

CLERK OF THE COURT

APN #: 178-19-712-012

LISP

HOWARD C. KIM, ESQ.

Nevada Bar No. 10386

E-mail: howard@hkimlaw.com

DIANA S. CLINE, ESQ.

Nevada Bar No. 10580

E-mail: diana@hkimlaw.com

VICTORIA L. HIGHTOWER, ESQ.

Nevada Bar No. 10897

E-mail: victoria@hkimlaw.com

HOWARD KIM & ASSOCIATES

400 N. Stephanie St, Suite 160

Henderson, Nevada 89014

Telephone: (702) 485-3300

Facsimile: (702) 485-3301

Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL1, LLC a Nevada
limited liability company,

Plaintiff,

vs.

US BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4, and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No.

Dept. No.

NOTICE OF LIS PENDENS

PLEASE TAKE NOTICE that the above-entitled action stating a real property claim as described in this notice, was commenced on March 22, 2013, in the above-named Court, located at 200 Lewis Avenue, Las Vegas, Nevada, 89101, by SFR INVESTMENTS POOL1, LLC against US BANK, N.A. ("US Bank") is a national banking association and Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation, Mortgage Pass-Through

HOWARD KIM & ASSOCIATES

400 N. STEPHANIE ST, SUITE 160

HENDERSON, NEVADA 89014

(702) 485-3300 FAX (702) 485-3301

1 Certificates, Series 2006-AR4; LUCIA PARKS; DOES I-X, ROE CORPORATIONS I-X, and
2 any and all persons unknown, claiming any right, title, estate, lien or interest in the real property
3 described in the Complaint, adverse to Plaintiff's ownership or any cloud upon Plaintiff's title
4 thereto.

5 The action is now pending in the above-named Court.

6 This action effects title to specific real property and the right to possession of specific
7 real property situated in Clark County, Nevada, commonly known as 2270 Nashville Avenue,
8 Henderson, NV 89052 legally described as follows:

9 **Lot 5, Block 5, of Green Valley Ranch Phase 3, Parcel 40, As Shown by Map**
10 **Thereof on File in Book 71 of Plats, Page 68 in the Office of the County**
11 **Recorder of Clark County Nevada**

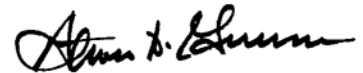
12 and more particularly described as Clark County Assessor Parcel Number **178-19-712-012**.

13 DATED March 22nd, 2013.

HOWARD KIM & ASSOCIATES

14
15 /s/ Diana S. Cline
16 Howard C. Kim, Esq.
17 Nevada Bar No. 10386
18 Diana S. Cline, Esq.
19 Nevada Bar No. 10580
20 Victoria L. Hightower, Esq.
21 Nevada Bar No. 10897
22 400 N. Stephanie St., Suite 160
23 Henderson, Nevada 89014
24 Phone: (702) 485-3300
25 Fax: (702) 485-3301

Attorneys for Plaintiff



CLERK OF THE COURT

1 MTD

2 WRIGHT, FINLAY & ZAK, LLP

3 Chelsea A. Crowton, Esq.

4 Nevada Bar No. 11547

5 5532 South Fort Apache Road, Suite 110

6 Las Vegas, NV 89148

7 (702) 475-7964; Fax: (702) 946-1345

8 ccrowton@wrightlegal.net

9 Attorney for Defendant,

10 U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities

11 Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4

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

14 SFR INVESTMENTS POOL, LLC, a Nevada
15 limited liability company

16 Plaintiff,

17 vs.

18 US BANK, N.A., a national banking association
19 as Trustee for the Certificate Holders of Wells
20 Fargo Asset Securities Corporation, Mortgage
21 Pass-Through Certificates, Series 2006-AR4,
22 and LUCIA PARKS, an individual; DOES I
23 through X, and ROE CORPORATIONS I
24 through X, inclusive.

25 Defendants.

Case No.: A-13-678814-C

Dept. No.: XVIII

26 **DEFENDANT, U.S. BANK, N.A.'S,**
27 **MOTION TO DISMISS WITH**
28 **PREJUDICE THE PLAINTIFF'S**
COMPLAINT

21 Pursuant to Nevada Rules of Civil Procedure (N.R.C.P.) 12(b)(5), the Defendant, U.S.
22 Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities Corporation,
23 Mortgage Pass-Through Certificates, Series 2006-AR4 (hereinafter "U.S. Bank"), by and
24 through their attorney of record, Chelsea A. Crowton, Esq. of the law firm of Wright, Finlay &
25 Zak, LLP, hereby submits its Motion to Dismiss with Prejudice the Plaintiff's Complaint.

26 ///

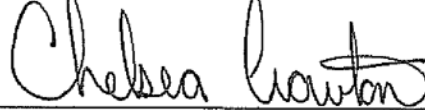
27 ///

28 ///

1 This Motion is based on the attached Memorandum of Points and Authorities, all papers
2 and pleadings on file herein, all judicially noticed facts, and on any oral or documentary
3 evidence that may be presented at a hearing on this matter.

4 DATED this 30th day of April, 2013.

5 WRIGHT, FINLAY & ZAK, LLP

6 

7 Chelsea A. Crowton, Esq.

8 Nevada Bar No. 11547

9 5532 South Fort Apache Road, Suite 110

10 Las Vegas, NV 89148

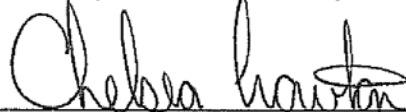
11 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
12 *for the Certificate Holders of Wells Fargo Asset*
13 *Securities Corporation, Mortgage Pass-Through*
14 *Certificates, Series 2006-AR4*

15 **NOTICE OF HEARING**

16 PLEASE TAKE NOTICE that the undersigned will bring **DEFENDANT, U.S. BANK,**
17 **N.A.'S, MOTION TO DISMISS WITH PREJUDICE THE PLAINTIFF'S COMPLAINT**
18 on the 4 day of June, 2013, at the hour of 8:15 a.m., or as soon thereafter as counsel may
19 be heard on this matter.

20 DATED this 30th day of April, 2013.

21 WRIGHT, FINLAY & ZAK, LLP

22 

23 Chelsea A. Crowton, Esq.

24 Nevada Bar No. 11547

25 5532 South Fort Apache Road, Suite 110

26 Las Vegas, Nevada 89148

27 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
28 *for the Certificate Holders of Wells Fargo Asset*
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4

1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. STATEMENT OF FACTS**

4 On December 3, 2005, Lucia Parks (hereinafter "Parks") purchased the Property located
5 at 2270 Nashville Avenue, Henderson, Nevada 89052 (hereinafter "Property").¹ On January 4,
6 2006, Richard E. Parks executed a Grant, Bargain, Sale Deed, whereby Richard E. Parks sold his
7 community property interest in the Property to Parks. On December 30, 2005, Parks executed a
8 Deed of Trust and Note for \$331,500.00, whereby Wells Fargo Bank, N.A. was stated as the
9 Lender and United Title of Nevada was stated as the Trustee under the Deed of Trust.² On
10 February 24, 2010, a Notice of Default and Election to Sell under Deed of Trust was recorded in
11 the Clark County Recorder's Office, whereby the Notice stated that Parks defaulted on the 2005
12 Note as early as November 2009.³ On July 12, 2010, a Corporation Assignment of Deed of Trust
13 was recorded in the Clark County Recorder's Office, whereby Wells Fargo Bank, N.A.
14 transferred all beneficial interest in the December 2005 Note and Deed of Trust to U.S. Bank.⁴
15 On July 12, 2010, a Substitution of Trustee was recorded in the Clark County Recorder's Office,
16 whereby U.S. Bank substituted National Default Servicing Corporation as Trustee under the
17 December 2005 Deed of Trust.⁵ On July 12, 2010, a Certificate from the Nevada Foreclosure
18 Mediation Program was recorded in the Clark County Recorder's Office.⁶ On July 12, 2010, a
19 Notice of Trustee's Sale was recorded in the Clark County Recorder's Office.⁷

20 On May 24, 2012, a Notice of Delinquent Assessment Lien was recorded in the Clark
21 County Recorder's Office.⁸ On June 7, 2012, an Assignment of Mortgage was recorded in the

22 ¹ A true and correct copy of the GBS Deed is recorded in the Clark County Recorder's Office as Book and
23 Instrument Number 20060105-0004274 is attached to the Defendant's Request for Judicial Notice ("RJN") as
24 **Exhibit A.**

25 ² A true and correct copy of the Deed of Trust is recorded in the Clark County Recorder's Office as Book and
26 Instrument Number 20060105-0004275 is attached to the Defendant's RJN as **Exhibit B.**

27 ³ A true and correct copy of the Notice of Default is recorded in the Clark County Recorder's Office as Book and
28 Instrument Number 20100224-0003380 is attached to the Defendant's RJN as **Exhibit C.**

⁴ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002705 is attached to the Defendant's RJN as **Exhibit D.**

⁵ A true and correct copy of the Substitution is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002706 is attached to the Defendant's RJN as **Exhibit E.**

⁶ A true and correct copy of the Certificate is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002707 is attached to the Defendant's RJN as **Exhibit F.**

⁷ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book
and Instrument Number 20100712-002708 is attached to the Defendant's RJN as **Exhibit G.**

⁸ A true and correct copy of the Notice of Lien is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20120524-0002436 is attached to the Defendant's RJN as **Exhibit H.**

1 Clark County Recorder's Office, clarifying the transfer of beneficial interest in the December
2 2005 Note and Deed of Trust to U.S. Bank.⁹ On June 27, 2011, a Notice of Trustee's Sale was
3 recorded in the Clark County Recorder's Office.¹⁰ On July 19, 2012, a Notice of Default and
4 Election to Sell under Homeowners Association Lien was recorded in the Clark County
5 Recorder's Office.¹¹ On February 7, 2013, a Notice of Foreclosure Sale was recorded in the
6 Clark County Recorder's Office.¹² On March 6, 2013, a Foreclosure Deed was recorded in the
7 Clark County Recorder's Office, whereby the Plaintiff purchased the Property for \$14,000,000.¹³
8 On March 11, 2013, a third Notice of Trustee's Sale was recorded in the Clark County
Recorder's Office.¹⁴

9 II. PROCEDURAL HISTORY

10 On March 22, 2013, the Plaintiff filed a Complaint for Quiet Title and Declaratory Relief
11 in the herein Court. On March 22, 2013, the Plaintiff filed a Notice of Lis Pendens in the herein
12 Court. On March 27, 2013, the Plaintiff filed an Application for Temporary Restraining Order
13 and Motion for Preliminary Injunction. On March 28, 2013, the Plaintiff filed a Temporary
14 Restraining Order. On April 10, 2013, U.S. Bank filed a Notice of Appearance in the case. On
15 April 25, 2013, U.S. Bank filed a Response to the Motion for Preliminary Injunction and Request
for Judicial Notice in Support of the Response to the Motion for Preliminary Injunction.

16 III. LEGAL ARGUMENTS

17 A. MOTION TO DISMISS LEGAL STANDARD.

18 Pursuant to N.R.C.P. Rule 12(b)(5), "failure to state a claim upon which relief can be
19 granted," is a basis to dismiss a Complaint where the moving party can demonstrate beyond
20 doubt that the Petitioner cannot provide a set of facts in support of his claim which would entitle
21 them to relief, such that this Motion to Dismiss should be granted. Puckett v. Park Place

22
23 ⁹ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20120607-0002928 is attached to the Defendant's RJN as **Exhibit I**.

24 ¹⁰ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book
and Instrument Number 20110627-0002062 is attached to the Defendant's RJN as **Exhibit J**.

25 ¹¹ A true and correct copy of the Notice of Default (HOA) is recorded in the Clark County Recorder's Office as
Book and Instrument Number 20120719-0001226 is attached to the Defendant's RJN as **Exhibit K**.

26 ¹² A true and correct copy of the Notice of Foreclosure Sale is recorded in the Clark County Recorder's Office as
Book and Instrument Number 20130207-0000910 is attached to the Defendant's RJN as **Exhibit L**.

27 ¹³ A true and correct copy of the Foreclosure Deed is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20130306-0001614 is attached to the Defendant's RJN as **Exhibit M**.

28 ¹⁴ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book
and Instrument Number 20130311-0003086 is attached to the Defendant's RJN as **Exhibit N**.

1 Entertainment Corp., 332 F. Supp. 2d 1349, 1352 (D. Nev. 2004). In making a determination,
2 the allegations made in the Complaint are generally taken as true and viewed in the light most
3 favorable to the non-moving party. Id. While the Court should typically take the allegations as
4 alleged in the Complaint as true, "Courts do not assume the truth of legal conclusions merely
5 because they are cast in the form of factual allegations." Puckett, 332 F. Supp. 2d at 1352
6 (Quoting, Western Mining Counsel v. Watt, 643 F.2d 618, 624 (9th Cir. 1981)). It has
7 specifically been held that "conclusory allegations of law and unwanted inferences are
8 insufficient to defend a Motion to Dismiss for failure to state a claim." In re Stac Electronics
9 Securities Litigation, 89 F.3d 1399, 1403 (9th Cir. 1996) (Quoting, In re VeriFone Securities
10 Litigation, 11 F.3d 865, 868 (9th Cir. 1993)).

11 **B. THE DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED WITH**
12 **REGARDS TO THE COMPLAINT BECAUSE THE PLAINTIFF FAILS TO**
13 **STATE A CLAIM FOR RELIEF AGAINST U.S. BANK.**

14 a. **THE DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED**
15 **BECAUSE UNDER N.R.S. 116.3116(2)(b), U.S. BANK'S LIEN IS**
16 **SUPERIOR TO THE ASSESSMENT LIEN RECORDED BY COPPER**
17 **RIDGE.**

18 The Plaintiff misconstrues the language in N.R.S. 116.3116(2)(b) to imply that the
19 foreclosure by Copper Ridge Community (hereinafter "Copper Ridge") extinguished U.S.
20 Bank's Lien. The Nevada Supreme Court has espoused that when a statute "is clear on its face, a
21 Court may not go beyond the language of the statute in determining the legislature's intent."
22 Diaz v. Eighth Judicial District Court ex rel. County of Clark, 116 Nev. 88, 94, 993 P.2d 50, 54-
23 55 (2000). The language in N.R.S. 116.3116(2)(b) is clear as to the priority of title regarding
24 Deeds of Trust and HOA Liens. The language in N.R.S. 116.3116(2)(b) unambiguously states
25 that the Copper Ridge Lien is junior to U.S. Bank's Lien. N.R.S. 116.3116(2)(b) states,

26 2. A lien under this section is prior to all other liens and encumbrances on a unit except:

27 (b) A first security interest on the unit recorded before the date on which the assessment
28 sought to be enforced became delinquent or, in a cooperative, the first security interest
encumbering only the unit's owner's interest and perfected before the date on which the
assessment sought to be enforced became delinquent;

1 The specific language of N.R.S. 116.3116(2) states that the Copper Ridge Lien is prior to
2 all other liens and encumbrances secured by the Property, except a first security interest on the
3 Property recorded before the date on which the assessment became delinquent in the case.
4 N.R.S. 116.3116(2). The Deed of Trust wherein U.S. Bank is a beneficiary was recorded in the
5 Clark County Recorder's Office prior to the date on which the assessments by Copper Ridge
6 became delinquent in this case. On December 30, 2005, Parks executed a Deed of Trust and
7 Note for \$331,500.00, whereby Wells Fargo Bank, N.A. was stated as the Lender and United
8 Title of Nevada was stated as the Trustee under the Deed of Trust.¹⁵ On July 12, 2010, a
9 Corporation Assignment of Deed of Trust was recorded in the Clark County Recorder's Office,
10 whereby Wells Fargo Bank, N.A. transferred all beneficial interest in the December 2005 Note
11 and Deed of Trust to U.S. Bank.¹⁶ On May 24, 2012, a Notice of Delinquent Assessment Lien
12 was recorded in the Clark County Recorder's Office.¹⁷ On June 7, 2012, an Assignment of
13 Mortgage was recorded in the Clark County Recorder's Office, clarifying the transfer of
14 beneficial interest in the December 2005 Note and Deed of Trust to U.S. Bank.¹⁸ The December
15 2005 Deed of Trust was properly perfected and recorded in the Clark County Recorder's Office
16 over six (6) years prior to the recording of the Notice of Delinquent Assessment Lien by Copper
17 Ridge. Therefore, pursuant to N.R.S. 116.3116(2)(b), the December 2005 Deed of Trust has
18 priority over the Assessment Lien recorded by Copper Ridge.

19 The Plaintiff is also required to (1) produce a copy of the assessment lien upon which the
20 foreclosure sale was based and (2) allege that the assessment lien chronologically precedes the
21 Deed of Trust. See Centeno v. Mortg. Elec. Registration Systems, 2012 WL 3730528 * 3 (D.
22 Nev. Aug. 28, 2012).¹⁹ The Plaintiff has failed to assert a vital fact necessary to maintain a
23

24 ¹⁵ A true and correct copy of the Deed of Trust recorded in the Clark County Recorder's Office as Book and
Instrument Number 20060105-0004275 is attached to the Defendant's RJN as **Exhibit B**.

25 ¹⁶ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002705 is attached to the Defendant's RJN as **Exhibit D**.

26 ¹⁷ A true and correct copy of the Notice of Lien is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20120524-0002436 is attached to the Defendant's RJN as **Exhibit H**.

27 ¹⁸ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20120607-0002928 is attached to the Defendant's RJN as **Exhibit I**.

28 ¹⁹ A true and correct copy of Centeno v. Mortg. Elec. Registration Systems, 2012 WL 3730528 * 3 (D. Nev. Aug.
28, 2012) is attached to the Defendant's RJN as **Exhibit O**.

1 N.R.S. 116.3116 et seq. cause of action. Similar to Centeno, wherein the Court dismissed an
2 N.R.S. 116.3116 cause of action based on the failure of the Plaintiff to attach the Assessment
3 Lien or factually assert that the Assessment Lien predated the first, position Deed of Trust, the
4 Plaintiff in the herein case fails to assert that U.S. Bank's Lien was recorded after the Copper
5 Ridge Lien and the Plaintiff fails to attach the Assessment Lien. The Centeno Court clearly
6 relied on the chain of title recordings to determine if a First Mortgage was extinguished by an
7 HOA sale.²⁰ The failure of the Plaintiff to assert the above-stated facts is based on the clear
8 chain of title that establishes that the Copper Ridge Lien was recorded over six (6) years after
9 U.S. Bank's 2005 Deed of Trust.

10 Therefore, pursuant to N.R.S. 116.3116(2)(b) and case law, the December 2005 Deed of
11 Trust has priority over the Assessment Lien recorded by Copper Ridge and the Plaintiff cannot
12 state a valid claim under N.R.S. 116.3116 et seq.

13 **b. THE DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED**
14 **BECAUSE THE PLAINTIFF MISCONSTRUES N.R.S. 116.3116(2)(c).**

15 The Plaintiff asserts, pursuant to N.R.S. 116.3116(2)(c), that the foreclosure sale by
16 Copper Ridge extinguished U.S. Bank's first, position lien secured against the Property.²¹ The
17 language in N.R.S. 116.3116(2)(c) carves out a limited exception to N.R.S. 116.3116(2)(b),
18 wherein an HOA is entitled to only nine (9) months of HOA charges and assessments upon the
19 foreclosure of the first, position Deed of Trust or upon the initiation of a judicial action by the
20 HOA. N.R.S. 116.3116(2)(c) states,

21 2. A lien under this section is prior to all other liens and encumbrances on a unit except:

22 (c) Liens for real estate taxes and other governmental assessments or charges against the
23 unit or cooperative.

24 The lien is also prior to all security interests described in paragraph (b) to the extent of
25 any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the
26 extent of the assessments for common expenses based on the periodic budget adopted by
the association pursuant to NRS 116.3115 which would have become due in the absence
of acceleration during the 9 months immediately preceding institution of an action to

27
28 ²⁰ A true and correct copy of Centeno v. Mortg. Elec. Registration Systems, 2012 WL 3730528 * 3 (D. Nev. Aug.
28, 2012) is attached to the Defendant's RJN as **Exhibit O**.

²¹ See Complaint in general.

1 enforce the lien, unless federal regulations adopted by the Federal Home Loan Mortgage
2 Corporation or the Federal National Mortgage Association require a shorter period of
3 priority for the lien. If federal regulations adopted by the Federal Home Loan Mortgage
4 Corporation or the Federal National Mortgage Association require a shorter period of
5 priority for the lien, the period during which the lien is prior to all security interests
6 described in paragraph (b) must be determined in accordance with those federal
7 regulations, except that notwithstanding the provisions of the federal regulations, the
8 period of priority for the lien must not be less than the 6 months immediately preceding
9 institution of an action to enforce the lien. This subsection does not affect the priority of
10 mechanics' or materialmen's liens, or the priority of liens for other assessments made by
11 the association.

12 N.R.S. 116.3116(2)(c) carves out a narrow exception to N.R.S. 116.3116(2)(b), for
13 N.R.S. 116.3116(2)(c) merely states that an HOA's unpaid charges and assessments incurred
14 during the nine (9) months prior to the foreclosure of a First Mortgage continue to encumber the
15 Property after the foreclosure by the first, position Deed of Trust. The nine (9) month "Super-
16 Priority Lien" does not wipe out a first, position Deed of Trust nor does the language in N.R.S.
17 116.3116(2)(c) state that a first, position Deed of Trust is extinguished by a foreclosure on an
18 Assessment Lien. The language in N.R.S. 116.3116(2)(c) clearly states that the HOA must
19 initiate a judicial or non-judicial action to enforce the "Super-Priority Lien." N.R.S.
20 116.3116(2)(c) is a mechanism by which the Legislature ensured that an HOA will be paid the
21 assessments due on a Property upon the foreclosure by a first, position Deed of Trust. The
22 interpretation of N.R.S. 116.3116(2)(c) proffered by the Plaintiff is absurd and illogical, for its
23 absurd and illogical to assume that a Homeowner's Association foreclosure sale for \$14,000.00
24 could eliminate a Deed of Trust executed over seven (7) years prior to the foreclosure sale. The
25 "Super-Priority Lien" should be treated as a payment priority, wherein the Lien remains after a
26 foreclosure to ensure that the Homeowner's Association is paid its assessment dues.

27 The proffered legal theory offered by the Plaintiff would be in direct violation of U.S.
28 Bank's due process rights, pursuant to the properly recorded Deed of Trust in the Clark County
Recorder's Office. U.S. Bank's Deed of Trust was recorded in January 2006, perfecting U.S.
Bank's Lien secured against the Property. It would be a violation of U.S. Bank's due process
rights to allow a later-in-time recorded Lien to extinguish a first, position Deed of Trust. N.R.S.
116.3116(2)(c) is merely a means to ensure that the HOA's Lien is paid and will not be

1 extinguished by a first, position Deed of Trust foreclosure sale. To accept the Plaintiff's theory
2 is to accept a violation of the contractual and due process rights of U.S. Bank.

3 Plus, the analysis by the Plaintiff is illogical, for the Plaintiff maintains that the Statute
4 states both that a first mortgage is superior to an assessment lien and that a Trustee's Sale can
5 eliminate a first, position Deed of Trust. If the Legislature intended to allow an assessment lien
6 to extinguish a first, position Deed of Trust then the Legislature would not have included N.R.S.
7 116.3116(2)(b) in the statute. The Legislature clearly intended merely to allow assessments to
8 have a secured lien and be entitled to payment upon the foreclosure by the first, position Deed of
9 Trust. The Plaintiff knowingly purchased a Property from a Homeowner's Association Sale that
10 was governed by N.R.S. 116.3116. The Plaintiff had knowledge of the eventual loss of title to
11 the Property upon the foreclosure by U.S. Bank. A reasonably prudent purchaser at an HOA
12 foreclosure sale would assume that any HOA foreclosure sale would be subject to any first,
13 position Deeds of Trust secured against the Property. The Plaintiff purchased the Property at the
14 foreclosure sale for a nominal amount of only \$14,000.00 and should have expected that any sale
15 of a Property at an HOA foreclosure sale for a nominal amount is contingent on a potential loss
16 of the Property through a foreclosure by U.S. Bank. The Plaintiff never purchased fee simple
17 title at the HOA foreclosure sale, therefore, the Plaintiff cannot assert any "irreparable" or
18 "unique" harm related to the real property. The Plaintiff only received the title that the prior
19 owner, Parks, had possessed before the foreclosure sale. N.R.S. 116.3116(3) (providing that a
20 foreclosure sale by a Homeowner's Association "vests in the purchaser the title of the unit's
21 owner without equity or right of redemption"). The Plaintiff merely holds a possessory title
22 interest in the Property, subject to an eventual sale by the first, position Deed of Trust.

23 Based on the above, the Defendant's Motion to Dismiss should be granted because the
24 Plaintiff misconstrues the language of N.R.S. 116.3116(2)(b)-(c) and falsely asserts that U.S.
25 Bank's Lien is extinguished by the foreclosure sale by Copper Ridge.

26 ///

27 ///

28 ///

1 c. NEVADA COURTS HAVE CONSISTENTLY HELD THAT N.R.S.
2 116.3116 ET SEQ. DOES NOT EXTINGUISH A FIRST, POSITION DEED
3 OF TRUST.

4 Nevada Courts have ruled that a foreclosure sale pursuant to N.R.S. 116.3116 et seq. does
5 not eliminate a first, position Deed of Trust. In a recent United States District Court, District of
6 Nevada case, the Federal Court rejected the analysis concerning N.R.S. 116.3116 et seq. and
7 stated that a foreclosure sale by a Homeowner's Association **does not** extinguish a first, position
8 Deed of Trust. In Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL
9 531092, the Court states that "N.R.S. 116.3116(2)(c) creates a limited super priority lien for 9
10 months of HOA assessments leading up to the foreclosure of the first mortgage, but **it does not**
11 **eliminate the first security interest.**"²² Similar to Diakonos, where the Borrower defaulted on
12 their HOA dues, the HOA foreclosed on the Assessment Lien, and the Third-Party Purchaser
13 claims an extinguishment of a First Mortgage, Parks failed to make her HOA assessments
14 thereby instituting the foreclosure sale on the Property, and the Plaintiff asserts that U.S. Bank's
15 Lien was extinguished by the sale of the Property. The analysis of the Diakonos Court to
16 determine the priority of liens focuses on N.R.S. 116.3116(2)(b) and the timing of the recording
17 of the Deed of Trust and HOA Assessment Lien.

18 The Court in Diakonos stated that the arguments regarding the inability of an HOA to
19 recover on a deficiency without the power to extinguish a first, position Deed of Trust are
20 meritless, for the Court stated that N.R.S. 116.3116 et seq. provides a statutory scheme to allow
21 for an HOA to recover delinquent assessments.²³ The Diakonos Court specifically emphasized
22 N.R.S. 116.3116(2)(b)'s priority language when analyzing the lack of extinguishment of a first,
23 position Deed of Trust.²⁴ The Diakonos Court emphasized that an HOA has two options to
24 recover on its "Super-Priority Lien:" (1) the HOA may initiate a non-judicial foreclosure to
25 recover the delinquent assessments and the **purchaser at the sale takes the property subject to**

26 ²² See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at *3 (D. Nev. Feb. 11, 2013)
27 attached to the Defendant's RJN as Exhibit P.

²³ See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at *3 (D. Nev. Feb. 11, 2013)
28 attached to the Defendant's RJN as Exhibit P.

²⁴ See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at *3 (D. Nev. Feb. 11, 2013)
attached to the Defendant's RJN as Exhibit P.

1 the security interest or (2) initiate a judicial action to pursue the assessments.²⁵ The Diakonos
2 Court clearly stated that the foreclosure sale by a Homeowner's Association "takes the property
3 subject to the security interest," even if the Beneficiary received notice of the HOA
4 foreclose on the Property."²⁶ Similar to Diakonos, U.S. Bank's Deed of Trust was recorded in
5 January 2006, which is over six (6) years prior to the recording of the Copper Ridge Lien.
6 Therefore, based on the analysis in Diakonos, the Plaintiff took title to the Property subject to
7 U.S. Bank's Lien.

8 The Plaintiff misstates the language in N.R.S. 116.3116 et seq. The Court in Wingbrook
9 Capital, LLC v. Peppertree Homeowners Association, with regards to the "extinguishment"
10 under N.R.S. 116.3116 et seq. The Wingbrook Capital, LLC v. Peppertree Homeowners
11 Association, Case No. A-11-636948-B, case confirms that a "Super-Priority Lien" constitutes
12 only the nine (9) months portion of an assessment lien preceding the foreclosure of a first,
13 position Deed of Trust and the "Super-Priority Lien" does not attach until after the foreclosure of
14 a First Mortgage. Wingbrook asserts that "Pursuant to N.R.S. 116.3116(2), the homeowners'
15 association's Statutory Lien is junior to a first security interest on the unit recorded before
16 the date on which the assessment sought to be enforced became delinquent ("First Security
17 Interest") except for a portion of the homeowner's association's Statutory Lien which
18 remains prior to the First Security Interest (the "Super-Priority Lien")."²⁷ "Homeowner's
19 Associations, therefore, have a Super Priority Lien which has priority over the First Security
20 Interest on a homeowners' unit. However, the Super Priority Lien amount is not without
21 limits and N.R.S. 116.3116 provides that the amount of the Super Priority Lien (i.e. the amount
22 of a homeowners' associations' Statutory Lien which retains priority status over the First
23 Security Interest) is limited "to the extent" of those assessments for common expenses based
24 upon the associations' periodic budget that would have become due in the nine (9) month period
25

26 ²⁵ See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at *3 (D. Nev. Feb. 11, 2013)
attached to the Defendant's RJN as **Exhibit P**.

27 ²⁶ See Diakonos Holdings, LLC v. Countrywide Home Loans, Inc., 2013 WL 531092 at *3 (D. Nev. Feb. 11, 2013)
attached to the Defendant's RJN as **Exhibit P**.

28 ²⁷ See Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order is
attached to the Defendant's RJN as **Exhibit Q**.

1 immediately preceding an associations' institution of an action to enforce its Statutory Lien and
2 "to the extent" of external repaid costs pursuant to N.R.S. 116.310312."²⁸ "Therefore after the
3 foreclosure by a First Security Interest holder of a unit located within a homeowners'
4 association, pursuant to N.R.S. 116.3116 the monetary limit of a homeowners' association's
5 Super Priority Lien is limited to a maximum amount equaling nine (9) times the homeowners'
6 association's monthly assessment amount to unit owners for common expenses based on the
7 periodic budget which would have become due immediately preceding the institution of an
8 action to enforce the lien plus external repair costs pursuant to N.R.S. 116.310312."²⁹

9 The Wingbrook Court emphasizes that an HOA "Super-Priority Lien" established
10 pursuant to N.R.S. 116.3116(2)(c) does not extinguish a first, position Deed of Trust, for the
11 Court stated that the "Super-Priority Lien" is only based upon the foreclosure by the first,
12 position Deed of Trust.³⁰ The Court analyzed the interaction between N.R.S. 116.3116 and a
13 first, position Deed of Trust in the context of a parasitic relationship, whereby the "Super-
14 Priority Lien" attaches onto the Property and is only extinguished upon the foreclosure by the
15 first, position Deed of Trust. The Court in Wingbrook never anticipates nor asserts that an HOA
16 foreclosure sale extinguishes a first, position Deed of Trust, for Court's analysis of N.R.S.
17 116.3116 is couched in the legal theory that the first, position Deed of Trust attaches to the title
18 of the Property after a foreclosure sale and will eventually foreclose on the Property. Based on
19 the analysis in Wingbrook, the Plaintiff's Complaint fails to state a claim for quiet
20 title/declaratory or injunctive relief, with regards to the extinguishment of U.S. Bank's Lien
21 against the Property.

22 In JP Morgan Chase Bank, N.A. v. Countrywide Home Loans, Inc. et al, Case No. A-08-
23 562678, Dept. XVI, and Korbel Family Trust v. Spring Mountain Ranch Master Association et
24 al, Case No. 06-A-523959-C, the Courts reinforced the legal analysis of N.R.S. 116.3116(2),
25 whereby the Courts stated that a junior assessment lien does not eliminate a First Mortgage and

26
27 ²⁸ See Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order is
attached to the Defendant's RJN as **Exhibit Q**.

28 ²⁹ See Wingbrook Capital, LLC v. Peppertree Homeowners Association, Case No. A-11-636948-B, Order is
attached to the Defendant's RJN as **Exhibit Q**.

³⁰ Id.

1 the Super-Priority Lien under N.R.S. 116.3116(2)(c) is limited to the charges and assessments
2 incurred by an HOA during the nine (9) months **preceding the foreclosure of the First**
3 **Mortgage.**³¹ In Villa Palms Court 102 Trust v. William L. Riley et al, Case No. A-13-674595-
4 C, Dept. XVI, the Court denied a Motion for Preliminary Injunction, based on the fact that the
5 Court analyzed N.R.S. 116.3116 et seq. in the context of a foreclosure sale and determined that a
6 “Super-Priority Lien” under N.R.S. 116.3116 et seq. does not impact or extinguish a first,
7 position Deed of Trust.³²

8 In Sanucci Ct Trust v. Joseph Elevado et al, Case No. A-12-670423-C, Dept. 30, the
9 Court granted a Defendant’s Motion to Dismiss because the Court determined that the “Super-
10 Priority Lien” under N.R.S. 116.3116(2) “is not a standalone lien that a homeowners association
11 can foreclose upon constituting a senior position to all first security interest. Rather the “Super
12 Priority Lien” established a payment priority relative to a first security interest, meaning that the
13 homeowners association is entitled to payment . . . prior to payment of a foreclosing first security
14 interest lienholder.”³³ The Court in Sanucci also stated that a foreclosure sale conducted
15 pursuant to N.R.S. 116.3116 et seq. does not extinguish a first, position Deed of Trust recorded
16 prior to the date on which the assessments sought be enforced became delinquent in the case.³⁴
17 As in this case, U.S. Bank’s Lien was recorded prior to the date on which the assessments
18 became due as to Copper Ridge, thereby forestalling any extinguishment of U.S. Bank’s Lien at
19 the time of the Copper Ridge’s foreclosure sale.

20 In Korbel, the Court analyzed the interaction between N.R.S. 116.3116(2)(b) and N.R.S.
21 116.3116(2)(c), whereby the Court emphasized that **a foreclosure by the first, position Deed of**
22 **Trust would extinguish the “Super-Priority Lien.”** The Court in Korbel analyzed N.R.S.
23 116.3116 et seq. in the context of an HOA sale **not** extinguishing a first, position Deed of

24
25 ³¹ See JP Morgan Chase Bank, N.A. v. Countrywide Home Loans, Inc. et al, Case No. 08-A562678, Order on
26 Motion for Determination of Priority Amount attached to the Defendant’s RJN as **Exhibit R**; and Korbel Family
27 Trust v. Spring Mountain Ranch Master Association et al, Case No. 06-A-523959-C, Order attached to the
28 Defendant’s RJN as **Exhibit S**.

³² See Villa Palms Court 102 Trust v. William L. Riley et al, Case No. A-13-674595-C, Dept. XVI, Order on Motion
for Preliminary Injunction, attached to the Defendant’s RJN as **Exhibit T**.

³³ See Sanucci Ct Trust v. Joseph Elevado et al, Case No. A-12-670423-C, Dept. 30, Order attached to the
Defendant’s RJN as **Exhibit U**.

³⁴ Id.

1 Trust.³⁵ In Design 3.2 v. Bank of New York Mellon, Case No. A-10-621628-C, the Court
2 specifically stated that an HOA foreclosure sale **does not** extinguish a first, position Deed of
3 Trust.

4 The Court stated that,

5 NRS 116.3116 governs liens against units for assessments. It states that an assessment lien by a
6 homeowner's or unit-owner's "is prior to all other liens and encumbrances on a unit except: (a)
7 Liens and encumbrances recorded before the recordation of the declaration and ... (b) A first
8 security interest on the unit recorded before the date on which the assessment sought to be
9 enforced became delinquent ...," NRS 116.3116(2)(a)-(b). Here Defendant's first security interest
10 Deed was recorded on August 16, 2006. The assessment lien was recorded on June 6, 2008 two
11 years later. Therefore, the security lien is first in time prior to the assessment lien of the
12 Homeowner's association. Plaintiff was on notice of the recorded 2006 secured lien on the
13 property at the 2009 foreclosure sale in which it purchased the property. The security interest and
14 priority lien was not extinguished by the foreclosure sale of the HOA and the plaintiffs took title
15 of the property subject to the lien pursuant to NRS 116.3116 (emphasis added).³⁶

16 The Court in Design 3.2 negated and dismissed the analysis regarding N.R.S. 116.3116 et
17 seq. and the extinguishment of a first, position Deed of Trust.³⁷ Similar to Design 3.2, wherein
18 the Court noted that the Third-Party Purchaser was provided notice of the recorded First
19 Mortgage, the Plaintiff had notice of the December 2005 Deed of Trust through the perfection by
20 recording of the Deed of Trust in the Clark County Recorder's Office. As with Design 3.2, due
21 to the prior knowledge of the first, position Deed of Trust, the Plaintiff does not have standing to
22 assert the necessity for a preliminary injunction or quiet title. In Villa Palms Court 102 Trust v.
23 William L. Riley et. al, Case No. A-13-674595-C, the Court analyzed N.R.S. 116.3116 et seq. in
24 the context of a foreclosure by a first, position Deed of Trust and concluded that a Motion for
25 Preliminary Injunction **should be denied because the foreclosure pursuant to N.R.S. 116.3116**
26 **does not extinguish a first, position Deed of Trust.**³⁸

27 In 9320 Pokeweed Ct. Trust v. Wells Fargo Bank, et al., Case No. A-13-677406-C, Dept.
28 XVII, the Court denied a Motion for Preliminary Injunction based on the fact that N.R.S.

35 See Korbel Family Trust v. Spring Mountain Ranch Master Association et al, Case No. 06-A-523959-C, Order
attached to the Defendant's RJN as **Exhibit S**.

36 See Design 3.2 v. Bank of New York Mellon, Case No. A-10-621628-C, Minutes from MSJ Hearing dated 6-15-
2011 attached to Defendant's RJN as **Exhibit V**.

37 See Design 3.2 v. Bank of New York Mellon, Case No. A-10-621628-C, Minutes from MSJ Hearing dated 6-15-
2011 attached to Defendant's RJN as **Exhibit V**.

38 See Villa Palms Court 102 Trust v. William L. Riley et. al, Case No. A-13-674595-C, Order attached to the
Defendant's RJN as **Exhibit T**.

1 116.3116 is merely a priority of payment lien and does not extinguish a first, position Deed of
2 Trust.³⁹ In SFR Investments Pool1, LLC v. U.S. Bank et al, Case No. A-12-673671-C, Dept.
3 XXVII, the Court denied a Motion for Preliminary Injunction based on the fact that the Court
4 found that the “extinguishment” theory proffered by the Plaintiff would violate both State and
5 Federal constitutional due process guarantees if the first mortgage’s interest may be voided by a
6 non-judicial foreclosure for an assessment lien, relatively nominal in value . . .⁴⁰ Based on the
7 above, the Nevada Courts have clearly interpreted N.R.S. 116.3116 et seq. to state that a sale by
8 a Homeowner’s Association is subject to a first, position Deed of Trust and the sale **does not**
9 extinguish a first, position Deed of Trust.

10 Based on Nevada case law, the Defendant’s Motion to Dismiss should be granted because
11 Nevada Case Law shows a trend whereby the Courts are dismissing the “extinguishment” theory
12 proffered by the Plaintiff and the Courts are ruling that a third-party purchaser at an HOA sale
13 takes title to a Property subject to the first, position Deed of Trust.

14 **E. THE DEFENDANT’S MOTION TO DISMISS SHOULD BE GRANTED**
15 **BECAUSE THE CC&RS ATTESTS TO THE PRESERVATION OF U.S. BANK’S**
16 **LIEN AFTER THE FORECLOSURE SALE.**

17 The Declaration of Covenants, Condition, Restrictions, Reservations, and Easements for
18 Green Valley Ranch establishes that a Homeowner’s Association foreclosure sale does not
19 extinguish a first, position Deed of Trust and that title to the Property is sold subject to the first,
20 position Deed of Trust. The arguments by the Plaintiff regarding the extinguishment of U.S.
21 Bank’s Lien are negated by the rules and regulations regarding the HOA.

22 The Declaration of Covenants, Condition, Restrictions, Reservations, and Easements for
23 Green Valley Ranch clearly states that,

24 Section 9.13. Mortgage Protection

25 Notwithstanding all other provision hereof, no lien created under this Article, nor any breach of
26 this Declaration, nor the enforcement of any provision hereof, or of any Supplemental
Declaration hereto, shall defect or render invalid the rights of the Beneficiary under any Recorded

27 ³⁹ See 9320 Pokeweed Ct. Trust v. Wells Fargo Bank, et al., Case No. A-13-677406-C, Dept. XVII, Order attached
to the Defendant’s RJN as **Exhibit X**.

28 ⁴⁰ See SFR Investments Pool1, LLC v. U.S. Bank et al, Case No. A-12-673671-C, Dept. XXVII, Order, attached to
the Defendant’s RJN as **Exhibit Y**.

1 First Deed of Trust encumbering a Lot or Condominiums, made in good faith and for value;
2 provided (i) such Deed of Trust or Mortgage is Recorded prior to any notice of lien or notice of
3 noncompliance Recorded pursuant to this Declaration and (ii) after such Beneficiary, Mortgagee
4 or other such Person obtains title to such Lot, Parcel, Development Tract or Other Area by
5 foreclosure, deed or assignment in lieu thereof same shall remain subject to this Declaration . . .⁴¹

6 Section 9.14 Priority of Lien.

7 The lien of any of the assessments, including default interest, costs, expenses and attorneys' fees
8 as provided for herein, shall be subordinate to the lien of any First Mortgage.⁴²

9 Section 9.13 and Section 9.14 of the Declaration of Covenants, Condition, Restrictions,
10 Reservations, and Easements for Green Valley Ranch clearly establishes that the Homeowner's
11 Association intended the sale of the Property, pursuant to N.R.S. 116.3116, to be subject to the
12 First Mortgage secured against the Property.⁴³ Sections 9.13 and 9.14 of the Declaration of
13 Covenants, Condition, Restrictions, Reservations, and Easements for Green Valley Ranch clearly
14 states that an HOA Lien does not extinguish U.S. Bank's Lien.⁴⁴ Section 9.13 states that the
15 HOA Assessment Lien is subordinate to the lien of any previously recorded First Mortgage.⁴⁵
16 The December 2005 Deed of Trust was properly perfected and recorded in the Clark County
17 Recorder's Office over six (6) years prior to the recording of the Notice of Delinquent
18 Assessment Lien by Copper Ridge Community.

19 The guidelines and rules governing the entity that initiated the sale refute the claims by
20 the Plaintiff with regards to the extinguishment of a first, position Deed of Trust. The Plaintiff is
21 bound by the Declaration of Covenants, Condition, Restrictions, Reservations, and Easements
22 for Green Valley Ranch, due to the CC&Rs governing the manner and method of the sale
23 wherein title was purchased by the Plaintiff in this case. The Plaintiff can only acquire as much
24 of an interest as is being sold by the CC&Rs. The CC&Rs clearly state that the Plaintiff acquired
25 title to the Property, subject to U.S. Bank's Lien.⁴⁶ The CC&Rs clearly anticipate and allow for
26 a "second" foreclosure by U.S. Bank and payment of the "Super-Priority Lien" through the

27 ⁴¹ A true and correct copy of Section 9.13 of the CC&Rs is attached to the Defendant's RJN as **Exhibit Z**.

28 ⁴² A true and correct copy of Section 9.14 of the CC&Rs is attached to the Defendant's RJN as **Exhibit Z**.

⁴³ Id.

⁴⁴ A true and correct copy of Sections 9.13 and 9.14 of the CC&Rs is attached to the Defendant's RJN as **Exhibit Z**.

⁴⁵ Id.

⁴⁶ A true and correct copy of Sections 9.13 and 9.14 of the CC&Rs is attached to the Defendant's RJN filed
concurrently herewith as **Exhibit Z**.

1 foreclosure by U.S. Bank. The language in the CC&Rs are consistent with the above stated case
2 law, wherein both the Nevada case law and the CC&Rs assert that the Plaintiff obtained title to
3 the Property, subject to U.S. Bank's Lien and the subsequent foreclosure by U.S. Bank is a valid
4 sale.

5 Therefore, the Defendant's Motion to Dismiss should be granted because the Plaintiff
6 received title to the Property subject to U.S. Bank's Lien.

7 **F. THE DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED**
8 **BECAUSE U.S. BANK HAS STANDING TO FORECLOSE ON THE PROPERTY.**

9 U.S. Bank has standing under the December 2005 Note and Deed of Trust to foreclose on
10 the Property. The recorded land documents show a clear trail of legal authority of U.S. Bank to
11 foreclose on the Property. On December 30, 2005, Parks executed a Deed of Trust and Note for
12 \$331,500.00, whereby Wells Fargo Bank, N.A. was stated as the Lender and United Title of
13 Nevada was stated as the Trustee under the Deed of Trust.⁴⁷ On July 12, 2010, a Corporation
14 Assignment of Deed of Trust was recorded in the Clark County Recorder's Office, whereby
15 Wells Fargo Bank, N.A. transferred all beneficial interest in the December 2005 Note and Deed
16 of Trust to U.S. Bank.⁴⁸ On July 12, 2010, a Substitution of Trustee was recorded in the Clark
17 County Recorder's Office, whereby U.S. Bank substituted National Default Servicing
18 Corporation as Trustee under the December 2005 Deed of Trust.⁴⁹ On July 12, 2010, a
19 Certificate from the Nevada Foreclosure Mediation Program was recorded in the Clark County
20 Recorder's Office.⁵⁰ Under N.R.S. 107.080 et seq. the "beneficiary, the successor in interest of
21 the beneficiary, or the trustee . . . or other person authorized" has the power to initiate sale on a
22 Property."⁵¹ The December 2005 Deed of Trust expressly gives U.S. Bank, as the Beneficiary
23

24
25 ⁴⁷ A true and correct copy of the Deed of Trust is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20060105-0004275 is attached to the Defendant's RJN as **Exhibit B**.

26 ⁴⁸ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002705 is attached to the Defendant's RJN as **Exhibit D**.

27 ⁴⁹ A true and correct copy of the Substitution is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002706 is attached to the Defendant's RJN as **Exhibit E**.

28 ⁵⁰ A true and correct copy of the Certificate is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002707 is attached to the Defendant's RJN as **Exhibit F**.

⁵¹ N.R.S. 107.080(b) and (c).

1 under the Deed of Trust, the power of sale upon default by Parks.⁵² The Assignment to U.S.
2 Bank was legally executed by the original Lender under the December 2005 Deed of Trust and
3 Note and the Assignment was properly recorded in the Clark County Recorder's Office.⁵³ Based
4 on the above, U.S. Bank has standing to foreclose on the Property.

5 **G. THE DEFENDANT'S MOTION TO DISMISS SHOULD BE GRANTED**
6 **BECAUSE THE PLAINTIFF'S CLAIMS FOR RELIEF FAIL TO STATE A**
7 **CLAIM AGAINST U.S. BANK.**

8 The Plaintiff falsely bases the quiet title, declaratory, and injunctive claims for relief on
9 the legal analysis of N.R.S. 116.3116 et seq. In Nevada, a quiet title action may be brought "by
10 any person against another whom claims an estate or interest in real property, adverse to the
11 person bringing the action, for the purpose of determining such adverse claim." N.R.S. 40.010.
12 "In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself."
13 Brelant v. Preferred Equities Corp., 918 P.2d 314, 318 (Nev. 1996) and Wensley v. First Nat.
14 Bank of Nevada, 2012 WL 1971773 (D. Nev. 2012). Declaratory relief is not an independent
15 cause of action, but rather is dependent on the Plaintiffs' other substantive claims. Stock West,
16 Inc. v. Confederated Tribes of Coville Reservations, 873 F.2d 1221, 1225 (9th Cir. 1989). The
17 Defendant, U.S. Bank, is not asserting an adverse claim against the Plaintiff in this case. As
18 stated above, the Plaintiff took title to the Property, subject to U.S. Bank's Lien. In addition,
19 case law and the language in N.R.S. 116.3116 et seq. clearly establishes that a foreclosure sale
20 by Copper Ridge did not extinguish U.S. Bank's Lien. The Plaintiff merely had a temporary,
21 possessory interest which was based on the eventual foreclosure by U.S. Bank. Since U.S.
22 Bank's Lien was not extinguished by the HOA sale, U.S. Bank's interest is not adverse to the
23 Plaintiff in this case, and the Plaintiff's Complaint fails as a matter of law.

24 The Plaintiff also has failed to identify under what basis they entitled to a "permanent
25 injunction" which would eliminate the ability of U.S. Bank to enforce a valid, legal lien secured
26 against the Property. The Plaintiff's Complaint fails to state any genuine issues of material fact

27 ⁵²A true and correct copy of the Deed of Trust is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20060105-0004275 is attached to the Defendant's RJN as **Exhibit B**.

28 ⁵³ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20100712-0002705 is attached to the Defendant's RJN as **Exhibit D**.

1 that would grant relief to the Plaintiff in this case. As a result, the Plaintiff has not provided any
2 viable basis for the Court to grant a preliminary or permanent injunction. Plus, a claim for
3 injunctive relief is not an independent cause of action. See Barlow v. BNC Mortg. Inc., No.
4 3:09-cv-00677-LRH-RAM, 2011 WL 2669618, at *3 (D. Nev. July 7, 2011) (dismissing
5 plaintiffs' causes of action for injunctive and declaratory relief); See also In re Wal-Mart Wage
6 & Hour Emp't Practices Litig., 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007) (holding that a claim
7 for injunctive relief was not a cause of action or independent ground for relief).

8 Plus, the Plaintiff cannot maintain an unjust enrichment cause of action against U.S.
9 Bank. To state a claim for unjust enrichment, the Plaintiff must allege that U.S. Bank has
10 retained a benefit, which in equity and good conscious, belongs to another party. Ramanathan v.
11 Saxon Mortg. Services, Inc., 2011 WL 6751373 *6 (D. Nev. 2011) (citing LeasePartners Corp. v.
12 Robert L. Brooks Trust, 113 Nev. 747, 942 182, 187 (1997)). Accordingly, unjust enrichment is
13 an equitable claim. All Direct Travel Services, Inc. v. Delta Air Lines, Inc., 120 Fed. Appx.
14 673,676, 2005 WL 23420, at *2 (C.A.9 Cal. 2005). U.S. Bank has not retained the funds paid by
15 the Plaintiff at the HOA sale nor does U.S. Bank retain a benefit belonging to the Plaintiff in this
16 case. As stated above, the Plaintiff took title subject to U.S. Bank's Lien. The Plaintiff had
17 knowledge of the recording of U.S. Bank's Lien prior to purchasing title at the HOA sale. The
18 Plaintiff has been able to retain a temporary, possessory interest in the Property based on the
19 funds expended at the HOA sale. If the Plaintiff had not paid the HOA Lien, U.S. Bank would
20 have been forced under N.R.S. 116.3116 et seq. to pay the lien upon the foreclosure by U.S.
21 Bank. Any additional money paid by the Plaintiff at the time of the HOA sale needs to be
22 directed to the HOA who retained the funds paid by the Plaintiff and not towards U.S. Bank.
23 Based on these facts, U.S. Bank has not been unjustly enriched by the actions of the Plaintiff in
24 this case and the Plaintiff cannot maintain its unjust enrichment claim for relief against U.S.
25 Bank.

26 Therefore, the Defendant's Motion to Dismiss should be granted because the Plaintiff's
27 Complaint fails as a matter of law to establish any claim for relief against the Defendant, U.S.
28 Bank.

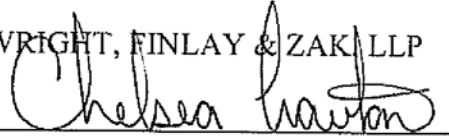
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. CONCLUSION

Based on the above, U.S. Bank's Motion to Dismiss the Complaint should be granted and U.S. Bank should be allowed to proceed with a foreclosure on the Property.

DATED this 30th day of April, 2013.

WRIGHT, FINLAY & ZAK, LLP



Chelsea A. Crowton, Esq.

Nevada Bar No. 11547

5532 South Fort Apache Road, Suite 110

Las Vegas, NV 89148

*Attorney for Defendant, U.S. Bank, N.A., as Trustee
for the Certificate Holders of Wells Fargo Asset
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4*

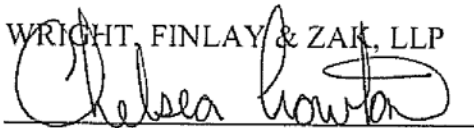
AFFIRMATION

Pursuant to N.R.S. 239B.030

The undersigned does hereby affirm that the preceding **DEFENDANT, U.S. BANK,
N.A.'S, MOTION TO DISMISS WITH PREJUDICE THE PLAINTIFF'S COMPLAINT**
filed in Case No. A-13-678814-C **does not** contain the social security number of any person.

DATED this 30th day of April, 2013.

WRIGHT, FINLAY & ZAK, LLP



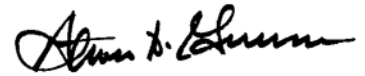
Chelsea A. Crowton, Esq.

Nevada Bar No. 11547

5532 South Fort Apache Road, Suite 110

Las Vegas, NV 89148

*Attorney for Defendant, U.S. Bank, N.A., as Trustee
for the Certificate Holders of Wells Fargo Asset
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4*



CLERK OF THE COURT

1 **MELP**

2 **WRIGHT, FINLAY & ZAK, LLP**

3 Chelsea A. Crowton, Esq.

4 Nevada Bar No. 11547

5 5532 South Fort Apache Road, Suite 110

6 Las Vegas, NV 89148

7 (702) 475-7964; Fax: (702) 946-1345

8 ccrowton@wrightlegal.net

9 *Attorney for Defendant,*

10 *U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo Asset Securities*

11 *Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4*

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

14 SFR INVESTMENTS POOL, LLC, a Nevada
15 limited liability company

16 Plaintiff,

17 vs.

18 US BANK, N.A., a national banking association
19 as Trustee for the Certificate Holders of Wells
20 Fargo Asset Securities Corporation, Mortgage
21 Pass-Through Certificates, Series 2006-AR4,
22 and LUCIA PARKS, an individual; DOES I
23 through X, and ROE CORPORATIONS I
24 through X, inclusive.

25 Defendants.

Case No.: A-13-678814-C

Dept. No.: XVIII

DEFENDANT, U.S. BANK, N.A.'S,
MOTION TO EXPUNGE LIS PENDENS

26 The Defendant, U.S. Bank, N.A., as Trustee for the Certificate Holders of Wells Fargo
27 Asset Securities Corporation, Mortgage Pass-Through Certificates, Series 2006-AR4 (hereinafter
28 "U.S. Bank"), by and through their attorney of record, Chelsea A. Crowton, Esq. of the law firm
of Wright, Finlay & Zak, LLP, hereby submits its Motion to Expunge Lis Pendens.

///

///

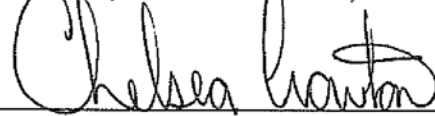
///

///

1 This Motion is based on the attached Memorandum of Points and Authorities, all papers
2 and pleadings on file herein, all judicially noticed facts, and on any oral or documentary
3 evidence that may be presented at a hearing on this matter.

4 DATED this 30th day of April, 2013.

5 WRIGHT, FINLAY & ZAK, LLP

6 

7 Chelsea A. Crowton, Esq.

8 Nevada Bar No. 11547

9 5532 South Fort Apache Road, Suite 110

10 Las Vegas, NV 89148

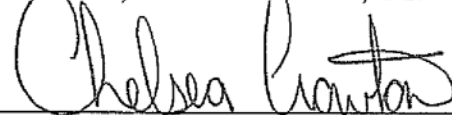
11 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
12 *for the Certificate Holders of Wells Fargo Asset*
13 *Securities Corporation, Mortgage Pass-Through*
14 *Certificates, Series 2006-AR4*

15 **NOTICE OF HEARING**

16 PLEASE TAKE NOTICE that the undersigned will bring **DEFENDANT, U.S. BANK,**
17 **N.A.'S, MOTION TO EXPUNGE LIS PENDENS** on the 16th day of May, 2013, at the
18 hour of 8 : 15 a.m., or as soon thereafter as counsel may be heard on this matter.

19 DATED this 30th day of April, 2013.

20 WRIGHT, FINLAY & ZAK, LLP

21 

22 Chelsea A. Crowton, Esq.

23 Nevada Bar No. 11547

24 5532 South Fort Apache Road, Suite 110

25 Las Vegas, Nevada 89148

26 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
27 *for the Certificate Holders of Wells Fargo Asset*
28 *Securities Corporation, Mortgage Pass-Through*
Certificates, Series 2006-AR4

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
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS

On December 3, 2005, Lucia Parks (hereinafter "Parks") purchased the Property located at 2270 Nashville Avenue, Henderson, Nevada 89052 (hereinafter "Property").¹ On January 4, 2006, Richard E. Parks executed a Grant, Bargain, Sale Deed, whereby Richard E. Parks sold his community property interest in the Property to Parks. On December 30, 2005, Parks executed a Deed of Trust and Note for \$331,500.00, whereby Wells Fargo Bank, N.A. was stated as the Lender and United Title of Nevada was stated as the Trustee under the Deed of Trust.² On February 24, 2010, a Notice of Default and Election to Sell under Deed of Trust was recorded in the Clark County Recorder's Office, whereby the Notice stated that Parks defaulted on the 2005 Note as early as November 2009.³ On July 12, 2010, a Corporation Assignment of Deed of Trust was recorded in the Clark County Recorder's Office, whereby Wells Fargo Bank, N.A. transferred all beneficial interest in the December 2005 Note and Deed of Trust to U.S. Bank.⁴ On July 12, 2010, a Substitution of Trustee was recorded in the Clark County Recorder's Office, whereby U.S. Bank substituted National Default Servicing Corporation as Trustee under the December 2005 Deed of Trust.⁵ On July 12, 2010, a Certificate from the Nevada Foreclosure Mediation Program was recorded in the Clark County Recorder's Office.⁶ On July 12, 2010, a Notice of Trustee's Sale was recorded in the Clark County Recorder's Office.⁷

On May 24, 2012, a Notice of Delinquent Assessment Lien was recorded in the Clark County Recorder's Office.⁸ On June 7, 2012, an Assignment of Mortgage was recorded in the Clark County Recorder's Office, clarifying the transfer of beneficial interest in the December

¹ A true and correct copy of the GBS Deed is recorded in the Clark County Recorder's Office as Book and Instrument Number 20060105-0004274 is attached to the Defendant's Request for Judicial Notice ("RJN") as **Exhibit A.**

² A true and correct copy of the Deed of Trust is recorded in the Clark County Recorder's Office as Book and Instrument Number 20060105-0004275 is attached to the Defendant's RJN as **Exhibit B.**

³ A true and correct copy of the Notice of Default is recorded in the Clark County Recorder's Office as Book and Instrument Number 20100224-0003380 is attached to the Defendant's RJN as **Exhibit C.**

⁴ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and Instrument Number 20100712-0002705 is attached to the Defendant's RJN as **Exhibit D.**

⁵ A true and correct copy of the Substitution is recorded in the Clark County Recorder's Office as Book and Instrument Number 20100712-0002706 is attached to the Defendant's RJN as **Exhibit E.**

⁶ A true and correct copy of the Certificate is recorded in the Clark County Recorder's Office as Book and Instrument Number 20100712-0002707 is attached to the Defendant's RJN as **Exhibit F.**

⁷ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book and Instrument Number 20100712-0002708 is attached to the Defendant's RJN as **Exhibit G.**

⁸ A true and correct copy of the Notice of Lien is recorded in the Clark County Recorder's Office as Book and Instrument Number 20120524-0002436 is attached to the Defendant's RJN as **Exhibit H.**

1 2005 Note and Deed of Trust to U.S. Bank.⁹ On June 27, 2011, a Notice of Trustee's Sale was
2 recorded in the Clark County Recorder's Office.¹⁰ On July 19, 2012, a Notice of Default and
3 Election to Sell under Homeowners Association Lien was recorded in the Clark County
4 Recorder's Office.¹¹ On February 7, 2013, a Notice of Foreclosure Sale was recorded in the
5 Clark County Recorder's Office.¹² On March 6, 2013, a Foreclosure Deed was recorded in the
6 Clark County Recorder's Office, whereby the Plaintiff purchased the Property for \$14,000,000.¹³
7 On March 11, 2013, a third Notice of Trustee's Sale was recorded in the Clark County
8 Recorder's Office.¹⁴

9 II. PROCEDURAL HISTORY

10 On March 22, 2013, the Plaintiff filed a Complaint for Quiet Title and Declaratory Relief
11 in the herein Court. On March 22, 2013, the Plaintiff filed a Notice of Lis Pendens in the herein
12 Court. On March 27, 2013, the Plaintiff filed an Application for Temporary Restraining Order
13 and Motion for Preliminary Injunction. On March 28, 2013, the Plaintiff filed a Temporary
14 Restraining Order. On April 10, 2013, U.S. Bank filed a Notice of Appearance in the case. On
15 April 25, 2013, U.S. Bank filed a Response to the Motion for Preliminary Injunction and Request
16 for Judicial Notice in Support of the Response to the Motion for Preliminary Injunction.

17 III. LEGAL ARGUMENTS

18 A. MOTION TO EXPUNGE LIS PENDENS LEGAL STANDARD.

19 Pursuant to N.R.S. § 14.015, a lis pendens must be expunged if upon 15 days' notice, the
20 party that recorded the lis pendens fails to establish to the satisfaction of the court all of the
21
22

///

///

///

23 ⁹ A true and correct copy of the Assignment is recorded in the Clark County Recorder's Office as Book and
24 Instrument Number 20120607-0002928 is attached to the Defendant's RJN as **Exhibit I.**

25 ¹⁰ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book
26 and Instrument Number 20110627-0002062 is attached to the Defendant's RJN as **Exhibit J.**

27 ¹¹ A true and correct copy of the Notice of Default (HOA) is recorded in the Clark County Recorder's Office as
28 Book and Instrument Number 20120719-0001226 is attached to the Defendant's RJN as **Exhibit K.**

¹² A true and correct copy of the Notice of Foreclosure Sale is recorded in the Clark County Recorder's Office as
Book and Instrument Number 20130207-0000910 is attached to the Defendant's RJN as **Exhibit L.**

¹³ A true and correct copy of the Foreclosure Deed is recorded in the Clark County Recorder's Office as Book and
Instrument Number 20130306-0001614 is attached to the Defendant's RJN as **Exhibit M.**

¹⁴ A true and correct copy of the Notice of Trustee's Sale is recorded in the Clark County Recorder's Office as Book
and Instrument Number 20130311-0003086 is attached to the Defendant's RJN as **Exhibit N.**

1 following elements:

- 2 (a) The action is for the foreclosure of a mortgage upon the real property
- 3 described in the notice or affects the title or possession of the real property described
- 4 in the notice;
- 5 (b) The action was not brought in bad faith or for an improper motive;
- 6 (c) He will be able to perform any conditions precedent to the relief sought in
- 7 the action insofar as it affects the title or possession of the real property; and
- 8 (d) He would be injured by any transfer of an interest in the property before
- 9 the action is concluded.¹⁵

10 In addition to each of the four elements listed above, the party that recorded the lis

11 pendens must also establish:

- 12 (a) That he is likely to prevail in the action; or
- 13 (b) That he has a fair chance of success on the merits in the action and the
- 14 injury ... would be sufficiently serious that the hardship on him in the event of a
- 15 transfer would be greater than the hardship on the defendant resulting from the
- 16 notice of pendency, and that if he prevails he will be entitled to relief affecting the
- 17 title or possession of the real property.¹⁶

18 When a party fails to establish any of these elements, the lis pendens must be expunged.

19 N.R.S. § 14.015(3) provides that “the court shall order the cancellation of the notice of pendency

20 and shall order the party who recorded the notice to record with the recorder of the county a copy

21 of the order of cancellation.” N.R.S. § 14.015(3). It is important to note that, like California,

22 Nevada policy is to favor a restrictive application of the lis pendens statutes. As stated in BGI

23 Associates v. Superior Court, 75 Cal. App. 4th 952, 969 (Cal. Ct. App. 1999): Courts have long

24 recognized that “because the recording of a lis pendens place[s] a cloud upon title of real

25 property until the pending action [is] ultimately resolved, the lis pendens procedure [is]

26 susceptible to serious abuse, providing unscrupulous Plaintiffs with a powerful lever to force the

27 settlement of groundless or malicious suits. Id. In Hilberg v. Superior Court, 215 Cal. App. 3d

28 539, 542, the Court stated, “We cannot ignore as judges what we know as lawyers – that the

recording of a lis pendens is sometimes made not to prevent conveyance of property that is the

subject of the lawsuit, but to coerce an opponent to settle regardless of the merits.” Hilberg v.

Superior Court, 215 Cal. App. 3d 539, 542 (Cal. Ct. App. 1989).

¹⁵ N.R.S. § 14.015(2)

¹⁶ N.R.S. § 14.015(3)

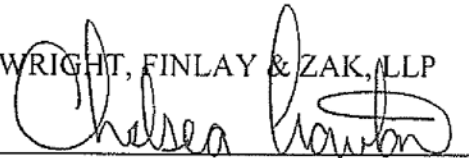
1 In the present case, the Plaintiff's Notice of Lis Pendens must be expunged because the
2 Plaintiff has failed to state a single viable claim in the Complaint with regards to an
3 extinguishment of U.S. Bank's Lien, as stated in the Defendant, U.S. Bank's, Motion to Dismiss
4 with Prejudice the Plaintiff's Complaint. The analysis by the Plaintiff, with regards to N.R.S.
5 116.3116 et seq., is flawed and fails to state a viable claim for quiet title, declaratory relief, and
6 injunctive relief, as it relates to U.S. Bank's first, position Deed of Trust. Based on the above,
7 the Plaintiff's Notice of Lis Pendens should be expunged, due to the Complaint failing to state a
8 claim for declaratory relief, quiet title, or injunctive relief.

9 **II. CONCLUSION**

10 Based on the above, the Defendant, U.S. Bank, respectfully requests that the Court grant
11 the Defendant's Motion to Expunge Lis Pendens.

12
13 DATED this 30th day of April, 2013.

14 WRIGHT, FINLAY & ZAK, LLP

15 

16 Chelsea A. Crowton, Esq.

17 Nevada Bar No. 11547

18 5532 South Fort Apache Road, Suite 110

19 Las Vegas, NV 89148

20 *Attorney for Defendant, U.S. Bank, N.A., as Trustee*
21 *for the Certificate Holders of Wells Fargo Asset*
22 *Securities Corporation, Mortgage Pass-Through*
23 *Certificates, Series 2006-AR4*
24
25
26
27
28

- 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
- 26
- 27
- 28

The undersigned does hereby affirm that the preceding **DEFENDANT, U.S. BANK, N.A.'S, MOTION TO EXPUNGE LIS PENDENS** filed in Case No. A-13-678814-C does not contain the social security number of any person.

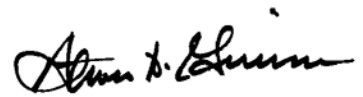
DATED this 30th day of April, 2013.

WRIGHT, FINLAY & ZAK, LLP
Chelsea Clinton

Nevada Bar No. 11547
5532 South Fort Apache Road, Suite 110
Las Vegas, NV 89148
*Attorney for Defendant, U.S. Bank, N.A., as Trustee
for the Certificate Holders of Wells Fargo Asset
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4*

5532 South Fort Apache Road, Suite 110
Las Vegas, NV 89148

*Attorney for Defendant, U.S. Bank, N.A., as Trustee
for the Certificate Holders of Wells Fargo Asset
Securities Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4*



CLERK OF THE COURT

OPP

HOWARD C. KIM, ESQ.
Nevada Bar No. 10386
E-mail: howard@hkimlaw.com
DIANA S. CLINE, ESQ.
Nevada Bar No. 10580
E-mail: diana@hkimlaw.com
VICTORIA L. HIGHTOWER, ESQ.
Nevada Bar No. 10897
E-mail: victoria@hkimlaw.com
HOWARD KIM & ASSOCIATES
400 N. Stephanie St, Suite 160
Henderson, Nevada 89014
Telephone: (702) 485-3300
Facsimile: (702) 485-3301
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a
Nevada limited liability company,

Plaintiff,

vs.

U.S. BANK, N.A., a national banking
association as Trustee for the Certificate
Holders of Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through
Certificates, Series 2006-AR4 and LUCIA
PARKS, an individual, DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Defendants.

Case No. A-13-678814-C

Dept. No. XVIII

**OPPOSITION TO MOTION TO EXPUNGE
LIS PENDENS**

Hearing Date: May 16, 2013
Hearing Time: 8:15 a.m.

Plaintiff SFR Investments Pool 1, LLC ("SFR") hereby opposes Defendant U.S. Bank, N.A.'s ("U.S. Bank's") motion to expunge lis pendens ("Motion") recorded by Plaintiff on . Plaintiff's Opposition is based on the following memorandum or points and authorities, the pleadings and papers on file herein, and any oral argument entertained by the Court.

///

///

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After obtaining the Property by bidding at a public HOA auction, Plaintiff SFR filed its complaint to quiet title against both U.S. Bank and former homeowner, Lucia Parks. As required by NRS 14.010(1), Plaintiff recorded a notice of lis pendens on the Property after it filed its complaint. As discussed in detail in Plaintiff's briefing in its motion for preliminary injunction, Plaintiff has a fair chance of success on the merits and will be injured by any transfer of interest in the Property before the litigation is concluded. Because Plaintiff's complaint states viable claims relating to real property against both U.S. Bank and Lucia Parks, Defendant's motion to expunge lis pendens should be denied. Expunging the lis pendens prematurely, as Defendant urges, would deny future purchasers or encumbrancers of the Property notice that the Property's title is in dispute. Defendant's motion should be denied.

II. LEGAL ARGUMENT

Defendant's motion to expunge lis pendens should be denied because Plaintiff has at least a fair chance of success on the merits and the injury sustained to Plaintiff outweighs any potential hardship to Defendant if the lis pendens remains in place. Nevada law requires a plaintiff to file a lis pendens whenever it files an action affecting title or possession of real property at the time of filing its complaint. *See* NRS 14.010. The purpose of this requirement is to give notice to future purchasers or encumbrancers that title to the property is the subject of litigation. NRS 14.010(3) ("From the time of recording only . . . the pendency of the action is constructive notice to a purchaser or encumbrancer of the property affected thereby.").

Citing NRS 14.015, Defendant claims that the lis pendens in this case should be removed because "Plaintiff has failed to state a single viable claim in the Complaint with regards to an extinguishment of U.S. Bank's Lien [.]". *See* Motion, 6:2-3. **First**, Defendant does not dispute that Plaintiff has stated a viable claim related to the Property against Lucia Parks. On that basis alone, its motion should be denied. **Second**, as discussed in detail in Plaintiff's briefing in its

1 motion for preliminary injunction, Plaintiff has a fair chance of success on the merits and will be
2 injured by any transfer of interest in the Property before the litigation is concluded.¹

3 The standard to keep a lis pendens on a property is similar to that of a preliminary
4 injunction, but less stringent. NRS 14.015 sets forth the requirements for maintaining a lis
5 pendens on a property. The relevant portion of the statute provides:

6 2. Upon 15 days' notice, the party who recorded the notice of pendency of
7 the action must appear at the hearing and, through affidavits and other evidence
8 which the court may permit, establish to the satisfaction of the court that:

9 (a) The action is for the foreclosure of a mortgage upon the real property
10 described in the notice or **affects the title or possession of the real**
11 **property** described in the notice;(b) The action was **not brought in bad**
12 **faith** or for an improper motive; (c) The party who recorded the notice
13 **will be able to perform any conditions precedent** to the relief sought in
14 the action insofar as it affects the title or possession of the real property;
15 and (d) The party who recorded the notice **would be injured by any**
16 **transfer of an interest in the property** before the action is concluded.

17 3. In addition to the matters enumerated in subsection 2, the party who recorded
18 the notice must establish to the satisfaction of the court either:

19 (a) That the party who recorded the notice is **likely to prevail in the**
20 **action**; or (b) That the party who recorded the notice **has a fair chance of**
21 **success on the merits** in the action and the **injury described in**
22 **paragraph (d) of subsection 2 would be sufficiently serious that the**
23 **hardship** on him or her in the event of a transfer would be **greater than**
24 **the hardship on the defendant** resulting from the notice of pendency,
25 and that if the party who recorded the notice prevails he or she will be
26 entitled to relief affecting the title or possession of the real property.

27 NRS 14.015 (emphasis added).

28 A court should not expunge a lis pendens when a complaint states viable claims
concerning real property. *Zhang v. Eighth Judicial Dist. Court of State ex rel. Cnty. of Clark*, 120
Nev. 1037, 1043, 103 P.3d 20, 24 (2004), abrogated on other grounds by *Buzz Stew, LLC v. City*
of N. Las Vegas, 124 Nev. 224, 181 P.3d 670 (2008). Further, a potential loss of a transaction

¹ Plaintiff hereby incorporates by reference its motion for preliminary injunction filed on March
27, 2013 and its reply in support of its motion for preliminary injunction filed on March 14,
2013.

with another buyer does not outweigh the risk of a party that has expended time and money on the property. *NGA #2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1163-64, 946 P.2d 163, 171 (1997).

Here, Plaintiff meets all of the requirements. **First**, the action indisputably affects title or possession of the real property. **Second**, Plaintiff has not brought the action in bad faith or for an improper motive—it just seeks to obtain declaratory relief related to title of a property it purchased at a public auction. While Defendant cites California cases that discuss improper use of lis pendens to force settlement, it does not make any factual allegations that could be construed as bad faith by Plaintiff. *See* Motion, 5:17-27. There is no controlling case law from the Nevada Supreme Court relating to the application of NRS 116.3116. Based on the plain language of NRS 116.3116, the legislative history of related statutory sections, the interpretation of the statute by several Nevada courts and the agency charged with interpreting NRS 116.3116, Plaintiff’s complaint cannot be considered the type of groundless or malicious suit referenced by Defendant.

Third, Plaintiff is unaware of any conditions precedent to the relief it seeks. **Fourth**, as fully explained above and in its motion for preliminary injunction, Plaintiff will be injured by a transfer of interest in the property before the litigation is concluded. Also as explained above and in its motion for preliminary injunction, Plaintiff enjoys a substantial likelihood of success on the merits. But to maintain a lis pendens on the Property, Plaintiff only need show a “fair chance” of success of the merits and that the injury to Plaintiff will suffer injury that is “sufficiently serious” or that Plaintiff’s injury will be greater than the hardship on Defendant. If Defendant is able to sell the Property during the litigation, Plaintiff will lose the Property whereas Defendant’s only hardship will be its inability to sell the Property without notice to potential purchasers that litigation regarding title to the Property is ongoing. This Court should deny the request to expunge the lis pendens.

///

///

///

HOWARD KIM & ASSOCIATES
400 N. STEPHANIE ST, SUITE 160
HENDERSON, NEVADA 89014
(702) 485-3300 FAX (702) 485-3301

DATED May 15, 2013.

/s/ Diana S. Cline
Howard C. Kim, Esq.
Nevada Bar No. 10386
Diana S. Cline, Esq.
Nevada Bar No. 10580
Victoria L. Hightower, Esq.
Nevada Bar No. 10897
400 N. Stephanie St., Suite 160
Henderson, Nevada 89014
Phone: (702) 485-3300
Fax: (702) 485-3301
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May, 2013, pursuant to NRCP 5(b), I served via first class U.S. Mail, postage prepaid, the foregoing **OPPOSITION TO MOTION TO EXPUNGE LIS PENDENS**, to the following parties:

D. Chris Albright, Esq
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, NV 89106
Attorney for Plaintiff

Chelsea A. Crowton, Esq.
Wright, Finlay & Zak
5532 S. Fort Apache Rd.
Las Vegas, NV 89148
Attorney for US Bank

/s/ Sarah Felts
An Employee of Howard Kim & Associates

CASE NO. 74532

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 27 2018 03:11 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

SFR INVESTMENTS POOL 1, LLC, a Nevada
limited liability company,

Appellant,

vs.

U.S. BANK, N.A., A NATIONAL BANKING
ASSOCIATION AS TRUSTEE FOR THE
CERTIFICATE HOLDERS OF WELLS FARGO
ASSET SECURITIES CORPORATION,
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2006-AR4; AND NV
WEST SERVICING, LLC, A NEVADA
LIMITED LIABILITY COMPANY, AS
TRUSTEE FOR NASHVILLE TRUST 2270,
RESPONDENTS.

Respondents.

RESPONDENT'S APPENDIX VOLUME I

ROBERT B. NOGGLE, ESQ.

Nevada Bar No.: 11427

NOGGLE LAW PLLC

5940 S. Rainbow Blvd Suite 1013

Las Vegas, Nevada 89118

Attorney for Respondent

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
26
27
28

INDEX TO APPENDIX VOLUME I

Notice of Lis Pendens RA 000001

U.S. Bank Motion to Dismiss RA 000003

U.S. Bank Motion to Expunge RA 000023

Opposition to Motion to Expunge RA 000030

ALPHABETICAL INDEX TO APPENDIX VOLUME I

Notice of Lis Pendens RA 000001

Opposition to Motion to Expunge RA 000030

U.S. Bank Motion to Dismiss RA 000003

U.S. Bank Motion to Expunge RA 000023