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Glenview West Townhomes Association	\$223.00
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Dated: February 7, 2017.

By /s/Stuart J. Taylor
MICHAEL R. HALL, ESQ.
Nevada State Bar No. 005978
STUART J. TAYLOR, ESQ.
Nevada Bar No. 014285
7425 Peak Drive
Las Vegas, Nevada 89128
*Attorneys for Defendant
Glenview West Townhomes Association.*

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify under penalty of perjury that I am an employee of HALL
3 JAFFE & CLAYTON, LLP, and that on the__7th__ day of February the foregoing
4 **Initial Appearance Fee Disclosure** was served upon those persons designated by the parties in the E-
5 Service Master List for the above-referenced matter in the Eighth Judicial District Court e-Filing System
6 in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the
7 Nevada Electronic Filing and Conversion Rules.

8 Michael F. Bohn, Esq.
9 Adam R. Trippiedi, Esq.
10 Law Offices of Michael F. Bohn, Esq., LTD.
11 376 East Warm Springs Rd., Ste 140
12 Las Vegas, Nevada 89119
13 *Attorneys for Resources Group, LLC*

14 Kristin A. Schuler-Hintz, Esq.
15 Thomas N. Beckom, Esq.
16 McCarthy & Holthus, LLP
17 9510 W. Sahara, Suite 200
18 Las Vegas, Nevada 89117
19 *Attorneys for US Bank National Association, ND*

20
21
22
23
24
25
26
27
28

/s/Alexandria Raleigh
An Employee of HALL JAFFE & CLAYTON, LLP

A-12-667690-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property	COURT MINUTES	March 07, 2017
A-12-667690-C	U S Bank National Association, Plaintiff(s) vs. George Edwards, Defendant(s)	
March 07, 2017	3:00 PM	Minute Order Re: U.S. Bank's Motion for Summary Judgment

HEARD BY: Williams, Timothy C.

COURTROOM: RJC Courtroom 12D

COURT CLERK: Lorna Shell

PARTIES PRESENT: None

JOURNAL ENTRIES

- After a review and consideration of the points and authorities on file herein, and oral argument of counsel, the COURT DETERMINED as follows:

COURT ORDERED, Plaintiff U.S. Bank National Association's Motion for Summary Judgment shall be DENIED in light of the Nevada Supreme Court decision in Saticoy Bay, LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, A Division of Wells Fargo Bank N.A., 133 Nev. Adv. Op. 5 (2017).

Furthermore, the issue of the adequacy of the sale price at the HOA sale is not, itself, sufficient grounds for setting aside an HOA sale legally made without proof of some element of fraud, unfairness or oppression. Counsel for Resources Group, LLC, shall prepare a detailed Order based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: A copy of this minute order was electronically served to all Wiznet registered parties by the Judicial Executive Assistant./ls 3-7-17

PRINT DATE: 03/07/2017

Page 1 of 1

Minutes Date: March 07, 2017

DISTRICT COURT
CLARK COUNTY, NEVADA


CLERK OF THE COURT

U S BANK NATIONAL ASSOCIATION,
PLAINTIFF(S)
VS.
GEORGE EDWARDS, DEFENDANT(S)

CASE NO.: A-12-667690-C

DEPARTMENT 16

NOTICE OF HEARING

Please be advised that the above-entitled matter has been scheduled for Status
Check re Submission of Stipulation and Order to Continue Trial Date/Toll NRCP41(e) to a
Date Certain, to be heard by the Honorable TIMOTHY C. WILLIAMS, at the Regional
Justice Center, 200 Lewis Ave, Las Vegas, Nevada 89155, on the **30th** day of **March**,
2017, at the hour of **9:00 AM**, in RJC Courtroom 12D, Department 16. YOUR
PRESENCE IS NECESSARY

Should the Stipulation and Order be submitted prior to March 29, 2017, the
hearing will be vacated.

HONORABLE TIMOTHY C. WILLIAMS


By: Lynn Berkhelmer
Judicial Executive Assistant



CERTIFICATE OF SERVICE

I hereby certify that on or about the date e-filed, this document was electronically served to all registered parties for Case Number A667690 as follows:

Hall Jaffe & Clayton

Name

Amber Geiman
Stuart Taylor

Email

ageiman@lawhjc.com
staylor@lawhjc.com

Hall Jaffe Clayton

Name

Alexandria Raleigh

Email

ARaleigh@lawhjc.com

Law Offices of Michael F. Bohn, Esq.

Name

Eserve Contact
Michael F Bohn Esq

Email

office@bohnlawfirm.com
mbohn@bohnlawfirm.com

Les Zieve Law Office

Name

Benjamin D. Petiprin, Esq.

Email

bpetiprin@zievelaw.com

McCarthy & Holthus, LLP.

Name

Kristin Schuler-Hintz

Email

dcny@mccarthyholthus.com


McCarty & Holthus, LLP.

Name

Thomas N. Beckom

Email

tbeckom@mccarthyholthus.com


Lynn Berkheimer
Judicial Executive Assistant
Department 16

A-12-667690-C

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property	COURT MINUTES	March 29, 2017
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A-12-667690-C	U S Bank National Association, Plaintiff(s) vs. George Edwards, Defendant(s)
---------------	--

March 29, 2017	2:00 PM	Minute Order Re: Defendant/Counterclaimant, Resources Group, LLC's Motion for Summary Judgment
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HEARD BY: Williams, Timothy C. COURTROOM: RJC Courtroom 12D

COURT CLERK: Lorna Shell

PARTIES PRESENT: None

JOURNAL ENTRIES

- After a review and consideration of the points and authorities on file herein, and oral argument of counsel, the COURT DETERMINED as follows:

There are issues of fact as to the Home Owners' Association sale of the subject property, the adequacy of the sale price, and whether Defendant Resources Group, LLC was a bona fide purchaser. As a result COURT ORDERED, Defendant Resources Group, LLC's Motion for Summary Judgment shall be DENIED.

Counsel for Defendant, Resource Group, shall prepare a detailed Order based not only on the foregoing Minute Order, but also on the record on file herein. This is to be submitted to adverse counsel for review and approval and/or submission of a competing Order or objections, prior to submitting to the Court for review and signature.

CLERK'S NOTE: A copy of this minute order was electronically served to all Wiznet registered parties by the Judicial Executive Assistant./ls 03-29-17



CLERK OF THE COURT

1 **SAO**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

3 ADAM R. TRIPPIEDI, ESQ.

Nevada Bar No. 12294

4 atrippiedi@bohnlawfirm.com

LAW OFFICES OF

5 MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

6 Las Vegas, Nevada 89119

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

7 Attorneys for defendant/counterclaimant Resources Group, LLC

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 U.S. BANK NATIONAL ASSOCIATION, ND, a
11 national association

12 Plaintiff,

13 vs.

14 GEORGE R. EDWARDS, an individual; ANY AND
15 ALL PERSONS UNKNOWN, CLAIMING TO BE
16 PERSONAL REPRESENTATIVES OF GEORGE
17 R. EDWARDS ESTATE, OR DULY APPOINTED,
18 QUALIFIED, AND ACTING EXECUTOR OF THE
19 WILL OF THE ESTATE OF GEORGE R.
EDWARDS; RESOURCES GROUP, LLC, a Nevada
Limited Liability Company; GLENVIEW WEST
TOWNHOMES ASSOCIATION, a Nevada non-
profit corporation; DOES 4 through inclusive; and
ROES 1 through 10 inclusive

20 Defendants.

21 RESOURCES GROUP, LLC,

22 Counter-claimant

23 vs

24 U.S. BANK NATIONAL ASSOCIATION, ND, a
national association

Counter-defendant

CASE NO.: A-12-667690-C
DEPT NO.: XVI

**STIPULATION AND ORDER TO
TOLL NRCP41(e)**

25
26 Defendant/counterclaimant, Resources Group, LLC, as Trustee for the Bourne Valley Court Trust
27 (hereinafter "plaintiff"), by and through its attorneys, Michael F. Bohn, Esq. and Adam R. Trippiedi, Esq.;

1 plaintiff/counterdefendant U.S. Bank National Association, ND (hereinafter "defendant"), by and through
2 its attorney, Thomas N. Beckom, Esq.; and defendant Glenview West Townhomes Association, by and
3 through its attorney, Stuart J. Taylor, Esq., hereby submit the following Stipulation and Order to Toll
4 NRCP 41(e).


5 1. The parties have recently agreed to stipulate to continue the trial date in this matter.

6 2. The complaint in this matter was filed on August 30, 2012.


7 3. In order to avoid running afoul of NRCP 41(e)'s requirement to bring a matter to trial within
8 five years of the filing of the complaint, the parties hereby agree that NRCP 41(e) is hereby tolled through
9 November 3, 2017.

10 DATED this 30 day of March, 2017.

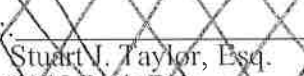
11 LAW OFFICES OF
12 MICHAEL F. BOHN, ESQ., LTD.

13 By: 
14 Michael F. Bohn, Esq.
15 Adam R. Trippiedi, Esq.
16 376 E. Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for defendant
Resources Group, LLC

MCCARTHY HOLTHUS LLP

By: 
Thomas N. Beckom, Esq.
9510 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorney for plaintiff

17 ~~HALL JAFFE & CLAYTON LLP~~

18 By: 
19 Stuart J. Taylor, Esq.
20 7245 Peak Drive
Las Vegas, Nevada 89128
21 Attorney for defendant Glenview West
Townhomes Association

ORDER

Based on the foregoing Stipulation by and between the parties, and good cause appearing,

IT IS HEREBY ORDERED that the calculation of time under NRCP 41(e) is hereby tolled
through November 3, 2017.


IT IS SO ORDERED this 30th day of March, 2017


DISTRICT COURT JUDGE
Case No. A667690

Respectfully submitted by:

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

By: 
MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.
376 E. Warm Springs Road, Ste. 140
Las Vegas, NV 89119
Attorney for plaintiff



CLERK OF THE COURT

1 **NEO**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 LAW OFFICES OF
6 MICHAEL F. BOHN, ESQ.
7 376 East Warm Springs Road, Ste. 140
8 Las Vegas, Nevada 89119
9 (702) 642-3113/ (702) 642-9766 FAX

6 Attorney for defendant Resources Group, LLC

7
8 DISTRICT COURT
9 CLARK COUNTY NEVADA

A-12-667690-C

CASE NO.: ~~A667690~~
DEPT NO.: XVI

10 U.S. BANK NATIONAL ASSOCIATION, ND, a
11 national association

12 Plaintiff,

13 vs.

14 GEORGE R. EDWARDS, an individual; ANY AND
15 ALL PERSONS UNKNOWN, CLAIMING TO BE
16 PERSONAL REPRESENTATIVES OF GEORGE R.
17 EDWARDS ESTATE, OR DULY APPOINTED,
18 QUALIFIED, AND ACTING EXECUTOR OF THE
19 WILL OF THE ESTATE OF GEORGE R.
20 EDWARDS; RESOURCES GROUP, LLC, a Nevada
21 Limited Liability Company; GLENVIEW WEST
22 TOWNHOMES ASSOCIATION, a Nevada non-profit
23 corporation; DOES 4 through inclusive; and ROES 1
24 through 10 inclusive

20 Defendants.

22 RESOURCES GROUP, LLC,

23 Counter-claimant

24 vs

25 U.S. BANK NATIONAL ASSOCIATION, ND, a
26 national association

26 Counter-defendant

27
28 **NOTICE OF ENTRY OF ORDER**

TO: Parties above-named; and

1 TO: Their Attorney of Record

2 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **STIPULATION AND**
3 **ORDER TO TOLL NRCP 41(e)** has been entered on the 3rd day of April, 2017, in the above captioned
4 matter, a copy of which is attached hereto.

5 Dated this 4th day of April, 2017.

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

8 By: /s/ Michael F. Bohn, Esq./
9 MICHAEL F. BOHN, ESQ.
10 376 E. Warm Springs Rd., Ste. 140
11 Las Vegas, NV 89119
12 Attorney for plaintiff

13 **CERTIFICATE OF SERVICE**

14 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
15 OFFICES OF MICHAEL F. BOHN, ESQ., and on the 4th day of August, 2016, an electronic copy of the
16 **NOTICE OF ENTRY OF ORDER** was served on opposing counsel via the Court's electronic service
17 system to the following counsel of record:

18 Kristin A. Schuler-Hintz, Esq.
19 Thomas N. Beckom, Esq.
20 McCarthy & Holthus, LLP
21 9510 W. Sahara Ave., Ste. 200
22 Las Vegas, NV 89117
23 Attorney for plaintiff/counterdefendant

24 Stuart J. Taylor, Esq.
25 HALL JAFFE & CLAYTON, LLP
26 7245 Peak Drive
27 Las Vegas, Nevada 89128
28 Attorney for defendant Glenview West
Townhomes Association

29 /s/ Marc Sameroff /
30 An Employee of the LAW OFFICES OF
31 MICHAEL F. BOHN, ESQ., LTD.



CLERK OF THE COURT

1 **SAO**

MICHAEL F. BOHN, ESQ.

2 Nevada Bar No.: 1641

mbohn@bohnlawfirm.com

3 ADAM R. TRIPPIEDI, ESQ.

Nevada Bar No. 12294

4 atrippiedi@bohnlawfirm.com

LAW OFFICES OF

5 MICHAEL F. BOHN, ESQ., LTD.

376 East Warm Springs Road, Ste. 140

6 Las Vegas, Nevada 89119

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

7 Attorneys for defendant/counterclaimant Resources Group, LLC

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 U.S. BANK NATIONAL ASSOCIATION, ND, a
11 national association

12 Plaintiff,

13 vs.

14 GEORGE R. EDWARDS, an individual; ANY AND
15 ALL PERSONS UNKNOWN, CLAIMING TO BE
16 PERSONAL REPRESENTATIVES OF GEORGE
17 R. EDWARDS ESTATE, OR DULY APPOINTED,
18 QUALIFIED, AND ACTING EXECUTOR OF THE
19 WILL OF THE ESTATE OF GEORGE R.
EDWARDS; RESOURCES GROUP, LLC, a Nevada
Limited Liability Company; GLENVIEW WEST
TOWNHOMES ASSOCIATION, a Nevada non-
profit corporation; DOES 4 through inclusive; and
ROES 1 through 10 inclusive

20 Defendants.

21 RESOURCES GROUP, LLC,

22 Counter-claimant

23 vs

24 U.S. BANK NATIONAL ASSOCIATION, ND, a
national association

Counter-defendant

CASE NO.: A-12-667690-C
DEPT NO.: XVI

**STIPULATION AND ORDER TO
TOLL NRCP41(e)**

25 Defendant/counterclaimant, Resources Group, LLC, as Trustee for the Bourne Valley Court Trust
26 (hereinafter "plaintiff"), by and through its attorneys, Michael F. Bohn, Esq. and Adam R. Trippiedi, Esq.;

1 plaintiff/counterdefendant U.S. Bank National Association, ND (hereinafter "defendant"), by and through
2 its attorney, Thomas N. Beckom, Esq.; and defendant Glenview West Townhomes Association, by and
3 through its attorney, Stuart J. Taylor, Esq., hereby submit the following Stipulation and Order to Toll
4 NRCP 41(e).

5 1. The parties have recently agreed to stipulate to continue the trial date in this matter.


6 2. The complaint in this matter was filed on August 30, 2012.


7 3. In order to avoid running afoul of NRCP 41(e)'s requirement to bring a matter to trial within
8 five years of the filing of the complaint, the parties hereby agree that NRCP 41(e) is hereby tolled through
9 November 3, 2017.

10 DATED this 30 day of March, 2017.


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

MCCARTHY HOLTHUS LLP

13 By: 
14 Michael F. Bohn, Esq.
15 Adam R. Trippiedi, Esq.
16 376 E. Warm Springs Road, Ste. 140
17 Las Vegas, Nevada 89119
18 Attorney for defendant
19 Resources Group, LLC

By: 
Thomas N. Beckom, Esq.
9510 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89117
Attorney for plaintiff

~~20 NALL JAFFE & CLAYTON, LLP~~

~~21 By: 
22 Stuart J. Taylor, Esq.
23 7245 Peak Drive
24 Las Vegas, Nevada 89128
25 Attorney for defendant Glenview West
26 Townhomes Association~~

ORDER

Based on the foregoing Stipulation by and between the parties, and good cause appearing,


IT IS HEREBY ORDERED that the calculation of time under NRCP 41(e) is hereby tolled through November 3, 2017.


IT IS SO ORDERED this 30th day of March, 2017


DISTRICT COURT JUDGE
Case No. A667690

Respectfully submitted by:

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

By: 
MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.
376 E. Warm Springs Road, Ste. 140
Las Vegas, NV 89119
Attorney for plaintiff



1 **SUBT**
2 GEISENDORF & VILKIN, PLLC
3 Richard J. Vilkin, Esq. (8301)
4 2470 St. Rose Parkway, Suite 309
5 Henderson, Nevada 89074
6 Tel: (702) 873-5868
7 Email: richard@gvattorneys.com
8 Attorney for RESOURCES GROUP, LLC

9
10
11 **DISTRICT COURT**
12
13 **CLARK COUNTY, NEVADA**

14 U.S. BANK NATIONAL ASSOCIATION, ND, a
15 national association,

16
17 **Plaintiff,**

18 **v.**

19 GEORGE R. EDWARDS, an individual; ANY AND
20 ALL PERSONS UNKNOWN, CLAIMING TO BE
21 PERSONAL REPRESENTATIVES OF GEORGE R.
22 EDWARDS ESTATE, OR DULY APPOINTED,
23 QUALIFIED, AND ACTING EXECUTOR OF THE
24 WILL OF THE ESTATE OF GEORGE R.
25 EDWARDS; RESOURCES GROUP, LLC, a Nevada
26 Limited Liability Company; GLENVIEW WEST
27 TOWNHOMES ASSOCIATION, a Nevada non-profit
28 corporation; DOES 4 through inclusive; and ROES 1
through 10 inclusive,

Defendants.

RESOURCES GROUP, LLC,

Counter-claimant,

v.

U.S. BANK NATIONAL ASSOCIATION, ND, a
national association,

Counter-defendant.

Case No.: A-12-667690-C
Dept. No.: XVI

Substitution of Attorney

1 The LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD., attorney of record for
2 RESOURCES GROUP, LLC does hereby consent to the substitution of GEISENDORF &
3 VILKIN, PLLC, as attorney for RESOURCES GROUP, LLC in the above-entitled matter in its
4 place and stead.
5

6 Dated this 1st day of August, 2017.

7
8 LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.


9
10 /s/ Michael F. Bohn

11 By: Michael F. Bohn, Esq. (1641)

12 GEISENDORF & VILKIN, PLLC does hereby agree to be substituted in the place of the
13 LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD., as attorney for RESOURCES GROUP,
14 LLC in the above-entitled matter.

15 Dated this 2 day of August, 2017.

16
17 GEISENDORF & VILKIN, PLLC

18
19 
20 By: Richard J. Vilkin, Esq. (8301)

21 RESOURCES GROUP, LLC, consents to the substitution of GEISENDORF & VILKIN,
22 PLLC, in place of the LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD., as its attorney of
23 record.

24 Dated this 2 day of August, 2017.

25
26 RESOURCES GROUP, LLC

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28 
By: Iyad "Eddie" Haddad

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Certificate of Service

I hereby certify that on August 3rd, 2017, I served the following document(s):

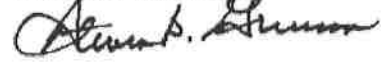
A copy of the preceding **Substitution of Attorney**.

- By Electronic Transmission: by transmitting the document to the parties registered to receive service for this case via this Court's mandatory e-service system.

/s/ Stacie Geisendorf

An employee of Geisendorf & Vilkin, PLLC

Electronically Filed
8/31/2017 4:03 PM
Steven D. Grierson
CLERK OF THE COURT



McCarthy & Holthus, LLP
Kristin A. Schuler-Hintz (NSB# 7171)
Thomas N. Beckom, Esq (NSB#12554)
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: (702) 685-0329
Facsimile: (866) 339-5961

Attorneys for Plaintiff,

U.S. Bank N.A.

**IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK**

U.S. BANK NATIONAL ASSOCIATION ND,
A NATIONAL ASSOCIATION

Plaintiff,

v.

GEORGE R. EDWARDS, an individual, ANY
AND ALL PERSON UNKNOWN, CLAIMING
TO BE PERSONAL REPRESENTATIVES OF
GEORGE R. EDWARDS ESTATE OR DULY
APPOINTED, QUALIFIED, AND ACTING
EXECUTOR OF THE WILL OF THE ESTATE
OF GEORGE R. EDWARDS; RESOURCES
GROUP, LLC a Nevada Limited-Liability
Company; GLENVIEW WEST TOWNHOMES
ASSOCIATION, a Nevada non-profit
corporation; DOES 4 through 10, inclusive, and
ROES 1 through 10, inclusive

Defendants.

AND ALL RELATED CLAIMS

Case No. A-12-667690-C

Dept. No. XVI

U.S. BANK'S PRETRIAL DISCLOSURES

Pursuant to Rule 16.1 of the Nevada Rules of Civil Procedure, Plaintiff, U.S. BANK

NATIONAL ASSOCIATION ND ("U.S. BANK"), by and through its undersigned counsel of record Thomas N. Beckom, Esq of the law firm of McCarthy Holthus hereby submits the following Pre-trial Disclosures.

**I.
WITNESSES**

1. Witnesses Expected to Call

- a. George "Chip" Holmes
3565 S. Las Vegas Blvd Suite 366
Las Vegas, NV 89109
- b. Corporate Witness
U.S. Bank National Association
c/o Thomas Beckom, Esq
9510 W. Sahara Ave., Suite 200
Las Vegas, NV 89117

2. Witnesses to be Subpoenaed

- a. Corporate Witness
Resources Group, LLC
c/o Michael F. Bohn, Esq
376 Warm Spring Rd. Suite 140
Las Vegas, NV 89119
- b. Corporate Witness
Glenview West Townhomes Association
c/o Marquis Aubach Coffing P.C.
10001 Park Run Dr.
Las Vegas, NV 89145
- c. David Alessi
Alessi & Koenig, LLC
c/o Robert A. Koenig
9500 W. Flamingo Rd. Unit 101
Las Vegas, NV 89147

3. Witnesses Plaintiff May call if the Need Arises

Any witness named by any party to this matter or disclosed in U.S. Bank's 16.1

Disclosures

4. Witnesses Whose Testimony is Expected to be Presented by Means of Deposition

None expected at this time, however Plaintiff reserves the right to disclose deposition testimony for the individuals whom have been deposed in this action.

II.

LIST OF DOCUMENTS AND EXHIBITS

1. Documents Plaintiff Expects to Present

Bates No	Description
Legal Description of Subject Property	USB0001
Delinquent Taxes for the Fiscal 2003-2004	USB002-004
U.S. Bank Equiline Agreement	USB0005-0010
Deed of Trust	USB0011-0019
Notice of Claim of Lien	USB0020-0022
Tax Trustee Deed	USB0023-0025
Alessi & Koenig, LLC's Production of Documents	USB0026-0175
Glenview West Townhomes Association's Production of Documents	USB0176-0261
Trustee's Deed Upon Sale	USB0262-0263
Miscellaneous BPO's	USB0264-0310
Documents from Bankruptcy of the Bourne Valley Court Trust	USB311-361

2. Documents Plaintiff May Offer if Need Arises

- i. Any document disclosed by any party to this action and all documents disclosed by BONY as well as any documents filed in the property records.

**III.
DEMONSTRATIVES**

1. Power Point

Plaintiff reserves the right to produce any and all document produced by other parties to this litigation as well as impeachment and rebuttal evidence as necessary.

DATED: August 31, 2017.

McCarthy & Holthus, LLP

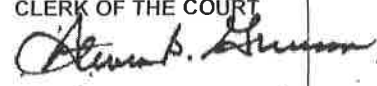
By: /s/ Thomas N. Beckom, Esq
Thomas N. Beckom, Esq

GEISENDORF & VILKIN, PLLC
2470 St. Rose Parkway, Suite 309 Henderson, Nevada 89074
Phone: 702.873.5868 & Fax: 702.548.6335

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Richard Vilkin
Nevada Bar No. 8301
Geisendorf & Vilkin, PLLC
2470 St. Rose Parkway, Suite 309
Henderson, Nevada 89074
Direct Dial: (702) 476-3211
Office phone: (702) 873-5868
Email: Richard@gvattorneys.com
*Attorneys for plaintiff and counterdefendant
Resources Group, LLC*

Electronically Filed
9/2/2017 11:35 AM
Steven D. Grierson
CLERK OF THE COURT



DISTRICT COURT
CLARK COUNTY, NEVADA

U.S. BANK NATIONAL ASSOCIATION ND, A NATIONAL ASSOCIATION, Plaintiff, v. GEORGE R. EDWARDS, an individual, ANY AND ALL PERSON UNKNOWN CLAIMING TO BE PERSONAL REPRESENTATIVES OF GEORGE R. EDWARDS ESTATE OR DULY APPOINTED, QUALIFIED, AND ACTING EXECUTOR OF THE WILL OF THE ESTATE OF GEORGE R. EDWARDS; RESOURCES GROUP, LLC; a Nevada limited liability company; GENVIEW WEST TOWNHOMES ASSOCIATION, a Nevada non-profit corporation; DOES 4 through 10, inclusive, and ROES 1 through 10, inclusive, Defendants.	Case No.: A-12-667690-C Dept. No.: XVI PRE-TRIAL DISCLOSURES OF DEFENDANT AND COUNTER- CLAIMANT RESOURCES GROUP, LLC
RESOURCES GROUP, LLC, Counter-claimant, v. U.S. BANK NATIONAL ASSOCIATION, ND, Counter-claimant.	

1
2
3
4 Defendant and counter-claimant Resources Group, LLC hereby presents its pre-trial
5 disclosures pursuant to NRCP 16.1(a)(3) as follows:

6 I.

7 WITNESSES EXPECTED TO BE PRESENTED AT TRIAL

- 8 1. Iyad Eddie Haddad as manager of Resources Group, LLC, c/o Geisendorf & Vilkin,
9 PLLC.
10
11 2. David Alessi of Alessi & Koenig, LLC, as deposed in this case, to be subpoenaed.
12
13 3. 30(b)(6) representative of Glenview West Townhomes Association, as deposed in this
14 case, to be subpoenaed.
15
16 4. Michael Brunson, c/o Geisendorf & Vilkin, PLLC.
17
18 5. 30(b)(6) witness of U.S. Bank National Association
19
20 6. All other witnesses as designated by other parties as witnesses in this case pursuant
21 to their disclosures pursuant to NRCP 16.1.

22 II.

23 DOCUMENTS EXPECTED TO BE PRESENTED AT TRIAL

- 24 1. USB 1-263, 417-488.
25
26 2. Tax Deed recorded 06122012, produced by Resources Group, LLC.
27
28 3. Grant, Bargain and Sale Deed recorded 052912 by Resources Group, LLC.
4. Exhibits 1-11 attached to Resources Group, LLC's Motion for Summary Judgment
filed January 3, 2017.

5. Exhibits A-K attached to Resources Group, LLC's Opposition to U.S. Bank's Motion for Summary Judgment, filed January 19, 2017.
6. Report of Michael Brunson dated August 31, 2016.
7. Interrogatories, Requests for Production and Requests for Admissions served on October 19, 2015 U.S. Bank by Resources Group, LLC.
8. Responses and Objections of U.S. Bank to Resources Groups, LLC's Interrogatories, Requests for Production and Requests for Admissions served by U.S. Bank on January 13, 2016.
9. All documents recorded as part of the non-judicial foreclosure and sale, including Foreclosure Deed.
10. If necessary, all other documents produced by all parties in this case.

Date: September 2, 2017

GEISENDORF & VILKIN, PLLC

By: /s/ Richard J. Vilkin
Richard J. Vilkin, Esq. (8301)
2470 St. Rose Parkway, Suite 309
Henderson, Nevada 89074
Attorneys for plaintiff and defendant
Lyric Arbor Drive Trust

Certificate of Service

On September 2, 2017, I served the foregoing by E-Service by serving same by electronic service on the Eighth District Court Odyssey File and Serve system by requesting that the document be e-served on all persons who have signed up for e-service for this case.

Executed this 2nd day of September, 2017 at Henderson, NV. I declare the above is true.

/s/ Richard Vilkin

Richard Vilkin

AFFIDAVIT OF DUE DILIGENCE

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

Dept No. XVI

U.S. BANK NATIONAL ASSOCIATION ND, A
NATIONAL ASSOCIATION,

Plaintiff(s)

v.

GEORGE R. EDWARDS, an individual, et. al.,

Defendant(s)

Case No.:A-12-667690-C

Kristin A. Schuler-Hintz, Esq. Bar No. 7171

Thomas N. Beckom, Esq. Bar No. 12554

MCCARTHY HOLTHUS-LITIGATIONS

9510 W.Sahara Avenue, Suite 200

Las Vegas, NV 89117

(702) 685-0329

Attorneys for the Defendant

Client File# NV-16-736927-CV

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Subpoena Dueces Tecum, from MCCARTHY HOLTHUS-LITIGATIONS

That attempts were made to serve Resources Group, LLC c/o Geisendorf & Vilkin, PLLC with Subpoena Dueces Tecum, at:

Attempted at 2470 St. Rose Parkway, Suite 309 Henderson, NV 89074 On 9/8/2017 at 9:48 AM

Results: Spoke with Charles Geisendorf, Esq. (Caucasian, Male, 50's., 5'6", 180 lbs., Salt Pepper Hair, Blue Eyes, Mustache, Beard), states cannot accept service as he is not the Registered Agent.

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Judith Mae All
Registered Work Card# R-040570
State of Nevada

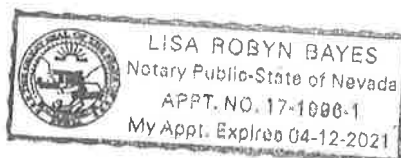
State of: Nevada
County of: Clark

Subscribed and sworn before me, a
Notary Public, this 11th day of
September 2017

BY: Judith Mae All

Lisa Robyn Bayes
Notary Public
My Commission expires on: 4/12/2021

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656



Order #:NV94127

their File NV-16-736927-CV

EDWARD APPENDIX 1480

Steven D. Grierson

AFFIDAVIT OF SERVICE

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK Dept No. XVI

U.S. BANK NATIONAL ASSOCIATION ND, A
NATIONAL ASSOCIATION,

Plaintiff(s)

v.

GEORGE R. EDWARDS, an individual, et. al.,

Defendant(s)

Case No.: A-12-667690-C
Kristin A. Schuler-Hintz, Esq. Bar No. 7171
Thomas N. Beckom, Esq. Bar No. 12554
MCCARTHY HOLTHUS-LITIGATIONS
9510 W. Sahara Avenue, Suite 200
Las Vegas, NV 89117
(702) 685-0329
Attorneys for the Defendant
Client File# NV-16-736927-CV

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Subpoena Duces Tecum, from MCCARTHY HOLTHUS-LITIGATIONS

That on 9/8/2017 at 10:33 AM at 900 Las Vegas Boulevard South, Suite 810, Las Vegas, NV 89101 I served Resources Group, LLC, by personally delivering and leaving a copy of the above-listed document(s) with Rosie Bonilla - Office Manager, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:

Gender: Female, Race: Asian, Age: 50's, Height: 5'6", Weight: 140 lbs., Hair: Black, Eyes: Brown, Marks: Glasses

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Judith Mae All
Judith Mae All
Registered Work Card# R-040570
State of Nevada

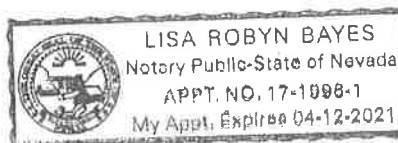
State of: Nevada
County of: Clark

Subscribed and sworn before me, a
Notary Public, this 11th day of
September 2017

BY: Judith Mae All

Lisa Robyn Bayes
Lisa Robyn Bayes
Notary Public
My Commission expires on: 4/12/2021

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656



Order #: NV94127A
Their File NV-16-736927-CV
EDWARD APPENDIX 1481

AFFIDAVIT OF SERVICE

IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK Dept No. XVI

U.S. BANK NATIONAL ASSOCIATION ND, A
NATIONAL ASSOCIATION,

Plaintiff(s)

v.

GEORGE R. EDWARDS, an individual, et. al.,

Defendant(s)

Case No.: A-12-667690-C

Kristin A. Schuler-Hintz, Esq. Bar No. 7171

Thomas N. Beckom, Esq. Bar No. 12554

MCCARTHY HOLTHUS-LITIGATIONS

9510 W. Sahara Avenue, Suite 200

Las Vegas, NV 89117

(702) 685-0329

Attorneys for the Defendant

Client File# NV-16-736927-CV

I, Judith Mae All, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Subpoena Deuces Tecum, from MCCARTHY HOLTHUS-LITIGATIONS

That on 9/7/2017 at 3:04 PM at 9500 W. Flamingo Road, Suite 204, Las Vegas, NV 89147 I served David Alessi/Alessi & Koenig, LLC c/o Robert A. Koenig, by personally delivering and leaving a copy of the above-listed document(s) with Heidi Hagen - Receptionist, a person of suitable age and discretion authorized to accept service of process.

That the description of the person actually served is as follows:

Gender: Female, Race: Caucasian, Age: 40's, Height: Seated, Weight: 220 lbs., Hair: Red, Eyes: Blue, Marks: Glasses

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Judith Mae All
Registered Work Card# R-040570
State of Nevada

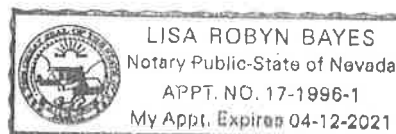
State of: Nevada
County of: Clark

Subscribed and sworn before me, a
Notary Public, this 11th day of
September 2017

BY: Judith Mae All

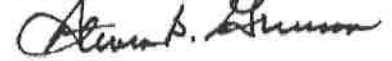
Lisa Robyn Bayes
Notary Public
My Commission expires on: 4/12/2021

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656



Order #: NV94129
Their File NV-16-736927-CV
EDWARD APPENDIX 1482

Electronically Filed
9/13/2017 2:40 PM
Steven D. Grierson
CLERK OF THE COURT



PTM
McCARTHY & HOLTHUS, LLP
Kristin A. Schuler-Hintz, Esq. (NSB# 7171)
Thomas N. Beckom, Esq. (NSB# 12554)
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Telephone: (702) 685-0329
Facsimile: (866) 339-5691
Attorneys for Defendant, *U.S. Bank*

**IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK**

U.S. BANK NATIONAL ASSOCIATION ND, A
NATIONAL ASSOCIATION

Case No. A-12-667690-C

Dept. No. XVI

Plaintiff,

v.

**PLAINTIFF'S PRE-TRIAL
MEMORANDUM**

GEORGE R. EDWARDS, an individual, ANY
AND ALL PERSON UNKNOWN, CLAIMING
TO BE PERSONAL REPRESENTATIVES OF
GEORGE R. EDWARDS ESTATE OR DULY
APPOINTED, QUALIFIED, AND ACTING
EXECUTOR OF THE WILL OF THE ESTATE
OF GEORGE R. EDWARDS; RESOURCES
GROUP, LLC a Nevada Limited-Liability
Company; GLENVIEW WEST TOWNHOMES
ASSOCIATION, a Nevada non-profit
corporation; DOES 4 through 10, inclusive, and
ROES 1 through 10, inclusive

Defendants.

AND ALL RELATED CLAIMS

COMES NOW Plaintiff, U.S. BANK NATIONAL ASSOCIATION ("U.S. BANK"); by
and through their counsel of record, Thomas N. Beckom, Esq., of McCarthy & Holthus, LLP,
hereby submit their Pre-Trial Memorandum in accordance with EDCR 2.67 and NRCP 16.1.

Date Conference was held by Counsel: September 11, 2017

A. STATEMENT OF FACTS

1. On March 3, 2009; U.S. Bank N.A. gave George Edwards a \$50,000.00 Equity Line of Credit secured by 4254 Rollingstone Dr., Las Vegas, NV 89103. This loan was secured by a Deed of Trust with a Future Advance Clause filed in the property records on March 28, 2009.
2. The Subject Property was located in the Glenview West Townhomes HOA and governed by the Covenants Conditions and Restrictions of Glenview West Townhomes HOA. ("CC&Rs").
3. The CC&R's are patently misleading and include illegal provisions. *Id.* The CC&R's misrepresent to U.S. Bank, Edwards and the Public the effect of an HOA foreclosure and expressly state:

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve said lot from liability for any assessments thereafter becoming due or from the lien thereof.

4. On November 3, 2010; Alessi sent Mr. Edwards a pre-lien letter stating that \$1,855.00 was due and owed.
5. This was based the internal accounting by Glenview. Glenview's ledger showed that Mr. Edward's HOA dues were \$130.00 dollars, that he ceased paying his HOA dues in February, 2010.
6. On this basis, Alessi, on behalf of Glenview, liened the Subject Property.
7. Thereafter, on March 2, 2011; Alessi and Glenview indicated in the property records that they would be selling the property and filed a Notice of Default and Election to Sell under Homeowners Association Lien in the property records.

8. It is worth noting at this juncture that U.S. Bank National Association indicated in their Deed of Trust that their mailing address was 4325 17th Avenue SW, Fargo, ND 58103..
9. At his deposition, David Alessi, the person most knowledgeable for Alessi & Koenig testified that at no point was the Notice of Default ever mailed to U.S. Bank's address. (Ex. 16 p. 23)(Q. "So the Notice of Default was not mailed to the address for the lender. Can we agree on that? **A. It does—It appears that the Notice of Default was not mailed to U.S. Bank National Association ND at their Fargo, North Dakota address.....)**
10. On September 16, 2011; Alessi and Glenview indicated that they would exercise their rights to sell the property and filed in the property records a notice of sale. The Notice of Sale indicated that \$5,379.00 was owed on the property and was signed by Ryan Kerbow..
11. On January 25, 2012; the property sold for \$5,331.00 dollars, less than the amount owed, to the 4254 Rollingstone Dr. Trust.
12. No one bid on the Subject Property at the Sale according to the testimony of Eddie Haddad.
13. From there, a Trustee's Deed Upon Sale, also signed by Ryan Kerbow, Esq as Authorized Agent for Glenview West Townhomes Association, was filed in the property records memorializing this sale.
14. The Declaration of Value, attached to the Deed, stated the property was worth \$5,331.00.
15. U.S. Bank's expert will testify that the property is worth \$48,000.00 based on a fair market value analysis.
16. The BPO's from U.S. Bank's loan file show that the property is worth anywhere from \$44,000.00 to \$85,000.00 dollars.
17. Mr. Haddad, the controlling individual behind the Resources Group was aware that litigation would be involved with his purchase at an HOA sale and prior to the sale:

Q Did you think you were getting a property free and clear of a mortgage when you purchased this property in January of 2012?

A Yes. That's the only reason why I bought it.

Q So you had no reason to be concerned about any kind of deed of trust on 4254 Rollingstone Drive, correct?

A Only the cost of litigation.

18. Mr. Haddad, the controlling manager for Resources Group, actually filed a bankruptcy involving the Subject Property in which he represented to the Bankruptcy Court that the Subject Property was encumbered by a mortgage. .
19. In addition, independent witnesses from Alessi further testified that they believe Mr. Haddad thought this property was subject to the Bank's lien.
20. Mr. Haddad also testified under penalty of perjury that the Subject Property was worth \$35,000.00.
21. Alessi, the entity the represented Glenview and foreclosed on the property, via their attorney Ryan Kerbow, Esq *also* represented Mr. Haddad at the exact same time as this sale.
22. Mr. Kerbow, whom also signed the Notice of Sale and the Trustee's Deed, represented Resources Group in Quiet Title Action.
23. The relationship between Alessi & Koenig and Haddad was so close, that Alessi actually paid Mr. Haddad's transfer tax.

B. LIST OF CLAIMS

- a. U.S. Bank's Complaint
 - i. Judicial Foreclosure of Deed of trust, against All Defendants
- b. Resource's Group's Counterclaim
 - i. Quiet Title

ii. Declaratory Relief

C. U.S. BANK'S AFFIRMATIVE DEFENSES TO THE COMPLAINT

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state facts sufficient to constitute any cause of action against U.S. Bank.

SECOND AFFIRMATIVE DEFENSE

To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute, and Chapter 116 are void for vagueness as applied to this matter.

THIRD AFFIRMATIVE DEFENSE

The super-priority lien was satisfied prior to the homeowners' association foreclosure under the doctrines of tender, estoppels, laches, or waiver.

FOURTH AFFIRMATIVE DEFENSE

The homeowners' association foreclosure sale was not commercially reasonable and the circumstances of sale of the property violated the homeowners' association's obligation of good faith under NRS §116.1113 and duty to act in a commercially reasonable manner.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff lacks standing to bring some or all of their claims and causes of action.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has cited no rule and/ or statute to override the American Rule regarding attorney fee shifting.

EIGHTH AFFIRMATIVE DEFENSE

The sale of the property is unconstitutional pursuant to Federal Law, the due process clause of the 14th amendment of the United States Constitution, and Article 1 Sec. 8 of the Nevada Constitution.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff received a deed which was void and/ or voidable pursuant to NRS Chapter 112.

TENTH AFFIRMATIVE DEFENSE

U.S. Bank avers the affirmative defense of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

U.S. Bank denies that the Plaintiff is entitled to any relief for which it prays.

TWELETH AFFIRMATIVE DEFENSE

U.S. Bank avers the affirmative defense of failure to do equity.

THIRTEENTH AFFIRMATIVE DEFENSE

The homeowners' association did not provide proper notice of the "superpriority" assessment amount and the homeowners' association foreclosure sale, and any such notice failed to comply with the statutory and common law requirements of Nevada and with state and federal constitutional law.

FOURTEENTH AFFIRMATIVE DEFENSE

The homeowner's association foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

FIFTEENTH AFFIRMATIVE DEFENSE

U.S. Bank is entitled to an offset of some, if not all, of the Plaintiffs alleged damages, if any.

SIXTEENTH AFFIRMATIVE DEFENSE

The Plaintiff assumed the risk in taking the actions they now aver caused them damage.

SEVENTEETH AFFIRMATIVE DEFENSE

NRS 116.3116 *et seq* violates the 5th amendment takings clause.

EIGHTEENTH AFFIRMATIVE DEFENSE

NRS 116.3116 *et seq* violates U.S. Bank's Substantive Due Process Right and Fundamental rights under the Nevada and Federal Constitution

NINETEENTH AFFIRMATIVE DEFENSE

The foreclosure sale price is low, the sale is the result of oppression, fraud, and unfairness, and further the Plaintiff is not a bona fide purchaser.

TWENTIETH AFFIRMATIVE DEFENSE

This entire action is barred by the statute of limitations.

D. LIST OF EXHIBITS

Bates No	Description
Legal Description of Subject Property	USB0001
Delinquent Taxes for the Fiscal 2003-2004	USB002-004
U.S. Bank Equiline Agreement	USB0005-0010
Deed of Trust	USB0011-0019
Notice of Claim of Lien	USB0020-0022
Tax Trustee Deed	USB0023-0025
Alessi & Koenig, LLC's Production of Documents	USB0026-0175
Glenview West Townhomes Association's Production of Documents	USB0176-0261
Trustee's Deed Upon Sale	USB0262-0263
Miscellaneous BPO's	USB0264-0310

Documents from Bankruptcy of the Bourne Valley Court Trust	USB311-361
Deposition Transcript of Iydad Haddad	USB362-416
Miscellaneous Title Documents	USB 417-488
Deposition Transcript of Glenview West	
Deposition Transcript of David Alessi	
Deposition Transcript of Iydad Haddad	

E. LIST OF WITNESSES

1. Corporate Designee
U.S. Bank National Association
c/o McCarthy Holthus LLP
9510 W. Sahara, Suite 200
Las Vegas, Nevada 89117

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case

2. Custodian of Records
U.S. Bank National Association
c/o McCarthy Holthus
9510 W. Sahara, Suite 200
Las Vegas, Nevada 89117

This person will testify as to the authenticity and genuineness of any records, notes, papers, that resulted from the transaction(s) and/ or events giving rise to this litigation.

1. NRCP 30(b)(6) Witness
Resources Group, LLC
c/o Michael F. Bohn, Esq
376 Warm Spring Rd. Suite 140
Las Vegas, NV 89119

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case

2. Custodian of Records
Resources Group, LLC
c/o Michael F. Bohn, Esq
376 Warm Spring Rd. Suite 140
Las Vegas, NV 89119

This person will testify as to the authenticity and genuineness of any records, notes, papers, that resulted from the transaction(s) and/ or events giving rise to this litigation.

3. George Edwards
Address Unknown

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case

4. Nev. R. Civ. Pro 30(b)(6) Witness
Glenview West Townhomes Association
c/o Marquis Aubach Coffing P.C.
10001 Park Run Dr.
Las Vegas, NV 89145

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case

5. Board of Directors
Glenview West Townhomes Association
c/o Marquis Aubach Coffing P.C.
10001 Park Run Dr.
Las Vegas, NV 89145

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case

6. Custodian of Records
Glenview West Townhomes Association
c/o Marquis Aubach Coffing P.C.
10001 Park Run Dr.
Las Vegas, NV 89145

This person will testify as to the authenticity and genuineness of any records, notes, papers, that resulted from the transaction(s) and/ or events giving rise to this litigation.

7. NRCP 30(b)(6) Witness
Alessi & Koenig, LLC
c/o Robert A. Koenig
9500 W. Flamingo Rd. Unit 101
Las Vegas, NV 89147

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

8. Custodian of Records
Alessi & Koenig, LLC
c/o Robert A. Koenig
9500 W. Flamingo Rd. Unit 101
Las Vegas, NV 89147

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

9. David Alessi
Alessi & Koenig, LLC
c/o Robert A. Koenig
9500 W. Flamingo Rd. Unit 101
Las Vegas, NV 89147

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

10. Person Most Knowledgeable
Edwards George R. Trust

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

11. Mary Indalecio
c/o Alessi & Koenig, LLC
c/o Robert A. Koenig
9500 W. Flamingo Rd. Unit 101
Las Vegas, NV 89147

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

12. Carolyn Paige
Address unknown

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

13. Coporate Representative
Republic Services, Inc
c/o The Corporation Trust Company of Nevada
701 S. Carson St. Suite 200
Carson City, NV 89701

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

14. Iyad Haddad
c/o Michael F. Bohn, Esq
376 Warm Spring Rd. Suite 140
Las Vegas, NV 89119

This person will testify as to the authenticity and genuineness of any records, notes, papers, that resulted from the transaction(s) and/ or events giving rise to this litigation.

15. Craig's Plumbing
c/o Law Offices of AJ Kung
1020 Garces Ave. Suite 200
Las Vegas, NV 89101

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

16. Ryan Kerbow
Address Unknown

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

17. Nev. R. Civ. Pro 30(b)(6) Witness
Sin City Realty LLC
c/o Matt Edward Mitchell
9500 W. Flamingo Rd. Suite 101
Las Vegas, NV 89147

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

18. Huong Lam, Esq
Address Unknown

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

19. Ryan Alexander, Esq
Address Unknown

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

20. Nadia Haddad
Address Unknown

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

21. Naomi Eden
Address Unknown

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

22. Heidi Hagen
Address Unknown

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

23. George "Chip" Holmes
EAGLE APPRAISAL
3565 S. Las Vegas Blvd Suite 366
Las Vegas, NV 89109

Mr. Holmes is an expert appraiser. Mr. Holmes will testify as to the value of the property.
A copy of his expert report and required materials is attached.

24. Judith Fenner
4855 W. Desert Inn Rd.
Las Vegas, NV 89102

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

25. Old West Realty, Inc
c/o Judith Fenner
4855 W. Desert Inn Rd.
Las Vegas, NV 89102

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

26. J. Michal Bloom
c/o U.S. Department of Justice
Office of the US Trustee
300 Las Vegas Boulevard South
Suite 4300
Las Vegas, NV 89101

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case

27. Corporate Representative
Great Bridge Properties, LLC
c/o Stephanie Cooper Herdman, Esq
820 South Valley View
Las Vegas, NV 89107

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

28. Matt Mitchell
Address Unknown

This person is expected to testify regarding his/ her knowledge of facts and circumstances surrounding the allegations and defenses made in this case.

29. Heather *Last Name Unknown*
Address Unknown

1. This answering Defendant DENIES the allegations in paragraph 1.
2. This answering Defendant does not have sufficient information to either admit or deny the and on this basis DENIES the allegations in paragraph 2.
3. This answering Defendant is without sufficient information to either admit or deny the allegations contained in paragraph 3 and therefore DENIES the allegations contained in paragraph 3.
- [sic] 6. The answering Defendant DENIES the allegations in paragraph 6.
7. This answering Defendant DENIES the allegations in paragraph 7.
8. This answering Defendant DENIES the allegations in paragraph 8.

SECOND CLAIM FOR RELIEF

9. This answering Defendant incorporates it's answers to paragraphs 1 through 8 as if fully set forth herein.
10. This answering Defendant DENIES the allegations in paragraph 10.
11. This answering Defendant DENIES the allegations in paragraph 11.

AFFIRMATIVE DEFENSES

U.S. Bank asserts the following additional defenses. Discovery and investigation of this case is not yet complete, and U.S. Bank reserves the right to amend this Answer by adding, deleting, or amending defenses as may be appropriate. Any allegations not specifically admitted are denied. U.S. Bank further expressly incorporates all affirmative defenses delineated in Nev. R. Civ. Pro 8. In further answer to the Complaint, and by way of additional defenses U.S. Bank avers as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiff has failed to state facts sufficient to constitute any cause of action against U.S. Bank.

SECOND AFFIRMATIVE DEFENSE

To the extent that Plaintiff's interpretation of NRS 116.3116 is accurate, the statute, and Chapter 116 are void for vagueness as applied to this matter.

THIRD AFFIRMATIVE DEFENSE

The super-priority lien was satisfied prior to the homeowners' association foreclosure under the doctrines of tender, estoppels, laches, or waiver.

FOURTH AFFIRMATIVE DEFENSE

The homeowners' association foreclosure sale was not commercially reasonable and the circumstances of sale of the property violated the homeowners' association's obligation of good faith under NRS §116.1113 and duty to act in a commercially reasonable manner.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred in whole or in part because of its failure to take reasonable steps to mitigate its damages, if any.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff lacks standing to bring some or all of their claims and causes of action.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff has cited no rule and/ or statute to override the American Rule regarding attorney fee shifting.

EIGHTH AFFIRMATIVE DEFENSE

The sale of the property is unconstitutional pursuant to Federal Law, the due process clause of the 14th amendment of the United States Constitution, and Article 1 Sec. 8 of the Nevada Constitution.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff received a deed which was void and/ or voidable pursuant to NRS Chapter 112.

TENTH AFFIRMATIVE DEFENSE

U.S. Bank avers the affirmative defense of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

U.S. Bank denies that the Plaintiff is entitled to any relief for which it prays.

TWELETH AFFIRMATIVE DEFENSE

U.S. Bank avers the affirmative defense of failure to do equity.

THIRTEENTH AFFIRMATIVE DEFENSE

The homeowners' association did not provide proper notice of the "superpriority" assessment amount and the homeowners' association foreclosure sale, and any such notice failed to comply with the statutory and common law requirements of Nevada and with state and federal constitutional law.

FOURTEENTH AFFIRMATIVE DEFENSE

The homeowner's association foreclosure sale is void for failure to comply with the provisions of NRS Chapter 116, and other provisions of law.

FIFTEENTH AFFIRMATIVE DEFENSE

U.S. Bank is entitled to an offset of some, if not all, of the Plaintiffs alleged damages, if any.

SIXTEENTH AFFIRMATIVE DEFENSE

The Plaintiff assumed the risk in taking the actions they now aver caused them damage.

SEVENTEETH AFFIRMATIVE DEFENSE

NRS 116.3116 *et seq* violates the 5th amendment takings clause.

EIGHTEENTH AFFIRMATIVE DEFENSE

NRS 116.3116 *et seq* violates U.S. Bank's Substantive Due Process Right and Fundamental rights under the Nevada and Federal Constitution

NINETEENTH AFFIRMATIVE DEFENSE

The foreclosure sale price is low, the sale is the result of oppression, fraud, and unfairness, and further the Plaintiff is not a bona fide purchaser.

TWENTIETH AFFIRMATIVE DEFENSE

This entire action is barred by the statute of limitations.

WHEREFORE the Counter Plaintiff prays to this Honorable Court that the Court:

1. Void the Sale under NRS Chapter 112;
2. In the alternative, enter judgment against LVRR #77 in an amount equal to U.S. Bank's interest in the property.
3. In the alternative, Quiet Title in the name of the Homeowner;
4. Issue a order an order declaring that the HOA sale did not comply with NRS Chapter 116 and is void or voidable;
5. Use the Equitable Powers of this Court to Void the Sale
6. Issue an order declaring the sale unconstitutional under the United States Constitution;
7. Any other relief which is just and proper.

DATED: January 20, 2017

McCarthy & Holthus, LLP

By: /s/ Thomas N. Beckom, Esq
Thomas N. Beckom, Esq



CLERK OF THE COURT

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8
9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 U.S. BANK NATIONAL ASSOCIATION, ND, a
12 national association

13 Plaintiff,

14 vs.

15 GEORGE R. EDWARDS, an individual; ANY AND
ALL PERSONS UNKNOWN, CLAIMING TO BE
16 PERSONAL REPRESENTATIVES OF GEORGE
R. EDWARDS ESTATE, OR DULY APPOINTED,
17 QUALIFIED, AND ACTING EXECUTOR OF THE
WILL OF THE ESTATE OF GEORGE R.
18 EDWARDS; RESOURCES GROUP, LLC, a Nevada
Limited Liability Company; GLENVIEW WEST
19 TOWNHOMES ASSOCIATION, a Nevada non-
profit corporation; DOES 4 through inclusive; and
20 ROES 1 through 10 inclusive

21 Defendants.

22 RESOURCES GROUP, LLC,

23 Counter-claimant

24 vs

24 U.S. BANK NATIONAL ASSOCIATION, ND, a
25 national association

Counter-defendant

CASE NO.: A-12-667690-C
DEPT NO.: XVI

**RESOURCES GROUP, LLC'S REPLY
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

1 Defendant/counterclaimant, Resources Group, LLC, as Trustee for the Bourne Valley Court Trust
2 (hereinafter "Resources Group"), by and through its attorneys, Michael F. Bohn, Esq. and Adam R.
3 Trippiedi, Esq., submits the following points and authorities in support of its motion for summary
4 judgment, filed on January 3, 2017, and in response to the arguments raised by U.S. Bank National
5 Association ND (hereinafter "plaintiff") in its opposition to motion for summary judgment, filed on
6 January 17, 2017.

7 POINTS AND AUTHORITIES

8 Legal Argument

9 **A. The majority opinion in Bourne Valley Court Trust v. Wells Fargo Bank, N.A. 10 is not a binding interpretation of Nevada's HOA foreclosure statute.**

11 At page 6 of its opposition, plaintiff argues that this court should adopt the ruling by the Ninth
12 Circuit court of appeals in Bourne Valley Court Trust v. Wells Fargo Bank, N.A., 832 F.3d 1154 (9th Cir.
13 2016), and find that "NRS § 116.3116 *et seq* is unconstitutional in all respects due to the 'opt in' noticing
14 as outlined in the statute." The decision in Bourne Valley, however, is not a binding interpretation of the
15 statute, and the Nevada Supreme Court has expressly rejected the due process argument adopted by the
16 majority opinion in that case.

17 In Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, 133 Nev., Adv.
18 Op. 5 (Jan. 26, 2017), the Nevada Supreme Court found that due process is not an issue in an HOA
19 foreclosure sale because no "state actor" participates in the foreclosure process. At pages *6 and *7 of
20 its opinion, the court relied on the decisions by the United States Supreme Court in Lugar v. Edmondson
21 Oil Co., Inc., 475 U.S. 922 (1982), and Flagg Bros., Inc. v. Brooks, 436 U.S. 149 (1978), which hold that
22 due process is not an issue unless a "state actor" participates in the challenged procedure.

23 At page *7 of the opinion, the Nevada Supreme Court also recognized that based on this federal
24 precedent, "the Legislature's mere enactment of NRS 116.3116 does not implicate due process absent
25 some additional showing that the state compelled the HOA to foreclose on its lien, or that the state was
26 involved with the sale." In footnote 5 at the bottom of page *7, the court acknowledged the finding in
27 Bourne Valley "that the Legislature's enactment of NRS 116.3116 *et seq.* does constitute state action,"

1 and stated: "However, for the aforementioned reasons, we decline to follow its holding."

2 In SFR Investments Pool I, LLC v. U.S. Bank, N.A., 130 Nev., Adv. Op. 75, 334 P.3d 408
3 (2014), the Nevada Supreme Court also rejected the lender's argument that the statutory scheme granting
4 to the HOA its superpriority lien rights violated due process:

5 The contours of U.S. Bank's due process argument are protean. **To the extent U.S. Bank**
6 **argues that a statutory scheme that gives an HOA a superpriority lien that can be**
7 **foreclosed nonjudicially, thereby extinguishing an earlier filed deed of trust, offends**
8 **due process, the argument is a nonstarter.** As discussed in 7912 Limbwood Court
9 Trust, 979 F. Supp. 2d at 1152'.

10 Chapter 116 was enacted in 1991, and thus [the lender] was on notice that
11 by operation of the statute, the [earlier recorded] CC & Rs might entitle
12 the HOA to a super priority lien at some future date which would take
13 priority over a [later recorded] first deed of trust.... Consequently, **the**
14 **conclusion that foreclosure on an HOA super priority lien**
15 **extinguishes all junior liens, including a first deed of trust recorded**
16 **prior to a notice of delinquent assessments, does not violate [the**
17 **lender's] due process rights.** (emphasis added)

18 334 P.3d at 418.

19 The misinterpretation of Nevada law by the majority opinion in Bourne Valley is not a binding
20 interpretation of the statute because only the Nevada Supreme Court can authoritatively construe NRS
21 Chapter 116.

22 In Blanton v. N. Las Vegas Mun. Ct., 103, Nev. 623, 633, 748 P.2d 494, 500 (1987), *aff'd*,
23 Blanton v. City of N. Las Vegas, 489 U.S. 538 (1989), the Nevada Supreme Court stated:

24 We note initially that the decisions of the federal district court and panels of the federal
25 circuit court of appeal are not binding upon this court. United States ex rel. Lawrence v.
26 Woods, 432 F.2d 1072, 1075-76 (7th Cir. 1970), *cert. denied*, 402 U.S. 983, 91 S.Ct.
27 1658, 29 L.Ed. 2d 140 (1971). Even *en banc* decision of a federal circuit court would not
28 bind Nevada to restructure the court system of this state. Our state constitution binds the
courts of the State of Nevada to the United States Constitution as interpreted by the
United States Supreme Court. art. I, §2. See Bargas v. Warden, 87 Nev. 30, 482 P.2d
317, *cert. denied*, 403 U.S. 935, 91 S. Ct. 2267, 29 L.Ed.2d 715 (1971).

29 In California Teachers Association v. State Board of Education, 271 F.3d 1141 (9th Cir. 2001),
30 the court identified the following limits on a federal court's power to interpret state law:

31 We recognize that it is **solely within the province of the state courts to authoritatively**
32 **construe state legislation.** See United States v. Thirty-Seven (37) Photographs, 402 U.S.
33 363, 369, 91 S. Ct. 1400, 28 L. Ed. 2d 822 (1971). Nor are we authorized to rewrite the
34 law so it will pass constitutional muster. Virginia v. American Booksellers Ass'n, Inc.,
35 484 U.S. 383, 397, 108 S. Ct. 636, 98 L. Ed. 2d 782 (1988). A federal court's duty, when

1 faced with a constitutional challenge such as this one, is to employ traditional tools of
2 statutory construction to determine the statute's "allowable meaning." Grayned v. City of
3 Rockford, 408 U.S. 104, 110, 92 S. Ct. 2294, 33 L.Ed.2d 222 (1972); Stoianoff v.
4 Montana, 695 F.2d 1214, 1218 (9th Cir.1983). In doing so, **we look to the words of the**
5 **statute itself as well as state court interpretations of the same or similar statutes.**
6 Grayned, 408 U.S. at 109–10, 92 S. Ct. 2294. Moreover, before invalidating a state statute
7 on its face, a federal court **must determine whether the statute is "readily susceptible"**
8 **to a narrowing construction by the state courts.** American Booksellers, 484 U.S. at
9 397, 108 S. Ct. 636; Nunez v. City of San Diego, 114 F.3d 935, 942 (9th Cir.1997).
10 (emphasis added)

11 271 F.3d at 1146-1147.

12 In Arizonans for Official English v. Arizona, 520 U.S. 43, 48 (1997), the Supreme Court stated:

13 Federal courts lack competence to rule definitively on the meaning of state legislation,
14 see, e.g., Reetz v. Bozanich, 397 U.S. 82, 86-87 (1970), nor may they adjudicate
15 challenges to state measures absent a showing of actual impact on the challenger, see, e.g.,
16 Golden v. Zwickler, 394 U.S. 103, 110 (1969).

17 In Bromley v. Crisp, 561 F.2d 1351, 1354 (10th Cir. 1977), cert. denied, 435 U.S. 908 (1978), the
18 court stated that "the Oklahoma Courts may express their differing views on the retroactivity problem **or**
19 **similar federal questions** until we are all guided by a binding decision of the Supreme Court."
20 (emphasis added)

21 In Arizonans for Official English v. Arizona, 520 U.S. 43, 77 (1997), the Supreme Court stated
22 that "[a] more cautious approach was in order" and that "[t]hrough certification of novel or unsettled
23 questions of state law for authoritative answers by a State's highest court, a federal court may save 'time,
24 energy, and resources and hel[p] build a cooperative judicial federalism.'"

25 In the present case, the notice of delinquent assessment lien recorded on January 4, 2011 (Exhibit
26 4 to Resource Group's motion) stated that the assessment lien was recorded in accordance with Nevada
27 Revised Statutes and the Association's Declaration of Covenants Conditions and Restrictions (CC&Rs)
28 recorded in the official records of Clark County, Nevada. A copy of the CC&Rs is Exhibit K to Resource
Group's opposition, filed on January 19, 2017. Plaintiff's deed of trust was not recorded until March
26, 2009. (Exhibit 2 to plaintiff's opposition)

Because the CC&Rs were recorded prior to the adoption of the UCIOA in Nevada in 1991, the
CC&Rs do not expressly refer to the rights held by the HOA pursuant to NRS Chapter 116. NRS
116.1206(1) provides:

1 1. Any provision contained in a declaration, bylaw or other governing document of a
2 common-interest community that violates the provisions of this chapter:

3 (a) **Shall be deemed to conform with those provisions by operation of law, and**
4 **any such declaration, bylaw or other governing document is not required to be**
5 **amended to conform to those provisions.**

6 (b) Is superseded by the provisions of this chapter, regardless of whether the provision
7 contained in the declaration, bylaw or other governing document became effective before
8 the enactment of the provision of this chapter that is being violated. (emphasis added)

9 As a result, the CC&Rs recorded in 1983 are “deemed to conform” with the provisions of NRS
10 116.3116 “by operation of law,” including the provisions in NRS 116.3116(2) defining the HOA’s
11 superpriority lien rights.

12 As recognized by the Nevada Supreme Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,
13 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014), NRS 116.1104 prevents that language in Article VI,
14 Section 11 of the CC&Rs from varying or waiving the HOA’s superpriority lien rights under NRS
15 116.3116(2).

16 At the time that plaintiff’s deed of trust was recorded on March 26, 2009, NRS 116.3116(5)
17 stated:

18 Recording of the declaration constitutes record notice and perfection of the lien.
19 No recordation of any claim of lien for assessment under this section is required.

20 As recognized by the Nevada Supreme Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,
21 the CC&Rs recorded on December 12, 1983 and the statute enacted in 1991 provided plaintiff with notice
22 that its deed of trust was subordinate to the HOA’s superpriority lien rights.

23 This court is not bound by the incorrect interpretation of the statute by the majority opinion in
24 Bourne Valley. This court is instead bound by the constitutional interpretation of the statute adopted by
25 the Nevada Supreme Court.

26 **B. Judicial Estoppel does not apply.**

27 At pages 7 to 9 of its opposition, plaintiff argues that because Southwest Financial Services was
28 scheduled as a creditor holding a secured claim in Schedule D filed by Bourne Valley Court Trust on June
13, 2012 in Case No. 12-16387-btb (Exhibit 15 to plaintiff’s motion for summary judgment, filed on
January 3, 2017), Resources Group has taken an inconsistent position.

1 Unlike the facts in Hamilton v. State Farm Fire & Cas. Co., 210 F.3d 778 (9th Cir. 2001), in the
2 present case, the Property was fully disclosed in Schedule A at page 3 of 29. The secured claim by
3 Southwest Financial Services against the Property was disclosed in Schedule D at page 8 of 29 as
4 “disputed” and for an “unknown” amount. Bourne Valley Court Trust’s compliance with the Bankruptcy
5 Code’s requirement that the debtor schedule this “disputed” claim is entirely consistent with Resources
6 Group’s argument that the deed of trust was extinguished by the HOA foreclosure sale held on January
7 25, 2012. Judicial estoppel does not apply in the present case.

8 **C. Resources Group is protected as the grantee of a bona fide purchaser.**

9 Plaintiff has identified no evidence that would have put 4254 Rolling Stone Dr Trust on notice
10 of any basis for plaintiff to dispute the extinguishment of its subordinate deed of trust. 4254 Rolling
11 Stone Dr Trust therefore qualifies as a bona fide purchaser for value.

12 Shadow Wood Homeowners Association v. New York Community Bancorp, Inc., 132 Nev. Adv.
13 Op 5, 366 P.3d 1105 (2016) (hereinafter “Shadow Wood”), discusses bona fide purchaser status in detail.
14 The many points contained in the decision can be summarized as:

- 15 1. A bona fide purchase is without notice of any **prior** equity.
- 16 2. “The decisions are uniform” that the title of a bona fide purchaser is not affected by any matter
17 of which he has no notice, actual or constructive.
- 18 3. The bona fide purchaser must pay **valuable** consideration, not “adequate” consideration.
- 19 4. The fact that the foreclosure price may be “low” is not sufficient to put the purchaser on notice
20 of any alleged defects with the sale.
- 21 5. The fact that the court retains equitable power to void the sale does not deprive the purchaser
22 of bona fide purchaser status.
- 23 6. The time to determine the status of bona fide purchaser is at the time of the sale.

24 In Shadow Wood, the court concluded its discussion regarding Gogo Way’s status as a bona fide
25 purchaser by stating:

26 And NYCB points to no other evidence indicating that Gogo Way had notice before it
27 purchased the property, either actual, constructive, or inquiry, as to NYCB’s attempts to
28 pay the lien and prevent the sale, or that Gogo Way knew or should have known that

Shadow Wood claimed more in its lien than it actually was owed, especially where the record prevents us from determining whether that is true. *Lennartz v. Quilty*, 191 Ill. 174, 60 N.E. 913, 914 (Ill.1901) (**finding a purchaser for value protected under the common law who took the property without record or other notice of an infirmity with the discharge of a previous lien on the property**). Because the evidence does not show Gogo Way had any notice of the pre-sale dispute between NYCB and Shadow Wood, the potential harm to Gogo Way must be taken into account and further defeats NYCB's entitlement to judgment as a matter of law.

366 P.3d at 1116 (emphasis added)

In the present case, plaintiff has likewise failed to identify any fact, recorded document or other evidence showing that plaintiff held a latent equity in the Property of which 4254 Rolling Stone Dr Trust knew or should have known.

As the grantee of a bona fide purchaser, Resources Group enjoys the same protections as 4254 Rolling Stone Dr Trust. “[A] title or lien held by a bona fide purchaser or encumbrancer can be conveyed to a grantee or assignee free and clear of a prior unknown interest even if the grantee or assignee does not fulfill the requirements of a bona fide purchaser or encumbrancer.” 5 Miller & Starr, Cal. Real Est. § 11:58 (3d ed.) (citing *Jones v. Independent Title Co.*, 23 Cal. 2d 859 (1944)).

D. Plaintiff is not entitled to equitable relief against Resources Group.

At page 9 of plaintiff's opposition, plaintiff states that “U.S. Bank humbly comes to this Court, sitting in Equity, for assistance.” Under both the Restatement and Nevada law, plaintiff is not entitled to equitable relief against Resources Group because any damages which the plaintiff may have sustained as a result of an alleged wrongful foreclosure can be compensated with money damages.

As stated at page 6 of Resources Group's motion, comment b to section 8.3 recognizes that where a property has been purchased by a bona fide purchaser, “the real estate is unavailable” and that “price inadequacy” may be raised in a suit against the foreclosing mortgagee for damages. This authority from the Restatement is consistent with the Nevada Supreme Court decisions stating that there is no equity jurisdiction when a party has available to itself an adequate remedy at law. County of Washoe v. City of Reno 77 Nev. 152, 360 P.2d 602, 604 (1961) State v. Second Judicial District Court 49 Nev. 145, 241 P.317, 321-322, 43 A.L.R. 1331 (1925); Turley v. Thomas, 31 Nev. 181, 101 P. 568 (1909); and Conley v. Chedic, 6 Nev. 222, 224 (1870); Sherman v. Clark, 4 Nev. 138, 141 (1868).

1 Comment b to the Restatement also recognizes that any claim that plaintiff may have cannot be
2 asserted against Resources Group, but is limited to a claim for damages against the foreclosure agent. See
3 Moeller v. Lien, 25 Cal. App. 4th 822, 831-832, 30 Cal. Rptr. 2d 777 (1994).

4 At the time of the HOA foreclosure sale, NRS 116.31166(1) provided that the recitals in the
5 foreclosure deed were "conclusive proof" of default, mailing of the notice of delinquent assessment,
6 recording of the notice of default, the elapsing of the 90 days, and the giving of notice of sale. The
7 foreclosure deed (Exhibit 1 to Resources Group's motion) includes each of the required recitals. NRS
8 116.31166(2) provided that "[s]uch a deed containing those recitals is conclusive against the unit's former
9 owner, his or her heirs and assigns, and all other persons."

10 At the top of page 10 of its opposition, plaintiff quotes the Nevada Supreme Court's statement
11 in Shadow Wood that "in an appropriate case, a court can grant equitable relief from a defective HOA
12 lien foreclosure sale." 366 P.3d at 1107. At the middle of page 10 of its opposition, plaintiff quotes the
13 Nevada Supreme Court's comment on the conclusive recital language found in NRS 116.31166 stating
14 that "such recitals are '*conclusive, in the absence of grounds for equitable relief.*'" 366 P.3d at 1112
15 (quoting Holland v. Pendleton Mortg. Co., 61 Cal. App. 2d 570, 143 P.2d 493, 496 (Cal. Ct. App. 1943)).
16 (emphasis in original)

17 Because the foreclosure deed contains each of the recitals required by NRS 116.31166, it is
18 plaintiff's burden to prove that it is entitled to equitable relief from the "conclusive" foreclosure deed.
19 In First Fidelity Thrift & Loan Ass'n v. Alliance Bank, 60 Cal. App. 4th 1433, 71 Cal. Rptr. 2d 295
20 (1998), the court recognized that where a party is seeking equitable relief, the burden is on the party
21 seeking equitable relief to allege and prove that the person holding legal title is not a bona fide purchaser:

22 **That Alliance had knowledge of First Fidelity's equitable claim for reinstatement of**
23 **its reconveyed deed of trust was an element of First Fidelity's case.** "The general rule
24 places the burden of proof upon a person claiming bona fide purchaser status to present
25 evidence that he or she acquired interest in the property without notice of the prior
26 interest. (Bell v. Pleasant (1904) 145 Cal. 410, 413-414, 78 P. 957; Alcorn v. Buschke
27 (1901) 133 Cal. 655, 657-658, 66 P. 15; Hodges v. Lochhead (1963) 217 Cal. App.2d 199,
28 p. 51.) ... [¶] If the prior party claims an equitable rather than a legal title, however, the
burden of proof is upon the person asserting that title. (Bell v. Pleasant, *supra*, 145 Cal.
410, 414-415, 78 P. 957; Garber v. Gianella (1893) 98 Cal. 527, 529-530, 33 P. 458; 2
Miller & Starr, Current Law of Cal. Real Estate, *supra*, § 11:28, pp. 52-53.)" (Gates

1 Rubber Co. v. Ulman (1989) 214 Cal. App. 3d 356, 366, fn. 6, 262 Cal. Rptr. 630.) (2b)
2 **Showing that Alliance was not an innocent purchaser for value was hence an element**
3 **of First Fidelity's claim.** (Firato v. Tuttle, *supra*, 48 Cal.2d 136, 138, 308 P.2d 333.)
(emphasis added)

4 60 Cal. App. 4th at 1442, 71 Cal. Rptr. at 301.

5 In Firato v. Tuttle, 48 Cal. 2d 136, 308 P.2d 333 (1957), the California Supreme Court held that
6 the beneficiaries under a trust deed could not prevail against a bona fide purchaser who relied on
7 recordation of a reconveyance deed even though the deed of reconveyance was issued without authority
8 and the indebtedness had not been paid:

9 The rule indicated by section 2243, which would protect innocent purchasers for value
10 who take without any notice that the conveyance by the trustee was unauthorized, is in
11 accord with the rule protecting such purchasers who acquire their interests from one who
12 holds a general power and who makes a conveyance for an unauthorized purpose (see
13 Alcorn v. Buschke, 133 Cal. 655, 66 P. 15, and cases cited) or from a trustee under a
14 secret trust. (Ricks v. Reed, 19 Cal. 551; Rafferty v. Kirkpatrick, 29 Cal.App.2d 503, 508,
15 85 P.2d 147; Civ. Code, 869[.] The protection of such purchasers is consistent "with the
16 purpose of the registry laws, with the settled principles of equity, and with the convenient
17 transaction of business." (Williams v. Jackson, 107 U.S. 478, 484, 2 S.Ct. 814, 27 L.Ed.
18 529. It also finds support in the better reasoned cases from other jurisdictions which have
19 dealt with similar problems upon general equitable principles and in the absence of
20 statutory provisions. Simpson v. Stern, 63 App. D.C. 161, 70 F.2d 765, (certiorari denied
21 292 U.S. 649, 54 S.Ct. 649, 54 S.Ct. 859, 78 L.Ed. 1499; Williams v. Jackson, *supra*, 107
22 U.S. 478, 2 S.Ct. 814; Town of Carbon Hill v. Marks, 204 Ala. 622, 86 So. 903; Lennartz
23 v. Quilty, 191 Ill. 174, 60 N.E. 913; Millick v. O'Malley, 47 Idaho 106, 273 P. 947; Day
24 v. Brenton, 102 Iowa 482, 71 N.W. 538; Willamette Collection & Credit Service v. Gray,
25 157 Ore. 77, 79, 70 P.2d 39; Locke v. Andrasko, 178 Wash. 145, 34 P.2d 444.

26 48 Cal. 2d at 139-140, 308 P.3d at 335.

27 At pages 6 to 9 of its motion for summary judgment, Resources Group explained how plaintiff's
28 unrecorded claim that the notice of default had been mailed to the wrong address cannot support equitable
relief against either 4254 Rolling Stone Dr Trust or Resources Group because plaintiff has an adequate
remedy at law against the HOA and its foreclosure agent. Plaintiff's opposition cites no contrary
authority.

In Shadow Wood, the court also stated:

Consideration of harm to potentially innocent third parties is especially pertinent here
where NYCB did not use the legal remedies available to it to prevent the property
from being sold to a third party, such as by seeking a temporary restraining order and
preliminary injunction and filing a lis pendens on the property. See NRS 14.010; NRS
40.060. Cf. Barkley's Appeal, Bentley's Estate, 2 Monag. 274, 277 (Pa. 1888) ("In the case
before us, we can see no way of giving the petitioner the equitable relief she asks without

1 doing great injustice to other innocent parties who would not have been in a position to
2 be injured by such a decree as she asks if she had applied for relief at an earlier day.”).
(emphasis added)

3 366 P.3d at 1115, n.7.

4 Like the lender in Shadow Wood, plaintiff failed to take any action to prevent the Property from
5 being sold to a bona fide purchaser without notice of plaintiff’s unrecorded claim that the notice of default
6 had been mailed to the wrong address. Plaintiff cannot now assert that claim against the bona fide
7 purchaser.

8 At page 10 of its opposition, plaintiff describes Wright v. Cradlebaugh, 3 Nev. 341 (1867), as
9 “[t]he seminal opinion regarding due process in this state,” but that case involved a tax sale by Ormsby
10 County. As noted at page 2 above, because no “state actor” participates in an HOA foreclosure sale, due
11 process is not an issue in the present case. Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo
12 Home Mortgage, 133 Nev., Adv. Op. 5 (Jan. 26, 2017).

13 **E. Even if the Property was sold for less than 20% of fair market value, plaintiff**
14 **cannot satisfy the California rule adopted in Shadow Wood.**

15 At page 11 of its opposition, plaintiff asserts that “[i]n *Shadow Wood* the Nevada Supreme Court
16 adopted the Restatement of Property Mortgages § 8.3 as the bench mark for gross inadequacy.” In
17 Shadow Wood, the Nevada Supreme Court instead applied the California rule that was first adopted by
18 the Nevada Supreme Court in Golden v. Tomiyasu, 79 Nev. 503, 387 P.2d 989 (1963). This is
19 appropriate because NRS 116.1108 states that “[t]he principles of law and equity, including . . . the law
20 of real property . . . supplement the provisions of this chapter, except to the extent inconsistent with this
chapter.”

21 Unlike the case law from Alaska, New Mexico, Oklahoma, West Virginia and Arizona cited at
22 page 12 of plaintiff’s opposition, the California rule adopted in Shadow Wood recognizes that a grossly
23 inadequate sale price does not justify relief from a foreclosure sale unless the grossly inadequate sales
24 price is caused by fraud, oppression or unfairness.

25 In Shadow Wood, there are three instances before the court refers to the Restatement where the
26 Court states, without contradiction or criticism, the standard that a foreclosure sale will not be set aside
27

1 absent fraud, oppression or unfairness which results in a grossly inadequate sales price.

2 As quoted at page 16 of Resources Group's motion, the first citation to the fraud, oppression or
3 unfairness standard specifically reaffirms the standards as set forth in both the Long and Golden cases.
4 As quoted at page 17 of Resources Group's motion, the second reference reaffirms the court's equitable
5 power to set aside a foreclosure sale in the limited instances when an inadequate price is accompanied
6 by fraud, oppression or unfairness, and cites the Nevada and California cases that discuss these
7 requirements.

8 As quoted at page 18 of Resources Group's motion, the third reference discusses only the first
9 element of the California rule and the failure by NYCB "to establish that the foreclosure sale price was
10 grossly inadequate as a matter of law." 366 P.3d at 1112.

11 At page 12 of its opposition, plaintiff cites the retrospective appraisal report attached as Exhibit
12 12 to its opposition as proof that the fair market value of the Property on the date of the HOA foreclosure
13 sale was \$48,000.00. At the bottom of page #3 of the report, however, the report states:

14 The appraiser made an exterior only inspection which involves the use of an extraordinary
15 assumption that no adverse conditions exist that may affect the livability, soundness, or
16 structural integrity, and all subject data used from assessor records and MLS, which if
17 found to be false, could affect the appraisers opinion of value and conclusions.

18 Plaintiff's opposition is not supported by any evidence proving that the "extraordinary
19 assumption" is true, so the retrospective appraisal report is not competent evidence of the fair market
20 value of the Property on the date of the HOA foreclosure sale.

21 The appraisal report also fails to mention the Detrimental Condition that distinguishes the
22 Property in the present case from the six comparable sales listed at pages 3 and 5 of the appraisal report.
23 Unlike the six comparable sales (3 traditional sales, 1 REO sale, 1 FHA foreclosure, 1 foreclosure), 4254
24 Rolling Stone Dr Trust did not receive insurable clear title to the Property because no title company in
25 Southern Nevada is willing to issue title insurance following an HOA foreclosure sale. The lack of
26 insurable clear title precludes traditional financing options to future buyers and adversely affects
27 Resources Group's right of disposition of the Property.

28 The Appraisal of Real Estate, 14th Edition, p. 406 (Chicago: Appraisal Institute, 2013) states:

1 “Before a comparable sale property can be used in sales comparison analysis, the appraiser must first
2 ensure that the sale price of the comparable property applies to **property rights that are similar** to those
3 being appraised.” (emphasis added) Because the appraisal report offered by plaintiff violates this
4 standard, the value assigned to the Property by plaintiff’s appraiser is merely hypothetical.

5 As proved by the appraisal review, dated August 31, 2016, prepared by Brunson Jiu LLC (Exhibit
6 12 to Resource Group’s motion), the fee simple impaired value of the Property as of January 25, 2012
7 was only \$5,300.

8 **F. Plaintiff’s opposition is not supported by the required evidence of fraud, unfairness,
or oppression “as accounts for and brings about the claimed inadequacy of price.**

9 At page 18 of its opposition, plaintiff advances two “theories” to support its claim that unfairness
10 is present. First, plaintiff claims that the CC&Rs misrepresent the asset being sold because Article VI,
11 Section 11 of the CC&Rs states that “[t]he lien of the assessments provided for herein shall be
12 subordinate to the lien of any first mortgage.” (Exhibit K to Resource Group’s opposition, filed on
13 January 19, 2017)

14 As discussed at pages 4 and 5 above, when Nevada adopted the UCIOA in Nevada in 1991, NRS
15 116.1206(1) expressly provided that the CC&Rs “shall be deemed to conform with those provisions by
16 operation of law, and any such declaration, bylaw or other governing document is not required to be
17 amended to conform to those provisions.” Likewise, in SFR Investments Pool 1, LLC v. U.S. Bank, N.A.,
18 130 Nev., Adv. Op. 75, 334 P.3d 408, 419 (2014), the Nevada Supreme Court held that NRS 116.1104
19 prevented any language in the CC&Rs from varying or waiving the HOA’s superpriority lien rights.
20 Plaintiff’s opposition does not include any evidence proving that any person chose not to bid on the
21 Property because of the language in Article VI, Section 11 of the CC&Rs.

22 At the bottom of page 19 of its opposition, plaintiff states: “U.S. Bank contends the bidding was
23 unintentionally chilled per the Restatement as adopted by *Shadow Wood*.” The foreclosure sale in the
24 present case took place on January 25, 2012, so the bidding could not have been influenced by the
25 reference to the Restatement made in Shadow Wood on January 28, 2016. On the other hand, Nevada’s
26 adoption of the California rule took place long before January 25, 2012.

1 At page 20 of its opposition, plaintiff argues that “[t]he publically available documents, which are
2 subject to constructive notice, stated *publically* that this was a sale Subject to a mortgage.” No such
3 language appears in the notice of delinquent assessment (lien), the notice of default, or the notice of
4 trustee’s sale. Each of these notices stated “the total amount of the lien” as approved by the Nevada
5 Supreme Court in SFR Investments Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d at 418.

6 At page 20 of its opposition, plaintiff argues that fraud is present because Ryan Kerbow, “an
7 individual who conducted a sale which was not noticed on U.S. Bank was the *purchaser’s attorney*.”
8 (emphasis by plaintiff) Plaintiff’s opposition is not supported by any evidence that Ryan Kerbow
9 conducted the public auction held on January 25, 2012 or that Ryan Kerbow represented Mr. Haddad or
10 5254 Rolling Stone Dr Trust on the date of the sale. In his deposition, Mr. Haddad testified that he did
11 not know when he first hired Ryan Kerbow to file quiet title actions or when he stopped using Mr.
12 Kerbow. See pg. 49, ll. 3-18, and pg. 50, ll. 2-7 of Exhibit 14 to plaintiff’s motion, filed on January 4,
13 2017.

14 Plaintiff also argues that “[t]he Notice of Default was not noticed on U.S. Bank, which is
15 completely undisputed.” To the contrary, Exhibit 5 to Resources Group’s motion for summary judgment
16 proves that a copy of the notice of default was mailed on April 5, 2014 to “US Recordings, 2925 Country
17 Drive Ste 201, St. Paul, MN 55117,” which is the mailing address listed as the “Return To (name and
18 address)” in the upper left hand corner of the deed of trust.

19 Furthermore, Exhibit 7 to Resources Group’s motion for summary judgment proves that copies
20 of the notice of foreclosure sale were timely mailed to the same “Return To (name and address)” in the
21 upper left hand corner of the deed of trust and also to the address for U.S. Bank National Association ND,
22 4325 17th Avenue SW, Fargo, ND 58103 listed in Paragraph 1 on page 1 of the deed of trust.

23 Plaintiff has not produced any evidence proving that it did not receive both of the notices.

24 As a result, plaintiff’s claim at page 20 of its opposition that “[t]his is insider dealing at it’s
25 worst” is not supported by competent evidence.

26 **G. Plaintiff has not produced any evidence proving that 4254 Rolling Stone Dr Trust
27 was not a bona fide purchaser.**

1 At page 20 of its opposition, plaintiff asserts that “Resources has not met their burden of
2 production under Nevada law as bona fide purchaser status is their burden.” To the contrary, as discussed
3 at page 8 above, because plaintiff is seeking equitable relief from the “conclusive” foreclosure deed, it
4 is plaintiff’s burden to allege and prove that 4254 Rolling Stone Dr Trust was not a bona fide purchaser.
5 First Fidelity Thrift & Loan Ass’n v. Alliance Bank, 60 Cal. App. 4th 1433, 71 Cal. Rptr. 2d 295 (1998).

6 At page 20 of its opposition, plaintiff argues that “they had constructive notice of the defective
7 lien documents which resulted in chilled bidding.” Plaintiff’s motion is not supported by any evidence
8 proving this claim. At the top of page 21 of its opposition, plaintiff cites Cooper v. Pacific Auto
9 Insurance Co., 95 Nev. 798, 603 P.2d 281 (1979), but that case involve the application of NRS
10 104.2403(1)(b) to a car purchased for cash in the nighttime on a weekend at a bar. In the present case,
11 on the other hand, the foreclosure agent conducted a public auction during normal business hours at the
12 business location where real property auctions are typically held in Las Vegas. Moreover, as noted above,
13 the Uniform Commercial Code does not apply to an HOA foreclosure sale.

14 In the middle of page 21 of its opposition, plaintiff cites Berge v. Fredericks, 95 Nev. 183, 591
15 P.2d 246 (1979), where the court reversed a summary judgment entered in favor of the respondent
16 (purchaser) because the respondent and the seller were intimately related and because the respondent had
17 actual notice of appellant’s residence on the property being sold. The court quoted the general rule that
18 “open, notorious, and exclusive possession and occupation of lands by a stranger to a vendor’s title, as
19 of record, at the time of a purchase” is sufficient to put a purchaser on inquiry as to the legal or equitable
20 rights of the party in possession. 591 P.2d at 249. No such evidence exists in the present case.

21 In the last paragraph on page 21 of its opposition, plaintiff argues that “[t]he CC&R’s disclaim
22 everything.” (emphasis added). The exact opposite is true. Article VI in the CC&Rs expressly provides
23 that the HOA has the authority to record an assessment lien against the Property. NRS Chapter
24 116.3116(2) defined the superpriority portion of the lien. NRS 116.31162 to NRS 116.31168, and by
25 incorporation, NRS 107.090, defined the nonjudicial procedure used to foreclose the lien. NRS 116.1206
26 confirmed that the provisions of the CC&Rs would be deemed to conform with the provisions of NRS
27 Chapter 116 “by operation of law.” NRS 116.1104 confirmed that the HOA’s superpriority lien rights

1 could not be varied or waived by any language in the CC&Rs.

2 Consequently, absolutely nothing appeared in the public record that would charge 4254 Rolling
3 Stone Dr Trust with notice of any defect in the foreclosure of the HOA's superpriority lien and the
4 extinguishment of plaintiff's subordinate deed of trust.

5 **H. The HOA foreclosure sale is not voidable as a fraudulent transfer.**

6 At page 22 to 24 of its opposition, plaintiff argues that if the court assumes that the Property was
7 worth \$48,000.00 at the time of the HOA foreclosure sale, and if the court ignores plaintiff's deed of trust
8 and treats the HOA's lien as being \$1,170.00, then "[t]here was \$46,830 in equity over and above this
9 lien."

10 First, the notice of trustee's sale proves that \$5,370.00 was owed to the HOA as of September 16,
11 2001. (Exhibit 7 to Resources Group's motion for summary judgment)

12 Second, in order to determine if **the debtor** made a fraudulent transfer of **an asset** that removed
13 property from the reach of **unsecured** creditors, all of the liens recorded against the Property must be
14 considered and not just the lien being foreclosed. From the point of view of the debtor and its unsecured
15 creditors, the Property had no equity that could be obtained by sale and paid to unsecured creditors.

16 Third, plaintiff has not produced any evidence that the unit owner was insolvent at the time of the
17 HOA foreclosure or became insolvent as a result of the HOA foreclosure sale.

18 Fourth, at pages 27 and 28 of its opposition, plaintiff argues that the cases cited by Resources
19 Group at pages 21 to 22 of Resources Group's motion for summary judgment are factually different than
20 the present case. Plaintiff, however, cites no authority contradicting the "fundamental principle of
21 mortgage law" that a nonjudicial foreclosure sale that complies with applicable statutory notice and other
22 requirements "terminates not only the owner's title and equitable redemption rights, but also all other
23 junior interests." Comment a to Restatement (Third) of Prop.: Mortgages, §7.1 (1997). The general
24 provisions of the Uniform Fraudulent Transfer Act cannot be used to negate this specific rule that applies
25 to nonjudicial HOA foreclosure sales. I

26 In BFP v. Resolution Trust Corp., 511 U.S. 531 (1994), the United States Supreme Court held that
27 "the fact that a piece of property is legally subject to forced sale, like any other fact bearing upon the
28

1 property's use or alienability, necessarily affects its worth" and "the only legitimate evidence of the
2 property's value at the time it is sold is the foreclosure-sale price itself." Id. at 548-549.

3 Although footnote 3 in the BFP v. Resolution Trust Corp. opinion limits its application to "only
4 mortgage foreclosures of real estate," the court of appeals in Tracht Gut, LLC v Los Angeles County
5 Treasurer (In re Tracht Gut, LLC), 836 F.3d 1146, 1149 (9th Cir. 2016), held that "the price received at
6 a California tax sale conducted in accordance with state law conclusively establishes 'reasonably
7 equivalent value' for purposes of 11 U.S.C. § 548(a)." The tenth circuit has applied the holding in BFP
8 to a tax sale challenged under a state fraudulent transfer law. Kojima v. Grandote Int'l Ltd. Liab. Co. (In
9 re Grandote Country Club, Ltd.), 252 F.3d 1146, 1152 (10th Cir. 2001).

10 The standards adopted in BFP v. Resolution Trust Corp. therefore protect Resources Group from
11 plaintiff's argument that the HOA foreclosure sale can be set aside as a fraudulent transfer.

12 **I. The nonjudicial foreclosure sale did not violate the Takings clauses of the United**
13 **States and Nevada Constitutions or the Eighth Amendment**

14 At page 29 of its opposition, plaintiff incorporates by reference "it's arguments in it's own Motion
15 for Summary Judgment that this is an unconstitutional taking and violates the 8th amendment."

16 In Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage, 133 Nev., Adv.
17 Op. 5 (Jan. 26, 2017), the Nevada Supreme Court expressly held that "the extinguishment of a
18 subordinate deed of trust through an HOA's nonjudicial foreclosure does not constitute a governmental
19 taking." Id. at *11. The Eighth Amendment prohibits the government from requiring excessive bail,
20 imposing excessive fines, or inflicting cruel and unusual punishment. The nonjudicial foreclosure sale
21 in the present case involved no such conduct.

22 In the last paragraph on page 29, plaintiff claims that "[i]t would seem to be fair to provide
23 Resources a first priority lien for their purchase price and declare the remaining amounts subject to U.S.
24 Bank's Security Interest." Plaintiff cites no authority that would support such an absurd result that
25 ignores established principles of real property foreclosure law. Plaintiff allowed the HOA to foreclose
26 its superpriority lien and extinguish plaintiff's subordinate deed of trust without objection, and plaintiff's
27 only remedy, if any, is now against the HOA and its foreclosure agent.

1 CONCLUSION

2 Accordingly, defendant respectfully requests that this Court enter an order granting Resources
3 Group's motion for summary judgment.

4 DATED this 31st day of January, 2017

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


7 By: /s/ Michael F. Bohn, Esq. /
8 Michael F. Bohn, Esq.
9 376 E. Warm Springs Road, Ste. 140
10 Las Vegas, Nevada 89119
11 Attorney for Resources Group, LLC

12 CERTIFICATE OF SERVICE

13 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law
14 Offices of Michael F. Bohn, Esq., and on the 31st day of January, 2017, an electronic copy of the
15 RESOURCES GROUP, LLC'S REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
16 was served on opposing counsel via the Court's electronic service system to the following counsel of
17 record:

18 Kristin A. Schuler-Hintz, Esq.
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24 /s/ Marc Sameroff
25 An Employee of the LAW OFFICES OF
26 MICHAEL F. BOHN, ESQ., LTD.


CLERK OF THE COURT

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US Bank

**DISTRICT COURT
CLARK COUNTY NEVADA**

U.S. BANK NATIONAL ASSOCIATION ND, A
NATIONAL ASSOCIATION

Case No. A-12-667690-C

Dept. No. XVI

Plaintiff,

v.

**REPLY IN SUPPORT OF US BANK'S
MOTION FOR SUMMARY
JUDGMENT**

GEORGE R. EDWARDS, an individual, ANY
AND ALL PERSON UNKNOWN, CLAIMING
TO BE PERSONAL REPRESENTATIVES OF
GEORGE R. EDWARDS ESTATE OR DULY
APPOINTED, QUALIFIED, AND ACTING
EXECUTOR OF THE WILL OF THE ESTATE
OF GEORGE R. EDWARDS; RESOURCES
GROUP, LLC a Nevada Limited-Liability
Company; GLENVIEW WEST TOWNHOMES
ASSOCIATION, a Nevada non-profit
corporation; DOES 4 through 10, inclusive, and
ROES 1 through 10, inclusive

Defendants.

AND ALL RELATED CLAIMS.

COMES NOW U.S. BANK NATIONAL ASSOCIATION ND, A NATIONAL
ASSOCIATION (hereinafter "U.S. Bank") by and through their attorney of record Thomas N.
Beckom, Esq of the law firm of McCarthy Holthus LLP and hereby files this reply in support of
Summary Judgment.

I. LAW AND ARGUMENT

A. RECENT CHANGES IN THE LAW

This writer acknowledges that a recent change in the law has substantially undercut many of the arguments presented in the pleadings regarding constitutionality. *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage* 133 Nev. Adv. Op. 5(2017)(holding that Nevada's HOA foreclosure statutes do not constitute state action sufficient to implicate due process provisions). This opinion has placed the Nevada State Courts directly at odds with the Federal District Court in the interpretation of Federal Law in this jurisdiction. *Bourne Valley Court Tr. V. Wells Fargo Bank N.A.* 832 F.3d, 1154 (9th Cir. 2016)(holding that Nevada HOA Foreclosure Statutes do constitute state action sufficient to implicate due process provisions.). U.S. Bank will not use this time to throw some type of court room temper tantrum as that is assuredly improper and not constructive. *Drum v. City of Long Beach* 1988 U.S. App. LEXIS 21908 (9th 1988)(affirming Summary Judgment on a claim under 42 U.S.C. §1983 by an attorney who "was arrested when he threw a temper tantrum in the hallways of the Long Beach, California Municipal Courthouse" and claimed that this violated his constitutional rights).

To be clear and for the purposes of non waiver U.S. Bank in this instance argues that *Bourne Valley Court Tr. V. Wells Fargo Bank N.A.* was the correct interpretation of this statute. U.S. Bank acknowledges that the trial court is now bound by *Saticoy Bay*, however *Bourne Valley Court Tr. V. Wells Fargo Bank N.A.* should be adopted and most likely this will be resolved by the United State Supreme Court given this split in authority¹. Irrespective, this sale does not stand under the current state of *state* law and U.S. Bank would encourage the Court to grant summary judgment on other grounds.

¹ A viewing party with popcorn would seem to be more appropriate in this instance.

B. BONA FIDE PURCHASER IS AN AFFIRMATIVE DEFENSE, AND RESOURCES HAS NOT MADE ANY TYPES OF APPROPRIATE SHOWING

1. Resources has failed to demonstrate they are bona fide purchasers

This writer is persistently confused as to how and why it is appropriate for an HOA purchaser to devote a page and a half to their own bona fide purchaser status when this is an affirmative defense. Resources group simply cannot be anointed bona fide purchaser. This is improper

U.S. Bank unequivocally argued “Resources has not met their burden of production under Nevada law as bona fide purchaser status is their burden.” U.S. Bank’s MSJ p. 16 Line 17-19. No evidence was produced that somehow Resources was unaware of the CC&R’s which blatantly stated that the purchase was subject to a mortgage and were filed in the Resources records. No evidence was produced that Resources did not have constructive notice that Saticoy was not aware of the provisions of the CC&R’s which blatantly said NRS Chapter 116 did not apply. Even the Nevada Supreme Court has noted that it is an HOA purchasers burden to establish good title in themselves and that when they fail to do this, Summary Judgment is properly granted. *Centeno v. Mortg. Elec. Registration Sys.* 2016 Nev. LEXIS 590 (2016)(Noting that a purchaser “failed to meet their burden to prove that BOA’s first deed of trust was properly extinguished”).

It has been the law for over hundred years that “the defense of bona fide purchaser is an affirmative one.” *Krueger v. United States* 246 U.S. 69 (1918)(ruling that burden is on bona fide purchaser to defeat claims in equity and further affirming judgment that purchaser was not a bona fide purchaser because she failed to sustain her burden); *Wright-Blodgett Co. v. United States* 236 U.S. 397(1915)(bona fide purchaser status must be affirmatively proven). In fact six years after the Constitution was ratified, one of the first things that the U.S. Supreme Court did was declare that the bona fide purchaser defense required an affirmative showing by the party asserting the defense. *Talbot v. Janson* 3 U.S. 133 (1795)(Supreme Court case discussing how when someone buys a ship from pirates, they must affirmatively show they are bona fide purchaser in order to

prevail). This is the law in Nevada and even respected jurists such as Judge Pro have held that bona fide purchaser is an affirmative defense which must be proven by the party asserting said. *W. Charleston Lofts I, LLC v. R& O Constr. Co.* 915 F.Supp.2d 1191 (D.Nev. 2013) citing *Berge v. Ferdericks* 95 Nev. 183 (1979).

Yet here even over and above the aforementioned documents which unequivocally generate constructive, here Resources was on *actual* notice. Resources filed a Federal Bankruptcy after the sale claiming that their property was encumbered by U.S. Bank's mortgage. (MSJ Ex. 15). Independent witnesses, including David Alessi, repeatedly testified that Haddad thought the property was subject to a mortgage. (MSJ Ex. 16 p. 51) Resources has failed to meet their burden here, when numerous document filed in the property records placed them on constructive notice that there was an issue with their purchase.

2. Saticoy Cannot be Bona Fide Purchase Because of the Disclaimer of Warranties in the Deed.

Another microcosm of this HOA foreclosure issue is that recently Judge Jones issued an opinion that the following placed SFR Investment Pool 1, LLC on notice and thereby eviscerated their bona fide purchaser status: (1) their fractional purchase price and (2) the deed without warranties. *U.S. Bank v. SFR Invs. Pool 1*, 2016 U.S. Dist. LEXIS 113120 (D.Nev. 2016) citing *Berge v. Fredericks* 591 P2d 246 (Nev. 1979). In addition, Judge Jones noted that "The law was not clear at the time of the sale that the sale would extinguish the DOT at all, superpriority tender or not, and a reasonable purchaser therefore would have perceived a serious risk that it would not. *Id.* at 35.

All of these elements are present here. The foreclosure document persistently dance back and forth between which statute they are foreclosing under. The CC&R's say the sale is subject to a mortgage.

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien. However, the sale or transfer of any lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve said lot from liability for any assessments thereafter becoming due or from the lien thereof.

This Court should not condone "real property roulette" irrespective of whether or not this sale occurred in Las Vegas. These are people's lives, not a bouncing balls determining the faith and destiny of thousands hundreds of thousands of dolahrs. Our law cannot and not condone this type of gamesmanship in the foreclosure process.

C. AT LEAST TWO FEDERAL COURTS HAVE CONSTRUED MISPRESENTATIONS AT HOA FORECLOSURES WHICH LEAD TO CHILLED BIDDING TO BE UNFAIR

Two Federal Courts to date have ruled that the unfairness that U. Bank decries is sufficient to set aside a sale. Both Judge Gordon and Judge Mahan have ruled that chilled bidding based on misstatements of facts can be unfair.

1. Mahan on Bid Chilling Being Unfair

As previously brief, in *Zyzzx 2 v. Dizon* the Honorable Judge Mahan dealt with the type HOA foreclosure there. *Zyzzx 2 v. Dizon* 2016 U.S. Dist. LEXIS 39467 (2016). That case Judge Mahan found a grossly inadequate price when the property was worth \$210,000 and the purchaser paid \$15,000.00 for the property (three times what LVRP paid). Judge Mahan found that the purchase price was grossly inadequate. Judge Mahan then went on to find that when the HOA "represented to both the general public as well as Wells Fargo that the association's foreclosure would not extinguish the first deed of trust" this was unfair. As previously briefed, this must be compare to the the CC&R's which states:

Section 11. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve said Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Similarly to *Dizon* the HOA misrepresented to (1) Resources (2) US Bank, and (3) the Public the nature of what was being sold. It is small wonder that the sale was for such a paltry amount based on the chilled bidding and misrepresentation which Satcoy took constructive notice of.

2. Gordon on Bid Chilling Being Unfair

In *7912 Limbwood Court Trust v. Wells Fargo* the Honorable Judge Gordon contemplated more similar misrepresentations by HOAs and their sales agent which result in chilled bidding. There, the HOA made similar misrepresentations about their lien priority prior to the sale. *7912 Limbwood Court Trust v. Wells Fargo Bank* 2015 U.S. Dist. LEXIS 116223. In voiding the sale, Judge Mahan noted that the sale must be voided be “Fairness also dictates this result.” *Id.* Judge Gordon specifically speaks to chilled bidding as being a nexus of unfairness. Again, the bidding pattern, not the purchase price, shows that people were completely uncertain as to what was being purchased.

D. SATICOY HAS CHERRY PICKED PORTIONS OF THE RESTATEMENT OF MORTGAGES WHICH LARGELY DOES NOT SUPPORT THEIR POSITION

First and primarily, the *Restatement (Third) Property: Mortgages* §8.3 unequivocally says:

“A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defect unless the price is grossly inadequate.”

1 If Nevada follows the Restatement approach in this context, then this sale is flawed
2 because Saticoy purchased the property for \$5,331.00 when it was worth anywhere between
3 \$44,000.00 to \$85,000.00. But yet the Restatement goes on.

4
5 Comment A to the Restatement, Section §8.3, states that “close judicial scrutiny of the sale
6 price is more justifiable when the price is being employed to calculate the amount of a deficiency
7 judgment context” as noted by Saticoy. Yet compare the comments of Justice Gibbons that after
8 “the first deed of trust loses its security in the property pursuant to the association's foreclosure of
9 its superpriority lien, the former homeowner generally will be liable for the amount still owed on
10 the debt.” *SFR Invs. Pool 1 LLC v. U.S. Bank N.A.* 334 P.3d 408 (Nev. 2014)(Gibbons
11 dissenting). This comment in combination with the realities of *SFR* make it clear that if this Court
12 finds anything wrong with this sale, it is full well within it’s power to overturn the sale.

13 **E. THIS FORECLOSURE IS VOIDABLE UNDER THE UNIFORM FRAUDULENT**
14 **TRANSFER ACT**

15 US Bank has previously briefed why summary judgment should be granted to US Bank in
16 their own motion for summary judgment. US Bank incorporates those arguments here and
17 moreover, takes this opportunity to rebut the assertions and Resources.

18 **1. To the Extent there is Equity Past the Lien, the Subject Property is an**
19 **Asset by the Plain Language of NRS §112.150**

20 NRS §112.150(2) defines “Assets” as

21 “property of a debtor, but the term does not include

22 (a) Property to the extent it is encumbered by a valid lien”

23 The Uniform Fraudulent Transfer Act clarifies the intent behind the definition of asset in
24 that it is meant to protect interests “generally beyond reach by unsecured creditors because [it is]
25 subject to a valid lien.” *Uniform Fraudulent Transfer Act* Section 1 Official Comment 2.
Therefore the UFTA provides protections from levying unsecured creditors against value which is

1 liened by a secured creditor such as the HOA. Therefore to an extent some “assets” are indeed
2 exempt from the UFTA if they are subject to a valid security interest.

3 Resources has taken the position however that the mere presence of a lien however
4 exempts the entire asset from the UFTA and NRS Chapter 112. Respectfully, this is contrary to
5 law. This exact same issue was discussed in depth by the Oregon Court of Appeals in *Greer* and
6 it is important to note that, much like other uniform acts, NRS Chapter 112 “must be applied and
7 construed to effectuate its general purpose to make uniform the law with respect to the subject of
8 this chapter among the states enacting it. NRS §112.250. *Oregon Account Sys. V. Greer* 165
9 Ore.App.738 (2000). In *Greer* the transferee argued that because a lien was present on the
10 property that the entire value of the property was exempt on Oregon’s UFTA. *Oregon Account*
11 *Sys. V. Greer* 165 Ore.App.738 (2000). The Oregon Court of Appeals performed an in-depth
12 analysis of the phrase “to the extent it is encumbered by a valid lien” and determined that only the
13 value of the property actually encumbered by the lien was exempted from being an “Asset” under
14 the Oregon UFTA. The Court reasoned that an interpretation, similar to Saticoy’s, that the mere
15 presence of a lien excluded the entire asset would render the phrase “to the extent” superfluous in
16 contravention to the basic tenants of statutory construction. *Id.*

17 A Federal District Court has echoed this interpretation and ruled that:

18 “Moreover, because property is *not* an ‘asset’ *to the extent* it is encumbered by a valid
19 lien the plain meaning of the statutory definition of “asset” is that “property of the debtor”
20 is an “asset” to the extent it is *not* encumbered by a valid lien i.e. to the extent that the
21 debtor has any equity in the property.”

22 *Webster Indus v. Northwood Doors Inc* 320 F.Supp 2d 821 (D.Io 2004)

23 US Bank asserts that the interpretation that the definition of “assets” prevents the
24 application of NRS Chapter 112 because the definition of “asset” excludes property to the extent
25 it is encumbered by a valid quizzical on a basic factual basis in that Saticoy, in it’s Complaint,
stated clearly contends that there are no liens on this property.

1 Finally, equity drives the transfer. *People's United Bank v. Lilly* 2012
2 Conn.Super.LEXIS 3077 (2012) Additionally only the liens which survived the foreclosure can
3 be taken into account when determining the amount of the equity. *Miller v. NLVK, LLC* 454 F.3d
4 899, 903(8th Cir 2006).

5 With that being said, Bombassei's HOA dues for his HOA were \$130.00. (Ex. 6). George
6 Holmes' expert report shows the property was worth \$48,000.00 at the time of the sale. 9 months
7 worth of HOA dues in this instance is \$1,170.00. There was \$46,830.00 in equity over and above
8 this lien. \$46,830.00 of this house is an asset by the plain language of the UFTA.

9 **2. The Homestead Exemption does not Save Saticoy**

10 US Bank's understanding of Resource's argument is that the Subject Property was the the
11 homeowner's homestead, therefore exempt under nonbankruptcy law from execution and
12 unavailable as an asset under Nevada's UFTA. Respectfully, U.S. Bank contends that a deeper
13 analysis of NRS §112.150(2)(b) leads to a conclusion that this is incorrect.

14 NRS §112.150(2)(b) states that a property is not an asset "to the extent it is generally exempt
15 under nonbankruptcy law". NRS 21 §21.090(1) thereafter provides that the homestead is exempt
16 from execution "as provided for by law." The extent of the homestead exemption is thereafter
17 governed by NRS §115.005 *et seq.* In most cases, the homestead is exempt.

18 Yet as outlined in greater detail below, there are two flaws in Resource's homestead
19 argument. First, the borrower must file a declaration of homestead which is a necessary predicate
20 to a homestead exemption. Secondly, the homestead exemption does not provide an exemption as
21 to US Banl as they are a mortgage creditor and therefore the definition of "assets" does not
22 preclude Lakeview from seeking relief.

1 **3. Resources has not demonstrated a declaration of Homestead was filed**

2 The Homeowner's never exempted their property under Nevada's homestead law prior to the
3 foreclosure. As such the property is not exempt under nonbankruptcy law and is subject to
4 Nevada's UFTA.

5 Even the United States Supreme Court has acknowledged that the Nevada homestead
6 exemption only takes effect "if the selection and recording occurs at any time before actual sale
7 under execution." *Myers v. Matley* 318 U.S. 622 (1943). The Nevada Supreme Court has also
8 echoed this ruling in that "to secure the benefits of the constitutional and statutory provisions
9 exempting the homestead from forced sale under process...it is necessary that a declaration of
10 homestead be filed for record." *McGill v. Lewis* 61 Nev. 34 (1941).

11 The Homeowner never filed a declaration of homestead in the property records of the subject
12 property, a necessary predicate to claiming a homestead exemption and claiming the property as
13 exempt. Saticoy cannot now claim some genre of *nunc pro tunc* homestead exemption as they
14 lack standing by operation of NRS §115.005 which states that only the owner of the home can
15 claim said exemption. This was never done and Resources cannot stand in the shoes of the
16 Homeowner and accomplish this task now. Therefore by operation of NRS §115.005 *et seq* the
17 property is not exempt under nonbankruptcy law and subject to Nevada's UFTA.

18 **4. Even Assuming *Arguendo* that the Homeowner's filed a Homestead Exemption, it**
19 **would still be exempt as to U.S. Bank.**

20 NRS §112.150 provides limiting language to the definition of asset for UFTA purposes in that
21 asset only includes property to the extent it is exempt under nonbankruptcy law. A deeper reading
22 of the homestead statutes however shows that the homestead does not provide a nonbankruptcy
23 exemption as to Lakeview because they are a mortgage creditor under a deed of trust. As such
24 Nevada's UFTA applies.
25

1 NRS §112.150 states that property is not an “asset” “to the extent it is generally exempt under
2 nonbankruptcy law.” (Emphasis Added) NRS §112.150(2)(b). A Montana Federal District Court
3 ruled that this language in Montana’s UFTA provided that if an asset was subject to a judicial
4 process by the creditor seeking to set aside a conveyance, it is an asset for UFTA purposes. *U.S.*
5 *Bank v. United States IRS* 2013 U.S. Dist. LEXIS 28628 (Mont. 2013). In *U.S. Bank*, the IRS
6 attempted to set aside a real property conveyance under the UFTA from a husband with
7 substantial tax liability to a wife with no tax liability. *Id.* *U.S. Bank*, in a similar manner to
8 Resources, argued that this was improper because the Homeowners had declared the property at
9 issue as their homestead and as such the property was exempt from being considered an asset. *Id.*
10 The Montana Court noted that if a specific creditor could proceed against an asset then it was not
11 exempt from the UFTA and voided the transfer under the UFTA because the homestead did not
12 provide protection from the IRS. *Id.*

13 This sentiment is also echoed by the Supreme Court of Oklahoma in *Burrows v. Burrows*. In
14 *Burrows* an ex-spouse brought a UFTA claim for her ex-husband’s transfer of his home and the
15 40 acres of land the home was located on to his parents for \$5,151.04 in order to avoid execution
16 on past-due alimony and child support. *Burrows v. Burrows* 1994 OK 129 (Ok 1994). The ex-
17 husband claimed that the transfer was not voidable pursuant to Oklahoma’s UFTA because he had
18 taken a homestead exemption. *Id.* The trial court agreed however was subsequently reversed by
19 the Supreme Court of the state. *Id.* The Oklahoma Supreme Court ruled that because under
20 Oklahoma homestead law the ex-husband’s real property was not exempt as to the ex-wife for the
21 payment of alimony and child support, that the homestead exemption could not be used as a basis
22 to defeat a UFTA claim. *Id.*

23 Both of these rules are illustrative of the idea that any party whom is exempt under the
24 homestead laws of the state can proceed with a UFTA claim based on the “to the extent” limiting
25 language. Therefore a closer analysis of Nevada’s Homestead law is warranted.

1 NRS 115.010(3) delineates several enumerated exemptions from a declaration of homestead
2 and specifically states that the homestead does no exempt the dwelling from:

3 "Any mortgage or deed of trust hereon executed and given, including without limitation,
4 any second or subsequent mortgage, mortgage obtained through refinancing, line of credit
taken against the property and a home equity "

5 Even assuming *arguendo* that the Homeowners had filed a homestead exemption, which
6 they did not, it would still not function to defeat a UFTA claim because the exemption does not
7 protect the homeowner from a mortgage creditor. In this instant case, U.S. Bank is a first
8 mortgage creditor of the Homeowners and as such they are not precluded from filing a claim
9 under Nevada's UFTA because Nevada's homestead exemption does not extend to them.

10 **5. Resources Cases are Distinguishable**

11 Resources cites a line of cases on pp. 4-5 of their brief, including *McDonald*, *Brunzell*,
12 *Aladdin*, and *Erickson*, for the proposition that the UFTA does not apply because senior liens
13 wipe out junior liens by operation of law. A closer review of the fact patterns of these cases
14 however demonstrates that the UFTA simply could not have applied to the facts of those cases,
15 unlike this instant case.

16 In *Aladdin* the Deed of Trust creditor credit bid a casino project for \$5,000,000.00 on a
17 \$6,500,000.00 loan. *Aladdin Heating Corp v. Trustees of Cent. States*, 93 Nev. 257 (1977). While
18 the record is devoid of what the actual value of the casino was, \$5,000,000.00 is quite a large sum
19 of money and therefore it can be inferred that this was reasonably equivalent value for the project.
20 The same fact pattern is present in *Erickson* in that the bank obtained property through a credit bid
21 of \$48,712.12 on a \$66,000.00 loan. *Erickson Constr. Co. v. Nevada Nat'l Bank* 89 Nev. 350
22 (1973) Again the facts lead to an inference that the junior lien holders could not meet the
23 reasonably equivalent value standard. Finally in *Brunzell* no sale had ever occurred because the
24 foreclosing mechanics lien claimant had been enjoined from consummating a sheriff's sale.
25

1 *Brunzell v. Lawyers Title Ins. Co.* 101 Nev. 395(Nev. 1985). As such the lienor had not
2 consummated a “transfer” sufficient to make the UFTA applicable.

3 *McDonald* is equally inapplicable as the McDonald court was determining whether or not
4 a formally secured creditor, whose security had been voided as a preferential transfer in a Chapter
5 11 Bankruptcy, was covered under Nevada’s one action rule and therefore was barred from
6 pursuit of the underlying debt against a guarantor. *McDonald v. D.P. Alexander * Las Vegas*
7 *Boulevard, LLC* 121 Nev. 812 (2005)

8 None of these cases, for one reason or the other, operate to undermine the applicability of
9 Nevada’s UFTA. Unlike the aforementioned cases, there has been a consummated transfer and
10 this transfer was for less than reasonably equivalent value. In sum, the UFTA applies.

11 **F. THE APPRAISAL IS PROPER**

12 **1. Per *Unruh* Fair Market Value is the Only Proper Indicator of Value**

13 In *Shadow Wood v. N.Y. Comm Bank*, the Nevada Supreme Court most definitely
14 delineated a standard for analyzing this sale and announced, in line with the Restatement of
15 Property: Mortgages §8.3 that “Fair Market Value” was the proper indicator here. 132 Nev. Adv.
16 Op. 5 at 15 (2016). This writer contends here that arguing “HOA foreclosure value” is simply a
17 “nonstarter” and simply not relevant in this action as fair market value is the only true indicator.

18 The Alaska Supreme Court, citing to the U.S. Supreme Court noted that “Fair Market Value”
19 has been defined as :

20 “not the fair “forced sale” value of the real estate, but the price which would result from
21 negotiation and mutual agreement, after ample time to find a purchaser, between a vendor
22 who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not
23 compelled to take a particular piece of real estate.”

24 *Baskurt v. Beal* 101 P.3d 1041 (Ak 2004)

25 Blacks Law Dictionary similarly defines “Fair Market Value” as:

1 “The amount at which property would change hands between a willing buyer and a willing
2 seller, neither being under any compulsion to buy or sell and both having reasonable
knowledge of the relevant facts.”

3 *Blacks Law Dictionary* 597 (6th Ed. 1990)

4 Finally “Fair Market Value” is not a new idea in Nevada and Fair Market Value is defined as
5 as “the price which a purchaser, willing but not obligated to pay, would pay an owner willing but
6 not obligated to sell, taking into consideration all uses to which the property is adopted and might
7 in reason be applied.” *Lee v. Verex Assur* 103 Nev. 515 (Nev. 1987) also *Unruh v. Streight* 96
8 Nev. 684 (Nev. 1980)

9 Black’s then goes on to state that Fair Market Value must be assessed based on the “highest
10 and most profitable use.” *Id.* On this basis, the “value” assessment must be done at Market Value
11 based on the highest and best use per *Shadow Wood*. On this basis, the “bundle of sticks”
12 appraisal as well as the purported “sub market” is irrelevant and therefore only the Holm appraisal
13 is relevant.

14 The Brunson report repeatedly relies on forced sale value and only uses forced sale
15 comparables. This is completely improper in this context. *Unruh v. Streight* 96 Nev. 684 (Nev.
16 1980). The Nevada Supreme Court has indicated “fair market value” to be the proper indicator
17 and the Brunson report is anything but fair market value.

18 **2. The Use of An “Extraordinary Assumption” in an Appraisal is Proper**

19 “The Definition of “extraordinary assumption” is an assumption which if found to be false
20 could alter the resulting opinion or conclusion.” *United States v. 1,604 Acres of Land* 2012 U.S.
21 LEXIS 103243 (D.Va 2012). The Uniform Standards of Professional Appraisal Practices “allows
22 the use of extraordinary assumptions but imposes te duty of justifying their use and analyzing
23 their impact on value.” *Bruno v. Restuccia* 2005 Mass.Super. LEXIS 93 (Ma2005)

24 Resources misapprehends the phrase extraordinary assumption. Given the necessity of
25 finding a highest and best use, it is imperative that Mr. Holmes assume the proper is in the

1 appropriate condition. The term "extraordinary assumption" is assuredly misleading in it's
2 pertinence but an extraordinary assumption that the interior of the property is at it's highest and
3 best use is proper in this jurisdiction for the purposes of determining foreclosure value in this
4 instance.

6 **III. CONCLUSION**

7 On this basis, US Bank respectfully requests that the HOA foreclose sale be declare subject to
8 US Bank's Deed of Trust. This would seem to be a "fair" remedy. *Shadow Wood* dictates that
9 this Court can and should consider a fair remedy weighing the rights of the purchaser and US
10 Bank here.

11 DATED: January 31, 2016

12 McCarthy & Holthus, LLP

13
14 By: /s/ Thomas N. Beckom Esq
15 Thomas N. Beckom, Esq
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CLERK OF THE COURT

1 **NOTA**

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13 *Attorneys for Defendant*

14 *Glenview West Townhomes Association.*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 U.S. BANK NATIONAL ASSOCIATION ND,
18 A NATIONAL ASSOCIATION

19 Plaintiff,

20 vs.

21 GEORGE R. EDWARDS, an individual, ANY
22 AND ALL PERSON UNKNOWN, CLAIMING
23 TO BE PERSONAL REPRESENTATIVES OF
24 GEORGE R. EDWARDS ESTATE OR DULY
25 APPOINTED, QUALIFIED, AND ACTING
26 EXECUTOR OF THE WILL OF THE ESTATE
27 OF GEORGE R. EDWARDS; RESOURCES
28 GROUP, LLC a Nevada Limited-Liability
Company; GLENVIEW WEST TOWNHOMES
ASSOCIATION, a Nevada non-profit
corporation; DOES 4 through 10, inclusive, and
ROES 1 through 10, inclusive

Defendants.

RESOURCES GROUP, LLC,

Counter-claimant

vs.

U.S. BANK NATIONAL ASSOCIATION, ND,
a national association

Counter-defendant

CASE NO.: A-12-667690-C
DEPT. NO.: XVI

NOTICE OF APPEARANCE

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NOTICE OF APPEARANCE

Michael R. Hall, Esq. And Stuart J. Taylor, Esq. of Hall, Jaffe & Clayton, LLP appears as
counsel of record for Glenview West Townhomes Association.

Dated: February 6, 2017.

HALL JAFFE & CLAYTON, LLP

By /s/Stuart J. Taylor
MICHAEL R. HALL, ESQ.
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STUART J. TAYLOR, ESQ.
Nevada Bar No. 014285
7425 Peak Drive
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Attorneys for Defendant
Glenview West Townhomes Association.

1 CERTIFICATE OF SERVICE

2 Pursuant to NRCP 5(b), I hereby certify under penalty of perjury that I am an employee of HALL
3 JAFFE & CLAYTON, LLP, and that on the__6th __ day of February the foregoing **Notice of**
4 **Appearance** was served upon those persons designated by the parties in the E-Service Master List for
5 the above-referenced matter in the Eighth Judicial District Court e-Filing System in accordance with the
6 mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic
7 Filing and Conversion Rules.

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/s/Alexandria Raleigh
An Employee of HALL JAFFE & CLAYTON, LLP



CLERK OF THE COURT

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10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 U.S. BANK NATIONAL ASSOCIATION ND,
13 A NATIONAL ASSOCIATION

14 Plaintiff,

15 vs.

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20 APPOINTED, QUALIFIED, AND ACTING
21 EXECUTOR OF THE WILL OF THE ESTATE
22 OF GEORGE R. EDWARDS; RESOURCES
23 GROUP, LLC a Nevada Limited-Liability
24 Company; GLENVIEW WEST TOWNHOMES
25 ASSOCIATION, a Nevada non-profit
26 corporation; DOES 4 through 10, inclusive, and
27 ROES 1 through 10, inclusive

22 Defendants.

23 **RESOURCES GROUP, LLC,**

24 Counter-claimant

25 vs.

26 U.S. BANK NATIONAL ASSOCIATION, ND,
27 a national association

28 Counter-defendant

CASE NO.: A-12-667690-C
DEPT. NO.: XVI

**INITIAL APPEARANCE FEE
DISCLOSURE**

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 74575

U.S. BANK N.A. N.D. a foreign Corporation

Plaintiff and Appellant

v.

RESOURCES GROUP LLC, a Nevada limited liability company

Defendant and Respondent

**Appeal from a Judgment
Of the Eighth Judicial District Court, County of Clark
Hon. Timothy Williams**

**APPELLANT'S APPENDIX VOL. 6
PART 1**

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Electronically Filed
Apr 05 2018 02:34 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

TABLE OF CONTENTS

1. Opposition to Motion for Summary Judgment	1251
2. First Amended Answer to the Counterclaim	1415
3. Reply in Support	1420
4. Reply in Support	1437
5. Minute Order Denying Summary Judgment	1458
6. Stipulation Tolling 5 Year Rule	1462
7. Substitution of Attorney	1470
8. Pre-Trial Disclosures	1473
9. Pre-Trial Disclosures	1477
10. Affidavits	1480
11. Pre-Trial Memorandum	1483

EXHIBIT N

EXHIBIT N



August 31, 2016

Resources Group LLC,
Represented by attorney Michael F. Bohn
Law Offices of Michael F. Bohn, Esq. Ltd.
376 E. Warm Springs Rd, Suite 140, Las Vegas, NV 89119

*RE: U S Bank National Association, v. George Edwards, et al
(Case #A-12-667690-C)*

Dear Mr. Bohn:

Per your request, I have examined the expert appraisal report completed by George P. Holmes of Eagle Appraisal, Inc. (Holmes report or Holmes appraisal). The Holmes report is a retrospective, market value appraisal of the fee simple interest of the subject (4254 Rollingstone Drive) as of January 25, 2012. Communication is via a general-purpose residential form with numerous narrative and graphic addenda. The Holmes report contains 16 pages in total; includes development of the sales comparison approach, utilizing six comparable sales. The signing date was July 28, 2016.

Federal law and/or state law requires professional appraisers to comply with the edition of the Uniform Standards of Professional Appraisal Practice (USPAP) in effect as of the effective date of their work. The USPAP require specific professional ethics, disclosure, and performance when an appraiser is engaged to perform a service requiring his or her appraisal expertise. The USPAP are promulgated by the Appraisal Foundation and are the recognized measure of professional due diligence for all licensed or certified appraisers.

This assignment falls under the category of Appraisal Review as defined by the USPAP. It complies with the current edition of that document. This is a desktop assignment. All opinions, conclusions, and analysis are developed and communicated without advocacy or bias. They are communicated in a manner that is meaningful and not misleading within the context of the intended use, intended users, and scope of work for this assignment.

It is assumed under an Extraordinary Assumption that the factual data presented in the Holmes report is accurate. The independent opinion of value is based on the assumption that the subject was in average condition as of the retrospective effective date. Use of these assumptions is reasonable but may have affected the assignment results. In the case of conflicting data, additional research will be conducted (if necessary) to determine which information is most reliable in order to allow my report to arrive at credible assignment results.

Brunson-Jiu, LLC
10161 Park Run Drive #150, Las Vegas, NV 89145
702-641-5657 Phone 702-939-9080 Fax
www.brunson-jiu.com

EDWARD APPENDIX 1379

The client for this assignment is Resources Group LLC. The Intended Use is for litigation in the case noted above. Intended Users include the Client represented by the Law Offices of Michael F. Bohn, Esq. Ltd. The Scope of Work for my assignment includes an appraisal review (as defined) of the Holmes report and an independent opinion of the retrospective disposition value. My review emphasizes compliance with the USPAP and generally accepted appraisal methodology. I have examined the techniques and methodology of the Holmes appraisal in order to determine the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review, developed in the context of the requirements applicable to that work.

The accompanying appraisal review report complies with USPAP Standards Rules 3-4, 3-5 and 3-6. It contains statements and summary discussions of the data, reasoning, and analyses that used in the process of developing my opinions. Supporting documentation concerning the data, reasoning, and analyses is in my work file.

The depth of discussion within this report is specific to the client and intended use stated below. Neither I, nor Brunson-Jiu, LLC is responsible for unauthorized use of this review.

Conclusions – Holmes Expert Appraisal Report

The risk associated with a property following an HOA foreclosure and subject to unresolved litigation is a Detrimental Condition that impairs the subject value as of the retrospective effective date. The appraisal report completed by Holmes purports to provide an opinion of the unimpaired market value. However, it does so in a manner that does not comply with professional standards or generally accepted appraisal methodology.

The report contains numerous errors, violations of the Uniform Standards of Professional Appraisal Practice, and fails to use generally recognized appraisal methodology. These errors of omission and commission cause the appraisal to lack credibility and the report to be misleading.

Moreover, Nevada is a mandatory licensing state for real estate appraisers. Nevada law indicates that licensed appraisers are precluded from conducting complex appraisal assignments.¹ By completing this assignment Mr. Holmes may have exceed the scope of his credential.

¹ NRS 645C.280.1(a)(2)

Conclusions – Independent Opinion of Value

The subject had been a distressed property since at least 1Q 2011. HOA foreclosure properties contain risks and limitations on their bundle of rights. The risk and limited rights associated with an HOA foreclosure property are a Detrimental Condition (DC) that impair its value. A foreclosure sale under NRS 116 can be classified as a Type II DC (Transactional Conditions).

The risk and limitations to the bundle of rights require a definition of value other than Market Value. They preclude the use of traditional owner-equity sales in an analysis of value. They limit the use of non-traditional sales (REO, short sales, or 107 foreclosure sales) in an analysis of value. Similar HOA foreclosure sales and consideration of “current” market conditions provide the best measure of value for this type of transaction.

As an HOA foreclosure property, affected by a Class II detrimental condition, the fee simple impaired value as of January 25, 2012 was:

\$5,300

Five Thousand Three Hundred Dollars (rounded)

Specific findings in support of these conclusions appear in the individual sections of the report that follows this letter. Readers of this report should refer to appropriate versions of the USPAP or relevant cited documents for proper understanding of this appraisal review report. I invite your attention to the accompanying report, from which the above opinions were derived.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Holmes report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions, and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

Respectfully submitted,



Michael L. Brunson, MNAA, SRA

AQB Certified USPAP Instructor / Nevada Certified General Appraiser #A.0207222-CG

August 31, 2016

Assumptions and Limiting Conditions

The submitted report is subject to underlying assumptions and limiting conditions qualifying the information it contains as follows:

1. Possession of this review or copy thereof does not carry with it the right of publication.
2. The purpose of the assignment is to review the appropriateness of the conclusions and the compliance with the USPAP determined within the submitted report.
3. This review is intended solely for the use of the identified Client and Intended User(s). Neither all nor any part of the contents of this review shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent of the reviewer.
4. Unless stated otherwise in the review, the analyses, opinions, and conclusions in this review are based solely on the data, analyses, and conclusions contained in the appraisal report, appraisal review report, and/or the workfile under review.
5. All analyses, opinions, and conclusions expressed by the reviewer are limited by the scope of the review process as defined herein.
6. The conclusions apply only to the property specifically identified and described herein and in the reviewed, appraisal review reports, appraisal reports, and/or associated workfiles.
7. The reviewer has made no legal survey, nor has he commissioned one to be prepared; therefore, reference to a sketch, plat, diagram or previous survey appearing in the report is only for the purpose of assisting the reader to visualize the property.
8. No responsibility is assumed for legal matters existing or pending outside of the existing case.
9. Disclosure of the contents of this review is governed by the Nevada Commission of Appraisers and the USPAP.
10. The compensation received for this assignment is in no manner contingent upon the conclusion of the review.
11. Reviewer Competency: Michael L. Brunson is an AQB Certified USPAP Instructor and is fully competent regarding the proper interpretation and application of the USPAP. He is also a Certified General Appraiser in Nevada and has the geographic competency to appraise the subject and similar properties within the Southern Nevada area.

Appraiser Certification

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the properties that are the subject of the work under review and no personal interest with respect to the parties involved.
- I have performed no other services, as an appraiser or in any other capacity, regarding the property that is the subject of the work under review within the three-year period immediately preceding acceptance of this assignment.
- I have no bias with respect to the properties that are the subject of the work under review or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in this review or from its use.
- My compensation for completing this assignment is not contingent upon the development or reporting of predetermined assignment results or assignment results that favors the cause of the client, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal review.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.
- I have made no inspection of the subject of the work under review.
- William Slivinski (NV Lic #A.0003887-RES) provided significant professional appraisal review assistance to the person signing this certification.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- As of the date of this report, I have completed the continuing education program for Designated Members of the Appraisal Institute.



Michael L. Brunson, MNAA, SRA
AQB Certified USPAP Instructor
NV Certified General Appraiser # A.0207222-CG
August 31, 2016

DEFINITIONS

For the purpose of this report, the following definitions apply:

Appraisal²

(noun) The act or process of developing an opinion of value; an opinion of value.
(adjective) of or pertaining to appraising and related functions such as appraisal practice or appraisal services.

Comment: An appraisal must be numerically expressed as a specific amount, as a range of numbers, or as a relationship (e.g., not more than, not less than) to a previous value opinion or numerical benchmark (e.g., taxable value, collateral value).

Appraisal Review³

The act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal or appraisal review assignment.

Comment: The subject of an appraisal review assignment may be all or part of a report, workfile, or a combination of these.

Assessment Stage⁴

The first stage of a detrimental condition analysis. It includes all costs and losses of income.

Assumption⁵

That which is taken to be true.

Class II Detrimental Condition – Transactional Conditions⁶

Class II transactional conditions relate to situations in which some particular and unique issue impacted a specific transaction. This classification includes transactions in which a buyer pays more than necessary to acquire a property or a seller disposes of a property at a discount.

² USPAP 2016-2017 Edition, the Appraisal Foundation.

³ Ibid.

⁴ Randall Bell, PhD, MAI, Real Estate Damages: Applied Economics and Detrimental Conditions, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 456.

⁵ USPAP 2016-2017 Edition, the Appraisal Foundation.

⁶ Randall Bell, PhD, MAI, Real Estate Damages: Applied Economics and Detrimental Conditions, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 73.

Credible⁷

Worthy of belief.

Comment: Credible assignment results require support, by relevant evidence and logic, to the degree necessary for the intended use.

Detrimental Condition⁸

Any issue or condition that may cause a diminution in value to real estate.

Disposition Value⁹

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a future exposure time specified by the client.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. An adequate marketing effort will be made during the exposure time specified by the client.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Extraordinary Assumption¹⁰

An assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions.

Comment: Extraordinary assumptions presume as fact otherwise uncertain information about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

⁷ USPAP 2016-2017 Edition, the Appraisal Foundation.

⁸ Randall Bell, PhD, MAI, Real Estate Damages: Applied Economics and Detrimental Conditions, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 458.

⁹ The Dictionary of Real Estate Appraisal, 6th Edition, (Chicago: Appraisal Institute, 2015).

¹⁰ USPAP 2016-2017 Edition, the Appraisal Foundation.

Fee Simple Estate¹¹

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

Highest and Best Use¹²

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and that results in the highest value. The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity.

Hypothetical Condition¹³

That which is contrary to what exists but is supposed for the purpose of analysis.

Comment: Hypothetical conditions assume conditions contrary to known facts about physical, legal, or economic characteristics of the subject property; or about conditions external to the property, such as market conditions or trends; or about the integrity of data used in an analysis.

Impaired Value¹⁴

The indicated value of a property with a detrimental condition reached upon the application of one or more of the three approaches to value.

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

¹¹ The Dictionary of Real Estate Appraisal, 6th Edition, (Chicago: Appraisal Institute, 2015).

¹² *Ibid.*

¹³ USPAP 2016-2017 Edition, the Appraisal Foundation.

¹⁴ Randall Bell, PhD, MAI, Real Estate Damages: Applied Economics and Detrimental Conditions, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 461.

Appraisal Review

INTRODUCTION

File No.: 1608.3115

Client:

Resources Group LLC
Engaged by Law Offices of Michael F. Bohn, Esq. Ltd.

Review Appraiser:

Michael L. Brunson, MNAA, SRA
AQB Certified USPAP Instructor
Nevada Certified General Appraiser #A.0207222-CG
Brunson-Jiu, LLC

Intended User(s):

Client only. Use of this report by others is not intended. Parties to this litigation other than the Client might be granted access to the report and related workfile. However, as noted in the USPAP Advisory Opinion 36,

Parties who receive a copy of an appraisal or appraisal review as a consequence of disclosure requirements applicable to an appraiser's client do not become intended users of the report unless they were specifically identified by the appraiser at the time of the assignment.

Intended Use:

Litigation in the matter of *U S Bank National Association, v. George Edwards, et al* (Case #A-12-667690-C). This report is not intended for any other use or in any other case.

Appraisers Who Completed the Work under Review:

George P. Holmes, Nevada Licensed Residential Appraiser #A.0006387-RES²¹

²¹ NRS 645C.280.1(a)(2) Indicates that licensed appraisers in Nevada cannot complete an appraisal on complex property.

Identification of the Work under Review:

The Holmes report is a general-purpose form report that includes 16 pages. It is a retrospective appraisal with an effective date of January 25, 2012 and a signed date of July 28, 2016.

Subject Property Address:	4254 Rollingstone Drive, Las Vegas, Nevada 89103
APN:	163-24-111-021
Location:	Southwest – Glenview West Townhouse
Property Type:	Attached townhouse residential
Owner of Record:	Edwards, George R Trust (Current: Bourne Valley Court Trust & Resources Group LLC Trs)
Interest Appraised:	Fee Simple

Purpose and Scope of Assignment:

The purpose of this assignment is to develop a credible and reliable opinion as to the completeness, adequacy, relevance, appropriateness, and reasonableness of the work under review. This opinion is developed in the context of compliance with the USPAP and generally accepted appraisal methodology. An independent value opinion is part of the scope of this assignment. The following scope of work was developed in accordance with the objective of the assignment and in compliance with the USPAP.

- Collected and analyzed pertinent background information about the subject property.
- Examined various documents provided and requested of the client.
- Examined the expert report completed by Holmes.
- Verified relevant data from the work under review with the cited source when available or other reliable source as applicable.
- Noted compliance and lack of compliance with relevant sections of the USPAP.
- Noted compliance or lack of compliance with generally accepted appraisal methodology
- Developed opinions of the quality of the work under review.
- Developed an independent opinion of retrospective value.
- Concluded to final opinions.

My Appraisal Review Report is a summary report of the data, analysis, and conclusions. Supporting documentation is retained in the work file. Future stages of the assignment may include additional valuation services, including but not limited to additional analysis, consulting, deposition, and/or testimony.

Liquidation Value¹⁵

The most probable price that a specified interest in real property should bring under the following conditions:

1. Consummation of a sale within a short time period.
2. The property is subjected to market conditions prevailing as of the date of valuation.
3. Both the buyer and seller are acting prudently and knowledgeably.
4. The seller is under extreme compulsion to sell.
5. The buyer is typically motivated.
6. Both parties are acting in what they consider to be their best interests.
7. A normal marketing effort is not possible due to the brief exposure time.
8. Payment will be made in cash in U.S. dollars or in terms of financial arrangements comparable thereto.
9. The price represents the normal consideration for the property sold, unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Market Area¹⁶

The area associated with a subject property that contains its direct competition.

Market Value¹⁷

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised, and each is acting in what they consider their own best interest;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and,
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

¹⁵ The Dictionary of Real Estate Appraisal, 6th Edition, (Chicago: Appraisal Institute, 2015).

¹⁶ The Dictionary of Real Estate Appraisal, 6th Edition, (Chicago: Appraisal Institute, 2015).

¹⁷ Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), [Pub. L. No. 101-73 103 Stat. 183 (1989)], 12 U.S.C. 3310, 3331-3351, and Section 5 (b) of the Bank Holding Company Act, 12 U.S.C. 1844 (b); Part 225, Subpart G: Appraisals; Paragraph 225.62(f).

Neighborhood¹⁸

A group of complementary land uses; a congruous grouping of inhabitants, buildings, or business enterprises.

Sales Comparison Approach¹⁹

The process of deriving a value indication for the subject property by comparing market information for similar properties with the property being appraised, identifying appropriate units of comparison and making qualitative comparisons with or quantitative adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison.

Unimpaired Value²⁰

The value as if no detrimental condition exists.

¹⁸ The Dictionary of Real Estate Appraisal, 6th Edition, (Chicago: Appraisal Institute, 2015).

¹⁹ Ibid.

²⁰ Randall Bell, PhD, MAI, Real Estate Damages: Applied Economics and Detrimental Conditions, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 468.

Relevant Dates:

Date subject acquired at auction:	January 25, 2012
Effective date of Holmes appraisal:	January 25, 2012
Date subject viewed by Holmes:	July 28, 2016
Transmittal date of Holmes appraisal:	July 28, 2016

Additional relevant dates are noted in the body of the review.

Relevant version of the USPAP:

The 2016-2017 version of the USPAP is relevant to the Holmes appraisal. This review and the independent value are subject to the 2016-2017 version of the USPAP.

Reviewer Competency and Professional Assistance:

The Competency Rule of the USPAP states in part that, *"the appraiser must determine, prior to accepting an assignment, that he or she can perform the assignment competently."* As an AQB Certified USPAP Instructor, I am competent concerning the Uniform Standards and their application. As a Certified General Appraiser, I am competent concerning the type of property and the analytical methods necessary to produce credible assignment results. My primary area of practice is Southern Nevada. I am competent concerning the geographic area and market. William Slivinski (Nevada Licensed Residential Appraiser #A.0003887-RES) assisted in the confirmation of data and the preparation of this report.

USPAP Background:

The Uniform Standards of Professional Appraisal Practice, promulgated by the Appraisal Foundation, are the recognized measure of professional due diligence for all licensed or certified appraisers. The preamble of the USPAP provides a brief overview as to the purpose and intent of the Uniform Standards, stating in part:

The purpose of the *Uniform Standards of Professional Appraisal Practice* (USPAP) is to promote and maintain a high level of public trust in appraisal practice by establishing requirements for appraisers. It is essential that appraisers develop and communicate their analyses, opinions, and conclusions to **intended users** of their services in a manner that is **meaningful** and **not misleading**...

(Bold added for emphasis).

The following excerpt from the 2016-2017 Preamble helps the reader understand the relevance and applicability of the specific portions of the USPAP referenced in the report that follows.

USPAP addresses the ethical and performance obligations of appraisers through DEFINITIONS, Rules, Standards, Standards Rules, and Statements.

- The DEFINITIONS establish the application of certain terminology in USPAP.
- The ETHICS RULE sets forth the requirements for integrity, impartiality, objectivity, independent judgment, and ethical conduct.
- The RECORD KEEPING RULE establishes the workfile requirements for appraisal, appraisal review, and appraisal consulting assignments.
- The COMPETENCY RULE presents pre-assignment and Assignment Conditions for knowledge and experience.
- The SCOPE OF WORK RULE presents obligations related to problem identification, research, and analyses.
- The JURISDICTIONAL EXCEPTION RULE preserves the balance of USPAP if a portion is contrary to law or public policy of a jurisdiction.
- The ten Standards establish the requirements for appraisal, appraisal review, and appraisal consulting service and the manner in which each is communicated.
 - STANDARDS 1 and 2 establish requirements for the development and communication of a real property appraisal.
 - STANDARD 3 establishes requirements for the development and communication of an appraisal review.
 - (Note: STANDARDS 4 and 5 have been retired)
 - STANDARD 6 establishes requirements for the development and communication of a mass appraisal.
 - STANDARDS 7 and 8 establish requirements for the development and communication of a personal property appraisal.
 - STANDARDS 9 and 10 establish requirements for the development and communication of a business or intangible asset appraisal.
- There are currently no active Statements on Appraisal Standards.
- Comments are an integral part of USPAP and have the same weight as the component they address. These extensions of the DEFINITIONS, Rules, and Standards Rules provide interpretation and establish the context and conditions for application.

It is important to note that the USPAP make a significant distinction between the *Development* of an appraisal or appraisal review and the *Communication* (reporting) of an appraisal or appraisal review. Standards Rule 1 (SR-1) applies to the *Development* of an appraisal of real property whereas SR-2 applies to the *Communication* of the appraisal. SR-3 is one of two Standards Rules where both development and communication are addressed in the same rule. However, the sections of SR-3 that apply to the development of an appraisal review are clearly labeled and the sections that apply to communication are clearly labeled.

This review focuses on compliance with generally accepted appraisal methodology and the USPAP – specifically the Preamble, Definitions, General Rules, Standards Rule 1, and Standards Rule 2 for the Development and Reporting of a Real Property Appraisal.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Holmes report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions, and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

The table on the following page provides a summary of the Standards Rules applicable to the Holmes appraisal and a brief summary of my findings related to each specific USPAP rule. Green cells indicate compliance. Red cells indicate a lack of compliance. Yellow cells indicate either; technical violations of USPAP that do not significantly influence the overall credibility of the appraisal; or issues that are subject to interpretation.

Appraisal Report Std-3 Review Checklist (2016-2017 USPAP)					
USPAP Reference	Item	Location	Notes	Compliance	
2-1(a)	Clear, Accurate, Not Misleading		Errors. Provides unimpaired value with no comment on the impairment.	N	
2-1(b)	Sufficient Information for Understanding		Fails to disclose details of the HOA auction and the conditions assumed not to exist.	N	
2-1(c)	Disclose all Assumptions & Limiting Conditions	Form, Addenda	Disclosed, but not clear and accurate.	Y	
2-2	Report Type Prominently Disclosed	Form		Y	
Identify Problem and Determine Adequate Scope of Work				Compliance	
2-2(a)(vi)	Transmittal Date	1,4,10		Y	
	Effective Date 1-2(d)				
	Report Date				
2-2(a)(i) 1-2(a)	Client Identity	1,2,10		Y	
2-2(a)(i); 1-2(a)	Intended User(s)	2		Y	
2-2(a)(ii); 1-2(b)	Intended Use	2	Statement-9	Y	
2-2(a)(iii); 1-2(e)	Legal Description or Other Property ID	2		Y	
2-2(a)(iv); 1-2(e)(ii)	Property Interest	2	Reports Tenant occupied and fee simple interest.	N	
2-2(a)(v) 1-2(c)	Type of Value	2,10	Appraisal of Unimpaired Value. Definition and source are disclosed. No clear indication of how the definition applies to the problem to be solved.	Y	
	Definition of Value	10			
	Source of Definition	10			
	Applicability/Application of Definition	No			
	Reasonable Exposure Time (if developed)	3			
2-2(a)(vii) 1-2(h)	Scope of Work	9	Proper disclosure.	Y	
Analysis and Development				Compliance	
2-2(a)(ix); 1-3(a)(b)	Use Existing, Use Appraised	2		Y	
2-2(a)(x)	Summarize HABU (if developed)	2		Y	
2-2(a)(xi) 1-2(f) 1-2(g)	Standard Assumptions and Limiting Conditions	9	Stated EA does not address condition of the interior. Stated assumption of no DC lacks required disclosure of potential effect. Reconciliation indicates "as-is" with no disclosure of assumptions.	N	
	- Extraordinary Assumptions	3			
	- Disclosure of Affect	3			
	- Hypothetical Conditions	3			
	Disclosure of Affect	No			
2-2(a)(viii)	1-4	Collect/Verify/Analyze Info for Credible Results	Questionable adjustment methodology.	Y	
		(a) Sales Comparison Approach			3,5
		(b) Cost Approach			-
		(c) Income Approach			-
	1-5(a)&(b)	Sales, Contracts and Listing History	3	Reports the prior sale with no analysis.	N
	1-6	Reconcile Data/Analysis and Approaches	4	"as-is" no disclosure of assumptions.	N
1-1(a)	Be Aware of, Understand, Correctly Employ	-	Numerous issues noted above.	N	
1-1(b)	Substantial Error: Omission or Commission	-	Numerous issues noted above.	N	
1-1(c)	Carelessness or Negligence	-	Totality of errors. Potential negligent performance.	N	
Certification				Compliance	
2-2(a)(xii)	Include a Signed Certification (SR 2-3)	10	No certification regarding prior services.	N	
2-3	USPAP Certification	10			
General Rules				Compliance	
ETHICS RULE	Conduct	Avoid Bias or Advocacy; Gross Negligence; Disclosure of Prior Work	-	Y	
	Management	Disclosure of Payment to Procure; Contingent Compensation; Proper Advertising; Signature Issues	-		
	Confidentiality	Protect Appraiser-Client Relationship	-		
RECORD KEEPING RULE		Prepare and maintain a workfile. Must exist prior to issuance of any report. Must contain name of client/intended users; true copies of all reports; summaries of oral reports; and all data, info, docs to support opinions/conclusions and show compliance with USPAP.	workfile	Unknown. Workfile not provided.	-
COMPETENCY RULE		Applies to factors such as, but not limited to, an appraiser's familiarity with a specific type of property or asset, a market, a geographic area, an intended use, specific laws and regulations, or an analytical method.		Lack of competent performance.	N
SCOPE OF WORK RULE	Problem Identification	9	Unimpaired Value. No disclosure of economic reality that creates the impairment.	N	
	SOW Acceptability	9			
	Disclosure	9			
JURISDICTIONAL EXCEPTION RULE		-			N/A

FINDINGS - Holmes Appraisal**Finding No. 1:**

The Holmes appraisal purports to provide an “*unimpaired opinion of market value*.”²² While it is acceptable to perform this analysis, the Holmes report contains numerous errors, lacks sufficient information for understanding, and ultimately does not comply with the USPAP.

Key Observations:

The central issue of this litigation is the HOA foreclosure under NRS 116 (a forced sale). The subject sold at auction on the effective date for \$5,331. This sale is disclosed on page three of the Holmes report. However, both the form and the USPAP require more than a simple reporting of the factual date and price of the sale. The USPAP require *analysis* and a summary of that analysis in order for the report to be considered “*meaningful and not misleading*.”

The letter of transmittal states, “*The property rights appraised are fee simple title ownership, assuming no indebtedness against the property. The purpose of this report is to estimate the MARKET VALUE of the subject property as of the effective date.*”²³ (Bold added for emphasis). Holmes discloses the intended use as, “*To establish retrospective market value [sic] for attorney as of 1/25/2012.*”²⁴

On the bottom of the third page, Holmes states,

The client assigned the report effective date, the appraiser has completed [sic] assignment developing an unimpaired opinion of market value employing the use of an assumption that no detrimental conditions existed as of the effective date and reserves the right to modify [sic] report and opinion of value if court deems effective date inappropriate or misleading to appraisal problem or assignment.

²² Holmes report, p 3.

²³ Holmes report, p 1.

²⁴ Holmes report, p 2.

The USPAP would define the assumption of no detrimental conditions as a Hypothetical Condition (an assumption contrary to known fact). While the USPAP does not require the use of the specific term, it does require:

- That all hypothetical conditions result in a credible analysis.
 - Credible analysis requires some disclosure of the facts regarding the HOA foreclosure. It is significant to note that the HOA foreclosure is not even mentioned in the Holmes report.
- That the assumption be “*clearly and conspicuously*” reported.
 - Disclosure of such a foundational assumption *only* on the bottom of the third page of a 13-page report is neither clear nor conspicuous. Furthermore, the reconciliation presents conflicting information indicating the appraisal is completed “as-is” with no assumptions.
- That the reporting of the disclosure include a statement that the use of the assumption might have affected the assignment results.
 - No such statement exists in the Holmes report.

As noted, the central issue of this litigation is the HOA foreclosure under NRS 116. Use of an assumption regarding detrimental conditions is acceptable. However, the lack of clear and conspicuous reporting, the conflicting information in the reconciliation, and the lack of any comment regarding the potential impact on the credibility of the assignment results - cause the Holmes report to lack credibility and the appraisal to be misleading.

Additional noted errors include, but are not limited to:

- Reporting *tenant* occupied and *fee simple* rights.
- Growth rate reported as “Stable” when data indicates slow.
- Property values reported as “Stable” when data indicates declining.
- Demand/Supply reported as “In Balance” when data indicates oversupply.
- Predominate occupancy reported as “Owner” when data indicates 66.3% tenant.
- Assumptions lacking required disclosure of potential affect.
- No assumption regarding interior condition in a retrospective assignment.
- Reporting subject off-sites as “public” when they are private.
- Presentation of conflicting information.
- Questionable adjustments in the sales comparison.

- Reporting sale 1 as fee simple when it was tenant occupied.
- Failure to report known concessions to sale 3
- Use of REO sales as comparables with no additional comment/adjustment.
- False statements.
- Questionable use of the UAD in a non-UAD assignment.
- Lack of required disclosure of prior services.
- Inapplicable boilerplate language.

Conclusion:

The Holmes appraisal purports to provide an opinion of the unimpaired market value. However, simply stating the assumption of no detrimental condition without any comment on the economic realities affecting the subject causes the appraisal to lack credibility and the report to be misleading. Moreover, the appraisal contains numerous errors and inconsistencies that individually could be benign, but in aggregate cause the credibility of the appraisal to suffer all the more.

Conclusion – Holmes Expert Appraisal Report

The risk associated with a property following an HOA foreclosure and subject to unresolved litigation is a Detrimental Condition that impairs the subject value as of the retrospective effective date. The appraisal report completed by Holmes purports to provide an opinion of the unimpaired market value. However, it does so in a manner that does not comply with professional standards or generally accepted appraisal methodology.

The report contains numerous errors, violations of the Uniform Standards of Professional Appraisal Practice, and fails to use generally recognized appraisal methodology. These errors of omission and commission cause the appraisal to lack credibility and the report to be misleading.

Moreover, the effective date of the Holmes appraisal is 7-months subsequent to the HOA foreclosure auction that is the central issue in this litigation. This effective date is not relevant in the context of this litigation. Therefore, even if it were credible, the Holmes appraisal is not useful to the trier of fact in establishing an unimpaired value as of the date of the HOA foreclosure sale.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Holmes report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions, and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

Documents relevant to my opinions and conclusions, including but not limited to the workfile for the Holmes report, have not been produced. While I can properly review the report, I cannot fully evaluate whether the analyses, opinions and conclusions were properly *developed*. Additional findings may apply once the workfile is made available. Future stages of the assignment may include additional valuation services, including but not limited to an independent retrospective appraisal. I reserve my right to amend my findings based on future production of relevant documents.

The appraisal (including the appraised value) lacks credibility. Therefore, an independent opinion of value is provided on the pages that follow.

All assignment characteristics from the review extend to the independent opinion of value. Uncontested information from the Holmes appraisal regarding physical characteristics are assumed accurate. The retrospective condition is assumed to have been average. *The use of these assumptions is reasonable but may have affected the assignment results.*

Relevant Dates

Date	Information	Party	Source
9/17/2010	Utility Lien	Republic Services	Doc. #201009170001706
1/4/2011	Notice of Delinquent Assessment Lien	Glenview West Townhomes Assoc.	Doc. #201101040005412
3/29/2011	Notice of Default & Election to Sell	Glenview West Townhomes Assoc.	Doc. #201103290002690
4/8/2011	Utility Lien	Republic Silver State Disposal Inc	Doc. #201104080002551
5/10/2011	Notice of Breach & Election to Sell *	Law Offices of Les Zieve	Doc. #201105100001579
9/20/2011	Notice of Trustee Sale	Law Offices of Les Zieve	Doc. #201109200002964
9/28/2011	Certificate Foreclosure Mediation NV	Law Offices of Les Zieve	Doc. #201109280002291
10/13/2011	Notice of Trustee Sale	Glenview West Townhomes Assoc.	Doc. #20110130001535
10/13/2011	Default Recission *	Edwards, George R	Doc. #20110130001802
12/19/2011	Utility Lien	Republic Silver State Disposal Inc	Doc. #201112190000447
1/25/2012	\$5,331 Sale at HOA Auction	Alessi & Koenig (Trustee)	Doc. #201201310001704
1/25/2012	\$48,000 Unimpaired Market Value	Holmes Appraisal Report	Holmes report, p 4
1/31/2012	Recording of HOA Auction Sale	4254 Rolling Stone Dr Trust	Doc. #201201310001704

The subject had been a distressed property since at least 1Q 2011. As of the retrospective effective date, it was subject to utility liens and facing foreclosure under NRS 116. A certificate of foreclosure had been issued in favor of the Law Offices of Les Zieve. While a prior NRS 107 foreclosure was rescinded, it was likely to resume.

Type and Definition of Value

Generally accepted appraisal methodology indicates, *"The intended use of an appraisal dictates which definition of market value is applicable."*²⁵ The intended use of this appraisal is litigation in the matter of *U S Bank National Association, v. George Edwards, et al* (Case #A-12-667690-C). The deed indicates that after appropriate notices, disclosures, and waiting periods, the subject sold at auction as an HOA foreclosure sale in compliance with NRS 116.

The subject was a distressed property in a distressed market. The seller was under compulsion to sell. Therefore, the traditional definition of Market Value cannot apply. In fact, the forced sale under NRS 116 precludes *any* definition of value that includes a requirement that neither party is under compulsion to sell, or any similar requirement that buyer and seller are typically motivated. Professional appraisers recognize that *"other types of value might be more appropriate for properties when a forced sale or some other*

²⁵ The Appraisal of Real Estate, 14th Edition, p 60. (Chicago: Appraisal Institute, 2013).

*form of distress is influencing the decisions of the buyer or seller.”*²⁶ Appraisers familiar with real estate damages know that, “*liquidation value is often associated*”²⁷ with foreclosure transactions that contain some sort of duress, non-market motivation, and/or limited exposure.

Appraisal texts, advisories, and guide notes suggest the use of either *Liquidation Value* or *Disposition Value* when valuing distressed properties and/or when faced with a distressed market. Disposition Value most closely captures the circumstances of an HOA foreclosure sale under NRS 116. However, because 116 foreclosures are so unique, they do not fit either definition perfectly. The lack of a perfect fit has caused confusion in several other 116 cases. Therefore, in order to avoid confusion, it is logical to use *Impaired Value* as defined on the following page.

Impaired Value The indicated value of a property with a detrimental condition reached upon the application of one or more of the three approaches to value.²⁸

VALUATION METHODOLOGY

Approach to Value and Selection of Comparable Sales

Neither the income approach nor the cost approach are necessary for credible assignment results. Neither approach is part of the scope of work for this assignment. The sales comparison approach represents the most reasonable methodology for this assignment.

The premise of the sales comparison approach is the economic principle of Substitution. This principle states that when comparably equivalent goods or services are available, a buyer in an open market will choose the one with the lowest price. The sales comparison approach also considers the secondary principles of Supply and Demand, Balance, and Externalities. An appraiser develops an indicated value by analyzing closed sales, listings, and/or pending sales of properties similar to the subject, using relevant units and elements of comparison.

²⁶ Ibid, p 65.

²⁷ Randall Bell, PhD, MAI, Real Estate Damages: Applied Economics and Detrimental Conditions, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 77.

²⁸ Ibid, p 461.

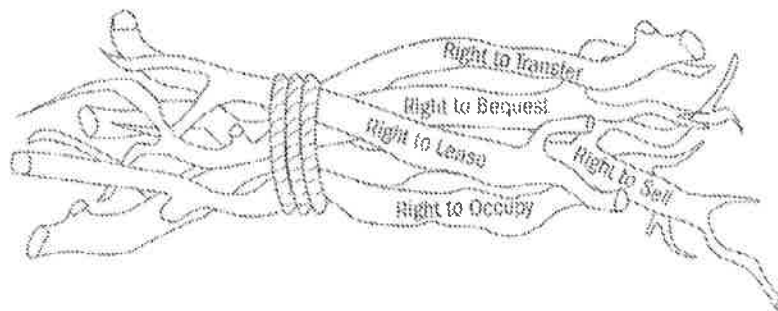
Units of comparison represent the way that typical buyers measure and compare similar properties. Elements of comparison explain the differences in price between properties based on transactional and property characteristics. Generally accepted appraisal methodology requires transactional adjustments be applied before property adjustments **and** in the specific sequence shown below.

1. Real property rights conveyed
2. Financing terms
3. Conditions of sale
4. Expenditures made immediately after purchase
5. Market conditions

The 14th edition states: *Before a comparable sale property can be used in sales comparison analysis, the appraiser must first ensure that the sale price of the comparable property applies to property rights that are similar to those being appraised.*²⁹

The bundle of rights is a common way of referencing the components of interest in real estate. A proper understanding of the bundle of rights is foundational to a properly developed and communicated appraisal. The interest or rights associated with real estate ownership include the right to: use the real estate; sell it; lease it; enter it; and give it away. Each stick has value and can be separated and traded in the market. As shown on the following page, they are often illustrated as a bundle of sticks.

The Bundle of Rights



30

²⁹ The Appraisal of Real Estate, 14th Edition, p 406. (Chicago: Appraisal Institute, 2013).

³⁰ Ibid, p 5.

In this assignment, the interest appraised is fee simple. However, there were limitations on the bundle of rights that must be considered. Buyers of HOA foreclosures can face limitations on any or all of the rights including but not limited to restrictions on occupancy, possession, or use of the property. This risk to the rights was not present in traditional, short sale, REO, or 107 foreclosure transactions.

Another consideration is the limitation on salability and financing. The retrospective effective date is January 25, 2012 (the date of acquisition at public auction). As of that date, there was no title company in Southern Nevada willing to issue title insurance following an HOA foreclosure sale. The lack of insurable clear title would have precluded traditional financing options to a typical buyer. This represents risk to the right of transfer and precludes typical financing options to future buyers. These issues were not present in traditional, short sale, REO, or non-HOA foreclosure transactions.

The 14th Edition states:

The real property rights to be appraised are singled out among the relevant characteristics of the property because, like the appropriate type and definition of value for the assignment, the property rights appraised are a fundamental element of the assignment. An oversight in the analysis of some other characteristic of the property may or may not have a noticeable effect on the ultimate opinion of value, but a poor understanding of what precisely is being valued guarantees a critical error in the development of the appraisal.¹ ... Real property appraisal involves not only the identification and valuation of a variety of different rights, but also the analysis of the many limitations on those rights, and the effect that the limitations have on value.³¹

The cited Appraisal Journal article deals solely with commercial property. However, the concept, that the bundle of rights is fundamental to an appraisal assignment, applies. An additional risk in the purchase of HOA lien properties was the likelihood of litigation. As of the retrospective effective date, numerous district court cases had ended with decision both in favor of and opposed to a buyer's position. The Nevada Supreme Court had not yet interpreted NRS 116.3116. These circumstances are the Detrimental Condition that is referenced in the Holmes appraisal.

³¹ The Appraisal of Real Estate, 14th Edition, p 69-70. (Chicago: Appraisal Institute, 2013).

¹ See David Lennhoff, "You Can't Get the Value Right If You Get the Rights Wrong," *The Appraisal Journal* (Winter 2009): 60-65.

Detrimental Condition

Foreclosures are typically classified as a Class II DC. A brief restatement of the classification and the risk factors appear below.

Class II Detrimental Condition – Transactional Conditions:

Class II transactional conditions relate to situations in which some particular and unique issue impacted a specific transaction. This classification includes transactions in which a buyer pays more than necessary to acquire a property or a seller disposes of a property at a discount.³²

Under the Class II classification, the book *Real Estate Damages* states, “Distress sales often reflect prices below market value due to specific seller motivation including bankruptcy, lender repossessions (real estate-owned or REO), and other factors. When dealing with distressed properties, real estate professionals need to be aware of why these properties may be discounted below market value. ... Forced or semi-forced sales such as REO transactions may result in below market sale prices and, as a result, would not be indicative of typical motivations associated with most definitions of market value.”³³

The Detrimental Condition Matrix: Real property affected by a detrimental condition will typically have a life cycle of three stages: Assessment, Repair, and Ongoing. During each stage, a property may be affected by three related issues: Cost, Use, and Risk. The Detrimental Condition Matrix (reproduced from *Real Estate Damages*) appears below.

Detrimental Condition Matrix			
	Assessment	Repair	Ongoing
Cost	Assessment Costs & Responsibility	Repair Costs & Responsibility	Ongoing Costs & Responsibility
Use	Use Impacts While Assessed	Use Impacts While Repaired	Impact on Highest & Best Use
Risk	Uncertainty Factor	Project Incentive	Market Resistance

³² Randall Bell, PhD, MAI, *Real Estate Damages: Applied Economics and Detrimental Conditions*, 3rd ed. (Chicago: Appraisal Institute, 2016), p. 73.

³³ *Ibid*, p 76 and 77.

DCs follow a logical sequence of events. The market reaction to this DC varied depending on the date of value. Because of the variance, the subject DC would fall somewhere between the *Assessment* and *Repair* stages as of the retrospective effective date. *Cost* issues related to legal expenses and repairs to the property. *Use* issues related to the varying limits on the bundle of rights. The foremost factor facing 116 properties as of the HOA auction date was *Risk* (uncertainty and/or incentive).

Risk: At the time of the HOA auction, there were many unknowns. The risk associated with the subject would be similar to the risk of purchasing a car without the ability to turn the ignition or open the hood. It could also be likened to buying a dented can from a grocery shelf that was missing its label. The typical buyer in these circumstances will require a substantial discount as an incentive to buy. HOA foreclosure properties contained an additional risk. It was a known possibility that even *after* a purchase, the original lien holder might ignore any ownership rights and sell the property out from under the 116 buyer. The typical buyer in these circumstances will require an even greater discount.

Conclusion

The most likely buyer was an investor. The risk noted above represents a Class II Detrimental Condition - Transactional Conditions. The risk and associated costs would have affected a typical investor's decision to purchase. Thereby, reducing the number of potential buyers. The typical buyer for an HOA foreclosure property would require a substantial discount to offset the associated risk.

Traditional sales are so different that they cannot be used as comparable measures of worth for HOA lien properties. Short sales, REO sales and 107 foreclosures should not be used as comparable measures of worth for HOA lien properties without analysis and adjustment of the transactional elements of comparison.

Based on the above analysis, the most logical definition of value would be Impaired Value. The most similar transactions, and therefore the best comparable sales, are other HOA foreclosures.

Sales Comparison Analysis

Research of historical foreclosures and trustees deeds in the MLS tax assessor's database revealed 26,468 transactions, recorded in Clark County, between January 1, 2011, and June 30, 2012. Restricting the search criteria to attached townhouses less than 1,300 square feet of GLA, and built between 1974 and 1994 reduced the number of transactions to 410. Further restricting the search to MLS areas 501-504 revealed 90 potential transactions.

Based on prior analysis, the best comparable sales will be similar HOA foreclosures. Research into the deeds found that only two of those properties (including the subject) were HOA foreclosures under NRS 116. Those transactions appear in the table on the following page. They are sorted by auction date with the most current transactions on top. The subject is highlighted in green. The property at 4208 Rollingsstone is located on the same street and built to the same plan.

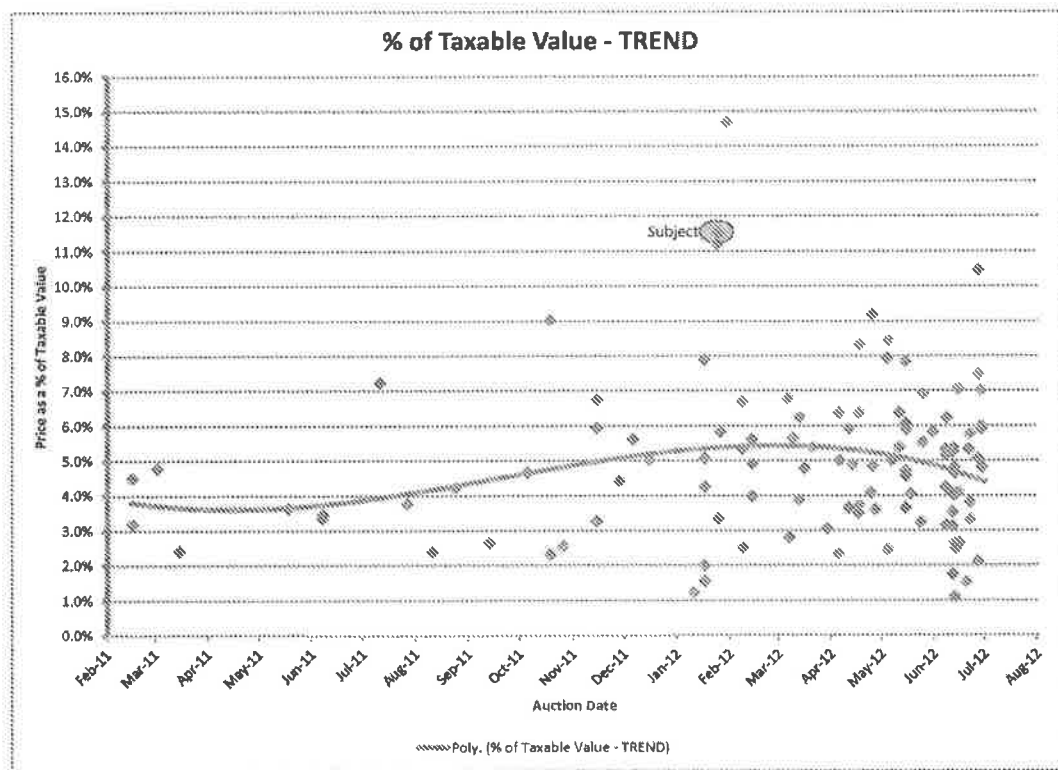
Comparable 116 Sales

File #	Address	Type Sale	Size	Bed	Baths	Year Built	Sq. Feet	Garage	Assessed Value	Auction Price	% of Assessed Value	Auction Date	Notes
303	4254 ROLLINGSTONE DR	TOWNHO	845	2	2	1984	1307		\$46,003	\$5,331	11.5%	1/25/2012	4254 ROLLINGSTONE TR
397	4308 ROLLINGSTONE DR	TOWNHO	840	2	2	1984	1307		\$45,217	\$5,063	11.2%	1/25/2012	4308 ROLLINGSTONE TR

Two sales is not enough data from which to draw a conclusion. The subject sale takes place early in the life cycle of 116 foreclosures in Nevada. Therefore, I expanded the search criteria to include all 116 foreclosures of all properties within the specified period. Omitting outliers, the search resulted in 117 properties that sold at 116 auction. In many HOA lien transactions, the assessed value was used to calculate the real property transfer tax. Assessed value becomes a constant point of reference for comparison. The point statistics for that sample appear in the table below.

Mean	4.9%
Median	4.8%
Mode	6.4%
St. Deviation	2.2%
Min	1.1%
Max	14.7%

Looking at the auction price as a percentage of the assessed value reveals a range from 1.1% to 14.7%. The subject auction price of \$5,331 is 11.5% of the retrospective assessed value. The trend indicated by the sample of all properties appears on the following page.



The shaded oval indicates the subject. It falls above the overall trend and is the second highest of all the sales in the sample. The subject sale is also above the median and mean for the overall sample.

Reconciliation

The subject auction price of \$5,331 (11.5% of the retrospective assessed value) falls above the overall trend and is the second highest of all the sales in the sample. The subject sale is also above the median and mean for the overall sample. It represents the upper end of the range demonstrated by contemporaneous transactions. Based on these facts, my professional opinion is that the subject's acquisition price is equivalent to or above a reasonable, retrospective, impaired value.

As an HOA foreclosure property, affected by a Class II detrimental condition, the fee simple impaired value as of January 25, 2012 was:

\$5,300

Five Thousand Three Hundred Dollars (rounded)

-- END OF REPORT --

Brunson-Jiu, LLC

Addenda

Addenda

- A. Qualifications of Michael Brunson
- B. Expert Disclosure for Michael Brunson

Addendum A: Qualifications of Michael Brunson

Michael L. Brunson, MNAA, SRA

AQB Certified USPAP Instructor

Nevada Certified General Appraiser #A.0207222-CG

California Certified General Appraiser #3003517

Member of the Nevada Real Estate Division Appraisal Advisory Review Committee

Collateral Valuation Specialist

mike@brunson-jiu.com www.brunson-jiu.com

VALUATION BUSINESS BACKGROUND

Brunson-Jiu, LLC (Partner, 2011 – Present) Founding partner of a firm providing real property valuations, consulting and expert witness services. Areas of specialty include: real estate damages analysis for residential, commercial, vacant land and multi-family properties; and business valuation and exit planning strategies.

Bell Anderson & Sanders LLC (Contract Appraiser, 2008 – 2014) Engagement involved studying the economic impact of detrimental conditions, including issues such as environmental contamination, construction defects, legal conditions such as eminent domain, and proximity effects.

Columbia Institute (Instructor, 2009-Present) Approved to teach pre-licensing and continuing education courses related to residential appraisal

Ascent Appraisal, Inc. (Principle/Chief Appraiser, 1997 – 2011) An independent real estate valuation and consulting firm providing a comprehensive range of professional valuation products and services. We specialize in expert witness services; litigation support and consulting; forensic review; and complex valuation assignments.

Institute for Real Estate and Appraisal Studies (Instructor, 2003 – 2009) Approved to teach both pre-licensing and continuing education courses related to residential appraisal.

Ascent Inspection, Inc. (Owner/Primary Inspector, 2001 – 2003) An independent residential and commercial inspection firm providing both pre-purchase and pre-listing property inspections.

Berry & Associates (Registered Intern/Office Manager, 1995 – 1997) Performed single and multi-family residential appraisal assignments in form reports on various property types; conducted extensive market research & due diligence; performed internal appraisal review function; and appraisal office management.

EXPERT WITNESS / CONSULTING

AQB Certified USPAP Instructor The Uniform Standards of Professional Appraisal Practice (USPAP) are the recognized standard of care for professional appraisers. Michael is one of only four certified appraisers qualified as an AQB Certified USPAP Instructor in Nevada. He teaches USPAP courses and provides USPAP consultation to attorneys, appraisers, and lending clients. Michael has completed assignments for civil, probate, real estate damages, and divorce cases. He has qualified as an expert witness in real estate valuation in the 8th Judicial District Court of Clark County, Nevada.

Assignments in which an expert has provided deposition or court testimony are disclosed in compliance with state/federal law. Cases lacking such testimony are confidential.

Cases with Court Testimony: SFR v Green Tree Servicing, A-680704
 Wilmington Trust v Edward Webb, A-700347
 SFR v Green Tree, A-695002
 Shaw v Citi Mortgage, 3:13-cv-00445-LRH-VPC
 Peach v McKay, A-605325 (Arbitration)
 Johnson et al v Stanpark, A-606013
 Santos Probate, P-068058
 Dennett v Miller, A-459131

Deposition Testimony: Bank of America NA v SFR, 2:15-cv-00693-GMN-VCF
 Alessi & Koenig v Storm, A-699883
 PNC Bank v Wingfield CA, 3:15-cv-00349-MMD-VPC
 Platinum Realty v Wells Fargo, 2:13-cv-00535-GMN-NJK
 SFR v Wells Fargo, A-688212
 SFR v US Bank, A-673671
 Wells Fargo v SFR, 2:15-cv-00577-APG-PAL
 Wells Fargo v SFR, 2:15-cv-00748-APG-GWF
 Poshbaby v Elsinore III, A-699435
 Sunlight Trust v Brogan, A-691473
 Wells Fargo v SFR, 2:15-cv-00576-RFB-CWH
 SFR v Green Tree Servicing, A-680704
 FDIC v CoreLogic, SACV11-704 DOC
 Nguyen v Taylor, A-644936
 Aguirre v American Nevada, A-600566
 Copper Sands HOA v Copper Sands Realty, A-560139
 Deutsche Bank v Mha, A-532836
 Carlisle v Pardee, A-421939
 Demby v Chamberlin, A-443513

INTERVIEWS, PUBLICATIONS AND PUBLIC TESTIMONY

Local and national media recognize Michael as an expert in the Las Vegas Real Estate market.

- Interviewed by Real Estate Today, Show 385, 10 Ways to Increase the Value of Your Home, aired June 25, 2016.
- Author, Highlights from the Recent TAFAC Meeting, *Appraiser Focus*, 2nd Quarter 2016, National Association of Appraisers.
- Co-author, Can I get a witness? 10 tips for landing and performing work as an expert witness appraiser, January 14, 2016, *Valuation*, Volume 20, Number Four, The Appraisal Institute.
- Panel Member, Spring 2015 Housing Outlook, Homebuilders Research (May 29, 2015)
- Panel Member, Lied Institute and Nevada Department of Business and Industry - Nevada Housing Forum (September 22, 2014)
- Panel Member, Using the Cost Addendum for High Performance Homes (October, 16, 2013)
- Panel Member, The Green Home Valuation Summit, Phoenix, AZ (September 23, 2013)
- Appraisal Industry Representative, Special City Council Meeting of the City of North Las Vegas, Regarding the underwater mortgage crisis (June 11, 2013)
- Panel Member, Spring 2013 Housing Outlook, Homebuilders Research (April 12, 2013)
- Interviewed by Diana Olick of CNBC (March 5, 2013 published on cnbc.com and aired on the NPR Nightly Business Report)
- Panel Member and Presenter, 2012 High Performance Home & Building Summit (August 15-16, 2012)
- Panel Member, Spring 2012 Housing Outlook, Homebuilders Research (April 27, 2012)
Quoted by Hubbel Smith of the Las Vegas Review Journal.
- Real Estate Panel Member, Spring 2011 Economic Outlook, UNLV Center for Business and Economic Research, (June 20, 2011)
- Interviewed by Jason Morgan of *Valuation Review*, Appraisers caught in the middle of Las Vegas housing market tensions, Online: March, 31, 2011, Print: April 25, 2011
- Interviewed by Calvert Collins of KLAS-TV (aired March 28, 2011)
- Author, Growing Business: Giving Clients What They Need, Vol. 217, March 21, 2011, *Working RE Magazine*
- Interviewed by Hubbel Smith of the Las Vegas Review-Journal (August 5, 2010).
- Interviewed by Calvert Collins of KLAS-TV (aired May 5, 2010)
- Interviewed by Dana Gentry of Las Vegas 1 (aired March 27, 2009)
- Interviewed by Chris Saldana of KLAS-TV (aired March 9, 2009)
- Interviewed by Stephanie Dhue of the Nightly Business Report (aired October 26, 2007).
- Interviewed by Hubbel Smith of the Las Vegas Review-Journal (June 7, 2007).

Michael has provided public comment and testimony before the Nevada Commission of Real Estate Appraisers, the Nevada Assembly Committee on Commerce and Labor and the Nevada Senate Committee on Commerce and Labor on numerous occasions.

MEMBERSHIPS

Appraisal Institute: SRA Designated Member. Awarded February 2015.

National Association of Appraisers: Founding Member. 2010-2016 Director; 2013, 2014 President; 2010-2012 Vice President; Representative to The Appraisal Foundation Advisory Council (TAFAC).

Coalition of Appraisers in Nevada: Founding Member. 2009-2016 Director; 2010-2011 President; 2009 Vice President; Government Relations Committee Chair 2009-2015.

National Association of Realtors

Greater Las Vegas Association of Realtors

TEACHING EXPERIENCE

Approved by the State of Nevada to teach both pre-licensing and continuing education appraisal courses. Michael has also been approved to teach courses in California, Arizona, Indiana, Michigan, Wisconsin, and Utah. A partial list of classes includes:

Fundamentals of Real Estate Appraisal	7 and 15 Hour National Uniform Standards of
Applied Residential Appraisal Techniques I	Professional Appraisal Practice
Appraisal Law in Nevada	How Finance affects Value
Highest & Best Use Analysis I	Advanced Neighborhood and Market Area
Appraising Small Residential Income	Analysis
Properties	Appraising 2-4 & Multi-Family Properties
Cost Approach Revisited	Foreclosures & Short Sales: Dilemmas and
Communicating the Appraisal I, II, III and IV	Solutions

Private seminars authored and instructed by Mr. Brunson:

Neighborhood and Market Analysis I and II
Cost Approach – The Square Foot Method
Mortgage Fraud – An Appraiser’s Perspective (NV CLE Seminar)
Residential Real Estate Appraisal (For Brokers/Agents)
How to Select & Evaluate an Expert Witness (NV CLE Seminar)

EDUCATION

Professional Education

University of Nevada, Las Vegas, Introductory and Intermediate Statistics
 Clark County Community College, Principles of Real Estate Appraisal
 Appraisal Institute, Standards of Professional Practice, Part A (410)
 Appraisal Institute, Standards of Professional Practice, Part B (420)
 Appraisal Institute, Standards of Professional Practice, Part C (430)
 Appraisal Institute, Nevada Appraisal Statutes
 Appraisal Institute, FHA and the Appraisal Process
 Appraisal Institute, Complex Litigation Appraisal Case Studies
 Appraisal Institute, Analyzing the Effects of Environmental Contamination on Real Estate
 Appraisal Institute, Advanced Income Capitalization
 Appraisal Institute, Advanced Spreadsheet Modeling for Valuation Applications
 Appraisal Institute, General Appraiser Site Valuation and Cost Approach
 Appraisal Institute, General Appraiser Sales Comparison Approach
 Appraisal Institute, General Appraiser Market Analysis and Highest and Best Use
 Appraisal Institute, Real Estate Finance, Statistics, and Valuation Modeling
 Appraisal Institute, Advanced Residential Report Writing, Part I and II
 Nevada Commission of Appraisers, Valuing Residential Energy Efficiency
 Chicopee Group, Impact of Financing on Appraisals
 TWI Systems, 50 hours of Professional Inspection Training
 Clark County Community College, 60 hours of home Inspectors Training
 Institute for Real Estate and Appraisal Studies, Applied Residential Appraisal Techniques I
 Institute for Real Estate and Appraisal Studies, Highest and Best Use Analysis I
 Institute for Real Estate and Appraisal Studies, Introduction to Business Appraisal
 Institute for Real Estate and Appraisal Studies, Small Residential Income Properties I
 Institute for Real Estate and Appraisal Studies, Introduction to Commercial Appraisal
 Institute for Real Estate and Appraisal Studies, Income Capitalization I and II
 IRWA, Principles of Real Estate Engineering
 IRWA, Understanding Environmental Contamination in Real Estate
 IRWA, Environmental Due Diligence and Liability
 (Current Continuing Education course list available upon request)

Other Education

University of Nevada at Las Vegas, Las Vegas, NV - 1991
 B.A. in Psychology. Emphasis on experimental psychology and methodology.

Chaparral High School, Las Vegas, NV - 1987
 Graduated with High Honors.

REFERENCES

- Available upon request

Addendum B: Expert Disclosure Requirements

Compensation for Study and Testimony: Michael L. Brunson charged an hourly rate of \$400 per hour for this stage of the assignment. Michael's hourly rate is \$400 for non-testimony time and \$450 for testimony time. Non-testimony time is billed for research, consultation, meetings, field inspections, travel, analysis, deposition preparation, and court preparation. **There is a two-hour minimum for deposition and court testimony. Anticipated fees for deposition and court testimony are to be paid 48 hours prior to the scheduled appearance.**

Publications:

- Author, Highlights from the Recent TAFAC Meeting, *Appraiser Focus*, 2nd Quarter 2016, National Association of Appraisers
- Co-author, Can I get a witness? 10 tips for landing and performing work as an expert witness appraiser, January 14, 2016, *Valuation*, Volume 20, Number Four, The Appraisal Institute.
- Author, Growing Business: Giving Clients What They Need, March 21, 2011, Vol. 217, *Working RE Magazine*
- National Association of Appraisers, Appraisal 4-1-1 e-newsletters

Summary of Recent Testimony:

Cases with Court Testimony: SFR v Green Tree Servicing, A-680704
 Wilmington Trust v Edward Webb, A-700347
 SFR v Green Tree, A-695002
 Shaw v Citi Mortgage, 3:13-cv-00445-LRH-VPC
 Peach v McKay, A-605325 (Arbitration)
 Johnson et al v Stanpark, A-606013
 Santos Probate, P-068058
 Dennett v Miller, A-459131

Deposition Testimony: Bank of America NA v SFR, 2:15-cv-00693-GMN-VCF
 Alessi & Koenig v Storm, A-699883
 PNC Bank v Wingfield CA, 3:15-cv-00349-MMD-VPC
 Platinum Realty v Wells Fargo, 2:13-cv-00535-GMN-NJK
 SFR v Wells Fargo, A-688212
 SFR v US Bank, A-673671
 Wells Fargo v SFR, 2:15-cv-00577-APG-PAL
 Wells Fargo v SFR, 2:15-cv-00748-APG-GWF
 Poshbaby v Elsinore III, A-699435
 Sunlight Trust v Brogan, A-691473
 Wells Fargo v SFR, 2:15-cv-00576-RFB-CWH
 SFR v Green Tree Servicing, A-680704
 FDIC v CoreLogic, SACV11-704 DOC
 Nguyen v Taylor, A-644936
 Aguirre v American Nevada, A-600566
 Copper Sands HOA v Copper Sands Realty, A-560139
 Deutsche Bank v Mha, A-532836
 Carlisle v Pardee, A-421939
 Demby v Chamberlin, A-443513



CLERK OF THE COURT

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Attorneys for *U.S. BANK*

**IN THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK**

U.S. BANK NATIONAL ASSOCIATION ND,
A NATIONAL ASSOCIATION

Case No. A-12-667690-C

Dept. No. XVI

Plaintiff,

v.

**FIRST AMENDED ANSWER TO THE
COUNTERCLAIM**

GEORGE R. EDWARDS, an individual, ANY
AND ALL PERSON UNKNOWN,
CLAIMING TO BE PERSONAL
REPRESENTATIVES OF GEORGE R.
EDWARDS ESTATE OR DULY
APPOINTED, QUALIFIED, AND ACTING
EXECUTOR OF THE WILL OF THE
ESTATE OF GEORGE R. EDWARDS;
RESOURCES GROUP, LLC a Nevada
Limited-Liability Company; GLENVIEW
WEST TOWNHOMES ASSOCIATION, a
Nevada non-profit corporation; DOES
through 10, inclusive, and ROES 1 through 10,
inclusive

Defendants.

COMES NOW U.S. BANK NATIONAL ASSOCIATION ND, A NATIONAL
ASSOCIATION ("U.S. BANK") by and through its attorney of record Thomas N. Beckom, Esq
and Kristin A. Schuler-Hintz, Esq of the law firm of McCarthy Holthus LLP and hereby files this
answer to the counterclaim