

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

WEST SUNSET 2050 TRUST,

Appellant,

vs.

NATIONSTAR MORTGAGE, LLC,

Respondent.

No. 70754

Electronically Filed
Aug 01 2016 04:33 p.m.

DOCKETING STATEMENT
CIVIL APPEALS
Tara K. Lindeman
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 Eight Judicial Department XXI
County Clark Judge Honorable Valerie Adair
District Ct. Case No. A-13-691323-C

2. Attorney filing this docketing statement:

Attorney Margaret E. Schmidt, Esq. Telephone (702) 629-7900
Firm Maier Gutierrez Ayon
Address 8816 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Client(s) West Sunset 2050 Trust (hereinafter referred to as "West Sunset")

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 Allison R. Schmidt, Esq. Telephone (702) 634-5000
Firm Akerman LLP
Address 1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144

Client(s) Nationstar Mortgage, LLC (hereinafter referred to as "Nationstar")

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:

None.

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:

West Sunset v. New Freedom Mortgage Corporation, et al., Eighth Judicial District Court, Case No. A-13-691323-C. Order granting Nationstar's countermotion for summary judgment and denying West Sunset's motion for summary judgment was entered on February 8, 2016 and noticed on February 16, 2016. The order denying West Sunset's motion for reconsideration was entered on May 31, 2016 and noticed on June 3, 2016

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

This is an appeal from an order granting summary judgment in favor of Nationstar and against West Sunset. Nationstar is the purported beneficiary of a first deed of trust recorded against the subject real property in 2005. In 2011, the borrower under the deed of trust recorded a deed in lieu of foreclosure, purporting to transfer ownership of the property to the originator of the underlying loan and extinguish the deed of trust. In 2013, West Sunset acquired title to the property at a non-judicial foreclosure sale conducted pursuant to NRS 116 and tendered payment to the HOA's agent in satisfaction of the lien. West Sunset recorded its foreclosure deed thereafter, which stated that the sale complied with all requirements of law, including notice. After Nationstar and West Sunset each moved for summary judgment, the district court granted Nationstar's countermotion, holding that (1) the deed in lieu was a false recording and did not strip the beneficiary of the deed of trust of its property rights; (2) the HOA's agent failed to provide any foreclosure notices to the beneficiary of the deed of trust; and (3) absent the requisite notices, the foreclosure sale did not extinguish the deed of trust.

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

1. Whether the district court erred by failing to consider West Sunset's status as a bona fide purchaser for value at the HOA foreclosure sale.
2. Whether the district court erred by finding that no genuine issues of material fact remained as to whether notice of the HOA foreclosure sale was properly provided and whether the deed in lieu of foreclosure was a false recording.

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:

First 100, LLC vs. US Bank National Association, et al., No. 70085, raises similar issues concerning the district court's failure to consider a bona fide purchaser's status at an HOA foreclosure sale. I am not aware of any other proceedings presently pending before the Court concerning the effect of a "rogue" deed in lieu of foreclosure.

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: See response to question 13.

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 appeal is presumptively retained by the Supreme Court pursuant to NRAP 17(a)(13) and (14) as a matter raising as a principal issue, a question of first impression involving common law and of statewide public importance. While West Sunset believes that the Court has already decided many of the issues presented in this appeal, it also believes that the case should be retained by the Supreme Court until it definitively puts to rest the issues of bona fide purchaser status at an HOA foreclosure sale. This is a matter of statewide public importance as a decision from this Court will bring certainty to the effect of HOA foreclosure sales in Nevada and reduce the multitude of litigation on these issues which persist in the lower courts. Accordingly, this case should be heard by the Supreme Court as opposed to the Court of Appeals.

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

Was it a bench or jury trial? _____

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 February 8, 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 February 16, 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 March 6, 2016

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 May 31, 2016

(c) Date written notice of entry of order resolving tolling motion was served Jun 3, 2016

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed July 1, 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:

This is an appeal from an order granting Nationstar's NRCP 56(b) countermotion for summary judgment entered in the Eighth Judicial District Court of Nevada. Thus, this order is a final appealable judgment for purposes of this Court's jurisdiction.

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

(a) Parties:

(1) West Sunset; (2) New Freedom Mortgage Corporation ("New Freedom"); (3) Bank of America, N.A. ("BANA"); (4) Nationstar; (5) Cooper Castle Law Firm, LLP ("Cooper Castle"); and (6) Stephanie Tablante ("Tablante")

(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:

Cooper Castle was formally dismissed from the litigation on February 3, 2014. Tablante and New Freedom never entered an appearance in this litigation, and default was entered against them on July 29, 2015. The district court's order did not grant summary judgment as to BANA; accordingly, West Sunset is seeking Rule 54(b) certification in the lower court.

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.

West Sunset alleged claims for declaratory relief/quiet title and preliminary/permanent injunction. Nationstar counterclaimed and cross-claimed for quiet title, declaratory relief, slander of title, breach of contract, breach of implied covenant of good faith and fair dealing, and unjust enrichment. Nationstar's counterclaims, Nationstar's cross-claims, and West Sunset's claims against Nationstar were formally disposed of on February 8, 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:

West Sunset's claims against New Freedom, BANA and Tablante for declaratory relief/quiet title and preliminary and permanent injunction.

(b) Specify the parties remaining below:
West Sunset, New Freedom, BANA, and Tablante

(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)):

West Sunset is seeking Rule 54(b) certification from the district court so as to render the judgment final and appealable. The stipulation and order will be filed with the Court upon receipt from the district court and entry in the underlying litigation.

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.

West Sunset 2050 Trust
Name of appellant

Margaret E. Schmidt, Esq.
Name of counsel of record

August 1, 2016
Date

/s/ Margaret E. Schmidt
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 1st day of August, 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.)

Allison R. Schmidt, Esq.
Akerman LLP
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Attorney for Respondent Nationstar Mortgage, LLC

Craig A. Hoppe, Esq.
Hoppe Law, LTD.
601 South Rancho Drive, Suite A7
Las Vegas, Nevada 89106
Settlement Judge

Dated this 1st day of August, 2016

/s/ Natalie Vazquez
Signature

EXHIBIT 1

EXHIBIT 1

CIVIL COVER SHEET

Clark County, Nevada

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

A- 13- 691323- C

XXI

I. Party Information

Plaintiff(s) (name/address/phone): WEST SUNSET 2050 TRUST, a Nevada Trust

Attorney (name/address/phone):

Luis A. Ayon, Esq., Margaret E. Schmidt, Esq., Maier Gutierrez Ayon, 2500 W. Sahara Avenue, Suite 106, Las Vegas, NV 89102 (702) 629-7900

Defendant(s) (name/address/phone): NEW FREEDOM MORTGAGE CORPORATION, a Foreign Corporation; BANK OF AMERICA, N.A., a National Association; NATIONSTAR MORTGAGE LLC, a Foreign Limited Liability Company, COOPER CASTLE LAW FIRM, LLP, a Nevada Limited Liability Partnership STEPHANIE TABLANTE, an individual, DOES I through X; and ROE CORPORATIONS I through X, inclusive

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> 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	<input type="checkbox"/> 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	Other Civil Filing Types	
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	<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.)

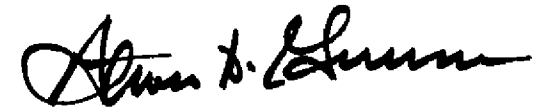
- | | | |
|--|---|---|
| <input type="checkbox"/> NRS Chapters 78-88
<input type="checkbox"/> Commodities (NRS 90)
<input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Investments (NRS 104 Art. 8)
<input type="checkbox"/> Deceptive Trade Practices (NRS 598)
<input type="checkbox"/>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

November 6, 2013

Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

COMP
LUIS A. AYON, ESQ.
Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
Nevada Bar No. 12489
MAIER GUTIERREZ AYON
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Attorneys for West Sunset 2050 Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: **A- 13 - 691323 - C**

Dept. No.: **XXI**

COMPLAINT

Arbitration Exemptions:

- 1. Action for Declaratory Relief**
- 2. Action Concerning Real Property**

Plaintiff WEST SUNSET 2050 TRUST ("Plaintiff" or the "Trust"), by and through its attorneys of record, the law firm MAIER GUTIERREZ AYON, PLLC, hereby demands quiet title against the above named defendants, defendants DOES I through X, and ROE CORPORATIONS I through X (collectively, "Defendants"), as follows:

GENERAL ALLEGATIONS

1. This lawsuit involves real property located at 7255 W. Sunset Road, Unit 2050, Las Vegas, Nevada 89113, and bearing Assessor's Parcel Number 176-03-510-102 (the "Property").

2. Plaintiff WEST SUNSET 2050 TRUST ("Plaintiff" or the "Trust") is, and at all times pertinent hereto was, a resident of the State of Nevada.

3. Plaintiff is the present record owner of the Property.

4. The Property is subject to a set of CC&Rs recorded by the Tuscano Homeowners Association ("Tuscano HOA").

5. Plaintiff acquired the Property on or about June 22, 2013, by successfully bidding on the Property at a publicly held foreclosure action in accordance with NRS 116.3116, *et seq.*

6. The foreclosure sale was conducted pursuant to NRS 116.3116, *et seq.*, and all requirements of law regarding the mailing of the copies of the Notice of Default and Election to Sell, and the mailing, posting, and publication of the Notice of Foreclosure Sale have been complied with.

7. Pursuant to NRS 116.3116(2), the entire HOA lien is prior to all other liens and encumbrances of unit except:

1. Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes, or takes subject to;
2. A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or, in a cooperative, the first security interest encumbering only the unit's owner's interest and perfected before the date on which the assessment sought to be enforced became delinquent; and
3. Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

8. NRS 116.3116(2) further provides that a portion of the HOA Lien has priority over even a first security interest in the Property.

9. On June 24, 2013, the foreclosure deed was recorded in the Official Records of the Clark County Recorder as Instrument No. 201306240003127 (the "Deed").

10. Since purchasing the Property, Plaintiff has expended significant additional funds and resources in relation to the Property.

11. Upon information and belief, on or about December 7, 2005, Defendant Stephanie Tablante, obtained a mortgage from Defendant New Freedom Mortgage Corporation ("New Freedom Mortgage") for the purchase of the Property.

1 12. Upon information and belief, Defendant New Freedom Mortgage is foreign
2 corporation. However, Defendant New Freedom Mortgage is not registered with the Nevada
3 Secretary of State as a corporation authorized to do business in the State of Nevada.

4 13. Defendant New Freedom Mortgage recorded a deed of trust with the Clark County
5 Recorder's office as Instrument No. 200512070002367 on or about December 7, 2005 ("New
6 Freedom DOT"). Defendant Stephanie Tablante was the borrower under the mortgage and
7 executed the New Freedom DOT as security for the mortgage.

8 14. On or about March 3, 2011, Defendant Stephanie Tablante transferred her interest
9 in the Property to Defendant New Freedom Mortgage via a Deed in Lieu of Foreclosure.
10 Defendant New Freedom Mortgage recorded the Deed in Lieu of Foreclosure with the Clark
11 County Recorder's office as Instrument Number 20113030003444.

12 15. On or about June 21, 2011, the Deed in Lieu of Foreclosure was rerecorded with the
13 Clark County Recorder's office as Instrument Number 201106210002567.

14 16. After Defendant Stephanie Tablante signed her interest in the Property over to
15 Defendant New Freedom Mortgage, Defendant New Freedom Mortgage became the owner of the
16 Property and was responsible for all the maintenance associated with the Property, including the
17 homeowner assessments.

18 17. On or about July 29, 2011, Mortgage Electronic Registration Systems, Inc.
19 ("MERS") recorded an assignment of deed of trust against the Property with the Clark County
20 Recorder's office as Instrument Number 201107290000895 ("MERS Assignment").

21 18. The MERS Assignment purportedly assigned Defendant New Freedom Mortgage's
22 interest in the New Freedom Mortgage DOT to BAC Home Loans Servicing, LP FKA
23 Countrywide Home Loan Servicing LP ("BAC Home Loans").

24 19. Is it unclear why the MERS Assignment occurred because the New Freedom
25 Mortgage DOT was extinguished after ownership of the Property was transferred to Defendant
26 New Freedom Mortgage.

27 20. On or about March 20, 2013, Defendant Bank of America, N.A. ("BANA")
28 recorded an assignment ("Nationstar Assignment") that purported to transfer BANA's interest to

1 Defendant Nationstar Mortgage LLC ("Nationstar"). The Nationstar Assignment was recorded
2 with the Clark County Recorder's office as Instrument Number 201303200000887.

3 21. Defendant New Freedom Mortgage was the owner of the Property at the time the
4 Nationstar Assignment was made

5 22. On or about September 18, 2013, Defendant Cooper Castle Law Firm, LLP
6 ("Cooper Castle"), as Trustee under the New Freedom DOT, recorded a Notice of Breach and
7 Default ("NOD") against the Property. The NOD was recorded with the Clark County Recorder's
8 office as Instrument Number 201309180002103.

9 23. As previously stated, the New Freedom DOT was extinguished after Defendant
10 Stephanie Tablante transferred her interest in the Property to Defendant New Freedom Mortgage.

11 24. Upon information and belief, each of the defendants sued herein as DOES I through
12 X, inclusive, are responsible in some manner for the events and happenings herein referred to,
13 which thereby proximately caused the injuries and damages to plaintiff as alleged herein; that
14 when the true names and capacities of such defendants become known, plaintiff will ask leave of
15 this Court to amend this complaint to insert the true names, identities and capacities together with
16 proper charges and allegations.

17 25. Upon information and belief, each of the defendants sued herein as ROE
18 CORPORATIONS I thought X, inclusive, are responsible in same manner for the events and
19 happenings herein referred to, which thereby proximately caused the injuries and damages to
20 plaintiff as alleged herein; that when the true names and capacities of such defendants become
21 known, plaintiff will ask leave of this Court to amend this complaint to insert the true names,
22 identities and capacities together with proper charges and allegations.

23 **FIRST CLAIM FOR RELIEF**

24 **(Declaratory Relief/Quiet Title Pursuant to NRS 30.010 and 116.3116, et seq.**
25 **against all Defendants)**

26 26. Plaintiff repeats and realleges the allegations of the preceding paragraphs of the
27 complaint as though fully set forth herein and incorporate the same herein by reference.

28 27. This Court has the power and authority to declare the Plaintiff's rights and interests

1 in the Property, and the resolution of Defendants' adverse claims, if any, to it.

2 28. Plaintiff acquired the Property via a NRS 116 foreclosure sale on or about June 22,
3 2013. Thereafter, Plaintiff properly recorded the Deed on June 24, 2013.

4 29. Defendant New Freedom Mortgage, as the owner of the Property, was required to
5 maintain the HOA assessments.

6 30. Defendants were duly notified of the HOA foreclosure sale and failed to act to
7 protect their interests. Defendants have sat on their rights and effectively have abandoned their
8 security interests, if any ever legitimately existed.

9 31. Furthermore, an NRS 116 foreclosure sale, like all foreclosure sales, extinguishes
10 junior security interests. Pursuant to NRS 116.3116, a Homeowners Association ("HOA") lien is
11 superior in priority to all mortgage encumbrances. Therefore, an NRS 116 foreclosure sale
12 extinguishes all mortgage encumbrances, if any remained in place.

13 32. Defendants are unable to satisfy the stringent requirements of Nevada Assembly
14 Bill No. 284, as codified, and effectively have abandoned their security interests.

15 33. Plaintiff is entitled to a declaratory judgment from this Court finding that: (1)
16 Plaintiff is the owner of the Property; (2) Plaintiff's Deed is valid and enforceable; and (3)
17 Plaintiff's rights to the Property and interest in the Property are superior to any adverse interest
18 claimed by Defendants and are therefore extinguished.

19 34. Plaintiff seeks an order from the Court quieting title to the Property in favor of
20 Plaintiff and extinguishing any interest Defendants may have therein.

21 **SECOND CLAIM FOR RELIEF**

22 **(Preliminary and Permanent Injunction against Defendants Cooper Castle and Nationstar)**

23 35. Plaintiff repeats and realleges the allegations of the preceding paragraphs of the
24 complaint as though fully set forth herein and incorporate the same herein by reference.

25 36. Defendants may claim an interest in the Property by way of a competing deed of
26 trust or other interest that was extinguished by the HOA foreclosure sale or otherwise abandoned.

27 37. As such, Defendants may improperly attempt to foreclose upon the Property and
28 sell it at a trustee's sale.

38. Such a trustee's sale would be invalid as Defendants have lost or otherwise abandoned their interests in the Property.

39. On the basis of the facts described herein, Plaintiff has a reasonable probability of success on the merits of its claims.

40. Plaintiff is entitled to a preliminary and permanent injunction prohibiting Defendants, each of them, from initiating any foreclosure proceedings that would affect the title to the Property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff WEST SUNSET 2050 TRUST, prays for judgment against Defendants, and each of them, as follows:

1. For a declaration and determination that Plaintiff is the rightful holder of title to the Property and that Defendants, and each of them, be declared to have no right, title or interest in the Property;

2. For a preliminary and permanent injunction that Defendants, and each of them, are prohibited from initiating foreclosure proceedings on the Property; and

3. For such other and further relief as the Court may deem proper.

DATED this 6th day of November, 2013.

MAIER GUTIERREZ AYON



LUIS AYON, ESQ.
Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
Nevada Bar No. 12489
2500 W. Sahara Ave, Suite 106
Las Vegas, Nevada 89102
Attorneys for Plaintiff West Sunset 2050 Trust

EXHIBIT 2

EXHIBIT 2


CLERK OF THE COURT

1 **AACR**
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 ALLISON R. SCHMIDT, ESQ.
5 Nevada Bar No. 10743
6 AKERMAN LLP
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12 Email: allison.schmidt@akerman.com

13 *Attorneys for Defendant Nationstar*
14 *Mortgage, LLC*

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 WEST SUNSET 2050 TRUST, a Nevada Trust,
18
19 Plaintiff,

20 v.

21 NEW FREEDOM MORTGAGE
22 CORPORATION, a Foreign Corporation;
23 BANK OF AMERICA, N.A., a National
24 Association; NATIONSTAR MORTGAGE,
25 LLC, a Foreign Limited Liability Company;
26 COOPER CASTLE LAW FIRM, LLP, a Nevada
27 Limited Liability Partnership; STEPHANIE
28 TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-13-691323-C
Dept.: XXI

**NATIONSTAR MORTGAGE, LLC'S
ANSWER, COUNTERCLAIM AGAINST
WEST SUNSET 2050 TRUST AND CROSS-
CLAIM AGAINST STEPHANIE
TABLANTE**

Nationstar Mortgage, LLC, (**Nationstar**), answers plaintiff NEVADA NEW BUILDS LLC's
complaint as follows:

1. Nationstar lacks sufficient knowledge or information to admit or deny the allegations
set forth in paragraphs 1-4, 10-13, 34, and 36 of the complaint and denies each allegation contained
in those paragraphs on that basis.

2. Nationstar denies the allegations set forth in paragraphs 5-7, 14, 16, 19, 21, 23-25, 28-
33, and 37-40 of the complaint.

3. With respect to paragraph 8 of the complaint, Nationstar responds that the law cited

{28649609;1}

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
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1 speaks for itself.

2 4. With respect to paragraphs 9, 15, 17, 18, 20, and 22 of the complaint, Nationstar
3 responds that the recorded documents referenced speak for themselves.

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

6 6. Paragraph 27 of the complaint is merely a statement of this Court's jurisdiction, and
7 no response thereto is required.

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

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

12 **AFFIRMATIVE DEFENSES**

13 1. Plaintiff fails to state claims upon which relief may be granted.
14 2. The foreclosure sale at issue cannot eliminate a senior deed of trust under NRS
15 116.311635 and NRS 21.130.

16 3. The foreclosure sale at issue cannot eliminate a senior deed of trust because it was
17 commercially unreasonable.

18 4. The foreclosure sale at issue is void due to lack of proper notice.

19 5. Nationstar acted in good faith at all times.

20 6. Due to plaintiff's own actions, plaintiff is estopped from asserting the claims in the
21 complaint.

22 7. Plaintiff's claims may be barred by applicable limitations on actions, including the
23 statute of limitations.

24 8. The liability, if any, of Nationstar must be reduced by the percentage of fault of
25 plaintiff and others.

26 9. Plaintiff's claims and causes of action are barred, in whole or in part, due to plaintiff's
27 failure to mitigate, minimize, or otherwise avoid its alleged damages.

10. Plaintiff's claims are barred because any injury it suffered was the result of the actions of an intervening superseding cause over which Nationstar had no control.

11. Plaintiff's claims are barred pursuant to the laches doctrine.

12. Any act or omission on the part of Nationstar was not the proximate cause of the 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 was unaware of any wrongdoing by any other defendant or third party.

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

17. Plaintiff has waived any claims against Nationstar.

18. Plaintiff has released any claims against Nationstar.

19. Plaintiff has failed to do equity.

20. Plaintiff acted with unclean hands.

21. Plaintiff assumed the risks when it purchased the property.

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

23. Plaintiff is not a *bona fide* purchaser.

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

COUNTERCLAIM AND CROSS-CLAIM

Nationstar counterclaims against plaintiff West Sunset 2050 Trust (**West Sunset**), and cross-claims against defendant Stephanie Tablante (**Tablante**), as follows:

1. Upon information and belief, West Sunset is a trust and citizen of Nevada.

2. Upon information and belief, Tablante is a resident of the state of Nevada.

3. Nationstar is a Delaware limited liability company with its principal place of business in the State of Texas.

1 4. Nationstar will seek leave of this Court to add the Tuscano Homeowners Association
2 (Tuscano HOA) as a party to this action. Upon information and belief, Tuscano HOA is a domestic
3 non-profit corporation.

4 **FACTUAL BACKGROUND**

5 5. Upon information and belief, Tablante purchased the property located at 7255 W.
6 Sunset Road, unit 2050, Las Vegas Nevada 89113 in or about December 2005.

7 6. Tablante financed the purchase of the property by obtaining a mortgage loan in the
8 amount of \$176,750 from New Freedom Mortgage Corporation.

9 7. A deed of trust securing the mortgage loan obtained by Tablante was recorded on the
10 property as instrument no. 200512070002367 in the Clark County official records.

11 8. Upon information and belief Tablante, or her agent, unilaterally attempted to deed the
12 property back to New Freedom Mortgage Corporation by creating and recording a false deed in lieu
13 of foreclosure.

14 9. The improper deed in lieu of foreclosure was recorded first as instrument no.
15 201103030003444, and was later re-recorded as instrument no. 201106210002567.

16 10. Upon information and belief, neither deed in lieu of foreclosure was ever accepted by
17 New Freedom Mortgage Corporation.

18 11. Neither deed in lieu of foreclosure bear any signature of New Freedom Mortgage
19 Corporation.

20 12. The deeds in lieu of foreclosure do not satisfy the Nevada Statute of Frauds, codified
21 as NRS 111.220.

22 13. On or about July 28, 2011, the deed of trust was assigned to BAC Home Loans
23 Servicing, LP.

24 14. The assignment to BAC Home Loans Servicing, LP was recorded as instrument no.
25 201107290000895.

26 15. On or about February 28, 2013, the deed of trust was assigned to Nationstar.

27 16. The assignment to Nationstar was recorded as instrument no. 201303200000887.
28

1 17. On or about April 4, 2014, Red Rock Financial Services, on behalf of the Tuscano
2 HOA recorded a lien for purported delinquent assessments, which stated that \$2695.10 was due and
3 owing.

4 18. The assessment lien was addressed to New Freedom Mortgage Company, despite the
5 fact that Tablante was still the property owner, and responsible for the assessments on the property.

6 19. On or about May 29, 2012 Red Rock Financial Services, on behalf of the Tuscao
7 HOA recorded a notice of default, which claimed that \$4018.40 was due and owing.

8 20. The notice of default was addressed to New Freedom Mortgage Company, despite the
9 fact that Tablante was still the property owner, and responsible for the assessments on the property.

10 21. On May 29, 2103, United Legal Service, Inc., on behalf of the Tuscano HOA
11 recorded a notice of sale, claiming that \$7806.42 was due and owing.

12 22. The notice of sale was addressed to New Freedom Mortgage Company, despite the
13 fact that Tablante was still the property owner, and responsible for the assessments on the property.

14 23. On or about June 22, 2013, the Tuscano HOA purported to sell the property at
15 foreclosure auction to West Sunset.

16 24. A trustee's deed upon sale was recorded on June 24, 2013 as instrument no.
17 201306240003127.

18 25. The trustee's sale was void as the required notices were not provided in accordance
19 with the requirements of NRS Chapter 116.

20 26. The trustee's deed failed to contain any recitation of the consideration allegedly given
21 by West Sunset.

22 **FIRST CLAIM FOR RELIEF—QUIET TITLE**

23 **(Against West Sunset 2050 Trust and Stephanie Tablante)**

24 26. Nationstar repeats and realleges each and every allegation contained in paragraphs 1
25 through 25 of its counterclaim and cross-claim as if fully incorporated herein.

26 27. Tablante's deeds in lieu of foreclosure were ineffective to transfer title of the property
27 to New Freedom Mortgage Corporation.

1 28. Because the deeds in lieu of foreclosure were ineffective, Nationstar has a valid and
2 enforceable security interest in the property as the assignee of the deed of trust.

3 29. The Tuscano HOA foreclosure sale was void because all notices were not provided as
4 required by NRS Chapter 116.

5 30. Because the HOA foreclosure sale was void, West Sunset possesses no valid interest
6 in the property and is unlawfully asserting a claim to title to the property adverse to that of
7 Nationstar.

8 31. Nationstar has been required to retain Akerman LLP to prosecute this counterclaim
9 and cross-claim, and Nationstar is entitled to recover its fees and costs.

10 **SECOND CLAIM FOR RELIEF—DECLARATORY RELIEF**

11 **(Against West Sunset 2050 Trust and Stephanie Tablante)**

12 32. Nationstar repeats and realleges each and every allegation contained in paragraphs 1
13 through 31 of its counterclaim and cross-claim as if fully incorporated herein.

14 33. A controversy exists as to title to the real property, the validity of Nationstar's
15 security interest, and the validity of the HOA foreclosure sale.

16 34. Pursuant to NRS 30.010, Nationstar is entitled to an order establishing that
17 Nationstar's deed of trust is a valid encumbrance upon the property, and the June 22, 2013 HOA
18 foreclosure sale was void for lack of notice.

19 **THIRD CLAIM FOR RELIEF—SLANDER OF TITLE/VIOLATION OF NRS 239.330**

20 **(Against Stephanie Tablante)**

21 35. Nationstar repeats and realleges each and every allegation contained in paragraphs 1
22 through 34 of its counterclaim and cross-claim as if fully incorporated herein.

23 36. Upon information and belief, the deeds in lieu of foreclosure recorded by Tablante, or
24 her agent, were false and malicious communications.

25 37. By recording the improper deeds in lieu of foreclosure, Tablante disparaged
26 Nationstar's interest in the property.

27 38. Tablante's recording of the improper deeds in lieu of foreclosure have resulted in
28 special damages, including but not limited to clouding the title to the property, and possible loss of

1 Nationstar's security interest and its right to foreclose upon the property as a remedy for Tablante's
2 breach of her mortgage loan agreement. The damages sustained by Nationstar are in excess of
3 \$10,000.

4 39. Tablante's actions were willful, wanton and malicious and entitle Nationstar to
5 exemplary damages.

6 **FOURTH CLAIM FOR RELIEF—BREACH OF CONTRACT**

7 **(Against Stephanie Tablante)**

8 40. Nationstar repeats and realleges each and every allegation contained in paragraphs 1
9 through 39 of its counterclaim and cross-claim as if fully incorporated herein.

10 41. Tablante and Nationstar are parties to the deed of trust, attached hereto as **Exhibit A**.

11 42. The deed of trust prohibits Tablante from transferring any interest in the property
12 without the beneficiary's consent.

13 43. The deed of trust requires Tablante to perform all obligations under the governing
14 documents and covenants, codes, and restrictions of the Tuscano HOA.

15 44. Upon information and belief, Tablante breached the terms of the deed of trust by
16 attempting to convey her interest in the property to New Freedom Mortgage Corporation.

17 45. Upon information and belief, Tablante failed to perform her obligations under the
18 Tuscano governing documents and covenants, codes, and restrictions, by failing to pay her periodic
19 assessments as required.

20 46. As a result of Tablante's breach of the deed of trust, Nationstar has sustained damages
21 in excess of \$10,000.

22 **FOURTH CLAIM FOR RELIEF—BREACH OF THE IMPLIED**

23 **COVENANT OF GOOD FAITH AND FAIR DEALING**

24 **(Against Stephanie Tablante)**

25 47. Nationstar repeats and realleges each and every allegation contained in paragraphs 1
26 through 46 of its counterclaim and cross-claim as if fully incorporated herein.

27 48. The implied covenant of good faith and fair dealing is required in every contract
28 under Nevada Law.

1 49. Tablante and Nationstar are parties to the deed of trust.

2 50. The purpose of the deed of trust was to secure repayment of Tablante's mortgage
3 loan, and provide the beneficiary with a foreclosure remedy in the event of Tablante's default.

4 51. Tablante performed in a way that us unfaithful to the purpose of the deed of trust by
5 unilaterally attempting to reconvey her interest in the property to New Freedom Mortgage Company.

6 52. Nationstar's expectations under the deed of trust have been denied.

7 53. As a result of Tablante's breach of the implied covenant of good faith and fair
8 dealing, Nationstar has sustained damages in excess of \$10,000.

9 **FIFTH CLAIM FOR RELIEF—UNJUST ENRICHMENT**

10 **(Against West Sunset 2050 Trust)**

11 54. Nationstar repeats and realleges each and every allegation contained in paragraphs 1
12 through 53 of its counterclaim and cross-claim as if fully incorporated herein.

13 55. Nationstar has been unable to proceed with foreclosure as a result of West Sunset's
14 possession of the property.

15 56. Upon information and belief, West Sunset leases the property to an unknown third
16 party.

17 57. West Sunset has retained the rental funds, which should equitably belongs to
18 Nationstar.

19 58. As a result of West Sunset's conduct, Nationstar has sustained damages in excess of
20 \$10,000.

21 **WHEREFORE**, Nationstar prays for relief from this Court as follows:

22 1. For an Order of the Court quieting title in Tablante's name (subject to Nationstar's
23 deed of trust), voiding the HOA's foreclosure sale, and upholding the validity and
24 enforceability of Nationstar's deed of trust;

25 2. For declaratory relief determining the parties' respective rights and obligations under
26 NRS 30.010;

27 3. For general damages in excess of \$10,000;

28 4. For special damages in excess of \$10,000;

5. For exemplary damages in excess of \$10,000.
6. For reasonable attorney's fees and costs; and
7. For such further relief as this Court deems appropriate.

DATED this 19th day of May, 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, Ste. 330

Las Vegas, Nevada 89144

Attorneys for Defendant Nationstar Mortgage, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2014 and pursuant to NRCP 5, I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NATIONSTAR MORTGAGE, LLC'S ANSWER, COUNTERCLAIM AGAINST WEST SUNSET 2050 TRUST AND CROSS-CLAIM AGAINST STEPHANIE TABLANTE**, postage prepaid and addressed to:

Luis A. Ayon, Esq.
Margaret E. Schmidt, Esq.
MAIER GUTIERREZ AYON
2500 W. Sahara Ave., Ste. 106
Las Vegas, NV 89102

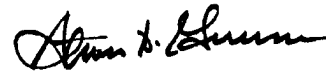
Attorneys for Plaintiff

/s/ Lucille Chiusano

An employee of AKERMAN LLP

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

1 **NOTC**

2 Jason Peck, Esq.
3 Nevada Bar No.: 10183
4 THE COOPER CASTLE LAW FIRM, LLP
5 A Multi-Jurisdictional Law Firm
6 5275 South Durango Drive,
7 Las Vegas, Nevada 89113
8 (702) 435-4175 Telephone
9 (702) 877-7424 Facsimile
10 E-Mail: japeck@ccfirm.com
11 Attorney for The Cooper Castle Law Firm, LLP

12 **EIGHTH JUDICIAL DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 WEST SUNSET 2050 TRUST, a Nevada Trust,
15
16 Plaintiff,
17 vs.

Case No: A-13-691323-C
Dept. No. XXI

18 NEW FREEDOM MORTGAGE
19 CORPORATION, a Foreign Corporation;
20 BANK OF AMERICA, N.A., a National
21 Association; NATIONSTAR MORTGAGE
22 LLC, a Foreign Limited Liability Company,
23 COOPER CASTLE LAW FIRM, LLP, a Nevada
24 Limited Liability Partnership; STEPHANIE
25 TABLANTE, an individual, DOES I through X;
26 and ROE CORPOARTIONS I THROUGH x,
27 INCLUSIVE,

28 Defendants.

NOTICE OF ENTRY OF ORDER

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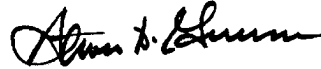
DATED this 4th day of February, 2014.

/s/ Jason Peck, Esq.
Jason Peck, Esq.
Nevada Bar No.: 10183
5275 South Durango Drive,
Las Vegas, Nevada 89113
(702) 435-4175 Telephone
(702) 877-7424 Facsimile
Attorney for The Cooper Castle Law Firm, L

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Luis Ayon, Esq.
MAIER GUTIERREZ AYON
400 South Seventh Street, Ste 400
Las Vegas, Nevada 89101

/s/ Jennifer Shumway
An Employee of
THE COOPER CASTLE LAW FIRM, LLP



CLERK OF THE COURT

1 **ORDR**

2 Jason M. Peck, Esq.
3 Nevada Bar No.: 10183
4 THE COOPER CASTLE LAW FIRM, LLP
5 A Multi-Jurisdictional Law Firm
6 5275 South Durango Drive,
7 Las Vegas, Nevada 89113
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10 E-Mail: japeck@ccfirm.com
11 Attorney for The Cooper Castle Law Firm, LLP

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28
EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
L.L.C, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual, DOES I through X;
and ROE CORPOARTIONS I THROUGH x,
INCLUSIVE,

Defendants.

Case No: A-13-691323-C

Dept. No. XXI

ORDER GRANTING DISMISSAL OF
THE COOPER CASTLE LAW FIRM, LLP

Defendant The Cooper Castle Law Firm, LLP ("CCLF")'s Motion to Dismiss, having
come on for hearing in Department XXI of the Eighth Judicial District Court, Clark County,
Nevada; and Defendant CCLF being represented by Jason M. Peck, Esq., and Defendant Bank
of America, N.A. being represented by J. Christopher Jorgensen, Esq., and Plaintiff being
represented by Margaret E. Schmidt, Esq., and after review and consideration of the points and
authorities on file, and the argument of counsel, and good cause therefore;

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IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is GRANTED.

Accordingly, all claims against The Cooper Castle Law Firm, LLP are dismissed.


IT IS FURTHER ORDERED that The Cooper Castle Law Firm, LLP, as trustee under the deed of trust affecting the real property located at 7255 West Sunset Road, Unit #2050, Las Vegas, Nevada 89113, is to comply with any preliminary injunction orders that may be entered in this matter with respect to the foreclosure of said property.

DATED this 29 day of January, 2014.


DISTRICT COURT JUDGE 

Submitted by:


THE COOPER CASTLE LAW FIRM, LLP



Jason M. Peck, Esq.
Nevada Bar No.: 10183
5275 South Durango Drive,
Las Vegas, Nevada 89113
*Attorney for The Cooper Castle
Law Firm, LLP*

Approved as to form and content by:

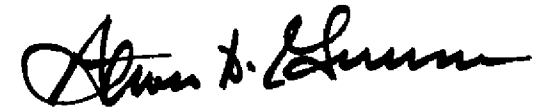
MAIER GUTIERREZ AYON



Luis A. Ayon, Esq.
Nevada Bar No.: 9752
Margaret E. Schmidt, Esq.
Nevada Bar No.: 12489
2500 West Sahara Avenue, Ste 106
Las Vegas, Nevada 89102
Attorney for Plaintiff

EXHIBIT 4

EXHIBIT 4



CLERK OF THE COURT

1 **NEOJ**
2 ARIEL E. STERN, ESQ.
3 Nevada Bar No. 8276
4 ALLISON R. SCHMIDT, ESQ.
5 Nevada Bar No. 10743
6 AKERMAN LLP
7 1160 Town Center Drive, Suite 330
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10 Facsimile: (702) 380-8572
11 Email: ariel.stern@akerman.com
12 Email: allison.schmidt@akerman.com

13 *Attorneys for Defendant Nationstar Mortgage, LLC*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 WEST SUNSET 2050 TRUST, a Nevada Trust,
17
18 Plaintiff,

19 v.

20 NEW FREEDOM MORTGAGE
21 CORPORATION, a Foreign Corporation;
22 BANK OF AMERICA, N.A., a National
23 Association; NATIONSTAR MORTGAGE,
24 LLC, a Foreign Limited Liability Company;
25 COOPER CASTLE LAW FIRM, LLP, a Nevada
26 Limited Liability Partnership; STEPHANIE
27 TABLANTE, an individual; DOES I through X;
28 and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C
Dept.: XXI

NOTICE OF ENTRY OF ORDER

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.

6 PLEASE TAKE NOTICE that the Order has been entered on the 8th day of February, 2016,
7 in the above-captioned matter. A copy of said Order is attached hereto as Exhibit A.

8 DATED this 16th day of February, 2016.

9 **AKERMAN LLP**

10 */s/ Allison R. Schmidt*

11 ARIEL E. STERN, ESQ.

12 Nevada Bar No. 8276

13 ALLISON R. SCHMIDT, ESQ.

14 Nevada Bar No. 10743

15 1160 Town Center Drive, Suite 330

16 Las Vegas, Nevada 89144

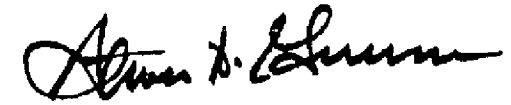
17 *Attorneys for Defendant Nationstar Mortgage, LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of February, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** addressed to:

Luis A. Ayon, Esq.
MAIER GUTIERREZ AYON PLLC
cmb@mgalaw.com
djb@mgalaw.com
dtr@mgalaw.com
jrm@mgalaw.com
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laa@mgalaw.com
mes@mgalaw.com
ndv@mgalaw.com
Attorneys for West Sunset 2050 Trust

/s/ Brienne Siriwan
An employee of AKERMAN LLP



CLERK OF THE COURT

ORDR

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ALLISON R. SCHMIDT, ESQ.
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Email: allison.schmidt@akerman.com

*Attorneys for Defendant Nationstar
Mortgage, LLC*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C
Dept.: XXI

**ORDER GRANTING NATIONSTAR
MORTGAGE LLC'S COUNTERMOTION
FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.
6

7 **ORDER GRANTING NATIONSTAR MORTGAGE LLC'S COUNTERMOTION FOR**
8 **SUMMARY JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY**
9 **JUDGMENT**

10 Nationstar Mortgage, LLC's (**Nationstar**) countermotion for summary judgment came on for
11 hearing before this court on June 24, 2015. Allison R. Schmidt, Esq. appeared on behalf of
12 Nationstar. Luis Ayon, Esq. appeared on behalf of Plaintiff, West Sunset 2050 Trust. The court,
13 having reviewed the countermotion and opposition thereto, as well as Plaintiff's competing motion
14 for summary judgment, the opposition thereto and reply, and good cause appearing hereby grants
15 summary judgment in favor of Nationstar.

16 **FINDINGS OF FACT**

17 1. Stephanie Tablante (**Tablante**) purchased the property located at 7255 W. Sunset
18 Road, Unit 2050, Las Vegas, Nevada on or about December 2, 2005.

19 2. To finance the purchase of the property, Tablante obtained a loan from New
20 Freedom Mortgage Corporation in the amount of \$176,760.00, which was secured by a senior
21 deed of trust recorded against the property.

22 3. Tablante contacted Bank of America in 2011 in hopes of obtaining a deed in lieu
23 of foreclosure on her property, but never obtained approval from Bank of America for the deed
24 in lieu.

25 4. Tablante, through her attorney, unilaterally recorded a false deed in lieu to New
26 Freedom Mortgage Corporation.

27 5. According to the Utah Secretary of State, New Freedom Mortgage Corporation
28 no longer existed after 2008, having merged into iFreedom Direct Corporation.

6. The deed in lieu that was recorded by Tablante is not signed by either New Freedom Mortgage Corporation or Bank of America, NA.

7. The cover page of the deed in lieu recorded by Tablante indicated the documents was to be returned to the offices of John Peter Lee, Esq. upon recording.

8. Red Rock Financial Services (**RRFS**) recorded a notice of delinquent assessment lien on April 4, 2012.

9. Later, RRFS recorded a Notice of Default on May 29, 2013.

10. RRFS did not provide any foreclosure notices to Bank of America, which was the record beneficiary of the senior deed of trust.

11. Prior to the foreclosure sale, the senior deed of trust was assigned to Nationstar.

12. A foreclosure sale was held by United Legal Services on June 22, 2013, where the property was sold to Plaintiff for \$7,800.

13. The declaration of value recorded with the trustee's deed lists the value of the property at the time of the sale as \$63,280.00.

CONCLUSIONS OF LAW

1. Under Nev. R. Civ. P. 56, a motion for summary judgment should be granted "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to judgment as a matter of law.'" *Wood v. Safeway*, (2005) 121 Nev. 724, 729; 121 P.3d 1026, 1029; NRCP 56(c).

2. Materiality is dependent on the underlying substantive law, and includes only those factual disputes that could change the ultimate outcome of a case. *Id.* All evidence and inferences are viewed in a light most favorable to the non-moving party on a summary judgment motion. *Id.*

3. Nationstar and its predecessor in interest, Bank of America, was entitled to receive the foreclosure notices as the senior deed of trust could be effected by the foreclosure sale. NRS 116.31168, NRS 116.31163(2); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950).

4. Tablante's recording of a false deed in lieu of foreclosure did not strip the beneficiary of the senior deed of trust of its property rights.

1 5. RRFS failed to provide any foreclosure notices to the beneficiary of the senior deed
2 of trust. As a result, the beneficiary had no opportunity to cure the delinquency in assessment
3 payments.

4 6. Because of the failure to provide the required notices to the beneficiary of the senior
5 deed of trust, the foreclosure sale did not extinguish the senior deed of trust.

6 ORDER

7 IT IS HEREBY ORDERED that Nationstar's Countermotion for Summary Judgment is
8 GRANTED;

9 IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment is DENIED.

10 DATED this 4th day of February, 2016.

11 Valerie Adams
12 District Court Judge atw

13 Submitted by:

14 A. Stern
15 ARIEN E. STERN, ESQ.
16 Nevada Bar No. 8276
17 ALLISON R. SCHMIDT, ESQ.
18 Nevada Bar No. 10743
19 1160 Town Center Drive, Suite 330
20 Las Vegas, Nevada 89144
21 Attorneys for Defendant Nationstar Mortgage, LLC

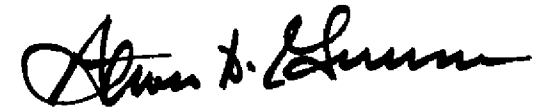
22 Approved as to form and content:

23 (provided to plaintiff's counsel but did not sign)

24 Luis A. Ayon, Esq.
25 Margaret E. Schmidt, Esq.
26 2500 W. Sahara Ave., Ste. 106
27 Las Vegas, NV 89102
28 Attorneys for Plaintiff

EXHIBIT 5

EXHIBIT 5



CLERK OF THE COURT

NEOJ
ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
ALLISON R. SCHMIDT, ESQ.
Nevada Bar No. 10743
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Email: allison.schmidt@akerman.com

Attorneys for Defendant Nationstar Mortgage, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,
Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.: A-13-691323-C
Dept.: XXI

**NOTICE OF ENTRY OF ORDER
DENYING PLAINTIFF'S MOTION FOR
RECONSIDERATION AND TO ALTER
AND AMEND ORDER GRANTING
NATIONSTAR MORTGAGE LLC AND
BANK OF AMERICA, N.A.'S MOTION FOR
SUMMARY JUDGMENT.**

NATIONSTAR MORTGAGE, LLC,
Counterclaimant,
v.
WEST SUNSET 2050 TRUST, a Nevada Trust,
Counter-Defendant.

1 NATIONSTAR MORTGAGE, LLC,
2 Cross-Claimant,
3 v.
4 STEPHANIE TABLANTE,
5 Cross-Defendant.

6
7 PLEASE TAKE NOTICE that the **ORDER DENYING PLAINTIFF'S MOTION FOR**
8 **RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING**
9 **NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A'S MOTION FOR**
10 **SUMMARY JUDGMENT** has been entered on the 31st day of May, 2016, in the above-captioned
11 matter. A copy of said Order is attached hereto as Exhibit A.

12 DATED this 3rd day of June, 2016.

13 **AKERMAN LLP**

14 */s/ Allison R. Schmidt*

15 ARIEL E. STERN, ESQ.

16 Nevada Bar No. 8276

17 ALLISON R. SCHMIDT, ESQ.

18 Nevada Bar No. 10743

19 1160 Town Center Drive, Suite 330

20 Las Vegas, Nevada 89144

21 *Attorneys for Nationalstar Mortgage LLC*
22 *and Bank of America, NA*
23
24
25
26
27
28

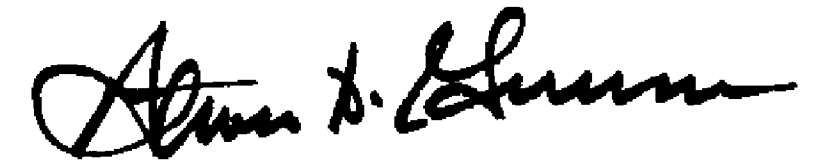
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2016 and pursuant to NRCP 5(b), I served through this Court's electronic service notification system ("Wiznet") and/or deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A'S MOTION FOR SUMMARY JUDGMENT** postage prepaid and addressed to:

Charity Barber
Danielle Barraza
Darren T. Rodriguez
Jason Maier
Joseph Gutierrez
Luis Ayon
Margaret E. Schmidt
Natalie D. Vazquez
cmb@mgalaw.com
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laa@mgalaw.com
mes@mgalaw.com
ndv@mgalaw.com

/s/ Doug J. Layne

An employee of AKERMAN LLP



CLERK OF THE COURT

ORDR

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Email: allison.schmidt@akerman.com

Attorneys for Defendant Nationstar Mortgage, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust,

Plaintiff,

v.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE,
LLC, a Foreign Limited Liability Company;
COOPER CASTLE LAW FIRM, LLP, a Nevada
Limited Liability Partnership; STEPHANIE
TABLANTE, an individual; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

NATIONSTAR MORTGAGE, LLC,

Counterclaimant,

v.

WEST SUNSET 2050 TRUST, a Nevada Trust,

Counter-Defendant.

Case No.: A-13-691323-C

Dept.: XXI

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION AND
TO ALTER AND AMEND ORDER
GRANTING NATIONSTAR MORTGAGE
LLC AND BANK OF AMERICA, N.A.'S
MOTION FOR SUMMARY JUDGMENT**

AKERMAN LLP

1160 TOWN CENTER DRIVE, SUITE 330
LAS VEGAS, NEVADA 89144
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 NATIONSTAR MORTGAGE, LLC,
2
3 Cross-Claimant,
4
5 v.
6
7 STEPHANIE TABLANTE,
8
9 Cross-Defendant.

10 On March 4, 2016, plaintiff West Sunset 2050 trust filed a motion to reconsider and amend
11 this court's order granting summary judgment in favor of Nationstar Mortgage, LLC and denying
12 plaintiff's motion for summary judgment. Nationstar filed an opposition on March 22, 2016.

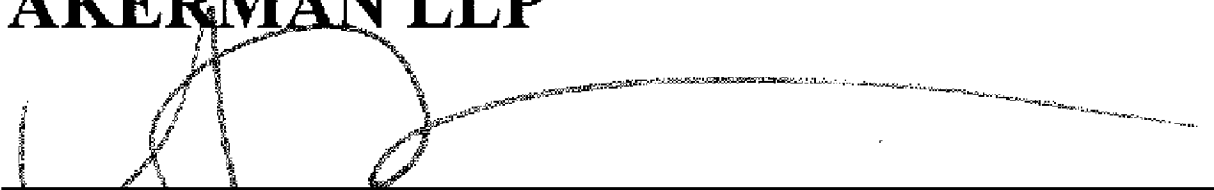
13 This matter came before the court on April 4, 2016 in chambers. Having reviewed the papers
14 filed by both parties, and good cause appearing:

15 IT IS HEREBY ORDERED that plaintiff's motion for Reconsideration and to Alter and Amend
16 Order Granting Nationstar Mortgage LLC and Bank of America, N.A.'s Motion For Summary
17 Judgment is DENIED.

18 DATED this 23rd day of May, 2016

19 
20 _____
21 DISTRICT COURT JUDGE 

22 Submitted by:
23 **AKERMAN LLP**

24 
25 _____
26 ALLISON R. SCHMIDT, ESQ.
27 Nevada Bar No. 10743
28 1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
*Attorneys for Nationstar Mortgage LLC
and Bank of America, NA*

Approved as to form and content, all rights reserved:
MAIER GUTIERREZ AYON


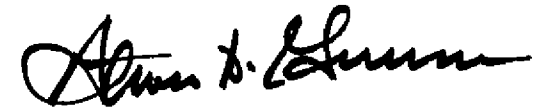
24 
25 _____
26 LUIS A. AYON, ESQ.
27 2500 W. Sahara Ave., Ste. 106
28 Las Vegas, NV 89102
Attorneys for Plaintiff

EXHIBIT 6

EXHIBIT 6



CLERK OF THE COURT

MRCN
LUIS A. AYON, ESQ.
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MARGARET E. SCHMIDT, ESQ.
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mes@mgalaw.com

*Attorneys for Plaintiff/Counterdefendant
West Sunset 2050 Trust*

DISTRICT COURT

CLARK COUNTY, NEVADA

WEST SUNSET 2050 TRUST, a Nevada Trust

Plaintiff,

vs.

NEW FREEDOM MORTGAGE
CORPORATION, a Foreign Corporation;
BANK OF AMERICA, N.A., a National
Association; NATIONSTAR MORTGAGE
LLC, a Foreign Limited Liability Company,
COOPER CASTLE LAW FIRM, LLP, a
Nevada Limited Liability Partnership
STEPHANIE TABLANTE, an individual,
DOES I through X; and ROE
CORPORATIONS I through X, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-13-691323-C

Dept. No.: XXI

**PLAINTIFF'S MOTION FOR
RECONSIDERATION AND TO ALTER
AND AMEND ORDER GRANTING
DEFENDANTS NATIONSTAR
MORTGAGE LLC AND BANK OF
AMERICA, N.A.'S COUNTERMOTION
FOR SUMMARY JUDGMENT**

Plaintiff/Counterdefendant West Sunset 2050 Trust ("Plaintiff" or "West Sunset"), by and through its attorneys of record, the law firm MAIER GUTIERREZ AYON, hereby files this motion for reconsideration of the order granting defendants Nationstar Mortgage LLC ("Nationstar") and Bank of America, N.A. ("BANA") summary judgment entered on February 8, 2016.

This motion is made and based upon EDCR 2.24, the following memorandum of points and

authorities, the pleadings and papers on file herein, the attached affidavit of counsel, and any oral argument of counsel at the time of the hearing.

DATED this 4th day of March, 2016.

Respectfully submitted,

MAIER GUTIERREZ AYON

/s/ Luis A. Ayon

LUIS AYON, ESQ.
Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
Nevada Bar No. 12489
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
*Attorneys for Plaintiff/Counterdefendant West
Sunset 2050 Trust*

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring this **PLAINTIFF'S MOTION FOR RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING DEFENDANTS NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A.'S COUNTERMOTION FOR SUMMARY JUDGMENT** on for a hearing on the 4 day of April, 2016, at In Chambers a.m./p.m., in Department XXI of the above-entitled Court, or as soon thereafter as counsel may be heard.

DATED this 4th day of March, 2016.

Respectfully submitted,

MAIER GUTIERREZ AYON

/s/ Luis A. Ayon

LUIS AYON, ESQ.
Nevada Bar No. 9752
MARGARET E. SCHMIDT, ESQ.
Nevada Bar No. 12489
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101
*Attorneys for Plaintiff/Counterdefendant West
Sunset 2050 Trust*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff requests this Court reconsider its Order denying Plaintiff's motion for summary judgment and granting Defendants' Nationstar Mortgage ("Nationstar") and Bank of America, N.A. ("BANA") countermotion for summary judgment. *See* Court Minutes and Decision, attached as **Exhibit 1**. The Order was entered on February 8, 2016, and notice of entry of order was entered on February 16, 2016. *See* Order, attached as **Exhibit 2**; Notice of Entry of Order, attached as **Exhibit 3**.

One of the main issues before the Court was whether the Deed in Lieu was fraudulently recorded, and if so, whether Plaintiff as a subsequent bona fide purchaser at the HOA Foreclosure Sale is entitled to have its interest in the Property protected. First, the Court incorrectly concluded that Nationstar was a legitimate holder of the First Deed of Trust and did not receive notice of the HOA delinquency. Exh. 1. Second, the Court found that the rogue filing of a Deed in Lieu of Foreclosure to Defendant New Freedom Mortgage Co. ("New Freedom") did not divest Nationstar of its interest in the property, meaning Plaintiff purchased the property subject to the First Deed of Trust even though Plaintiff was a bona fide purchaser. *Id.* There has been an intervening change in controlling law with the entry of the Nevada Supreme Court's decision in *Shadow Wood Homeowners Ass'n, Inc., et al. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5 (2016) ("*Shadow Wood*"), which settles that a third party purchaser who qualifies as bona fide is protected from any latent interest of which he had no notice. Therefore, the Court should reconsider, alter, and amend its Order and enter summary judgment in favor of Plaintiff.

II. SUMMARY OF FACTS

The property at issue in this case is commonly known as 7255 W. Sunset Road, Unit 2050, Las Vegas, NV 89113, and bears Assessor's Parcel Number 176-03-510-102 (the "Property"). The Property is within a common-interest community governed by non-party Tuscano Homeowners Association (the "Association"), a common-interest community association created pursuant to NRS Chapter 116. *See, e.g.*, Declaration of Covenants, Conditions and Restrictions for Tuscano Condominiums ("Tuscano CC&Rs"), attached to Plaintiff's Motion for Summary Judgment

1 (“MSJ”) at Exh. 1, *on file*.

2 Stephanie Tablante purchased the Property on or about December 2, 2005. *See* Grant,
3 Bargain and Sale Deed (NSM00001-NSM00004), attached to MSJ at Exh. 2. Ms. Tablante
4 borrowed money from New Freedom Mortgage Corporation (“New Freedom”), in the amount of
5 \$176,760.00. *See* Deed of Trust (NSM00005–23), attached to MSJ at Exh. 3. A deed of trust
6 securing the loan was recorded on December 7, 2005, in the Official Records of the Clark County
7 Recorder as Instrument Number 20051207-0002367 (the “Deed of Trust”). *See id.*, at NSM00005.
8 The Deed of Trust listed Mortgage Electronic Registration Systems, Inc. (“MERS”), as the
9 beneficiary. *See id.*, at NSM00006.

10 Five years later, on or about March 1, 2011, the Property records show that Ms. Tablante
11 transferred the Property to New Freedom in “full satisfaction of all obligations secured by the Deed
12 of Trust,” by executing a Deed in Lieu of Foreclosure (“Deed in Lieu”). *See* Deed in Lieu of
13 Foreclosure (NSM00025–29), attached to MSJ at Exh. 4. A few months later, the Deed in Lieu was
14 corrected to include the legal description of the Property and was re-recorded on June 21, 2011. *See*
15 Corrected Deed in Lieu of Foreclosure (NSM00030–35), attached to MSJ at Exh. 5. A letter from
16 the Clark County Assessor’s Office dated March 18, 2011, shows that New Freedom was notified of
17 the recording of the Deed in Lieu and provided with a copy of the document. *See* Opposition &
18 Countermotion for Summary Judgment (“Opp’n”) at Exh. A, *on file*.

19 New Freedom—as the owner of record following the Deed in Lieu—failed to pay the
20 Property’s HOA dues, and the Association through its agent recorded a Lien for Delinquent
21 Assessments on April 4, 2012. *See* Lien for Delinquent Assessments (NSM00039), attached to MSJ
22 at Exh. 6. More than thirty (30) days later, on May 29, 2012, the Association recorded a Notice of
23 Default and Election to Sell Pursuant to the Lien for Delinquent Assessments. *See* Notice of Default
24 and Election to Sell Pursuant to the Lien for Delinquent Assessments (NSM00040), attached to MSJ
25 at Exh. 7. More than ninety (90) days following the recording of the Notice of Default and Election
26 to Sell Under Homeowners Association Lien, May 29, 2013, the Association recorded a Notice of
27 Foreclosure Sale Under the Lien for Delinquent Assessments, setting the foreclosure sale for June
28 22, 2013. *See* Notice of Foreclosure Sale Under the Lien for Delinquent Assessments (NSM00043),

1 attached to MSJ at Exh. 8. On that day, the Association sold the Property at public auction to
2 Plaintiff. *See* Foreclosure Deed Upon Sale (NSM00044-NSM00046), attached to MSJ at Exh. 9.

3 A Foreclosure Deed Upon Sale was properly recorded on June 24, 2013. *See id.* The
4 Foreclosure Deed recited, in part, that the sale complied with all requirements of law including
5 proper notice:

6 This conveyance is made pursuant to the powers conferred upon Agent by
7 NRS Chapter 116, the foreclosing Association's governing documents
(CC&R's), and the notice of the Lien for Delinquent Assessments, recorded
8 on April 4, 2012 as instrument 201204040001017 in the Official Records of
9 the Recorder of Clark County, Nevada. Default occurred as set forth in the
10 Notice of Default and Election to Sell, recorded on May 29, 2012 as
11 instrument 201205290001690 in the Official Records of the Recorder of
12 Clark County, Nevada. **All requirements of law have been complied with,
including, but not limited to, the elapsing of the 90 days, the mailing of
copies of the notice of Lien of Delinquent Assessment, and Notice of
Default, and the mailing, posting, and publication of the Notice of
Foreclosure Sale.** Agent, in compliance with the Notice of Foreclosure Sale
and in exercise of its power under NRS § 116.31164, sold the property at
13 public auction on June 22, 2013.

14 *Id.* (emphasis added). Robert Atkinson, the attorney responsible for conducting the foreclosure
15 auction, testified that his firm had mailed notice of the Foreclosure Sale to New Freedom, BANA,
16 Nationstar, and Cooper Castle; and he provided documentation of certified mailing in his deposition.
17 *See* Deposition of Robert Atkinson, attached as **Exhibit 4** at 23; Exhibit B to Deposition of Robert
18 Atkinson, at 6, 9, 14.

19 Meanwhile, notwithstanding the fact that all obligations secured by the Deed of Trust had
20 been satisfied and the Deed of Trust consequently extinguished, on or about July 29, 2011, MERS
21 purportedly assigned the Deed of Trust to BAC Home Loans Servicing, LP FKA Countrywide
22 Home Loans Servicing LP ("BANA"). *See* Assignment of Deed of Trust (NSM00036-NSM00037),
23 attached to MSJ at Exh. 11. BANA substituted The Cooper Castle Law Firm, LLP ("Cooper
24 Castle"), as the Trustee, *see* Substitution of Trustee (NSM00038), attached to MSJ at Exh. 12, and
25 then on March 20, 2013, BANA purportedly assigned the deed of trust to Nationstar. *See*
26 Corporation Assignment of Deed of Trust (NSM00041-42), attached as **Exhibit 5**. At the time of
27 the assignment to Nationstar, Nationstar was on record notice of the Deed in Lieu of Foreclosure, as
28 well as the Association's pending foreclosure sale.

On September 18, 2013, Cooper Castle, as Trustee of the Deed of Trust, instituted foreclosure proceedings by filing a Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust. *See* Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust (NSM00047–51), attached to MSJ at Exh. 14.

III. PROCEDURAL HISTORY

Plaintiff initiated the above-captioned lawsuit on November 6, 2013 in order to quiet title against the adverse interests in the Property of Defendants New Freedom, BANA, Nationstar, Cooper Castle, and Stephanie Tablante, and for injunctive relief preventing Defendants from continuing foreclosure proceedings on the Property. *See* Complaint, *on file*. On February 3, 20213, this Court dismissed Cooper Castle as a party.

On December 19, 2013, BANA filed its Answer. On May 20, 2014, Nationstar filed its Answer and Counterclaim against Plaintiff, and its Cross-Claim against Stephanie Tablante. Plaintiff filed its Answer to Nationstar’s Counterclaim on June 18, 2014.

On May 22, 2015, Plaintiff filed its Motion for Summary Judgment, arguing that the Deed in Lieu of Foreclosure that was recorded on the Property, and which went uncontested by New Freedom, extinguished any interest Nationstar or BANA had in the Property, that the Association’s foreclosure sale extinguished New Freedom’s interest in the Property, and that regardless of whether or not the Deed in Lieu of Foreclosure was properly recorded, Plaintiff was a bona fide purchaser at the Association’s foreclosure sale and now holds valid title to the Property.

On June 10, 2015, Defendants Nationstar and BANA filed their Opposition and Countermotion to the Motion for Summary Judgment, arguing that Nationstar was never provided notice of the Association’s foreclosure of the Property, that First 100, LLC split the payment rights from the security interest and satisfied the super-priority portion of the HOA’s lien, that Nationstar was denied its due process rights, and that the sale was commercially unreasonable.

On June 18, 2015, Plaintiff filed its Reply in support of the Motion for Summary Judgment, and Opposition to Defendants’ Countermotion for Summary Judgment, arguing that Defendants did not previously disclose many of their exhibits submitted in support of their Opposition and Countermotion, that the recordation of the Deed in Lieu of Foreclosure satisfied the underlying

debt and extinguished the Deed of Trust on the Property, that Defendants have no evidence the Deed in Lieu was fraudulent, and that Plaintiff's title is protected under the bona fide purchaser doctrine.

Following a hearing on the matter, the Court denied Plaintiff's motion for summary judgment, and granted Defendants' countermotion for summary judgment. The Order was entered on February 8, 2016, and notice of entry of order was entered on February 16, 2016. *See* Exh. 2 and Exh. 3.

IV. LEGAL ARGUMENT

A. LEGAL STANDARD—MOTION FOR RECONSIDERATION

The Nevada Supreme Court has held that district courts have the inherent authority to reconsider their prior orders. *See Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975) ("a court may, for sufficient cause shown, amend, correct, resettle, modify, or vacate, as the case may be, an order previously made and entered on motion in the progress of the cause of proceeding"). Indeed, "the district court is empowered to correct erroneous rulings at any time prior to the entry of final judgment." *Insurance Co. of the West v. Gibson Tile Co., Inc.*, 122 Nev. 455, 134 P.3d 698, fn 4 (2006) (Maupin, J., concurring).

Accordingly, a party may file a motion for reconsideration under EDCR 2.24 when the decision articulated in the court's findings are "clearly erroneous." *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Similarly, a party may file a motion for relief of an order entered erroneously pursuant to NRCP 60(b) or to amend a judgment pursuant to NRCP 59(e).

If taken as a Motion under Rule 59(e), it is timely as "[a] motion to alter or amend the judgment shall be filed no later than 10 days after service of written notice of entry of judgment." The Court should grant relief under Rule 59(e) where "(1) the motion is necessary to correct manifest errors of law or fact upon which the judgment is based; (2) the moving party presents newly discovered or previously unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or (4) there is an intervening change in controlling law." *See Turner v. Burlington Northern Santa Fe R.R. Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003). The motion must also

satisfy Nev. R. Civ. P. 7(b) and be “in writing, . . . state with particularity [its] grounds [and] set forth the relief or order sought.” *United Pac. Ins. Co. v. St. Denis*, 81 Nev. 103, 106–07, 399 P.2d 135, 137 (1965) (citing Nev. R. Civ. P. 7(b) and Nev. R. Civ. P. 59(e)).

B. THE COURT ERRED IN ITS ANALYSIS OF THE DEED IN LIEU FILING

The Court held that the “rogue filing of a Deed in Lieu of Foreclosure to New Freedom did not divest Nation Star of its interest in the property.” *See* Exh. 1. *See also*, Exh. 2 (“Tablante’s recording of a false deed in lieu of foreclosure did not strip the beneficiary of the senior deed of trust of its property rights.”). This reasoning led the Court to conclude that because the Association’s agent never provided any foreclosure notices to Nationstar, the “foreclosure sale did not extinguish the senior deed of trust.” Exh. 2 at p. 4.

However, Deed in Lieu of Foreclosure (Deed in Lieu) has the same effect as any other foreclosure, thus recordation of the Deed in Lieu provided formal record notice to the world – including the Association and its agent – that Stephanie Tablante had conveyed absolute title to the Property to New Freedom in full satisfaction of the debts secured by the Property.

A deed in lieu is, for a great many purposes, the functional equivalent of a formal foreclosure. A deed in lieu essentially involves an alternate method of the collection of security. The lender accepting a deed in lieu, just like the lender exercising strict foreclosure, has the security interest mature into real ownership without any requirement of public sale.

Moloney v. Boston Five Cents Sav. Bank FSB, 422 Mass. 431, 433, 663 N.E.2d 811, 813 (1996). *See also FH Partners, LLC v. Leany*, No. 2:11-CV-0796-LRH-NJK, 2014 WL 3853806, at *2 (D. Nev. Aug. 6, 2014) (a deed in lieu is the functional equivalent of a duly noticed foreclosure sale). In accordance with this case law, the Deed in Lieu expressly conveyed the Property to New Freedom with the consideration being “full satisfaction of all obligations secured by the Deeds of Trust executed by the party of the first part to New Freedom Mortgage Corporation” MSJ at Exh. 4. Thus, the Court erred in holding that the recording of the deed in lieu of foreclosure did not strip Nationstar of its interest in the Property.

///

///

///

C. THE COURT ERRED IN NOT PROTECTING PLAINTIFF’S RIGHTS TO THE PROPERTY AS A BONA FIDE PURCHASER

Despite Plaintiff’s briefing of the issue in the summary judgment pleadings, the Court’s Order failed to address Plaintiff’s status as a bona fide purchaser and the rights that accompany that status. Exh. 2. NRS 111.180(1) defines a bona fide purchaser as a purchaser who “purchases an . . . interest in any real property in good faith and for valuable consideration and who does not have actual knowledge, constructive notice of, or reasonable cause to know that there exists a defect in, or adverse rights, title or interest to, the real property.” *See also Hewitt v. Glaser Land & Livestock Co.*, 97 Nev. 207, 208, 626 P.2d 268, 269 (1981) (holding that a bona fide purchaser is someone who purchases a property without notice of outstanding equities).

To be clear, Plaintiff purchased the Property at the HOA foreclosure sale without any notice or reasonable cause to suspect a defect in New Freedom’s title as record owner, and Defendants offered no evidence to dispute this contention. Even if the Deed in Lieu is somehow invalid, that dispute is immaterial because Plaintiff was a bona fide purchaser for value at the Association’s foreclosure sale, and its title should not have been attacked. *See Buhecker v. R.B. Petersen & Sons Const. Co.*, 112 Nev. 1498, 1501, 929 P.2d 937, 939 (1996) (“[W]e conclude that it would be unfair to impute to [the bona fide encumbrancer] constructive notice of the fraud.”).

If the significance of a bona fide purchaser’s status was ever in doubt, an intervening change in controlling law occurred through the Nevada Supreme Court’s decision in *Shadow Wood Homeowners Ass’n, Inc., et al. v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5 (2016) (“*Shadow Wood*”), which affirmatively settles that a third party purchaser who qualifies as bona fide is protected from any latent interest of which he had no notice. “A subsequent purchaser is bona fide under common-law principles if it takes property ‘for a valuable consideration and without notice of prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry.’” *Shadow Wood* at 22 (quoting *Bailey v. Butner*, 64 Nev. 1, 19 (1947)).

Moreover, if there were any question as to Plaintiff’s ability to rely on the recitals set forth in the Association’s foreclosure deed, which stated that that the sale complied with all requirements of

1 law including proper notice, *Shadow Wood* also effectively confirmed the Nevada Supreme Court's
2 previous holding in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. ___, 334 P.3d 408 (2014), *reh'g*
3 *denied* (Oct. 16, 2014) ("*SFR Investments*"), which stated that the foreclosure deed's recitals are
4 conclusive as to notice.

5 The Nevada Supreme Court held in *SFR Investments* that a foreclosure deed "reciting
6 compliance with notice provisions of NRS 116.31162 through NRS 116.31168 'is conclusive' as to
7 the recitals 'against the unit's former owner, his or her heirs and assigns and all other persons.'" *SFR Investments*, 334 P.3d at 411-412 (citing NRS 116.31166(2)). Thus, a purchaser at an HOA
8 foreclosure sale may rely on specific recitals in the foreclosure deed as "conclusive proof of the
9 matters recited" as follows: "(a) Default, the mailing of the notice of delinquent assessment, and the
10 recording of the notice of default and election to sell; (b) The elapsing of the 90 days; and (c) The
11 giving of notice of sale." NRS 116.31166(1).
12

13 This sentiment was reaffirmed in *Shadow Wood*, wherein the Court, quoting *Bourne Valley*
14 *Court Trust v. Wells Fargo Bank, N.A.*, 80 F. Supp. 3d 1131, 1135 (D. Nev. 2015), stated that
15 "under NRS 116.31166, when a foreclosure deed recited that there was a default, the proper notices
16 were given, the appropriate amount of time elapsed between notice of default and sale, and the
17 notice of sale was given, it was 'conclusive proof' that the required statutory notices were
18 provided." *Shadow Wood* at 10. While the *Shadow Wood* court declined to extend NRS 116.31166
19 as "conclusively establishing a default," the court did not take issue with the recitals pertaining to
20 notice. *Id.* Thus, Plaintiff had a right to rely on the recitals contained in the foreclosure deed that
21 the sale was properly noticed and Defendants provided no evidence indicating Plaintiff had any
22 notice that the Association's foreclosure sale was in any way improper.

23 Just as the Nevada Supreme Court recognized the purchaser's probable bona fide status in
24 *Shadow Wood* due to the evidence suggesting a lack of notice, this Court should grant Plaintiff's
25 Motion here, because any actual defects in the Association sale were entirely unknown to Plaintiff.
26 *Id.* ("Because the evidence does not show Gogo Way had any notice of the pre-sale dispute between
27 NYCB and Shadow Wood, the potential harm to Gogo Way must be taken into account and further
28 defeats NYCB's entitlement to judgment as a matter of law.").

1 **V. CONCLUSION**

2 Based on the foregoing reasons, Plaintiff respectfully requests this Court alter, amend, or
3 reconsider its Order denying Plaintiff's motion for summary judgment and granting Nationstar and
4 BANA's countermotion for summary judgment.

5 DATED this 4th day of March, 2016.

6 Respectfully submitted,

7 **MAIER GUTIERREZ AYON**

8 /s/ Luis A. Ayon

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to Administrative Order 14-2, a copy of the **MOTION FOR**
3 **RECONSIDERATION AND TO ALTER AND AMEND ORDER GRANTING**
4 **DEFENDANTS NATIONSTAR MORTGAGE LLC AND BANK OF AMERICA, N.A.'S**
5 **COUNTERMOTION FOR SUMMARY JUDGMENT** was electronically filed on the 4th day of
6 March, 2016 and served through the Notice of Electronic Filing automatically generated by the
7 Court's facilities to those parties listed on the Court's Master Service List and by depositing a true
8 and correct copy of the same, enclosed in a sealed envelope upon which first class postage was fully
9 prepaid, in the U.S. Mail at Las Vegas, Nevada, addressed as follows (*Note: All Parties Not*
10 *Registered Pursuant to Administrative Order 14-2 Have Been Served By Mail.*):

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16
17 /s/ Charity Barber
18 An Employee of MAIER GUTIERREZ AYON
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