barred, in whole or in part, due to plaintiff's
21 failure to mitigate, minimize, or otherwise avoid its alleged damages.
22 9. Plaintiff's claims are barred because any injury it suffered was the result of the actions
23 of an intervening superseding cause over which Nationstar had no control.
24 10. Plaintiff's claims are barred pursuant to the laches doctrine.
25 11. Plaintiff's damages, if any, were not caused by any negligence or want of care by
26 Nationstar, but were caused by third parties over which Nationstar had no control.
27 12. Any act or omission on the part of Nationstar was not the proximate cause of the
28 alleged injuries or damages, if any, sustained by plaintiff.

13. The liability of Nationstar, if any, is several and not joint and several, and based upon each defendant's own acts and not the acts of others.

14. Nationstar owed no duty to plaintiff.

15. Nationstar did not breach any duty, if any, owed to plaintiff.

16. Nationstar was unaware of any wrongdoing by any other defendant or third party.

17. Plaintiff did not justifiably or reasonably rely on any representation made by Nationstar.

18. Nationstar did not ratify the actions of any other defendant.

19. Plaintiff has waived any claims against Nationstar.

20. Plaintiff has released any claims against Nationstar.

21. Plaintiff has failed to do equity.

22. Plaintiff acted with unclean hands.

23. Plaintiff assumed the risks when it entered into the purchase and loan agreements.

24. Nationstar did not make any false representations to plaintiff.

25. No agents of Nationstar made any misrepresentations to plaintiff.

26. Plaintiff has not stated any basis to rescind any instruments or liens encumbering the property.

27. The applicable covenants codes and restrictions prevent Nationstar's deed of trust from being extinguished by the assessment lien foreclosure.

28. The CC&Rs protect Nationstar's interest in the property against extinguishment.

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29. Nationstar reserves the right to assert additional affirmative defenses that become apparent during discovery.

DATED this 21st day of July, 2014.

AKERMAN LLP

/s/ Allison R. Schmidt

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
ALLISON R. SCHMIDT, ESQ.
Nevada Bar No. 10743
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

Attorneys for Nationstar Mortgage, LLC

1160 Town Center Drive, Suite 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 21st day of July, 2014 I caused to be served a true and correct copy of foregoing **DEFENDANT NATIONSTAR MORTGAGE LLC'S ANSWER TO COMPLAINT** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed 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/ Lucille Chiusano
An employee of AKERMAN LLP

1 **DSML**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

3 JEFF ARLITZ, ESQ.

Nevada Bar No.: 6558

4 jarlitz@bohnlawfirm.com

LAW OFFICES OF

5 MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

6 Las Vegas, Nevada 89119

(702) 642-3113/ (702) 642-9766 FAX

7 Attorney for plaintiff

DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 2227 SHADOW
11 CANYON

12 Plaintiff,

13 vs.

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

16 Defendants.

CASE NO.: A702938
DEPT NO.: V

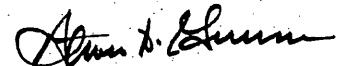
18 **NOTICE AND JUDGMENT OF DISMISSAL**

19 The Defendant named below not having filed or served an answer, motion for summary judgment
20 or otherwise having appeared herein; the Plaintiff in the above entitled action requests, authorizes and
21 directs the Clerk of the court to enter a judgment of dismissal as to Republic Silver State Disposal, DBA
22 Republic Services.

24 DATE: 7-18-14


Attorney for Plaintiff

Electronically Filed
07/25/2014 10:37:41 AM


CLERK OF THE COURT

CLERK OF THE COURT

JUL 21 2014

RECEIVED

1 On application of the Plaintiff, no answer, motion for summary judgment or other appearance
2 having been filed or served by the Defendant named below, a notice of the dismissal of this action having
3 been duly signed, the above entitled action as to Defendant, Republic Silver State Disposal, DBA
4 Republic Services, is hereby dismissed.

5 CLERK OF COURT

6 JUL 21 2014

7 By: Patricia Azucena

8 DEPUTY CLERK

9 DATE

10 PATRICIA AZUCENA

11 A702988


CLERK OF THE COURT

1 DSML
MICHAEL F. BOHN, ESQ.,
2 Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
3 LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
4 376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
5 (702) 642-3113/ (702) 642-9766 FAX

6 Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

9 SATICOY BAY LLC SERIES 2227 SHADOW
CANYON

CASE NO.: A702938
DEPT NO.: V

10 Plaintiff,

11 vs.

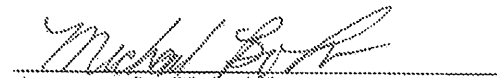
12 NATIONSTAR MORTGAGE LLC.;
13 PATERNO C. JURANI, ESQ.; and REPUBLIC
SILVER STATE DISPOSAL, DBA REPUBLIC
14 SERVICES;

15 Defendants.

16
17 NOTICE AND JUDGMENT OF DISMISSAL

18 The Defendant, Paterno C. Jurani, Esq., not having filed or served an answer, motion for summary
19 judgment or otherwise having appeared herein; the Plaintiff in the above entitled action requests,
20 authorizes and directs the Clerk of the court to enter a judgment of dismissal as to Paterno C. Jurani, Esq.

21 DATE: 5-21-15


Attorney for Plaintiff

23 ///

24 ///

25 ///

CLERK OF THE COURT

RECEIVED
MAY 23 2015

1 On application of the Plaintiff, no answer, motion for summary judgment or other appearance
2 having been filed or served by the Defendant named below, a notice of the dismissal of this action having
3 been duly signed, the above entitled action as to Defendant, Paterno C. Jurani, Esq, is hereby
4 dismissed .

5 CLERK OF COURT STEVEN D. GRIERSON
6 CLERK OF THE COURT

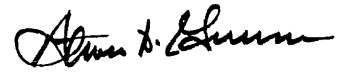
7 By:

8 Michelle McCarthy
9 DEPUTY CLERK

10 DATE

11 MICHELLE MCCARTHY

12 MAY 22 2015
13
14
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21
22
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27
28



CLERK OF THE COURT

1 **FFCL**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ., LTD.
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8 Las Vegas, Nevada 89119
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6 Attorney for plaintiff

7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 SATICOY BAY LLC SERIES 2227 SHADOW
11 CANYON,

11 Plaintiff,

12 vs.

13 NATIONSTAR MORTGAGE LLC.;
14 PATERNO C. JURANI, ESQ.; and REPUBLIC
15 SILVER STATE DISPOSAL, DBA REPUBLIC
16 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 counter-motion 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

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.*

2. 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.

3. When ruling on a motion for summary judgment, the court may take judicial notice of the public records attached to the motion. See *Anderson v. County of Nassau*, 297 F. Supp 2d 540, 544-45 (E.D.N.Y. 2004); *In Re Bayside Prison Litig.*, 190 F. Supp 2d 755, 760 (D. N.J. 2002). The recorded documents attached to the plaintiffs motion are referenced in the complaint and/or are public records of which the Court may, and did take judicial notice. See NRS 47.150; Lemel v. Smith, 64 Nev. 545 (1947) (Judicial Notice takes the place of proof and is of equal force.) “Documents accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take acknowledgments are 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
28

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 it's 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

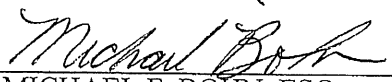
1 IT IS FURTHER ORDERED that defendants, as well as their heirs and assigns or anyone acting
2 on their behalf are forever barred from enforcing any rights against the real property commonly known
3 as 2227 Shadow Canyon, Las Vegas, Nevada as a result of the deed of trust recorded as instrument
4 number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

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

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7
8 
9 DISTRICT COURT JUDGE
10 

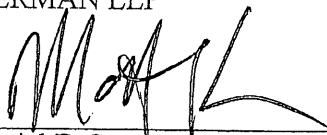
11 Respectfully submitted by:

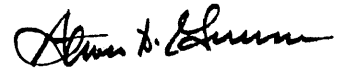
12 LAW OFFICES OF
13 MICHAEL F. BOHN, ESQ., LTD.

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
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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,

CASE NO.: A702938
DEPT NO.: XIV

11 Plaintiff,

12 vs.

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

15 Defendants.

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

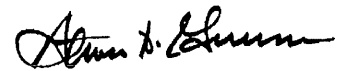
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CERTIFICATE OF SERVICE

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

Ariel E. Stern, Esq.
AKERMAN LLP
1160 Town Center Drive, Ste. 330
Las Vegas, NV 89144
Attorneys for defendant Nationstar

By: /s/ /Marc Sameroff /
An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ.



CLERK OF THE COURT

1 **FFCL**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
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10 Attorney for plaintiff

11
12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 SATICOY BAY LLC SERIES 2227 SHADOW
15 CANYON,

16 Plaintiff,

17 vs.

18 NATIONSTAR MORTGAGE LLC.;
19 PATERNO C. JURANI, ESQ.; and REPUBLIC
20 SILVER STATE DISPOSAL, DBA REPUBLIC
21 SERVICES,

22 Defendants.

CASE NO.: A702938
DEPT NO.: XIV

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

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

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

FINDINGS OF FACT

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

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.*

2. 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.

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

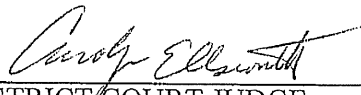

IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on January 2, 2014 and the foreclosure deed recorded on February 3, 2014 as instrument number 201402030002095, the interests of defendant Nationstar as well as it's heirs or assigns in the property commonly known as 2227 Shadow 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

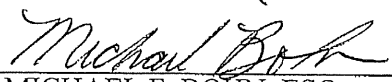
1 IT IS FURTHER ORDERED that defendants, as well as their heirs and assigns or anyone acting
2 on their behalf are forever barred from enforcing any rights against the real property commonly known
3 as 2227 Shadow Canyon, Las Vegas, Nevada as a result of the deed of trust recorded as instrument
4 number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

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

6
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8 
9 DISTRICT COURT JUDGE
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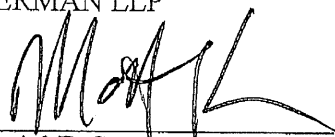
11 Respectfully submitted by:

12 LAW OFFICES OF
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14 By: 
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