

IN THE SUPREME COURT OF THE STATE OF NEVADA

WELLS FARGO BANK, N.A., AS
TRUSTEE ON BEHALF OF THE
HOLDERS OF THE HARBORVIEW
MORTGAGE LOAN TRUST
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2006-12,

Appellant,

vs.

TIM RADECKI

Respondent,

Supreme Court No. 71405

Electronically Filed
District Court Case No. Jan 10 2017 08:27 a.m.
A-13-676574-C Elizabeth A. Brown
Clerk of Supreme Court

**APPELLANT'S RESPONSE
TO ORDER TO SHOW CAUSE**

Appellant Wells Fargo Bank, N.A., as Trustee, on Behalf of the Holders of the Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-12 ("Wells Fargo") respectfully responds as follows to the Court's Order to Show Cause:

POINTS AND AUTHORITIES

On December 21, 2016, the Court entered an Order to Show Cause as to why the appeal should not be dismissed for lack of subject matter jurisdiction. Specifically, the Court requested that the appellant provide documentation of a final judgment or order with respect to the claims asserted against Defendant Cambridge Heights.

A final judgment is one "that disposes of the issues presented in the case . . . and leaves nothing for the future consideration of the

court.” *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417-18 (2000). The finality of a district court's order depends on what the “order” or “judgment” substantively accomplishes. *Id.*

This is a judicial foreclosure and quiet title action arising from a first position deed of trust and an HOA foreclosure sale under NRS Chapter 116. Wells Fargo originally asserted a claim for judicial foreclosure to adjudicate the various interests in the subject property, including the lien held by Cambridge Heights. Appellee Tim Radecki intervened in the case after purchasing the subject property at an HOA lien foreclosure sale.

Cambridge Heights' interest in the subject property was completely adjudicated in the underlying case. First, a default was entered against Cambridge Heights on April 8, 2013, for failing to appear and defend. *See* Ex. 1 (Default). A formal judgment was then entered with respect to Wells Fargo's judicial foreclosure claim on September 10, 2013. *See* Ex. 2 (Judgment). This judgment adjudicated the rights and interests of the parties to the lawsuit, including the interests of Cambridge Heights.

Specifically, the judgment provides,

That the Deed of Trust . . . is a valid lien on the Property located at 2102 Logsdon Drove, North Las Vegas, Nevada 89032, . . . is superior to all right, title, interest, lien, equity or estate of the Defendants [including Cambridge Heights] with the exception of any super priority lien rights held by any Defendant pursuant to NRS 116.3116.

Ex. 2 (Judgment) at ¶ 3 (emphasis added).

The Judgment further provides,

On filing the certificate of sale, Defendants [including Cambridge Heights], and all persons claiming by, through or under them, or any of them, be foreclosed of and forever barred from any and all right, title, claim, interest, or lien in or to the Property or with respect thereto except such rights of redemption as they may have by law and with exception of any super priority lien rights held by any Defendant pursuant to NRS 116.3116.

Ex. 2 (Judgment) at ¶ 7.

The priority of Cambridge Heights' interest in the subject property was adjudicated and determined in this Judgment.

Second, Cambridge Heights' interest in the subject property was substantively determined through the Declaratory Judgment Quieting Title to Property entered in favor of Appellee Tim Radecki. According to the Complaint in Intervention, Mr. Radecki succeeded to Cambridge

Heights' interest in the property through the HOA lien foreclosure sale. Following a two-day bench trial, the district court entered a Declaratory Judgment quieting title to the subject property with Mr. Radecki, thus substantively determining the rights of all parties claiming an interest in the subject property. *See* Ex. 3 (Declaratory Judgment Quieting Title to Property).

This Declaratory Judgment combined with the Judgment entered in September 2013 constitutes a final judgment as to all claims asserted in the case. These two Judgments substantively resolved all claims in the case leaving nothing for future consideration. There are no outstanding claims against Cambridge Heights and Cambridge Heights' interest in the subject property has been fully adjudicated.

CONCLUSION

For the reasons set forth above, Wells Fargo respectfully requests that the Court dismiss the Order to Show Cause.

Dated: January 9, 2017.

BALLARD SPAHR LLP

By: /s/ Sylvia O. Semper

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*Attorneys for Appellant Wells Fargo
Bank, N.A., as Trustee, on Behalf of
the Holders of the Harborview
Mortgage Loan Trust
Mortgage Loan Pass-Through
Certificates, Series 2006-12*

CERTIFICATE OF SERVICE

I certify that this foregoing **APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE** was filed electronically with the Nevada Supreme Court on the 9th day of January 2017. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Glenn F. Meier
Rachele E. Donn
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Attorneys for Tim Radecki

/s/ Kathy Goral
An employee of Ballard Spahr LLP

EXHIBIT 1

CLERK OF THE COURT

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HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2006-12

DISTRICT COURT

CLARK COUNTY NEVADA

WELLS FARGO BANK, N.A., AS TRUSTEE,
ON BEHALF OF THE HOLDERS OF THE
HARBORVIEW MORTGAGE LOAN TRUST
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2006-12,

Case No. A-13-676574-C
Dept.: XXIX

Plaintiff,

DEFAULT

v.

AMANDA R. MUNAR; UNKNOWN SPOUSE
OF AMANDA R. MUNAR; CAMBRIDGE
HEIGHTS, A PLANNED COMMUNITY; DOES
I-X; and ROES 1 -10 inclusive,
Defendants.

It appearing from the files and records in the above entitled action that:

CAMBRIDGE HEIGHTS, A PLANNED COMMUNITY, Defendant herein, being duly
served with a copy of the Summons and Complaint on the 27th day of February, 2013 and that
more than 20 days, exclusive of the day of service, having expired since service upon the
Defendant; that no answer or other appearance having been filed and no further time having been
granted; the default of CAMBRIDGE HEIGHTS, A PLANNED COMMUNITY,

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CLERK OF THE COURT

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1 the above-named Defendant for failing to answer or otherwise plead to Plaintiff's Complaint is
2 hereby entered.

STEVEN D. GRIERSON
CLERK OF THE COURT

APR - 2 2013

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4 By:

Patricia Azucena
Deputy Clerk

Date

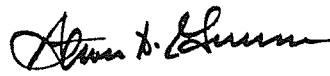
PATRICIA AZUCENA

5
6 Respectfully submitted,
7 MCCARTHY & HOLTHUS, LLP

8
9 By:

Kristin A. Schuler-Hintz (NSB# 7171)
9510 West Sahara Ave. Suite 110
10 Las Vegas, NV 89117

EXHIBIT 2



CLERK OF THE COURT

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Attorneys for Plaintiff,

WELLS FARGO BANK, N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE
HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2006-12,

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

WELLS FARGO BANK, N.A., AS TRUSTEE,
ON BEHALF OF THE HOLDERS OF THE
HARBORVIEW MORTGAGE LOAN TRUST
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2006-12,

) Case No. A-13-676574-C

) Dept. No. XXIX

) **JUDGMENT**

Plaintiff,

v.

AMANDA R. MUNAR; CAMBRIDGE
HEIGHTS, A PLANNED COMMUNITY; DOES
I-X; and ROES 1 -10 inclusive,

Defendants.

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input checked="" type="checkbox"/> Sum Jdgmt
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non-Jury Trial
<input type="checkbox"/> Jdgmt on Arb Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial
<input type="checkbox"/> Min to Dis (by def)	<input type="checkbox"/> Transferred	

All defendants in this case have been served. Evidence having been introduced by Plaintiff's Affidavit, the Court finding that it has jurisdiction over the subject matter and the parties hereto and being otherwise fully advised in the premises, and good cause appearing,

IT IS ORDERED, AJUDGED, AND DECREED, THAT PLAINTIFF, shall receive a Judgment against Defendant, AMANDA R. MUNAR;

(1) The sum of \$230,069.16 as shown on the breakdown below:

a) Unpaid Principal Balance
on the note and mortgage \$ 207,846.66

b) Accrued interest from 2/1/2011 To 8/27/2013

1 per diem (21.35) \$ 20,505.77
2 c) Other Fee Due \$ 13.09
3 d) Escrow Advance \$ 1,703.64

4 plus costs of \$1967.28 as shown in the Memorandum of Costs and Disbursements
5 plus attorney's fees of \$ 1500⁰⁰ for the total of \$ 233,536⁴¹, all of which
6 shall bear interest at the rate of 3.875% per annum;

7 (2) The sum above is secured by the Property located at 2102 Logsdon Drive, North Las
8 Vegas, Nevada 89032; APN: 139-20-612-037;

9 (3) That the Deed of Trust recorded on September 07, 2006 as Document Number
10 20060907-0004388 is a valid lien on the Property located at 2102 Logsdon Drive,
11 North Las Vegas, Nevada 89032, and more particularly described on exhibit 1
12 attached hereto; APN: 139-20-612-037 is superior to all right, title, interest, lien,
13 equity or estate of the Defendants with the exception of any super priority lien rights
14 held by any Defendant pursuant to NRS 116.3116;

15 (4) If the total sum with interest at the rate described above and all costs accrued
16 subsequent to this judgment are not paid, the sheriff shall sell the Property at public
17 sale between 9:00 a.m. and 5:00 p.m. to the highest bidder for cash, except as
18 prescribed in paragraph 5 below, in accordance with NRS Chapter 21.

19 (5) Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for
20 them by the sheriff if Plaintiff is not the purchaser of the Property for sale. If Plaintiff
21 is the purchaser, the sheriff shall credit Plaintiff's bid with the total sum with interest
22 and cost accruing subsequent to this judgment, or such part of it, to pay the bid in full.

23 (6) On filing the certificate of sale, the sheriff shall distribute the proceeds of the sale, so
24 far as they are sufficient, by paying: the reasonable expenses of taking possession,
25 maintaining, protecting and leasing the Property, the costs and fees of the foreclosure
26 sale, including reasonable trustee's fees, applicable taxes and the cost of title
27 insurance and, to the extent provided in the legally enforceable terms of the mortgage
28 or lien, any advances, reasonable attorney's fees and other legal expenses incurred by
the foreclosing creditor and the person conducting the foreclosure sale; (b)

1 satisfaction of the obligation being enforced by the foreclosure sale; (c) satisfaction
2 of obligations secured by any junior mortgages or liens on the property, in their order
3 of priority; (d) payment of the balance of the proceeds, if any, to the debtor or the
4 debtor's successor in interest.

5 (7) On filing the certificate of sale, Defendants, and all persons claiming by, through or
6 under them, or any of them, be foreclosed of and forever barred from any and all
7 right, title, claim, interest, or lien in or to the Property or with respect thereto except
8 such rights of redemption as they may have by law and with the exception of any
9 super priority lien rights held by any Defendant pursuant to NRS 116.3116;

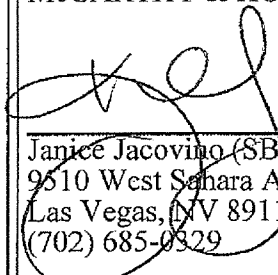
10 (8) For any other further relief as this court deems just and proper.

11 DATED this 5th day of Sept, 2013.

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14 DISTRICT COURT JUDGE 

15 Respectfully submitted,

16 McCARTHY & HOLTHUS, LLP

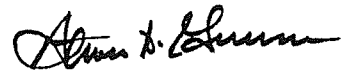
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EXHIBIT "1"

1 LOT THIRTY-EIGHT (38) IN BLOCK SIX (6) OF CAMBRIDGE HEIGHTS PHASE 2, AS
2 SHOWN BY MAP THEREOF ON FILE IN BOOK 79 OF PLATS, PAGE 58, IN THE
3 OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.
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EXHIBIT 3



CLERK OF THE COURT

JUDG
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Attorneys for Tim Radecki,
Plaintiff in Intervention

DISTRICT COURT
CLARK COUNTY, NEVADA

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WELLS FARGO BANK, N.A., AS TRUSTEE, ON
BEHALF OF THE HOLDERS OF THE
HARBORVIEW MORTGAGE LOAN TRUST
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2006-12,

Plaintiff,

vs.

AMANDA R. MUNAR; CAMBRIDGE HEIGHTS, A
PLANNED COMMUNITY; DOES I-X; and ROES 1-10
inclusive,

Defendants.

TIM RADECKI,

Plaintiff- in-Intervention,

vs.

AMANDA MUNAR; WELLS FARGO, N.A. AS
TRUSTEE, ON BEHALF OF THE HOLDERS OF THE
HARBORVIEW MORTGAGE LOAN TRUST
MORTGAGE LOAN PASS-THROUGH
CERTIFICATES, SERIES 2006-12; DOES 1-20; and
ROE CORPORATIONS 1-20,

Defendant-in-Invention.

Case No. A-13-676574-C
Dept. No. XXIV

DECLARATORY JUDGMENT
QUIETING TITLE TO PROPERTY

2102 Logsdon Dr., NLV., NV.

APN: 139-20-612-037

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<input type="checkbox"/> Non-Jury Disposed After Trial Start	<input type="checkbox"/> Jury Disposed After Trial Start
<input checked="" type="checkbox"/> Non-Jury Judgment Reached	<input type="checkbox"/> Jury Verdict Reached
<input type="checkbox"/> Transferred before Trial	<input type="checkbox"/> Other - _____

1 THIS COURT having held a bench trial, regarding the Quiet Title/Declaratory Relief
2 action for certain real property located at 2102 Logsdon Drive, North Las Vegas, Nevada,
3 identified by the Clark County Assessor as APN: 139-20-612-037 (the "Property") filed by
4 Plaintiff-in-Intervention, TIM RADECKI, against Defendants-in-Intervention, AMANDA R.
5 MUNAR ("Amanda Munar") and WELLS FARGO, N.A. AS TRUSTEE, ON BEHALF OF
6 THE HOLDERS OF THE HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN
7 PASS-THROUGH CERTIFICATES, SERIES 2006-12 ("Wells Fargo"); Plaintiff-in-
8 Intervention, TIM RADECKI, having appeared at the trial, by and through his legal counsel,
9 Marilyn Fine, Esq, and Glenn F. Meier, Esq. of the law firm of Holley Driggs Walch Fine Wray
10 Puzey & Thompson; Defendant-in-Intervention, Wells Fargo having appeared at the trial, by and
11 through its legal counsel, Anthony C. Kaye, Esq. and Sylvia O. Semper, Esq. of the law firm of
12 Ballard Spahr LLP; and Defendant-in-Intervention, Amanda Munar, having not appeared in the
13 action and an Entry of Default having been entered against her; this Court having read and
14 considered the pleadings and papers on file herein, reviewed and considered the evidence
15 admitted during the trial, heard and carefully considered the witnesses called to testify at the
16 trial, considered the oral and written arguments of counsel, and entered entered written Findings
17 of Fact, Conclusions of Law, and Order granting Final Judgment in favor of Tim Radecki and
18 against Amanda Munar and Wells Fargo; and the Court being fully advised in the premises and
19 for good cause therefore:

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT FINAL**
21 **JUDGMENT** shall be and is hereby entered in favor of Plaintiff-in-Intervention, TIM
22 RADECKI, quieting title to the Property against all adverse interests of Defendants-in-
23 Intervention, Amanda Munar and Wells Fargo.

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT** Tim Radecki is
25 the rightful owner of the Property; Amanda Munar has no rights to or interest in the Property;
26 and Wells Fargo has no rights to or interest in the Property.

27 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT** Tim Radecki
28 acquired the Property at a properly conducted HOA nonjudicial foreclosure sale on August 23,

1 2013 (the "Sale"); and foreclosure of the subject HOA lien divested Amanda Munar of her title
2 to the Property without equity or right of redemption.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT** immediately
4 prior to the Sale on August 23, 2013, the Property was encumbered by a first deed of trust in
5 favor of ComUnity Lending Incorporated as lender and MERS as beneficiary, which was
6 recorded in the Official Records of the Clark County Recorder as Instrument No. 20060907-
7 0004388 (the "Deed of Trust") and subsequently transferred and assigned to Wells Fargo via
8 Assignments of Deed of Trust recorded in the Official Records of the Clark County Recorder on
9 January 20, 2011 as Instrument No. 20110120002706 and December 27, 2012 as Instrument No.
10 20121227-1359, respectively.

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT** the Deed of
12 Trust was extinguished upon foreclosure of the subject HOA lien at the Sale on August 23, 2013,
13 and accordingly, the Deed of Trust is hereby released, discharged and removed as a lien of
14 record against the Property.

15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT** there are no
16 valid grounds for voiding the Sale and in particular, no fraud, unfairness or oppression
17 accounting for or bringing about the low sales price; and no irregularity in the conduct of the
18 Sale resulting in a defective foreclosure.

19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT** the summary
20 judgment entered in the underlying case in favor of Wells Fargo on or about September 5, 2013,
21 regarding Wells Fargo's judicial foreclosure/deficiency judgment claims against Amanda Munar
22 (the "WFB Judgment") shall not be (or ever become) a judgment lien against the Property. Wells
23 Fargo is hereby permanently enjoined from recording the WFB Judgment against the Property;
24 or taking any other action impairing or clouding Tim Radecki's title to the Property, including
25 any attempts to sell the Property in satisfaction of the WFB Judgment.

26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT** the lis pendens
27 recorded by Wells Fargo in the Official Records of the Clark County Recorder on December 19,

28 ///

1 2013, as Instrument No. 201312190001671 is hereby expunged and removed as a lien against
2 the Property.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that following recordation
4 of this Judgment, the Clark County Recorder shall update its Official Records for the Property to
5 recognize Tim Radecki as the owner and recognize the removal and release of the Deed of Trust
6 and Lis Pendens as liens and encumbrance against the Property.

7 DATED this 25 day of August, 2016.

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10 
11 DISTRICT COURT JUDGE

12 Prepared and submitted by:

13 HOLLEY DRIGGS WALCH
14 FINE WRAY PUZEY & THOMPSON

15 By: 

16 Marilyn Fine, Esq.
17 Nevada Bar No. 5949
18 Glenn F. Meier, Esq.
19 Nevada Bar No. 6059
20 400 South Fourth Street, 3rd Floor
21 Las Vegas, Nevada 89101
22 Attorneys for Plaintiff-in-Intervention

23 Approved Disapproved by:

24 BALLARD SPAHR LLP

25 By: 

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27 Nevada Bar No. 7548
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Attorneys for Defendant-in-Intervention
Wells Fargo Bank, N.A