THE COURT: Again, this is Proposed Exhibit 56, 1 but it's a part of the case, is that correct? 2 MS. SEMPER: That's correct. 3 BY MS. SEMPER: 4 Have you seen this document before? 5 0. 6 Α. No. Are you aware that Cambridge -- the Court entered 7 0. 8 a default against Cambridge on April 8th, 2013? 9 Α. No. Did the HOA at any point contest this default 10 that was entered on April 8, 2013? 11 Α. Not that I know of. 12 MS. SEMPER: Your Honor, I'd like to move to 13 admit this as an exhibit. 14 I know it's a Court record as well. 15 16 THE COURT: Right, it's part of the official 17 pleadings in the case, so I can take judicial notice of it actually, but it will be received in evidence. 18 19 No objection, correct? 20 MR. MEIER: No objection. Okay. Proposed Exhibit 56 is a 21 THE COURT: 22 default entered on April 2nd, 2013 against Cambridge, is received in evidence. 23 24 MS. SEMPER: Thank you. 25 THE COURT: Now, I want to take a mid-morning

```
break. This is later than I expected, but I'm not
finding a good logical place to do so.

MS. SEMPER: I have perhaps five more minutes, if
```

- 5 THE COURT: That's Fine.
- 6 Go right ahead.
- 7 MS. SEMPER: Thank you.
- 8 BY MS. SEMPER:

that works.

- 9 Q. I'd like to now direct you to Exhibit 55.
- 10 A. Okay.
- Q. If we could take a look at this, and tell me if you've seen this document before.
- 13 A. No.
- Q. The title of this document is, notice of pendency
- 15 of action, is that correct?
- 16 A. Yes.
- Q. And if you look at the top right, there's a recorder's stamp stating it was recorded on February
- 19 13th, 2013, is that correct?
- 20 A. Yes.
- Q. Are you aware that Wells Fargo recorded a lis
- 22 pendens against the property at issue in this
- 23 litigation?
- 24 A. No.
- 25 | Q. Are you aware that NAS was aware that Wells Fargo

recorded?

A. I wasn't an employee during this time, so I wouldn't know anything about that.

O. Did you have any communications with the bo

- Q. Did you have any communications with the board regarding this lis pendens?
 - A. This, no.
- Q. Are you aware that Wells Fargo obtained summary judgment against Cambridge?
- A. No.

10 MS. SEMPER: That's all I have, Your Honor.

THE COURT: Okay.

12 Redirect?

13 MR. MEIER: Real briefly, Your Honor.

14

15

17

18

5

6

7

8

9

11

REDIRECT EXAMINATION OF MICHELLE BALTIMORE

16 BY MR. MEIER:

- Q. Mrs. Baltimore, turning to Proposed Exhibit 71, HOA 078 down in the lower right-hand corner --
- 19 A. Okay.
- 20 Q. -- this is the printout from the assessor's office.
- 22 Under owner do you see the name that is there?
- 23 A. Tim Radecki.
- Q. Do you recognize that name at all?
- 25 A. From the subpoena, yes.

1 THE COURT: Okay. We're back in session on case A-676574, Wells Fargo versus Munar. 2 3 You may proceed. MS. FINE: The Plaintiff in intervention calls 4 5 Susan Moses. THE CLERK: Please raise your right hand. 6 7 SUSAN MOSES, 8 9 who, being first duly sworn to tell 10 the truth, the whole truth, and 11 nothing but the truth, was examined 12 and testified as follows: 13 THE CLERK: Please have a seat. 14 State your full name, and spell your full name 15 for the record. 16 17 THE WITNESS: Susan Moses, it is S-u-s-a-n 18 M-o-s-e-s. 19 20 DIRECT EXAMINATION OF SUSAN MOSES 21 BY MS. FINE: I'm Marilyn Fine, and I represent the Plaintiff 22 in this case, Tim Radecki in the quiet title action. 23 24 Who do you work for? Nevada Association Services. 25

Q. I'm going to stop you there.

MS. FINE: Your Honor, you asked us to give you a

I need to do that.

little road map where we're going.

THE COURT: Yes.

3

5

6

8

9

10

11

12

13

14

15

16

17

19

20

21

22

23

24

25

MS. FINE: So, Mrs. Moses, may I call you Susan?

7 THE WITNESS: Yes.

MS. FINE: She works for Nevada Association Services, which was the foreclosing agent for the HOA foreclosure.

She'll be testifying regarding the amount of the delinquency through the time period when the account was referred to the collection company, the HOA lien foreclosure process, the notices that were sent, the HOA lien foreclosure sale itself, and the real estate sale of the property to Tim Radecki at the auction.

THE COURT: Thank you.

18 BY MS. FINE:

Q. Okay. So you just mentioned you work for Nevada
Association Services.

Does it sometime go by the abbreviation?

A. NAS.

BILL NELSON & ASSOCIATES

Certified Court Reporters

Q. Okay. So I may refer to it as NAS through the line of questioning.

How long have you worked for NAS?

- 1 A. Almost seven years.
- Q. What type of business is NAS?
- A. They are a debt collect for for HOA's.
 - Q. What is your position?
 - A. I'm a custodian of records and paralegal.
 - Q. In your capacity as custodian of records and paralegal, are you familiar with the different customers and clients of NAS?
- 9 A. Somewhat.

4

5

6

7

- 10 Q. To your knowledge, is Cambridge Heights HOA one 11 of NAS's clients?
- 12 A. I believe so.
- Q. I may refer to Cambridge Heights as the HOA?
- 14 A. Okay.
- Q. To your knowledge, do you know when the HOA
- 16 became NAS's services?
- 17 A. Not the very first time I don't know that.
- Q. Okay. In your capacity as custodian of records,
- 19 | are you familiar with the files maintained by NAS?
- 20 A. Yes.
- 21 Q. Do you know whether a file was maintained for
- 22 Cambridge Heights' account for Amanda Munar?
- 23 A. I believe so.
- Q. Okay. I'd like for you to take a look at
- 25 | Proposed Exhibit Number 70, and you may notice the

exhibit books are 1 through 50, and then there's a second book 51 through 70.

- A. Okay.
- Q. Just take a minute to look through that, the documents under that tab.
 - A. Okay.

3

6

7

17

18

- Q. Do you recognize those documents?
- 8 A. I do.
- Q. What are they?
- 10 A. The collection file for our internal number 71812
 11 for Amanda Munar.
- 12 Q. What property is that associated with?
- 13 A. 2102 Logsdon Drive.
- Q. Is this file a document that NAS generates in the ordinary course of its business?
- 16 A. Correct.
 - Q. And the documents, to your knowledge they are contained in this file, are they documents that were generated at or near the time that the event occurred?
- 20 A. Yes.
- 21 Q. When did -- Let me ask you another way.
- Do you know whether the HOA referred Amanda
- 23 | Munar's account to NAS for collection?
- 24 A. Yes.
- 25 O. When did that occur?

- A. If you look at NAS I'd say number 3, 4 and 5 and 6, at the bottom right hand corner it looks like it says, June 27th, 2012, and that would be when we received the initial documents from the HOA.
 - Q. What documents are you referring to?

- A. The first one on 3 is a referral for delinquent account, and the second one on page 4 is the HOA's ledger, on 5 is the intent to lien notice sent out by the Taylor Management Company, and 6 would be a copy of the assessor's page showing the owner of record.
- Q. After NAS received these documents from the HOA, did they prepare some sort of delinquency report for accounting for the file?
- A. If you look at NAS-9, it's their updated accounting ledger. They would have taken the HOA's ledger on 4 and put the information into our ledger.
- Q. Okay. I'd like to just have you orient me with the way this statement is set up.
- I see there's three columns.
- A. Okay. So the first column is amounts due to the HOA, and second and third column are fees and costs due to NAS.
 - Q. When was this report generated?
- A. It was printed on July 9th, 2012, and the actual ledger goes from March 1st, 2012 through July 30th,

2012.

1

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

- Q. What were the dates of delinquency when this report was prepared?
 - A. March 1st, 2012 through July 30th, 2012.
- Q. So I noticed in the first column at the top of the page NAS is showing a balance forward of \$25. Where did that amount come from?
- A. If you look at the HOA's ledger on 4, the balance forward, that shows a negative \$20, then there's an assessment from February 1st, 2012 of \$35 and a late charge on February 16th, 2012 for \$10, and the amount after all of that is \$25, and we started with the \$25 balance forward.
- Q. What were the amounts of the assessments in July 30th, 2012, monthly?
- A. For the monthly amount, if you look at 9, is \$35 a month.
- Q. And on the date that this report was prepared how many months delinquent was Amanda Munar?
- A. It would be five months, and then whatever portion of the balance forward of \$25 would be.
- Q. What was the total amount then for just the assessments?
- A. Just the assessments would be \$200, 175, plus whatever portion of the \$25 is assessments.

postponement of sale charges there for the fees of \$150, \$125 to conduct the foreclosure sale, \$85 to prepare and record the deed, and \$150 foreclosure fee.

- O. What were the totals?
- A. Sorry, I'm looking at it.
- O. What was the total amount of NAS fees?
- A. NAS fees are \$1,759.00.
 - O. The total amount of NAS costs?
 - A. \$768.83.
- Q. Was there a release of notice of delinquent assessment fee included in this ledger?
- 12 A. No.

1

2

3

4

5

6

7

8

9

13

14

19

20

21

22

- Q. Do you know what amount -- Well, strike that.

 Do you know when the foreclosure sale occurred?
- A. The certificate of sale on NAS 200 says August 23rd, 2013.
- Q. Do you know what the opening bid was at the foreclosure sale?
 - A. \$3,717.83.
 - Q. Does that amount match the total amount of the unpaid balance of Amanda Munar's account based on the delinquency report ended on August 21st, 2013?
 - A. Correct.
- Q. And again, this amount included 18 months of past due assessments at \$35 each, correct?

- A. Correct.
- Q. Do you know whether or not NAS sold the property at auction?
- A. Yes.

1

2

3

4

5

6

7

8

- Q. Who did NAS sell the property to?
- A. If you look at 197, the receipt of funds and instructions and the title to the property is to be vested as well as to Tim Radecki.
 - Q. What was the amount of the successful bid?
- 10 A. \$4,000.
- Q. Do you know whether or not Tim Radecki paid the purchase price?
- 13 A. He did.
- If you look at 198, there's a cashier's check in the amount of \$10,000, and then he was refunded the difference of \$6,000.
- Q. Are those amounts reflected on the receipt that NAS prepared?
- 19 A. Correct.
- If you look at 202, it's NAS's disbursements
 recognition, and it shows the amount was refunded to Tim
 Radecki.
- Q. Bate stamp number 197, is that a receipt that NAS
 typically prepared in the ordinary course of the
 foreclosure sale?

non-hearsay purposes --

2.0

MR. KAYE: Correct.

THE COURT: -- I still think that it is rendered under circumstances which renders it otherwise reliable, so I'm going to overrule the hearsay objection, and 70 will be received.

Now, with regard to the other exhibits, I noticed I was supplied with a document titled Exhibit list in order exhibits to be introduced for Plaintiff of intervention, and I assume Miss Moses is the second witness, so I've been checking off those documents as they've been offered and admitted, but before you terminate your direct examination, and she resumes cross-examination, would you please check to see if there's anything you want to offer through this witness on this Exhibit list per your indication you are going to be offering these things through the second witness, which I believe she is.

MS. FINE: Your Honor, since there were a number of witnesses, could we have just a minute to double check?

THE COURT: Sure.

MS. FINE: Okay. I just have a couple more questions, Your Honor.

We noticed a couple things.

Thank you for allowing me to do that.

THE COURT: Okay.

BY MS. FINE:

3

4

5

6

7

8

9

10

11

12

18

19

23

24

- Q. Could you turn to Exhibit 17, please?
- A. Okay.
 - Q. And this is part of the NAS file in Exhibit 70, which has been admitted, but could you describe the document.
 - A. It is an e-mail from Misty Blanchard at NAS to K. Sand at the management company advising that there is a sale date scheduled and how many postponements are available.
- Q. Who is this Misty Blanchard?
- 14 A. Misty is a former employee at NAS.
- Q. What was her position when she was employed at NAS?
- A. She did the -- conducted the foreclosure sales.
 - Q. Was it typically just Misty at the foreclosure sales?
- 20 A. Misty and Elisa Hollander.
- Q. Would you turn to Exhibit Proposed Exhibit 18?
 What is that document?
 - A. This is an e-mail from Misty Blanchard at NAS to k. Sand at the management company advising there's an HOA sale scheduled for August 23rd, 2013, and there's

```
1
     one postponement available.
 2
            MS. FINE: And I offer Exhibit 17 and 18 for
 3
     admission.
            THE COURT: Any objections?
 4
 5
            MR. KAYE: No objection.
 6
            THE COURT: Okay.
 7
    BY MS. FINE:
 8
        Q.
            Then finally Proposed Exhibit 45.
 9
            THE COURT: So 17 and 18 will be received.
            MS. FINE: Thank you.
10
    BY MS. FINE:
11
12
       Q.
            I think 45 is already in.
13
       Α.
            Okay.
14
       Q.
            48 is what I want you to turn to, tab 48.
15
       Α.
            Okay.
16
            Do you recognize this document?
       Q.
17
       Α.
            Yes.
18
            What is it?
       0.
19
       Α.
            It's a copy of the sale script.
20
       Q.
            What is the sales script?
21
       Α.
            It's what would be read at the foreclosure sale
22
    for the particular property.
23
       Q. Is this a document that is generated at or about
    the time the event occurred?
24
25
       A. Yes.
```

Q. Is this NAS's general practice to come up with a script before the foreclosure sale?

A. Correct.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

23

24

25

Q. And I noticed that there's a couple of different scripts here, different sections.

Can you explain those to us?

A. Sure.

The first paragraph where it starts, on behalf of Cambridge Heights, that would be part of that script that would be read if the sale was going forward.

If the sale was being postponed, it would be the second part of the middle paragraph where it says, postponement script, and the new date that it would be postponed to if it was postponed is September 20th, 2013.

And then the third one is a canceled script, which would be read if the sale had been canceled.

- Q. But in this circumstance the sale went forward, correct?
 - A. Correct.

MS. FINE: I offer Exhibit 48 for admission.

THE COURT: Any objection to 48?

MR. KAYE: No objection.

THE COURT: 48 will be received.

MS. FINE: Pass the witness, Your Honor.

1 THE COURT: All right. Cross-examination. 2 3 CROSS-EXAMINATION OF SUSAN MOSES 4 BY MR. KAYE: 5 Q. Good afternoon, Mrs. Moses. 6 My name is Anthony Kaye. I'm counsel for Wells Fargo Bank as trustee in 7 8 this matter. 9 Α. Good afternoon. 10 You testified that your job was as a custodian of 11 records and a paralegal? 12 Α. Correct. 13 And you have held that position from 2015 14 forward? 15 Α. Correct. 16 Q. All right. You do not have -- Your testimony 17 today is based on your review of these records, correct? A. Correct. 18 19 You don't have any personal knowledge concerning 20 any of the events that are described in the records? 21 I do not. Α. 22 NAS is the Defendant in approximately how many of 23 these HOA cases? 24 Maybe 200. Α. 25 And NAS is a debt collection agency, correct? Q.

A. Correct.

1

2

3

4.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. NAS does not provide any other services for HOA's, or any other type of entity?

- A. Not that I know of.
- Q. Merely a debt collection agency for HOA's?
- A. Correct.
- Q. Your understanding from the records in this case was the amount of assessments.

The amount of the monthly assessment charged by Cambridge to Miss Munar was \$35?

- A. Yes.
- Q. May I have you turn to trial Exhibit 24, please?

 THE COURT: Just for the record, since Exhibit 70 is in evidence, that means that necessarily the following are also in evidence, which are portions of Exhibit 70, bearing Bate's number NAS 1 through 249, and I just think for the sake of clarity on the record I want to declare them to be admitted also.

It may be more convenient for counsel to refer to these than to the larger Exhibit, but so the following exhibits which had not heretofore been admitted are in evidence too:

- 14, the e-mail from Misty Blanchard.
- 15, notice of foreclosure sale.
 - 16, letter dated June 7th, 2013.

1 BY MR. KAYE:

- Q. So we were going to look at trial Exhibit 24.
- 3 A. Okay.

- Q. And I did not mark the corresponding NAS pages,
- but we can go -- include that if you would like to.
- We'll use 70 at some point.
- 7 It's just easier for me based on my notes to go 8 with the Exhibit numbers.
- 9 THE COURT: I think it's definitely easier to use 10 the smaller portions, excerpts.
- So that is Exhibit 24, NAS pages 9 through 14 -- 12 9 and 14.
- MR. KAYE: Okay.
- 14 BY MR. KAYE:
- Q. So on this document it states, if you look that the number of delinquent periods, it is 5.
- 17 A. Correct.
- Q. And that refers to the number of delinquent assessments?
- 20 A. Correct.
- Q. Do you have an understanding as to the amount of assessments need to be delinquent before a notice of delinquent assessment lien is recorded?
- 24 A. No.
- MS. FINE: Objection.

```
1
            Calls for a legal conclusion.
 2
            THE COURT: Overruled.
 3
            I think that would be within the scope of her
 4
     knowledge.
 5
     BY MR. KAYE:
 6
            And you testified on direct examination --
        Q.
 7
            THE COURT: Did she answer your question?
 8
            THE WITNESS: I did.
 9
            I said, no.
10
            MR. KAYE: She did.
11
            Sorry.
12
            THE COURT: Okay.
13
    BY MR. KAYE:
14
       Q. You testified that on direct examination you
    testified the number of periods of late fees incurred
15
16
    was 5, but that the late fee, that fifth late fee,
    wouldn't have been -- or actually wouldn't have been
17
    incurred yet because the date of this document was July
18
19
    9th, 2012, is that correct?
20
       A. I believe so.
21
           Did you back out that late fee -- Well, strike
       0.
22
    that.
23
           THE COURT: The $10 late fees were incurred on a
24
    monthly basis after a 15 day grace period?
25
           MR. KAYE: Yeah.
```

THE WITNESS: Correct, I believe the late fee was incurred on the 16th of the month.

BY MR. KAYE:

Q. Right.

So this fifth late fee would not have been incurred yet, even though it appears on the accounting statement?

- A. Can I refer to this?
- Q. It's NAS 009. I'm going to leave out the zeros in the ninth page of Exhibit 70.
- A. Okay. So I believe that the fifth late fee was included because by the time they would have responded to the letter it could have been already incurred.

If they would have paid it, if they paid the amount prior to the 16th, it could have been backed out, but some of these HOA's it might be a better question for the HOA, but some of the HOA's have the late fee incurred until the balance is paid in full, so it wouldn't matter if they made a payment if they didn't pay the actual amount in full.

- Q. So this was used to calculate a letter sent by NAS on July 9th?
 - A. Correct.
- Q. All right. So that is NAS page 11, Bate's number 00 -- NAS 000011?

- 1 A. Yes.
- Q. So the total due on the total amount due on page
- 3 9 is 749.75?
- 4 A. Correct.
- Q. And the total amount demanded on July 9th by NAS
- 6 is 749,75 as well?
- 7 A. Correct.
- 8 Q. So it's including a late charge that technically
- 9 from what you said before had not been incurred yet
- 10 because it wasn't the 15th of the month?
- 11 A. Correct.
- 12 Q. Okay. Let's look at Exhibit 10.
- 13 A. Okay.
- Q. So on Exhibit 10 it's showing seven periods of
- 15 the assessment amount is delinquent for seven periods at
- 16 this point?
- 17 A. Yes.
- Q. And this is as of September?
- 19 A. Yes.
- 20 Q. So that would be for the months of March, April,
- 21 May, June, July, August and September?
- 22 A. Correct.
- 23 Q. And then do you have a charge for property title
- 24 report?
- 25 Sorry, just a property report on the column for

- NAS costs, see that \$195?
- 2 A. Yes.

1

- Q. The date of this document is September 10th, correct?
- - A. Correct.
- Q. So would you look -- or can you look to NAS 128
- 7 in Exhibit 70?
- 8 A. Okay.
- 9 Q. This was your invoice from North American Title
- 10 Company.
- Is that for \$195, plus another 18, for a total of
- 12 213?
- 13 A. Correct.
- Q. So did you also include -- Well, the date on this
- 15 document, the date on the invoice is what?
- 16 A. September 14th, 2012.
- Q. Okay. So this invoice had not been received at
- 18 | the time you included the property report of the costs
- 19 on September 10th?
- 20 A. Correct, because we had the search was made prior
- 21 to that, so if you look at 121, it says the search was
- 22 made through August 31st, 2012, so we would have
- 23 included it on this because of when the foreclosure
- 24 report was actually ordered.
- 25 Q. All right. Let's look at Exhibit 10 and Exhibit

25. 1 Is that right? 2 All right. Exhibit 25 includes the notice of 3 delinguent assessment lien? 4 5 It's also NAS 19. What are you asking me to look at? 6 Α. 7 0. Exhibit 25. Α. Okay. 8 Which is a cover letter and a copy of the notice 9 Q. 10 of the delinquent assessment lien? Correct. 11 Α. So this was recorded on July 25th, correct? 12 0. It looks like it, yes. 13 Α. And according to NAS's documents, that would only 14 Q. be five delinquent periods, July 25th would only be five 15 delinquent periods into Miss Munar's delinquency? 16 17 Α. Correct. And the amount of the delinquency is \$1,148.50, 18 19 correct? Correct. 20 Α. 21

Q. If you go back and compare that to the accounting for July, which was Exhibit 24, so this is the number -- or actually so the total on July 9th was 749.75, but on the notice of delinquent assessment lien it's \$1,148.50.

25 How does that happen?

22

23

So I guess by May 2nd, 2013 it could be, if that's the date of the date down.

I just don't want to say for sure, I don't know.

- Q. Okay. Turn to NAS 134.
- A. Okay.

1

2

3

4

5

6

7

8

9

10

11

- Q. So this is a cover page, and the next several pages -- or the next couple of pages appear to relate to the notice of pendency of action?
- A. Okay.
 - Q. So do you see title of document is notice of pendency of action on page 134, and then that document says it was printed on a 5/28/2000?
- 13 A. Okay.
- Q. Does it appear to say, at least by 5/28/13 NAS

 had notice of the existence of the notice of pendency of
 the action?
- 17 A. Sure.
- 18 Q. Okay.
- 19 A. That actually came with the date down.
- Q. That came with it?
- 21 A. Yes.
- 22 Q. Okay. Briefly look at NAS page 153, and 152.
- 23 A. Okay.
- Q. So these were the green return receipt requested signed cards from the recipients of the notice of sale,

do you recall testifying to that?

A. Right.

1

2

3

4

5

6

7

8

9

10

11

12

- Q. Okay. So do you see when you're showing of McCarthy & Holthus received notice of sale?
- A. I don't show any card coming back.

I do show it was mailed to them, if you look at 150.

- O. I understand, but that wasn't my question.
- A. Sorry, I'm just trying to look at it a hundred percent, and I was just looking to see if the mail had come back, which I don't show the mail being returned for it either.
- Q. Do you recall having your deposition taken in this case?
- 15 A. No.
- Q. Okay. You have been deposed too many times in too many different cases?
- 18 A. Yeah, over 70.
- 20 any of the Court records in cases in which it wasn't
 21 involved, so in other words NAS becomes aware of a
 22 notice of pendency of action, would it go and review the
 23 Court papers related to that action?
- A. I think that's a question that Chris could better answer for you.

I don't know.

1

2

3

4

5

6

7

- Q. Okay. Do you know if NAS ever notified Cambridge, the HOA in this case, of the notice of pendency of action?
 - A. I don't know.
 - Q. Is there anything in Exhibit 70 that suggests that NAS didn't provide any notice to Cambridge?
 - A. T --
- 9 THE COURT: Of what?
- 10 MR. KAYE: Of the lis pendens.
- 11 THE COURT: Okay.
- 12 MR. KAYE: Or the lawsuit.
- THE WITNESS: I don't remember seeing anything in
- 14 the file.
- 15 I'll look at the status report real quick.
- I don't see anything in the file, so I don't know
- 17 the answer.
- 18 BY MR. KAYE:
- 19 Q. Okay. But there's nothing that you can see in
- 20 the file that would suggest that notice was ever
- 21 | provided by NAS to Cambridge regarding that lis pendens?
- 22 A. Correct.
- 23 Q. So if you look at something like Exhibit 32 --
- 24 A. Okay.
- Q. That's not right.

Strike that.

How about Exhibit 33, this is NAS 51, it's an e-mail from NAS to somebody at Cambridge, correct?

A. Correct.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

2.0

21

2.2

23

24

25

Q. And it's saying that at least 90 days elapsed since the recording of the notice of default and election to sell, the statutory waiting period expired.

We can now schedule a sale.

Each side will be in communication with you prior to the sale date, discuss with you how you want us to proceed.

Please review the authorization, it's published form in the attached title report always.

Please contact our office should you have any questions.

And this is December 2012, is there any mention in that of the lis pendens or the lawsuit?

A. It wouldn't be.

This is an automatic e-mail goes out every couple months, so this isn't something that -- it's an automatic correspondence.

Q. Okay. And there were numerous communications, and I'll find some of them, but talking about how going forward with the sale we think that there are interested third-party investors, therefore we advise it's a good

time to conduct a sale, and in any of those communications did NAS notify the HOA of the pendency of action?

A. Not in any of these they wouldn't.

Q. So looking at Exhibit 45, for example the e-mail between Kimberly -- I'm sorry, from Misty Blanchard to Kimberly Sand at the HOA, it's talking about a HOA schedule, or sales schedule, for August 23rd, and if you read down, we've discovered that more properties are now being sold at the foreclosure auction to third-party investors.

When this happens, all parties get paid, including the HOA. Therefore, it's suggested the HOA allow any action to take the property to foreclosure sale.

If there are third-party investors interested in buying the property, they will be sold to such interested parties.

If there are no third-party investors at the time who want to, further consideration of the possible -they will be subject to other possible sale outcomes,

NAS can then have the for closure sale postponed to a
later date.

Again, it's the recommendation of NAS to proceed with the sale in anticipation of a third-party investor

buying the property.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

21

22

23

24

25

In that e-mail no mention whatsoever of the pendency of an action, or the fact that Wells Fargo was conducting a judicial -- or trying to conduct a judicial foreclosure through the court system?

- A. No, there's no mention there.
- Q. Is it your understanding that if there were a judicial foreclosure, as opposed to an HOA foreclosure, the HOA would get paid as a super-priority lien either way?
 - A. I have no idea.
- Q. Okay. Is the language third-party investors in this e-mail, is that standardized language used?

I know you sort of suggested that these e-mails were generated and mailed on a regular basis. Does that third-party investors language appear in e-mails of this sort on a routine basis to HOA's?

- A. Yes.
- Q. Would you look at trial Exhibit 57, please?
- 20 A. Okay.
 - Q. Have you seen this document before?

I believe that it's in the -- If you look actually at Exhibit 70 to NAS 000138, I think this is from Mr. Radecki, but my understanding is that Mr. Radecki briefly used the documents that NAS produced, so

A. Okay.

1

6

7

15

- 2 I didn't know you were done.
- Q. For either me or the Court Reporter here.
- A. I didn't know if you were done, or if that's a question or not.
 - Q. Are you familiar with this document?
 - A. Yes.
- Q. And the number, do you see the number for total value sales price of the property is 56,197?
- 10 A. Yes.
- Q. Is that a number that is put in there by NAS?
- 12 A. I don't know.
- The question about the foreclosure deed is usually answered by Chris.
 - I usually don't have that understanding about how they work, or who prepares them.
- Q. Well, whose signature is it on the line that
 starts with the undersigned declared and acknowledges
 under penalty of perjury the information provided is
 correct to the best of their knowledge, the information,
- 21 etcetera?
- 22 A. Elisa Hollander.
- Q. Is she an employee of NAS?
- 24 A. Yes.
- 25 O. You believe Elisa Hollander would have been the

person to fill in the information which she was swearing was true?

- A. I don't know.
- Q. Okay. Take a look at Exhibit 58. That one actually has an NAS Bate's number on it.
 - A. Okay.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

2.0

21

22

23

24

- Q. Can you explain what this is?
- A. It's a cover letter that would have been attached to a check that went to the homeowner.
- Q. And what was the purpose of -- Do you know what the \$282.17 was being sent to Miss Munar for?
 - A. If you look at NAS 202, it's our disbursement requisition and the amount disbursed from the proceeds of the sale, and it just shows that it went to Amanda Munar, I don't know why.
 - Q. Who determines how to send or how to disburse the proceeds of a sale?
 - A. That is a question better answered Chris Yergensen.
 - Q. But you can confirm that if a business record of NAS says that those funds were disbursed as set forth that, that is how it would have been done?
 - A. If you look at 204, there's a copy of the check that went to Amanda Munar, I don't know if it was cashed or not, but it went to her.

- Q. And then so NAS fees would have been -- cut a check for its fees and costs of \$1,759 for fees and \$134 for costs?
- A. I don't know if we would have been cut a check, but yes, those are NAS fees and costs.
 - Q. And the HOA got \$990?
- 7 A. It looks like it.
- Q. And there was a page that showed what the balance due to NAS was just before the sale.
- 10 Is that NAS 195?
- 11 A. Correct.

1

2

3

4

5

- 12 That was for the day of the sale.
- Q. Okay. So how did the HOA wind up with \$990?
- A. \$200 went to the management company, and then the \$150 violation would have been backed out.
- Q. So that would be a hundred and -- So that would be 50.
- So the subtotal is \$1340?
- THE COURT: If you deduct 350, it's 990.
- MR. KAYE: All right.
- 21 BY MR. KAYE:
- 22 Q. All right. The management company can.
- So then going back to 202, the HOA got paid \$990,
- 24 | the management company Cambridge -- or not Cambridge,
- 25 Taylor, collected 200, the title company was paid 213,

the posting company was paid -- or priority posting publishing was paid 421, Mr. Radecki was reimbursed 6,000, and Mrs. Munar was reimbursed \$282.17?

- A. Yes.
- O. Correct?
- A. Yes.

1

2

3

4

5

7

8

9

16

- Q. Okay. And this reflects that none of the money collected at the -- from the sale to Mr. Radecki was disbursed to Wells Fargo or any other creditors?
- 10 A. Correct.
- O. Does NAS review the CC & R's of the HOA's?
- 12 A. That's a question -- Sorry.
- Go ahead.
- 14 Q. Okay. Let me finish the question.
- 15 A. Go ahead.
 - Q. Do you know if NAS maintains the CC & R's of the HOA's that it represents?
- A. We have copies of the CC & R's, yes.
- Q. Do you know if anybody is charged with the responsibility for viewing the CC & R's?
- 21 A. I don't know.
- Q. So take a look at trial Exhibit 4, please.
- Do you know where the CC & R's are maintained for different HOA's?
- 25 A. They are maintained electronically.

- 1 correct?
- 2 A. Correct.
- Q. This document, also do you know who prepared this
- 4 · document?
- 5 A. No.
- 6 Q. Okay.
- 7 A. It's signed by Elisa Hollander, so it could be
- 8 her.
- 9 Q. It says that -- Where it is signed by Elisa
- 10 | Hollander?
- 11 A. Three quarters of the way down the page on the
- 12 | left-hand side, received by E. Hollander.
- 13 Q. I would have never read that as E. Hollander, but
- 14 that's okay.
- So the document says that the number of bidders
- 16 at the sale was one?
- 17 A. Correct.
- 18 Q. It also says interestingly the number of
- 19 witnesses was 19?
- 20 A. Correct.
- Q. What are witnesses?
- 22 A. Other people that are there to bid on properties.
- Q. But that don't bid?
- 24 A. Okay.
- 25 Q. Okay. So they are non-participating observers?

- A. They didn't buy the property, but they are there in case they want to bid on a property.
 - Q. Okay. Are you familiar with how many people typically bid at your sales?
 - A. I think it just all depends.

I've seen any number of people bidding on properties.

- Q. How often is there just one bidder?
- A. I've seen that before.
- 10 Q. Rarely, occasionally, a lot?
 - A. Quite a bit.

1

2

3

4

5

6

7

8

9

11

12

13

14

15

16

17

18

19

20

21

22

23

24

- Q. Could you put that in a percentage term, more than 50 of your sales with one bidder?
 - A. No, I don't know.
 - Q. At the sales where there's just one bidder are there typically more than one witness?
 - A. There can be.
 - Q. Are are you familiar with whether or not any of the investors that show up at NAS sales have an agreement to divide and conquer, where they will just, you know, the first person there will decide they will bid on the first property up for sale, and then another person will bid on the second property up for sale, another -- in other words, nobody will pay more than a few hundred bucks, or if that, over the amount owed to

```
1
    related to this particular sale.
 2
            THE COURT:
                        Right.
 3
            One second.
 4
            MR. MEIER:
                        Thank you.
 5
 6
               DIRECT EXAMINATION OF MISTY BLANCHARD
 7
    BY MR. MEIER:
 8
            Miss Blanchard, can you tell us how you are
    presently employed?
10
            Ideal Community Management.
11
            So you currently work for Ideal Community
12
    Management?
13
       Α.
            Yes.
14
            And what is your job with them?
15
       Α.
            Accounts receivable.
16
       Q.
            All right. How long have you been working for
17
    them?
18
       Α.
           A little over a year.
19
            And prior to working for Ideal Community
       Q.
20
    Management, had you been employed with Nevada
21
    Association Services?
            I worked at Pinnacle before that.
22
       Α.
23
       Q.
           How long were you at Pinnacle?
24
            Just a few months, then I went to Ideal, and I --
       Α.
25
    before I left NAS to go sell time shares, thought it
```

would be a great thing to do until -- so that's when I left NAS.

Q. So let me come at it from this angle.

What was -- or what were the dates you worked for NAS?

- A. I worked there a little over seven years, I believe it was '07 to 2014.
 - Q. Very good.

And did any part of your job duties relate to conducting foreclosure sales on homeowner association liens?

A. Yes.

- Q. And the sale that we're talking about today happened in August of 2013, so during that time frame what's called the year of 2013, were there specified people at NAS who conducted the foreclosure sales?
 - A. It was myself, and/or a co-worker, Elisa.
- Q. And when you say, and/or, sometimes would you conduct them together?
- A. Well, we were always together, but I would mostly take the sales, and she was next to me, but I had laryngitis, so she's had to do it before.
- Q. Okay. And has -- or was another part of your job duties with NAS to communicate with property managers for associations leading up to the sale?

- A. E-mail correspondence asking them how they want to proceed with the foreclosure action.
 - Q. Okay. Very good.

2

3

4

5

6

7

8

9

10

And aside from conducting the sales and e-mail correspondence with the associations leading up to the sales, what else did you do for NAS?

- A. Took phone calls, e-mails, ex-homeowners would obtain arrangements, help new clients that called, review the file, sometimes setting the foreclosure sales.
- At different times and different years I did
 different things.
- Q. In this 2013 time frame what was the main focus of your job duties at NAS?
- 15 A. The foreclosure sales.
- Q. Now, are you aware that NAS provided services for an association called Cambridge Heights?
- 18 A. I believe so.
- 19 Q. Okay.
- A. I don't remember all the times, but if that's why
 I'm here, then yes.
- Q. Okay. Let me ask you to look in the notebook that is open in front of you.
- If you would, turn to tab 14, please.
- 25 A. Okay.

- First of all, the from, the sender on the e-mail 0. address has your name, and then M. Blanchard at NAS-inc.com, you see where that is?
 - Yes. Α.

2

3

4

5

6

7

9

10

12

14

16

19

20

21

22

23

24

- And was that in fact your e-mail address while 0. you were working, your e-mail address while you were working for NAS?
 - Α. Yes.
- All right. And on the 2 line of this e-mail there is an e-mail address ksand@tamhoa.com?
- Yes. Α. 11
 - Do you recognize that e-mail address?
- Yes, it was Taylor Management, I believe. Α. 13
- And are you familiar with somebody named Kimberly 0. Sand, who previously worked at Taylor Association? 15
 - Just through correspondence. Α.
- And what did you understand -- Or why would you 17 send her any e-mail? 18
 - She would be the contact to find out who wanted to proceed with the foreclosure action for the company for this association.
 - Okay. Very good. 0.
 - And then the subject of this particular e-mail is, HOA scheduled, and then could you read the address into the record please on the subject line?

- A. 2102 Logsdon Drive.
 - Q. I think you said 2101 Logsdon?
- A. 2102 Logsdon Drive.
 - Q. That's quite all right.

And right next to the address there's the words, Cambridge Heights?

A. Yes.

1

2

3

4

5

6

7

8

10

11

12

13

14

19

20

21

22

- Q. What does that indicate?
- 9 A. That is the HOA name.
 - Q. Okay. So there's some language in here, and we've gone through this e-mail before you got here, talking about a sale being scheduled on June 7th, 2013, and then there's a couple of other paragraphs before that.

Did you write those paragraphs?

- 16 A. No.
- Q. Okay. How did those paragraphs come to be in your e-mail then?
 - A. It's a form that was in our program, so for the first postponement, second postponement, and third postponement, and I would click a button, it would put the e-mail address and send that verbiage.
- Q. In the first paragraph of the e-mail it says,
 please be advised there's an HOA scheduled, the date,
 and then it says, there are three postponements

available.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

22

23

24

25

What is your understanding of the why is there a limitation on postponements that are available?

- A. I'm not sure.
- Q. Okay. Do you have any understanding as to whether there is a legal requirement for sale about the maximum number of times it can be postponed?
 - A. I believe so.
 - O. What?
- A. Because I know that, yeah, I didn't -- I'm not sure if it was NRS because David Stone would have had us follow that protocol, so you can postpone the sale three times, and then it would have to be canceled, or sometimes they got paid, so it would be canceled anyway.
- Q. Okay. And then you said that the verbiage, that the form verbiage, that you didn't write that.

Do you know who did write that?

- A. David.
- 19 O. David?
- 20 A. David Stone.
- 21 Q. And who is Mr. Stone?
 - A. He was the owner at that time.
 - Q. The -- Now, again the date on this is May 29th, 2013, just to kind of orient you to the time frame we're talking about, and the beginning of the second paragraph

says, we have discovered that more properties are now being sold at the foreclosure auction to third-party investors.

Based on your experience being out and conducting sales for NAS, is that an accurate statement?

A. Yes.

- Q. Okay. So just generally what was the purpose of this e-mail to the Cambridge Heights property manager?
- A. Each time a sale comes up we needed to notify them to see how they wanted to proceed, so this one there was three postponements available.

Let's say hypothetically if they postponed one time, there would be two postponements left.

- Q. So I think you have lead nicely into the next thing, which is to ask you to turn to tab number 17.
- All right. And can you tell us what the e-mail in tab number 17 is?
- A. The e-mail is someone, except for the first two postponements, instead of three.
- Q. So on May 29th you're sending out an e-mail saying, there's a sale scheduled for June 7th, and there are three postponements that are available, and on July 11th you're sending out a letter saying, there's a sale scheduled for July 19th, and there are two postponements available.

1 THE WITNESS: Yes.

- 2 BY MR. MEIER:
- Q. Can you tell me if you recognize this document?
- 4 A. Yes.
- Q. Okay. Tell us what this is.
- A. This is what we read -- or I read allowed when the sale was being conducted.
- Q. And am I correct in understanding that the normal procedure was for you to actually call the sale?
- 10 A. Yes.
- 11 Q. Unless you had laryngitis?
- 12 A. Yes.
- Q. So absent an occasion where you had Laryngitis,
 you would have been the one who was reading the words on
- 15 Exhibit 48?
- 16 A. Correct.
- Q. Okay. Why are there three different scripts on this document?
- 19 A. They all print out that way.
- I don't know why there is an X postponement

 Script, but it was sold to one bidder for \$4,000 to Tim.
- Q. Okay. How can you tell that?
- A. Because I wrote Tim on there, and I put a 1 and circled it, and I wrote the 4,000.
- Q. Okay. So that handwriting down there, the 4,000,

Tim, and the 1 in the circle, that's yours?

- A. Correct.
- Q. Do you know, do you recognize the handwriting that wrote September 20th, 2013 above it?
- A. That is my writing.
 - Q. Okay. One's your script, and one's your print?
- 7 A. Yes.

1

2

3

4

5

6

8

9

10

13

14

15

16

17

21

- Q. Okay. So you said you can tell from the notes that you wrote on here this sale went ahead and went to one bidder named Tim?
- 11 A. Correct.
- 12 Q. Let me ask you to -- Sorry.

The fact that you wrote the notes on there about who was the bidder, and the fact there was one bidder, the amount of the bid, does that tell you anything as to whether you were the person who actually called this sale?

- 18 A. Yes.
- 19 Q. What does that tell you?
- 20 A. I called the sale.
 - Q. Okay.

All right. So let's go ahead and turn back to document number 20, Exhibit 20.

Now, do you recognize just the form, not necessarily any of the writing on there, but the form

1 that is depicted on the first page of Exhibit 20?

A. Yes.

- Q. And tell us what that is, please.
- 4 A. It's a receipt of funds.
- Q. And what -- Is this a form that you were familiar with through your work at NAS?
- 7 A. Yes.
- Q. What was the purpose of this form?
- 9 A. To write the receipt for the winning bidder.
- 10 Q. Okay. Do you recognize the handwriting that is
- 11 on this document?
- 12 A. Yes.
- Q. And whose handwriting is that?
- 14 A. Elisa Hollander.
- Q. So you said you were the one who called the sale typically.
- 17 What was Elisa's job at the sale?
- A. She would help write receipts, generate
- 19 foreclosure deeds.
- 20 Q. Would she do that in conjunction with you?
- 21 A. Yes.
- Q. So let me ask you some questions on here.
- 23 First of all, we have the transaction number, it
- 24 | says 71812, that is the same number we were talking
- 25 about before, correct?

```
1 funds?
```

5

6

- A. Or cash.
- Q. Okay. I suppose cash still constitutes certified funds.
 - A. Correct, yes.
 - Q. You never know, though.

7 THE COURT: The notices say not to come with 8 cash.

9 MR. MEIER: I would understand not wanting to 10 take cash.

11 THE WITNESS: Yes.

- 12 BY MR. MEIER:
- Q. So there is further on down a printed portion for opening bid, and then handwritten in there it's
- 15 \$3,717.83, correct?
- 16 A. Correct.
- Q. And do you know who makes the opening bid?
- A. I generate it, or Elisa would generate it, and it's monthly assessment, late fees, collection fees, and
- 20 costs.
- Q. Okay. For the entire account?
- 22 A. Correct.
- Q. And who is that opening bid made on behalf of?
- A. The homeowners association.
- Q. And putting out the opening bid, is that part of

what you do calling the sales?

A. Correct.

1

2

7

- Q. So you indicate on there, total received \$10,000, successful bid \$4,000, refund amount \$6,000, that was
- 5 because of the oversized cashiers check?
- A. Yes.
 - Q. All right. Where it says, received by, and there's a signature, do you recognize that?
- 9 A. Elisa Hollander.
- Q. And then do you know the buyer's name on this particular account?
- 12 A. It says Tim Radecki or Radecki.
- Q. Okay. On the form down towards the bottom there's a line for a number of bidders, and it's
- 15 handwritten in there 1.
- What does that signify?
- 17 A. He was the only one that bid on the property.
- 18 Q. And then there is also right underneath that a
- 19 printed section for number of witnesses, and it's
- 20 written 19?
- 21 A. Yeah.
- 22 Q. What does that certify?
- 23 A. There were 19 people at the sale.
- Q. Okay. Does that include the successful bidder?
- 25 A. Yes.

different reasons I'm quessing.

- Q. Okay. So you didn't know anything about the properties?
- 4 A. No.

1

2

3

- Q. So you didn't have anything to tell the prospective bidders about the properties?
- 7 A. No.
 - Q. They had done all their research on their own?
- 9 A. Yes.
- 10 THE COURT: If any.
- 11 BY MR. KAYE:
- 12 Q. If any, yes.
- They were responsible for their own research?
- 14 A. Yes.
- Q. You mentioned before that you know the check
- amount that Mr. Radecki brought for \$10,000, that that
- 17 could have been in part, because it was a lot, but he
- 18 | could have bought several properties with it?
- 19 A. Correct.
- Q. Was it common for several properties to be able
- 21 to be purchased at these sales for \$10,000?
- 22 A. Yes.
- Q. How many properties could you typically buy with
- 24 \$10,000?
- 25 A. He may have had more money orders, I don't know,

or cashiers checks, I don't know or recall what he.

- Q. Not him particularly, but generally the idea if somebody showed up with \$10,000, would they typically be able to buy one property or two properties?
- A. It just depends on what they were opening bid amounts for.
- Q. How often did -- Or was the opening bid typically a bid of the HOA?
- 9 A. The opening bid is the assessments, late fees, 10 collection fees, and costs.
- Q. Okay. And that's a bid of the HOA?
- 12 A. Yes.

1

2

3

4

5

- 13 | O. Accredited?
- 14 A. Yes.
- Q. So how often did -- Well, I guess let me do it this way:
- How common was it for the winning bid to be within \$500 of the opening bid?
- 19 A. I don't recall.
- 20 They were all --
- Q. Is that unusual?
- A. No, no, it's not unusual.
- Q. Even when they were 19 people at the sale?
- 24 A. No, not unusual.
- I don't know what kind of -- what value this unit

1 THE COURT: I'm sorry. 2 Are asking her if she knows what they believe? 3 MR. KAYE: Yeah, what they did. 4 THE WITNESS: I don't know what they thought. 5 I was just a worker bee. 6 BY MR. KAYE: 7 Q. What did you think? 8 Α. As far as? 9 When you were conducting the sales, what did you think you were selling? 10 11 Α. The property. Free and clear of liens and encumbrances? 12 Q. 13 Α. That never came up. As far as I knew, there was a senior, and that 14 was the lender, that was my understanding. 15 So your understanding was that the lender's 16 17 interest was senior to the HOA's interest? 18 That's my understanding at that time, yes. Α. 19 Q. Okay. So --20 THE COURT: You weren't alone in that. 21 BY MR. KAYE: 22 0. So you mentioned a gentlemen named David Stone. 2.3 He's the owner of NAS? 24 Α. Yes. 25 Did you ever chat with him about the operations

of NAS?

1

2

5

6

7

8

9

10

15

- A. Just what my duties were.
- Q. Okay. And he drafted up your e-mails to the HOA's?
 - A. It was in our computer system, it was drafted and put into our computer system, so when you click a button, the -- instead of copy and paste and type a bunch of different e-mails, it was all in the system.
 - Q. Were you able to deviate your script in the communications with the HOA's?
- 11 A. No.
- Q. Were you aware that there was a foreclosure case filed by the lender, the first position lender, relating to -- Well, strike that.
 - You don't have any recollection of this particular property at all, do you?
- 17 A. No.
- 18 I'm sorry.
- Q. Did you -- Or do you recall ever providing advice to an HOA that they should hold off on a sale because there was a competing or judicial foreclosure action by a bank, or a competing non-judicial foreclosure being conducted by a bank?
- A. No, I would just forward them the status reports, and each action of what was going on was already on

there, so they read it for themselves.

1

2

3

4

5

6

7

8

9

The association made their own choice from the documents we sent to them.

- Q. So for NAS to advise an HOA of some other action relating to some other bank action --
 - A. It would be mailed to the association.
- Q. -- but that should appear in the records of NAS if that did happen?
 - A. I would assume, yes.
- Q. Okay. Was -- Or is it your understanding NAS was supposed to advise the HOA's of competing foreclosure, whether they were judicial or non-judicial?
- A. They would be forwarded a copy of the document that was sent to NAS about it, so if a lender recorded a default or something, it would be sent to the association.
- Q. And why is that?
- A. So they know full knowledge of what was going on with the property.
- 20 Q. All right. And why would that be important?
- 21 A. Just information.
- Q. But those e-mails, who would send that?
- 23 A. Who would send what?
- Q. I mean, like you were sending e-mails to the
 HOA's regarding postponements, and you know, setting of

the sale and things like that, you were encouraging them to go ahead with the sale, at least at the period of time we're looking at?

A. Okay.

1

2

3

4

5

6

7

8

9

10

11

15

16

18

19

21

22

23

25

- Q. The language talking about how there were multiple third-party investors, and we think we could sell the property --
- A. Uh-huh.
- Q. Do you -- Or so you were sending those e-mails, they didn't include things like notice of there was a lis pendens filed or --
- 12 A. No.
- Q. --another foreclosure?
- 14 A. No.
 - Q. Who would be responsible for providing that other information?
- A. I don't recall at the time who would mail that.
 - Q. All right. Did you maintain records of which properties were sold at which particular sales, like --

20 I'll rephrase that.

Did you maintain records that would show on a particular Friday which properties were sold and how many bidders there were on that particular property?

- 24 A. No.
 - Q. So the records would just individually buy

property?

1

2

3

4

5

6

7

8

9

18

19

20

21

22

23

- A. Correct.
- Q. Do you know who drafted the foreclosure deeds?
- A. There was a form that was already pre-generated, and we just put in the name of the person who won the bid, and the sale date, and the amount it sold for, so it was like a form letter. It wasn't -- each one wasn't separately typed, it was already in our system, so we just add the name.
- Q. Let me have you take a look at Exhibit 21, 11 please.
- 12 A. Sure.
- Q. Would you look, and this is the foreclosure deed relative to this particular lawsuit.
- 15 A. Uh-huh.
- Q. Is the language in this deed in the first paragraph the typical form language that NAS uses?
 - A. It depends on the associations.
 - Each lien document -- or if they were citing that pursuant legal description, it is different obviously per property, if it wasn't the same community.
 - Q. Right.
 - So the legal description of the property would be different, the buyer would be different?
- 25 A. Correct.

- Q. But in the sentence that starts, I think it's the second sentence, or the third sentence of the first paragraph, it starts with, Nevada Association Services as agent for Cambridge Heights?
 - A. Uh-huh.

2

3

4

5

6

7

8

9

10

- Q. A planned community, does hereby grant and convey, but without warranty, express or implies, to Tim Radecki herein called grantee, close paren, pursuant to NRS, then it cites a number of statutory provisions, and then it goes, all its right, title and interest into that certain property legally described as so and so?
- 12 A. Okay.
- Q. Was that language, where it starts, particularly the Nevada Association Services, Inc., as agent for the HOA, was that the typical language used?
- 16 A. Yes.
- 17 Q. Was there a sign in sheet for the sales?
- 18 A. No.
- Q. Were any records maintained of who the particular witnesses were, or who the other bidders were?
- 21 A. No.
- Q. Can you recall any regular bidders, besides SFR and the other entity you mentioned before?
- 24 A. No.
- MR. KAYE: One moment.

```
TRAN
 1
 2
 3
 4
          IN THE EIGHTH JUDICIAL DISTRICT COURT
                   CLARK COUNTY, NEVADA
 5
 6
 7
   WELLS FARGO BANK, N.A., )
 8
 9
             Plaintiff, )
10
          vs.
                            ) Case No.
                            ) A-13-676574
11 AMANDA MUNAR, ET AL.,
                            ) Dept. No. 24
12
             Defendants. )
13
14
                        BENCH TRIAL
15
                         _______
             Before the Honorable Jim Crockett
16
            Tuesday, June 14, 2016, 9:00 a.m.
17
           Reporter's Transcript of Proceedings
18
19
20
21
22
23
24
25
   REPORTED BY ROBERT A. CANGEMI, CCR 888
```

```
APPEARANCES:
1
2
                              Sylvia Semper, Esq.
   FOR THE PLAINTIFF:
                              Anthony Kaye, Esq.
3
4
                              Glenn Meier, Esq.
   FOR THE DEFENDANTS:
5
                              Marilyn Fine, Esq.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
```

```
1 to what Mr. Scott will be testifying about.
           MS. SEMPER: Absolutely.
2
           Your Honor, we would like to call Mr. Doug
  Scott, the director at the Clark County Assessor's
  Office.
5
           The reason we are calling him to testify is
  his knowledge of the value of the property at the
   Tim of August 2013, the HOA sale.
           THE COURT: Thank you.
9
           Mr. Scott.
10
11
                    DOUG SCOTT,
12
13
  who, being first duly sworn to tell the
  truth, the whole truth, and nothing but the
  truth, was examined and testified as
17 follows:
18
           THE CLERK: Please be seated.
19
           Once you are seated, please state and
20
  spell your full name for the record.
21
           THE WITNESS: Good morning. My name
22
   is Doug Scott, D-o-u-g S-c-o-t-t.
24
                         DIRECT EXAMINATION
25
```

1 BY MS. SEMPER: 2 Q. Good morning, Mr. Scott, my name is Sylvia 3 Semper. I am counsel for Wells Fargo Bank in this 4 matter. 5 You are here today pursuant to a subpoena, 6 is that correct? 7 A. That's correct. 8 Q. And to provide testimony regarding the value 9 of the property at 2102 Logsdon Drive? 10 A. Correct. 11 Q. Could you please tell us what is your 12 official title at the Clark County Assessor's 13 Office? 14 A. I am the assistant director of assessment 15 services. 16 Q. And as the director what are your 17 responsibilities? 18 A. I oversee 4 divisions in the Clark County 19 Assessor's Office. 20 I am the second in command to the elected 21 official, Michelle W. Shafe. 22 Q. And are you familiar with what the taxable 23 value is under Nevada State law? 24 A. I am. 25

- Q. Can you please tell us what that is.
- A. Yes. Taxable value is a calculation which is based on the full cash value of the land, plus the replacement cost new of the improvement, less all applicable depreciation obsolescence.
- Q. And is that defined somewhere in the Nevada Revised Statute?
- 8 A. Yes, it is that.

It can be found in Nevada Revised Statute, Chapter 361.227.

- Q. And you mentioned full cash value; can you tell us what that means?
- A. Full cash value means the same thing as market value. It is the most probable price that would be obtained in a transaction between a willing buyer and a willing seller.
- Q. Does that mean that ordinarily the taxable value would be less than the full cash value, or market value of the property?
- A. Pursuant to statute, taxable value calculation is not supposed to exceed full cash value, so it is brought to the attention of the Assessor's Office that full cash value is in excess, or taxable value is in excess of full cash value if it is brought do the Assessor's attention during the

```
appropriate at time period, then adjustment can be
1
   made, which is subject to approval by the Board of
2
   Equalization.
3
           If I can have you look, there are exhibit
4
   binders in front of you, if you could turn to
5
   Exhibit 68, please.
6
           Is that understand the first or the second
7
8
   binder.
       O. The second.
9
       A. Exhibit 68?
10
11
       Q. Yes.
           THE COURT: That actually is a proposed
12
   exhibit. It hasn't been admitted yet.
1.3
           MS. SEMPER: Thank you, Your Honor.
14
       A. Okay.
15
       Q. Are you familiar with this document; there
16
   is several pages.
17
           Was this provided by your office in response
18
   to our trial subpoena?
19
           Yes, it was.
       Α.
20
           And looking at the value indication for the
21
   property, can you describe what that document is?
22
           Okay. There are -- are you referring to the
23
   property record card?
24
       Q. Yes. So I guess there is 2.
25
```

A. There is 2 of them.

1.3

1.7

- Q. Can you do you know why there are 2 of them in this file?
- A. The original one that we submitted provides the current taxable value, and the assessed value up in the upper right-hand corner of the property record card.

Then it shows the prior years in the middle section, where it says treasurer extract, and it provides the prior fiscal years.

After this was submitted to the Court, I thought that it would be better for clarity to provide on the actual snapshot from the fiscal year of 13-14, which is what was requested, and that's what the revised shows.

- Q. And when you say fiscal year 2013, 2014, would August 23, 2013 fall within that fiscal year?
- A. That is correct. The fiscal year is from July 1 to June 30.
 - O. Great.

So, if we look at the last printout that you provided, can you describe for us -- is this a document that's kept in the regular course of business at your office?

A. It is kept electrically.

```
And is this a certified copy that we are
       Q.
1
   looking at?
2
       A. Yes, it is. It was certified by Tina
3
  Mitchell in our office on June 9, 2016.
4
       O. And who is listed as the owner name on this
5
   one?
6
           The owner name may be found in the upper
   left-hand corner. The owner at the time was Amanda
   R. Munar.
9
       O. And then what was the address?
10
           What address is listed on this document?
11
           2102 Logsdon Drive, North Las Vegas.
12
       Q. And can you tell us what the total taxable
13
   value is?
14
       A. The total taxable value can be found on the
15
   right side. The grand total with the land
16
   improvements is $57,197.
17
       Q. So for the 2013-2014 year, the total taxable
18
   value is $56,197, is that correct?
19
           That's correct.
       Α.
20
           That would have been less than the full cash
21
   value or the market value for the property, is that
22
   correct?
23
       A. According to the Nevada Revised Statute,
24
```

that is supposed to be, the taxpayer would have the

ability to appeal it if they think their opinion on the market value were different. 2 Q. Did the homeowner for this property dispute 3 this amount? 4 I don't have that information in front of 5 6 me. How often would someone dispute the 7 Q. property? 8 Actually we have over 750,000 parcels. Last 9 year we had between one thousand and 2000 appeals, 10 so the percentage of appeals is relatively small. 11 Okay. Ο. 12 So to answer your prior question, typically 13 the taxable value is going to be less than market 14 value. 15 Q. Okay. Thank you. 16 MS. SEMPER: Your Honor I would like to move 17 the Court to take judicial notice of the fact that 18 the total taxable value at the time of the HOA sale was \$56,197. 2.0 Okay. THE COURT: 21 I just have a question. This is not a 22 question, but I am curious, but what are the odds

that Deputy District Attorney's last name would be

23

24

25

Logsdon?

```
There is a funny email exchange
           MR. KAYE:
1
   on that.
2
3
           THE COURT:
                        On the 5th page, Mr. Scott, of
   Exhibit 68 is a memorandum to Lisa Logsdon from Tina
4
   Mitchell, and it reference 2012 Logsdon Drive, but
5
   the first page of Exhibit 68 references 2102 Logsdon
6
   Drive, which is in fact the address of the property
   in question here.
8
           Would you just confirm for us that the
9
   parcel number that is identified in both the letter
10
   from Ms. Logsdon and the email from Ms. Mitchell
11
   belong to 2102 Logsdon Drive.
12
           THE WITNESS: Yes, I can confirm that.
13
           THE COURT:
                      Okay.
14
                          That is a typo in the letter.
           THE WITNESS:
15
           THE COURT: Okay.
16
           THE WITNESS:
                          The correct address -- the
17
   letter should have stated 2102 Logsdon Drive.
18
           THE COURT: All right.
19
           I can take judicial notice of the fact that
20
   the records of Clark County Assessor's Office reveal
21
   that the taxable value is $56,197.
22
           I qualify that, because I don't want to lead
23
   you to believe that I am finding as a fact that that
24
   is the market value or the reasonable selling price
2.5
```

```
And you also testified that the taxable
2
   value is listed in the Nevada Revised Statute
3
   361.227?
4
                        Objection, leading.
           MR. MEIER:
5
           THE COURT: Sustained.
6
           Where is the taxable value again in the
7
       Q.
   Never Revised Statute?
8
           Nevada Revised Statute Chapter 361.227.
       Α.
9
           And where is the definition of full cash
10
   value defined in the Nevada Revised Statute?
11
           I don't recall off the top of my head.
12
   can look it up for you.
13
           Can I refresh your recollection with --
14
           THE COURT: When you prepared your affidavit
15
   did you include these statutory references?
16
           THE WITNESS: No.
17
           With the second page of your affidavit.
18
       Q.
       Α.
           Okay.
                  Thank you.
19
           THE COURT: Would it refresh your
20
   recollection to refer to the affidavit for the
21
22
   numbers?
       A. Full cash value is defined in Statute
23
   361.025.
24
           And the copy that you provided in response
25
       Q.
```

Α.

1

Correct.

```
to the subpoena is a true and exact copy of the
 1
 2
   valuation of the property for the 2013-2014 fiscal
   year?
 3
            Yes, it is.
 4
       Α.
            MS. SEMPER: I think that's everything that
 5
 6
   I have.
 7
            THE COURT: With that, Mr. Meier, any
 8
   objection to the remaining 4 pages of Exhibit 68
   being admitted in evidence?
 9
10
           MR. MEIER: No, Your Honor.
            THE COURT: Those 4 pages of Exhibit 68,
11
   minus the affidavit will be received in evidence as
12
13
   Exhibit 68.
14
           MS. SEMPER:
                         Thank you.
15
16
                        CROSS-EXAMINATION
17
       BY MR. MEIER:
18
19
           Good morning, Mr. Scott.
20
       Α.
           Good morning.
21
           My name is Glenn Meier. I am counsel for
22
   Tim Radecki in this case, one of the counsel.
           You testified that the taxable value was
23
   determined by taking the full cash value of the
24
25
   land, adding the replacement value of improvements,
```

1 are there, and the Marshall & Swift manual with its 2 various updates?

- A. Once the initial inspection is done at the time the improvement is viewed, there's no reason for the appraiser to go back out and re-look at that.
- Q. And what about depreciation and obsolescence, how is that determined?
- 9 A. Depreciation is one and a half percent per 10 year by statute at a flat rate.
- Obsolescence is identified through a sales ratio analysis.
- 13 So, every year prior to the roll close in December, the Assessor's Office will run sales, 14 15 recent sales of improved properties, and compare them to the taxable values to see if there are 16 discrepancies, where the taxable value is exceeding 17 18 full cash value, or market value, based on those sales, and then adjustments can be made if necessary 19 20 prior to the roll close, or what is determined as 21 obsolescence.
 - Q. Tax rolls?

3

4

5

6

- 23 A. Tax rolls, correct.
- Q. When the Assessor's Office values a property, they don't do anything to calculate

```
1
   whether a purchaser of that property might be
   subject to litigation after they buy the property,
 2
 3
   correct?
            We probably wouldn't be aware of it.
        Α.
            And since you wouldn't be aware of it, there
 5
   is not way to factor that into valuation, correct?
 6
 7
       Α.
            No.
            No, that is not correct?
 8
       Q.
 9
            No, I have no way of knowing.
       Α.
10
       Q.
           Thank you.
11
            Are you generally aware of legal issues
   surrounding properties bought at homeowner's
12
   association foreclosures in Nevada within the last
13
14
   say 3 years?
15
           That type of information would be irrelevant
   to the calculation of our taxable value; so, no, we
16
   don't have that information.
17
18
           MR. MEIER:
                        Okay.
19
           Just one minute, Your Honor.
20
           That's all we have, Your Honor.
21
                        I just want to make sure I
           THE COURT:
   understood your answer to the last question, what
22
   kind of information would be irrelevant to your
23
   calculations?
24
25
           THE WITNESS:
                          The attorney was bringing up
```

```
Mr. Radecki to the stand.
 1
 2
 3
                       TIM RADECKI,
 4
   who, being first duly sworn to tell the truth, the
 5
   whole truth, and nothing but the truth, was examined
 6
   and testified as follows:
 7
 8
 9
            THE CLERK:
                         Please be seated.
            Once you are seated, please state and spell
10
11
   your you full name for the record.
12
            THE WITNESS: Sure, Tim Michael Radecki,
   T-i-m M-i-c-h-a-e-l R-a-d-e-c-k-i.
13
           THE COURT: Okay.
14
15
16
                      DIRECT EXAMINATION
17
       BY MR. MEIER:
18
19
           Good morning, Mr. Radecki.
20
           MR. MEIER: Give me just a minute.
21
           Your Honor, as you might imagine, we want
22
   Mr. Radecki to testify just generally about his
23
   purchase of this property, as well as his other
   involvement with purchasing property at HOA sales.
24
25
           THE COURT:
                        Okay.
```

Mr. Radecki, just to get some background 1 0. information, I introduced you to the Judge a little bit; can you tell us how old you are? Α. 46. What is your primary source of income? 5 0. 6 Skateboard sales. 7 Q. How long have you been involved in that business? 8 9 Since high school. And when you say skateboard sales, do you 10 work for a company that sells skateboards? 11 12 Α. My own company sells skateboards. And what is the name of the company? 13 O . 14 Woodland Skates. 15 Yesterday we he heard some testimony 16 regarding a homeowner's association foreclosure sale 17 for a property that's located at 2102 Logsdon Drive in North Las Vegas, Nevada; are you familiar with 18 19 that property? 20 Α. Yes. 21 And for the HOA foreclosure sale for that 22 property, were you the successful bidder at that 23 sale?

Is that the only piece of property in

24

25

Α.

Yes.

```
1
   Southern Nevada that you have purchased at HOA
   foreclosure sale?
 2
       Α.
           No.
 3
 4
           How many pieces of property have you
 5
   purchased at HOA for sales?
            6.
       Α.
 6
 7
           And did you go and do that on 6 separate
 8
   occasions?
            If I recall, it was 2 separate occasions.
       Α.
       Q.
           Okay.
10
11
           And, so, on at least one of those occasions,
12
   did you buy multiple property?
13
       Α.
            The second one.
14
           So the first time you went and bought an HOA
15
   sale, you only bought one piece of property, is that
16
   correct?
17
           That is my recollection, yes.
18
       Q.
           So, then, how many pieces of property did
   you buy on the second one?
19
20
       Α.
           5.
           Okay.
21
       Q.
22
           Do you know if the purchase of the property
23
   at 2102 Logsdon was the first time or the second
24
   time?
           I don't remember, but I believe it was the
25
       Α.
```

Ο. Okay. 2 Before you bought -- let's go back to the 3 first time. 4 5 Prior to the first time that you bought a piece of property at a homeowner's association 6 7 foreclosure, were you familiar with a company called Nevada Association Services? 8 Was I familiar with that company? 9 Α. 10 Let me do it this way; were you aware that 11 they existed? Before this? 12 Α. 13 0. Before you ever bought a piece of property. 14 Α. I don't think I was. 15 Q. Okay. Do you know anybody that worked during that 16 17 time, and when I say that time, can we just 18 generally talk about 2012-2013, in that time. 19 Did you know anybody that worked at Nevada 20 Association Services? 21 Α. No. 22 Ο. If you just -- I know that you know what I 23 am asking before all of the words get out of my 24 mouth, but just to help us keep a clear record, let 25 me get that done. That will be helpful.

1

second time.

- A. I believe it was during just a search.
- 2 Q. Okay.

1

3

4

5

6

7

8

10

25

And when you talk about a search, can you clarify for the Court what kind of search you are talking about?

- A. An Internet search.
- Q. As you began to do this research about association foreclosures sales, did you learn anything about any risks that might be present in buying property at an association foreclosure?
- A. Yes. I knew there was a risk, but I didn't really wrap my head about what kind of risk there was.
- 14 Q. Okay.

So, let me draw your attention back to the time before you -- as you said -- wrapped your head around this risk, so I am talking about before that time.

- 19 A. Yes.
- Q. What was your understanding at that time of the risk involved in buying property?

MS. SEMPER: Objection, vague as to time.

Can we put a time frame about before this time, after this time.

Q. Do you remember generally like the year that

don't understand how to answer? 2 Α. Both. Let me try and ask a better question. 3 You said that you knew there was some risk 4 5 to buying properties at foreclosure. Yes. Α. When you first became aware of that risk, 7 8 tell me what you understood it to be? 9 I really didn't understand it. Α. 10 Ο. Okay. That was really my point. I really didn't 11 understand it. 12 Were you aware that the property that you 13 14 were buying might have claims from banks holding mortgage loans on property? 15 16 Α. Yes. 17 And you were aware of that fact from the beginning? 18 19 Α. No. 20 Q. Okay. When did you become aware of that fact? 21 22 I don't remember. Would it have been before or after you 23 Ο. 24 bought property?

I am sure it was before that I bought the

25

Α.

property. I understood the risk. 2 0. Okay. Now at some point you talked about getting 3 your head more wrapped around the risk; what did you 4 mean by that? 5 6 I knew there was a risk because of the price 7 that I was paying for the property. That's basically what I knew. 8 9 Exactly what I was getting into, I didn't know exactly, but the price told me that there was a 10 risk on the property. 11 12 Q. Okay. So tell the Court how you got more 13 information about the details of this risk. 14 A. Well, I think it was -- I think one thing 15 16 that comes into mind is when I speak to Marilyn. 17 Let me just caution you and remind you to 0. the extent that you testify about what you spoke 18 19 with an attorney about, you are potentially waiving 20 a privilege, and you shouldn't do that unless you 21 really mean to. 22 But you can talk about the general

The general circumstances is; I wanted to

know the law was, and that answered my question

23

24

25

circumstances without --

about what the law was, whether I would be on the 1 2 right side. 3 As long as I was on the right side of the law, exactly what the law was, then I felt 4 comfortable with the property. 5 6 Ο. Okay. With the risk. 7 Α. And you mentioned talking to Ms. Fine; was 8 9 she the only attorney that you spoke to? Α. No. 10 11 Q. Do you have a ballpark of how many different 12 lawyers you talked to about this issue? Α. No. 13 More than 3? 0. 14 Somewhere maybe around 3. I learned quickly 15 16 that there wasn't many attorneys that were experts in this field, so it narrowed quickly. 17 Q. Okay. 18 19 In your discussions with the attorneys, did you find a definitive answer about what the law was? 20 Yes and no. 21 Α. 22 There wasn't, but I what I was hearing, I felt that I was on the right side of the law. 23 24 Q. Okay. And again, this would have been after you

Correct. I was told that there was a 2 decision of the State Supreme Court that was going 3 to be -- that was going to answer everybody's questions about it. 5 6 And that the way I understood the law was 7 that I was on the right side of the law. Q. Okay. 8 So after these 6 properties that we have 9 10 talked about already, did you continue to buy properties at any kind of foreclosure sale? 11 No. 12 Α. 13 Ο. Why not? Time, risk, money. 14 Α. 15 Would you describe the purchase of these 16 properties as a significant windfall for you? 17 MS. SEMPER: Objection, leading. MR. MEIER: That's nowhere close to 18 leading. You have to be able to tell what the 19 answer is supposed to be from the question. 20 There is no way you can do that from that 21 22 question. THE COURT: Windfall is word loaded with 23 innuendo, but I will allow it. 24 Overruled. 25

purchased the property?

1 I don't recall. 2 Q. Okay. 3 On the date that you purchased this property, you also bought 5 other properties? 4 5 Α. No. Q. 4 other properties? 6 7 Α. Yes. 8 Q. Okay. 9 And all of the 5 properties that you bought on August 23, 2013, are in litigation today, is that 10 11 correct? 12 Α. I don't know. Do you recall me asking you that question 13 during your deposition? 14 15 Α. No, I don't. 16 0. If I show you your deposition, would that 17 refresh your recollection? 18 Α. No. 19 MS. SEMPER: All right. Your Honor, I would like to publish the 20 21 deposition transcript. 22 THE COURT: Okay. 23 The record will reflect that the Court clerk 24 is delivering to Ms. Semper the original transcript 25 of the deposition that's been under seal with the

```
clerk.
 1
 2
           And what is the date and location of where
   this deposition was taken, and who was the
 3
   deponent?
 4
 5
           MS. SEMPER:
                         The deposition of Timothy
 6
   Radecki was taken at the offices of Ballard Spahr on
   Thursday, December 10, 2015 at 9:20 a.m.
 7
           THE COURT: Thank you.
 8
 9
           You may proceed.
           I would like to show you page 18.
10
       Q.
11
           Looking at line 11, my question to you; are
   any of these properties currently in litigation?
12
13
           Your answer; I do believe, yes.
   believe all of them are.
14
15
           Can I ask my counsel for that or no.
   ask my counsel that or no.
16
17
           My response; I just want your knowledge.
18
           Answer; yes, to my knowledge.
           Did I read that accurately?
19
           Sure, yes.
20
       Α.
21
       Q.
           Thank you.
22
           And you knew at the time that you approached
23
   these 5 properties, and the property at issue today,
24
   that there would be litigation; is that correct?
           I didn't know for sure that there would be
25
       Α.
```

litigation, no. 2 You knew that -- you were told that it probably wouldn't be a good idea to purchase the 3 property, right? 4 5 Who told me that? I don't know who told you that. 6 0. How can I answer it? 7 I believe you testified at deposition that 0. you were told; does that sound accurate? 9 I thought the price reflected whatever risks 10 were involved with buying the property. 11 12 Q. Okay. I would like to read a portion of your 13 deposition regarding your response to the question 14 15 when I asked you. On Page 21 I asked you the question; is 16 there anything that would refresh your recollection 17 18 with regard to who you spoke to? 19 And you were answer -- I will show you your 20 transcript -- is; I want to answer, and stop me if I 21 answer too broadly, or whatever to your question, 22 because I know you don't want me to do that.

I remember asking people in general here and

there, before I bought the property, about what they

thought of that, and everybody that I asked, that I

23

24

remember, really didn't know much but it. 1 Because they didn't know much about it, they 2 3 told me it probably wouldn't be a good idea, because there probably would be litigation to it, or they just didn't know much about it. 5 Did I read that accurately? 6 7 Α. Yes. I would like to turn your attention to Q. 8 Exhibit 21. 9 10 Have you seen this document before? This does look familiar. Α. 11 This is the foreclosure deed pertaining to 12 Ο. 13 the 2102 Logsdon Drive property. And based on this document it states that 14 you purchased the property for \$4,000; is that 15 correct? 16 17 That's what this says, yes. And if I draw your attention to the 18 declaration of value on the 3 page, in line item 19 3-A, total value sales price of the property, and 20 next to it listed \$56,197; is that correct? 21 22 Α. Yes. And that's the amount that you paid the 23 transfer tax on that value, correct? 24 Α. Yes. 25

fair market value of a property, what it is bought 2 and sold for. So it is kind of confusing in my mind, but 3 you can certainly ask Mr. Radecki what his estimate 4 5 of the value of the property was when he bought it for \$4,000. 6 Would you agree -- do you want to answer? 7 I sincerely was not sure on the value, because of what I bought it for, or what that was. And what I remember the other houses, I 10 11 wasn't really sure if I was missing something. 12 Right now I can tell you that I think the value of the house is more than \$56,000. At the 13 time I was a little bit confused. 14 15 You didn't dispute the value when you paid the transfer tax, did you? 16 17 A. I believe I the answered question. 18 The county assesses a value, and that's what it was. 19 20 THE COURT: Her question is; did you dispute 21 the value when you paid the taxes? THE WITNESS: No. That is what it was, so -22 - to be honest with you, I didn't know I could 23 24 dispute it. 25 I am sure I wouldn't have disputed it.

- Q. And you didn't dispute it?
- 2 A. I did not dispute it.

1

- Q. I believe earlier you testified that you don't recall specific details about this sale; is that correct?
- A. I think some details I do remember, and some details I don't.
- Q. You don't remember how many people were present at the sale, do you?
- 10 A. I don't remember the exact amount, no.
- Q. And you didn't take notes when you were at the sale, did you?
- 13 A. No, I did not take notes.
- Q. And it was your understanding at the time when you purchased this property that you didn't have a deed to this property; is that correct?
- A. I do understand that now. I wasn't completely 100 percent on it when I bought the property.
- Q. So you didn't own the property outright, is that correct?
- MR. MEIER: Objection. Calls for a legal conclusion.
- THE COURT: What was your question?
 - Q. Your understanding was that you didn't own

understanding at the time is relevant, whether it is accurate or not remains to be seen, but his understanding is relevant.

You may proceed.

4

5

6

7

10

16

17

18

19

25

- Q. I believe the question I posed was; what is your understanding at the time was, when you purchased the property, that you did not own the property outright, correct?
- A. The honest answer to that question is; I really wasn't quite sure about that.

As I was going along, I do believe I realized I did not have the title to that property, and that meant that for example I couldn't just turn around and sell it for example, that there was a gray area there.

- Q. And your understanding at the time you purchased it was that Wells Fargo's deed of trust was still encumbering the property at the time; is that correct?
- 20 A. No, I did not know the bank. I did not know 21 the story behind that at all, no.
- Q. Do you remember testifying under oath at your deposition, and your response to that question that was posed there?
 - A. No, I don't.

```
1
       0.
           I would like to direct you to page 38 of
   your deposition testimony.
 2
 3
           MR. MEIER: Page?
           MS. SEMPER:
                         38.
 4
 5
           MR. MEIER: Thank you.
 6
           And my question at line 20; what do you mean
 7
   by you don't have the deed to the property?
           Your answer; I am not sure. I don't own the
 8
   property outright, I believe yet.
 9
10
           I am in litigation. If I had the deed to
   the property, I wouldn't be in litigation.
11
       Α.
           Okay.
12
13
           And then on 39, if you can flip, line 6; did
   you believe that the first deed of trust was still
14
15
   encumbering the property at the time you purchased
   it?
16
17
           Your answer; I am not exactly sure what that
   means.
18
           My question; are you aware that there was a
19
   lien on the property for the mortgage that the
20
   previous owner had on the property?
21
           Answer; my understanding is there was
22
   something to that effect. Exactly what it was, I
23
   did not investigate it.
24
25
       Α.
           That is not what you asked me.
```

You asked me if I knew that Wells Fargo had that, and I answered that; all right?

Q. Okay.

So you knew there was a deed of trust encumbering the property, but you didn't know who owned that deed of trust; is that what your testimony is?

A. My understanding when I bought the property is; I was vague on the facts that you are referring to right now, okay.

I think my answer is pretty much how it was. My understanding is there was something to that effect. Exactly what it was, I did not investigate it.

Q. Okay.

So my question to you is; even if you did not know that Wells Fargo had a lien, was it your understanding that there was a deed of trust encumbering the property at the time you purchased the property?

A. I knew that there was something to that effect, and that's why the price was what it was.

THE COURT: Let's take our break now. I do need to run across the street for this meeting.

Then I will do my best to be back here by

```
TRAN
 1
 2
 3
           IN THE EIGHTH JUDICIAL DISTRICT COURT
 4
                    CLARK COUNTY, NEVADA
 5
 6
 7
   WELLS FARGO BANK, N.A., )
 8
             Plaintiff,
 9
10
           vs.
                             ) Case No.
                             ) A-13-676574
11 AMANDA MUNAR, ET AL.,
                            ) Dept. No. 24
12
             Defendants.
13
14
               BENCH TRIAL, AFTERNOON SESSION
15
16
             Before the Honorable Jim Crockett
            Tuesday, June 14, 2016, 9:00 a.m.
17
           Reporter's Transcript of Proceedings
18
19
20
21
22
23
24
25
  REPORTED BY ROBERT A. CANGEMI, CCR 888
```

```
1
    APPEARANCES:
 2
    FOR THE PLAINTIFF:
                                  Sylvia Semper, Esq.
                                  Anthony Kaye, Esq.
 3
 4
                                  Glenn Meier, Esq.
Marilyn Fine, Esq.
 5
    FOR THE DEFENDANTS:
 6
 7
 8
 9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
```

1 THE COURT: Okay. MS. SEMPER: If we looked at Proposed 2 3 Exhibit 62. Also, Your Honor, these were produced by Mr. Radecki's counsel. They were not objected to at 5 6 the time of production. 7 I just with want to also put that on the record. If we look at RAD 00107. 8 THE COURT: Okay. 9 10 MS. SEMPER: Additional terms and conditions. 11 Number one states; the owner has purchased 12 this property from an HOA foreclosure. There may be 13 lien and pending litigation issues still to be 14 resolved from this purchase. 15 16 THE COURT: Okay. Well, I think Plaintiffs' counsel be willing 17 to stipulate at the time these leases were entered 18 19 into the owner was aware of and made a part of his 20 least with his tenants, that the owner purchased 21 this property from an HOA foreclosure, and there may 22 be lien and pending litigation issues still being resolved in this purchase. 23 24 MR. MEIER: We will so stipulate, Your 25 Honor.

1 THE COURT: Okay. I think that's the only relevant thing that 2 3 I need to know about. MS. SEMPER: In that case, I would like to 5 move to admit the entirety of the lease agreement, 6 Exhibit 62. 7 THE COURT: Well, I don't want to get confused by issues regarding how much rent was 8 9 generated and things like that, because I don't think that's relevant for me, for what I am looking 10 at today. 11 MS. SEMPER: Fair enough. 12 13 THE COURT: Okay. 14 So just for the record, then, it is 15 stipulated on behalf of the Plaintiff that Mr. Radecki leased this property to a tenant or 16 tenants, and that one of the conditions in the lease 17 18 reads as follow's; "Owner has purchased this 19 property from an HOA foreclosure. There may be lien 20 and pending litigation issues still being resolved from this purchase." 21 22 And the lease also does require the tenant to comply with all HOA rules and regulations 23 24 regarding maintenance, landscape, et cetera. 25 So I will consider the lease language to

```
that extent that I have quoted, but beyond that, I
    don't think that we need to get into the actual
    leases which are contained in Proposed Exhibit 62.
  3
  4
            MS. SEMPER:
                          Okay.
  5
            So similarly to that I would also like to
    direct the Court to Proposed Exhibit 63, which is
    the residential property management agreement that
  7
    has similar language as well.
  8
 9
            THE COURT:
                        This is the residential property
    management agreement between who?
 10
11
            MS. SEMPER: Mr. Radecki and his property
12
    management company.
13
            THE COURT:
                        Does it make reference to the
   HOA foreclosure?
14
15
            MS. SEMPER:
                        It does, Your Honor.
16
            THE COURT:
                        Whereabouts?
            MS. SEMPER: First I would like to point the
17
   Court to page 5 of 8, it is RAD 000089.
18
19
           Under representations, the last part of
   subsection A, the last sentence; owner understands
20
   that offering a property for lease while the
21
   property is in foreclosure proceedings without
22
   written disclosure is a deceptive trade practice,
23
   punishable by both civil and criminal proceedings.
24
25
           THE COURT:
                       Okay.
```

1 MS. SEMPER: Then also --2 THE COURT: Let me first ask you; is that an 3 accurate statement of law regarding deceptive trade 4 practices? 5 MS. SEMPER: I believe so. I am offering --THE COURT: 6 I think the relevant thing there would be the statute for deceptive trades practices, 7 8 if a person is engaged in the process of renting a 9 property while it is in a foreclosure proceeding, it 10 violate the deceptive trade practices, whether it is 11 in the lease may demonstrate his awareness of it. 12 Ignorance of the law is no excuse; even though he says he doesn't know what the law says, it 13 14 is a prohibited practice. 15 How about page 91? 16 MS. SEMPER: Right, page 91, additional 17 terms under paragraph 24-2 states specifically; 18 broker agrees to disclose the HOA lien issue and 19 pending litigation where applicable. 20 Owner's attorney to provide specific 21 disclosure verbiage to be incorporated into each 22 lease agreement. 23 THE COURT: Okay. 24 I think that is fine to show his awareness of the fact that he knew there was a risk associated 25

```
to buying this property from the foreclosure.
 1
            I don't know that we need anything more than
 2
 3
   that.
          But, Mr. Meier.
            MR. MEIER: If the Court is going to admit
 4
   it for that limited purpose, then we have no
 5
   objection to that.
 6
 7
            If it was going to be considered for
   purposes beyond that, we would object on the grounds
 8
   of relevance.
 9
            THE COURT: Well, this is just he hired
10
   residential property management to take care of
11
   leasing the property for him; is that correct?
12
13
           MR. MEIER: Absolutely.
           THE COURT: So, it doesn't get into the
14
   terms of the lease between him and his tenant?
15
           MR. MEIER: No, I believe that is just done
16
   on the individual leases.
17
18
           THE COURT: If you want to offer 63 for that
19
   limited purpose, it will be received.
           MS. SEMPER: I would like to have it for the
20
   other purposes to show that Mr. Radecki has
21
   contracted with a professional company to maintain
22
23
   the property.
           And, so, for the purpose of showing that
24
25
   there is a property management company, that this is
```

```
used for commercial purpose, and not for his own
 1
   benefit.
 2
 3
           THE COURT: I think that is self-evident,
 4
   yes.
           MS. SEMPER:
                        Great.
 5
           THE COURT: So, 63 will be received for the
 6
   limited the purposes of showing that Mr. Radecki
7
   hired a property management company to be kind of
8
 9
   the in between person for him and his tenants, to
10
   take care of renting it out.
           And on page 89, the language indicating that
11
   the owner understands that offering a property for
12
13
   lease while the property is in foreclosure
   proceedings without written disclosure is a
14
   deceptive trade act punishable by a civil fine and
15
16
   criminal proceedings.
17
           And then page 91, which says; that broker
   agrees to disclose the HOA lien issues and pending
18
19
   litigation where applicable.
           Owner's attorney to provide specific
20
21
   disclosure verbiage to be incorporated in each lease
22
   agreement.
           It sounds like somebody is trying to
23
   delegate their responsibility, so 63 is in.
24
25
           MS. SEMPER:
                         If I may have one moment.
```

```
1
    who, being first duly sworn to tell the truth, the
    whole truth, and nothing but the truth, was examined
    and testified as follows:
 5
 6
                         Will you please state and spell
            THE CLERK:
    your full name for the record?
 7
            THE WITNESS: I am Chris Yergensen, and my
 8
   name is spelled C-h-r-i-s Y-e-r-g-e-n-s-e-n.
 9
10
11
                      DIRECT EXAMINATION
12
13
       BY MR. KAYE:
14
           Good afternoon, Mr. Yergensen, my name is
   Tony Kaye. I am counsel for Wells Fargo.
15
16
            Thank you for taking time out of your
17
   afternoon to be here.
18
           Are you currently employed by NAS?
19
           I am. I started my employment there in
       Α.
   October of 2013.
20
21
           And what is your position with NAS?
22
           I am corporate counsel. I deal with all
23
   legal issues related to NAS.
       Q. So you can testify as to NAS policies and
24
25
   procedures?
```

```
That's part of my job my job duties,
 1
        Α.
            Yes.
 2
   yes.
 3
            THE COURT: You came on board when?
            THE WITNESS: October of 2013.
 4
 5
        Q.
            And you were corporate counsel from October
 6
   of 2013 to the present?
 7
       Α.
            Yes.
            Was it your understanding or actually you
 8
   were the witness designated -- you are able to
 9
   testify on behalf of NAS?
10
            Yes, I testify as a person most
11
   knowledgeable on certain policies and procedures.
12
13
       0.
           Okay.
14
            Was it your understanding prior to the SFR
   decision, that NAS was selling properties, that
15
   those sales were subject to the lender's first
16
17
   mortgage?
           NAS took no position with respect to the
18
19
   priority of the HOA's lien.
20
           NAS is not a law firm. It does not provide
   legal advice to its clients.
21
           Prior to the SFR decision, there was many
22
23
   legal opinions circulating around the industry with
   respect to that issue.
24
```

NAS was not a party to any of that

```
litigation. NAS was a party to litigation related
   to the amount of the super priority lien.
 2
            NAS took an active role, and an active legal
 3
   position on that issue.
 4
 5
            So, with respect to the effect of the HOA's
   lien and the priority of it, with respect to first
 6
   trust deed holders, we really took no formal legal
 7
 8
   position on that issue.
 9
            MR. KAYE: Your Honor, may I approach the
   witness?
10
11
            THE COURT: Sure.
12
       Q. I have handed you a letter from NAS to
   Giavanna, care of Richard Kaye. It is dated October
13
14
   7, 2010.
15
            It is signed by Autumn Fesel. Do you know
16
   Ms. Fesel?
           She's a current employee.
17
       Α.
18
       0.
           She's still there?
19
           Yes.
       Α.
20
       Q.
           Does this appear to you to be a letter
21
   signed by Ms. Fesel?
22
           Yes, and I have seen this form letter many
       Α.
23
   times.
24
       Q.
          And I am just going to read --
25
           THE COURT: Is this in evidence yet?
```

```
MR. KAYE: It is not in evidence. It is an
 1
 2
   inconsistent statement, so I will offer it into
   evidence.
 3
           THE COURT: It is an inconsistent statement
 4
   as to what?
 5
 6
           MR. KAYE: As to whether or not NAS had an
 7
   understanding concerning whether or not its sales
   were subject to first possession deeds.
 8
 9
           THE COURT: So you are offering this as a
10
   statement of a party opponent as a prior
11
   inconsistent statement.
           MR. KAYE: He is not a party opponent.
12
   is just an inconsistent statement.
13
           THE COURT: Okay.
14
           MR. KAYE: So it is extrinsic evidence of an
15
16
   inconsistent statement.
17
           I need to show it to you, counsel, the
18
   witness.
19
           THE COURT: Go ahead.
           Okay.
       Q.
20
21
           So the first paragraph says; as instructed
   -- it is to a Board of Directors. You understand
22
23
   that Giavanna is an HOA?
           Yes. I have heard of that, yes.
24
       Α.
25
       Q.
           Dear Board of Directors; as you instructed,
```

this office commenced non-judicial foreclosure 1 proceedings against the above-referenced property. 2 Unfortunately, on September 22, 2010, the 3 lender proceeded with its own foreclosure action by 4 recording a notice of default on the property. A 5 6 copy of this notice is enclosed. Since this action is senior to the 7 association's lien, it could eliminate (wipe out) 8 the association's security interest. 9 Of course, if the homeowner restates its 10 account with the lender, we will be free to continue 11 with our action. 12 If the lender forecloses on the property, 13 the owner could then be responsible for up to 9 14 15 months of pass assessments. 16 This is a letter that was in fact sent by NAS to an HOA in 2010, is it not? 17 There is a form letter that was sent Yes. 18 Α. in many instances when NAS became aware that a 19 lender had filed a notice of default, and it was 20 proceeding with its own foreclosure process. 21 22 So it was sent to many HOAs? 23 Yes, it was sent to many. When NAS -- was it your understanding that

when NAS would conduct an HOA sale, that however

24

allowed the calculation of .008 times that amount to determine the real property transfer tax.

- Q. In this case the sale price was four thousand dollars, so back at some point, that would have been the number that would have been put on this form?
- A. Correct. It was in -- I have the email from Clark County. Clark County in its infinite wisdom realized that it was missing out on a lot of transfer taxes, because the sale prices were smaller than what the assessed value was in their system.

So the Clark County District Attorney sent out a memo, or an email at least to my office, as well as to other collection agencies that they would no longer accept that form, and the proper amount that needed to be placed on the line was the assessed value on the Clark County website.

We objected to it. I tried to convince her that she was wrong, but they were out there for their taxes.

They needed revenues.

- Q. Was there a criminal prosecution?
- A. No, there was threats that they wouldn't record the foreclosure deed unless they did it their way.

So I would complete the transaction. I it think that was in 2012 or 2013, which the industry as a whole changed on what it was going to place on that line.

- Q. So at some point after that District Attorney's letter --
 - A. It was an e-mail.

6

13

14

15

16

17

18

19

20

21

- Q. -- NAS started using the taxable value of the property?
- A. Yes. That was a business decision. There was some decision whether or not we could take the county to Court.
 - I know that a lot of the investors that were purchasing the properties were objecting that we require more money in the foreclosure price to calculate for that amount.

There was a little bit of backlash that went about, but from a business, we didn't want to argue with Clark County.

- Q. How did you increase the foreclosure price to account for the increased transfer taxes?
- A. We could run that calculation on the assessed value before we went to the sale.

So we could calculate the real property
transfer tax, at least a minimum amount, or actually

27

to some degree it was going to be that amount, because even if -- it is funny that the County 2 didn't realize that even if somebody paid above and beyond the assessed value, they were only still requiring us to put the assessed value. 5 So the real property transfer tax, we could calculate before the sale. So we would calculate that, and put that in the minimum bid amount, in order to take that money out in order to pay the transfer tax. 10 So NAS would pay the transfer tax with 11 proceeds of the sale, that's your testimony? 12 13 That's correct. It was going to be a cost of the sale, a cost to record the deed. 14 15 THE COURT: So you included that in the amount to be demanded? 16 17 THE WITNESS: That is correct. Is that reflected on any of the paperwork of 18 NAS; does that go into the total lien amount at the 19 time of the sale? 20 21 That's correct. It would have been placed in the lien amount. It would have been in the 22 23 script of that particular property's foreclosure 24 sale announcement. 25 The minimum price is X, and there should be

It wasn't as easy as it sounds. It took some bills decisions of what to do, and ultimately what our decision was, was to include the real property transfer tax as a cost of the sale, and placing it into the minimum bid so that we could record the foreclosure deed, so NAS could record the foreclosure deed.

Q. Okay.

And it is your belief that that sales price or value, the number that gets filled in there is too high if you are using the state's taxable value?

A. No, I am not saying that. It is a number that we had to put in there.

We take no positions on the value of the property.

- Q. So you don't dispute that that's the proper value of the property?
- A. Like I said, I wanted to take the County to Court, because I don't think that necessarily -- it was just a -- it was a position that the County took on what that number needed to be on the form.

I didn't necessarily agree or disagree. It was a business decision that the County said it is this number, take it or leave it, and we took it.

Q. Okay.

1 Are you saying you dispute it, or you don't 2 dispute it? 3 We did not dispute it. 4 Q. Okay. 5 Now, take a look at page 38 of your deposition, please. 6 7 Α. Okay. I will start-up, just for context with the 8 first question on line 4. 9 10 And do you think that the value listed on line item 3-A is a reasonable estimate for the valve 11 of the property at the time NAS conducted the 12 13 foreclosure sale? 14 Answer; you know what, if Clark County 15 thought it was, then I guess we did too. 16 We are taking it directly from the Clark County Assessor's page. I guess that is what they 17 18 thought the value was; we just use it. 19 To answer your question, that is what we were instructed to do so by Clark County in order to 20 21 get their foreclosure deed recorded. 22 Question; do you have any reason to dispute that that would be the approximate value of the 23 24 property? 25 Answer; absolutely, from a legal

1 From her perspective she was taking a position in order to increase the sales revenue. 2 3 She knew exactly what the arguments were on both sides. I remember, like I said in my testimony, I would have taken this to Court and 5 argued with the County, but that was a business decision not to. 8 And ultimately what I always have to remind myself when I am having my deposition or my 9 testimony taken is that my legal opinion really 10 doesn't matter, unfortunately. 11 Sometimes I give out my legal opinion freely 12 13 in my depositions, and it really doesn't matter what I think. 14 Q. Did you make any effort, or did NAS make any 15 efforts to get payoffs from lenders to get the HOA's 16 17 super priority lien paid by a lender? We complied with NRS 116 and we sent notices 18 to the lenders that we are proceeding with the 19 20 non-judicial foreclosure sale. 21 We do now have a mechanism in your office 22 where lenders can request payoffs. 23 In 2013 did you have a mechanism like that, if a lender wanted to request a payoff? 24

In 2013, yes. We have always had a

25

Α.

1 mechanism for a payoff, beginning in 2001. 2 If somebody wanted to know what it was to pay off the HOA lien, we certainly had a mechanism 3 to provide that information. 4 The reality of 2013 is that at that time, 5 prior to the legislative enactment in 2013, NAS as a 6 licensed debt collector in the State of Nevada 7 needed to comply with the Fair Debt Collections Practices Act at that time. 10 So our policy back then in 2013 was not to provide that information to a lender unless the 11 lender had the consent of the debtor. 12 13 Q. Okay. But if a lender asked for a tender amount, 14 did you respond in any way, or did you just remain 15 16 quiet? 17 Α. Yes. 18 What was the response? We needed the debtor's written consent, and 19 Α. if then if the lender provided the written consent, 20 then we would give them the payoff amount. 21 22 And you doesn't consider the CC&R's consent? 23 No. Most of the lenders attempted to send

The problem associated with what happened in

24

25

their deeds of trust.

EXHIBIT Q

GENERAL INFORMATION		
PARCEL NO.	139-20-612-037	
OWNER AND MAILING ADDRESS	RADECKI TIM 5225 REBECCA RD LAS VEGAS NV 89130	
LOCATION ADDRESS CITY/UNINCORPORATED TOWN	2102 LOGSDON DR NORTH LAS VEGAS	
ASSESSOR DESCRIPTION	CAMBRIDGE HGTS PHASE 2 PLAT BOOK 79 PAGE 58 LOT 38 BLOCK 6	
RECORDED DOCUMENT NO.	* 20130904:01985	
RECORDED DATE	Sep 4 2013	
VESTING	NS	
COMMENTS		

*Note: Only documents from September 15, 1999 through present are available for viewing.

ASSESSMENT INFORMATION AND SUPPLEMENTAL VALUE		
TAX DISTRICT	250	
APPRAISAL YEAR	2014	
FISCAL YEAR	2015-16	
SUPPLEMENTAL IMPROVEMENT VALUE	0	
SUPPLEMENTAL IMPROVEMENT ACCOUNT NUMBER	N/A	

REAL PROPERTY ASSESSED VALUE		
FISCAL YEAR	2014-15	2015-16
LAND	4900	6300
IMPROVEMENTS	23846	23429
PERSONAL PROPERTY	0	0
EXEMPT	0	0
GROSS ASSESSED (SUBTOTAL)	28746	29729
TAXABLE LAND+IMP (SUBTOTAL)	82131	84940
COMMON ELEMENT ALLOCATION ASSD	0	0
TOTAL ASSESSED VALUE	28746	29729
TOTAL TAXABLE VALUE	82131	84940

ESTIMATED LOT SIZE AND APPRAISAL INFORMATION		
ESTIMATED SIZE	0.23 Acres	
ORIGINAL CONST. YEAR	1998	
LAST SALE PRICE MONTH/YEAR	56197 9/2013	
LAND USE	110 - Single Family Residence	
DWELLING UNITS	1	

PRIMARY RESIDENTIAL STRUCTURE					
1ST FLOOR SQ. FT.	1080	CASITA SQ. FT.	0	ADDN/CONV	
2ND FLOOR SQ. FT.	0	CARPORT SQ. FT.	0	POOL	NO
3RD FLOOR SQ. FT.	0	STYLE	One Story	SPA	NO
UNFINISHED BASEMENT SQ. FT.	0	BEDROOMS	3	TYPE OF CONSTRUCTION	Frame-Stucco
FINISHED BASEMENT SQ. FT.	0	BATHROOMS	2 FULL	ROOF TYPE	Concrete Tile
BASEMENT GARAGE SQ. FT.	0	FIREPLACE	0		
TOTAL GARAGE SQ. FT.	380				

EXHIBIT R

A-13-676574-C

DISTRICT COURT CLARK COUNTY, NEVADA

Title to Property	COURT MINUTES August 27, 2013
A-13-676574-C	Wells Fargo Bank, N.A., Plaintiff(s)
	VS.
	Amanda Munar, Defendant(s)

August 27, 2013

9:00 AM

Motion for Summary

Judgment

HEARD BY: Scann, Susan

COURTROOM: RJC Courtroom 03D

COURT CLERK: Sylvia Perez

RECORDER:

Angie Calvillo

REPORTER:

PARTIES

PRESENT:

Schuler-Hintz, Kristin A., ESQ

Attorney for the Plaintiff

JOURNAL ENTRIES

- There being no opposition, COURT ORDERED, Plaintiff's Motion for Summary Judgment GRANTED. Ms. Schuler-Hintz made a record as to Plaintiff's request for amounts being the unpaid principle of \$207,846.00, interest of \$20,505.77, other fees, escrow advance of \$1,703.00, cost disbursement of \$1967.28 and attorney's fees of \$1,500.00 with the total judgment being \$233,536.44. Ms. Schuler-Hintz further advised she will be submitting judgment and order for the sale of property. Order SIGNED IN OPEN COURT.

PRINT DATE:

09/05/2013

Page 1 of 1

Minutes Date:

August 27, 2013

EXHIBIT S

Ballard Spahr

100 North City Parkway, Suite 1750 Las Vegas, NV 89106-4617 TEL 702-471-7000 FAX 702-471-7070 www.ballardspahr.com Sylvia O. Semper Tel: 702.868.7528 Fax: 702.868-7528 SemperS@ballardspahr.com

October 12, 2015

Office of the Attorney General 100 North Carson Street Carson City, Nevada 89701

Re: Wells Fargo Bank, N.A., as trustee v. . Munar, et al., Case No. A-13-676574-C

To The Nevada Attorney General:

Pursuant to NRS 30.130, please take notice that in the above-captioned action, defendant-in-intervention Wells Fargo Bank, N.A., as Trustee, on behalf of the Holders of the Harborview Mortgage Loan Trust Mortgage Pass Through Certificates Series 2006-12 ("Wells Fargo") is challenging the constitutionality of NRS § 116.3116 et seq. in the above-referenced matter. Full details can be found in the enclosed briefing.

Please do not hesitate to contact me if you have any questions or would like to discuss this matter.

Very truly yours,

Sylvia O. Semper

SOS Enclosure

DMWEST #13096320 v2

Electronically Filed 10/29/2015 03:19:13 PM

OPPS 1 MARILYN FINE, ESQ. (Nevada Bar No. 005949) mfine@nevadafirm.com **CLERK OF THE COURT** RACHEL E. DONN (Nevada Bar No. 10568) rdonn@nevadafirm.com 3 Holley Driggs Walch Fine Wray Puzey & Thompson 400 South Fourth Street, 3rd Floor 4 Las Vegas, Nevada 89101 5 Telephone: (702) 791-0308 Facsimile: (702) 791-1912 6 Attornevs for Tim Radecki, Plaintiff in Intervention 8 9 **DISTRICT COURT** 10 **CLARK COUNTY, NEVADA** -000-11 WELLS FARGO BANK, N.A., AS TRUSTEE, ON Case No. A-13-676574-C 12 BEHALF HOLDERS OF THE Dept. No. XXIX OF THE **HARBORVIEW** MORTGAGE **TRUST** 13 LOAN **PASS-THROUGH** MORTGAGE LOAN CERTIFICATES, SERIES 2006-12, PLAINTIFF-IN-INTERVENTION'S 14 OPPOSITION TO WELLS FARGO Plaintiff. 15 BANK'S MOTION FOR SUMMARY **JUDGMENT** 16 VS. **Arbitration Exemption:** 17 AMANDA R. MUNAR; CAMBRIDGE HEIGHTS, A Title to Real Property PLANNED COMMUNITY; DOES I-X; and ROES I-10 18 inclusive. 19 Defendants. TIM RADECKI. 20 Plaintiff- in-Intervention. 21 22 23 AMANDA MUNAR; WELLS FARGO, N.A. AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE 24 HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN PASS-THROUGH 25 CERTIFICATES, SERIES 2006-12; DOES 1-20; and **ROE CORPORATIONS 1-20,** 26 Defendant-in-Invention. 27 28 111

-1-

10742-05/1595343

AA2 290

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	

24

25

26

27

28

COMES NOW, Plaintiff-in-Intervention, TIM RADECKI ("Radecki"), by and through his attorneys of record Holley Driggs Walch Fine Wray Puzey & Thompson, and hereby files this Oppostion to the Motion for Summary Judgment filed by Defendant-in-Intervention 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 ("WFB").

This Opposition is based on the Memorandum of Points and Authorities, documents attached hereto, the pleadings and papers on file herein, and any argument of counsel as the Court may consider at the hearing on the matter.

DATED this 29th day of October, 2015.

HOLLEY DRIGGS WALCH FINE WRAY PUZEY & THOMPSON

By /s/Marilyn Fine
MARILYN FINE, ESQ. (# 005949)

400 South Fourth Street, 3rd Floor Las Vegas, Nevada 89101 Attorneys for Plaintiff-in-Intervention

MEMORANDUM OF POINTS AND AUTHORITIES

I.

SUMMARY OF FACTS

This matter involves property located at 2102 Logsdon Drive, North Las Vegas, Nevada, identified by the Clark County Assessor as APN: 139-20-612-037 (the "Property"). The Property is subject to CC&R's, which were recorded in 1996. The Property was annexed to the CC&Rs in 1987.

Amanda Munar purchased the Property in 2001 subject to the CC&Rs and a lien in favor of Cambridge Heights Community (the "HOA"). A deed of trust was recorded against the Property in 2006 (the "Deed of Trust"). An assignment of the Deed of Trust to WFB was recorded in 2011.

WFB's Complaint asserts two claims for relief: judicial foreclosure and deficiency judgment.
WFB's Complaint names two parties: Amanda R. Munar ("Debtor") and Cambridge Heights, A

10742-05/1595343 - 2 -

Planned Community (the "HOA"). Paragraph 18 of WFB's complaint asserts that the Deed of Trust is "prior and paramount to the interests of any Defendants" and that WFB is "entitled to judgment foreclosing the interests of any Defendants hereto in the Property and forever barring that interest and the interest and that of any successors, assigns or heirs." WFB's prayer seeks a declaration finding that WFB's Deed of Trust is superior to any right, title, interest, lien, equity or estate of the Defendants. See Complaint.

When WFB filed its Complaint on on February 12, 2013, the HOA was in the process of foreclosing under its HOA Lien. The HOA Notice of Delinquent Lien and HOA Notice of Default were recorded on July 25, 2012 and September 13, 2012, respectively. See WFB Motion, Exhibits I and J. WFB had notice of the HOA Lien foreclosure, by and through its predecessor, Bank of America and MERS. WFB did not seek or obtain an injunction to stop the HOA Lien Foreclosure pending its litigation nor did it pay the HOA any portion of the delinquent HOA Lien. See following Exhibits attached to Radecki's Motion for Summary Judgment ("Radecki's MSJ"): (1) Exhibit 10-F: certificate of mailings for HOA Notice of Default to Com Unity Lending, Bank of America and MERS and (2) Exhibit 10-A: Affidavit of Susan Moses authenticating documents.

A Notice of HOA Foreclosure Sale was recorded on May 13, 2013; and mailed via certified mail to WFB, WFB's servicing agent (Select Portfolio) and WFB's attorneys in the judicial foreclosure action (McCarthy & Holthus, LLP) on May 15, 2013. See following Exhibits attached to Radecki's MSJ: (1) Exhibit 10-H: certificate of mailings for HOA Notice of Sale to WFB; Select Portfolio Servicing, Inc.; McCarthy & Holthus; Bank of America; MERS; and Com Unity Lending (and in particular certificate signed by WFB on last page); and (2) Exhibit 10-A: Affidavit of Susan Moses authenticating documents. WFB received actual notice of the HOA Foreclosure Sale, but did nothing to stop the sale or otherwise protect its security interest.

On July 25, 2013, WFB filed a motion for summary judgment, and a hearing was scheduled for August 27, 2013. The HOA Lien Foreclosure Sale occurred on August 23, 2013. Twenty people attended the auction. It is unknown whether any representatives of WFB

10742-05/1595343 - 3 -

attended the auction. However, it is undisputed that WFB did not bid at the auction because there was only one bidder, Tim Radecki. See Receipt of Funds, Cashier's Check and Certificate of Sale attached to Radecki's MSJ as Exhibit 10-M.

As supported by the Receipt of Funds attached to Radecki's MSJ as Exhibit 10-M, the opening bid at the auction was \$3,717.83; and as supported by delinquency accounting attached to Radecki's MSJ as Exhibit 10-L, the opening bid equaled the unpaid balance of the entire delinquent HOA Lien on the date of the HOA Foreclosure Sale. See also Exhibit 10-A, affidavit authenticating the documents. Tim Radecki tendered the winning bid of \$4,000.00. See Receipt of Funds, Cashier's Check and Certificate of Sale attached to Radecki's MSJ as Exhibit 10-M. NAS subsequently executed a Foreclosure Deed for Radecki, declaring an assessed value of \$56,197.00. See Declaration of Value form attached to WFB's Motion as Exhibit O and Page 38 of the Deposition of Christopher Yergensen of NAS attached to WFB's Motion as Exhibit P. See also Pages 38 and 39 of the Deposition of Christopher Yergensen of NAS attached hereto as Exhibit 1. However, the Property's liquidation value in light of the uncertainty in the law and pending litigation was likely substantially less. See generally excerpts from Deposition of Christopher Yergensen in Opps Exhibit 1 hereof, stating:

- Q. And do you think the value listed on Line Item 3(a) is a reasonable estimate for the value of the property at the time NAS conducted the foreclosure sale?
- A. You know what, if Clark County thought it was, then I guess we did too. We are taking it directly from the Clark County Assessor's page. I guess if that is what they thought the value was, we just use it.

To Answer your question, that is what we are instructed to do so by Clark County in order to get their foreclosure deed recorded.

- Q. Do you have any reason to dispute that that would be the approximate value of the Property?
 - A. Absolutely. From a legal perspective?
 - Q. Why is that?
- A. Whoever bought this property is buying clouded title, an invite to litigation, and it is a foreclosure deed. Just real estate law, you are never going to get clear title from a title company. I argued with the Clark County District Attorney why they should list the sales price instead of the total value they believe because whoever is taking title to this property is walking into litigation. It is certainly not clear and marketable title. It was a revenue play from Clark County.

2 3 4

5 6

7 8

10

11

9

12 13

14

15

16

17

18

19 20

21

22

23 24

25

///

111

26

27

28

10742-05/1595343

Deposition of Christopher Yergensen, page 38, line 4 to page 39, line 6.

In this Case, the purchaser of the Property walked straight into litigation because litigation was already pending. WFB had already filed a Complaint and Motion for Summary Judgment. Four days after the HOA Lien Foreclosure Sale, the Court held a hearing on WFB's Motion for Summary Judgment. On September 12, 2013, the Court entered a judgment in favor of WFB and against Amanda Munar in the amount of \$230,069.16. With respect to the HOA, the judgment states in pertinent part that WFB's first deed of trust is "superior to all right, title, interest, lien, equity or estate of the Defendants with the exception of any super priority lien rights held by any Defendant pursuant to NRS 116.3116." Judgment, page 2, paragraph 3 (emphasis added).

The Foreclosure Deed was recorded on September 4, 2013. The Foreclosure Deed contains recitals regarding NAS's compliance with all requirements of law, including elapsing of time, mailing of notices, posting and publication. See recorded Foreclosure Deed attached to Radecki's MSJ as Exhibit 2. Mr. Radecki intervened in the action in December 2013.

П.

ARGUMENT

A. Introduction

NRS 116.3116 gives a homeowners' association a true priority lien such that its foreclosure extinguishes a first deed of trust, and the lien may be foreclosed nonjudicially. SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 130 Nev. Adv.Rep. 75, 334 P.3d 408, 409 (2014). WFB seeks to set aside the HOA Lien Foreclosure Sale based on three arguments: (1) the HOA Lien Foreclosure Sale was commercially unreasonable because the purchase price was grossly inadequate; (2) the statutes are facially unconstitutional; and (3) the HOA Lien Foreclosure Sale was a fraudulent conveyance. WFB's arguments lack merit for the reasons set forth below.

111 111

- 5 -

B. The HOA Foreclosure Sale was Commercially Reasonable

1. Gross Inadequacy of Price Alone is Insufficient Grounds for Voiding the Sale

The documents before this Court show that the HOA/NAS complied with all provisions of the HOA lien statutes pertaining to nonjudicial foreclosure sales (NRS 116.31162 through 116.31168 and 107.090). In addition, the documents before this Court establish that there was nothing fraudulent, collusive, unfair or oppressive about the subject HOA Lien Foreclosure Sale. Notwithstanding the foregoing, WFB claims that the HOA Lien Foreclosure Sale was commercially unreasonable because the winning bid was allegedly too low and urges this Court to void the HOA Lien Foreclosure on that basis alone.

It is well-established Nevada law that "mere inadequacy of price without proof of some element of fraud, unfairness or oppression that could account for and bring about inadequacy of price is not sufficient to warrant the setting aside of a trustee's sale." Golden v. Tomiyasu, 79 Nev. 503, 504, 387 P.2d 989, 989 (1963).

Even assuming that the price was inadequate, that fact standing alone would not justify setting aside the trustee's sale. . . . inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price.

Tomiyasu at 514, 995 (citations omitted) (emphasis added).

In <u>Tomiyasu</u>, the plaintiff sought to void a trustee's sale for various reasons, including the inadequacy of price. The property was valued at approximately \$200,0000 and sold for \$18,025.73 (which is 9% of the value without adjustment for liens). In considering the issue, the Nevada Supreme Court conducted an exhaustive examination of cases, regarding voidance of foreclosure sales based on the gross inadequacy of price; and determined that the rule stated therein was "mere inadequacy of price alone is not sufficient to invalidate the sale." <u>Tomiyasu</u> at 511, 993. However, the Court noted that many cases qualified the rule by "saying 'unless the inadequacy is so gross as to shock the conscience' or 'unless it [inadequacy of price] is so gross as to raise the inference of fraud or imposition' or similar language" (hereafter referred to as. "shock-the-conscience qualifier(s)"). <u>Tomiyasu</u> at 512, 993. The Nevada Supreme Court

further noted that it had used a shock-the-conscience qualifier in <u>Dazet v. Landry</u>, 21 Nev. 291, 30 P. 1064, 1067 (1892), but stated that "it was entirely unnecessary to the decision itself and was pure dictum." <u>Tomiyasu</u> at 512, 994.¹ After thoughtful and painstakenly thorough consideration, the Nevada Supreme Court adopted the rule that:

inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made; there must be in addition proof of some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price.

Tomiyasu at 514, 995. In adopting the rule, the Nevada Supreme Court rejected the use of any shock-the-conscience qualifiers, and critized the dictum in <u>Dazet</u>. <u>Tomiyasu</u> at 514-515, 995 ("in approving the rule thus stated, we necessarily reject the dictum in Dazet v. Landry, supra, implying that the rule requiring more than mere inadequacy of price will not be applied if 'the inadequacy be so great as to shock the conscience."").

The <u>Tomiyasu</u> case is squarely on point. Yet WFB never mentions the <u>Tomiyasu</u> case in its Motion; and urges this Court to adopt the shock-the-conscience qualifier referenced in the Restatement (Third) of Property, Mortgages, §8.3 (the shock-the-conscience qualifier, which states: "unless the price is grossly inadequate") and the holding in <u>Krohn v. Sweetheart Props</u>, <u>Ltd.</u>, 52 P.3d 774, 783 (Ariz. 2002) that a trustee's sale may be set aside soley on the basis that the bid price was grossly inadequate.² Based on the Restatement and <u>Krohn</u>, WFB argues that the HOA Lien Foreclosure Sale in this Case is void solely because the sales price was allegedly inadequate.

WFB urges this Court to find that contrary to the holding in <u>Tomiyasu</u>, gross inadequacy of price alone is grounds for voiding a foreclosure sale. This Court should deny WFB's argument because the Nevada Supreme Court has already ruled on this issue. The Nevada Supreme Court has already rejected the use of shock-the-conscience qualifiers like the one cited in the

- 7 -

¹ In <u>Dazet</u>, the Nevada Supreme Court stated "As a rule, something more than mere inadequacy of price must appear before a sale will be set aside, unless the inadequacy be so great as to shock the conscience." <u>Dazet</u> at 1064.

² As explained in the dissent, Arizona is one of only two jurisdictions that have adopted the Restatement view for non-judicial sales. See Krohn at 785.

5

Restatement, and declined to adopt a rule that low price by itself will invalidate a sale. Accordingly, this Court should deny WFB's argument for this reason alone.

2. As of the Time of Sale, the Price was Not Grossly Inadequate

This Court should also reject WFB's commercial unreasonableness argument because under the circumstances, the bid price of \$4,000.00 was commercially reasonable. Commercial reasonableness must be assessed as of the time the sale occurred. See Bourne Valley Court Trust v. Wells Fargo Bank, N.A., et al., No. 2:13-cv-00649-pmp, 2015 WL 310063, *5 (D. Nev. 2015). At the time of the HOA Lien Foreclosure Sale, the priority of association liens vis-a-vis first deeds of trust, and the effect of association lien foreclosures on first deeds of trust was uncertain. Potential purchasers at HOA lien foreclosure sales were essentially purchasing a lawsuit. The Nevada Supreme Court had yet to rule on these issues, purchasers were entrenched in litigation, and the courts were divided with the majority ruling in favor of the lenders. See Bourne Valley at *5, stating:

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

In <u>SFR</u>, the Nevada Supreme Court determined that associations have a true standalone super priority lien, and foreclosure extinguishes a first deed of trust. <u>SFR</u> at 409. However, the decision could have gone the other way. Tim Radecki would have acquired the Property subject to WFB's first deed of trust if the Nevada Supreme Court had determined that associations do not have a standalone lien and/or that a first deed of trust survives an HOA foreclosure. Under this circumstance, the Property would be severely "under water" with a <u>negative</u> value of

³ Unpublished decision cited for guidance only.

\$173,872.16 (assessed value of approximately \$56,197.00 minus \$230,069.16 owed on the Deed of Trust⁴). Under the circumstances, the foreclosure price of \$4,000.00 would have grossly exceeded the Property's negative value.

C. NRS 116's Notice Scheme is Constitutional

1. WFB's Constitutional Challenge Fails on Procedural Grounds

Nevada statutes require constitutional challengers to provide the Nevada Attorney General with notice. NRS 30.130 states in pertinent part: "[i]f the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard." In this Case, it appears that WFB failed to provide the Nevada Attorney General with notice of its motion for summary judgment and facial challenge to provisions of NRS 116.

The Certificate of Service for WFB's motion shows no notice to the Nevada Attorney General's office and as of this date, no separate of certificate of service showing notice to the Nevada Attorney General's office has been filed. As a result, this Court should disregard WFB's constitutional challenge for failing to comply with NRS 30.130.

2. WFB's Constitutional Challenge Fails on Substantive Grounds --WFB Cannot Meet its Burden of Proof and Supreme Court Thresholds

In Nevada, statutes are presumed to be valid, and the movant bears the burden of showing that statutes are unconstitutional. Flamingo Paradise Gaming v. Chanos, 125 Nev. 502, 509, 217 P.3d 546, 551 (2009). To prevail on a facially constitutional challenge, WFB must first show that the statute invokes constitutional protections (See Foti v. City of Menlo Park, 146 F.3d 629, 635 (9th Cir. 1998). If WFB can meet this first burden, then WFB must show that there are no set of circumstances under which the statute would be valid. U.S. v. Salerno, 481 U.S. 739, 745, 107 S.Ct. 2095 (1987); Déjà vu Showgirls v. Nev. Dep't of Taxation, 130 Nev. ____, 334 P.3d

⁴ See Restatement §8.3 comment b, stating "Where the foreclosure is subject to senior liens, the amount of those liens must be subtracted from the unencumbered fair market value of the real estate in determining the fair market value of the title being transferred by the foreclosure sale."

28 1

392, 398 (2014). See also illustrative constitutionality judicial review flow chart attached hereto as **Opps Exhibit 2**; and Ezel v. City of Chicago, 651 F.3d 684, 698 (7th Cir. 2011) as well as the law review article cited therein (Nicholas Quinn Rosenkranz, the Subject of the Constitution, 62 Stan. L.Rev at 1129-38 (2010), regarding constitutional challenges.

Here WFB cannot meet its burden. As discussed below, WFB cannot show that NRS 116.3116, et seq. invokes constitutional protections and cannot show that there are NO conceivable set of circumstances under which the statute would be valid.

(i) Due Process Rights are Not Invoked Due to Lack of State Action

WFB argues that NRS 116.3116, et seq. violates due process protections.

Prior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide "notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Mennonite Board of Missions v. Adams, 462 U.S. 791, 795, 103 S.Ct. 2706 (1983) (citations omitted).

WFB's argument fails because the "due process clause protects individuals only from governmental and not from private action." <u>Lugar v. Edmondson Oil Co.</u>, 457 U.S. 922, 930, 102 S.Ct. 2744, 2750 (1982). Constitutional rights do not apply to private conduct. <u>S.O.C. Inc. v. Mirage Casino-Hotel</u>, 117 Nev. 403, 410, 23 P.3d 243, 247 (2001). State action is subject to due process requirements, but private conduct is not. <u>National Collegiate Athletic Association v. Tarkanian</u>, 488 U.S. 179, 191, 109 S.Ct. 454, 461 (1988) (due process clause affords no shield to private conduct no matter how unfair the private conduct may be).

In this Case, foreclosure of the HOA Lien was not a state action. The State of Nevada did not foreclose on the HOA Lien. The HOA foreclosed on the HOA lien. The HOA's foreclosure was private conduct and, as such, the due process clause of the constitution does not apply. The State of Nevada's only involvement in any associations' foreclosure is indirect through Nevada's enactment of NRS 116 in 1991. However, enactment of NRS 116 does not transform an association's private conduct into a state action because NRS 116.3116, et seq. does

10742-05/1595343 - 11 -

not require associations to foreclose on their liens. NRS 116.3116, et seq. grants associations the right, but not the obligation, to foreclose on their liens. NRS 116.3116 gives associations the option to foreclose, but does not obligate them to do so. As a result, enactment of NRS 116 did not convert the HOA's private conduct into a state action. See Flagg Bros. v. Brooks, 436 U.S. 149, 164, 98 S.Ct. 1729 (1928) (state's acquiescence of private conduct does not convert private conduct to state action). Since there is no state action, the HOA Lien Foreclosure did not invoke the WFB's due process rights.

(ii) There are Circumstances Where the Statute Would be Valid

Even if the Court found that NRS 116.3116 invokes the WFB's constitutional rights, this Court should deny WFB's constitutional challenge because WFB cannot establish that there are no set of circumstances under which the statutes would be valid. Salerno at 745, 2095 (emphasis added); Déjà vu Showgirls at 398 (emphasis added). "A law is not facially unconstitutional unless it is unconstitutional in all of its applications." Ezcl at 698 (citing Washington State Grange v. Wash. State Republican Party, 552 U.S. 442, 449, 129 S.Ct. 1184 (2008) and Salerno at 745, 2095 (emphasis added). See also Foti at 635 (ordinance is facially unconstitutional if it is unconstitutional in every conceivable application).

If the court finds that the statute invokes constitutional protections and there are no set of circumstances under which the statute would be valid, the court's analysis necessarily stops at that point with a finding that the statute is unconstitutional and void. See Ezell at 689-699, stating "The remedy is necessarily directed at the statute itself and must be injunctive and declaratory; a successful facial attack means the statute is wholly invalid and cannot be applied to anyone" and the "law, if unconstitutional, is unconstitutional without regard to its application – or in all its applications, as Salerno requires."

Accordingly, if the court finds that a statute is "facially" unconstitutional, it would not continue its analysis or otherwise consider whether the statute is unconstitutional "as-applied" because the statute is unconstitutional no matter how or when it is applied or enforced. See Ezell at 697 ("In a facial constitutional challenge, individual applications of facts do not matter. Once standing is established, the plaintiff's personal situation becomes irrelevant.") See also

conducte

10742-05/1595343

Rosenkranz at 1276 (specific facts of enforcement cannot matter in a facial challenge "for the simple reason that the constitutional violation is complete before those facts arise.") A facially unconstitutional statute is void on its face, which means that it cannot be applied or enforced constitutionally in *any* circumstance. See Salerno at 745, 2100, Ezell at 689-699.

In <u>SFR</u>, the Nevada Supreme Court found a set of circumstances under which NRS 116.3116 would be valid, a circumstance which is identical to the Case at hand in all material respects. SFR's complaint alleged that the foreclosure sale was properly conducted and noticed; and the lender received actual notice of the sale, but "sat on their hands" and did nothing to protect its security interests. In this circumstance, NRS 116.3116 is valid, especially since NRS 116.3116 requires notice to lenders as described below.

3. Nevada Statutes Require Mandatory Notice to Lenders

At the time of the HOA Lien Foreclosure Sale, NRS 116.3116, et seq. together with NRS 107.090, and Nevada's Recording Statutes required associations to provide foreclosure notices to holders of security interests. When interpreting the meaning of a statute, the court should construe the statute in a reasonable manner in light of the policy and spirit of the law, avoiding absurd results. Desert Valley Water Co. v. State Engineer, 104 Nev. 718, 720, 766 P.2d 886, 886-87 (1998).

NRS 116.31162 through 116.31168 enables associations to foreclose on their liens nonjudicially. <u>SFR</u> at 409. NRS 116.31162 states:

- 1. Except as otherwise provided in subsection 5 or 6, in a condominium, in a planned community, in a cooperative where the owner's interest in a unit is real estate under NRS 116.1105, or in a cooperative where the owner's interest in a unit is personal property under NRS 116.1105 and the declaration provides that a lien may be foreclosed under NRS 116.31162 to 116.31168, inclusive, the association may foreclose its lien by sale after all of the following occur:
- (a) The association has mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest, at his or her address, if known, and at the address of the unit, a notice of delinquent assessment which states the amount of the assessments and other sums which are due in accordance with subsection 1 of NRS 116.3116, a description of the unit against which the lien is imposed and the name of the record owner of the unit.

⁵ Radecki's complaint-in-intervention makes the same allegations, and the documents before this Court establish that these allegations are true. The HOA Lien Forelcourse Sale was properly conducted and noticed; and WFB received actual notice of the sale.

27

28

(b) Not less than 30 days after mailing the notice of delinquent assessment pursuant to paragraph (a), the association or other person conducting the sale has executed and caused to be recorded, with the county recorder of the county in which the common-interest community or any part of it is situated, a notice of default and election to sell the unit to satisfy the lien which must contain the same information as the notice of delinquent assessment and which must also comply with the following:

(1) Describe the deficiency in payment.

(2) State the name and address of the person authorized by the association to enforce the lien by sale.

(3) Contain, in 14-point bold type, the following warning:

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

- (c) The unit's owner or his or her successor in interest has failed to pay the amount of the lien, including costs, fees and expenses incident to its enforcement, for 90 days following the recording of the notice of default and election to sell.
- 2. The notice of default and election to sell must be signed by the person designated in the declaration or by the association for that purpose or, if no one is designated, by the president of the association.
- 3. The period of 90 days begins on the first day following:

(a) The date on which the notice of default is recorded; or

- (b) The date on which a copy of the notice of default is mailed by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and at the address of the unit, whichever date occurs later.
- 4. An association may not mail to a unit's owner or his or her successor in interest a letter of its intent to mail a notice of delinquent assessment pursuant to paragraph (a) of subsection 1, mail the notice of delinquent assessment or take any other action to collect a past due obligation from a unit's owner or his or her successor in interest unless, not earlier than 60 days after the obligation becomes past due, the association mails to the address on file for the unit's owner:
- (a) A schedule of the fees that may be charged if the unit's owner fails to pay the past due obligation;

(b) A proposed repayment plan; and

- (c) A notice of the right to contest the past due obligation at a hearing before the executive board and the procedures for requesting such a hearing.
- 5. The association may not foreclose a lien by sale based on a fine or penalty for a violation of the governing documents of the association unless:
- (a) The violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community; or
- (b) The penalty is imposed for failure to adhere to a schedule required pursuant to NRS 116.310305.
- 6. The association may not foreclose a lien by sale if:
 - (a) The unit is owner-occupied housing encumbered by a deed of trust;

10742-05/1595343 - 13 -

28

(b) The beneficiary under the deed of trust, the successor in interest of the beneficiary or the trustee has recorded a notice of default and election to sell with respect to the unit pursuant to subsection 2 of NRS 107.080; and

(c) The trustee of record has not recorded the certificate provided to the trustee pursuant to subparagraph (1) or (2) of paragraph (d) of subsection 2 of NRS 107.086.

NRS 116.31163 states:

- 1. Each person who has requested notice pursuant to NRS 107.090 or 116.31168;
- 2. Any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest; and
- 3. A purchaser of the unit, if the unit's owner has notified the association, 30 days before the recordation of the notice, that the unit is the subject of a contract of sale and the association has been requested to furnish the certificate required by NRS 116.4109.

NRS 116.311635 states:

- 1. The association or other person conducting the sale shall also, after the expiration of the 90 days and before selling the unit:
- (a) Give notice of the time and place of the sale in the manner and for a time not less than that required by law for the sale of real property upon execution, except that in lieu of following the procedure for service on a judgment debtor pursuant to NRS 21.130, service must be made on the unit's owner as follows:
- (1) A copy of the notice of sale must be mailed, on or before the date of first publication or posting, by certified or registered mail, return receipt requested, to the unit's owner or his or her successor in interest at his or her address, if known, and to the address of the unit; and
- (2) A copy of the notice of sale must be served, on or before the date of first publication or posting, in the manner set forth in subsection 2; and
- (b) Mail, on or before the date of first publication or posting, a copy of the notice by certified or registered mail, return receipt requested, to:
- (1) Each person entitled to receive a copy of the notice of default and election to sell notice under NRS 116.31163;
- (2) The holder of a recorded security interest or the purchaser of the unit, if either of them has notified the association, before the mailing of the notice of sale, of the existence of the security interest, lease or contract of sale, as applicable; and
 - (3) The Ombudsman.
- 2. In addition to the requirements set forth in subsection 1, a copy of the notice of sale must be served:
- (a) By a person who is 18 years of age or older and who is not a party to or interested in the sale by personally delivering a copy of the notice of sale to an occupant of the unit who is of suitable age; or
- (b) By posting a copy of the notice of sale in a conspicuous place on the unit.
- 3. Any copy of the notice of sale required to be served pursuant to this section must include:

10742-05/1595343 - 14 -

- (a) The amount necessary to satisfy the lien as of the date of the proposed sale; and
 - (b) The following warning in 14-point bold type:

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL (name and telephone number of the contact person for the association). IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT (toll-free telephone number designated by the Division) IMMEDIATELY.

- 4. Proof of service of any copy of the notice of sale required to be served pursuant to this section must consist of:
- (a) A certificate of mailing which evidences that the notice was mailed through the United States Postal Service; or
- (b) An affidavit of service signed by the person who served the notice stating:
 - (1) The time of service, manner of service and location of service;
- (2) The name of the person served or, if the notice was not served on a person, a description of the location where the notice was posted on the unit.

NRS 116.31164 states:

and

- 1. The sale must be conducted in the county in which the common-interest community or part of it is situated, and may be conducted by the association, its agent or attorney, or a title insurance company or escrow agent licensed to do business in this State, except that the sale may be made at the office of the association if the notice of the sale so provided, whether the unit is located within the same county as the office of the association or not. The association or other person conducting the sale may from time to time postpone the sale by such advertisement and notice as it considers reasonable or, without further advertisement or notice, by proclamation made to the persons assembled at the time and place previously set and advertised for the sale.
- 2. On the day of sale originally advertised or to which the sale is postponed, at the time and place specified in the notice or postponement, the person conducting the sale may sell the unit at public auction to the highest cash bidder. Unless otherwise provided in the declaration or by agreement, the association may purchase the unit and hold, lease, mortgage or convey it. The association may purchase by a credit bid up to the amount of the unpaid assessments and any permitted costs, fees and expenses incident to the enforcement of its lien.
- 3. After the sale, the person conducting the sale shall:
- (a) Make, execute and, after payment is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty which conveys to the grantee all title of the unit's owner to the unit;
- (b) Deliver a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or his or her successor or assign; and
- (c) Apply the proceeds of the sale for the following purposes in the following order:
 - (1) The reasonable expenses of sale;

27

28

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

of record; and
(5) Remittance of any excess to the unit's owner.

NRS 116.31166 states:

- 1. The recitals in a deed made pursuant to NRS 116.31164 of:
- (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;
 - (b) The elapsing of the 90 days; and
- (c) The giving of notice of sale, are conclusive proof of the matters recited.
- 2. Such a deed containing those recitals is conclusive against the unit's former owner, his or her heirs and assigns, and all other persons. The receipt for the purchase money contained in such a deed is sufficient to discharge the purchaser from obligation to see to the proper application of the purchase money.
- 3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164 vests in the purchaser the title of the unit's owner without equity or right of redemption.

NRS116.31168 states:

- 1. The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community.
- 2. An association may, after recording a notice of default and election to sell, waive the default and withdraw the notice or any proceeding to foreclose. The association is thereupon restored to its former position and has the same rights as though the notice had not been recorded.

NRS 116.3116 requires the association to provide the delinquent owner with notice of delinquent assessment lien. NRS 116.31162(1)(a). If the delinquent owner fails to cure the delinquency after at least 30 days, the association may move forward with nonjudicial foreclosure of its lien. NRS 116.31162(1)(b). The association (or other person conducting the sale) must execute and record a notice of default and election to sell the unit to satisfy the lien. NRS 116.31162(1)(b). The association or other person conducting the sale must mail a copy of the notice of default to the delinquent owner and "any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, 30 days before the

10742-05/1595343 - 16 -

10742-05/1595343

recordation of the notice of default, of the existence of the security interest." NRS 116.31163.

Pursuant to NRS 116.31163, the association must mail a copy of the notice of default to lienholders, who provide the association with notice of their security interest at least 30 days prior to recordation of the notice of default. The statute does not specify the type of notice lienholders must provide to associations. Accordingly, the lienholders may provide actual and/or constructive notice to the HOA.

Lienholders may provide associations with actual notice of their security interest by mailing the association a copy of their deeds of trust or other security agreements. In addition, lienholders may provide associations with constructive notice of their security interest by simply recording their deeds of trust or security agreements in the official records of the county recorder. NRS 111.320 states:

Every such conveyance or instrument of writing, acknowledged or proved and certified, and recorded in the manner prescribed in this chapter or in NRS 105.010 to 105.080, inclusive, must from the time of filing the same with the Secretary of State or recorder for record, **impart notice to all persons of the contents thereof**; and subsequent purchasers and mortgagees shall be deemed to purchase and take with notice.

(Emphasis added.)

Because recordation of a document imparts notice to all persons of the contents thereof, simply recording a deed of trust or other security agreement imparts notice to associations of the lienholders' security interests in property. As a result, recordation of a deed of trust triggers mandatory notice of an HOA lien foreclosure. Associations or other parties conducting the foreclosure are required to mail a copy of the HOA notice of default to holders of security interests identified in recorded deeds of trust/security agreements pursuant to NRS 116.31163 and NRS 111.320.

Associations and other parties conducting the foreclosure are also required to mail a copy of the notice of sale to holders of security interests. NRS 116.31165 requires the associations or other parties conducting the foreclosure to provide notice of the time and place of any foreclosure sale to holders of recorded security interests. See NRS 116.31165(b)(1) and (2). Additionally, NRS 116.31168 requires the association and its agents to provide foreclosure

- 17 -

notices to persons who request notice and junior lienholders. See SFR at 411 (NRS 116.31168 imposes specific timing and notice requirements).

NRS116.31168(1) states in pertinent part: "[t]he provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed." (Emphasis added.) In so doing, NRS116.31168(1) incorporates NRS 107.090 into NRS 116.3116, et seq. in its entirety. However, in this context, references to "deed of trust" in NRS 107.090 must be substituted with the term "association lien" to avoid an absurd result.

In applying NRS 107.090 to the foreclosure of an association's lien as if a deed of trust were being foreclosed (which is expressly required by NRS 116.31168), the court should read NRS 107.090 as follows:

- 1. As used in this section, "person with an interest" means any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust [association lien], as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated.
- 2. A person with an interest or any other person who is or may be held liable for any debt secured by a lien on the property desiring a copy of a notice of default or notice of sale under a deed of trust with power of sale [association lien] upon real property may at any time after recordation of the deed of trust record [the association's CC&Rs] in the office of the county recorder of the county in which any part of the real property is situated an acknowledged request for a copy of the notice of default or of sale. The request must state the name and address of the person requesting copies of the notices and identify the deed of trust [association lien] by stating the names of the parties thereto, the date of [association's CC&Rs'] recordation, and the book and page where it is recorded.
- 3. The trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, [NRS 166.3116, et. seq.] cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to:
- (a) Each person who has recorded a request for a copy of the notice; and
 (b) Each other person with an interest whose interest or claimed interest is subordinate to the deed of trust [association lien].
- 4. The trustee or person authorized to make the sale shall, at least 20 days before the date of sale, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice of time and place of sale, addressed to each person described in subsection 3.
- 5. An [Another] association may record in the office of the county recorder of the county in which a unit governed by the association is situated an acknowledged request for a copy of the deed upon sale of the unit pursuant to a deed of trust [association lien]. A request recorded by an association must include, without limitation:

10742-05/1595343

- (a) A legal description of the unit or the assessor's parcel number of the unit;
 - (b) The name and address of the association; and
 - (c) A statement that the request is made by an association.
- 6. A request recorded by an [another] association pursuant to subsection 5 regarding a unit supersedes all previous requests recorded by the association pursuant to subsection 5 regarding the unit.
- 7. If a trustee or person authorized to record a notice of default records the notice of default for a unit regarding which an [another] association has recorded a request pursuant to subsection 5, the trustee or authorized person shall mail to the [other] association a copy of the deed upon the sale of the unit pursuant to a deed of trust [association lien] within 15 days after the trustee records the deed upon the sale of the unit.
- 8. No request recorded pursuant to the provisions of subsection 2 or 5 affects the title to real property, and failure to mail a copy of the deed upon the sale of the unit after a request is made by an [another] association pursuant to subsection 5 does not affect the title to real property.
- 9. As used in this section:
 - (a) "Association" has the meaning ascribed to it in NRS 116.011.
 - (b) "Unit" has the meaning ascribed to it in NRS 116.093.

In the context of an HOA Lien foreclosure, NRS 107.090 requires the association and other persons conducting the foreclosure to mail the HOA notice of default and notice of sale to each person who has recorded a request for a copy of the notice (NRS 107.090(2)(a) and NRS 101.090(4)) and each person with an interest subordinate to the association lien. (NRS 107.090(2)(b) and NRS 101.090(4)). Because first deeds of trusts are subordinate to the super priority portion of the HOA lien and junior deeds of trust are subordinate to the entire HOA lien, associations and their agents must provide all deed of trust holders with a copy of the notice of default pursuant to NRS 107.090(2)(b).

The documents before this Court show that the HOA's agent, NAS, complied with all of these notice provisions. The Foreclosure Deed recitals so state, and these recitals are conclusive proof as to the truth thereof. NRS 116.311. In addition, the documents before this Court show that NAS sent the foreclosure notices as required by NRS 116.31163 through NRS 116.31168 and NRS 107.090. WFB had actual knowledge of the foreclosure proceedings and the HOA Lien Foreclosure Sale. WFB received the HOA Notice of Sale. WFB's servicing agent received the HOA Notice of Sale. And WFB's attorneys received the HOA Notice of Sale. Under

10742-05/1595343 - 19 -

the circumstances, the Court should find no due process violations. The statute is valid facially and as applied to the specific facts of this Case.

4. Amendments to NRS 116 Reaffirm Existing Notice Requirements

In 2015, the Nevada legislature amended the HOA nonjudicial foreclosure notice provisions and in so doing, reaffirmed the salient notice requirements. Like the former statutes, the amended statutes require the association to mail the notice of default and notice of sale to security holders who record their liens prior to recordation of the association's notice of default. As discussed, this was the statutory requirement at the time of the subject HOA Lien foreclosure. At the time of the HOA Lien Foreclosure Sale, NRS 116.31163 required the association or other person conducting the sale to mail the notice of default to holders of security interest, who had notified the association 30 days prior to recordation of the notice of default. Since the statute did not specify the mode of notification, lien holders could provide actual notice or constructive notice; and pursuant to Nevada's recording statutes, recordation of the security interest imparts constructive notice. See NRS 116.31162 and NRS 111.320.

NRS 107.090 also requires the association or person authorized to record a notice of default to mail copies of the notice of default to persons who recorded a request for a copy of the notice and junior lienholders (including first deed of trust holders) within 10 days after recordation. See NRS 107.090(3). NRS 107.090 is incorporated into the HOA lien foreclosure statutes by and through NRS 116.31168.

Like the prior statute, the amended statute also requires the association or other person conducting the sale to mail a copy of the notice of sale to holders of security interests. After elapsing of the 90 day period, the association or other person conducting the sale must record, post and publish the notice of sale. In addition, they must mail a copy of the notice of sale to each person entitled to notice under NRS 116.31163 and holders of security interests if they had notified the association by providing actual notice or constructive notice through simply recording their security interests. See NRS 116.31165.

NRS 107.090 also requires the association or person authorized to record a notice of default to mail copies of the notice of sale to persons who recorded a request for a copy of the

10742-05/1595343

notice and junior lienholders (including first deed of trust holders) at least 20 days prior to the auction. See NRS 107.090(4). NRS 107.090 is incorporated into the HOA lien foreclosure statutes by and through NRS 116.31168.

In this Case, the HOA/NAS complied with statutory notice requirements. NAS mailed a copy of the HOA Notice of Default and the HOA Notice of Sale to the holder of the security interest received via certified mail. Moreover, WFB, its servicing agent and its attorneys signed the certificate of mailing receipts. WFB had actual notice of the HOA Lien foreclosure. As a result, there was absolutely no due process violation "as applied" to WFB.

D. WFB's Fraudulent Transfer Affirmative Defense Lacks Merit

WFB seeks to void the HOA Lien Sale pursuant to NRS 112.210(1)(a) based on NRS 112.180(1)(b) and NRS 112.190(1) of Nevada's Uniform Fraudulent Transfer Act ("NUFTA"). In 1987, the Nevada legislature adopted the Uniform Fraudulent Transfer Act (1984) virtually verbatim. See UFTA (1984). NUFTA "is designed to prevent a debtor from defrauding creditors by placing the subject property beyond the creditors' reach." Herup v. First Boston Fin., LLC, 123 Nev. 228, 232, 162 P.3d 870, 872 (2007).

NRS 112.210(1)(a) states: "In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in NRS 112.220, may obtain: (a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim."

NRS 112.180(1) states:

- 1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
- (a) With actual intent to hinder, delay or defraud any creditor of the debtor; or
- (b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
- (1) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
- (2) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond his or her ability to pay as they became due.

-21 -

///

NRS 112.190(1) states:

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

To prevail on a fraudulent transfer claim under NRS 112.180(1)(b) or 112.190(1), WFB must: (1) bring an action for relief against a transfer within the applicable statute of limitations, seeking avoidance of the transfer to the extent necessary to satisfy the creditor's claim; and (2) show that: (a) the debtor made a transfer; and (b) the debtor made a transfer without receiving a reasonably equivalent value in exchange for the transfer and that the debtor was insolvent at the time of the transfer or one the circumstances described in NRS 112.180(1)(b)(1) or (2) existed at the time of the transfer.

In this Case, WFB has not brought an action for relief against the HOA Lien Foreclosure Sale, seeking avoidance of the transfer to the extent necessary to satisfy the creditor's claim. WFB filed an Answer to Tim Radecki's Complaint-in-Intervention and asserted fraudulent transfer as an affirmative defense, but it did not file a counterclaim against Tim Radecki or bring any kind of action for relief pursuant to NRS 112.210(1)(a).

Furthermore, WFB has not satisfied the elements of NRS 112.180(1)(b) or NRS 112.190(1). At the close of discovery, WFB has produced no evidence showing the required elements of NRS 112.180(1)(b), namely that at the time of the HOA Lien Foreclosure Sale, Amanda Munar was engaged in or was about to engage in a business or a transaction for which her remaining assets were unreasonably small in relation to the business or transaction; Amanda Munar intended to incur, or believed or reasonably should have believed that she would incur, debts beyond her ability to pay as they became due. WFB has argued that Amanda Munar was insolvent under NRS 112.160(2) because she failed to pay WFB's loan and HOA assessments. However, this is a rebuttable presumption and a factual issue precluding summary judgment.

10742-05/1595343

3

4 5

67

8 9

11 12

10

13

15

14

16 17

18

19

2021

2223

24

25

26

27

28

⁶ The definition is identical to the UFTA (1984) definition, see §3, Value.

More importantly, WFB cannot show any of the other required elements of NRS 112.190. WFB cannot establish that the HOA Lien Foreclosure Sale was a "transfer" made by the debtor,

every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance.

Amanda Munar, NUFTA defines the term "transfer" as:

NRS 112.150(12).6

WFB argues that the HOA Lien Foreclosure Sale was a "transfer" of the Property made by the debtor, Amanda Munar. However, Ms. Munar did not transfer and convey the Property to Tim Radecki. The HOA/NAS transferred and conveyed the Property to Radecki under a validly conducted, noncollusive foreclosure sale. Based on that fact alone, this Court should reject WFB's argument. See In re Grandote Country Club Co. Ltd., 252 F.3d 1146, 1152 (2001), citing Weinman v. Simons 971 F.2d 577, 580 (10th Cir. 1992) where the 10th Circuit Court of Appeals rejected the creditor's argument that a tax lien sale is a "transfer" under the UFTA and stating "tax deed transfer made by the state of Colorado not by Grandote Country Club, and thus there was no transfer by a a 'debtor,' which is required to violate CUFTA." Grandote at 1152. An association lien sale is analogous to a tax lien sale because the property owner acquires property subject to the lien; and the statutes provide procedures/requirements for selling the property in satisfaction of delinquent tax liens and associtation liens, which include the requirement that the sales take place at public auctions. Like the court in Grandote, this Court should find that a noncollusive foreclosure sale is not a "transfer" under the UTFA and accordingly, WFB cannot prevail on its request for voidance of the HOA Lien Foreclosure Sale pursuant to NRS 112.210(1)(a).

Even if this Court construes the HOA Lien Foreclosure Sale as a "transfer," this Court should find that the alleged "transfer" occurred upon perfection of the HOA Lien not upon foreclosure of the HOA Lien. <u>Madrid v. Lawyers Title Insurance Corp.</u>, 725 F.2d 1197, 1200-1201 (9th Cir. 1983) (under 11 U.S.C 548 transfer took place upon perfection of the lien under

Nevada law not the foreclosure sale). <u>Madrid</u> applied provisions of 11 U.S.C. 548, which were in effect in 1983; provisions which are similar to NUFTA.

The holding in Madrid is supported by provisions of NRS 112.200, which state in pertinent part:

1. A transfer is made:

(a) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee....

NRS 112.200(1)(a) (emphasis added).

In this Case, the alleged "transfer" occurred when the HOA Lien was perfected. An association lien is perfected upon recordation of the CC&Rs pursuant to NRS 112.3116(5). Here, the CC&Rs were recorded in 1996. The HOA Lien was perfected on that date, several years before WFB's claim arose. WFB's Deed of Trust did not record until 2006. Thus, WFB cannot prevail on its request to void the HOA Lien Sale under 112.190(1) because WFB's claim did not arise prior to the alleged "transfer."

Furthermore, at the time of the HOA Lien Foreclosure Sale, Radecki paid reasonably equivalent value for the Property. "A reasonably equivalent value, for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with." <u>Safety Industries, Inc. v. Perkins</u>, 2014 WL 4922870 *2 (Nev. 2014)⁷ (citing <u>BFP v. Resolution Trust Corp.</u>, 511 U.S. 531, 541, 114 S.CT 1757, 1765 (1994)).

In <u>BFP</u>, the U.S. Supreme Court stated in pertinent part: "when a State's procedures are followed, the mere inadequacy of a foreclosure sale price is no basis for setting the sale aside." <u>BFP</u> 541, 1765. <u>BFP</u> pertains to mortgage foreclosures and dicta notes considerations for other foreclosures and forced sales may be different. However, this Court should find that under

⁷ Unpublished decision cited for guidance.

NUFTA there is no difference between mortgage foreclosures and association lien foreclosures and, as such, the foreclosure price paid at a regularly conducted noncollusive association lien foreclosure sale is reasonably equivalent value for the property purchased at the foreclosure sale. See also dicta in Safety Industries, Inc. where the Nevada Supreme Court distinguishes a debtor's auction of assets with the intent to hinder creditor's recovery on a judgment with foreclosures involving: (1) the forced sale of real property; (2) sales conducted pursuant to legislative controls; (3) competitive bidding; and (4) sellers motivated to obtain the highest price.

The holding in <u>BFP</u> is consistent with provisions of NUFTA, which provide that a purchaser gives reasonably equivalent value if he/she purchases the property at a regularly conducted noncollusive foreclosure sale.

NRS 112.170(2) sates:

For the purposes of paragraph (b) of subsection 1 of NRS 112.180 and NRS 112.190, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement.

NRS 112.170(2) applies to all regularly conducted, noncollusive foreclosure sales as well as all regularly conducted noncollusive executions of the power of sale under deeds of trust and security agreements. In its Motion, WFB argues that NRS 112.170(2) only applies to foreclosures of mortgages, deeds of trust and security agreements. However, UFTA contemplates all foreclosure sales not just foreclosures of mortgages, deeds of trust and security agreements. UFTA 3(a) and (b) is identical to NRS 112.170(1) and (2).

UFTA 3(a) states:

Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

UFTA 3(b) states:

For the purposes of Sections 4(a)(2) and 5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale

10742-05/1595343 - 25 -

3

45

6

7 8

9

11 12

13

1415

16

17 18

19

20

2122

2324

25

2627

28

for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

UFTA comments for 3(a) and 3(b) state in pertinent part:

- (2) Section 3(a) is adapted from § 548(d)(2)(A) of the Bankruptcy Code.
- (3) Section 3(a) does not indicate what is "reasonably equivalent value" for a transfer or obligation. Under this Act, as under § 548(a)(2) of the Bankruptcy Code, a transfer for security is ordinarily for a reasonably equivalent value notwithstanding a discrepancy between the value of the asset transferred and the debt secured, since the amount of the debt is the measure of the value of the interest in the asset that is transferred.
- (5) Subsection (b) rejects the rule of such cases as Durrett v. Washington Nat. Ins. Co., 621 F.2d 201 (5th Cir.1980) (nonjudicial foreclosure of a mortgage avoided as a fraudulent transfer when the property of an insolvent mortgagor was sold for less than 70% of its fair value); and Abramson v. Lakewood Bank & Trust Co., 647 F.2d 547 (5th Cir. 1981), cert. denied, 454 U.S. 1164 (1982) (nonjudicial foreclosure held to be fraudulent transfer if made without fair consideration). Subsection (b) adopts the view taken in Lawyers Title Ins. Corp. v. Madrid (In re Madrid), 21 B.R. 424 (B.A.P. 9th Cir.1982), aff'd on another ground, 725 F.2d 1197 (9th Cir.1984), that the price bid at a public foreclosure sale determines the fair value of the property sold. Subsection (b) prescribes the effect of a sale meeting its requirements, whether the asset sold is personal or real property. The rule of this subsection applies to a foreclosure by sale of the interest of a vendee under an installment land contract in accordance with applicable law that requires or permits the foreclosure to be effected by a sale in the same manner as the foreclosure of a mortgage. See G. Osborne, G. Nelson, & D. Whitman, Real Estate Finance Law 83-84, 95-97 (1979). The premise of the subsection is that "a sale of the collateral by the secured party as the normal consequence of default ... [is] the safest way of establishing the fair value of the collateral" 2 G. Gilmore, Security Interests in Personal Property 1227 (1965).

As supported by the UFTA comments, payment of a debt (e.g., indebtedness owed to HOA) in satisfaction of a lien is reasonable equivalent value and the price bid at a public foreclosure sale determines the fair value of the property sold. The rule applies to personal and real property, and extends to all foreclosures not just mortgage foreclosures. See comment 5, regarding application of UFTA 3(b) to contracts of sale.

Based on the foregoing, this Court should find that the price paid by Radecki at the subject HOA Lien Foreclosure Sale was reasonably equivalent value and reject WFB's fraudulent transfer argument on those grounds.

Finally, this Court should find that WFB waived any fraudulent transfer claims because it had actual notice of the HOA Lien Foreclosure Sale, could have stopped the HOA Lien

10742-05/1595343 - 26 -

5

7 8

10 11

12

13

9

14

15

1617

18

19 20

21

22

23

24

25

26

27

28

Foreclosure Sale or alternatively, could have bid at the HOA Lien Foreclosure Sale to protect its Deed of Trust. However, WFB DID NOTHING. Under the circumstances, it is disengious and contrary to the spirt and intent of NUFTA to void the HOA Lien Foreclosure Sale.

III.

CONCLUSION

Plaintiff respectfully requests this Court to deny WFB's Motion for Summary Judgment. As provided in Golden v. Tomiyasu, Nevada courts cannot void a trustee's sale based on inadequacy of price alone. Proof of fraud, collusion or oppression is required; and in this Case, WFB has not alleged, nor can it prove, any elements of fraud, collusion or oppression. Accordingly, WFB's argument that the HOA Lien Foreclosure Sale was commercially unreasonable fails as a matter of law.

WFB's argument that the HOA Lien Foreclosure Sale was a fraudulent transfer also fails as a matter of law because NRS 112 does not apply to regularly conducted, noncollusive real property foreclosure auctions and even if it did apply, WFB cannot establish the essential elements of a fraudulent transfer claim. WFB cannot establish that its claim arose prior to a transfer made by the debtor or that the debtor made the transfer for less than reasonably equivalent value. The debtor, Amanda Munar, did not convey the Property in this Case. The Conveyance was made by the HOA's agent and accordingly, the HOA Lien Foreclosure was not a "transfer" under NUFTA. Additionally, the transfer occurred contemporaneously with Amanda Munar's acquisition of the Property. The HOA Lien perfected prior to Amanda Munar's acquisition of the Property; and WFB's claim did not arise until several years later. Moreover, WFB cannot show that Radecki did not pay reasonably equivalent value because a reasonably equivalent value for foreclosed property is the price paid at a regularly conducted non-collusive foreclosure sale. Inadequacy of a foreclosure sale price alone is no grounds for voiding the sale. As a result, this Court should reject WFB's fraudulent transfer argument. Rejection of this argument is especially prudent in light of the fact that WFB has actual notice of the HOA Lien Foreclosure, but did absolutely nothing to stop the sale or protect its Deed of Trust.

10742-05/1595343

Finally, WFB cannot prevail on its constitutional challenge. The statutes are constitutional "on their face" and "as applied" to WFB under the circumstances of this Case. With respect to a facial challenge, WFB cannot meet the standard set in Salerno and Déjà vu Showgirls because WFB cannot show that there are NO set of circumstances under which the statute would be valid. The circumstances in this Case establish the validity of NRS 116.31162 through NRS 116.31168 (including NRS 107.090). At the time of the HOA Lien Foreclosure Sale, these statutes provided for "opt in" notice to lenders with unrecorded security interests and mandatory notice to lenders with recorded security interests. In this Case, the association's agent, NAS, mailed copies of the foreclosure notices to the lender of record. WFB received actual notice of the HOA Lien foreclosure, but "sat on its hands" and did nothing. Due process is not offended where proper notice of a foreclosure sale was given and WFB failed to take the necessary steps to protect its security interest following its receipt of notice.

DATED: This 29th day of October, 2015

HOLLEY DRIGGS WALCH FINE WRAY PUZEY & THOMPSON

By /s/Marilyn Fine
MARILYN FINE, ESQ. (# 005949)
RACHEL E. DONN, ESQ. (# 010568)
400 South Fourth Street, 3rd Floor
Las Vegas, Nevada 89101
Attorneys for Plaintiff-in-Intervention,
Tim Radecki

10742-05/1595343

EXHIBIT LIST

3	Opps Exhibit No.	Description		
4	1 .	Excerpts from Deposition of Christopher Yergensen dated September 14, 2015.		
5	2	Constitutional Analysis Illustrative Flow Chart		

10742-05/1595343

- 29 -

AA2 318

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 29, 2015, I served a copy of the PLAINTIFF-IN-INTERVENTION'S OPPOSITION TO WELLS FARGO BANK'S MOTION FOR SUMMARY JUDGMENT in accordance with Administrative Order 14-2, addressed to the following:

Ballard Spahr

 Name
 Email
 Select

 Abran Vigil
 vioila@ballardspahr.com
 ✓

 Catherine
 wranghamc@ballardspahr.com
 ✓

 Mary Kay Carlton
 Caritonm@ballardspahr.com
 ✓

 SLC Docket Clerk
 DocketClerk SaltLakeCity@ballardspahr.com
 ✓

 Sylvia Semper
 sempers@ballardspahr.com
 ✓

/s/ Jan Simon

- 30 -

An employee of HOLLEY DRIGGS WALCH FINE WRAY PUZEY & THOMPSON

10742-05/1595343

EXHIBIT 1

		1	
1			
_	DISTRICT COURT		
2	CLARK COUNTY, NEVADA		
3	CLARR COUNTY, NEVADA		
4		!	
5	WELLS FARGO BANK, N.A., AS TRUSTEE ON BEHALF OF		
J	THE HOLDERS OF THE		
6	HABORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN		
7	PASS-THROUGH		
8	CERTIFICATES, SERIES 2006-12,		
9	Plaintiff,		
10	vs. No. A-13-676574-C		
	Dept. No. XXIX		
11			
12	CAMBRIDGE HEIGHTS, A PLANNED COMMUNITY; DOES		
	I-X; and ROES 1-10		
13	inclusive,		
14	Defendants.		
15			
16	DEPOSITION OF CHRISTOPHER YERGENSEN		
	30(b)(6) Nevada Association Services, Inc.		
17			
18	Taken on Monday, September 14, 2015 By a Certified Court Reporter		
19	At 3:01 p.m.		
	At Ballard Spahr, LLP		
20	100 North City Parkway, Suite 1750 Las Vegas, Nevada		
21	Las vegas, nevada		
22			
23			
24	Reported By: Cindy Huebner, CCR 806		
25			

37 1 form? 1 District Attorney why they should list the sales 2 We do. price instead of the total value they believe What are NAS's policies and procedures because whoever is taking title to this property 3 0 with respect to filling this form out? is walking into litigation. It is certainly not clear and marketable title. It was a revenue 5 Originally, we had put down the sales price of the property. For about two years, the play from Clark County. Clark County Treasurer's Office was accepting 7 ο. Just so we are clear. NAS did not announce that at the HOA sale? Do you recall the approximate dates? In 2013, we did not. We placed it 9 9 10 This might have been when I was at Red 10 upon our -- we did not -- we were actually --Rock. Clark County rotated their civil division 11 the policy went back and forth when we were 11 12 trying to record these foreclosure deeds. 12 at the District Attorneys. The new attorney that came in under the Assessor's Office figured Originally, we were just handing the 13 13 out a new way to increase revenue, and that was 14 foreclosure deed to the real estate investor and 14 through these HOA sales, and took a position letting them move forward to record their own 15 15 that in order for them to accept the foreclosure deed, and that is probably what caused the 16 16 deed, the value had to be listed rather than the 17 brouhaha with Clark County. 17 18 sales price. That was in probably 2011, 2012. 18 After that, we took it upon ourselves So the value that MAS takes is the 19 to just figure out the value shead of time and 19 20 value off of the Assessor's page usually. In place that within the amount that needed to these pages that you referred me to, the total foreclose on the property, and it looks like value/sales price of property, like I said, that is what we did here. 23 typically, we list the sales price at the 23 So neither the value --24 auction, but the Clark County Assessor's Office 24 A. Four months of my life trying to argue changed their mind and said no, you got to put with Clark County and the investors. All of 25 40 1 down a stated value. Our policy them is to take 1 them were pissed. the value off of the Assessor/Clark County ٥. But this amount, the \$56,197 that is listed here, that was not represented or Becorder's page. 3 o. And do you think that the value listed announced by MAS or anyone on behalf of the HOA on Line Item 3(a) is a reasonable estimate for at the time of the sale? the value of the property at the time NAS It was not. It was information that conducted the foreclosure sale? we could obtain prior to the sale so we could You know what, if Clark County thought calculate the real property transfer tax shead it was, then I guess we did too. We are taking of time, but it into the amount of the minimum 9 it directly from the Clark County Assessor's 10 bid by the association so that we could record 10 page. I guess if that is what they thought the the foreclosure deed in the event it sold. 11 11 value was, we just use it. 12 MS. SEMPER: I think I am done. Thank 12 13 To answer your question, that is what 13 YOU. we were instructed to do so by Clark County in MS. FINE: I have just a couple of 14 14 order to get their foreclosure deed recorded. 15 15 questions. Do you have any reason to dispute that 16 THE WITNESS: Okav. 16 17 that would be the approximate value of the 17 18 property? 19 EXAMINATION BY MS. FINE: Absolutely. From a legal perspective? 19 19 A. Why is that? 20 Earlier, you stated that if someone 20 O. Q. 21 Whoever bought this property is buying 21 wanted to pay the lien in full. NAS would accept 22 clouded title, an invite to litigation, and it 22 payment from anyone. I believe you even said is a foreclosure deed. Just real estate law, 23 23 the owner's grandma. you are mever going to get clear title from a 24 That's right. 24 λ. title company. I argued with the Clark County So is it fair to state that if the 0.

10 (Pages 37 to 40)

EXHIBIT 2

JUDICIAL REVIEW FLOW CHART DOES THE STATUTE INVOKE CONSTITUTIONEL PROTECTIONS? CONSTITUTIONAL CHALLENGE FAILS IS THE STATUTE FACIALLY CONSTITUTIONAL? IS THERE ANY SET OF CIRCUMSTRIKES UNDER WHICH THE STATUTE WOULD BE VALID? STATUTE FACIALLY NO YES THREADLY SAROUND 4 VOID IS THE STATUTE CONSTITUTIONAL DE APPLIED ? IN THE MOVINDAS SECHTIC CROUNSTANCE, WAS THE STATUTE APPLICO OF ENFORCED IN VIOLATION OF THE MOVILLE S CONSTITUTIONAL RIGHTS? 4es NE CONSTITUTION CHALLENSE. FAILS STATUTE IS UNCOUSTITUTIONAL AS. APPLIED

ege egy a se 🖾 a 🐃 fit

Ballard Spahr LLP 100 North City Parkway, Suite 1750 Las Vegas, Nevada 89106-4617

REPLY OF WELLS FARGO BANK N.A., AS TRUSTEE, IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

Defendant-in-intervention Wells Fargo Bank, N.A. as Trustee, on behalf of the Holders of the Harborview Mortgage Loan Trust Mortgage Pass Through Certificates Series 2006-12 ("Wells Fargo") submits this reply in further support of its motion for summary judgment.

I. OBJECTION TO PLAINTIFF-IN-INTERVENTION'S EXHIBITS

Wells Fargo objects to the admission of the exhibits attached to plaintiff-in-intervention's opposition to Wells Fargo's motion for summary judgment. Opposition exhibit No. 1 is an excerpt from the Deposition of Christopher Yergensen, as the Rule 30(b)(6) representative for NAS. The excerpt submitted by plaintiff-in-intervention is Mr. Yergenson's opinions about the reasonableness of the sale price and the legal risk of litigation pre-SFR Investments. This testimony is improper opinion testimony and should be excluded under NRS 50.265 and NRS 50-275. Plaintiff-in-intervention did not disclose any expert witness in this case, yet seeks to introduce the opinion of Mr. Yergenson, as an expert opinion.

Opposition exhibit No. 2 is not evidence in this case. It is merely an attempt by counsel to illustrate the constitutional analysis process. Since it is not evidence and does not accurately reflect the constitutional analysis under applicable case law, Wells Fargo objects to its admission, and moves to strike it from the record.

II. SUMMARY OF REPLY POSITION

Plaintiff-in-intervention Timothy Radecki ("Radecki") does not dispute the material facts set forth in Wells Fargo's Motion. Ignoring the summons in this case, the Cambridge Heights Homeowners Association ("Cambridge") raced to sell the Property using an interested foreclosure trustee who did not seek to maximize the sale price for the benefit of Ms. Munar or the other creditors. Rather, the sale of the Property valued at over \$50,000 netted a price of only \$4,000. This price was not based on the alleged uncertainty pre-SFR Investments or on the potential for

DMWEST #13227204 v1

litigation, but was calculated in an effort to buy property for as inexpensive as possible. The Court should void the sale due to this grossly inadequate price together with the other irregularities of the foreclosure sale.

Radecki does not dispute that if NRS Chapter 116 requires a lender to "optin" to receive notice of a foreclosure, the statute would be unconstitutional on its face. Radecki, instead, argues that NRS Chapter 116 requires notice to all parties who have a recorded interest in the property. Radecki's interpretation, however, is contrary to the plain language of NRS Chapter 116 and ignores the basic tenets of statutory construction. Primarily at issue is whether notice is required to be provided under NRS 107.090. If NRS Chapter 116 incorporates the notice requirements of NRS 107.090, however, there would be no reason for the detailed and express notice requirements set forth in NRS Chapter 116. Because a statute cannot be interpreted in a way that would render any provision meaningless, Radecki's proposed interpretation is not plausible.

Lastly, the sale in this case was a constructively fraudulent transfer because, under the express provisions of NRS Chapter 112, the sale constitutes an involuntary transfer from Ms. Munar to Mr. Radecki, at a time when Ms. Munar was insolvent, for less than reasonably equivalent value.

III. ARGUMENT

A. The Sale is Void for Insufficiency of Price and Inequity of the Sale.

 Under Nevada Law and the Restatement, the Sale is Void Due to the Grossly Inadequate Price and Inequity of the Sale.

Radecki argues that under Nevada law, mere inadequacy of price is not sufficient to support a judgment setting aside a foreclosure sale. The case cited by Radecki to support this argument, however, did not involve HOA foreclosures under NRS Chapter 116.

Golden v. Tomiyasu, 79 Nev. 503 (1963) predates Nevada's adoption of NRS Chapter 116, which requires a foreclosure and sale to be conducted in good faith.

Golden involved a trustee's sale under a deed of trust, a completely different statutory scheme than the one at issue here.

In the context of trustee's sales, Nevada law provides safeguards to maximize the sale price that are not present in NRS Chapter 116. NRS Chapter 40 incentivizes a beneficiary of a deed of trust to maximize the sale price by tying the maximum deficiency judgment a beneficiary may recover to the price. In a typical case, the deficiency judgment is capped at the lesser of (a) the difference between the fair market value of the property at the time of the sale and the amount of the outstanding indebtedness, and (b) the difference between the actual sale price and the amount of the outstanding indebtedness. See NRS 40.459(1)(a)-(b). In other words, if the property sells for less than its fair market value, the amount of the deficiency judgment the beneficiary can recover is reduced. HOA foreclosures under NRS Chapter 116 are not subject to this limitation. In addition, a beneficiary of a deed of trust has a strong incentive to maximize the price of a sale because a deed of trust typically secures a debt for several hundred thousand dollars.

Based on the differences between trustee's sales and HOA foreclosures, Wells Fargo submits that the Nevada Supreme Court will follow the Restatement – rather than Golden - that where, as here, the HOA foreclosure sale price is so low as to shock the conscience, the foreclosure can be voided. Here, the sale price of \$4,000 was a fraction — <u>approximately 7%</u> — of the <u>value</u> of the Property depriving Ms. Munar, the borrower, and Wells Fargo, the secured lender, and causing Ms. Munar to be solely responsible for the entirety of the mortgage loan.

At the very least, even were *Golden* applicable here, *Golden* states that an extremely small price renders a sale <u>inherently suspect</u>:

[I]t is universally recognized that inadequacy of price is a circumstance of greater or less weight to be considered in connection with other circumstances impeaching the fairness of the transaction as a cause of vacating it, and

NRS 40.459(1)(c) imposes further limitations in cases where the foreclosing beneficiary obtained the deed of trust from another party.

that, where the inadequacy is palpable and great, very slight additional evidence of unfairness or irregularity is sufficient to authorize the granting of the relief sought....We think there can be no doubt under the authorities that where, in addition to gross inadequacy of price, the purchaser has, in the language of the United States Supreme Court, 'been guilty of any unfairness or has taken any undue advantage,' resulting in such gross inadequacy and consequent injury to the owner of the property, he will be deemed guilty of fraud warranting the interposition of a court of equity in favor of the owner who is himself without fault.

Golden, 79 Nev. at 515 (quoting Odell v. Cox, 151 Cal. 70, 90 P. 194 (1907)) (emphasis added).

Thus, under *Golden*, the grossly inadequate price together with the other irregularities, which need only be slight, cause a foreclosure sale to be unfair and oppressive.

Here, in addition to the inadequate sales price, the HOA sale was rife with irregularities. As an initial matter, rather than participate in the pending judicial foreclosure of which all parties had constructive notice, Cambridge ignored the summons in this case in order to sell the Property without a legal determination as to the various interests. (See Ex. L (Default) & Ex. M (Notice of Sale).)

In addition, the sale was not conducted by a neutral trustee, and instead was conducted by NAS - the interested collection agent for Cambridge. NAS knew the sale price would be inadequate to compensate Wells Fargo and Ms. Munar, and, in fact, NAS sought to obtain the <u>lowest</u> possible amount for the sale to avoid dealing with excess proceeds.² (See Ex. P (Dep. Tr. of Christopher Yergensen) at 34:17-35:1.) The absence of a neutral trustee and its failure to attempt to maximize the price obtained for the property should render the sale inherently unfair particularly in connection with the grossly inadequate price actually obtained for the Property. See Roszkowski v. Cimarron Homeowners Association (In re Roszkowski), 494 B.R.

Attempting to sell real property for the amount of the debt - a percentage of the property's value - without any attempt to get a higher price is equivalent to fraud. See Runkle v. Gaylord, 1 Nev. 123, 129 (1865).

671 (Bankr. E.D. N.C. 2013) (existence of interested trustee who did not maximize sale price for benefit of debtor is sufficient irregularity coupled with gross inadequate price to set aside foreclosure sale).

In sum, even under the standard in *Golden*, it is inherently unfair and oppressive that thousands of dollars of value can be wiped out to satisfy the *de minimis* HOA lien, particularly while a judicial foreclosure was pending (in which Cambridge defaulted in order to pursue its competing sale). These factors exacerbate the inequity of the grossly inadequate price for the Property.

2. The Purchase Price is Grossly Inadequate.

Recognizing that an inadequate sales price defeats his position, Radecki attempts to argue that the purchase price in this case accurately reflects the value of the property due to the risk of uncertainty and litigation. Radecki argues that this Court must factor in the prior uncertainty over the interpretation of NRS 116.3116(2) in deciding whether the sale price is sufficient. But under *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.,* 130 Nev. Adv. Rep. 75, 334 P.3d 408 (2014), the buyer at an HOA super-lien foreclosure ostensibly receives clear title to the property. The sufficiency of the sale price must be judged in light of this objective reality, not in light of whatever subjective beliefs the purchaser may have had in 2014.

If a buyer at an HOA foreclosure wants to receive clear title under *SFR Investments*, then he should pay for it. To illustrate, suppose that when Radecki bought the Property in 2014, there was a 50% chance the Nevada Supreme Court would eventually hold that an HOA super-lien foreclosure extinguishes a first deed of trust. If so, then the Property should theoretically have sold for over \$25,000, or 50% of its actual value. But it only sold for \$4,000. No amount of legal uncertainty or litigation risk can justify a sale for (literally) pennies on the dollar.

Moreover, Radecki's argument is belied by the fact that properties purchased at HOA foreclosure sales post-SFR Investments have also sold for pennies on the

dollar despite the SFR Investments decision.

In any event, there is no dispute that Radecki did not factor the uncertainty or risk of litigation to determine the price he would pay for the Property. There is no dispute that Radecki was not aware and had little knowledge of the risk of litigation to determine the appropriate value of the property.

Radecki did not research or consult with anyone about the ability to secure title insurance following the sale or about any potential issues that may arise from the sale. (Ex. T (Radecki Dep.), 20:20-22.) Radecki also did not consult with an attorney about the legality or validity of the sale or the prospect of legal action to quiet title to the property. (See id.; see also id., 21:22-24.) In fact, despite the recorded lis pendens, Radecki did not know of the present foreclosure action until over a month after the sale when he first consulted an attorney. (See id., 18:20-19:5.)

Neither the uncertainty of title insurance nor the potential for litigation were factors in the amount Radecki bid at the foreclosure sale. (See Ex. T (Radecki Dep.), 23:7-27:5.) Rather, Radecki determined the properties he would bid on and the amount he planned to pay based on the amount the trustee sought at the sale to cover the HOA lien. (Id..) Other than running a basic Google search, Radecki did not research the value of the Property prior to the sale. (Ex. T (Radecki Dep.), 25:11-19, 26:8-11.) Radecki also did not review the publicly available real property records for the Property or the court records in this case. (Id., 26:21-27:2.)

As the sole bidder at the sale at issue in this case, Radecki bid slightly more than the HOA's opening credit bid in an effort to obtain the property for the lowest possible amount. Indeed, Radecki testified at his deposition "I thought it would be a good idea to purchase properties at the time at auction because it seemed like at auction they were less expensive than you would buy through a real estate agent." (Id., 20:12-15.) To this end, he was aided by NAS, as the trustee, who avoided any effort to maximize the sale price.

DMWEST #13227204 v1

B. The Notice Scheme of NRS Chapter 116 is Facially Unconstitutional.

As an initial matter, Radecki alleges that Wells Fargo's challenge to the constitutionality of NRS 116 should be denied because Wells Fargo failed to notify the Nevada Attorney General. Attached as Exhibit S to Wells Fargo's Motion for Summary Judgment, however, is a copy of the letter that was sent to the Nevada Attorney General notifying that office of the constitutional challenge and enclosing a copy of the Motion for Summary Judgment.

1. NRS Chapter 116's Opt-In Notice Scheme Violates Due Process.

Radecki does not dispute that due process requires a foreclosing lienholder to give notice to any person who holds an interest junior to the lien being foreclosed. Radecki also does not dispute that "opt in" provisions are unconstitutional. Instead, Radecki argues that NRS Chapter 116 is constitutional because: (i) it allegedly requires mandatory notice to all interested parties; (ii) that NRS Chapter 116 is not an opt-in statute for those who have recorded a deed of trust pursuant to NRS 111.320; and (iii) there is no state action. Radecki's interpretation is contrary to the express language of the statute and ignores the tenets of statutory construction.

2. NRS Chapter 116 Does Not Mandate Notice, but Rather Requires Lenders to Opt-In to Receive Notice.

As discussed in detail in Wells Fargo's Motion, NRS Chapter 116 places the burden on the lender to affirmatively "opt in" and request notice of a foreclosure. By failing to require associations to take reasonable steps to notify interested parties of the association's foreclosure, Chapter 116 violates long-established principles of due process. See U.S. Bank. N.A. v. SFR Invs. Pool 1. LLC, No. 3:15-cv-00241-RCJ-WGC, 2015 U.S. Dist. LEXIS 112807, at *35-38 (D. Nev. Aug. 26, 2015) (holding Chapter 116's notice scheme unconstitutional); Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 799-800 (1983); Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); Small Engine Shop, Inc. v. Cascio, 878 F.2d 883, 893 (5th Cir. 1989).

In an attempt to circumvent the unconstitutionality of the statute, Radecki claims that NRS 116.31163, NRS 116.311635, and NRS 116.31168 require mandatory notice to all interested parties, including Wells Fargo. That is incorrect.

First, NRS 116.31163 does not require mandatory notice. This provision only requires notice if some affirmative action is taken to request notice. Specifically, under this provision, notice will be given only to those (1) "who ha[ve] requested notice pursuant to NRS 107.090 or 116.31168," or (2) who have "notified the association, 30 days before the recordation of the notice of default." See NRS 116.31163 (emphasis added).

NRS 116.311635 likewise requires some affirmative action on behalf of the lender before notice will be given. Specifically, it states that notice is required only (1) if the party entitled to notice under NRS 116.31163 (which is those who have "requested" such notice or "notified the association"), and (2) for a holder of a "recorded security interest or the purchaser . . . if either of them has notified the association, before the mailing of the notice of sale." NRS 116.311635 (emphasis added).

NRS 116.31168 also is not a mandatory notice provision. This provision merely sets forth what is required for a "[r]equest by interested person for notice." Specifically NRS 116.31186 provides:

Foreclosure of liens: Requests by interested persons for notice of default and election to sell; right of association to waive default and withdraw notice or proceeding to foreclose.

- 1. The provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community.
- 2. An association may, after recording a notice of default and election to sell, waive the default and withdraw the notice or any proceeding to foreclose. The association is thereupon restored to its former position and has the same rights as though the notice had not been recorded.

1|

NRS 116.31186 (emphasis added). The plain language of this provision states that for those requesting notice pursuant to NRS 116, that the "provisions of NRS 107.090 apply" and that the "request must identify the lien by stating the name of the unit's owner and the common-interest community."

These provisions all require some affirmative act on the part of the lender before the statutory notice to lender requirement kicks in, even where the lender's security interest has been recorded. Hence, the statute requires lenders to "opt-in" if they are to get notice.

Radecki ignores this plain language and suggests that the statute somehow incorporates the mandatory notice language of NRS 107.090(3)(b). Specifically, Radecki asks the Court to divine the unstated intent of NRS 116.31168 and to conclude that its meaning is to substitute an association lien for the Deed of Trust, which, when read in conjunction with NRS 107.090 means that notice is required to "each other person with an interest whose interest or claimed interest is subordinate to the [Association Lien]." Radecki contends that this reference to NRS 107.090 salvages the statute by requiring actual notice to the lender.

But to interpret the statute in that manner requires the Court to ignore the title ("Requests by interested persons for notice . . .") and the language of the NRS 116.31168, which this Court cannot do. See Pope v. Motel 6, 121 Nev. 307, 114 P.3d 277, 282 (2005) ("To ignore the plain meaning of [a statute] would be an impermissible judicial excursion into the legislature's domain.").

Additionally, this interpretation would render the specific notice provisions set out in NRS 116.31163 and NRS 116.311635 superfluous and meaningless. As set forth above (and in Wells Fargo's motion for summary judgment), NRS 116.31163 and NRS 116.311635 both place the onus on the secured creditor—whether senior or subordinate—to provide notice of its interest to an association before the association becomes obligated to provide the notice of default or notice of sale to the creditor. There would be no reason to include these detailed and express

opt-in provisions if the legislature intended to mimic, verbatim, the notice requirements of NRS 107.090(3)(b). If NRS 107.090 became the sole governing notice provision, the notice provisions of NRS 116 would effectively be written out of the Statute in violation of basic principles of statutory interpretation. See S. Nevada Homebuilders Ass'n v. Clark County, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005).

Moreover, Radecki's interpretation violates Nevada's long-standing interpretive rule that "[a] specific statute controls over a general statute." State Tax Comm'n v. Am. Home Shield of Nev., Inc., 254 P.3d 601, 605 (Nev. 2011) (citing Nev. Power Co. v. Haggerty, 115 Nev. 353, 364, 989 P.2d 870, 877 (1999)). Here, NRS Chapter 116 governs common-interest ownership communities, and NRS 116.3116 et seq. governs the foreclosure of an association's assessment lien, whereas NRS 107.090 governs the foreclosure of a deed of trust. As discussed above, NRS 116 includes detailed and express provisions regarding what notice must be given and to whom.

The language of NRS Chapter 116 when read as a whole simply does not support Radecki's interpretation. The statute references NRS 107 only twice. First, NRS 116.31163(1) states that a notice of default and election to sell only needs to be mailed to "[e]ach person who has requested notice pursuant to NRS 107.090 or 116.31168." (Emphasis added.) Regardless of the reference to NRS 107.090, this provision expressly requires a party to request notice. Second, NRS 116.31168(1) makes clear that a request must be made pursuant to NRS 107.090, stating that "[t]he request must identify the lien by stating the names of the unit's owner and the common interest community." Regardless of its reference to NRS 107.090, both of these provisions specifically identify and require a request from the interested party.

Wells Fargo's position that NRS 116 is an opt-in statute is further bolstered by the Nevada Supreme Court's opinion in SFR Invs. Pool 1, LLC v. U.S. Bank,

N.A., 130 Nev. Adv. Rep. 75, 334 P.3d 408 (2014). The Nevada Supreme Court indicated in that case that NRS 116 requires affirmative action on behalf of a security interest holder to receive notice. Specifically, the court stated that (1) notice is required of "any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association . . . ," id. (quoting NRS 116.31163), and (2) "the HOA must give notice of the sale to . . . the holder of a recorded security interest if the security interest holder 'has notified the association, before the mailing of the notice of sale of the existence of the security interest." (quoting NRS 116.311635(1)(b)(2) & citing NRS 107.090(3)(b),(4)). Other courts have found likewise.

3. A Recorded Deed of Trust is Not a Request for Notice Under NRS 116.

Radecki also argues that a recorded security interest pursuant to NRS 111.320 qualifies as a request for notice under NRS 116. He therefore surmises that NRS 116 requires mandatory notice for those who have recorded a security interest. Radecki's position is incorrect.

As discussed, the express language of NRS 116.31163 and 116.311635 requires creditors to first provide notice of their interest to receive notice of the association sale. Thus, Radecki's reference to NRS 111.320 does nothing to refute that the statute is an impermissible opt-in statute. Even where a security interest has been previously recorded, additional conduct is still required by the "holder of a recorded security interest" for notice to be required under the statute.

Further, under NRS 111.320, the recording of a deed of trust merely provides notice of the contents of the deed of trust. It does not serve as an affirmative request that the association provide it notice, which is required under the express provisions of NRS Chapter 116.

Understanding this issue, the Nevada Legislature recently passed an amendment to NRS 116 that requires holders of a recorded security interest to receive mandatory notice. If the original version of NRS 116 already required such

DMWEST #13227204 v1

DMWEST #13227204 v1

notice, there would be no need to amend the statute See Pub. Emples. Benefits Program v. Las Vegas Metro. Police Dep't, 124 Nev. 138, 156-57, 179 P.3d 542, 554 (2008) ("[W]hen the [Nevada] Legislature substantially amends a statute, it is ordinarily presumed that the Legislature intended to change the law.").

3. NRS Chapter 116's Creation of an Association Lien and Foreclosure Framework and this Judicial Enforcement Are State Actions.

Radecki argues that there is a lack of state action in this non-judicial foreclosure. This argument fails for at least two reasons.

First, Radecki has brought a lawsuit to enforce his purported rights arising from the sale. Even if a transaction is completely private, the state action requirement is satisfied if a party brings a lawsuit to enforce rights arising from the transaction. See Shelley v. Kraemer, 334 U.S. 1, 20-21, 68 S. Ct. 836, 845-46 (1948) (judicial enforcement of private, racially restrictive covenants constituted state action, even though covenants themselves did not). Citing Shelley, the United States Court for the District of Nevada recently held that a judicial determination of the parties' rights arising from a Chapter 116 foreclosure constitutes state action. See US Bank, N.A. v. SFR Invs. Pool 1, LLC, No. 3:15-cv-00241-RCJ-WGC, 2015 U.S. Dist. LEXIS 112807, at *26-27 (D. Nev. Aug. 26, 2015). In any such lawsuit, the notice provisions of Chapter 116 are subject to the requirements of due process. See id. at *30.

Further, even in the absence of litigation, Chapter 116 triggers the requirements of due process because it creates the legal framework that provides an association a statutorily-granted super-priority lien and allows an association to foreclose on that lien. It requires homeowners to pay assessments to associations, authorizes associations to use these assessments to provide traditionally governmental services, creates a statutory assessment lien which does not exist under common law, and creates specific procedures associations must follow to enforce the lien. Unlike a private security interest—such as a mortgage or deed of

 $\mathbf{2}$

trust—an assessment lien under Chapter 116 is a creation of the State, as is the entire legal regime giving rise to the lien.

In other words, the Nevada government has created new rights and obligations which did not exist under common law. See Culberston v. Leland, 528 F.2d 426 (9th Cir. 1975) (statutory lien provided by state implicated due process requirements). Homeowner associations and other common-interest communities exist by virtue of the State's approval. Under the lien created by Nevada, an association may bypass the normal judicial process by privately executing against a homeowner's property. Cf. J.D. Construction v. IBEX Int'l Group. 126 Nev. Adv. Rep. 36, 240 P.3d 1033 (2010) (mechanic's lien foreclosure constitutes state action for purposes of Takings Clause). The foreclosure sale on the HOA's lien, and indeed, the very existence of the lien, would not have been possible without the Nevada government's action. Therefore, the statutory lien and foreclosure under NRS Chapter 116 implicates state action and is subject to the requirements of due process.

4. SFR Did Not Address NRS Chapter 116's Opt-In Notice Provision.

Radecki argues that the Nevada Supreme Court already resolved the constitutionality of Chapter 116's opt-in notice provisions in *SFR. SFR*, however, did not address the constitutionality of opt-in notice. The lender in *SFR* argued that certain provisions of Chapter 116 are unconstitutional because they do not require an association's foreclosure notices to state the specific amount of the association's super-priority lien. *See* 334 P.3d at 418. The Nevada Supreme Court held that this narrow feature of Chapter 116 did not violate the Due Process Clause, but this was the full extent of the court's analysis. The court was not presented with and it did not decide the issue of whether opt-in notice is constitutional.

C. The Foreclosure Sale Was a Constructively Fraudulent Transfer Under the Uniform Fraudulent Transfer Act.

Radecki argues that the sale was not a fraudulent transfer because: (i) Wells

 2

Fargo did not assert an affirmative claim; (ii) the transfer occurred when the lien was perfected in 1996; and (iii) Cambridge received reasonably equivalent value because it received the amount of its debt. Radecki's arguments fail under the express language of NRS Chapter 112.

Nothing in NRS Chapter 112 requires a party to assert an affirmative claim in order to challenge the quiet title of a transferee. NRS 112.120 merely states that relief may be obtained in "an action for relief against a transfer." Here, Radecki has raised claims that, by way of the purported transfer at the foreclosure sale, he is entitled to quiet title in the Property. In this action. Wells Fargo has raised the issue that Radecki is not entitled to quiet title because the foreclosure sale was a constructive fraudulent transfer. Nothing in the statute or in Nevada law prohibits raising this as an affirmative defense.

The sale constituted an involuntary "transfer" of the Property from Ms. Munar to Radecki. NRS 112.150 defines the term "transfer" to include both voluntary and involuntary means of parting with an asset, such as an involuntary foreclosure sale. See NRS 112.150(12).

Radecki's reliance on *In re Grandote Country Club Co. Ltd.*, 252 F.2d 1146, 1152 (10th Cir. 2001) is misplaced. In *Grandote*, the Tenth Circuit found that the sale of the tax certificates (*i.e.*, the liens themselves, as opposed to the property) was not a transfer by the debtor. It was instead a transfer of the lien by the creditor. The present case does <u>not</u> involve the sale of the HOA assessment lien. Rather, there is no dispute that the foreclosure sale transferred the property from Ms. Munar to Radecki.

Radecki next argues that the transfer occurred when the association lien was perfected, which is when the CC&R's were recorded in 1996. Radecki's position, however, violates common sense. In 1996, Ms. Munar was not an owner of the Property and no lien had yet attached to the Property. "A transfer is made: With respect to an asset that is real property. . . when the transfer is so far perfected that

a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is <u>superior</u> to the interest of the transferee." NRS 112.200(1) (emphasis added). In other words, the transfer is made when the transferee acquires an interest of the debtor that is superior to a good faith purchaser. *See also* NRS 112.170(2) (when a person acquires an interest of the debtor pursuant to a foreclosure).

In Roszkowski v. Cimarron Homeowners Association (In re Roszkowski), 494 B.R. 671 (Bankr. E.D. N.C. 2013), the bankruptcy court treated the foreclosure sale on the association's lien as a transfer subject to the fraudulent transfer statute. In Roszkowski, the association foreclosed on its assessment lien and purchased the property, valued at \$50,000, at the sale for the credit amount of \$9,500. The foreclosure trustee represented the association in the collection of the past due assessments and in the foreclosure. In addition, the foreclosure trustee did not take any steps to maximize the sale price for the benefit of the debtor. The bankruptcy court found that the transfer at the foreclosure sale could have violated the fraudulent transfer requirements, and that the price obtained at the foreclosure sale coupled with the irregularity of not having a neutral trustee created a grossly inadequate price. As in Roszkowski, the transfer to Radecki was an involuntary transfer from Ms. Munar to Radecki.

Lastly, citing NRS 112.170, Radecki argues that the \$4,000 received in exchange for the over \$50,000 Property was reasonably equivalent value because it satisfied the outstanding debt owed to Cambridge. NRS 112.170, however, does not provide that satisfying the debt constitutes "reasonably equivalent value." Rather, paragraph 1 of NRS 112.170 merely states that satisfaction of a debt constitutes "value" but says nothing about whether such value is reasonably equivalent to the value of the transferred property. See also UFTA, § 3, cmt. 3.

NRS 112.170(2) provides that analysis. This provision provides:

a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to

DMWEST#13227204 v1

a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement.

NRS 112.170(2) (emphasis added). By its plain terms, this provision <u>only</u> applies to a sale under a "mortgage, deed of trust or security agreement." An assessment lien, which is noticeably absent from the provision, is not a mortgage, deed of trust, or security agreement.

Even the comments to the UFTA cited by Radecki suggest that the purpose of section (2) is to avoid an analysis of reasonably equivalent value where the sale was conducted pursuant to a mortgage or deed of trust without any consideration of other liens, such as mechanic's liens or association liens, which are creatures of statute. See UFTA, § 3, cmt. 5.

The transfer of the Property from Ms. Munar to Radecki was for less than reasonably equivalent value, since the \$4,000 sale price was 7.1% of the Property's assessed value. (See Wells Fargo Mot.. at 19:15-20:9.) At the time of the sale, Ms. Munar was insolvent because she could not pay her debts as they came due. (See id. at 20:10-21:2.) Since Wells Fargo has established all the elements of a constructively fraudulent transfer under the UFTA, the Court should grant summary judgment in favor of Wells Fargo.

IV. <u>CONCLUSION</u>

For the reasons set forth above and in Wells Fargo's Motion, the Court should enter summary judgment in favor of Wells Fargo as to all claims in the plaintiff-in-intervention's complaint.

Ballard Spahr LLP 0 North City Parkway, Suite 1750 as Vegas, Nevada 89106-4617 Dated: November 6, 2015.

BALLARD SPAHR LLP

By: /s/Sylvia O. Semper
Abran E. Vigil, Esq.
Nevada Bar No. 7548
Sylvia Semper, Esq.
Nevada Bar No. 12863
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106
Telephone: (702) 471-7000

Attorneys for Defendant-in-Intervention 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

DMWEST #13227204 v1

Ballard Spahr LLP 100 North City Parkway, Suite 1750 Las Vegas, Nevada 89106-4617

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 6th day of November 2015 and pursuant to N.R.C.P. 5(b), I served a true and correct copy of the foregoing REPLY OF WELLS FARGO BANK N.A., AS TRUSTEE, IN FURTHER SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT, upon all counsel listed below in the following manner:

[] Hand Delivery

[] Facsimile Transmission

[] U.S. Mail, Postage Pre-Paid' and/or

[XX] Via the Wiznet E-Service-generated "Service Notification of Filing" upon all counsel set up to receive notice via electronic service in this matter

MARILYN FINE RACHELE E. DONN HOLLEY DRIGGS WALCH FINE WRAY PUZEY & THOMPSON 400 South Fourth Street, 3rd Floor Las Vegas, NV 89101

/s/ Mary Kay Carlton
An employee of BALLARD SPAHR LLP

EXHIBIT T

```
1 TIM RADECKI,
       Plaintiff-in-Intervention,
 3
              vs.
 4 AMANDA R. MUNAR; WELLS FARGO
   BANK, N.A. AS TRUSTEE, ON
 5 BEHALF OF THE HOLDERS OF THE
   HARBORVIEW MORTGAGE LOAN TRUST
 6 MORTGAGE LOAN PASS-THROUGH
   CERTIFICATES, SERIES 2006-12,
 7 DOES 1-20; and ROES 1-20,
   inclusive,
 8
       Defendants-in-Intervention.
 9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
```

CSR ASSOCIATES OF NEVADA LAS VEGAS, NEVADA (702) 382-5015

1 first sale?

6

- A. It was roughly, I believe, a month or two before the second sale.
- Q. And when you refer to the second sale, you mean the sale of --
 - A. I bought five, yes.
- Q. Was that on August 23rd, 2012?
- A. I don't remember the exact date; but if that's the date that I bought the Logsdon property,
- 10 then yes, that is the date.
- Q. Are any of these properties currently in litigation?
- A. I do believe, yes. I do believe all of
- 14 them are. Can I ask my counsel that or no?
- Q. I just want your knowledge.
- 16 A. Yes, to my knowledge.
- Q. And for all these properties, are you
- 18 using the same counsel?
- 19 A. Yes.
- Q. When did you retain, when did you first
- 21 retain counsel?

24

- A. I do believe shortly, I think within a
- 23 month or two after I bought the five properties.
 - Q. Why did you retain counsel?
- 25 A. Well, if I remember correctly, I called

```
counsel. I wanted to find out if I did need to retain counsel because of the specifics to the properties. I do believe she -- not my counsel, but other people too told me it would be a good idea since there is issues with these properties to retain counsel.
```

- Q. Great. And I'm asking for generalities,
 the timing of when you retained counsel and that
 information. But I do not want information related to
 the communications that you've had with your counsel.
- 10 So I'm not looking for specifically what was said,
 11 just so we are clear.
- 12 A. Okay.
- Q. Great.
- And moments ago you mentioned that
 there were others that prompted you to retain counsel;
 is that correct?
- 17 A. Yes.
- Q. Do you recall who those other individuals
- 19 were?

25

- 20 A. No.
- Q. Were they family members?
- A. No. I called more than one attorney to figure out what I should do with these properties. So it would be other attorneys that dealt in this area.
 - Q. Were you referred by anyone to your

- 1 current counsel?
- A. No.
 - Q. How did you find current counsel?
- A. I don't remember. I would assume it would be some kind of Yellowbook Google search.
- Q. Prior to this litigation, had you ever had any previous contact or communications with current
- A. No.

counsel?

- 10 Q. Why did you decide to start buying homes
 11 at HOA foreclosure sales?
- A. I thought it would be a good idea to
 purchase properties at the time at auction, because it
 seemed like at auction they were less expensive than
 you would buy through a real estate agent.
- Q. What prompted your decision to do so in 2012? In other words, was there any reason why in particular you started in that year?
 - A. No. No reason.
- Q. Did you consult with anyone prior to making your decision to purchase homes at HOA sales?
- 22 A. No.
- Q. Did you talk to any real estate agents?
- A. I don't think so, but I might have. I

25 might have.

19

- Q. Is there anything that would refresh your recollection?
- A. I want to answer, and stop me if I answer too broadly or whatever to your question, because I know you don't want me to do that. But I remember
- 6 asking people in general here and there before I
- 7 bought the properties about what they thought of that.
- 8 And everybody that I asked, that I remember, really
- 9 didn't know much about it.
- Because they didn't know much about
- 11 it, they told me it probably wouldn't be a good idea,
- 12 because there probably would be litigation to it or
- 13 they just didn't know much about it.
- Q. Do you recall who those individuals were?
- 15 A. Right. No.
- Q. Did you speak to a financial adviser?
- 17 A. No.
- 18 Q. Did you speak to other attorneys?
- 19 A. Well, I spoke to other attorneys about
- 20 this after I bought the five properties during the
- 21 same week that I hired my counsel.
- Q. Prior to the HOA sale, did you ever talk
- 23 to an attorney?
- 24 A. No, I did not.
- Q. Did you do any research prior to?

```
A.
               Yeah.
                      I do remember doing it.
                                               But the
 2 problem was is there really wasn't much information on
 3 it. No one seemed to know much about it.
 4 wasn't that much information on it, so it was a gray
   area.
 5
 6
        Q.
               Do you recall what kind of search terms
   vou used?
        Α.
               No.
                    No.
 9
        0.
               Do you recall any websites that you did
10 visit?
11
        Α.
               No.
12
        Q.
               How did you find out about the foreclosure
  sale for this property in this litigation?
14
        A.
               I do believe that I typed in or I searched
  for foreclosures, different foreclosures. And this
16 was one of them that came up. I believe the other one
17 was near downtown, and I can't recall the name but it
  was more downtown.
                       This was more on the west side of
19
  the valley, the HOA sales.
20
               Do you recall what kind of website you
        Q.
  looked at to obtain the information?
22
       Α.
               I'm sure it was Google, but I'm not
  positive.
              I bet it would be a Google search.
```

CSR ASSOCIATES OF NEVADA
LAS VEGAS, NEVADA (702) 382-5015

24

0.

you found this property?

Was it through a real estate listing that

- A. No.
- Q. Was it a through a government website?
- A. Wait. Are we talking about found the listing or are we talking about found the HOA?
- 5 Because I thought we were talking about found the HOA
- 6 auctions.

2

- Q. I guess if you can explain the process.
- 8 How did you get to this particular property?
- 9 A. Found where the HOA auctions were. Got a
- 10 list. They do it like five days or a week ahead, I
- 11 can't remember exactly. Prior to the sale they have a
- 12 list. You receive the list from NAS.
- 13 You look at the list and see if
- 14 anything interests you. You circle the properties
- 15 that interest you. You go to the auction and bid on
- 16 the property that interests you.
- Q. Did the property, the subject of this
- 18 litigation interest you?
- 19 A. Yes.
- 20 Q. Why?
- 21 A. It was near my house. It was in the
- 22 northwest part of town. Every single property of the
- 23 six properties that's on here is the northwest part of
- 24 town, except for Tropicana.
- Q. Other than location to your home, did you

1 consider any other criteria?

A. Yes.

2

- Q. What were those other criteria?
- A. I did not want a property that looked like the sit needed extensive work.
- Q. How did you determine which properties would need extensive work?
- 8 A. By the age of the property, where it was 9 located at, what it looked like on Google maps. I
- 10 learned quickly that all properties with the HOA it
- 11 seemed like were in good shape because they are in an
- 12 HOA. So right away it looked like that that wouldn't
- 13 be a main concern of mine.
- Q. Other than those criteria that you just
- 15 mentioned, is there anything else that you considered?
- 16 A. Price.
- 17 Q. How did you determine the price of the
- 18 property?
- 19 A. I believe it was given.
- 20 Q. I guess --
- 21 A. Go ahead.
- Q. Sorry. What do you mean by "price"?
- A. The amount of money they are asking for
- 24 the property.

25

Q. That the HOA was asking for the property?

- A. Yes. Or the auction house was asking for the property. I guess it's both.
- Q. And what did you consider when looking at the price of the property? What factors went into your assessment of the price of the property?
 - A. I'm not sure what you mean.
- Q. Okay. In other words, were you looking at any other valuations for the property other than the price that was listed by the HOA?
- 10 A. Was I what?

- Q. Were you looking at other valuations of the property other than what the HOA was asking for to determine the value of the home?
- A. Oh. On Google you would have, if you would look up the property, you would get an idea of what other properties sold for in that area. So I had an idea of, I think it was a guesstimate of how much the other properties around that property would be worth.
- Q. And were those comparable prices similar to the amount that the HOA was asking for?
- A. They were less than the amount that the HOA was asking for.
- Q. In other words, if the HOA was asking for, let's say, \$4,000, were the properties higher or lower

		26		
1	1 than that amount?			
2	A.	Higher.		
3	Q.	Did you inspect the property before		
4	A.	No.		
5	Q.	the HOA sale?		
6		Did you do a drive-by?		
7	A.	No.		
8	Q.	Other than looking on Google, did you		
9	perform any	other evaluations of the price of the		
10	property?			
11	A.	No.		
12	Q.	Do you recall what the value of the		
13	property wa	s at the time you searched it on Google?		
14	A.	Do I what?		
15	Q.	Recall the value of the property at the		
16	time you sea	arched it on Google?		
17	A.	No.		
18	Q.	Do you recall if it was more or less than		
19	4,000?			
20	A.	It was more.		
21	Q.	Prior to the HOA sale, did you check the		
22	real estate	records available		
23	A.	No.		
24	Q.	online?		
25	A.	No.		

- Q. Did you search the Clark County's website?
- 2 A. No.

1

5

- Q. Is there any other information that you gathered about the property prior to the HOA sale?
 - A. I don't think so.
- Q. Do you recall the amount of money you brought with you to the sale?
- A. I do believe it was around \$100,000 in numerous notes, numerous sizes. Meaning some were 10,000. Some were 5,000. Some were 20,000. So if I was to buy more than one or if I were to buy one, I would have exact change or close to exact change.
- Q. And how did you determine to bring that amount to the HOA sale?
- A. I don't recall exactly, but it must have been because of the first HOA sale that I went through. And I may have asked too, but I don't recall. But, they did not give change. They would give your change at a later date.
- So it was good to bring as close to as possible the amount. And since you were at the auction, you did not know what the amount was going to be, so you try to bring enough cashier's checks to be as close as you could to the total.
 - Q. And that \$100,000, roughly, that amount

```
TRAN
 1
 2
 3
 4
 5
 6
               IN THE EIGHTH JUDICIAL DISTRICT COURT
                        CLARK COUNTY, NEVADA
 7
 8
 9
    WELLS FARGO BANK NA, )
10
            Plaintiff,
11
    VS.
                               Case No. A-13-676574-C
                                  Dept. No. 24
12
    AMANDA MUNAR, ET AL,
13
            Defendants. )
14
15
16
                             BENCH TRIAL
17
                 Before the Honorable Jim Crockett
                 Monday, June 13, 2016, 9:00 a.m.
18
19
               Reporter's Transcript of Proceedings
20
21
22
23
    REPORTED BY:
24
    BILL NELSON, RMR, CCR #191
    CERTIFIED COURT REPORTER
25
```

```
1
 2
     APPEARANCES:
 3
 4
     For the Plaintiff:
                             Marilyn Fine, Esq.
                             Glenn Meier, Esq.
 5
 6
     For the Defendants:
                             Anthony Kaye, Esq.
                             Sylvia Semper, Esq.
 7
 8
 9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
```

association, the agent, is in fact also a representative 1 2 of the association. 3 THE COURT: Okay. Thank you. 4 You may proceed. 5 6 DIRECT EXAMINATION OF MICHELLE BALTIMORE 7 BY MR. MEIER: 8 Miss Baltimore, you already gave the Court your 9 name. 10 Can you tell the Court please what you do for a 11 living? 12 A. I am a supervisor and manager, which means I handle common interest communities, and I'm currently 13 14 the manager for Cambridge Heights Homeowners Association. 15 16 Q. Okay. And what is the name of the company that 17 employs you? 18 Taylor Association Management. 19 All right. How long have you been working for Q. 20 Taylor? 21 Since September of 2014. 22 Q. And can you generally describe what Taylor's 23 business is? 24 We facilitate the day-to-day business for the Α.

association, accounting violations, administrative,

financial.

1

2

3

4

5

6

- Q. Okay. And you mentioned before that you are the property manager for the Cambridge Heights Homeowners Association, is that correct?
 - A. Yes.
- Q. All right. And where is -- just generally, where is Cambridge Heights located?
- A. It's located on Lake Mead and MLK, Martin Luther King.
- Q. And I'm getting a lot of feedback here.
- So you mentioned that you are the property manager for the association.
- Are you familiar with -- Sorry, I got rattled there.
- What is Taylor's relationship -- I'm sorry -
 With the Cambridge Heights Homeowners Association?
- A. We're the renting agent for them.
- Q. Okay. And do you know how long Taylor has been the management company for Cambridge Heights?
- A. It's been quite a while, I want to say at least to my knowledge it goes back to 2005.
- Q. Okay. And do you know if Cambridge Heights is subject to recorded covenants, conditions and restrictions?
- 25 A. Yes.

A. Yes.

1

2

3

4

5

6

7

8

9

10

11

- Q. And looking through onto the next page through the balance of 2011, it appears that there were regular payments being made, and that the account remained in a credit status, is that correct?
 - A. Yes.
- Q. Turning onto the last page there of Exhibit 28, which is the page that has the -- or excuse me, Exhibit Number 26, which is the page has the index number 000028, can you tell me the date of the last payment posted to Ms. Munar's account?
- 12 A. The last payment was September 21st of 2011.
- Q. And once that payment was posted, what was Ms.
- 14 | Munar's balance?
- A. She had a credit \$160.
- Q. After that date of September 21st, 2011, through the end of the period listed on this page, were there any other payments made on Ms. Munar's behalf?
 - A. No.
- 20 Q. And --
- 21 THE COURT: There were debits against her credit,
- 22 correct?
- MR. MEIER: Correct.
- 24 THE COURT: Okay.
- MR. MEIER: I'm just going to go to that right

now, Your Honor.

BY MR. MEIER:

1

2

3

4

5

6

7

8

- Q. So what happened to the credit balance as assessments became applied to the account after September 21st of 2011?
- A. They are deducted from the credit on the account.
 - Q. And was there a point where Ms. Munar stopped having a credits balance and became delinquent?
- A. Approximately 2/1/2012.
- Q. Okay. Now, so on 2/1 of 2012 there was a \$35
- 12 A. Uh-huh.
- Q. And that resulted in a debit balance -- or balance owed of \$15 from the Ms. Munar, correct?
- 15 A. Yes.
- Q. And then can you explain what the next entry after the 2/1/2012 assessment is?
- A. On 2/15 of 2012 there was an outstanding balance, so there was a late charge assessed in the the amount of
- 20 \$10.
- Q. Okay. And why does Taylor assess a late charge on missed payments like that?
- 23 A. That is based on their bylaws and CC & R's.
- Q. And when you say, their --
- 25 A. The association.

- A. It's a single-family, single-storey home located in the common interest community.
 - Q. Do you know how many bedrooms are in that home?
- A. No, we don't know that information.

We only maintain the outside of the unit.

As far as the interior, we have nothing to do with it.

Q. I'm going to try to go in order of the exhibits, so we don't have to switch back and forth.

If I can direct you first to Exhibit 26 --

11 A. Okay.

1

2

3

4

8

9

- Q. -- you testified earlier that the monthly assessment amount was \$35, is that correct?
- 14 A. Yes.
- Q. And that was the same amount for 2011 and 2012,
- 16 is that correct?
- 17 A. Yes.
- 18 Q. And 2013?
- 19 A. Yes.
- Q. Okay. Looking at 26, the page Bate stamped NAS
- 21 00028 --
- 22 A. Okay.
- 23 | Q. -- you spoke about this page earlier.
- 24 A. Okay.
- Q. When did you review this accounting system -- You

1 mentioned you reviewed this prior to coming here today,

- 2 | is that correct?
 - A. Yes.

3

- Q. When did you review it?
- 5 A. When I was subpoenaed.
- Q. And looking at this document, as of January 1st,
- 7 | 2012 Ms. Munar's account had a credit of \$20, is that
- 8 correct?
- 9 A. Yes.
- 10 Q. And what was the expectation when payment will be
- 11 | made by the homeowner?
- 12 A. Assessments are due on the 1st of the month, and
- 13 | they have a 15 day grace period, that's per the
- 14 governing documents.
- 15 Q. Based on the \$35 monthly assessment amount, I
- 16 don't know if I have a calculator here, but if I
- 17 | represent to you that six months of \$35 a month is \$210,
- 18 is that an accurate statement?
- 19 A. For assessments only.
- Q. For assessments only?
- 21 A. Yes.
- Q. And that would be -- the six month amount would
- 23 be 210?
- 24 A. I would guess.
- 25 I'm not a math teacher.

```
1
            MS. SEMPER: Your Honor, I don't have a
 2
    calculator.
 3
            THE COURT: No, no, six times 35 is 210, no
 4
    question.
 5
            MR. MEIER: We'll stipulate.
 6
            MS. SEMPER: Great.
 7
            I just wanted to make sure.
    BY MS. SEMPER:
 8
 9
       0.
            I'd like to turn your attention to 35.
10
       Α.
           Okay.
11
            Earlier you testified that you are familiar with
12
    this document, correct?
13
       Α.
           Yes.
14
           And the signature below is of Donna Jordan, who
15
    is president of the HOA, is that correct?
16
       Α.
           Yes.
17
           But you have no personal knowledge as to whether
18
    in fact the HOA checked and assured Ms. Munar was in the
19
    military service, is that correct?
20
       A. We have no way to check that.
```

- It would be up to the homeowner to report that information.
- Q. Do you know if the HOA reached out to the homeowner to verify that?
- A. Yes, there should be parts of notices sent from

today?

1

2

3

4

- A. Yes, when I spoke to them regarding -- and let them know the status, they we're familiar and agreed that everything was in order and that I should come represent them.
- Q. So you went through the documents with the board prior to coming here today?
- A. Not in detail, no, but I discussed the circumstances and the unit address, and we went into that.
- 11 Q. Did you specifically look at this document?
- 12 A. This document, no.
- Q. Okay. Then I'd like to draw your attention to 14 Exhibit 45, please.
- 15 A. Okay.
- Q. We spoke about this document earlier, correct, you're familiar with this e-mail?
- 18 A. Yeah.
- Q. And if we're looking at the bottom portion from
 Kimberly to the board, it's forwarding Misty Blanchard's
 e-mail, correct?
- 22 A. Yes.
- Q. And the e-mail from Misty states, the HOA sale is scheduled for August 23rd, 2013, correct?
- 25 A. Yes.

Q. And it also states at -- on the third paragraph, again, it is the recommendation of NAS to proceed with the sale in anticipation of a third-party investor buying the property.

Is that accurate?

A. Yes.

1

2

3

4

5

6

7

8

Q. If you could, take a moment to look at this document.

Do you see anywhere in this e-mail where NAS

states, Wells Fargo has initiated a judicial foreclosure

action?

- 12 A. No.
- Q. Does this document state anywhere, Wells Fargo has recorded a lis pendens on the property?
- 15 A. No.
- Q. So based on the limited information provided to
 the board from Misty's e-mail, Donna Jordan, the
 president, states in her response, move forward with the
 foreclosure sale, is that correct?
- 20 A. Yes.
- Q. Then if I can direct you to the second exhibit book, we'll go to tab 70, and then page 5.
- 23 A. Okay.
- Q. We discussed this document earlier today, is that correct?

- 1 Q. And then looking at column -- Or sorry, the
- 2 chart, it says, real property assessed value?
- 3 A. Okay.
- 4 Q. Do you see that chart?
- 5 A. Yes.
- Q. In the middle of the page --
- 7 A. Yes.
- Q. -- there's a column that lists 2013, 2014, and
- 9 within that it says, total taxable value 56,197, do you
- 10 | see that?
- A. Okay, uh-huh.
- 12 Q. And do you have any reason to dispute that that
- 13 is the taxable value?
- 14 A. No.
- 15 MS. SEMPER: If I may have a moment.
- 16 BY MS. SEMPER:
- 17 Q. Okay. Going back to these matters, are you aware
- 18 | that Cambridge was named as a Defendant in this case?
- 19 A. Once I was subpoenaed, yes.
- 20 | Q. Did you have discussions with the board about
- 21 that?
- 22 A. Yes.
- Q. What did they tell you?
- 24 A. They basically said to handle it.
- 25 Q. Are you aware that Cambridge was served with a

- 1 | Summons and Complaint in this matter?
- 2 A. For this issue right here, or for a different
- 3 issue?
- 4 Q. For this case.
- 5 A. Yeah.
- 6 Q. This litigation.
- 7 A. Yes.
- Q. Are you aware that they did not appear or defend
- 9 their interest?
- 10 A. I'm here.
- 11 Q. Can I --
- 12 A. For this case I'm here.
- Q. Yes, as a witness you're here, but Cambridge was
- 14 listed as a party to this case.
- 15 A. Yes, I did try to submit this to the
- 16 association's insurance and also to the association's
- 17 attorney.
- 18 Q. And when did you do that?
- 19 A. When I was subpoenaed.
- 20 Q. But prior to that, the HOA had never done it?
- 21 A. That was before my time.
- 22 Q. And do you know if they did ever?
- A. I don't know because it was before my time.
- Q. If I could have you look at Exhibit 56.
- 25 A. Okay.

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 Sep 21,2917 08:17 a.m. Elizabeth A. Brown Clerk of Supreme Court

District Court Case No. A-13-676574-C

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable Jim Crockett, District Judge
District Court Case No. A-13-676574-C

APPELLANT'S APPENDIX – VOLUME 2

Abran E. Vigil, Nevada Bar No. 7548
Sylvia O. Semper, Nevada Bar No. 12863
Ballard Spahr LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106
Telephone: (702) 471-7000
vigila@ballardspahr.com
sempers@ballardspahr.com
Anthony C. Kaye, Utah Bar No. 8611, Admitted pro hac vice
201 South Main Street, Suite 800
Salt Lake City, Utah 84111-2221
kaye@ballardspahr.com

CHRONOLOGICAL INDEX

Document	Date	Volume and Bates Number(s)
Verified Complaint for Judicial	February 12, 2013	AA1 001-047
Foreclosure and Deficiency Judgment of		
Deed of Trust		
Default (as to Amanda R. Munar)	April 8, 2013	AA1 048-049
Default (as to Cambridge Heights)	April 8, 2013	AA1 050-051
Judgment	September 10, 2013	AA1 052-056
Notice of Entry of Judgment	September 12, 2013	AA1 057-063
Motion for Leave to Intervene on Order	October 14, 2013	AA1 064-088
Shortening Time		
Order Granting Motion to Intervene	December 10, 2013	AA1 089-090
Notice of Entry of Order Granting	December 11, 2013	AA1 091-095
Motion to Intervene		
Complaint-In-Intervention	December 12, 2013	AA1 096-105
Amended Answer of Defendant-In-	May 28, 2015	AA1 106-115
Intervention Wells Bank N.A., as		
Trustee		
Wells Fargo Bank N.A.'s Motion for	October 12, 2015	AA1 116-238
Summary Judgment		AA2 239-289
Plaintiff-In-Intervention's Opposition to	October 29, 2015	AA2 290-324
Wells Fargo Bank's Motion for		
Summary Judgment		
Reply of Wells Fargo Bank N.A., as	November 6, 2015	AA2 325-356
Trustee, in Further Support of its Motion		
for Summary Judgment		
Pertinent Portion of Trial Transcript –	June 13, 2016	AA2 357-424
Day 1	(4)	
Pertinent Portion of Trial Transcript –	June 14, 2016	AA2 425-456
Day 2 – Part 1		
Pertinent Portion of Trial Transcript –	June 14, 2016	AA2 457-476
Day 2 – Part 2		AA3 477-498
Grant, Bargain, Sale Deed (Trial Exhibit 3)	August 31, 2001	AA3 499-500

Document	Date	Volume and Bates Number(s)
Assignment of Deed of Trust (Trial Exhibit 6)	October 12, 2011	AA3 501-503
Letter from M. Molina to A. Munar re: Collection of the Overdue Homeowner's assessments (Trial Exhibit 7)	July 9, 2012	AA3 504-506
Notice of Delinquent Assessment Lien (Trial Exhibit 8)	July 25, 2012	AA3 507-508
Letter from D. Kluska to A. Munar re: Non-Judicial Foreclosure Action	August 23, 2012	AA3 509-510
Cambridge Heights Account Log – A. Munar (Trial Exhibit 10)	September 10, 2012	AA3 511-513
Notice of Default and Election to Sell Under Homeowners Association Lien (Trial Exhibit 11)	September 21, 2012	AA3 514-517
Corporate Assignment of Deed of Trust (Trial Exhibit 12)	December 27, 2012	AA3 518-520
Cambridge Heights Account Log – A. Munar (Trial Exhibit 13)	May 9, 2013	AA3 521-522
Email from M. Bianchard re: HOA Sale Schedule (Trial Exhibit 14)	May 29, 2013	AA3 523-524
Notice of Foreclosure Sale (Exhibit 15)	May 13, 2013	AA3 525-527
Letter from M. Bianchard to A. Munar re: HOA sale being postponed (Trial Exhibit 16)	June 7, 2013	AA3 528-529
Email from M. Blanchard re: HOA sale postponement available(Trial Exhibit 17)	July 11, 2013	AA3 530-531
Email from M. Blanchard re: HOA sale postponement available(Trial Exhibit 18)	August 14, 2013	AA3 532-533
Cambridge Heights Account Log – A. Munar (Trial Exhibit 19)	August 21, 2013	AA3 534-535
Certificate of Sale (Trial Exhibit 20)	August 23, 2013	AA3 536-540
Foreclosure Deed (Trial Exhibit 21)	September 4, 2013	AA3 541-544
Deed of Trust (Trial Exhibit 23)	September 7, 2006	AA3 545-569
NAS Delinquency Log (Trial Exhibit 24)	July 9, 2012	AA3 570-572
Endorsement (Trial Exhibit 36)	May 2, 2013	AA3 573-574

Document	Date	Volume and Bates Number(s)
Cambridge Heights Community Association Account Log for A. Munar (Trial Exhibit 37)	May 6, 2013	AA3 575-583
Email from D. Jordan re: moving forward to foreclosure sale (Trial Exhibit 45)	August 14, 2013	AA3 584-585
Cambridge Heights Community Association Account Log for A. Munar (Trial Exhibit 47)	August 21, 2013	AA3 586-594
NAS Letter re: foreclosure sale (Trial Exhibit 49)	September 20, 2013	AA3 595-596
Adjustable Rate Note (Trial Exhibit 51)	August 31, 2006	AA3 597-602
Referral for Delinquent Accounts – Cambridge Heights for A. Munar (Trial Exhibit 54)	June 15, 2012	AA3 603-605
Notice of Pendency of Action (Trial Exhibit 55)	February 13, 13	AA3 606-610
Default (as to Cambridge Heights) (Trial Exhibit 56)	April 8, 2013	AA3 611-613
Clark County Real Property Information (Trial Exhibit 57)	May 9, 2013	AA3 614-616
Letter from J. Gerber to A. Munar re: Trust Account Check for foreclosure sale (Trial Exhibit 58)	August 29, 2013	AA3 617-618
Letter from J. Gerber to Cambridge Heights re: client trust account check (Trial Exhibit 59)	August 29, 2013	AA3 619-621
Declaration of Value (Trial Exhibit 60)	August 23, 2013	AA3 622-623
Notice of Pendency of Action (Trial Exhibit 61)	December 18, 2013	AA3 624-627
Residential Lease Agreement (Trial Exhibit 62)	April 1, 2014	AA3 628-638
Residential Property Management Agreement (Exhibit 63)	February 7, 2014	AA3 639-647
Residential Lease Agreement (Trial	May 4, 2015	AA3 648-658

Document	Date	Volume and Bates Number(s)
Exhibit 64)		Trumber (s)
Clark County Assessor (Trial Exhibit 68)	June 14, 2016	AA3 659-665
Court Minutes (Trial Exhibit 72)	August 27, 2013	AA3 666-667
Cambridge Heights Assessment Log (Trial Exhibit 74)	September 10, 2012	AA3 668-670
Letter from A. Fesel to Giavanna re: Lender's Foreclosure Action (Trial Exhibit 79)	October 7, 2010	AA3 671-672
Findings of Fact, Conclusions of Law	August 26, 2016	AA3 673-688
Declaratory Judgment Quieting Title to Property	August 26, 2016	AA3 689-692
Notice of Entry of Declaratory Judgment Quieting Title to Property	August 26, 2016	AA3 693-695
Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting Judgment in Favor of Plaintiff-In- Intervention	August 29, 2016	AA3 696-698
Notice of Appeal	September 26, 2016	AA3 699-702

.

ALPHABETICAL INDEX

Document	Filing Date	Volume and Bates Number(s)
Adjustable Rate Note (Trial Exhibit 51)	August 31, 2006	AA3 597-602
Amended Answer of Defendant-In- Intervention Wells Fargo Bank N.A., as Trustee	May 28, 2015	AA1 106-115
Assignment of Deed of Trust (Trial Exhibit 6)	October 12, 2011	AA3 501-503
Cambridge Heights Account Log – A. Munar (Trial Exhibit 10)	September 10, 2012	AA3 511-513
Cambridge Heights Account Log – A. Munar (Trial Exhibit 13)	May 9, 2013	AA3 521-522
Cambridge Heights Account Log – A. Munar (Trial Exhibit 19)	August 21, 2013	AA3 534-535
Cambridge Heights Assessment Log (Trial Exhibit 74)	September 10, 2012	AA3 668-670
Cambridge Heights Community Association Account Log for A. Munar (Trial Exhibit 37)	May 6, 2013	AA3 575-583
Cambridge Heights Community Association Account Log for A. Munar (Trial Exhibit 47)	August 21, 2013	AA3 586-594
Certificate of Sale (Trial Exhibit 20)	August 23, 2013	AA3 536-540
Clark County Real Property Information (Trial Exhibit 57)	May 9, 2013	AA3 614-616
Complaint-In-Intervention	December 12, 2013	AA1 096-105
Corporate Assignment of Deed of Trust (Trial Exhibit 12)	December 27, 2012	AA3 518-520
Court Minutes (Trial Exhibit 72)	August 27, 2013	AA3 666-667
Declaration of Value (Trial Exhibit 60)	August 23, 2013	AA3 622-623
Declaratory Judgment Quieting Title to Property	August 26, 2016	AA3 689-692
Deed of Trust (Trial Exhibit 23)	September 7, 2006	AA3 545-569
Default (as to Amanda R. Munar)	April 8, 2013	AA1 048-049
Default (as to Cambridge Heights)	April 8, 2013	AA1 050-051

Document	Filing Date	Volume and Bates Number(s)
Default (as to Cambridge Heights) (Trial Exhibit 56)	April 8, 2013	AA3 611-613
Email from D. Jordan re: moving forward to foreclosure sale (Trial Exhibit 45)	August 14, 2013	AA3 584-585
Email from M. Bianchard re: HOA Sale Schedule (Trial Exhibit 14)	May 29, 2013	AA3 523-524
Email from M. Blanchard re: HOA sale postponement available(Trial Exhibit 17)	July 11, 2013	AA3 530-531
Email from M. Blanchard re: HOA sale postponement available(Trial Exhibit 18)	August 14, 2013	AA3 532-533
Endorsement (Trial Exhibit 36)	May 2, 2013	AA3 573-574
Findings of Fact, Conclusions of Law	August 26, 2016	AA3 673-688
Foreclosure Deed (Trial Exhibit 21)	September 4, 2013	AA3 541-544
Grant, Bargain, Sale Deed (Trial Exhibit 3)	August 31, 2001	AA3 499-500
Judgment	September 10, 2013	AA1 052-056
Letter from A. Fesel to Giavanna re: Lender's Foreclosure Action (Trial Exhibit 79)	October 7, 2010	AA3 671-672
Letter from D. Kluska to A. Munar re: Non-Judicial Foreclosure Action	August 23, 2012	AA3 509-510
Letter from J. Gerber to A. Munar re: Trust Account Check for foreclosure sale (Trial Exhibit 58)	August 29, 2013	AA3 617-618
Letter from J. Gerber to Cambridge Heights re: client trust account check (Trial Exhibit 59)	August 29, 2013	AA3 619-621
Letter from M. Bianchard to A. Munar re: HOA sale being postponed (Trial Exhibit 16)	June 7, 2013	AA3 528-529
Letter from M. Molina to A. Munar re: Collection of the Overdue Homeowner's assessments (Trial Exhibit 7)	July 9, 2012	AA3 504-506

Document	Filing Date	Volume and Bates Number(s)
Motion for Leave to Intervene on Order Shortening Time	October 14, 2013	AA1 064-088
NAS Delinquency Log (Trial Exhibit 24)	July 9, 2012	AA3 570-572
NAS Letter re: foreclosure sale (Trial Exhibit 49)	September 20, 2013	AA3 595-596
Notice of Appeal	September 26, 2016	AA3 699-702
Notice of Default and Election to Sell Under Homeowners Association Lien (Trial Exhibit 11)	September 21, 2012	AA3 514-517
Notice of Delinquent Assessment Lien (Trial Exhibit 8)	July 25, 2012	AA3 507-508
Notice of Entry of Declaratory Judgment Quieting Title to Property	August 26, 2016	AA3 693-695
Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting Judgment in Favor of Plaintiff-In- Intervention	August 29, 2016	AA3 696-698
Notice of Entry of Judgment	September 12, 2013	AA1 057-063
Notice of Entry of Order Granting Motion to Intervene	December 11, 2013	AA1 091-095
Notice of Foreclosure Sale (Exhibit 15)	May 13, 2013	AA3 525-527
Notice of Pendency of Action (Trial Exhibit 55)	February 13, 13	AA3 606-610
Notice of Pendency of Action (Trial Exhibit 61)	December 18, 2013	AA3 624-627
Order Granting Motion to Intervene	December 10, 2013	AA1 089-090
Pertinent Portion of Trial Transcript – Day 1	June 13, 2016	AA2 357-424
Pertinent Portion of Trial Transcript – Day 2 – Part 1	June 14, 2016	AA2 425-456
Pertinent Portion of Trial Transcript – Day 2 – Part 2	June 14, 2016	AA2 457-476 AA3 477-498
Plaintiff-In-Intervention's Opposition to Wells Fargo Bank's Motion for Summary Judgment	October 29, 2015	AA2 290-324

Document	Filing Date	Volume and Bates Number(s)
Referral for Delinquent Accounts – Cambridge Heights for A. Munar (Trial Exhibit 54)	June 15, 2012	AA3 603-605
Reply of Wells Fargo Bank N.A., as Trustee, in Further Support of its Motion for Summary Judgment	November 6, 2015	AA2 325-356
Residential Lease Agreement (Trial Exhibit 62)	April 1, 2014	AA3 628-638
Residential Lease Agreement (Trial Exhibit 64)	May 4, 2015	AA3 648-658
Residential Property Management Agreement (Exhibit 63)	February 7, 201	AA3 639-647
Clark County Assessor (Trial Exhibit 68)	June 14, 2016	AA3 659-665
Verified Complaint for Judicial	February 12, 2013	AA1 001-047
Foreclosure and Deficiency Judgment of		
Deed of Trust		
Wells Fargo Bank N.A.'s Motion for	October 12, 2015	AA1 116-238
Summary Judgment		AA2 239-289

*

Dated: September 20, 2017.

BALLARD SPAHR LLP

By: /s/ Sylvia O. Semper
Sylvia O. Semper
Nevada Bar No. 12863
Abran E. Vigil
Nevada Bar No. 7548
100 North City Parkway, Suite 1750

Las Vegas, Nevada 89106 Telephone: (702) 471-7000

Anthony C. Kaye Admitted *pro hac vice* Utah Bar No. 8611 201 South Main Street, Suite 800 Salt Lake City, Utah 84111-2221

Attorneys for Appellant

CERTIFICATE OF SERVICE

I certify that this foregoing APPELLANT'S APPENDIX – VOLUME 2 was filed electronically with the Nevada Supreme Court on the 20th day of September 2017. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Henry Wright Nevada Bar No. 6182 2340 Paseo Del Prado Suite D-305 Las Vegas, NV 89102

Attorneys for Tim Radecki

/s/ Charlene Bowman
An employee of Ballard Spahr LLP



CLARK COUNTY, NEVADA JUDITH A. VANDEVER, RECORDER RECORDED AT REQUEST OF:

FIRST AMERICAN TITLE COMPANY OF 08-30-96 14:03 CPD 54 OFFICIAL RECORDS 54 BOOK: 960630 INST: 01713

60.00 RPTT: FEE:

. 00

CERTIFIED COPY, THIS
LOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
AMY REDACTED PORTIONS

OCT. 12.2015 Sebbie Genuary

AA2 240

EXHIBIT G

CSR ASSOCIATES OF NEVADA
LAS VEGAS, NEVADA (702) 382-5015

- 1 the lender listed on the deed of trust
- 2 encumbering your property?
- A. It would be -- if there was anything,
- 4 it would be in the status report or the phone
- 5 notes. I am looking at the phone notes and the
- 6 status report. It doesn't look like there is
- 7 any correspondence.
- Q. Are you aware of whether Ms. Munar was
- 9 able to pay her debts as they became due?
- 10 A. Can you rephrase the question?
- Q. Did NAS evaluate Ms. Munar's financial
- 12 situation before conducting the foreclosure
- 13 process?
- 14 A. Not that I know of.
- 15 Q. Are you aware of whether or not
- 16 Ms. Munar was insolvent at the time of the HOA
- 17 sale?
- 18 A. I have no idea.
- 19 (Deposition Exhibit 16 marked.)
- 20 BY MS. SEMPER:
- Q. Does this document look familiar to
- 22 you?
- 23 A. Yes.
- 24 Q. Can you please describe the document
- 25 for the record?

CSR ASSOCIATES OF NEVADA
LAS VEGAS, NEVADA (702) 382-5015

- A. It is an updated accounting ledger for NAS and a copy of the notice of delinquent assessment lien.
- Q. Is there a date listed on the account ledger?
- 6 A. It was printed on July 23, 2012.
 - Q. And what is the total amount due?
- 8 A. \$1,148.50.

- Q. If you look at Exhibit 14, which is
 the account ledger from July 9, 2012, can you
 please explain the additional charges that were
 incurred in those two weeks?
- A. Sure. The cost of the notice of delinquent assessment lien, the NAS fees -- I'm sorry. The NAS fee of the release of the lien and mailing costs and recording costs.
- Q. Had NAS incurred the release of notice of delinquent assessment lien at the time that this charge was made?
- 20 A. No.
- Q. So it is listing an amount that has yet to be incurred; is that correct?
- A. Correct. We list it and then if the account is paid in full, then we reverse our -we wouldn't reverse the charge. But if it goes

- contained in this file, then no records were kept to determine who other than Mr. Radecki
- 3 qualified for this?
- A. Yeah. When they qualify, they
- 5 bring -- they have to have their funds available
- 6 with them. So they don't actually keep a list
- 7 of whoever qualified that day and how much they
- 8 qualified for. They just qualify them, so
- 9 nothing is kept in the file per se. It is just
- 10 whoever the winning bidder is, we have their
- 11 information in this particular file for that
- 12 particular file that they purchase the property
- 13 for.
- 14 (Deposition Exhibit 25 marked.)
- 15 BY MS. SEMPER:
- 16 Q. Does this document look familiar?
- 17 A. Yes.
- 18 Q. Can you please describe it for the
- 19 record?
- 20 A. It is NAS's Receipt of Funds and
- 21 Instructions.
- Q. Is this for the property at issue in
- 23 this litigation?
- 24 A. Yes.
- 25 Q. Does this document state the opening

CSR ASSOCIATES OF NEVADA
LAS VEGAS, NEVADA (702) 382-5015

- 1 bid?
- 2 A. Yes.
- Q. Can you please describe it for the
- 4 record?
- 5 A. \$3,717.83.
- 6 Q. Do you recall if that was the amount
- 7 on the notice of sale?
- 8 A. It is not.
- 9 Q. Do you know whether NAS has an
- 10 obligation to provide the amount in the notice
- 11 of sale that is the opening bid on the date of
- 12 the foreclosure sale?
- 13 A. I know that NAS provides the
- 14 additional fees and costs for the actual sale
- 15 going forward on their updated accounting ledger
- 16 and that's what the total of the opening bid is.
- 17 So if you look at the updated accounting ledger
- 18 for NAS, it is August 21, 2013.
- 19 Q. Who receives the August 21, 2013
- 20 updated ledger?
- 21 A. Nobody receives it.
- 22 Q. So how would a person who receives the
- 23 notice of sale know the opening bid amount prior
- 24 to the foreclosure sale?
- 25 A. They wouldn't.

CSR ASSOCIATES OF NEVADA
LAS VEGAS, NEVADA (702) 382-5015

- Q. Looking at Exhibit 25, do you know how many bids were placed at the sale?
 - A. There is only one bidder.
 - Q. And who was that?
- 5 A. Tim Radecki.

3

- Q. Other than this receipt of funds and instructions, do you have any other documents relating to the HOA sale?
- A. They would be in the file if there was anything else. Is there anything in particular that you wanted me to look at?
- 12 Q. Do you know what was orally said at 13 the sale prior to the opening bid?
- 14 A. No.

- Q. Is Misty Blanchard the person who
- 16 would know what was said at the sale?
- 17 A. She read the script, but what do you 18 mean by orally said?
- Q. By Misty Blanchard or someone at your office, were there any other representations
- 21 made about the property?
- A. I don't know. She would have read the script verbatim, the sales part of the script verbatim.
 - Q. So other than the information provided

- 1 in Exhibit 24, no other representations were
- 2 made relating to the property; is that correct?
- A. Not that I am aware of.
- Q. Where it says number of witnesses on
- 5 Exhibit 25, what does that mean?
- A. There were 19 witnesses the day of the
- 7 sale.
- 8 Q. Does that mean 19 individuals that
- 9 qualified to bid at the sale?
- 10 A. I don't know.
- 11 Q. Were there other foreclosure sales
- 12 conducted on that same day?
- 13 A. I don't know.
- Q. Are you aware of any prior agreements
- 15 regarding biding at the sale?
- A. What do you mean by prior agreements?
- 17 Q. Prior to the August 23rd date, do you
- 18 know if there were any offers to purchase this
- 19 property?

- 20 A. I have no idea. I mean, I can only
- 21 testify as to what is in the file. So I don't
- 22 see anything in the file.
- Q. Do you know how much the property sold
- 24 for at the HOA sale?
 - A. The successful bid was \$4,000.

51 1 (Deposition Exhibit 26 marked.) 2 BY MS. SEMPER: 3 0. Does this document look familiar? Α. Yes. 5 Ο. Can you please describe it for the 6 record? 7 Α. It is a copy of the recorded foreclosure deed. 9 And for the record, I will say it is 0. Wells Fargo-Radecki 0252 to 0254. Does this document confirm that the sale occurred on 11 12 August 23, 2013? 13 A. Yes. 14 0. And the bid amount was \$4,000? 15 Α. Correct. 16 0. Who signed this document? 17 Α. Elissa Hollander. 18 0. Is she an employee of Nevada Association Services? 20 Α. Yes. Currently employed as well? 21 0. 22 Α. Yes. Earlier you testified that Misty 23 Q. Blanchard conducted the sale. Would Elissa Hollander also have been present at the sale?

> CSR ASSOCIATES OF NEVADA LAS VEGAS, NEVADA (702) 382-5015

52

- A. Probably. I don't know for sure, but probably.
- Q. Would anyone else from your office be present at the sale?
- 5 A. I don't know. Anybody can be. I 6 don't know on this day who was there.
- Q. Can you please look at Page Bates
 Blabeled Wells Fargo-Radecki 254?
- 9 A. Okay.
- 10 Q. Is this the declaration of value for
- 11 the property?
- 12 A. Yes.
- Q. Do you know who would have filled this
- 14 out?
- 15 A. I don't. Either Elissa or Misty.
- 16 Q. It would have been filled out by
- 17 someone in your office, correct?
- 18 A. Correct.
- 19 Q. Do you know what information they
- 20 would have relied upon in order to fill this
- 21 out?
- 22 A. No.
- Q. Looking at Line Item 3(a), total value
- 24 sales price of property, can you tell me what is
- 25 listed there?

EXHIBIT H



Nevada Association Services, Inc. 6224 W. Desert Inn Road, Suite A Las Vegas, NV 86146 Phone (702) 804-8885 Fax (702) 804-8887 Tolf Free (888) 827-5544

July 9, 2012

Amanda R Munar 2102 Logsdon Drive North Las Vegas, NV 89032

> VIA REGULAR AND CERTIFIED MAIL

Re: NAS# N71812

2102 Logsdon Drive, North Las Vegas, NV 89032 Cambridge Heights, a planned community

Dear Sir/Madam:

Neveda Association Services, Inc. (NAS) has been contracted by Cambridge Heights, a planned community (also called the Association) to collect the overdue homeowner's assessments still due to the Association. As of today's date, records show a balance due of \$749.75. The account balance may periodically increase due to the addition of other charges provided within the Association's governing documents or as otherwise provided by law including NAC 116.470.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the debt, or any portion thereof, this office will assume the debt is valid. If you notify this office in writing within 30 days from receiving this notice that the debt, or any portion thereof, is disputed, this office will; obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request from this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

If you have any questions, please contact an account manager at (702) 804-8885.

Sincerely,

Megan Molina

Nevada Association Services, Inc.

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





Munar, Amanda Cambridge Heights, a planned community
2102 Logsdon Drive Account No. 37027

NAS #N71812

	NAS#N71812			
Assessments, Late Feez, I		Amount	Amount	Amount
Attorneys Poes & Collect	ion Costs	(Monthly)	(CURRENT)	(TOTAL)
		Present Rate	NAS FEES	NAS COSTS
Dates of Delinquency:		3/1/2012	3/1/2012	3/1/2012
03/01/2012-7/23/2012		7/23/2012	7/23/2012	7/23/2012
Balance Forward		25.00	0.00	0.00
Assessment Amount		35.00	0.00	0.00
No. of Periods Deling	uent	5	0	0
Total Assessments Due		175.00	0.00	0.00
Late fee amount		10.00	0.00	0.00
No. of Periods Late Fe	es Incurred	5	0	0
Total Late Fees Due		50.00	0.00	0.00
Interest Due		0.00	0.00	0.00
Mgtnt Intent to Lien		95.00	0.00	0.00
Misc: Delinquency Notice		45.00	0.00	0.00
Misc: Balance Due Notice		15.00	0.00	0.00
Management Co. Fee/ Adm	in Fee	200.00	0.00	0.00
Transfer Pce		0.00	0.00	0.00
Demand Letter		0.00	135.00	0.00
Notice of Dolinquent Asses	sment			
Lien/Violations Lien		0.00	325.00	0.00
Release of Notice of Deling	vent Assessment			
Lien/Violations Lien		0.00	30.00	0.00
Mailing		0.00	8.00	11.50
Recording Costs		0.00	0.00	34.00
Intent to Notice of Default		0,00	0.00	0.00
Payment Plan Fee		0.00	0.00	0.00
Payment Plan Breach Letter	25	0.00	0.00	0.00
Escrow Demand Fee		0.00	0.00	0.00
Notice of Default Fees		0.00	0.00	0.00
Title Report		0.00	0.00	0.00
Property Report		0.00	0.00	0.00
Notice of Sale Pee		0.00	0.00	0.00
Posting & Publication Cost		0.00	0.00	0.00
Courier		0.00	0.00	0.00
Postponement of Sale		0.00	0.00	0.00
Conduct Foreclosure Sale		0.00	0.00	0.00
Prepare/Record Deed		0.00	0.00	0.00
Property Transfer Tax		0.00	0.00	0.00
• -	Subtotals	\$605.00	\$498.00	\$45.50
Credit	Date	Type	Amoun	t Pa

Credit	Date	Type	<u>Amount</u> (0.00)	Payment Credits Assessments/Violations	Amount (0.00)
OTHER CREDITS TOTAL			0.00	Interest Late charges Management Co	(0.00) (0.00) (0.00)
				NAS Fees NAS Costs	(0.00) (0.00)

PAYMENTS TOTAL 0.00

TOTAL 1148.50

Assessments:	\$355.00
Interest:	\$0.00
Late charges:	\$50.00
Management Co:	\$200.00
Collection fees:	\$498,00
Collection costs:	\$45,50

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

http://nas/Ledger.aspx?hmnrid=8032409&tabindex=214

7/23/2012

WITNESS Moses
DATE: 9/14/15

Wells Fargo-Radecki 00014

EXHIBIT I

Inst#: 201207250001162

Fees: \$17.00 N/C Fee: \$0.00

07/25/2012 09:30:20 AM Receipt #: 1246666

Requestor:

NORTH AMERICAN TITLE

COMPAN

Recorded By: MSH Pgs: 1
DEBBIE CONWAY
CLARK COUNTY RECORDER

APN # 139-20-612-037 # N71812

NOTICE OF DELINQUENT ASSESSMENT LIEN

In accordance with Nevada Revised Statutes and the Association's declaration of Covenants Conditions and Restrictions (CC&Rs), recorded on August 30, 1996, as instrument number 01713 Book 960830, of the official records of Clark County, Nevada, the Cambridge Heights, a planned community has a lien on the following legally described property.

The property against which the lien is imposed is commonly referred to as 2102 Logsdon Drive North Las Vegas, NV 89032 particularly legally described as: CAMBRIDGE HGTS PHASE 2, PLAT BOOK 79, PAGE 58, LOT 38, BLOCK 6 in the County of Clark.

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

Mailing address(es):

2102 Logsdon Drive North Las Vegas, NV 89032

*Total amount due as of today's date is \$1,148.50.

This amount includes late fees, collection fees and interest in the amount of \$793.50

* Additional monies will accrue under this claim at the rate of the claimant's regular assessments or special assessments, plus permissible late charges, costs of collection and interest, accruing after the date of the notice.

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

Dated: July 23, 2012

By Megan Holina, of Nevada Association Services, Inc., as agent for Cambridge Heights, a planned community

When Recorded Mail To: Nevada Association Services TS # N71812 6224 W. Desert Inn Rd, Suite A

Las Vegas, NV 89146

Phone: (702) 804-8885

Toll Prec: (888) 627-5544



Centified Copy, this Document is a true and Cohrect Copy of the Recorded Eccument Minus ANY REDACTED PORTIONS

OCT. 12.2015 Debbie Gonnay

EXHIBIT J

Inet #: 201209130001442

Fees: \$18.00 N/C Fee: \$0.00

09/13/2012 09:24:20 AM Receipt #: 1306006

Requestor:

NORTH AMERICAN TITLE COMPAN

Recorded By: RNS Pge: 2

DEBBIE CONWAY

CLARK COUNTY RECORDER

APN # 139-20-612-037 NAS # N71812 North American Title # 38008 Property Address: 2102 Logsdon Drive



NOTICE OF DEFAULT AND ELECTION TO SELL UNDER HOMEOWNERS ASSOCIATION LIEN

IMPORTANT NOTICE

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

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

This amount is \$2,011.50 as of September 10, 2012 and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property or pay other obligations as required by your note and deed of trust or mortgage, or as required under your Covenants Conditions and Restrictions, Cambridge Heights, a planned community (the Association) may insist that you do so in order to reinstate your account in good standing. In addition, the Association may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes and hazard insurance premiums.

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

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

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

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

NAS # N71812

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

REMEMBER, YOU MAY LOSE LEGAL RIGHTS IF YOU DO NOT TAKE PROMPT ACTION. NOTICE IS HEREBY GIVEN THAT NEVADA ASSOCIATION

SERVICES, INC.

is the duly appointed agent under the previously mentioned Notice of Delinquent Assessment Licn, with the owner(s) as reflected on said lien being Amanda R Munar, dated July 23, 2012, and recorded on July 25, 2012 as instrument number 0001162 Book 20120725 in the official records of Clark County, Nevada, executed by Cambridge Heights, a planned community, hereby declares that a breach of the obligation for which the Covenants Conditions and Restrictions, recorded on August 30, 1996, as instrument number 01713 Book 960830, as security has occurred in that the payments have not been made of homeowner's assessments due from 3/1/2012 and all subsequent homeowner's assessments, monthly or otherwise, less credits and offsets, plus late charges, interest, trustee's fees and costs, attorney's fees and costs and Association fees and costs.

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

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

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

Legal Description: CAMBRIDGE HGTS PHASE 2, PLAT BOOK 79, PAGE 58, LOT 38, BLOCK 6 in the

County of Clark

Dated: September 10, 2012

By: Autumn Pesel, of Nevada Association Services, Inc. on behalf of Cambridge Heights, a planned community

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

CERTIFIED COPY, THIS DOCUMENT IS A THUE AND CORRECT COPY OF THE HECKLES DOCUMENT MINUS AT RESEARCHED PORTIONS

OCT. 1 2. 2015

Nebbis Certury

EXHIBIT K



Inst #: 201312190001671

N/C Fee: \$0.00 12/19/2013 01:16:08 PM

Fees: \$19.00

	Receipt #: 1878134 Requestor:
APN# 139-20-612-037	FIRST LEGAL INVESTIGATIONS
11-digit Assessor's Parcel Number may be obtained at:	Recorded By: STAITEK Pgs: 3 DEBBIE CONWAY
http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx	CLARK COUNTY RECORDER
Notice of Pendency of Action	
,	
Type of Document	
(Example: Declaration of Homestead, Quit Claim Deed, etc.)	
Recording Requested By:	
Meier & Fine	
Return Documents To:	
Name Meier & Fine	
Address 2300 W. Sahara Ave 井1150	
City/State/Zip Las Vegas, NV 85/02	
This page added to provide additional information required by NI	RS 111.312 Section 1-2
(An additional recording fee of \$1.00 will apply)	
This cover page must be typed or printed clearly in black ink only	<i>'.</i>
OR Form 108 ~ 08/06/2007 Coversheet.pdf	

Electronically Filed 12/18/2013 10:33:24 AM

]	LIS GLENN F. MEIER, ESQ.	Alun to Chum		
	2	Nevada Bar No. 006059 gmeier@nvbusinesslawyers.com	CLERK OF THE COURT		
	3	MARILYN FINE, ESQ. Nevada Bar No. 005949			
	4	mfine@nvbusinesslawyers.com Meier & Fine, LLC			
	5	2300 West Sahara Avenue, Suite 1150 Las Vegas, Nevada 89102			
	6	Telephone: (702) 673-1000 Facsimile: (702) 673-1001			
	7	Attorneys for Tim Radecki			
	8				
	9	IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA			
	10	IN AND FOR THE COUNTY	OF CLARK		
•	11	-000-			
MELER & FINE, LLC 2300 West Sabara Avenue, Sulte 1750 Las Vegas, Newada 89102 Tel: (702) 673-1001 Fax: (702) 673-1001	12	WELLS FARGO BANK, N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE	Case No. A-13-676574-C Dept. No. XXIX		
MEIFR & FINE, LLC 60 West Schata Avenue, Sule 13: Las Vegas, Nevada 89102 Fel: (702) 673-1000 Fan: (702) 673-1001	13	HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN PASS-THROUGH	And provided in the control of the c		
& FINE,] hara Avenue, S ns. Novada 89; (702) 673-1001 (702) 673-1001	14	CERTIFICATES, SERIES 2006-12,			
IFR of at Subs as Vega Tel: (7 Fax: (15	Plaintiff,			
ME W V	16	V 5.			
N	17	AMANDA R. MUNAR; CAMBRIDGE HEIGHTS, A PLANNED COMMUNITY; DOES I-X; and ROES I-10			
	18	inclusive,			
	19	Defendants.			
	20	TIM RADECKI,			
	21	Plaintiff-in-Intervention,			
	22	vs.			
	23	AMANDA MUNAR, WELLS FARGO BANK, N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS OF			
	24	THE HARBORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN PASS-THROUGH			
	25	CERTIFICATES, SERIES 2006-12,			
	26	Defendant-in-Intervention.			
	27				
	28	· ·			
		. 1			

24

25

26 27

28

1

2

3

4

5

6

7

8

9

10

11 12

LIS PENDENS

NOTICE IS HEREBY GIVEN, PURSUANT TO NRS § 14.010 that a Complaint in Intervention has been filed in the above-captioned matter by Plaintiff, LVDG, LLC, a Nevada limited liability company, by and through its attorneys of record, MEIER & FINE, LLC, which affect certain real property situated at 2102 Logsdon Drive, North Las Vegas, Nevada and identified by the Clark County Assessor's APN 139-20-612-037 (the "Property").

The action filed by Plaintiff seeks inter alia Quiet Title and Declaratory Relief concerning the Property.

DATED this 17th day of December, 2013.

MEIER & FINE, LLC

MARILYN FINE, ESQ., #005949 2300 West Sahara Avenue, Suite 1150

Las Vegas, Nevada 89102 Attorney for Tim Radecki

> CERTIFIED COPY DOCUMENT ATTACHED IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE

CLERK OF THE COURT

DEC 1 9 2013

- 2 -

CERTIFIED COPY, THIS
DOCUMENT IS A TRUE AND
COMPRET COPY OF THE
HE STEED DOCUMENT MINUS
NY NEBARTED PORTIONS

OCT. 12.2015 Debbie Gongay

EXHIBIT L

1 **DFLT** Kristin A. Schuler-Hintz, Esq., SBN 7171 2 McCarthy & Holthus, LLP 9510 W. Sahara Ave., Suite 110 3 Las Vegas, NV 89117 Phone (702) 685-0329 4 Fax (866) 339-5691 Email NVJud@McCarthyHolthus.com 5

CERTIFICATES, SERIES 2006-12

Attorneys for Plaintiff,

CLERK OF THE COURT

DISTRICT COURT

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

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

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

18 19

20

21

22

6

8

9

10

11

12

13

14

15

16

17

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,

23,24,1125 III

/// 26

111

III

27

OLERK OF THE COURT

28

NV-12-530033-TUD

1	the above-named Defendant for failing to answer or otherwise plead to Plaintiff's Complaint is STEVEN D. GRIERSON
2	hereby entered. CLERK OF THE COURT APR - 2 2013
3	By: Coltica ansone
4	Deputy Clerk Date
5	PATRICIA AZUCENA LOCATE
6	Respectfully submitted, MCCARTHY & HOLTHUS, LLP
7	
8	By: (/ 1/4/2
9	Kristin A. Schuler-Histz (NSB# 7171) 9510 West Sahara Ave. Suite 110
10	Las Vegas, NV 89117
71	
12	
13	
14	
15	
16	
17	
18	2
19	· ·
20	
21	
22	
23	
24	
25	
26	
27	·
/ 20 11	

NV-12-530033-JUD

EXHIBIT M

NOTICE OF FORECLOSURE SALE

WARNING! A SALE OF YOUR PROPERTY IS IMMINENT! UNLESS YOU PAY THE AMOUNT SPECIFIED IN THIS NOTICE BEFORE THE SALE DATE, YOU COULD LOSE YOUR HOME, EVEN IF THE AMOUNT IS IN DISPUTE. YOU MUST ACT BEFORE THE SALE DATE. IF YOU HAVE ANY QUESTIONS, PLEASE CALL NEVADA ASSOCIATION SERVICES, INC. AT (702) 804-8885. IF YOU NEED ASSISTANCE, PLEASE CALL THE FORECLOSURE SECTION OF THE OMBUDSMAN'S OFFICE, NEVADA REAL ESTATE DIVISION, AT 1-877-829-9907 IMMEDIATELY.

YOU ARE IN DEFAULT UNDER A DELINQUENT ASSESSMENT LIEN, July 23, 2012. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDINGS AGAINST YOU, YOU SHOULD CONTACT A LAWYER.

NOTICE IS HEREBY GIVEN THAT on 6/7/2013 at 10:00 am at the front entrance to the Nevada Association Services, Inc. 6224 West Desert Inn Road, Las Vegas, Nevada, under the power of sale pursuant to the terms of those certain covenants conditions and restrictions recorded on August 30, 1996 as instrument number 01713 Book 960830 of official records of Clark County, Nevada Association Services, Inc., as duly appointed agent under that certain Delinquent Assessment Lien, recorded on July 25, 2012 as document number 0001162 Book 20120725 of the official records of said county, will sell at public auction to the highest bidder, for lawful money of the United States, all right, title, and interest in the following commonly known property known as: 2102 Logsdon Drive, North Las Vegas, NV 89032. Said property is legally described as: CAMBRIDGE HGTS PHASE 2, PLAT BOOK 79, PAGE 58, LOT 38, BLOCK 6, official records of Clark County, Nevada.

The owner(s) of said property as of the date of the recording of said lien is purported to be: Amanda R Munar The undersigned agent disclaims any liability for incorrectness of the street address and other common designations, if any, shown herein. The sale will be made without covenant or warranty, expressed or implied regarding, but not limited to, title or possession, or encumbrances, or obligations to satisfy any secured or unsecured liens. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is \$3,062.83. Payment must be in cash or a cashier's check drawn on a state or national bank, check drawn on a state or federal savings and loan association, savings association or savings bank and authorized to do business in the State of Nevada. The Notice of Default and Election to Sell the described property was recorded on 9/13/2012 as instrument number 0001442 Book 20120913 in the official records of Clark County.

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

May 9, 2013

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

By: Elissa Hollander, Agent for Association and employee of Nevada Association Services, Inc.

Las Vegas, NV 89146 (702) 804-8885, (888) 627-5544

EXHIBIT N



RECEIPT OF FUNDS AND INSTRUCTIONS

Address: 2102 LC	asyou Dr. v	111, NV 80	1032			
T.S. No. 71812		Date \$123/13				
Check No.	Name of Bank	Amount				
08 44503584	USISANK	\$ 10,000,00 \$ \$ \$	 			
Opening Bid \$ 3,717.	Total of Cash Received Total Received	s 10,000,00	2			
4	Successful Bid Refund Amount	\$ 4,000.00				
Refund Payable to Company Signature Signature						
Buyers Name JUM KULLCU Drivers License No. NV 150069 1601 Title to Property to Be Vested As Follow: JUM Radicus						
Address 5005 Rebucca Rd, LV, NV 89130 Phone Number Ley 5- Le 182						
Number of Bidders	9	;	PIF EXHIBIT 25			
A	Mare D	ble	DATE: 9/14/15 CINDY HUEBNER, CCR			

Wells Fargo-Radecki 00197

EXHIBIT 0

STATE OF NEVADA DECLARATION OF VALUE

1. Assessor Parcel Num a. 139-20-612-03			
	3/		•
ъ. с.			
d.			
2. Type of Property:			
a. Vacant Land	b. Single Pam. Res.	EOG BEGONEDE	C Charles
	and a mind of the state of the		RS OPTIONAL USE ONLY
		Book	Page:
e. Apt. Bldg	f. Comm'l/Ind'l		**
g. Agricultural Other	h. Mobile Home	Notes:	
3.a. Total Value/Sales Pr	ice of Property	\$ 56,197.00	
	closure Only (value of proj	nerty (
c. Transfer Tax Value:	Trouble Only (value of proj	\$ 56,197,00	
d. Real Property Transfe	er Tax Due	\$ 288.15	
		200113	
4. If Exemption Claime	:d:		
	mption per NRS 375.090, 5	Section	
	or Exemption:		
The undersigned declares and NRS 375.110, that the and can be supported by	ntage being transferred: 10 and acknowledges, under the information provided is documentation if called up	penalty of perjury, purs correct to the best of the on to substantiate the ir	eir information and belief, aformation provided herein.
Furthermore, the parties a	gree that disallowance of a	ny claimed exemption,	or other determination of
additional tax due, may re	sult in a penalty of 10% of	the tax due plus interes	st at 1% per month. Pursuant
to NRS 375.030, the Buy	er and Seller shall be jointly	y and severally liable fo	or any additional amount owed.
Signatury LUS	$\Delta M = \Delta M = \Delta M$	D	nployee/Agent for HOA
/ Signature		Capacity:	
SELLER (GRANTOR)	INFORMATION	BUYER (GRANT	EE) INFORMATION
(REQUIR			(UIRED)
Print Name: Nevada Association Services		Print Name: Tim F	
Address: 6224 W. Desert Inn Road		Address: 5225 Rebecca Road	
City: Las Vegas		City: Las Vegas	DCCCS (COG)
	Zip: 89146	State: NV	Zip:89130
			~~~~~~
COMPANY/PERSON R	<b>EQUESTING RECORD</b>	ING (Required if not	seller or buyer)
Print Name:		Escrow#	
Address:			
City;	_	State:	Zip:

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Wells Fargo-Radecki 0254

Inet #: 201309040001985
Fees: \$18.00 N/C Fee: \$0.00
RPTT: \$288.15 Ex: #
09/04/2013 01:45:18 PM
Receipt #: 1768240
Requestor:
TIM RADECKI
Recorded By: SUO Pge: 3
DEBBIE CONWAY

**CLARK COUNTY RECORDER** 

Please mail tax statement and when recorded mail to: Tim Radecki 5225 Rebecca Road Las Vegas, NV 89130



### FORECLOSURE DEED

APN # 139-20-612-037 North American Title #38008

NAS # N71812

### The undersigned declares:

Nevada Association Services, Inc., herein called agent (for the Cambridge Heights, a planned community), was the duly appointed agent under that certain Notice of Delinquent Assessment Lien, recorded July 25, 2012 as instrument number 0001162 Book 20120725, in Clark County. The previous owner as reflected on said lien is Amanda R Munar. Nevada Association Services, Inc. as agent for Cambridge Heights, a planned community does hereby grant and convey, but without warranty expressed or implied to: Tim Radecki (herein called grantee), pursuant to NRS 116.31162, 116.31163 and 116.31164, all its right, title and interest in and to that certain property legally described as: CAMBRIDGE HGTS PHASE 2, PLAT BOOK 79, PAGE 58, LOT 38, BLOCK 6 Clark County

### AGENT STATES THAT:

This conveyance is made pursuant to the powers conferred upon agent by Nevada Revised Statutes, the Cambridge Heights, a planned community governing documents (CC&R's) and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell, recorded on 9/13/2012 as instrument # 0001442 Book 20120913 which was recorded in the office of the recorder of said county. Nevada Association Services, Inc. has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notice of Delinquent Assessment and Notice of Default and the posting and publication of the Notice of Sale. Said property was sold by said agent, on behalf of Cambridge Heights, a planned community at public auction on 8/23/2013, at the place indicated on the Notice of Sale. Grantee being the highest bidder at such sale, became the purchaser of said property and paid therefore to said agent the amount bid \$4,000.00 in lawful money of the United States, or by satisfaction, pro tanto, of the obligations then secured by the Delinquent Assessment Lien.

Dated: August 23, 2013

By Elissa Hollander, Agent for Association and Employee of Nevada Association Services

PIF EXHIBIT 24
WITNESS MOSES
DATE: 9/14/15
CINDY HUEBNER, CCR

Wells Fargo-Radecki 0252

STATE OF NEVADA COUNTY OF CLARK

On August 23, 2013, before me, M. Blanchard, personally appeared Elissa Hollander personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same in his/her authorized capacity, and that by signing his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and seal.

(Scal)

(Signature)

M. BLANCHARD
Notary Public, State of Nevada
Appointment No. 09-11646-1
My Appt. Expiree Nov. 5, 2013

M. Blanchard

### EXHIBIT P

1 1 DISTRICT COURT 2 CLARK COUNTY, NEVADA 3 4 WELLS FARGO BANK, N.A., 5 AS TRUSTEE ON BEHALF OF THE HOLDERS OF THE 6 HABORVIEW MORTGAGE LOAN TRUST MORTGAGE LOAN 7 PASS-THROUGH CERTIFICATES, SERIES 8 2006-12, 9 Plaintiff, 10 vs. No. A-13-676574-C Dept. No. XXIX 11 AMANDA R. MUNAR; CAMBRIDGE HEIGHTS, A PLANNED COMMUNITY; DOES 12 I-X; and ROES 1-10 inclusive, 13 14 Defendants. 15 DEPOSITION OF CHRISTOPHER YERGENSEN 16 30(b)(6) Nevada Association Services, Inc. 17 Taken on Monday, September 14, 2015 18 By a Certified Court Reporter 19 At 3:01 p.m. At Ballard Spahr, LLP 20 100 North City Parkway, Suite 1750 Las Vegas, Nevada 21 22 23 Reported By: Cindy Huebner, CCR 806 25

1 foreclosed upon?

10

17

A.

No.

- A. In our script, we say that a check in the amount of so and so was paid by Wells Fargo Bank, for example, which we believe is full payment of the super priority lien pursuant to Nevada Chapter 116. That is all we announce.
- Q. Other than the oral representation at the time of the sale, there is no written document that reflects that?

Typically, banks are paying the

- last day, the last minute. So we just thought that that would be important to let the investors -- or at least all of them know that the check was made and it is usually like the day before or two days before the sale is conducted, but they are still buying them.
  - Q. Does NAS have any policies or procedures relating to maximizing the sales price at the HOA sale?
- A. No. Actually, we don't -- we just go
  in increments of 1,000, 5,000, and it is up to
  the bidders. We would actually prefer not to go
  over the lien amount because then NAS has to
  deal with the excess proceeds, which in my

25 lifetime has made my life miserable.

prefer they just pay the lien amount.

2

3

19

24

25

- What is NAS's policy with respect to excess proceeds?
- 4 A. Excess is kind of an ambiguous term. 5 We are talking about access above what the HOA 6 is owed, as well as cost collection.

7 So in NRS 116, there are like five sub-paragraphs that tell you how to apply the proceeds. When we talk about excess, it is 10 after everyone has been paid and we don't know where the rest of the money should go to. now, we are putting it in trust. We notify all of the recorded security interest holders against the property that we have the money to make a claim. And then when they make a claim, we try to figure out, you know, who the next subordinate claim of record should receive those 17 18 funds.

To date, just out of caution and because there is so much litigation going on, we 21 have rarely distributed those proceeds. contemplating going into an interpleader action, but it is way too expensive to do so. It would just eat into the corpus of the funds.

Right now, we are considering deeding

1 form?

- 2 A. We do.
- Q. What are NAS's policies and procedures with respect to filling this form out?
- A. Originally, we had put down the sales
  price of the property. For about two years, the
  Clark County Treasurer's Office was accepting
  that.
- Q. Do you recall the approximate dates?
- A. This might have been when I was at Red Rock. Clark County rotated their civil division at the District Attorneys. The new attorney that came in under the Assessor's Office figured out a new way to increase revenue, and that was through these HOA sales, and took a position that in order for them to accept the foreclosure deed, the value had to be listed rather than the sales price. That was in probably 2011, 2012.

So the value that NAS takes is the value off of the Assessor's page usually. In these pages that you referred me to, the total value/sales price of property, like I said, typically, we list the sales price at the auction, but the Clark County Assessor's Office

25 changed their mind and said no, you got to put

- 1 down a stated value. Our policy then is to take 2 the value off of the Assessor/Clark County 3 Recorder's page.
- Q. And do you think that the value listed on Line Item 3(a) is a reasonable estimate for the value of the property at the time NAS conducted the foreclosure sale?
- A. You know what, if Clark County thought it was, then I guess we did too. We are taking it directly from the Clark County Assessor's page. I guess if that is what they thought the value was, we just use it.

To answer your question, that is what
we were instructed to do so by Clark County in
order to get their foreclosure deed recorded.

- Q. Do you have any reason to dispute that that would be the approximate value of the property?
  - A. Absolutely. From a legal perspective?
  - Q. Why is that?

19

20

A. Whoever bought this property is buying clouded title, an invite to litigation, and it is a foreclosure deed. Just real estate law, you are never going to get clear title from a title company. I argued with the Clark County