

01:52:44 1 I do seem to recall that there may have been  
2 some issue that Mr. Haddad had retained our firm for,  
3 but I don't remember exactly what it was. It would not  
4 be unusual for an investor to look to Alessi & Koenig  
01:53:03 5 for its expertise post sale, so wouldn't surprise me.  
6 But I just can't give you many specifics on that.

7 Q. But generally, though, you would provide post  
8 sale services to investors; correct?

9 A. Not generally. It would be anomaly, but we  
01:53:20 10 have before.

11 Q. And had you done that in -- but you can't  
12 quite recall whether you did that in 2011 or 2012?

13 A. It would surprise me if in 2011 there was any  
14 of that -- any need for that service. In 2012 I'm not  
01:53:38 15 so sure.

16 Q. Okay. So did at any point in time did Alessi  
17 & Koenig have an attorney-client relationship with Iyad  
18 Eddie Haddad?

19 A. Again, I'm not sure. I wasn't involved in any  
01:53:54 20 litigation wherein Alessi & Koenig represented  
21 Mr. Haddad. But again, I'll just repeat, I believe,  
22 there may have been a matter that we represented  
23 Mr. Haddad on for short period of time. I'm just not  
24 exactly sure of the specifics.

01:54:09 25 Q. Do you remember generally what you represented

01:54:11 1 him on?

2 A. No.

3 Q. Do you remember if it was involving quiet  
4 title litigation?

01:54:16 5 A. No.

6 Q. Okay. Let's go ahead and go over to USB0047.

7 A. So 0047 looks to be an unrecorded notice of  
8 delinquent assessment lien. Unsigned.

9 Q. Okay. Why would this unrecorded notice of  
01:54:59 10 delinquent assessment lien be in your collection file?

11 A. So back in 2006, 2007, our entire office went  
12 paperless. So we have just an electronic filing system  
13 and filing program. And when a document -- you see  
14 these bold areas of the document, those bolded areas  
01:55:22 15 are date of sales from the program that get mail merged  
16 into the document. Those data sales are always in the  
17 program regardless of document.

18 When a notice of delinquent assessment lien is  
19 printed to be mailed and notarized and recorded, a copy  
01:55:38 20 of that notice of delinquent assessment lien is  
21 actually saved prior to it being signed or recorded  
22 into the letters and notices tab of our program.

23 Q. Okay. Let's go back one page to USB0046.

24 A. Okay. So that is a copy of the cover letter  
01:55:56 25 that would have accompanied the lien on 0047 or some

01:56:04 1 other delinquent assessment lien.

2 Q. Okay. So this would be the letter. And this  
3 letter, 0046, would accompany 0047 during the  
4 collection process. You would send that out to  
01:56:19 5 individuals?

6 A. I don't know. Yes. Except that I would say,  
7 you know, I can't testify as to whether or not 0047 was  
8 the enclosure with the cover letter or if a signed and  
9 notarized version of 0047 was the enclosure with the  
01:56:35 10 cover letter.

11 I can just testify that a notice of delinquent  
12 assessment lien similar to the one or exactly like the  
13 one on 0047 would have been enclosed with the cover  
14 letter on 0046.

01:56:52 15 Q. Okay. I'm looking at the bottom of 0046. The  
16 documents that were provided by Alessi & Koenig which  
17 you testified to the authenticity to pursuant to the  
18 earlier affidavit we discussed. There is a, looks like  
19 a certified mail receipt at the bottom of the cover  
01:57:11 20 letter that you previously reference at 0046?

21 A. Yes.

22 Q. Okay. Looks like it go -- we can agree that  
23 it goes out to the Edwards, George R Trust at 4254  
24 Rolling Stone Drive; correct?

01:57:22 25 A. Yes.

01:57:23 1 Q. Did you send this notice of lien to anyone  
2 else at all?

3 A. Did we send the notice of delinquent  
4 assessment lien to the delinquent owner? If you're  
01:57:34 5 asking if we sent it to the bank, no, we did not.

6 If the delinquent owner had a off-site  
7 address, we would have sent it to that address as well.

8 Q. Understood. But you would not send the notice  
9 of delinquent assessment lien to any form of deed of  
01:57:49 10 trust holder on the property pursuant to the policies  
11 and procedures of Alessi & Koenig at this time?

12 A. Correct.

13 Q. Okay. And so we can agree that then -- you  
14 have no reason to believe that US Bank ever received  
01:58:03 15 this notice of lien?

16 A. I can't testify to that. They wouldn't have  
17 received it from us mailing it to them.

18 Q. Okay. Let's go on to USB0049.

19 A. There is the title report from First American  
01:58:22 20 Title?

21 Q. You've seen this document before, sir?

22 A. I do not have a specific recollection of  
23 seeing this document, but I have certainly seen this  
24 form of document before.

01:58:33 25 Q. Okay. And why would this title report for

01:58:37 1 First American Title be in the collection file?

2 A. We use this document to help us ascertain the  
3 parties in interest, the parties with a recorded  
4 interest on the property that we are foreclosing on.

01:58:52 5 Q. Okay. And this would assist you in mailing  
6 out the appropriate notices to all the lienholders and  
7 everyone the title denoted?

8 A. Correct.

9 Q. Okay. Let's go over to US -- and that would  
01:59:05 10 be the title report we're referring to, I guess, we're  
11 both talking about, goes to USB0049 to USB0053; is that  
12 your understanding, Mr. Alessi?

13 MR. VILKIN: Objection, misstates the  
14 evidence.

01:59:19 15 THE COURT: I'll sustain. Rephrase.

16 BY MR. BECKOM:

17 Q. Can you identify for me where this title  
18 report begins and ends?

19 A. The title report begins on USB0049 and ends on  
01:59:35 20 USB0053.

21 Q. Okay. And, I guess, you would rely on this  
22 document for the parties to -- you would rely on this  
23 document to determine which parties to mail foreclosure  
24 notices to; correct?

01:59:51 25 A. This is -- this would be part of the body of

01:59:56 1 documents that we would rely on.

2 Q. Okay. Go over to USB0051.

3 A. Yes.

4 Q. What is your understanding of this page right  
02:00:13 5 here, sir?

6 A. This page, subsection D, shows the following  
7 deeds of trusts affecting the land. And then it gives  
8 you a list. It shows a deed of trust dated March 25,  
9 2009.

02:00:34 10 Q. Okay.

11 A. And you have one March 20 -- yeah. And  
12 there's also a claim of lien from Republic Services.

13 Q. Okay.

14 A. And then it also shows -- well, then on  
02:00:46 15 subsection 5 it shows the notice of delinquent  
16 assessment lien recorded by Glenview West.

17 Q. And, I guess, and you can correct me if I'm  
18 wrong here, but you previously testified that you would  
19 rely on this title report to mail the notices out;  
02:01:01 20 correct?

21 A. My testimony was that this would be part of  
22 the documents that we would rely on.

23 Q. Okay. We can both agree that the trustee  
24 listed on this title report is US Bank Trust Company;  
02:01:10 25 correct?

02:01:11 1

A. Yes.

2

Q. And we can also both agree that the  
beneficiary on this title report is US Bank National  
Association, ND; correct?

02:01:20 5

A. Yes.

6

Q. Would Alessi & Koenig typically mail -- as  
part of your procedures, would you typically mail  
documents to those two entities based on this title  
report?

02:01:29 10

A. It depends. It depends if there were any  
assignments. And that's why I say this is part of what  
we rely on. If there was an assignment on the deed of  
trust, that would be relevant.

14

02:01:49 15

Q. Would you rely on this document to mail out  
the notice of default on the homeowners association  
lien?

17

A. Again, this would be part of what we rely on  
to mail out the notice of default.

19

02:02:02 20

Q. Okay. What would be the other part you would  
rely on?

21

A. We do in-house research. Clark County has  
always had great online information available vis-à-vis  
the assessor's page and the recorders' page, where we  
can find assignments or judgments that the title plant  
might have missed.

02:02:21 25

02:02:21 1 Q. Okay. But you would just use the Clark County  
2 Assessor's website to supplement this title report?

3 A. Correct.

4 Q. Okay. And you would make sure that whoever  
02:02:31 5 was listed on the title report got the appropriate  
6 mailings as part of the policies and procedures?

7 A. Usually. I can imagine a situation where  
8 whoever is listed on the title report would be a former  
9 holder of a deed of trust, and the title report did not  
02:02:50 10 show an assignment. You know, the tens of thousands of  
11 foreclosures that we did, I'm sure that's happened.

12 Q. Okay.

13 A. But you're correct. In large part, the title  
14 report forms the foundation of what we rely upon to  
02:03:05 15 mail the notice of default.

16 Q. And would you think in your, I guess, based on  
17 your policies and procedures it would not follow Alessi  
18 & Koenig's policies and procedures to mail this to  
19 anyone other than these two entities, US Bank Trust or  
02:03:19 20 US Bank National Association unless there was some form  
21 of assignment, correct?

22 A. Well, every file is different. And I would  
23 like -- you know, I would feel more comfortable going  
24 through the file before I answer that question.

02:03:29 25 Q. Not that --



02:03:29 1 A. Because every file is different. I know that  
2 the mailing department would engage in their own  
3 analysis. So, again, this is part of it, but I don't  
4 want to commit to this being everything.

02:03:40 5 Q. Okay. Go over to USB0075.

6 A. Yes.

7 Q. Do you know what this document is that we're  
8 looking at, sir?

9 A. There is -- it's a certified mail receipt  
02:04:24 10 showing that a document was mailed to Edward George  
11 Trust. It also lists some other entities on it.

12 Q. What --

13 A. This looks to be a document that came from our  
14 program.

02:04:42 15 Q. Do you know what the purpose of this list of  
16 addresses up here would be?

17 A. The list of these addresses -- I don't know --  
18 I don't have a doc -- the list of these entities at the  
19 top of the document would be the entities that the  
02:05:15 20 notice of default -- looks to be the entities, just  
21 leafing through this, that the notice of default was  
22 mailed to.

23 Q. And how are you -- how are you drawing that  
24 conclusion, sir?

02:05:29 25 A. By the order that the paper is in the file.

02:05:33 1 Q. Which -- do you see the numbers in the bottom  
2 right-hand corner, the Bates No.?

3 A. Yes.

4 Q. Can you just identify for me, and also the  
02:05:43 5 Court, which Bates range you're relying on to, I guess,  
6 draw the conclusion that these were the mailing  
7 addresses for the notice of default which Alessi &  
8 Koenig sent?

9 A. I am looking at Bates -- I'm going to use the  
02:06:02 10 AK Bates 44 through AK48.

11 Q. 48?

12 A. Yes.

13 Q. Okay. So is it your understanding that if an  
14 entity is not listed on USB0075 and as you just  
02:06:17 15 referred it to A&K44, then Alessi & Koenig did not mail  
16 notice to anyone that was not on this list?

17 A. I mean, there's a lot of papers in this file.  
18 I mean, I would have to -- I wouldn't be able to tell  
19 you that off -- yet in the testimony.

02:06:37 20 Q. Well, I'll tell you what. We've previously  
21 talked about that title report where we discussed US  
22 Bank National Association, ND as being listed on that  
23 title report. Do you recall that, sir?

24 A. Yes.

02:06:52 25 Q. Okay. And then I think you also just

02:06:55 1 testified that this list right here at USB0075 is the  
2 list of people that received the notice of default.  
3 Can we agree on that as well?

4 A. Bear with me if you don't mind. I'm trying to  
02:07:14 5 locate a status report. I see one on AK70 or USB101.  
6 But it looks to be an incomplete status report. And  
7 the -- if I -- if I could -- if you could direct me to  
8 a complete status report which is off the -- which is a  
9 part of our document production that would be helpful  
02:07:33 10 to me.

11 Q. Well, I'll tell you what, why don't you take a  
12 moment, sir, since you were the custodian of records  
13 for Alessi & Koenig on this collection file that we've  
14 discussed.

02:07:49 15 A. Yes.

16 Q. Correct. Would you like to take a moment and  
17 see if you can find some document that indicates that  
18 Alessi & Koenig sent US Bank National Association the  
19 notice of default for this foreclosure for the property  
02:08:03 20 that brings us here today.

21 A. So I'm looking at AK01. And you can see  
22 there's an entry 4-5-2011, 10-day notice of default  
23 mailings.

24 Q. Where -- you are looking at USB0032?

02:08:34 25 A. Yeah.

02:08:35 1 Q. AK0001?

2 A. And 0033.

3 Q. What date did you refer to, sir?

4 A. I'm looking at the entry 4-5-2011, 4-12-2011.

02:08:53 5 Those appear to relate to the mailing shown on AK

6 USB75.

7 Q. And does that indicate to you at all that

8 US -- that Alessi & Koenig sent the notice of default

9 to US Bank National Association, sir?

02:09:17 10 A. It does not.

11 Q. Okay.

12 A. It indicates US Recordings as, but I do not

13 see US Bank.

14 Q. Okay. And you have no -- you don't have any

02:09:34 15 information -- because I believe you testified earlier

16 that it was the policies and procedures of Alessi &

17 Koenig to mail it out -- mail out the notice of default

18 to the entities contained in the title report; correct?

19 A. Against who?

02:09:47 20 Q. We talked about that title report earlier from

21 First American Title; do you recall?

22 A. Yeah. Yeah.

23 Q. Okay.

24 A. That was one -- that is one of the sources.

02:09:55 25 So it's possible that there's an assignment not shown

11:11:46 1 BY MR. BECKOM:

2 Q. Mr. Heifner, can you direct your attention to  
3 Exhibit 4 USB0016.

4 A. Yes.

11:12:05 5 Q. Can you go down to Section 16 that's entitled  
6 Notice?

7 A. Yes.

8 Q. Says:

9 Unless otherwise required by law any notice  
11:12:15 10 shall be given by delivering it to or by  
11 mailing it by First Class Mail to the  
12 appropriate party's address on page 1 of this  
13 security instrument or any other address  
14 designated in writing.

11:12:28 15 Do you see what I'm talking about?

16 A. Yes.

17 Q. Is it your understanding that that provision  
18 is just -- that's directing every -- like, direct  
19 everyone who reads this deed of trust that they need to  
11:12:40 20 send it to the correct address that's listed on that  
21 first page of the deed of trust?

22 A. Yes.

23 Q. Okay. And then going back to USB0011, the  
24 address delineated for US Bank National Association, ND  
11:12:57 25 again is the 4325 17th Avenue, Southwest, Fargo, North

11:13:02 1 Dakota, 58103.

2 Is that your understanding?

3 A. Yes.

4 Q. Okay. And so this deed of trust actually does  
11:13:10 5 direct parties to notice US Bank in Fargo, South  
6 Dakota? Or is that your understanding?

7 A. It is. And also it goes on to say that notice  
8 to one is not notice to all so an error of caution.

9 Q. Okay.

11:13:24 10 A. Notice to each address.

11 Q. So US Bank actually does request notice in  
12 Fargo, South Dakota under this deed of trust?

13 A. Yes.

14 Q. And is that deed of trust was filed in the  
11:13:34 15 property records on March 28, 2009; correct?

16 A. Yeah. I think there was a prior recording  
17 that we refinanced. There was a prior deed of trust on  
18 the property through US Bank with the same borrower  
19 that was refinanced advancing additional funds --

11:13:51 20 Q. So US Bank --

21 A. -- dating back longer than that. So this one  
22 would be the most -- the latest deed of trust recorded  
23 by US Bank.

24 Q. Fair enough. And so by the latest recording  
11:13:59 25 in the property records prior to, let's say, 2012, US

11:14:03 1 Bank had indicated to everyone on the property records  
2 that they wanted to be served process in Fargo, North  
3 Dakota?

4 A. Yes.

11:14:11 5 Q. Okay.

6 MR. BECKOM: I don't think I have anything  
7 further from this witness, your Honor.

8 THE COURT: Anything else, sir?

9 MR. VILKIN: Yes, your Honor, a couple.

11:14:20 10

11 RE CROSS-EXAMINATION

12 BY MR. VILKIN:

13 Q. Mr. Heifner, with regard to Exhibit 4,  
14 paragraph 16, it's talking about notice, correct?

11:14:33 15 A. Yes.

16 Q. Do you know whether that's notice between the  
17 parties to the agreement or notice to parties not part  
18 of the agreement?

19 A. Without making a legal speculation, I would  
11:15:00 20 say any parties given that it's any notice shall be  
21 given -- any notice shall be given by delivering it by  
22 mailing it first class mail. I would say the  
23 indication of any party. Any party involved in the  
24 contract will be noticed by this method.

11:15:22 25 Q. Any party involved in this --

11:15:23 1 A. So if anyone --

2 Q. -- contract, correct?

3 A. If you wanted to notice someone within these  
4 parties, this is how you would notice them.

11:15:29 5 Q. Okay. 16 also talks about sending it to the  
6 appropriate party, correct?

7 A. Yes.

8 Q. Okay. How is someone not a party to this  
9 agreement supposed to know who the appropriate party is  
11:15:43 10 based on the four addresses on page 1 of Exhibit 4?

11 A. The document --

12 MR. BECKOM: Objection. Calls for  
13 speculation.

14 THE WITNESS: -- will --

11:15:52 15 MR. VILKIN: It's their document, your Honor.  
16 They're saying they should have got notice. I'm asking  
17 how somebody is supposed to know where to send it.

18 THE COURT: I'll overrule.

19 MR. VILKIN: Thank you.

11:16:07 20 THE WITNESS: My -- the document is recorded.  
21 And it also goes on to state that notice of one grantor  
22 will not be notice to all. So this would be a public  
23 record.

24 BY MR. VILKIN:

11:16:18 25 Q. So in your view if you sent the notice to one



11:16:19 1 of the four it would be deemed notice to all; correct?

2 A. No. It specifically states that notice to one  
3 is not notice to all.

4 Q. It says -- in item 16?

11:16:30 5 A. I believe so.

6 Q. Take a look at the last sentence. Is that  
7 what you're talking about?

8 A. Yes. Notice to one is notice to all.

9 MR. VILKIN: Thank you. Nothing further.

11:16:39 10 MR. BECKOM: I have one further clarification  
11 I'd like to make, your Honor.

12

13 FURTHER REDIRECT EXAMINATION

14 BY MR. BECKOM:

11:16:44 15 Q. It says -- now going back to Section 16 of the  
16 notice provision. I believe my colleague here is  
17 discussing the sentence that says notice to one grantor  
18 will be deemed notice to all grantors. Do you see what  
19 I'm talking about?

11:16:57 20 A. Yes.

21 Q. Let's go back to page 1 of the deed of trust.  
22 Who is listed as a grantor under this document?

23 A. The unmarried man of George R. Edwards.

24 Q. Okay. And then your understanding was US  
11:17:13 25 Bank. US Bank's understanding is that they are not a

11:17:16 1 grantor under this document?

2 A. That is correct.

3 Q. Okay.

4 MR. BECKOM: Nothing further.

11:17:22 5 MR. VILKIN: I have nothing further, your  
6 Honor.

7 THE COURT: Okay. Will there be any need to  
8 call this witness back? Are we finished?

9 MR. VILKIN: I don't intend to, your Honor.

11:17:30 10 THE COURT: All right.

11 MR. BECKOM: I can talk to him whenever I  
12 want.

13 THE COURT: But as far as calling him back.

14 MR. BECKOM: I don't believe so. If anything  
11:17:36 15 changes, I have his cell phone number, and we can get  
16 him back here on pretty short order on the phone.

17 THE COURT: Sir, you're released. Thank you.

18 THE WITNESS: Thank you, your Honor.

19 THE MARSHAL: Please watch your step as you  
11:17:47 20 step down.

21 MR. VILKIN: Thank you, your Honor. If I may  
22 just have a moment with counsel on planning here.

23 THE COURT: You sure can.

24 MR. VILKIN: Your Honor, addressing the issue  
11:18:06 25 we raised earlier, we've got two witnesses. One

11:18:09 1 witness will be relatively short. She has a 2:00 p.m.  
2 appointment. The other witness has a 1:00 p.m. other  
3 testimony. If we started him after the short witness,  
4 we probably wouldn't get done. But if the Court is  
11:18:21 5 willing to finish him at another time, no problem.

6 THE COURT: Okay.

7 MR. BECKOM: Probably. You think it's going  
8 to be an issue?

9 THE COURT: I want to take the short witness.  
11:18:30 10 Are we going to take him right now, right? Take a  
11 quick break and then take a short witness.

12 MR. VILKIN: Yes.

13 THE COURT: And then -- and the longer  
14 witness, what's anticipated? What do you anticipate to  
11:18:44 15 add to the case?

16 MR. BECKOM: Mr. Alessi is the corporate  
17 witness for Alessi & Koenig.

18 THE COURT: Okay.

19 MR. BECKOM: Who is the trust deed that  
11:18:52 20 conducted the sale. We, at least US Bank, expects  
21 extensive testimony from Mr. Alessi regarding the sale.

22 MR. VILKIN: And as do we, your Honor. He's  
23 going to be longest witness of the case.

24 THE COURT: Okay. So what do you want to do  
11:19:04 25 with him?

11:19:06 1 MR. VILKIN: Well --

2 MR. BECKOM: We can call -- if he's got a

3 trial at 1:00, I have no objection to --

4 THE COURT: He's busy, huh.

11:19:11 5 MR. BECKOM: Pretty busy.

6 MR. GEISENDORF: Maybe we can check and see if

7 he's being called at 1:00 or 3:00 or 4:00.

8 MR. VILKIN: He's very busy.

9 THE COURT: What I'll do, we'll step down for

11:19:20 10 15.

11 MR. VILKIN: Okay.

12 THE COURT: You have one short witness, right?

13 MR. VILKIN: Right.

14 THE COURT: We can bring him in after this,

11:19:25 15 and we will deal with him when we have to deal with

16 him.

17 MR. VILKIN: Okay.

18 MR. BECKOM: Sounds good, your Honor.

19 -o0o-

(Recess)

11:19:29 20 -o0o-

21 THE COURT: All right. We can go back on the

22 record.

23 MR. BECKOM: We have one minor housekeeping

24 matter. I guess, we briefly talked before we recessed.

11:48:43 25 I was talking to Mr. Vilkin about this that Mr. Alessi

11:48:47 1 is actually under a trial subpoenaed right next door in  
2 Courtroom 12C with Judge Miley at 1:00. We're trying  
3 to figure out the best way to handle getting him in. I  
4 think we're taking a short witness now, but we do  
11:48:59 5 expect --

6 THE COURT: I mean, it's one of those things  
7 where it would be nice if we could get him in today. I  
8 don't know if we can or not, but I'm willing to work  
9 with whatever availability we have. If we can get him  
11:49:11 10 done today, I think we can make fairly significant  
11 inroads into the trial.

12 MR. BECKOM: No. Agreed. So we'll try to get  
13 him in?

14 THE COURT: Might be 2:30, right? Could be.

11:49:21 15 MR. VILKIN: What, until we finish with him?

16 THE COURT: No. I mean, when we start with  
17 him.

18 MR. VILKIN: Yeah. Could be.

19 MR. GEISENDORF: The door was locked.

11:49:28 20 MR. VILKIN: Right. We went and checked in  
21 the Department 23 to see if we could find out anything.  
22 But the door is locked.

23 THE COURT: Is the door locked? Are they in  
24 session next door, do you know?

11:49:40 25 Mike, are they in session next door?

11:49:44 1 THE MARSHAL: No, your Honor, they were not.  
2 But I can check on them again for you. They had a  
3 hearing or calendar earlier.

4 THE COURT: So they might be starting. Find  
11:49:50 5 out real quick if they're in session next.

6 THE MARSHAL: Who's the person we're looking  
7 for?

8 MR. VILKIN: David Alessi.

9 MR. BECKOM: He's under a trial subpoena for  
11:50:00 10 both. This department as well as --

11 THE COURT: Just find out if they're going to  
12 start trial at 1:00 o'clock.

13 THE MARSHAL: Yes, sir.

14 THE COURT: I guess, we can bring -- how long  
11:50:08 15 is this next witness going to take?

16 MR. BECKOM: Not long.

17 MR. VILKIN: 15, 20 minutes hopefully.

18 THE COURT: Okay. Let's see if we can get it  
19 done.

11:50:17 20 MR. BECKOM: You want to call him.

21 MS. BAKER: Yeah. Are we ready?

22 THE COURT: Yeah.

23 MS. BAKER: I'd like to call the  
24 representative for Glenview West Townhomes Association.

11:50:27 25 We have to wait for the Marshal to get her.

11:50:30 1 THE COURT: You can get her.

2 MS. BAKER: Okay. I'm going to set up the ...

3 KIM KALLFELZ,

4 having been first duly sworn to testify to the truth,  
11:50:37 5 the whole truth and nothing but the truth, was examined  
6 and testified as follows:

7 THE COURT CLERK: Please be seated. And if  
8 you will state and spell your name for the record,  
9 please.

11:51:36 10 THE WITNESS: Kim Kallfelz. First name Kim,  
11 K-I-M. Last name Kallfelz, K-A-L-L-F-E-L-Z.

12

13 DIRECT EXAMINATION

14 BY MR. BECKOM:

11:51:48 15 Q. Good morning, Kim. Can you please tell me  
16 what your occupation is?

17 A. I own HOA Management.

18 Q. Okay. And how are you affiliated with  
19 Glenview West Townhomes Association?

11:52:01 20 A. August 1st of 2017 I became their community  
21 manager.

22 Q. Okay. So you've been just recently?

23 THE MARSHAL: They had morning trial calendar.

24 It's all done. But they do have something at 1300

11:52:15 25 that's a civil bench trial.

11:52:17 1 THE COURT: That's 1:00 o'clock?

2 THE MARSHAL: Yes, sir. Nobody could say

3 anything specific about Brian Alessi.

4 MR. VILKIN: David Alessi.

11:52:24 5 THE MARSHAL: David, David. They couldn't say

6 specifically about him. But at 1300, they do have a

7 trial if it's the same person.

8 THE COURT: We'll find out.

9 MR. VILKIN: Yeah. And he may not be

11:52:35 10 scheduled to go first too, so.

11 THE COURT: I understand.

12 Okay. Continue on, ma'am.

13 MS. BAKER: Thank you.

14 BY MS. BAKER:

11:52:43 15 Q. So you're a manager, and you manage -- you own

16 your own company; is that -- I'm just understanding

17 what's going on.

18 A. Correct.

19 Q. Recapping. And then you're hired by Glenview

11:52:55 20 to do what?

21 A. To be their community manager.

22 Q. Okay. And what are the duties of the

23 community manager?

24 A. Well, we handle all of the financial vendors,

11:53:08 25 collection of dues, payment of -- payments every month.



11:53:14 1 Basically --

2 Q. Okay.

3 A. -- it's a corporation. We take care of all of  
4 the parts of the corporation.

11:53:18 5 Q. Okay. And how many homes are in this  
6 association?

7 A. Fifty.

8 Q. All right. And are you familiar with the  
9 account for 4254 Rolling Stone Drive?

11:53:31 10 A. Well, I am familiar with that address, yes.  
11 It's part.

12 Q. You're familiar with the address?

13 A. Yes.

14 Q. Have you had a chance to review the records  
11:53:39 15 for this property?

16 A. I have to a very limited degree.

17 Q. Okay. There's an exhibit book in front of  
18 you. I'm going to have you open it to Exhibit Tab 7.  
19 Starts on page USB0154. It's on the bottom. You can  
11:54:02 20 see they're numbered. You want to go to 0154.

21 So the document I'm referring to goes through?

22 A. 054 or 45?

23 Q. 54.

24 A. Okay.

11:54:33 25 Q. And the document ends at USB0169. Do you have

11:54:37 1 all those pages in between?

2 A. I do, yes.

3 Q. Okay. And is this the declaration of  
4 covenants, conditions, and restrictions for the HOA?

11:54:48 5 A. It looks like it, yes.

6 Q. And it looks like a true and correct copy and  
7 we're going to call it CC&Rs?

8 A. Okay. That's correct.

9 Q. Okay. And this CC&R, what is this? What are  
11:55:01 10 CC&Rs?

11 A. These are the governing documents of the  
12 association.

13 Q. And does this document put everyone on notice,  
14 potential buyers or anybody that this is what the  
11:55:12 15 duties of the HOA and what homeowner's responsibilities  
16 are?

17 A. Yes.

18 Q. Okay. And homeowners need to pay a monthly  
19 due?

11:55:25 20 A. Correct.

21 Q. And how much are the monthly dues?

22 A. \$130 right now.

23 Q. Okay. And is that was the same in 2011, 2010?

24 A. I don't know.

11:55:35 25 Q. Okay. And in looking at the CC&Rs, I'm going

11:55:42 1 to have you look at -- let's see, USB0164. Or actually  
2 can I admit --

3 MS. BAKER: I'm going to admit the CC&Rs into  
4 evidence.

11:55:55 5 MR. VILKIN: No objection.

6 THE COURT: So admitted. What exhibit is  
7 that, ma'am?

8 MS. BAKER: This is under Exhibit 7.

9 MR. VILKIN: Your Honor, I believe we have a  
11:56:06 10 stipulation that all of Exhibit 7 is admitted.

11 THE COURT: Okay.

12 MR. BECKOM: I believe that is correct.

13 BY MS. BAKER:

14 Q. But specifically, let's look at page USB164.

11:56:22 15 Let's see. The article starts on actually on USB0160.

16 Can you -- what's the title of this article? I'm  
17 saying Article 5, association members voting rights; is  
18 that correct?

19 A. Correct. Section 1 Article 4.

11:56:48 20 Q. Okay. Sorry.

21 A. 5, I meant.

22 Q. Sorry. Let's go USB0161. Article 6 is  
23 covenant for maintenance assessments; is that correct?

24 A. Yes, it is.

11:57:03 25 Q. Okay. And then Section 11 is within that

11:57:06 1 article. It's on USB164?

2 A. Correct.

3 Q. Okay. And Section 11 is a subordination of  
4 the lien to mortgages; is that correct?

11:57:17 5 A. Correct.

6 Q. Okay. And this states that the lien of the  
7 assessments provided herein shall be subordinate to the  
8 lien of any first mortgage; is that correct?

9 A. That's what it says.

11:57:32 10 Q. Okay. So what is the HOA's stance in how --  
11 is it -- let me question this.

12 Is it the HOA's policy to subordinate their  
13 lien to the first mortgages based on these CC&Rs?

14 A. Well, of course, the CC&Rs are subject to  
11:57:53 15 NRS statutes and changes.

16 Q. I understand that. But this, I'm looking  
17 at --

18 A. So they supersede this number 11.

19 Q. I'm not asking what per the statute. I'm  
11:58:03 20 asking what these CC&Rs state. These CC&Rs, the  
21 interpretation here is that it subordinates the lien;  
22 is that correct?

23 A. Well, I would say that it's correct as these  
24 words are, but it's not correct in practice.

11:58:20 25 Q. Okay. But it was the HOA's intent to

11:58:29 1 subordinate the lien per these CC&Rs; is that correct?

2 A. I'd say, yes, but --

3 Q. Okay.

4 A. -- back when this was --

11:58:36 5 Q. And then?

6 A. -- record --

7 Q. That's fine.

8 THE COURT: One at a time. Thank you.

9 BY MS. BAKER:

11:58:41 10 Q. And then let's go further into this. The last  
11 sentence is: No sale or transfer shall relieve said  
12 lot from liability for assessments therein becoming  
13 due -- or sorry; is that correct? That's what it says?

14 A. That's correct what it says.

11:59:03 15 Q. Okay.

16 A. Yes.

17 Q. And then the sentence before that says:

18 However, the sale or transfer of any lot purchase or  
19 mortgage foreclosure or any proceeding in lieu thereof  
11:59:13 20 shall extinguish the lien of such assessments as to any  
21 payments which became due prior to the sale or  
22 transfer?

23 A. That's what it says.

24 Q. Okay. Okay. And then let's go to page --

11:59:37 25 it's page 14 of the CC&Rs, but it's USB0168. Under

11:59:48 1 Article 11, General Provisions. Section 3 is  
2 Amendment. So what is your understanding of how -- how  
3 to amend these CC&Rs?

4 A. Well, in Section 11 it says that if there is  
12:00:13 5 an amendment to the CC&Rs, then they would need a  
6 75 percent vote of the lot owners.

7 Q. Okay. Well, in Section 3 of the amendment it  
8 says, Not less than 90 percent of the lot owners or --  
9 let's see.

12:00:41 10 For the first 30-year -- for the first 30  
11 years; is that correct? And then after that it's 75?

12 A. Yes. That's correct.

13 Q. And how many board members are there? Or lot  
14 owners? You said there's 50 lot owners; correct?

12:00:56 15 A. Um-hum, correct.

16 Q. And how many board members?

17 A. Five board members.

18 Q. Okay. And do you have regular contact with  
19 the board members?

12:01:06 20 A. Yes, I do.

21 Q. All right. And you speak to them regularly?

22 A. Yes, I do.

23 Q. Okay. And so it's -- to amend the CC&Rs  
24 it's -- it's pretty easy to amend the CC&Rs based on if  
12:01:20 25 there's a provision that gives the availability to

12:01:24 1 amend?

2 A. It is never easy to amend CC&Rs.

3 Q. Okay. But there is a provision to amend the  
4 CC&Rs?

12:01:33 5 A. There is.

6 Q. Okay. And what is the HOA's collection  
7 policy?

8 A. Currently?

9 Q. In 2011 and 2012.

12:01:48 10 A. I do not know.

11 Q. What is currently the collection policy?

12 A. What is the collection policy currently?

13 Well, I don't have it with me, so I can't tell you  
14 verbatim, but it's pretty much that after 60 days, a

12:02:06 15 letter can be sent to the delinquent homeowner with --

16 they have four or five things that they can have as  
17 options. They can pay it in full. They can get into a  
18 payment plan. They can have a hearing, or if they  
19 don't respond within 30 days, they can be sent to  
12:02:30 20 collections.

21 Q. Going back to the amendment of the CC&Rs, to  
22 your understanding has the CC&Rs been amended at all?

23 A. Not to my knowledge.

24 Q. Okay. Has there been any attempt to amend the  
12:02:48 25 CC&Rs?

12:02:48 1 A. I do not know.

2 Q. Okay. So your question is it's never -- it's

3 not easy to amend. How do you know it's not easy to

4 amend the CC&Rs?

12:02:56 5 A. Well, I've been in business 18 years.

6 Q. Okay.

7 A. And in order to get an amendment to the CC&Rs,

8 it's very difficult to get the percentage you need of

9 owners to amend CC&Rs.

12:03:11 10 Q. All right. But there's only 50 owners;

11 correct?

12 A. Correct.

13 Q. And you'd only need 75 percent. But if you

14 got 75 percent, you were able to amend the CC&Rs; is

12:03:28 15 that correct?

16 A. That's correct.

17 Q. Okay. Going back to collection, you said the

18 policy is to send out a letter. And then you said the

19 efforts to work out a resolution with a delinquent

12:03:43 20 homeowner would be to pay in full or a payment plan.

21 Is there any other options?

22 A. Yes. They can have a hearing. Right now

23 currently?

24 Q. Yes.

12:03:53 25 A. They can have a hearing in front of the board.



12:03:55 1 Q. And if they wanted to challenge, say, the  
2 amount owed, they don't believe the amount owed is  
3 accurate, they would ask for a hearing?

4 A. They could do that. I mean, you know, the  
12:04:09 5 amount owed is generally done in a ledger so that it's  
6 pretty clear.

7 Q. Okay.

8 A. But certainty anybody can say it's wrong.

9 Q. Okay. Have you looked at the accounting of  
12:04:20 10 this property at 4254 Rolling Stone Drive?

11 A. Yes.

12 Q. Okay. And how -- what was the accounting like  
13 in 2010, 2011?

14 A. I do not know.

12:04:34 15 Q. But you reviewed the records?

16 A. I know. But I reviewed my records, and the  
17 records of Pinnacle.

18 Q. Okay. What about the records prior to  
19 Pinnacle?

12:04:44 20 A. I do not have any records prior to Pinnacle.

21 MS. BAKER: Nothing further at this time.

22

23 CROSS-EXAMINATION

24 BY MR. VILKIN:

12:04:57 25 Q. Good afternoon, or good morning, ma'am.

12:04:59 1 A. Good afternoon.

2 Q. I'll try to be brief. If you could look at

3 Exhibit 8 page 207. Are you there?

4 A. Yes, I am.

12:05:28 5 Q. Okay. So if you could just look at pages 207

6 through 212. And my question is what is that?

7 A. This looks like a ledger of the county for

8 4254 Rolling Stone Drive.

9 Q. And do you know who prepared this?

12:05:54 10 A. No, I do not.

11 Q. Does this look like something -- well, back in

12 2012 was your company the manager for Glenwest?

13 A. No, it was not.

14 Q. Glenview, I'm sorry. So when did you become

12:06:08 15 manager?

16 A. August 1st, 2017.

17 MR. VILKIN: Nothing further, your Honor.

18 THE COURT: Okay. Anything else?

19 MS. BAKER: Yes.

12:06:20 20

21 REDIRECT EXAMINATION

22 BY MS. BAKER:

23 Q. So prior to you taking over as manager for

24 Glenview, there was -- do you know the person by the

12:06:36 25 name of George -- or sorry, Ronald Stevenson.

12:06:40 1 A. I did not know him.

2 Q. Okay. Did you know of him?

3 A. I know that he worked for Pinnacle.

4 Q. Okay.

12:06:51 5 A. And he was their manager I think.

6 Q. Okay.

7 A. For a while.

8 Q. So he was a manager for a while for the HOA?

9 A. Yes.

12:06:59 10 Q. Do you know why he's no longer the manager?

11 A. Well, Pinnacle no longer manages --

12 Q. Okay.

13 A. -- Glenview West, but I think Ronny Stevenson

14 is deceased.

12:07:15 15 Q. Okay. Would you be -- you would not be

16 surprised if he was called as a witness for a

17 deposition for this matter?

18 A. No, I would not.

19 Q. Okay.

12:07:28 20 MS. BAKER: Your Honor, I do have a copy of --

21 a certified copy of the deposition transcript of Ronald

22 Stevenson. I'd like to admit it as evidence being that

23 he is deceased.

24 THE COURT: To have it admitted as evidence,

12:07:43 25 you have to have it published --

12:07:44 1 MS. BAKER: Or published.

2 THE COURT: -- first and foremost.

3 And number two, if you want portions of the

4 deposition transcript read into the record, they have

12:07:52 5 to be designated. The other side gets an opportunity

6 to designate. And then we make a determination as to

7 whether -- what portions of the record are going to be

8 read in -- I mean, the deposition are going to be read

9 into the record. So I -- it's not admitted.

12:08:07 10 MR. VILKIN: I was not aware of this.

11 MS. BAKER: Okay.

12 THE COURT: There's a specific rule --

13 MS. BAKER: Yes.

14 THE COURT: -- on uses of deposition at the

12:08:12 15 time of trial. Right? Am I missing something?

16 MS. BAKER: No. I'll withdraw it. Thank you.

17 THE COURT: All right. Anything else of this

18 witness?

19 MS. BAKER: No. Nothing further.

12:08:25 20 MR. VILKIN: Nothing, your Honor.

21 THE COURT: Okay. Thank you, ma'am.

22 THE WITNESS: Thank you, sir.

23 THE MARSHAL: Please watch your step, ma'am.

24 THE COURT: So when is a good time to meet for

12:08:51 25 this afternoon? 2:00 o'clock, do you think?

12:08:54 1 MR. VILKIN: Court's preference, your Honor.  
2 Whatever.

3 THE COURT: How is 2:00 o'clock? And we'll  
4 know. Because tomorrow we have two experts, right?

12:09:02 5 MR. VILKIN: Correct.

6 THE COURT: Okay.

7 MR. VILKIN: We do have Mr. Haddad.

8 THE COURT: Okay.

9 MR. VILKIN: Also which could be any time  
12:09:10 10 today.

11 THE COURT: All right. Well, we'll try -- I  
12 think what we'll do then, so would you call Mr. Haddad  
13 out of order? Is that fine?

14 MR. VILKIN: Do you want to call him right  
12:09:23 15 now? Or after lunch.

16 THE COURT: No, no. We got to go to lunch.

17 MR. VILKIN: Okay.

18 THE COURT: Right. I'm just trying to -- how  
19 about -- okay, this is what we can do. Because we want  
12:09:31 20 to be efficient. We'll break now until 1:30. And then  
21 if -- we'll know specifically, I would anticipate, the  
22 whereabouts of the other witness. And if he -- if he's  
23 not available, maybe we can call Mr. Haddad for about a  
24 hour or so.

12:09:47 25 MR. VILKIN: That's fine, your Honor, as long

12:09:48 1 as I have the ability to call Mr. Haddad after  
2 Mr. Alessi should something come up.

3 THE COURT: You can call him for redirect.

4 MR. VILKIN: Okay.

12:09:56 5 THE COURT: Any objection to that?

6 MR. BECKOM: We'll talk to whoever wants to  
7 talk whenever they want to talk, so we have no  
8 objection.

9 THE COURT: That's the beauty of a bench  
12:10:02 10 trial. Okay. So we will be in recess for lunch.

11 MR. VILKIN: Thank you, your Honor.

12 -o0o-  
(Lunch Recess)  
13 -o0o-

14 THE COURT: All right. Good afternoon.

01:34:43 15 MR. VILKIN: Afternoon.

16 MR. BECKOM: Afternoon.

17 THE COURT: Let's go ahead and note our  
18 appearances for the record.

19 MR. BECKOM: Thomas Beckom, Priscilla Baker on  
01:34:49 20 behalf of US Bank.

21 MR. VILKIN: Richard Vilkin, Charles  
22 Geisendorf and Eddie Haddad for the defendant.  
23 Mr. Haddad representing the client.

24 THE COURT: All right. So how are we going to  
01:35:01 25 proceed this afternoon?

01:35:05 1 MR. BECKOM: I think US Bank would like to  
2 call David Alessi to the stand. My understanding is  
3 that his trial this afternoon has been canceled.

4 THE COURT: So he's here.

01:35:12 5 MR. VILKIN: He's here. We're ready to go.

6 THE COURT: So I timed that perfectly.

7 MR. HADDAD: Yes, nicely done.

8 THE COURT: Okay.

9 THE MARSHAL: Yes, your Honor.

01:35:38 10 DAVID ALESSI,  
11 having been first duly sworn to testify to the truth,  
12 the whole truth and nothing but the truth, was examined  
13 and testified as follows:

14 THE COURT CLERK: Please be seated. And if  
01:35:55 15 you will state and spell your name for the record,  
16 please.

17 THE WITNESS: David Alessi. A-L-E-S-S-I.

18 THE COURT: Okay, sir, you have the floor.

19 MR. BECKOM: Thank you.

01:36:17 20  
21 DIRECT EXAMINATION

22 BY MR. BECKOM:

23 Q. Good morning, Mr. Alessi. And thank you for  
24 being here today.

01:36:27 25 A. Good morning.

01:36:28 1 Q. Why don't you tell everyone here in the court  
2 what you do for a living?

3 A. Well, I currently do a lot of depositions and  
4 trial testimony as a 30(b)(6) PMK for Alessi Koenig.  
01:36:44 5 I'm a California attorney.

6 Q. And can you explain to me why -- so you do a  
7 lot of depositions then, correct?

8 A. Hundreds and hundreds.

9 Q. Sounds like a lot of fun.

01:36:57 10 A. It's --

11 Q. What were you doing in 2010 and 2011?

12 A. I was part of a firm called Alessi Koenig. We  
13 were an HOA assessment collection law firm. We also  
14 perform general counsel services.

01:37:12 15 Q. Okay. And you said you had a law degree,  
16 right?

17 A. Yes. I'm a California lawyer.

18 Q. California lawyer.

19 Where did you go to school at, sir?

01:37:23 20 A. I -- law school or undergraduate?

21 Q. Law school is fine.

22 A. The University of La Verne. And then I  
23 finished up my last year at Pepperdine.

24 Q. Okay. So you were working at the law firm  
01:37:35 25 Alessi & Koenig in 2010 and 2011, correct?



01:37:39 1

A. Yes.

2

Q. Okay. What is Alessi & Koenig currently doing right now?

3

A. Alessi & Koenig because of all the litigation with the banks and the investors finally had to throw up the white flag and file Chapter 7 in December of 2016.

01:37:49 5

6

7

8

Q. Okay. Are you familiar today with the

9

property known as 4254 Rolling Stone Drive, Las Vegas,

01:38:03 10

Nevada, 89103.

11

A. Yes.

12

Q. Okay. How are you familiar with that

13

property, sir?

14

A. My understanding is that it is the subject

01:38:11 15

property of this litigation.

16

Q. Okay. And are you familiar with that property

17

outside of just being the subject of this litigation?

18

A. No.

19

Q. Did Alessi & Koenig perform any collection

01:38:25 20

services on behalf of --

21

A. My understanding is that we did. I don't have

22

a specific recollection of this file. I did speak

23

with, as I often do prior to testifying or depositions,

24

our paralegal Johnna Lepona, L-E-P-O-N-A, on my way to

01:38:41 25

the hearing today. And she briefed me on the

01:38:44 1 particulars of the foreclosure.

2 Q. Okay. Can you take a look at Exhibit 7 in  
3 your binder.

4 A. Okay.

01:39:04 5 Q. Now, my Exhibit 7 runs as USB0026 through  
6 USB00 -- or USB0175. Does yours as well?

7 A. Yes.

8 Q. Okay. And it appears on the front page of  
9 Exhibit 7 that there's an affidavit of David Alessi as  
01:39:29 10 custodian of records for Alessi & Koenig LLC. Do you  
11 see what I'm talking about, sir?

12 A. Yes.

13 Q. Okay. On USB0028 there is, it looks like, a  
14 signature, and then your name David Alessi, Esquire?

01:39:46 15 A. Correct.

16 Q. Is that your signature there, sir?

17 A. Yes.

18 Q. So you testified as a custodian of records  
19 through this affidavit of custodian of records that  
01:39:52 20 these documents contained at USB02 -- 0026 through 0175  
21 were the true and correct collection file that Alessi &  
22 Koenig had on the property that brings us here today?

23 A. Yes, sir.

24 Q. Okay. And did you review these documents  
01:40:11 25 previously?

01:40:11 1 A. I'm sure I reviewed them back in November of  
2 2015. I don't have a specific recollection of  
3 reviewing them.

4 Q. Okay. Let me take a look. But Alessi &  
01:40:23 5 Koenig did conduct the foreclosure sale on this  
6 property?

7 A. That's my understanding, yes.

8 Q. And you have no reason to believe that Alessi  
9 & Koenig did not conduct a foreclosure sale on this  
01:40:31 10 property?

11 A. Correct.

12 Q. Okay. Let's go over to USB0034.

13 MR. BECKOM: Oh, and, I guess, as to the Court  
14 to the extent, I believe we already stipulated to this,  
01:40:44 15 but I would like to move -- we already entered.

16 THE COURT CLERK: Exhibit 7.

17 MR. BECKOM: All right. They're already in.

18 MS. BAKER: Why not.

19 THE WITNESS: Okay. I'm at 0034.

01:40:53 20 BY MR. BECKOM:

21 Q. Okay. Was this document contained in the  
22 Alessi & Koenig's collection file for the property that  
23 brings us here today?

24 A. I believe so. There's a AK, Bates No. 000003.

01:41:06 25 Q. Okay.

01:41:07 1 A. And this is a real property parcel record.  
2 And it would be standard practice for us to pull this  
3 document.

4 Q. Why would it be standard practice for you to  
01:41:18 5 pull that document?

6 A. We pull the real property parcel record to  
7 obtain information on the property.

8 Q. Okay. What kind of information would you be  
9 obtaining through USB0034 and USB0035?

01:41:34 10 A. We would be obtaining the owner's legal name,  
11 the property address as well as the off-site mailing  
12 address if there are any. We would also obtain the  
13 legal description.

14 Q. Understood. Anything else you would get from  
01:41:54 15 this document?

16 A. Um, that's about it.

17 Q. On USB0035, the very top where it says total  
18 taxable value. Do you see what I'm talking about?

19 A. It's a little bit blurry, but I know what  
01:42:19 20 you're talking about.

21 Q. Okay. Do you see up in the far -- and it's  
22 kind of cut off between two different pages back at  
23 USB0034. The top of that says 2010 to 2011. And then  
24 that column seems to go down on to the next page. But  
01:42:35 25 do you see at the bottom of that page where it says

01:42:38 1 total taxable value \$62,943?

2 A. Yes.

3 Q. Was Alessi & Koenig, are you aware at the time  
4 this document was pulled which looks like to be around  
01:42:51 5 2011 that this property which brings us here today was  
6 worth \$62,943 for tax purposes?

7 A. I don't know.

8 Q. You don't know?

9 A. I don't know if we would have been aware of  
01:43:08 10 that.

11 Q. Okay. Any reason why you would not know?

12 A. I don't know if the legal assistant or the  
13 member of the firm who was handling this foreclosure  
14 looked at that date of sale on this document at that  
01:43:21 15 time.

16 Q. Do you know who the member of Alessi & Koenig  
17 was that was handling this foreclosure at that time?

18 A. Not off the top of my head.

19 Q. Okay. And also in the first column where it  
01:43:35 20 says \$84,557 for taxable years 2009 through 2010, you  
21 might end up giving the exact same answer here. But  
22 was it Alessi Koenig's understanding that this property  
23 was \$84,557 for those taxable years according to the  
24 assessor?

01:43:58 25 A. When you say -- and you've deposed me before,

01:44:00 1 so I know we've been through this particular area.  
2 When you say the property was worth a certain amount of  
3 money, as I've testified many times before, my  
4 understanding of the value of a property differs based  
01:44:13 5 upon whether or not that property is purchased with  
6 good title through an escrow or whether or not that  
7 property is purchased at a foreclosure sale where you  
8 basically are purchasing a lawsuit.

9 So when you say what the property is worth  
01:44:28 10 that could mean two different things to me.

11 MR. BECKOM: Your Honor, I'd like to move to  
12 strike that testimony as impermissible expert  
13 testimony.

14 THE COURT: Counsel.

01:44:37 15 MR. VILKIN: I don't think it's expert  
16 testimony. It's just -- it's personal knowledge.

17 THE COURT: I don't know, what does the term  
18 impermissible expert testimony mean?

19 MR. BECKOM: He's speculating as to the value  
01:44:46 20 of the property. My understanding of Nevada law is  
21 that the owner of the property can testify as to the  
22 value of the property. Or the owner can testify --

23 THE COURT: Didn't you ask him about value?

24 MR. BECKOM: All right. Fair enough. I  
01:44:57 25 withdraw. I withdraw the --

01:45:02 1 THE COURT: Right? I mean, okay.

2 BY MR. BECKOM:

3 Q. Let me go back and come at this a different  
4 way then. So go ahead and repeat -- go ahead and  
01:45:13 5 restate your testimony as far as the value of the  
6 property, at least your understanding of it.

7 A. Well, just that if an -- if a property is  
8 purchased through an escrow, the normal means of  
9 purchasing a property, the buyer obtains clear title.  
01:45:32 10 And the value of that property for that reason and  
11 others is worth more, in my opinion, than a property  
12 that is purchased, for instance, an HOA foreclosure  
13 sale, especially in Nevada between 2012 and 2015, where  
14 you're not obtaining clear title.

01:45:55 15 You're inheriting what seems to be never  
16 ending lawsuits. And so, obviously, the analysis or  
17 the calculus in determining the value of that  
18 particular property at that particular purchase would  
19 be different than were one to purchase a property  
01:46:11 20 through an escrow where they would get clear title.

21 Q. Okay. So this was Alessi & Koenig's -- was  
22 this Alessi & Koenig's specific position in 2011?

23 A. We didn't have a position in 2011. Alessi &  
24 Koenig still doesn't have a position. I'm just  
01:46:28 25 testifying to what I feel is common sense. It's not a

01:46:33 1 position of Alessi & Koenig necessarily. We made no  
2 representations to anybody as to values of property.  
3 We weren't overly interested in values of property.

4 Our main focus, as you know from deposing me  
01:46:49 5 prior, is to make sure that we do our job correctly on  
6 behalf of our client. We didn't engage in a lot of  
7 speculation.

8 Q. Understood. But you did mention, you know, I  
9 guess, rather despondently never ending lawsuits,  
01:47:02 10 correct?

11 A. Correct.

12 Q. Okay. Were you aware of these never ending  
13 lawsuits in 2011 when this document was pulled?

14 A. No.

01:47:13 15 Q. Okay. Any reason why not?

16 A. They hadn't started yet.

17 Q. They hadn't started yet. Did you expect in  
18 2011 that there would be never ending lawsuits as a  
19 result of your sales?

01:47:27 20 A. I don't think anybody expected all of this. I  
21 don't think anybody predicted it. Like I said, we were  
22 focused on doing our job, and we didn't engage in a lot  
23 of speculating or speculation.

24 Q. So you did not expect -- so you expected these  
01:47:49 25 properties to be sold free and clear?



01:47:51 1 A. No. I did not say that. We didn't have a  
2 position on that. To expect for the property to be  
3 sold free and clear would have required speculation.  
4 And as I testified moments ago, we did not engage in  
01:48:03 5 speculation.

6 Q. Understood. Can I get you to go over to  
7 USB0089.

8 A. Yes.

9 Q. Have you seen this document before,  
01:48:23 10 Mr. Alessi?

11 A. I don't have a specific recollection of having  
12 seen this document before. I have certainly seen  
13 documents like this before.

14 Q. Okay. I want to direct you down to bottom  
01:48:38 15 here where it says, signature of authorized agent for  
16 Glenview West Townhomes Association. Do you see what  
17 I'm talking about?

18 A. Yes.

19 Q. And then it was signed by a Mr. Ryan Kerbow.  
01:48:52 20 Do you see what I'm talking about?

21 A. Correct, yes.

22 Q. Who is Mr. Kerbow?

23 A. Ryan Kerbow is a California and Nevada  
24 attorney. He no longer works for the firm. I cannot  
01:49:03 25 remember the name of the firm that he currently works

01:49:05 1 for. But I do keep in touch with Ryan periodically.

2 Q. Okay.

3 A. He was a lawyer that worked for Alessi &  
4 Koenig.

01:49:14 5 Q. Why would he be signing this document on  
6 behalf of the Glenview West Townhomes Association?

7 A. I would be speculating. You would have to ask  
8 him. Our policy, though, was that we signed the deeds  
9 of trust -- I mean the trustee's deed upon sale as  
01:49:32 10 agent for the association.

11 Q. But was Mr. Kerbow the attorney, the Nevada  
12 attorney, that was responsible for processing this  
13 foreclosure on behalf of Glenview West?

14 A. I wouldn't say that. We had, and I don't know  
01:49:49 15 which attorneys, Nevada attorneys worked for the firm  
16 at this time. Certainly Robert Koenig was a long  
17 time -- was a partner in the firm. I know Ryan was an  
18 employee of the firm. I don't know if there were any  
19 other Nevada attorneys at the firm, who they were, or  
01:50:02 20 what role they had in this foreclosure.

21 Q. But if Mr. Kerbow's signature is on this  
22 trustee deed upon sale at USB0089, he would have had,  
23 at least, some hand in the sale of this property,  
24 correct?

01:50:16 25 A. Well, yes. He signed the trustee's deed upon

01:50:18 1 sale.

2 Q. Okay. Do you remember Mr. Kerbow's other  
3 duties at Alessi & Koenig?

4 A. He provided general counsel services to  
01:50:27 5 associations. And, I believe, at this time under the  
6 rules of the multiple jurisdictional law firm, he was  
7 our resident Nevada agent or resident Nevada attorney.

8 Q. Did he engage in any active litigation? Did  
9 he represent any clients in active litigation as part  
01:50:44 10 of an -- as part of your practice?

11 A. Did this -- his particular client or any  
12 clients?

13 Q. Mr. Kerbow, did he represent anyone in regards  
14 to civil litigation in this jurisdiction, that being  
01:50:56 15 Nevada?

16 A. I don't know if Alessi & Koenig performed any  
17 civil litigation or general counsel services for  
18 Glenview West Townhomes Association.

19 Q. But does he perform any civil litigation at  
01:51:10 20 all?

21 A. Does he or did he?

22 Q. Did he?

23 A. We -- 2012, we did not do a lot of civil  
24 litigation. I don't know if he was performing any at  
01:51:27 25 this time. It's possible he may have been formed --

01:51:31 1 may have been. It's also possible that he may not have  
2 been.

3 Q. Has Mr. Kerbow ever represented anyone while  
4 an attorney at Alessi & Koenig in quiet title  
01:51:43 5 litigation relating to homeowners association  
6 foreclosure services?

7 A. Representing?

8 Q. A purchaser post sale?

9 A. I don't know if Ryan Kerbow has represented a  
01:51:54 10 purchaser post sale. Our office has represented  
11 purchasers post sale. I don't know if Ryan has.

12 Q. Did they represent any purchasers in 2010?

13 A. I doubt, no.

14 Q. Did they represent any purchasers in 2011?

01:52:07 15 A. I doubt it. Really, the HOA sales didn't  
16 start happening until 2012.

17 Q. Okay. Did Mr. Kerbow or Alessi & Koenig ever  
18 represent Mr. Haddad in any kind of quiet title -- and  
19 Mr. Iyad Eddie Haddad in any kind of quiet title  
01:52:28 20 litigation?

21 A. I'm not sure. I believe that there was some  
22 relationship with Mr. Haddad for a brief period of  
23 time. I'm not sure. You know, I'm a California  
24 attorney. I wasn't involved in the Nevada caseload  
01:52:44 25 extensively.

10:10:41 1 Bank.

2

BRYAN HEIFNER,

3

having been first duly sworn to testify to the truth,

4

the whole truth and nothing but the truth, was examined

10:11:01 5

and testified as follows:

6

THE COURT CLERK: Please be seated. And if

7

you will state and spell your name for the record,

8

please.

9

THE WITNESS: Bryan, B-R-Y-A-N. Heifner.

10:11:13 10

H-E-I-F-N-E-R.

11

12

DIRECT EXAMINATION

13

BY MR. BECKOM:

14

Q. Good morning, Mr. Heifner.

10:11:23 15

A. Good morning.

16

Q. As a predicate matter, why don't you tell us

17

what you do for a living.

18

A. I am a litigation analyst for US Bank National

19

Association.

10:11:32 20

Q. Okay. And you were here today on behalf of

21

the US Bank National Association?

22

A. Yes.

23

Q. Okay. And can you tell me what a litigation

24

analyst for US Bank National Association does?

10:11:48 25

A. I prepare for testimonies at any depositions,

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

EDWARD APPENDIX 1659  
Bucket 74375 Document 2018-13062

10:11:53 1 litigations, trials. I also appear at mediations and  
2 settlement conferences as well.

3 Q. Okay. And I believe you said you were  
4 employed by US Bank; correct?

10:12:04 5 A. Yes.

6 Q. What does US Bank do?

7 A. US Bank -- US Bank National Association, the  
8 division I work for originates, holds, services, and  
9 sometimes owns mortgages.

10:12:20 10 Q. Okay. And did you originate a mortgage on  
11 behalf of -- or for George Edwards?

12 A. US Bank National Association did originate a  
13 mortgage on behalf of Mr. Edwards.

14 Q. Okay. Let's go ahead. Do we have an exhibit  
10:12:35 15 binder up there for you?

16 THE COURT CLERK: It's behind him.

17 MR. BECKOM: Okay.

18 BY MR. BECKOM:

19 Q. Why don't we go ahead and grab that exhibit  
10:12:45 20 binder. And I would direct you to -- its right there  
21 in the big binder. I would direct you to Exhibit 3 of  
22 that binder.

23 A. Okay.

24 Q. You've seen this document before, Mr. Heifner?

10:13:19 25 A. No. The US Bank equity line agreement, that's

10:13:22 1 what we're looking at; correct?

2 Q. Okay.

3 A. There's three.

4 Q. And then, I believe, on the bottom right-hand  
10:13:26 5 corner there's a series of numbers, USB005, and then a  
6 document ends in USB0010. Do you have five pages of  
7 this document as well?

8 A. I do.

9 Q. Okay. Have you seen this document before,  
10:13:44 10 Mr. Heifner?

11 A. Yes.

12 Q. Okay. And what is this document that we're  
13 looking at?

14 A. This is the equiline agreement or also the  
10:13:53 15 note.

16 Q. And this was the note that US Bank -- or the  
17 agreement that US Bank entered into with Mr. Edwards  
18 for the home equiline agreement, correct?

19 A. Yes.

10:14:06 20 Q. Okay. And you have no reason to believe that  
21 this is -- this is a true and correct version of the  
22 note that US Bank has with Mr. Edwards; correct?

23 A. Yes.

24 Q. Now, it was my understanding that this note,  
10:14:23 25 that this note is kept in electronic form only;

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment. EDWARD APPENDIX 1661

10:14:26 1 correct?

2 A. That is correct.

3 Q. Can you tell me the name of the system that  
4 this form -- that this note is kept within?

10:14:32 5 A. Yeah. Typically, refer to the system by  
6 letters. LDRS, which stands for Lender Document  
7 Retrieval System.

8 Q. Okay. And in your experience with dealing  
9 with LDRS, this is a reliable system for the retrieval  
10 of documents such as Exhibit 3?

11 A. Yes.

12 Q. Okay. And in this system, LDRS, there's only  
13 one authoritative company of your equiline agreement  
14 with Mr. Edwards?

10:15:07 15 A. Yes.

16 Q. Okay. Now, on this document I would direct  
17 you over to USB0010. That's the very last page.

18 Do you see in the bottom -- I guess, in the  
19 middle of page on the bottom left-hand corner where it  
10:15:31 20 says this note is a transferable record?

21 A. Yes.

22 Q. What is your understandings of this provision  
23 of the equiline agreement?

24 A. That we would keep an electronic copy of the  
10:15:44 25 record and force and service it based on that



10:15:47 1 electronic copy.

2 Q. Okay.

3 A. And in many cases or the most cases the  
4 original will be destroyed, and we would enforce it  
10:15:55 5 based on the copy.

6 Q. Based on the electronic copy?

7 A. Yes.

8 Q. Okay.

9 MR. BECKOM: I would, therefore, move to admit  
10:16:01 10 Exhibit 3 to the extent it was not admitted already?

11 MR. VILKIN: No objection.

12 MR. BECKOM: Okay.

13 THE COURT: Okay. It will be admitted.

14 So admitted.

10:16:10 15 (Exhibit 3 admitted)

16 BY MR. BECKOM:

17 Q. On what bank -- on what date did US Bank enter  
18 into this agreement with Mr. Edwards?

19 A. March 3, 2009.

10:16:46 20 Q. Okay.

21 A. On this one, yes.

22 Q. Okay. And where -- are you basing your  
23 testimony off of, like, the top left-hand corner of the  
24 first page?

10:16:56 25 A. I was referring to the signature date.

10:16:58 1 Q. Okay.

2 A. Which is the same as the top left-hand corner.

3 Q. Now what amount of money did US Bank agree to

4 lend to Mr. Edwards?

10:17:10 5 A. The line of credit was up to \$50,000.

6 Q. \$50,000. And what was the purpose that

7 Mr. Edwards was taking out this loan for?

8 A. This was -- the reasoning behind this was

9 medical bills. And I believe some of them may have

10:17:32 10 paid off a prior line of credit.

11 Q. Okay. Let's go over to USB0006 which is the

12 second page of Exhibit 3. Do you see on the top

13 left-hand corner where it says initial rate?

14 A. Yes.

10:17:52 15 Q. Okay. Is it your understanding that this loan

16 had an initial rate of 4.75 percent?

17 A. Yes.

18 Q. Okay. And then down in the middle of the page

19 where it says annual percentage rate. It also had an

10:18:09 20 annual percentage rate of 3.99 percent?

21 A. Yes. That's the lowest -- it will never

22 decrease below 3.99.

23 Q. Okay. Or it would not decrease below 3.99?

24 A. Yeah, 3.99.

10:18:25 25 Q. Okay. Let's go to USB0007. Do you see in the

10:18:34 1 top left-hand corner of Exhibit 3 where it says  
2 security?

3 A. Yes.

4 Q. Is it your understanding that US Bank took out  
10:18:43 5 a security interest in the real property commonly known  
6 as 4254 Rolling Stone Drive, Las Vegas, Nevada, 89103?

7 A. Yes.

8 Q. Okay. Moving down, I guess, down this  
9 document where it says assumption. It sues someone  
10:19:04 10 buying your house cannot assume the remainder of the  
11 mortgage on the original terms. Is it your  
12 understanding that this document bars a transfer of  
13 interest in the property from Mr. Edwards to any other  
14 entity?

10:19:17 15 A. Yes.

16 Q. Okay. And would a transfer of interest to any  
17 other entity either involuntary or voluntary result in  
18 a breach of this loan agreement?

19 A. Yes.

10:19:27 20 Q. Okay. I'm going to direct you over then to  
21 the left column of USB0007. Do you see the portion  
22 that says priority?

23 A. You said left side, right?

24 Q. I apologize. Right side.

10:19:53 25 A. Okay. Yes.

10:19:57 1 Q. Okay. This portion of Exhibit 3 says the  
2 residence that secures this loan is the primary  
3 security, and the security interest granted herein will  
4 be resorted to only in the event of a deficiency in the  
10:20:16 5 equity of the residence. Do you see what I'm talking  
6 about?

7 A. Yes, I do.

8 Q. Again, that is your understanding that US Bank  
9 had a security interest in this property pursuant to  
10:20:23 10 this loan noted Exhibit 3?

11 A. Yes.

12 Q. Okay. On the very bottom of the right-hand  
13 column on USB0007, do you see where it says cost of the  
14 collection?

10:20:39 15 A. Yes.

16 Q. Okay. And it says you agree to pay the costs  
17 we incur to collect this debt and realize on any  
18 collateral in the event of your default; do you see  
19 that provision?

10:20:51 20 A. I do.

21 Q. Is it your understanding that Mr. Edwards had  
22 agreed to US Bank that the -- in the event of a default  
23 under this loan note, that costs of collection  
24 including attorney's fees and other provisions would be  
10:21:05 25 paid by the borrower pursuant to this agreement?

10:21:08 1 A. Yes.

2 Q. Okay. Let's move over to USB0008. In the  
3 right-hand column where it says default. Let me know  
4 when you get there.

10:21:22 5 A. Yes, I'm there.

6 Q. Okay. Under default it says you'll be  
7 defaulted on this agreement if any of the following  
8 occur. Subsection 2 says subject to any right to cure  
9 you may have, if any, if you do not meet the repayment  
10 terms or otherwise fail to perform any obligation under  
11 this agreement; do you see what I'm talking about?

12 A. Yes.

13 Q. And so if Mr. Edwards failed to make payments  
14 under this equiline agreement, would that be a breach  
15 in the agreement?

16 A. Yes.

17 Q. Okay. Subsection 3 of that same provision  
18 says, Your action or inaction adversely affects it's --  
19 let me come at that a different way.

10:22:07 20 It says that you will be defaulted under this  
21 agreement if any of the following occur. Subsection 3  
22 says, your action or inaction adversely affects the  
23 collateral or our rights in the collateral including  
24 but not limited to failure to maintain property  
10:22:21 25 insurance on the dwelling, the transfer of the

10:22:24 1 property, failure to maintain the property, or use it  
2 in destructive manner in the commission of waste,  
3 failure to pay taxes on the property, otherwise fail to  
4 act and thereby cause a lien to be filed against the  
10:22:36 5 property that is senior to our lien.

6 And then after that it also discusses the  
7 death of the borrower; do you see what I'm discussing?

8 A. Yes.

9 Q. Okay. So if there was a senior lien filed  
10:22:48 10 against this property that adversely affected US Bank's  
11 rights in the 4254 Rolling Stone Drive property, US  
12 Bank's understanding of this agreement would be that  
13 that would be a breach of the agreement between US Bank  
14 and Mr. Edwards?

10:23:02 15 A. Yes.

16 Q. Okay. And in addition, if the borrower died,  
17 that would also be a breach under this agreement; is  
18 that your understanding as well?

19 A. Yes.

10:23:15 20 Q. Okay. So you've reviewed US Bank's records in  
21 regards to this property today; correct?

22 A. Yes.

23 Q. What is your understanding about the current  
24 status of Mr. Edwards?

10:23:30 25 A. Mr. Edwards is deceased.

10:23:32 1 Q. Mr. Edwards is deceased? How were you able to  
2 come to that determination?

3 A. We were notified by, initially by his son --

4 Q. Okay.

10:23:41 5 A. -- who sent us the executor of the estate  
6 information so that we could speak to him in regards to  
7 the payments. And he proceeded to make payments on the  
8 account for some time.

9 Q. Okay. But it's your understanding that,  
10:23:54 10 though, that Mr. Edwards is no longer with us today?

11 A. That is correct.

12 Q. And according to US Bank's understanding of  
13 this agreement that would be a breach under the  
14 equiline agreement between US Bank and Mr. Edwards;  
10:24:04 15 correct?

16 A. Correct.

17 Q. Okay. And, I guess, seems slightly redundant,  
18 but we'll go down this route anyway. US Bank's  
19 understanding is US Bank aware of an HOA foreclosure on  
10:24:20 20 this property?

21 A. Now we are, yes.

22 Q. Now you are. Okay.

23 And your understanding of this agreement is  
24 that if there was a senior HOA lien filed against this  
10:24:30 25 property due to the inaction of Mr. Edwards that that

10:24:32 1 would be a breach under this equiline agreement?

2 A. Yes.

3 Q. Okay. Mr. Edwards, I believe you said that  
4 the executor of his estate was paying for some time and  
10:24:49 5 then Mr. Edwards -- and then they stopped paying. Did  
6 you mention that earlier?

7 A. Yes. There was a prior -- we had a prior sale  
8 scheduled just before I think it was in 2011. We had a  
9 prior sale scheduled, and we had to cancel that sale  
10:25:07 10 because the day before was reinstated by Mr. Hazel who  
11 I believe is the son of Mr. Edwards.

12 Q. Okay.

13 A. Or the executor of the estate which stopped  
14 the prior sale that we had scheduled for the  
10:25:16 15 foreclosure.

16 Q. It might take a minute to get over here, but  
17 let's move over to Exhibit 17. This is USB0308.

18 Let me know when you get there.

19 A. You said 17, right?

10:25:58 20 Q. Exhibit 17, USB0308 is the Bates No. in the  
21 lower right-hand corner.

22 MR. VILKIN: I'm sorry. What was the Bates?

23 MR. BECKOM: 0308.

24 BY MR. BECKOM:

10:26:22 25 Q. Have you seen this document before,



10:26:24 1 Mr. Heifner? Oh, are you not -- are you still getting  
2 there?

3 A. You said 0308?

4 Q. Yes, sir.

10:26:29 5 A. All right. I had to flip a little bit past  
6 there. If I'm on the correct page, it would be a  
7 screenshot of our system; is that correct?

8 Q. Yes. I mean, it's --

9 A. 03.

10:26:42 10 Q. Have you seen this document before?

11 A. Yes.

12 Q. Okay. What is it that we're looking at?

13 A. This is a direct screenshot of our servicing  
14 system.

10:26:50 15 Q. Okay. And what does this document tell you  
16 based on your review?

17 A. This is giving me the loan information: Name,  
18 address, dates and amounts in regards to the line of  
19 credit.

10:27:06 20 Q. Okay. Does this also demonstrate the past due  
21 amount as well as the date of first delinquency?

22 A. Yes, it does.

23 Q. Okay. And this is kept in the ordinary course  
24 of your -- this is kept in US Bank's system; correct?

10:27:23 25 A. That's correct, yes.

10:27:23 1 Q. And the data that the system would rely on  
2 would be inputted as the delinquency occurs; correct?

3 A. Yes.

4 Q. Okay.

10:27:30 5 MR. BECKOM: On that basis I would move to  
6 admit Exhibit 17 USB0308 into evidence, your Honor.

7 MR. VILKIN: I'm going to object as lack of  
8 foundation. We don't know. No information has been  
9 provided as to who input this information, what sort of  
10:27:48 10 safeguards were used in order to check and determine  
11 the accuracy of the information. And I just think  
12 foundation is lacking.

13 MR. BECKOM: Mr. Heifner has testified he's  
14 competent as US Bank's corporate witness. He's  
10:28:04 15 identified this document as directly coming from their  
16 system. The default would be clearly relevant in this  
17 scenario, and it would be a business record that he has  
18 testified as being entered into.

19 THE COURT: Why is all this relevant, his  
10:28:15 20 testimony?

21 MR. BECKOM: This is a judicial foreclosure  
22 action and so --

23 THE COURT: No. I understand that. But, I  
24 mean, at the end of the day it seems to me that today's  
10:28:23 25 trial will focus primarily on the three issues. One

10:28:26 1 would be the notice and whether it was required to the  
2 bank. Two would be the BFP status. And number three,  
3 the commercial reasonableness of the transaction.

4 MR. BECKOM: We still --

10:28:36 5 THE COURT: There's no tender, right?

6 MR. VILKIN: Correct.

7 THE COURT: Yes.

8 MR. BECKOM: We still -- we still, I guess --

9 and I might be wrong in this regard, but it's my

10:28:44 10 understanding that we still have to prove up --

11 ultimately, we're asking for a judicial foreclosure

12 judgment against, you know, possibly Resources Group

13 depending on the outcome of this action if the property

14 has been held subject to the deed of trust.

10:28:57 15 We will need to establish sufficient default

16 on that basis in order to establish that we have the

17 ability to foreclose based on the breach of contract

18 claim, the underlying breach of contract between US

19 Bank and Mr. Edwards. And so that's why, I would

10:29:11 20 contend anyway, that that's relevant. While it might

21 not be relevant for the Shadow Wood factors, I guess,

22 we would respectfully argue that is relevant in terms

23 of establishing breach in order to foreclose.

24 THE COURT: Anything you want to add to that?

10:29:26 25 MR. VILKIN: Nothing further, your Honor.

10:29:27 1 THE COURT: Okay. So, but, I mean, my  
2 ultimate decision is going to make a determination as  
3 to whether or not the HOA sale resulted in an  
4 extinguishment of the first deed of trust pursuant to  
10:29:44 5 SFR: Right? So why does it matter?

6 Because one of two things will happen: Either  
7 the defendant takes free and clear or they don't,  
8 right? So I'm trying to figure out why all this  
9 information is really and truly necessary.

10:29:59 10 MR. BECKOM: My understanding of a judicial  
11 foreclosure action is that we would get a judicial  
12 foreclosure judgment against both Resources Groups as  
13 trustee for the Bourne Valley Trust as well as all the  
14 other subordinate lienholders and Mr. Edwards and his  
10:30:14 15 estate.

16 From there we would need a writ of execution  
17 in order to have a sheriff sale after the one  
18 year right of redemption from the judicial foreclosure.  
19 We'd need the breach to be incorporated into whatever  
10:30:28 20 judgment the Court issues here today. Because we will  
21 be unable to sell the property at a sheriff sale as to  
22 all parties if we cannot read into the record the  
23 default which has occurred.

24 THE COURT: So, I guess, that's contingent  
10:30:41 25 upon what my ultimate decision would be --

10:30:43 1 MR. BECKOM: Yes.

2 THE COURT: -- as it relates to the notice  
3 issue, the BFP issue, and the commercial reasonableness  
4 of the sale.

10:30:49 5 MR. BECKOM: Yes. I mean, obviously, like, we  
6 can establish a breach all day long, but if we don't  
7 have a security interest, there's not a lot to  
8 foreclose on.

9 But it's our position, anyway, that we would  
10:30:59 10 still establish the breach, and then also continue to  
11 establish all the factors under Shadow Wood as well as  
12 the mechanical defects of the sale.

13 THE COURT: No. I understand that.  
14 Anything else I need to know?

10:31:10 15 MR. BECKOM: Um.

16 THE COURT: I'll overrule.

17 MR. BECKOM: Overrule?

18 THE COURT: Yeah.

19 MR. BECKOM: Okay.

10:31:19 20 THE COURT: So we got a breach. Now what?

21 THE COURT CLERK: I need to clarify, does that  
22 mean that the exhibit is admitted.

23 THE COURT: Yes, it's admitted.

24 THE COURT CLERK: Okay. So I need to --

10:31:28 25 THE COURT: What exhibit number is that?

10:31:29 1 MR. BECKOM: That is Exhibit 17. Just Bates  
2 No. USB0308.

3 THE COURT CLERK: So we'll call it 17A.

4 MR. BECKOM: Sounds like a plan to me.  
10:31:37 5 Whatever makes it easier for the Court.

6 THE COURT CLERK: Thank you.

7 (Exhibit 17A admitted)

8 THE COURT: So we have a breach. Maybe it  
9 would be breaches, right?

10:31:51 10 MR. HADDAD: Stack them up.

11 MR. BECKOM: Breaches all over the place, your  
12 Honor.

13 BY MR. BECKOM:

14 Q. We've got a -- we've got a deceased borrower,  
10:31:56 15 and we've got a transfer of property, and then also  
16 Mr. Heifner. So this is -- so according to this  
17 printout from US Bank's system, do you see where it  
18 says first DELQ date?

19 A. (No audible response.)

10:32:19 20 Q. On the bottom left-hand corner.

21 A. Yes, I just looked at this earlier. Yes, I  
22 see that now. Yes. Correct. First delinquency date,  
23 DELQ date of December 2011.

24 Q. Okay. And what does that information tell you  
10:32:32 25 in regards to Mr. Edwards' payment on the loan note?

10:32:37 1 A. That would indicate that December of 2011  
2 payment was not made.

3 Q. Okay. To the best of your knowledge has he  
4 made -- did he make any payments since December of 2011  
10:32:47 5 towards the US Bank equiline agreement?

6 A. No.

7 Q. Are you able to tell from this document the  
8 amount currently in default to US Bank as far as  
9 payments go?

10:32:59 10 A. As far as payments the -- at the time that  
11 this document was printed, the payments were due at  
12 \$4,662. The balance was 60 -- be \$4,000.

13 Q. Okay. And so that would be the amount at the  
14 time this document was printed that was owed to US  
10:33:20 15 Bank, correct?

16 A. Correct.

17 Q. Okay. I believe you stated earlier that this  
18 note was secured against the property 4254 Rolling  
19 Stone Drive, correct?

10:33:32 20 A. Yes.

21 Q. How does US Bank typically secure their loan  
22 agreements in Nevada?

23 A. Deed of trust.

24 Q. Okay. I can direct you to Exhibit 4. Now,  
10:34:21 25 just to be -- oh, take your time.

10:34:23 1 A. I'm there.

2 Q. Now, just to be clear, my Exhibit 4 is showing  
3 as USB0011, and then ends at USB0019. Is that what  
4 your document is showing as well?

10:34:43 5 A. Yes.

6 Q. And what is this document that we are looking  
7 at here today, Mr. Heifner?

8 A. This is a recorder copy of the deed of trust  
9 between US Bank National Association, ND and Mr. George  
10 R. Edwards.

11 Q. So this is the deed of trust that secured the  
12 agreement between your employer US Bank and  
13 Mr. Edwards; correct?

14 A. Yes.

10:35:05 15 Q. Okay.

16 MR. BECKOM: On that basis I would move to  
17 admit Exhibit 4 for all purposes?

18 MR. VILKIN: No objection.

19 THE COURT: So admitted.

10:35:17 20 (Exhibit 4 admitted)

21 BY MR. BECKOM:

22 Q. I'm going to go over a couple pages to  
23 USB0017.

24 A. Okay.

10:35:48 25 Q. Do you see where it's circled and says



10:35:52 1 signatures?

2 A. I do see the signatures.

3 Q. Okay. Is your understanding that this is

4 Mr. Edwards' signature on this document?

10:36:01 5 A. Yes.

6 Q. Okay. And it appears that he executed this

7 document on March the 3rd, 2009, is that correct?

8 A. Yes.

9 Q. Okay. And so US Bank's and your understanding

10:36:15 10 of this is that this is the agreement to secure 4254

11 Rolling Stone Drive or to secure the note that we

12 discussed earlier against 4254 Rolling Stone Drive;

13 correct?

14 A. Yes.

10:36:27 15 Q. Okay. Let's go back to the first page. I

16 want to take a look at a couple of the entities here

17 that you listed under the deed of trust with a future

18 advance clause. Would you be able to take a moment for

19 me and identify where US Bank, who you are here

10:37:04 20 representing today, where they are listed on this deed

21 of trust for the Court and for all the parties present?

22 A. Yeah. It's near the bottom of the page under  
23 the bold title lender.

24 Q. Okay. And so that is who you are here on

10:37:21 25 behalf of today, US Bank National Association, ND;

10:37:25 1 correct?

2 A. Yes.

3 Q. There's an address below 4325, 17th Avenue  
4 Southwest, Fargo, North Dakota, 58103. Do you see what  
10:37:37 5 I'm talking about?

6 A. Yes.

7 Q. Is that the address for US Bank?

8 A. That would be one of the addresses for US  
9 Bank. For this loan in question, that would be the  
10:37:45 10 address.

11 Q. So if I wanted to send correspondence to US  
12 Bank, I could send it to this address?

13 A. Yes.

14 Q. Okay. Now, let's go up and talk about some of  
10:37:57 15 the other entities here on US Bank's deed of trust. Do  
16 you see in the upper left-hand corner where it says  
17 Southwest Financial Services Ltd?

18 A. Yes.

19 Q. Do you know who Southwest Financial Services  
10:38:13 20 Ltd is?

21 A. I do not.

22 Q. Okay. Are they in any way affiliated with US  
23 Bank?

24 A. Not to my knowledge.

10:38:23 25 Q. Okay. So if I sent a letter or any kind of

10:38:26 1 correspondence to Southwest Financial at their 537 East  
2 Pete Rose Way, Suite 300, Cincinnati, Ohio, would that  
3 reach US Bank?

4 A. No.

10:38:40 5 Q. Okay. Let's go down to the next one where it  
6 says return to. Do you see what I'm talking about?

7 A. Yes.

8 Q. Okay. Are you familiar with the entity US  
9 Recordings?

10:38:53 10 A. I am not.

11 Q. Okay. Is US recordings in any way affiliated  
12 with US Bank?

13 A. Not to my knowledge.

14 Q. If I sent mail to 2925 Country Drive, Suite  
10:39:06 15 201, St. Paul, Minnesota, 55117, would that reach US  
16 Bank?

17 A. No.

18 Q. Okay. And so -- and does US Bank place their  
19 address in this deed of trust in order to get notice?

10:39:25 20 A. Yes.

21 Q. Okay. And it was US Bank's understanding that  
22 they wished to receive notice at 4325 17th Avenue  
23 Southwest, Fargo, North Dakota, 58103?

24 A. Yes.

10:39:40 25 Q. Okay. And if it was sent to any of the other

10:39:49 1 addresses on the first deed of trust, it is US  
2 Bank's -- your understanding that US Bank would not  
3 have received that notice?

4 A. That is correct.

10:39:56 5 Q. And also is it your understanding that US Bank  
6 did not indicate they wanted to receive notices there  
7 under this deed of trust?

8 A. That is correct.

9 Q. Okay. And they -- and did US Bank  
10:40:06 10 specifically file this document in the property records  
11 to delineate an address for service on to US Bank?

12 A. Yes.

13 Q. Okay. Over on to USB0013. Under where it  
14 says payments; do you see what I'm talking about?

10:40:37 15 A. Yes.

16 Q. And then it says grantor agrees that all  
17 payments under the secured debt will be paid when due;  
18 correct?

19 A. Yes.

10:40:43 20 Q. That is just one more indication that an  
21 agreement between Mr. Edwards and US Bank that US Bank  
22 would be paid; correct?

23 A. That is correct.

24 Q. Okay. Let's go down to where it says claims  
10:41:00 25 against title.

10:41:11 1           So let's take a look at this one. It says  
2 grantor will pay all taxes, assessments, liens,  
3 encumbrances, lease payments, ground rents, utilities  
4 and other charges relating to the property when due.  
10:41:26 5 Lender may require grantor to provide lender copies of  
6 all notices that such amounts are due and the receipt  
7 evidencing grantor's payment.

8           Grantor will defend title to the property  
9 against any claims that would impair the lien of this  
10 security interest. Grantor agrees to assign to lender  
11 as requested by lender any rights, claims, or defenses  
12 grantor may have against parties who supply labor and  
13 materials to maintain or improve the property. Do you  
14 see what I'm talking about?

10:41:57 15       A.    Yes.

16       Q.    Okay. Is it your understanding that  
17 Mr. Edwards was supposed to discharge liens that became  
18 superior to US Bank's deed of trust?

19       A.    Yes. He's to -- well, first to prevent any  
10:42:12 20 liens from occurring. Second to satisfy those liens or  
21 notify us of those liens so that we may do so.

22       Q.    I understand.

23           Did Mr. Edwards notify US Bank of any superior  
24 liens on the property?

10:42:25 25       A.    No.

10:42:25 1 Q. Okay. Was US Bank, when you review there --  
2 well, actually did you review the internal systems, US  
3 Bank's internal system prior to coming here today?

4 A. Yes.

10:42:39 5 Q. Did you see any indication whatsoever in US  
6 Bank's file that they received any foreclosure notices  
7 from any kind of homeowners association associated with  
8 4254 Rolling Stone Drive at all?

9 A. Not at all.

10:43:00 10 Q. Let me ask you this. Are you familiar with US  
11 Bank's policies and procedures in regard to superior  
12 liens?

13 A. Yes.

14 Q. If US Bank had received a notice from a  
10:43:10 15 homeowners association regarding a homeowners  
16 association foreclosure, can you explain to the Court  
17 and all the parties here what US Bank would have done?

18 A. Yes. I actually worked in our collection  
19 department in 2011. I was trained then specifically on  
10:43:26 20 states such as Nevada in what to do if we were notified  
21 of a lien by the actual borrower.

22 And US Bank received notice or notified of  
23 that would request contact information, payoff  
24 information, or would pay the lien off if we received  
10:43:42 25 the notice of default in order to protect our interest

10:43:46 1 in states where we would need to do so.

2 Q. So US Bank's policies and procedures is if  
3 they had received the notice of default, they would  
4 have paid off the lien; correct?

10:43:55 5 A. Yes.

6 Q. Was there an available -- was there -- I  
7 believe you stated this is a home equity line of  
8 credit; correct?

9 A. Yes.

10:44:04 10 Q. And so they, Mr. Edwards just withdraws money  
11 from the line of credit and then there's still  
12 additional money available on that line of credit,  
13 correct?

14 A. Yes.

10:44:14 15 Q. Okay. Was there an available -- was there  
16 available credit on the line of credit to discharge the  
17 entirety -- to discharge any kind of superior  
18 homeowners association lien in 2011?

19 A. Depending on the amount, I believe there would  
10:44:30 20 have been. There was some available credit there, and  
21 upon reading the deed of trust along with the notes, it  
22 does state that that would be a possibility, or that  
23 would be our right to do so to protect our interest  
24 would be to pull from that line of credit to satisfy  
10:44:49 25 any liens.

10:44:51 1 Q. So to be -- just to be clear then, we  
2 discussed on the first page of the deed of trust that  
3 there is a Fargo, North Dakota, address that US Bank  
4 has delineated as their address for service, correct?

10:45:06 5 A. Yes.

6 Q. And if US Bank had received a notice of  
7 default for a homeowners association to that address,  
8 your company's policies and procedures were to pay that  
9 lien off in full?

10:45:20 10 A. Yes.

11 Q. Okay. And then you did not receive or you can  
12 find no record in US Bank's systems of ever receiving a  
13 notice of default on this property at all?

14 A. Yes. We've searched our records. I've  
10:45:35 15 actually read all the notes in the account. When they  
16 searching for records when we were noticed of this  
17 case, we have no record of our legal system -- or our  
18 legal addresses receiving any notice of default. And  
19 all of our documents received are scanned into our  
10:45:48 20 document retrieval system. And I've looked through  
21 every document on there as well, and there's no  
22 documents that would indicate so.

23 Q. Okay.

24 MR. BECKOM: I don't believe I have any  
10:46:13 25 further questions for this witness.



10:46:14 1 THE COURT: All right. Cross-examination.

2 MR. VILKIN: Thank you, your Honor.

3

4 CROSS-EXAMINATION

10:46:16 5 BY MR. VILKIN:

6 Q. Mr. Heifner, good morning.

7 A. Good morning.

8 Q. You've testified that in 2011 you worked in,  
9 was it the collection department?

10:46:29 10 A. Yes.

11 Q. And you were trained to do that work, is that  
12 correct?

13 A. We were trained to fill -- when speaking to  
14 our customers to notify certain departments or open  
10:46:43 15 certain tasks if we were advised by the borrower that  
16 there was a lien or an HOA foreclosure proceeding of  
17 any type so that we can notify that department  
18 verbally.

19 Q. Were you trained as to what the law was in  
10:46:56 20 Nevada in terms of whether a bank was required to be  
21 given notice of default?

22 A. As a collection representative, no. We  
23 typically aren't trained, or in most cases need to try  
24 to analyze the law in any way or make any type of  
10:47:19 25 speculation in regards to the law. That's why we have

10:47:21 1 counsel, and legal counsel and corporate counsel that  
2 helps make our policies and relate it to law.

3 Q. Well, do you know whether a bank such as yours  
4 in 2011 was required to be given a notice of default if  
10:47:33 5 it had not notified the homeowners association of its  
6 secured interest in the property?

7 MR. BECKOM: Objection. He's asking for a  
8 legal conclusion of my witness which is not a fact  
9 relevant -- he's not listing facts. He's listing  
10:47:50 10 conclusions of law.

11 THE COURT: I'll sustain. You can reframe it.  
12 BY MR. VILKIN:

13 Q. Well, your job was to try and protect the  
14 interests of the bank, correct, in the collection  
10:47:59 15 department?

16 A. Yes.

17 Q. And would you consider significant to know  
18 whether or not a bank was required to be given notice  
19 of default if it had not notified a homeowners  
10:48:13 20 association of its secured interest?

21 MR. BECKOM: Same objection. He's still  
22 asking for conclusions of law.

23 THE COURT: Overrule.

24 THE WITNESS: In my position at that time, I  
10:48:23 25 would have followed our policies and procedures which

10:48:26 1 would have been put in place by our legal team who  
2 would specialize in that.

3 BY MR. VILKIN:

4 Q. Well, was there a policy in place that  
10:48:36 5 required your bank to give notice to a homeowners  
6 association of its secured interest in the property  
7 once it obtained that secured interest?

8 A. My role then wouldn't -- wouldn't have had  
9 anything to do with that. I wouldn't -- the policies  
10:48:50 10 and procedures that I would have been following in my  
11 role would be how to handle and field calls in related  
12 to loans in default or when notified of any HOA sale or  
13 any HOA default and who to notify of that.

14 Q. Is the answer is you don't know?

10:49:06 15 A. I don't know in regards to your question and  
16 the law around that, no.

17 Q. Okay. Now, you said that you reviewed all of  
18 the documents that your bank has concerning this loan;  
19 correct?

10:49:21 20 A. Yes.

21 Q. And did you see in there any notice that the  
22 bank gave to the Glenview -- I'm sorry, Glenview West  
23 Townhomes Association of its secured interest in the  
24 property at any time?

10:49:42 25 A. Not to my knowledge.

10:49:44 1 Q. Take a look if you would at Exhibit 17.  
2 You don't have to look through it right now.  
3 I'm going to ask my question, and then you can look  
4 through it.

10:50:17 5 A. Okay.

6 Q. My question is, sir, if you could look through  
7 there and tell me if you see in there any document that  
8 could be considered a notice from your bank to the  
9 Glenview West Townhomes Association of its secured  
10:50:31 10 interest in the property? Take as much time as you  
11 need.

12 A. Your question was specifically related to us  
13 giving notice to?

14 Q. Right. To the Glenview West Townhomes  
10:52:05 15 Association of its secured interest in the property?

16 A. Well, our secured interest in the property  
17 would have been indicated when the deed of trust was  
18 recorded on March 26, 2009, to my knowledge.

19 Q. Well, I understand that. What I'm asking is  
10:52:25 20 did your bank ever give a notice to the association  
21 that it had a secured interest in the property?

22 A. And when you're asking of notice are you  
23 referring to us directly sending something to the  
24 association ourselves?

10:52:43 25 Q. Yes.

10:52:43 1 A. Or not to my knowledge. I don't know of us  
2 sending anything directly to them.

3 Q. Okay. Could you just look through all those  
4 documents in Exhibit 17 and tell us whether or not  
10:52:52 5 there's anything in there that you would consider a  
6 notice sent from US Bank to the Glenview West Townhomes  
7 Association notifying them of their secured interest.

8 THE COURT: I would anticipate if US Bank had  
9 requested notice, that document would have been  
10:59:48 10 produced; right?

11 MR. VILKIN: Yes, your Honor. That is what  
12 he's examining, though, the response to the request.

13 THE COURT: I understand.

14 MR. VILKIN: Yeah.

11:02:11 15 THE WITNESS: I do not see a document sent  
16 directly to owner other than the deed of trust  
17 recorded, advising that.

18 BY MR. VILKIN:

19 Q. Advising what?

11:02:25 20 A. Advising of your question a document sent  
21 directly to the HOA requesting notice other than the  
22 deed of trust which is recorded.

23 Q. And no document advising the HOA that you had  
24 a security interest in the property; correct?

11:02:41 25 A. The deed of trust.

11:02:42 1 Q. Other than the deed of trust, correct?

2 A. In that stack, I did not see anything. I know  
3 there was a prior sale. I don't know if -- how or if  
4 any type of notice would have been with that in regards  
11:02:57 5 to that prior sale that was occurring. And then didn't  
6 occur just months prior to the HOA sale.

7 Q. Well, you keep talking about the deed of  
8 trust. Did you see anything there where US Bank sent  
9 any kind of communications to the HOA enclosing the  
11:03:16 10 deed of trust?

11 A. Not to my knowledge.

12 MR. VILKIN: Your Honor, I move to admit  
13 Exhibit 17.

14 MR. BECKOM: It's our document. So no  
11:03:29 15 objection.

16 THE COURT: So admitted.

17 (Exhibit 17 admitted)

18 BY MR. VILKIN:

19 Q. Okay. Mr. Heifner, if you would, I want to  
11:03:36 20 ask you some questions about the notice of sale in this  
21 case. You told us -- you told the Court earlier that  
22 you had reviewed US Bank's complete file in this  
23 matter, correct?

24 A. Yes.

11:03:47 25 Q. Is it your testimony that you have no record

11:03:51 1 of ever receiving the notice of sale?

2 A. I -- prior to the sale or around the time of  
3 the sale there are no records. I mean, they even  
4 searched after the sale had taken place to see if we  
11:04:08 5 received it, and there was still no -- no record of  
6 receiving that at our addresses that we would receive  
7 those documents at.

8 Q. Well, I'm not asking about anything about  
9 addresses. All I'm asking is in the record you  
11:04:23 10 reviewed did you see any indication that US Bank had  
11 received the notice of sale prior to the sale date of  
12 January 25th, 2012?

13 A. No. I did not see it myself either.

14 Q. But it's your testimony that if you had  
11:04:46 15 received the notice of sale prior to the actual sale  
16 date that it was the policy of the company to find out  
17 what the payoff amount was and pay it off; correct?

18 A. It would be our policy to pay it off, yes.

19 Q. Take a look if you would again at Exhibit 4.

11:05:49 20 A. I'm there.

21 Q. You're there at Exhibit 4?

22 A. Yes.

23 Q. That's a deed of trust, correct?

24 A. Yes.

11:05:54 25 Q. And correct me if I'm wrong, but I believe you

11:05:59 1 testified that the company US Recordings in the upper  
2 left-hand corner, you don't believe has any affiliation  
3 with US Bank; correct?

4 A. No. Not to my knowledge.

11:06:11 5 Q. Okay. Why would this document -- this  
6 document was prepared on behalf of US Bank; would you  
7 agree with that?

8 A. It was prepared by Southwest Financial  
9 Service. The document was prepared by them.

11:06:24 10 Q. Well, do you think this document was prepared  
11 on behalf of US Bank?

12 A. It was prepared -- I mean, in all of my  
13 recollection of dealing with mortgages and deeds of  
14 trusts, a lot of times the title company, the mortgage  
11:06:41 15 broker information who is actually closing the loan,  
16 the information at times, or who's that information is  
17 up there. I'm not familiar with the company that's up  
18 there. I don't -- to my knowledge they're not  
19 affiliated with US Bank.

11:06:56 20 Q. Well, this -- you would agree with me, would  
21 you not, that this deed of trust is for the benefit of  
22 US Bank; correct?

23 A. Yes. It's a lender US Bank National  
24 Association.

11:07:06 25 Q. And US Bank, obviously, after the document is



11:07:10 1 executed and recorded is going to want a copy of it,  
2 correct?

3 A. Yes.

4 Q. And on this document, the direction is to  
11:07:23 5 return to US Recordings, correct?

6 A. US Recordings is who recorded it. So the  
7 recording was requested by US Recordings. Doesn't say  
8 that they received it after it was recorded.

9 Q. Well, but the upper left-hand corner it says  
11:07:39 10 return to name and address. You see that?

11 A. Correct. But the closing company or whoever  
12 was handling that, I would say was Southwest Financial  
13 Services would have had it, I'm assuming, recorded  
14 using the recording company who requested the recording  
11:07:52 15 and then we would have received the document to hold  
16 and own after that in our system.

17 Q. So are you telling me that US Recordings would  
18 have sent it to US Bank?

19 A. Yes.

11:08:06 20 MR. BECKOM: Objection, argumentative?

21 THE COURT: Overruled.

22 THE WITNESS: Yes.

23 BY MR. VILKIN:

24 Q. Now how many addresses does this deed of trust  
11:08:13 25 have on it?

11:08:19 1 A. On the face of it the first page there are --  
2 the deed of trust contains --

3 Q. I'm just asking how many addresses.

4 A. -- four complete addresses I believe.

11:08:30 5 Q. Okay. And why doesn't this document say who  
6 documents concerning this deed of trust should be  
7 mailed to?

8 A. I didn't create the document. All I can  
9 attest to is the information in the document. I can't  
11:08:54 10 state why or why not someone -- why it wouldn't say  
11 something.

12 Q. Well --

13 A. I could state what it does say or does not.

14 Q. Would you agree with me that somebody not  
11:09:03 15 associated with US Bank looking at this recorded  
16 document might have confusion over where to send  
17 documents concerning this deed of trust given that  
18 there's four addresses on it?

19 MR. BECKOM: Objection, argumentative.

11:09:13 20 THE COURT: Overruled.

21 THE WITNESS: If I were a homeowners  
22 association or an attorney, I -- I mean, being that I'm  
23 not, I would -- if just me, I would note to contact the  
24 lender who would be the person that would -- I mean, I  
11:09:28 25 wouldn't contact a recording company. I mean, and I'm

11:09:30 1 not an attorney.

2 BY MR. VILKIN:

3 Q. Did I ask you what you would do?

4 A. You asked if it would be -- if it's obvious,  
11:09:38 5 and I'm just stating I think it's obvious to myself --

6 Q. Okay.

7 A. -- that to notify the lender.

8 Q. What about somebody who's not somebody at a  
9 title company that is searching records? How would  
11:09:52 10 they know which address to send it to if the document  
11 doesn't tell them?

12 A. You just asked how the title company know?

13 Q. Yeah, a title company, correct?

14 A. They're very well knowledgeable in those  
11:10:08 15 procedures, title companies are.

16 Q. Well, wouldn't it have been better if US Bank  
17 had been specific on this document and said we want all  
18 notices concerning this deed of trust to go to whatever  
19 address they wanted instead of putting -- allowing four  
11:10:22 20 different addresses to be on it and creating confusion?

21 MR. BECKOM: Objection. Calls for a  
22 conclusion.

23 THE COURT: I'll sustain.

24 BY MR. VILKIN:

11:10:35 25 Q. Well, do you know why the document does not

11:10:37 1 specify which of the four addresses US Bank wants  
2 notices to be sent to?

3 A. The only answer to your question that I could  
4 give you would be that lender -- assumably suffice in  
11:10:58 5 that question being that the lender would be who's  
6 lending the funds --

7 Q. Okay.

8 A. -- in securing the property.

9 Q. My question is: Do you know why it doesn't  
11:11:07 10 specify which of the four addresses it wants notices  
11 sent to?

12 A. No. I mean as I stated earlier I can't really  
13 attest to why the document may not be -- may not  
14 contain that. I could just say why I believe that.  
11:11:20 15 And if that's what you're asking, I can say that  
16 because most people, I would assume, would understand  
17 that the lender is the company securing and lending the  
18 money against the property.

19 MR. VILKIN: Nothing further, your Honor.  
11:11:41 20 Thank you.

21 THE COURT: Anything else, sir?

22 MR. BECKOM: One thing.

23

24 REDIRECT EXAMINATION

25 \\\

10:17:12 1 in St. Paul, Minnesota.

2 THE COURT: Okay.

3 MR. BOHN: And that mailing is Exhibit 5 to  
4 our motion for summary judgment.

10:17:18 5 THE COURT: Okay. And number two, when we  
6 come to the notice of sale, that was sent to whom  
7 again?

8 MR. BOHN: The notice of sale is Exhibit 6  
9 notice -- Exhibit 7 to our motion is a proof of  
10 mailing. It went to US Bank Trust Company in Portland,  
11 Oregon. It went to US Bank National Association in  
12 Fargo, North Dakota. Then went again to US Recordings  
13 in St. Paul, Minnesota. So it went to three different  
14 addresses.

10:17:53 15 THE COURT: Okay. And the US Recording was  
16 listed on their deed of trust?

17 MR. BOHN: Correct.

18 THE COURT: Okay.

19 MR. BECKOM: But it was not listed as our  
10:18:07 20 mailing address.

21 THE COURT: Yeah. That's -- I always felt  
22 that, and you can correct me if I'm wrong, but I don't  
23 remember this being a Chapter 116, it would have made  
24 things so much easier if banks were required to have  
10:18:38 25 like a -- like a registered agent to when they transact

10:18:46 1 business they would have had for all the deeds of  
2 trust, they had a law that said, Look, you got to  
3 register where your business address is for the  
4 purposes of conducting business vis-à-vis the deed of  
10:19:00 5 trust. I always felt that that's one issue that I  
6 thought was problematic. Nothing I could do about it,  
7 but it would make my job a lot easier. I mean, it  
8 really and truly would because that -- if they're  
9 required to do that, you send it to the address. They  
10:19:17 10 do nothing, you're out of luck. That makes it really  
11 easy as far as I'm concerned. It's just like a  
12 corporation.

13 Anything else I need to know?

14 MR. BECKOM: I guess, we had additional  
10:19:26 15 arguments under Uniform Fraudulent Transfer Act. I  
16 think that is just an actual issue of pure law. It's a  
17 matter of it's based on NRS 112.191. It has to do with  
18 sales for less than a reasonably equivalent value when  
19 a borrower is insolvent.

10:19:47 20 Our argument there, actually a lot of it comes  
21 down to whether, I believe they were saying that this  
22 was exempt from those provisions because it was subject  
23 to a homestead exemption which was never filed. And  
24 there's actually US Supreme Court precedent that says  
10:20:02 25 you have to file a homestead exemption in Nevada in

10:20:05 1 order to have it be valid. And then on top of that,  
2 it's the expression exclusion analysis.

3 There are certain transactions that are  
4 expressly exempt as fraudulent transfers under  
10:20:18 5 NRS 112.191. They specifically mention UCC9 sales.  
6 They specifically mentioned mortgage foreclosures,  
7 deeds of trust foreclosures.

8 I think they just revised it to discuss spend  
9 thrift trust specifically. But not now or ever have  
10:20:36 10 they ever, and I'm probably one of the few people that  
11 actually argues this, have they ever amended that  
12 statute to say an HOA foreclosure provides reasonably  
13 equivalent value as a matter of law. And there's  
14 actually precedent out of the Eighth Circuit Federal  
10:20:55 15 Court of Appeals under the bankruptcy fraudulent  
16 transfer provisions specifically dealing with  
17 Nevada homeowners association foreclosures that says  
18 that they're not.

19 The Eighth Circuit confirmed voiding of a sale  
10:21:09 20 under the fraudulent transfer provisions of a Nevada  
21 homeowners association foreclosure in 2006.

22 We continue to contend that this sale is by  
23 the plain language of that statutory scheme, that's --  
24 this sale is not exempt from the provisions of the  
10:21:27 25 fraudulent transfer act which are meant specifically to

10:21:31 1 prevent this result. They are meant to prevent  
2 creditors having their assets sold at fire sale prices.

3 It's constructively fraudulent. It's a  
4 statutory tests under *Sportsco Enter v Morris*. And at  
10:21:44 5 the end of the day, like, it doesn't require intent.

6 There's no intent to defraud. It's not a traditional  
7 fraud claim. All you have to do is prove that there is  
8 lack of a reasonably equivalent value, that the debtor  
9 was -- that the homeowner was insolvent. And that's a  
10:22:00 10 done deal. You know, the sale should get voided, or we  
11 should be granted a lien by statute. I encourage you  
12 to read those.

13 THE COURT: But here's my question as far as  
14 that is concerned, hasn't that issue been decided by  
10:22:11 15 the Nevada Supreme Court as to what I should look for  
16 when it specifically deals with a determination as to  
17 where -- whether a sale was commercially unreasonable?

18 MR. BECKOM: I don't -- I don't think that --  
19 I don't think that foreclosed all avenues. I've  
10:22:29 20 advocated today that there's a void sale as opposed to  
21 a voidable sale.

22 I don't think that there is -- they -- the  
23 Nevada Supreme Court is going to be stuck to the record  
24 of the arguments made down below.

10:22:41 25 They can't start talking about -- I mean, very



10:22:44 1 rarely can they start talking about new argument that  
2 just pop out of the blue like a whack-a-mole game.  
3 Anybody made that argument.

4 THE COURT: But they do. I mean, isn't that  
10:22:54 5 what the Ninth Circuit did in Bourne Valley?

6 MR. BECKOM: Yeah. Constitutional issues are  
7 different. I think they can be sua sponte fraud up at  
8 the appellate level.

9 THE COURT: Okay.

10:23:01 10 MR. BECKOM: But we're talking about a strict  
11 statutory provision that, no, it has not been briefed  
12 by the Nevada Supreme Court at all. It's two statutes  
13 that seem to be interacting in such a way which should  
14 prevent this result. I mean, I have a couple of  
10:23:16 15 appeals. I think I've got another appeal with  
16 Mr. Bohn's office on this matter already. And I think  
17 it's an entirely separate issue. And I think it's an  
18 issue that deserves discussion. On that, I'll let them  
19 respond.

10:23:30 20 MR. TRIPPIEDI: Your Honor, on the Uniform  
21 Fraudulent Transfer Act, so NRS 112.150(2) defines  
22 asset for us under the Uniform Fraudulent Transfer Act  
23 and it states that the asset does not include -- the  
24 definition of asset does not include property  
10:23:48 25 encumbered by valid liens. Here we have the property

10:23:53 1 at the time of the "transfer" was encumbered by the HOA  
2 lien. So it -- this property doesn't meet the  
3 statutory definition --

4 THE COURT: I understand.

10:24:01 5 MR. TRIPPIEDI: -- of an asset.

6 Additionally, we've cited in our opposition on  
7 page 28 to Comment 2 to Section 1 of the act at which  
8 discusses the definition of the word asset. And the  
9 bank is not in the class of persons that this act is  
10 designed to protect. This act is defined to protect  
11 unsecured creditors, not secured creditors.

12 So, I mean, you can read the block quote in  
13 there. We have it in there. The last portion states  
14 it's generally beyond the reach by unsecured creditors  
10:24:37 15 because subject to a valid lien. There's various other  
16 areas within this section which discuss unsecured  
17 creditor. Never discusses secured creditors. The bank  
18 was a secured creditor because it had a deed of trust.  
19 So that -- it's -- the Uniform Fraudulent Transfer Act  
10:24:56 20 does not apply here.

21 Additionally, counsel stated that they have to  
22 show that the former owner of the property who  
23 "transferred the property" was insolvent. They have  
24 not made a showing of that. We don't have any showing  
10:25:08 25 of the assets or liabilities of this former owner,

10:25:12 1 Mr. Edwards. So they haven't met the burden on the  
2 Uniform Fraudulent Transfer Act. It does not apply  
3 under the facts of this case.

4 MR. BECKOM: And then we can probably just end  
10:25:24 5 it here. The only three points that I have are the  
6 definition of asset, he's omitting three key words  
7 here, which I think we cited a couple of cases in  
8 support of this proposition is the phrase to the extent  
9 it is encumbered by a valid lien. The statutory scheme  
10:25:40 10 cannot be used to, you know, derail Glen Eagle's lien  
11 rights for nine months worth of assessments. But to  
12 the extent there's equity over and above that nine  
13 months of assessments, that is most assuredly an asset  
14 for the purposes of the fraudulent transfer act, and  
10:25:57 15 there is case law to that effect.

16 Transfers can be involuntary transfers of  
17 interests. And that just goes without saying. And as  
18 far as the insolvency issue, we get -- we -- I heard  
19 Mr. Bohn speak earlier about presumptions. We get a  
10:26:14 20 presumption in this context that if Mr. Edwards is not  
21 paying his bills as they come due generally, then we  
22 get -- then he is insolvent. And they have to come  
23 back and show that the value of his assets are greater  
24 than the value of all his liabilities in order to  
10:26:31 25 disprove that, and that has not been done here. And

10:26:33 1 then, clearly, we have a bank trying to foreclose on a  
2 judicial foreclosure action and a homeowners  
3 association that didn't.

4 THE COURT: All right. Last one comment. And  
10:26:42 5 I just want to make sure I'm clear. For the record the  
6 parties agree that there's no material issues of fact  
7 to be decided, and these are questions of law for the  
8 Court to decide?

9 MR. TRIPPIEDI: I don't think that's disputed  
10:26:56 10 really.

11 MR. BECKOM: I get -- I get hesitant to  
12 abrogate my trial rights without speaking with them  
13 first other than to say --

14 THE COURT: Okay.

10:27:03 15 MR. BECKOM: We have -- we have met our burden  
16 of production. I think that is -- that is our  
17 position.

18 THE COURT: I understand. I just want to make  
19 sure. You know.

10:27:11 20 MR. TRIPPIEDI: The --

21 THE COURT: Because that makes it a lot easier  
22 for me.

23 MR. TRIPPIEDI: The only issue I would say is  
24 means the value of the property. But, again, we don't  
10:27:17 25 think you get to because there is not fraud,

10:27:19 1 oppression, or unfairness which accounts for that  
2 purchase price.

3 THE COURT: I understand.

4 MR. TRIPPIEDI: Other than that --

10:27:23 5 THE COURT: All I was doing, Mr. Trippiedi, I  
6 was really trying to make a fairly clean record and  
7 easy task for me. And it's not as easy as I would like  
8 it.

9 MR. TRIPPIEDI: True.

10:27:35 10 THE COURT: Do you understand?

11 MR. TRIPPIEDI: I understand.

12 MR. BECKOM: If you would like, what we can  
13 do, the only reason that I wouldn't stipulate to that  
14 is because I'm -- again, like seventh amendment trial  
10:27:43 15 rights are a big deal. And that's not something I  
16 do --

17 THE COURT: They are.

18 MR. BECKOM: -- unless I get, like, some kind  
19 of communications back from my client that says, sure,  
10:27:49 20 and then I go save that somewhere.

21 THE COURT: I don't blame you.

22 MR. BECKOM: We might be able to, if you give  
23 us a little bit of time, my client is normally very  
24 responsive. I can ask them if they would be willing to  
10:28:00 25 stipulate to that effect and maybe we can submit a

10:28:02 1 stipulation.

2 THE COURT: I'll give you that opportunity.

3 MR. TRIPPEDI: We can discuss that.

4 THE COURT: I'll let you discuss that before I  
10:28:07 5 issue a decision. And either way, let me know. Is  
6 that fine?

7 MR. BECKOM: Of course.

8 THE COURT: All right. Thank you, gentlemen.

9 MR. BECKOM: Thank you very much for your  
10:28:17 10 time.

11 MR. TAYLOR: Thank you, your Honor.

12

13

14 (Proceedings were concluded.)

15

16 \* \* \* \* \*

17

18

19

20

21

22

23

24

25

## REPORTER'S CERTIFICATE

STATE OF NEVADA)

:SS

COUNTY OF CLARK)

I, PEGGY ISOM, CERTIFIED SHORTHAND REPORTER DO  
HEREBY CERTIFY THAT I TOOK DOWN IN STENOGRAPHY ALL OF THE  
PROCEEDINGS HAD IN THE BEFORE-ENTITLED MATTER AT THE  
TIME AND PLACE INDICATED, AND THAT THEREAFTER SAID  
STENOGRAPHY NOTES WERE TRANSCRIBED INTO TYPEWRITING AT  
AND UNDER MY DIRECTION AND SUPERVISION AND THE  
FOREGOING TRANSCRIPT CONSTITUTES A FULL, TRUE AND  
ACCURATE RECORD TO THE BEST OF MY ABILITY OF THE  
PROCEEDINGS HAD.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED  
MY NAME IN MY OFFICE IN THE COUNTY OF CLARK, STATE OF  
NEVADA.

/s/ Peggy Isom  
PEGGY ISOM, RMR, CCR 541

	15/11	8/6	43/1 44/14 44/16	50/7 50/19 51/12
<b>MR. BECKOM:</b>	<b>200 [1]</b> 2/7	<b>ABILITY [1]</b> 57/11	44/17 45/12 45/23	53/24 54/4 55/5
<b>[63]</b>	<b>2006 [1]</b> 49/21	<b>able [1]</b> 55/22	45/24 46/3 47/20	56/8 57/5
<b>MR. BOHN: [22]</b>	<b>2011 [1]</b> 46/12	<b>about [27]</b> 7/8 9/3	48/3 48/9	<b>allegation [2]</b>
31/5 31/9 31/12	<b>2012 [1]</b> 12/23	10/15 12/15 13/24	<b>addresses [5]</b>	33/15 33/19
31/16 34/11 34/14	<b>2017 [2]</b> 1/20 4/1	14/22 16/12 20/24	44/23 45/16 46/4	<b>alleged [1]</b> 19/9
34/24 35/12 36/4	<b>28 [1]</b> 52/7	21/24 23/17 25/12	46/21 47/14	<b>alleging [1]</b> 15/4
37/6 37/16 39/3	<b>3</b>	28/15 30/11 32/24	<b>adequate [3]</b> 37/2	<b>almost [1]</b> 20/1
39/14 40/24 44/12	<b>30 [1]</b> 46/5	33/20 34/1 34/3	37/8 37/14	<b>already [2]</b> 35/4
45/13 46/1 46/22	<b>3113 [1]</b> 2/21	38/1 39/20 41/9	<b>admit [1]</b> 45/8	51/16
46/24 47/2 47/7	<b>316-4111 [1]</b> 3/7	43/4 43/22 48/6	<b>adverse [1]</b> 13/22	<b>also [4]</b> 36/21
47/16	<b>316-4114 [1]</b> 3/8	50/25 51/1 51/10	<b>advertisement [2]</b>	36/24 36/24 37/4
<b>MR. TAYLOR: [9]</b>	<b>4</b>	53/19	26/25 27/1	<b>always [7]</b> 10/16
4/10 5/23 6/10	<b>40 [1]</b> 9/16	<b>above [1]</b> 53/12	<b>advertisements [1]</b>	23/9 41/5 42/6
31/21 31/25 32/4	<b>4111 [1]</b> 3/7	<b>abrogate [1]</b> 54/12	28/17	43/13 47/21 48/5
32/20 38/14 56/10	<b>4114 [1]</b> 3/8	<b>abrogation [1]</b>	<b>advertising [2]</b>	<b>am [1]</b> 33/1
<b>MR. TRIPPIED:</b>	<b>41A [1]</b> 14/22	10/18	27/7 29/10	<b>amended [1]</b>
<b>[61]</b>	<b>4520 [1]</b> 2/18	<b>absolutely [4]</b>	<b>advocated [1]</b>	49/11
<b>THE COURT: [129]</b>	<b>47.250 [1]</b> 36/12	6/22 8/4 15/6 27/16	50/20	<b>amendment [1]</b>
	<b>4th [1]</b> 36/6	<b>academic [3]</b> 7/7	<b>affect [2]</b> 9/1	55/14
<b>\$</b>	<b>5</b>	25/21 32/16	21/10	<b>analysis [1]</b> 49/2
<b>\$40,000 [1]</b> 9/22	<b>541 [2]</b> 1/23 57/17	<b>acceptable [6]</b>	<b>affidavit [2]</b> 37/23	<b>and/or [1]</b> 32/19
<b>\$5,000 [3]</b> 15/16	<b>5691 [1]</b> 2/10	20/8 20/16 21/19	37/24	<b>another [3]</b> 15/25
19/22 21/3	<b>5th [1]</b> 36/8	21/20 22/4 22/18	<b>affidavits [1]</b>	45/18 51/15
<b>\$50,000 [1]</b> 35/4	<b>6</b>	<b>accounts [2]</b> 30/12	35/20	<b>answer [1]</b> 46/15
<b>\$5300 [1]</b> 35/3	<b>642-3113 [1]</b> 2/21	55/1	<b>affirmed [2]</b> 9/25	<b>answers [2]</b> 34/17
<b>\$62,000 [1]</b> 35/14	<b>685-0329 [1]</b> 2/9	<b>ACCURATE [1]</b>	14/3	34/21
<b>/</b>	<b>7</b>	57/11	<b>afield [1]</b> 33/4	<b>any [11]</b> 4/17 6/8
<b>/s [1]</b> 57/17	<b>702 [5]</b> 2/9 2/10	<b>acknowledges [1]</b>	<b>again [9]</b> 16/7 29/4	8/22 12/6 12/11
<b>0</b>	2/21 3/7 3/8	5/11	30/23 43/15 45/4	35/19 38/10 42/5
<b>0329 [1]</b> 2/9	<b>7425 [1]</b> 3/5	<b>acquire [1]</b> 35/15	47/7 47/12 54/24	44/12 46/18 52/24
<b>1</b>	<b>8</b>	<b>across [2]</b> 10/12	55/14	<b>anybody [2]</b> 40/10
<b>10 [1]</b> 8/18	<b>866-339-5691 [1]</b>	13/2	<b>against [3]</b> 10/11	51/3
<b>100 percent [1]</b>	2/10	<b>act [12]</b> 10/11	38/11 41/7	<b>anyone [1]</b> 43/20
25/8	<b>89117 [1]</b> 2/8	10/17 48/15 49/25	<b>agent [3]</b> 38/6	<b>anything [6]</b> 14/23
<b>11 [1]</b> 4/6	<b>89121 [1]</b> 2/20	51/21 51/22 52/7	46/16 47/25	16/21 28/10 34/11
<b>112.150 [1]</b> 51/21	<b>89128 [1]</b> 3/6	52/9 52/10 52/19	<b>agents [1]</b> 38/12	46/10 48/13
<b>112.191 [2]</b> 48/17	<b>9</b>	53/2 53/14	<b>ago [1]</b> 13/25	<b>anyway [1]</b> 10/7
49/5	<b>9510 [1]</b> 2/6	<b>action [5]</b> 8/8	<b>agree [3]</b> 31/19	<b>apparently [2]</b>
<b>116 [3]</b> 25/7 36/6	<b>9:21 [1]</b> 4/2	10/24 13/21 46/18	32/3 54/6	10/24 29/11
47/23	<b>:</b>	54/2	<b>agreed [3]</b> 21/21	<b>appeal [4]</b> 5/14 8/5
<b>116.104 [1]</b> 25/16	<b>:SS [1]</b> 57/2	<b>actions [4]</b> 19/16	31/15 31/20	33/11 51/15
<b>116.1104 [1]</b>	<b>A</b>	41/7 41/24 46/8	<b>agreeing [1]</b> 31/25	<b>appeals [3]</b> 11/5
27/21	<b>A-12-667690-C [1]</b>	<b>actual [2]</b> 37/10	<b>agrees [3]</b> 31/16	49/15 51/15
<b>116.1113 [1]</b>	1/1	48/16	31/24 32/6	<b>appearances [4]</b>
27/13	<b>A.M [1]</b> 4/2	<b>actually [10]</b>	<b>ahead [5]</b> 4/8 6/3	2/1 3/1 4/8 6/4
<b>116.3115 [1]</b>	<b>AB125 [1]</b> 9/25	13/25 19/1 19/13	11/23 24/10 36/4	<b>appellate [3]</b> 6/24
36/11	<b>abandoned [1]</b>	28/20 39/24 42/7	<b>Alessi [7]</b> 19/10	15/22 51/8
<b>150 [1]</b> 16/9	16/21	48/20 48/24 49/11	29/7 40/14 40/16	<b>applies [1]</b> 24/17
<b>16 [1]</b> 36/12	<b>abandoning [1]</b>	49/14	40/19 40/19 43/3	<b>apply [3]</b> 24/17
<b>19 [1]</b> 21/24		<b>ADAM [3]</b> 2/16	<b>all [34]</b> 4/6 4/7	52/20 53/2
<b>1991 [1]</b> 27/23		4/10 6/9	4/17 5/4 6/13 7/6	<b>appraisal [1]</b> 21/7
<b>2</b>		<b>add [2]</b> 32/1 34/11	7/8 8/1 11/9 12/24	<b>appreciate [1]</b>
<b>20 percent [1]</b>		<b>additional [1]</b>	13/10 14/24 18/24	39/18
		48/14	19/5 19/11 22/16	<b>appropriate [2]</b>
		<b>Additionally [3]</b>	26/21 34/8 37/20	39/3 42/3
		12/13 52/6 52/21	38/14 39/19 40/20	<b>approximately [1]</b>
		<b>address [12]</b> 42/24	42/1 44/2 44/9 48/1	46/13

(1) MR. BECKOM: - approximately



<p><b>A</b></p> <p><b>are [37]</b> 17/25 18/1 18/1 18/7 18/23 20/5 21/8 23/3 28/8 28/23 29/25 31/14 32/19 33/15 34/3 36/18 37/22 38/23 39/19 40/5 41/3 41/4 41/5 41/6 41/8 41/24 44/1 49/3 49/3 49/25 50/1 51/6 53/5 53/23 54/7 55/15 55/17</p> <p><b>area [3]</b> 9/17 16/21 17/1</p> <p><b>areas [1]</b> 52/16</p> <p><b>aren't [1]</b> 27/9</p> <p><b>arguably [1]</b> 19/20</p> <p><b>argue [4]</b> 5/14 22/24 23/2 24/13</p> <p><b>argued [1]</b> 17/10</p> <p><b>argues [1]</b> 49/11</p> <p><b>argument [7]</b> 10/15 19/1 26/16 32/23 48/20 51/1 51/3</p> <p><b>arguments [8]</b> 5/14 7/13 7/20 7/25 24/21 44/6 48/15 50/24</p> <p><b>around [2]</b> 15/16 27/12</p> <p><b>as [53]</b> 5/1 5/1 5/21 5/21 9/14 11/13 14/14 14/15 15/3 15/22 16/4 16/14 17/13 18/10 18/22 18/23 22/17 24/2 24/3 28/17 28/17 29/5 29/13 29/13 29/19 29/21 30/1 32/9 34/19 34/19 34/20 38/23 39/8 42/11 42/21 43/12 43/12 45/12 47/19 48/11 48/11 49/4 49/13 50/13 50/13 50/15 50/16 50/20 53/17 53/18 53/21 55/7 55/7</p> <p><b>aside [1]</b> 44/6</p> <p><b>ask [1]</b> 55/24</p> <p><b>asked [2]</b> 9/21 34/18</p> <p><b>asking [2]</b> 23/12 33/6</p> <p><b>aspect [1]</b> 45/3</p>	<p><b>aspects [1]</b> 15/10</p> <p><b>asserting [2]</b> 12/6 13/6</p> <p><b>assertion [1]</b> 14/11</p> <p><b>assessments [2]</b> 53/11 53/13</p> <p><b>asset [11]</b> 14/6 14/8 26/25 27/15 51/22 51/23 51/24 52/5 52/8 53/6 53/13</p> <p><b>assets [3]</b> 50/2 52/25 53/23</p> <p><b>association [8]</b> 1/9 4/12 6/12 19/14 47/11 49/17 49/21 54/3</p> <p><b>assuming [1]</b> 16/19</p> <p><b>assure [1]</b> 35/24</p> <p><b>assuredly [1]</b> 53/13</p> <p><b>at [52]</b> 7/9 8/7 8/13 11/1 11/4 11/7 11/14 11/25 12/1 13/2 15/7 17/16 18/6 18/15 19/5 20/23 21/1 21/4 23/1 23/8 24/20 25/5 25/5 26/21 26/24 27/17 28/21 29/5 29/14 29/17 30/22 37/5 37/8 38/14 39/10 40/1 41/16 42/6 43/2 43/5 43/18 43/19 45/5 46/8 50/2 50/4 51/7 51/12 52/1 52/7 57/6 57/8</p> <p><b>ATRIPIEDI [1]</b> 2/22</p> <p><b>attack [1]</b> 41/24</p> <p><b>attorney's [2]</b> 9/15 9/19</p> <p><b>authority [2]</b> 10/18 45/2</p> <p><b>automatically [1]</b> 23/10</p> <p><b>available [1]</b> 35/8</p> <p><b>AVENUE [1]</b> 2/6</p> <p><b>avenues [1]</b> 50/19</p> <p><b>award [1]</b> 9/15</p> <p><b>away [1]</b> 38/21</p> <p><b>B</b></p> <p><b>back [10]</b> 5/22 11/14 18/22 19/7 19/17 23/7 43/20</p>	<p>44/9 53/23 55/19</p> <p><b>bag [1]</b> 39/7</p> <p><b>balance [1]</b> 24/5</p> <p><b>balls [1]</b> 27/11</p> <p><b>bank [25]</b> 1/9 4/7 6/6 34/18 34/19 35/19 35/24 36/18 38/2 38/22 38/25 39/1 40/5 40/20 42/23 42/24 43/8 44/18 44/23 46/4 47/10 47/11 52/9 52/17 54/1</p> <p><b>Bank's [2]</b> 6/14 36/9</p> <p><b>bankruptcy [13]</b> 12/4 12/8 12/17 12/19 12/22 13/1 13/1 13/7 13/13 13/20 13/22 15/4 49/15</p> <p><b>banks [2]</b> 35/23 47/24</p> <p><b>Banks' [1]</b> 6/23</p> <p><b>based [10]</b> 13/18 16/16 16/24 17/3 17/12 18/8 19/23 26/16 40/19 48/17</p> <p><b>bases [1]</b> 29/6</p> <p><b>basis [2]</b> 29/5 33/10</p> <p><b>Bay [5]</b> 5/4 7/15 11/15 14/21 16/7</p> <p><b>be [60]</b></p> <p><b>beat [1]</b> 9/22</p> <p><b>because [54]</b> 5/2 5/3 9/2 9/17 10/2 10/6 11/4 13/12 13/19 14/23 15/17 16/8 17/14 18/15 18/21 19/18 22/6 24/1 24/14 26/6 26/21 27/25 28/21 29/7 31/24 33/3 35/2 35/17 35/22 36/7 36/18 38/8 38/23 39/24 41/4 41/10 41/18 41/20 42/4 42/5 43/6 43/8 43/11 44/1 44/2 44/2 44/3 48/8 48/22 52/15 52/18 54/21 54/25 55/14</p> <p><b>BECKOM [3]</b> 2/5 4/13 6/5</p> <p><b>Beckom's [1]</b> 5/10</p> <p><b>becomes [1]</b> 42/15</p> <p><b>been [19]</b> 5/7 8/14</p>	<p>10/16 18/20 27/22 36/7 36/13 37/11 37/22 41/6 41/22 42/1 43/13 43/21 43/25 45/1 50/14 51/11 53/25</p> <p><b>before [11]</b> 1/17 7/6 14/21 22/24 30/15 35/8 37/20 40/8 40/9 56/4 57/6</p> <p><b>BEFORE-ENTITLED [1]</b> 57/6</p> <p><b>behalf [1]</b> 6/5</p> <p><b>being [10]</b> 8/13 10/19 26/25 27/15 31/11 33/3 33/10 38/14 43/18 47/23</p> <p><b>believe [4]</b> 28/19 28/22 44/15 48/21</p> <p><b>belongs [2]</b> 31/6 31/8</p> <p><b>below [1]</b> 50/24</p> <p><b>bench [5]</b> 5/22 22/9 22/10 23/23 31/7</p> <p><b>benefit [1]</b> 13/13</p> <p><b>benefits [1]</b> 13/7</p> <p><b>best [3]</b> 20/1 27/4 57/11</p> <p><b>better [1]</b> 39/4</p> <p><b>between [8]</b> 6/24 8/20 16/1 18/14 19/25 20/25 41/14 46/6</p> <p><b>beyond [1]</b> 52/14</p> <p><b>bidding [2]</b> 26/15 26/15</p> <p><b>big [4]</b> 17/21 27/3 27/5 55/15</p> <p><b>billions [1]</b> 10/10</p> <p><b>bills [1]</b> 53/21</p> <p><b>binding [1]</b> 36/18</p> <p><b>bit [4]</b> 6/19 19/6 33/4 55/23</p> <p><b>blame [1]</b> 55/21</p> <p><b>block [1]</b> 52/12</p> <p><b>blue [1]</b> 51/2</p> <p><b>bodies [2]</b> 6/24 15/22</p> <p><b>BOHN [11]</b> 2/15 2/17 31/4 34/10 40/23 40/25 41/1 41/1 41/1 42/5 53/19</p> <p><b>Bohn's [1]</b> 51/16</p> <p><b>BOHNLAWFIRM.C OM [1]</b> 2/22</p> <p><b>bona [3]</b> 35/21</p>	<p>38/9 41/10</p> <p><b>book [1]</b> 28/25</p> <p><b>borrower [1]</b> 48/19</p> <p><b>boss [1]</b> 31/20</p> <p><b>both [3]</b> 21/13 24/12 45/20</p> <p><b>bottom [2]</b> 6/20 15/3</p> <p><b>bound [1]</b> 34/20</p> <p><b>Bourne [2]</b> 8/12 51/5</p> <p><b>brief [1]</b> 5/25</p> <p><b>briefed [4]</b> 23/5 29/13 41/13 51/11</p> <p><b>Briefly [1]</b> 44/13</p> <p><b>bring [4]</b> 9/8 17/5 19/7 33/25</p> <p><b>bringing [2]</b> 19/17 29/24</p> <p><b>brings [2]</b> 40/23 41/2</p> <p><b>Broker's [1]</b> 35/13</p> <p><b>Brokers [1]</b> 35/11</p> <p><b>brought [1]</b> 30/11</p> <p><b>Brunson [2]</b> 15/15 18/7</p> <p><b>bucks [1]</b> 21/3</p> <p><b>bunch [1]</b> 17/24</p> <p><b>burden [6]</b> 30/24 43/9 43/23 44/11 53/1 54/15</p> <p><b>business [3]</b> 48/1 48/3 48/4</p> <p><b>but [57]</b> 5/14 5/19 7/1 7/9 9/11 9/25 10/5 10/7 10/25 11/13 12/7 13/11 13/17 14/2 14/14 19/15 20/11 20/12 20/12 21/4 21/11 21/24 22/14 23/8 23/23 24/13 25/9 25/10 27/8 27/18 27/21 28/2 28/10 28/14 28/21 30/22 32/8 33/5 33/8 34/2 34/2 37/13 38/16 43/2 43/6 44/18 45/4 45/25 47/19 47/22 48/7 49/9 50/13 51/4 51/10 53/11 54/24</p> <p><b>Buy [1]</b> 27/4</p> <p><b>buyer [5]</b> 16/1 18/4 19/25 21/13 43/12</p> <p><b>buyers [1]</b> 20/25</p>
---	--	---	---	---

(2) are - buyers

<b>B</b>	8/17	29/18 30/3 48/20	<b>constitutionality</b>	<b>court</b> [46] 1/6 1/18
<b>buying</b> [1] 29/3	<b>change</b> [4] 10/1	<b>coming</b> [1] 26/19	[1] 44/5	5/17 7/11 7/15 8/9
<b>C</b>	10/5 13/11 16/16	<b>comment</b> [2] 52/7	<b>construction</b> [4]	8/14 8/19 8/21 9/24
<b>call</b> [1] 5/2	<b>changed</b> [2] 6/17	54/4	9/14 9/20 17/8	10/23 11/6 12/7
<b>came</b> [4] 9/25 14/7	9/3	<b>commercially</b> [8]	17/19	12/8 12/11 13/1
20/22 37/5	<b>changes</b> [1] 5/9	20/8 20/16 21/20	<b>constructive</b> [2]	13/9 13/21 13/22
<b>can</b> [28] 4/16 11/6	<b>changing</b> [1] 9/9	22/4 22/18 32/14	27/1 35/22	13/23 14/7 14/18
11/18 14/19 15/21	<b>Chapter</b> [3] 9/16	35/2 50/17	<b>constructively</b> [1]	15/23 18/11 22/25
16/13 16/16 18/10	25/7 47/23	<b>common</b> [4] 10/17	50/3	23/3 23/9 25/4
19/19 20/12 23/6	<b>Chase</b> [2] 14/22	14/25 16/9 36/21	<b>contacts</b> [1] 38/1	26/17 26/19 31/2
24/12 31/4 33/23	16/7	<b>communications</b>	<b>contained</b> [1] 28/6	31/14 32/25 36/14
36/20 38/19 38/20	<b>chill</b> [1] 26/15	[1] 55/19	<b>contend</b> [2] 38/5	37/2 37/5 37/15
39/13 47/22 51/1	<b>Cincinnati</b> [1]	<b>Company</b> [1]	49/22	38/17 43/20 46/7
51/7 52/12 53/4	45/17	47/10	<b>contention</b> [2]	48/24 49/15 50/15
53/16 55/12 55/24	<b>Circuit</b> [4] 8/20	<b>comparables</b> [1]	40/8 41/6	50/23 51/12 54/8
55/25 56/3	49/14 49/19 51/5	18/7	<b>contentions</b> [1]	<b>Court's</b> [1] 8/16
<b>can't</b> [6] 8/21 13/9	<b>circumstance</b> [1]	<b>competing</b> [1]	43/25	<b>courts</b> [3] 11/5
22/22 32/17 37/19	42/17	32/23	<b>context</b> [1] 53/20	11/5 23/2
50/25	<b>cited</b> [2] 52/6 53/7	<b>complain</b> [1] 38/1	<b>continue</b> [2] 8/6	<b>covenants</b> [1]
<b>cannot</b> [2] 44/7	<b>cites</b> [1] 29/14	<b>completely</b> [1]	49/22	28/24
53/10	<b>city</b> [2] 10/18	27/17	<b>CONTINUED</b> [1]	<b>create</b> [2] 19/21
<b>care</b> [2] 24/24	10/19	<b>complied</b> [1] 36/10	3/1	39/1
27/24	<b>civil</b> [3] 13/20	<b>component</b> [2]	<b>contrary</b> [1] 27/2	<b>creates</b> [1] 22/8
<b>case</b> [33] 1/1 5/3	14/25 16/10	30/8 30/9	<b>contrast</b> [1] 17/2	<b>creating</b> [1] 21/14
12/3 13/4 13/15	<b>claim</b> [6] 8/6 8/7	<b>comps</b> [1] 17/1	<b>contributed</b> [1]	<b>creditor</b> [3] 13/8
13/24 14/12 14/15	14/8 14/19 38/11	<b>compulsion</b> [4]	32/12	52/17 52/18
14/22 15/25 22/3	50/7	15/18 16/6 16/6	<b>convince</b> [1] 15/21	<b>creditors</b> [6] 13/2
23/8 23/8 23/11	<b>claimant</b> [1] 6/15	18/9	<b>corporation</b> [1]	50/2 52/11 52/11
23/20 23/25 29/14	<b>claiming</b> [7] 12/8	<b>compulsory</b> [1]	48/12	52/14 52/17
31/11 36/16 37/1	13/2 13/7 13/9	16/3	<b>correct</b> [12] 5/5	<b>cup</b> [1] 25/24
37/10 37/16 38/14	14/16 15/15 21/15	<b>concerned</b> [2]	5/6 22/21 22/23	<b>D</b>
38/22 39/18 40/3	<b>CLARK</b> [3] 1/7 57/3	48/11 50/14	24/25 25/8 30/16	<b>Dakota</b> [1] 47/12
40/9 41/13 42/10	57/14	<b>concluded</b> [1]	45/13 45/14 46/23	<b>damages</b> [5] 23/13
46/5 46/10 53/3	<b>class</b> [1] 52/9	56/14	47/17 47/22	23/19 31/11 37/1
53/15	<b>clause</b> [12] 24/22	<b>conclusion</b> [1]	<b>costs</b> [1] 9/15	38/10
<b>cases</b> [5] 10/6 11/4	25/6 25/6 26/5	21/18	<b>couch</b> [1] 21/2	<b>DATED</b> [1] 1/20
13/18 39/19 53/7	26/12 26/21 27/22	<b>concrete</b> [1] 21/9	<b>could</b> [14] 16/24	<b>David</b> [2] 40/13
<b>causation</b> [3]	27/25 28/4 28/5	<b>condition</b> [1]	17/7 17/8 17/11	40/19
30/13 32/19 34/3	28/13 29/25	17/16	24/8 32/13 33/14	<b>day</b> [14] 7/9 11/2
<b>caused</b> [1] 9/20	<b>CLAYTON</b> [1] 3/3	<b>conditions</b> [1]	35/6 35/6 35/7 35/8	11/14 12/1 15/8
<b>CC</b> [4] 21/25 28/6	<b>clean</b> [1] 55/6	28/24	42/15 42/15 48/6	18/16 20/23 24/13
29/2 29/10	<b>clear</b> [4] 7/1 14/5	<b>condo</b> [1] 15/17	<b>couldn't</b> [2] 17/10	29/18 30/22 41/16
<b>CCR</b> [2] 1/23 57/17	42/16 54/5	<b>conducted</b> [4]	39/4	43/2 43/19 50/5
<b>CCRs</b> [1] 27/25	<b>clearly</b> [2] 22/25	19/11 19/13 27/14	<b>counsel</b> [2] 45/8	<b>days</b> [1] 46/5
<b>certain</b> [3] 6/24	54/1	38/6	52/21	<b>deal</b> [5] 11/17 25/3
9/2 49/3	<b>client</b> [7] 37/23	<b>conducting</b> [3]	<b>counter</b> [2] 6/15	41/13 50/10 55/15
<b>Certainly</b> [1] 20/18	37/25 38/7 43/23	19/14 28/23 48/4	15/14	<b>dealing</b> [3] 19/12
<b>CERTIFICATE</b> [1]	45/22 55/19 55/23	<b>confirmed</b> [1]	<b>counter-claimant</b>	23/18 49/16
57/1	<b>clinically</b> [1] 40/1	49/19	[1] 6/15	<b>deals</b> [1] 50/16
<b>CERTIFIED</b> [1]	<b>code</b> [1] 17/21	<b>conflict</b> [4] 20/15	<b>counterclaim</b> [1]	<b>debtor</b> [1] 50/8
57/4	<b>coffee</b> [1] 25/24	22/19 24/2 32/7	32/8	<b>decent</b> [1] 16/20
<b>CERTIFY</b> [1] 57/5	<b>collusion</b> [4] 19/20	<b>conflicts</b> [1] 8/20	<b>counters</b> [1] 21/8	<b>decide</b> [6] 12/7
<b>challenging</b> [1]	21/12 22/19 43/13	<b>consequently</b> [2]	<b>Country</b> [1] 46/25	22/9 22/15 32/12
39/19	<b>come</b> [10] 13/9	39/2 39/13	<b>COUNTY</b> [3] 1/7	32/25 54/8
<b>chance</b> [2] 38/18	14/19 16/25 21/7	<b>constitutes</b> [2]	57/3 57/14	<b>decided</b> [7] 5/4 5/7
39/17	27/4 43/20 44/8	33/23 57/10	<b>couple</b> [2] 51/14	10/23 18/10 33/3
<b>chances</b> [2] 8/13	47/6 53/21 53/22	<b>constitutional</b> [4]	53/7	50/14 54/7
	<b>comes</b> [4] 25/15	6/18 7/19 36/7 51/6	<b>course</b> [1] 56/7	<b>decides</b> [2] 30/23

(3) buying - decides

<p><b>D</b></p> <p><b>decides...</b> [1] 31/3</p> <p><b>decision</b> [15] 7/10 7/14 7/18 8/17 8/19 9/14 10/2 14/15 14/20 22/25 24/6 33/8 37/10 37/16 56/5</p> <p><b>declared</b> [2] 31/1 41/22</p> <p><b>deed</b> [17] 15/5 24/17 31/1 35/3 36/19 42/25 44/14 44/15 44/19 44/25 45/12 45/16 45/23 46/22 47/16 48/4 52/18</p> <p><b>deeds</b> [2] 48/1 49/7</p> <p><b>deep</b> [1] 23/21</p> <p><b>default</b> [11] 28/22 40/18 42/14 43/15 44/14 44/16 45/24 46/1 46/2 46/17 46/20</p> <p><b>defect</b> [9] 9/14 9/20 17/20 18/14 18/15 19/23 20/6 20/21 42/12</p> <p><b>defective</b> [1] 18/8</p> <p><b>defects</b> [4] 15/18 17/8 20/24 42/3</p> <p><b>defendant</b> [7] 1/13 2/13 4/10 6/9 6/12 6/15 35/21</p> <p><b>defined</b> [2] 15/25 52/10</p> <p><b>defines</b> [1] 51/21</p> <p><b>definition</b> [5] 21/10 51/24 52/3 52/8 53/6</p> <p><b>defraud</b> [1] 50/6</p> <p><b>demonstrating</b> [1] 36/10</p> <p><b>denying</b> [1] 39/8</p> <p><b>department</b> [1] 4/22</p> <p><b>depending</b> [1] 31/2</p> <p><b>deposition</b> [3] 40/13 40/22 43/6</p> <p><b>depress</b> [1] 27/6</p> <p><b>depressed</b> [1] 21/15</p> <p><b>DEPT</b> [1] 1/3</p> <p><b>derail</b> [1] 53/10</p> <p><b>deserves</b> [1] 51/18</p> <p><b>designed</b> [1] 52/10</p>	<p><b>detail</b> [1] 39/25</p> <p><b>determination</b> [7] 14/1 22/17 23/3 23/15 23/25 24/2 50/16</p> <p><b>determinations</b> [2] 22/7 23/3</p> <p><b>determine</b> [1] 39/11</p> <p><b>determined</b> [1] 34/4</p> <p><b>developed</b> [1] 13/14</p> <p><b>dice</b> [1] 27/11</p> <p><b>did</b> [11] 32/1 35/17 35/24 40/20 44/22 44/23 45/8 46/2 46/3 46/15 51/5</p> <p><b>didn't</b> [15] 9/22 14/10 28/10 35/9 41/23 43/7 43/8 43/14 44/9 44/17 45/2 46/10 46/12 46/18 54/3</p> <p><b>difference</b> [2] 18/14 41/14</p> <p><b>differences</b> [1] 24/4</p> <p><b>different</b> [6] 10/12 13/3 17/9 21/24 47/13 51/7</p> <p><b>differently</b> [1] 12/6</p> <p><b>dig</b> [1] 23/21</p> <p><b>direct</b> [2] 32/6 46/17</p> <p><b>DIRECTION</b> [1] 57/9</p> <p><b>directly</b> [2] 27/2 29/11</p> <p><b>directs</b> [1] 29/2</p> <p><b>disagree</b> [2] 21/25 32/17</p> <p><b>disclaimed</b> [1] 14/6</p> <p><b>discovery</b> [5] 34/22 38/22 39/10 39/25 40/12</p> <p><b>discretion</b> [1] 12/11</p> <p><b>discuss</b> [4] 49/8 52/16 56/3 56/4</p> <p><b>discussed</b> [1] 14/20</p> <p><b>discusses</b> [2] 52/8 52/17</p> <p><b>discussing</b> [2] 11/8 41/13</p>	<p><b>discussion</b> [6] 5/3 7/3 11/11 18/24 25/22 51/18</p> <p><b>discussions</b> [2] 7/6 7/7</p> <p><b>dismissal</b> [1] 14/23</p> <p><b>disprove</b> [1] 53/25</p> <p><b>disputable</b> [2] 36/13 36/23</p> <p><b>dispute</b> [4] 32/7 33/9 33/12 33/13</p> <p><b>disputed</b> [1] 54/9</p> <p><b>dissect</b> [1] 39/25</p> <p><b>distinction</b> [1] 23/20</p> <p><b>distressed</b> [1] 17/2</p> <p><b>district</b> [5] 1/6 1/18 13/21 13/22 14/7</p> <p><b>disturbed</b> [1] 38/10</p> <p><b>divided</b> [1] 37/18</p> <p><b>do</b> [36] 4/25 5/16 5/16 6/16 7/11 7/13 8/21 8/21 9/10 26/8 27/20 28/10 29/21 31/2 34/10 35/9 39/1 39/22 39/22 40/5 40/5 43/24 46/10 46/13 46/14 46/15 48/6 48/9 48/10 48/17 50/7 51/4 55/10 55/13 55/16 57/4</p> <p><b>DOCKET</b> [1] 1/2</p> <p><b>document</b> [1] 43/1</p> <p><b>documentation</b> [1] 36/9</p> <p><b>documents</b> [4] 12/25 28/9 28/21 40/21</p> <p><b>does</b> [20] 4/23 7/17 10/22 12/14 14/14 17/17 17/18 25/15 31/19 32/10 33/11 33/22 41/15 42/8 42/9 45/22 51/23 51/24 52/20 53/2</p> <p><b>doesn't</b> [11] 10/22 11/21 13/11 15/7 23/9 24/7 37/15 43/6 44/24 50/5 52/2</p> <p><b>doing</b> [1] 55/5</p> <p><b>dollars</b> [1] 9/21</p> <p><b>domain</b> [1] 20/2</p>	<p><b>don't</b> [48] 4/19 6/25 8/11 8/18 8/21 9/9 11/22 14/18 15/1 15/7 15/22 16/9 17/21 21/21 22/9 22/15 24/14 24/14 24/18 24/19 25/3 25/12 25/17 26/1 26/11 27/24 28/1 32/3 32/5 32/6 33/2 33/7 33/8 33/21 35/19 38/13 41/16 41/17 42/2 47/22 50/18 50/18 50/19 50/22 52/24 54/9 54/24 55/21</p> <p><b>done</b> [4] 8/22 35/8 50/10 53/25</p> <p><b>down</b> [10] 14/7 21/9 26/24 27/4 29/14 29/16 35/12 48/21 50/24 57/5</p> <p><b>DRIVE</b> [2] 3/5 46/25</p> <p><b>due</b> [1] 53/21</p> <p><b>Durango</b> [1] 7/16</p> <p><b>E</b></p> <p><b>Eagle's</b> [1] 53/10</p> <p><b>Eagles</b> [1] 28/25</p> <p><b>earlier</b> [1] 53/19</p> <p><b>easier</b> [3] 47/24 48/7 54/21</p> <p><b>easily</b> [1] 16/24</p> <p><b>easy</b> [3] 48/11 55/7 55/7</p> <p><b>EDWARDS</b> [6] 1/12 4/7 12/15 12/16 53/1 53/20</p> <p><b>Edwards'</b> [1] 12/17</p> <p><b>effect</b> [2] 53/15 55/25</p> <p><b>effectuate</b> [1] 35/25</p> <p><b>Eighth</b> [2] 49/14 49/19</p> <p><b>either</b> [4] 28/22 30/25 44/3 56/5</p> <p><b>elements</b> [3] 43/16 43/17 43/17</p> <p><b>else</b> [1] 48/13</p> <p><b>EMAIL</b> [1] 2/11</p> <p><b>eminent</b> [1] 20/2</p> <p><b>employed</b> [1] 32/13</p> <p><b>encourage</b> [3] 40/13 40/22 50/11</p> <p><b>encumbered</b> [10] 12/5 12/22 13/8</p>	<p>14/17 15/17 27/6 29/3 51/25 52/1 53/9</p> <p><b>encumbering</b> [1] 12/9</p> <p><b>encumbers</b> [1] 26/20</p> <p><b>encumbrance</b> [1] 17/17</p> <p><b>end</b> [16] 7/4 7/9 11/2 11/14 11/25 15/7 15/8 18/15 20/23 29/18 30/22 41/16 43/2 43/18 50/5 53/4</p> <p><b>engaged</b> [1] 19/11</p> <p><b>enough</b> [2] 18/21 43/19</p> <p><b>Enter</b> [1] 50/4</p> <p><b>entirely</b> [1] 51/17</p> <p><b>ENTITLED</b> [1] 57/6</p> <p><b>equitable</b> [6] 23/2 23/14 23/18 36/25 37/3 46/9</p> <p><b>equity</b> [11] 23/1 23/9 23/17 24/1 29/6 37/12 37/15 41/9 41/11 43/11 53/12</p> <p><b>equivalent</b> [3] 48/18 49/13 50/8</p> <p><b>erroneous</b> [1] 16/4</p> <p><b>especially</b> [1] 27/15</p> <p><b>ESQ</b> [4] 2/5 2/16 2/17 3/4</p> <p><b>essence</b> [3] 10/6 20/4 38/19</p> <p><b>essentially</b> [3] 26/24 33/7 39/9</p> <p><b>estate</b> [1] 16/17</p> <p><b>estopped</b> [5] 12/6 13/5 13/12 14/10 43/18</p> <p><b>estoppel</b> [3] 13/16 13/18 14/1</p> <p><b>evaluate</b> [1] 46/14</p> <p><b>even</b> [10] 11/5 15/6 23/13 25/3 25/18 26/11 26/12 31/13 41/16 44/5</p> <p><b>ever</b> [6] 8/22 40/9 41/4 49/9 49/10 49/11</p> <p><b>everybody</b> [1] 31/4</p> <p><b>everyone</b> [5] 29/11 31/16 31/19</p>
---	--	--	---	---

(4) decides... - everyone

<b>E</b> <b>everyone... [2]</b> 31/24 31/25 <b>everything [3]</b> 5/9 7/6 19/5 <b>evidence [4]</b> 24/5 29/6 29/16 35/19 <b>evidenced [1]</b> 12/10 <b>Exactly [1]</b> 26/7 <b>example [3]</b> 9/13 16/17 42/22 <b>except [1]</b> 29/12 <b>excited [1]</b> 43/4 <b>exclusion [1]</b> 49/2 <b>exempt [3]</b> 48/22 49/4 49/24 <b>exemption [2]</b> 48/23 48/25 <b>Exhibit [4]</b> 45/15 47/3 47/8 47/9 <b>Exhibit 2 [1]</b> 45/15 <b>Exhibit 5 [1]</b> 47/3 <b>Exhibit 6 [1]</b> 47/8 <b>expect [1]</b> 6/25 <b>expert [3]</b> 15/14 16/4 24/3 <b>explain [3]</b> 25/18 26/1 40/9 <b>explaining [1]</b> 43/24 <b>explanation [2]</b> 24/3 43/25 <b>exponentially [1]</b> 8/17 <b>expression [1]</b> 49/2 <b>expressly [1]</b> 49/4 <b>extent [2]</b> 53/8 53/12 <b>extinguished [1]</b> 35/3 <b>extinguishment [1]</b> 15/5 <b>eye [1]</b> 11/3	<b>factors [2]</b> 16/17 37/5 <b>facts [9]</b> 20/9 28/3 32/13 33/14 33/16 33/18 37/20 45/11 53/3 <b>factual [7]</b> 10/3 21/6 22/7 24/12 33/9 33/12 33/13 <b>factually [1]</b> 44/1 <b>fair [13]</b> 15/11 15/24 16/5 16/14 16/15 16/23 17/11 18/16 19/17 20/10 21/11 22/4 24/4 <b>fairly [1]</b> 55/6 <b>faith [2]</b> 27/14 27/17 <b>family [1]</b> 16/18 <b>far [7]</b> 14/14 28/17 33/4 34/19 48/11 50/13 53/18 <b>Fargo [1]</b> 47/12 <b>fascinating [3]</b> 13/17 15/20 39/18 <b>favorite [1]</b> 19/1 <b>Fax [1]</b> 2/10 <b>FEBRUARY [2]</b> 1/20 4/1 <b>federal [3]</b> 14/18 26/17 49/14 <b>fees [3]</b> 9/15 9/19 9/21 <b>felt [2]</b> 47/21 48/5 <b>ferret [1]</b> 19/4 <b>few [3]</b> 10/6 34/12 49/10 <b>fide [3]</b> 35/21 38/9 41/10 <b>file [1]</b> 48/25 <b>filed [8]</b> 5/5 12/4 12/19 12/21 14/9 27/16 28/25 48/23 <b>filing [2]</b> 13/19 15/4 <b>final [2]</b> 17/14 36/18 <b>Financial [1]</b> 45/17 <b>finder [5]</b> 23/10 32/22 34/5 34/8 37/9 <b>finders [2]</b> 23/25 33/10 <b>fine [4]</b> 11/12 11/20 18/20 56/6 <b>fire [1]</b> 50/2 <b>first [10]</b> 11/17 15/5 24/21 30/9	34/15 35/1 35/9 45/11 46/21 54/13 <b>five [1]</b> 43/22 <b>flawed [1]</b> 18/20 <b>flood [2]</b> 17/8 17/25 <b>fodder [1]</b> 11/11 <b>follow [5]</b> 6/20 9/16 11/15 25/11 43/7 <b>followed [3]</b> 42/1 42/4 42/8 <b>following [2]</b> 26/2 46/12 <b>force [1]</b> 15/18 <b>forced [2]</b> 18/8 19/24 <b>foreclose [2]</b> 36/19 54/1 <b>foreclosed [1]</b> 50/19 <b>foreclosure [17]</b> 14/24 16/8 27/9 38/4 38/6 38/11 40/21 41/7 41/7 41/15 43/4 44/6 45/5 46/7 49/12 49/21 54/2 <b>foreclosures [5]</b> 37/11 41/25 49/6 49/7 49/17 <b>FOREGOING [1]</b> 57/10 <b>forgery [1]</b> 45/1 <b>form [2]</b> 14/9 19/20 <b>former [2]</b> 52/22 52/25 <b>forth [8]</b> 15/14 16/4 29/23 34/16 34/16 34/20 37/25 45/13 <b>forward [1]</b> 7/24 <b>found [2]</b> 11/2 43/13 <b>four [2]</b> 37/5 37/18 <b>fraud [22]</b> 15/9 24/15 26/5 26/9 26/13 29/15 29/19 29/23 30/9 30/11 30/16 32/10 32/18 33/15 33/20 34/19 35/4 44/5 45/1 50/7 51/7 54/25 <b>fraudulent [12]</b> 32/14 48/15 49/4 49/15 49/20 49/25 50/3 51/21 51/22	52/19 53/2 53/14 <b>front [4]</b> 13/1 18/20 19/1 33/5 <b>full [3]</b> 35/24 45/1 57/10 <b>G</b> <b>game [1]</b> 51/2 <b>gave [4]</b> 9/21 17/7 25/10 25/13 <b>generally [3]</b> 4/24 52/14 53/21 <b>gentlemen [5]</b> 4/7 6/1 6/13 18/20 56/8 <b>genuine [2]</b> 18/11 40/2 <b>GEORGE [1]</b> 1/12 <b>get [28]</b> 11/8 12/25 15/1 15/9 21/2 24/14 24/16 27/5 28/14 30/13 34/8 36/20 39/16 41/3 41/15 41/17 42/6 42/6 43/8 43/14 50/10 53/18 53/19 53/22 54/11 54/11 54/25 55/18 <b>gets [2]</b> 5/1 45/3 <b>getting [1]</b> 40/8 <b>give [6]</b> 25/14 38/18 39/17 44/20 55/22 56/2 <b>gives [1]</b> 45/24 <b>giving [1]</b> 20/12 <b>glass [1]</b> 11/12 <b>Glen [2]</b> 28/25 53/10 <b>Glenview [2]</b> 4/12 6/11 <b>go [28]</b> 4/7 4/23 6/3 6/16 7/24 8/17 11/6 11/23 19/6 24/10 25/18 26/8 27/10 27/11 29/2 36/4 37/21 37/21 38/23 39/23 39/24 42/2 44/22 44/24 45/3 46/2 46/3 55/20 <b>goes [5]</b> 10/12 29/13 29/16 36/22 53/17 <b>going [30]</b> 4/18 5/14 6/20 7/11 8/8 10/4 14/24 18/22 19/6 19/21 20/17 21/1 21/2 21/17 21/23 22/2 22/6 23/7 25/10 25/18	26/2 27/6 33/4 37/22 38/4 39/17 40/12 41/4 45/4 50/23 <b>gone [2]</b> 41/21 41/22 <b>good [9]</b> 4/9 5/3 5/24 6/1 6/2 9/12 27/14 27/17 42/12 <b>got [14]</b> 11/15 13/7 13/12 30/15 30/16 34/12 40/9 42/14 43/16 43/16 43/17 43/24 48/2 51/15 <b>gotten [2]</b> 35/6 35/7 <b>governed [1]</b> 10/19 <b>grant [3]</b> 37/3 37/19 39/13 <b>granted [2]</b> 8/13 50/11 <b>granting [1]</b> 39/8 <b>great [3]</b> 10/3 11/11 41/12 <b>greater [1]</b> 53/23 <b>Group [5]</b> 4/10 6/10 12/4 15/14 29/9 <b>Groups [1]</b> 6/15 <b>guess [11]</b> 4/16 4/17 4/23 8/2 13/19 15/2 17/18 21/18 26/10 38/16 48/14
<b>F</b> <b>fact [24]</b> 13/11 13/24 16/14 17/12 18/12 22/5 22/8 23/10 23/25 29/9 29/20 32/11 32/20 32/22 33/10 34/5 34/8 37/9 39/2 39/12 40/3 44/8 44/23 54/6 <b>factor [2]</b> 17/10 46/15				<b>H</b> <b>had [28]</b> 7/6 13/2 13/24 14/12 19/10 19/11 19/12 21/7 21/8 21/11 21/13 21/25 23/7 25/10 29/10 35/5 35/8 35/22 38/1 41/21 42/24 46/13 48/1 48/2 48/14 52/18 57/6 57/12 <b>Haddad [4]</b> 12/3 12/17 19/16 29/8 <b>HALL [1]</b> 3/3 <b>hand [2]</b> 36/22 36/22 <b>handled [4]</b> 31/14 35/4 35/9 36/7 <b>happen [3]</b> 44/2 44/9 46/12 <b>happened [5]</b> 14/4 42/19 44/3 44/10 46/7

(5) everyone... - happened

<b>H</b>	53/24	49/10 54/5 55/14	50/9 52/23 53/22	54/6
<b>happens [1]</b> 27/12	<b>HOA [14]</b> 10/17	<b>I've [6]</b> 14/12	<b>instance [1]</b> 44/4	<b>it [124]</b>
<b>has [25]</b> 5/17 9/3	12/21 14/24 16/8	22/24 23/1 43/21	<b>instrument [1]</b>	<b>it's [64]</b>
10/23 15/14 21/15	17/13 21/13 32/5	50/19 51/15	29/1	<b>items [1]</b> 35/8
27/22 33/20 33/25	35/17 36/8 38/5	<b>i.e [1]</b> 23/10	<b>insurance [1]</b> 23/7	<b>its [2]</b> 17/12 35/25
33/25 36/8 36/13	38/11 38/11 49/12	<b>idea [3]</b> 4/17 26/14	<b>intellectual [1]</b>	<b>itself [2]</b> 13/4
37/2 41/5 43/13	52/1	28/12	11/7	28/11
43/20 43/24 43/24	<b>HOA's [1]</b> 32/15	<b>if [44]</b> 10/1 11/9	<b>intellectually [1]</b>	<b>J</b>
44/3 44/8 44/14	<b>hole [1]</b> 17/21	11/18 14/20 14/23	39/19	<b>JAFFE [1]</b> 3/3
45/1 45/16 48/17	<b>holes [1]</b> 21/8	15/6 17/2 17/19	<b>intent [2]</b> 50/5	<b>January [1]</b> 46/13
51/11 53/25	<b>HOLTHUS [1]</b> 2/4	18/19 21/6 22/3	50/6	<b>job [1]</b> 48/7
<b>hasn't [1]</b> 50/14	<b>home [5]</b> 16/18	22/23 23/8 23/12	<b>interacting [1]</b>	<b>JPMorgan [2]</b>
<b>have [95]</b>	16/19 17/6 17/15	23/13 23/20 24/8	51/13	14/22 16/7
<b>haven't [4]</b> 23/5	21/19	27/3 27/24 28/12	<b>interest [5]</b> 10/17	<b>judge [16]</b> 1/17
37/22 37/24 53/1	<b>homeowner [2]</b>	32/3 37/1 37/1 37/8	20/15 22/19 24/2	1/18 11/4 11/13
<b>having [3]</b> 18/23	41/15 50/9	37/19 37/21 37/21	35/25	12/1 19/1 20/5
18/23 50/2	<b>homeowners [4]</b>	38/5 38/16 38/19	<b>interesting [5]</b> 8/9	20/13 23/15 23/17
<b>he [17]</b> 4/23 5/1	19/14 49/17 49/21	40/11 40/12 41/2	10/14 10/15 40/24	26/17 26/18 32/24
5/11 5/13 11/21	54/2	41/14 41/16 41/21	41/2	38/21 39/9 39/23
12/7 12/24 13/2	<b>homestead [2]</b>	46/14 47/22 47/24	<b>interests [1]</b> 53/17	<b>Judge Mahan [2]</b>
13/5 13/7 13/8	48/23 48/25	48/8 53/20 55/12	<b>interim [1]</b> 9/25	26/17 26/18
13/12 31/15 31/20	<b>Honor [17]</b> 4/9	55/22 55/24	<b>interrogatories [2]</b>	<b>judgment [15]</b>
37/14 40/17 53/22	4/11 5/23 5/24 6/7	<b>impact [4]</b> 7/17	34/17 34/21	6/14 6/16 9/22
<b>he's [10]</b> 4/18 4/21	24/18 30/4 31/22	12/14 14/14 18/16	<b>interrogatory [2]</b>	22/16 34/17 37/19
4/22 5/14 5/22 12/5	32/1 34/6 35/1	<b>impacted [2]</b> 10/7	40/7 40/8	39/2 39/9 39/13
13/11 37/14 38/9	36/14 39/5 44/13	17/12	<b>into [7]</b> 12/8 13/9	42/14 42/18 43/9
53/6	45/14 51/20 56/11	<b>impediment [3]</b>	14/7 15/9 36/14	43/22 45/16 47/4
<b>hear [3]</b> 10/9	<b>HONORABLE [1]</b>	8/25 18/14 18/15	37/18 57/8	<b>judicial [4]</b> 13/16
11/21 11/23	1/17	<b>impediments [1]</b>	<b>invalidated [2]</b>	13/18 13/25 54/2
<b>heard [2]</b> 22/24	<b>hopefully [1]</b>	18/1	26/6 29/25	<b>judicially [5]</b> 12/5
53/18	15/21	<b>important [3]</b> 9/8	<b>invalidates [1]</b>	13/5 13/12 14/10
<b>hearing [2]</b> 1/15	<b>house [2]</b> 21/5	33/5 34/1	27/22	43/18
32/9	41/17	<b>improper [1]</b> 45/4	<b>involuntary [1]</b>	<b>jump [1]</b> 31/4
<b>here [28]</b> 5/1 5/15	<b>how [6]</b> 4/17 7/1	<b>improperly [1]</b>	53/16	<b>juries [1]</b> 32/20
6/16 14/9 14/19	8/24 11/15 41/4	38/6	<b>involved [4]</b> 14/1	<b>jurisdiction [2]</b>
19/6 20/14 21/7	42/7	<b>in [152]</b>	16/8 22/20 29/19	36/25 37/3
21/11 21/23 28/3	<b>However [1]</b> 20/14	<b>inaccurate [2]</b>	<b>involving [2]</b> 13/18	<b>jurisdictions [2]</b>
32/7 32/22 34/5	<b>hundred [1]</b> 37/12	44/1 44/7	16/18	10/12 36/16
34/20 37/23 39/7	<b>hypothetically [1]</b>	<b>inadequate [2]</b>	<b>irrespective [2]</b>	<b>jury [11]</b> 22/5 23/4
40/15 40/24 41/2	42/11	15/12 19/22	41/4 42/7	23/11 23/14 29/21
43/10 43/19 46/11	<b>I</b>	<b>include [2]</b> 51/23	<b>is [148]</b>	31/7 31/9 31/10
51/25 52/20 53/5	<b>I'd [2]</b> 37/4 38/17	51/24	<b>isn't [4]</b> 16/13	31/14 32/12 34/4
53/7 53/25	<b>I'll [8]</b> 5/22 12/7	<b>inconsistent [1]</b>	38/25 39/12 51/4	<b>just [40]</b> 4/20 4/25
<b>here's [7]</b> 16/11	12/10 27/18 38/18	29/11	<b>ISOM [4]</b> 1/23 57/4	8/2 8/3 8/18 10/25
21/2 29/17 31/23	51/18 56/2 56/4	<b>incurred [1]</b> 9/19	57/17 57/17	12/6 12/10 12/23
33/2 37/6 50/13	<b>I'm [42]</b> 6/20 7/11	<b>indecipherable [1]</b>	<b>issue [26]</b> 8/8 9/1	14/4 15/1 15/7
<b>HEREBY [1]</b> 57/5	11/9 13/10 17/17	36/6	9/8 12/7 14/3 17/20	17/15 18/23 21/5
<b>HEREUNTO [1]</b>	18/21 18/23 19/6	<b>INDICATED [1]</b>	18/11 19/17 19/18	21/6 23/21 25/11
57/13	20/11 20/20 21/2	57/7	23/14 24/21 25/4	27/16 31/15 32/15
<b>hesitant [1]</b> 54/11	21/23 21/24 22/6	<b>influenced [1]</b>	29/19 33/5 33/8	32/24 38/20 39/6
<b>Hey [1]</b> 42/13	22/23 24/1 25/10	32/14	34/22 41/25 44/8	39/7 41/21 41/21
<b>highest [1]</b> 20/1	25/18 26/2 28/14	<b>injunction [1]</b> 35/7	48/5 48/16 50/14	42/8 42/21 42/25
<b>highway [1]</b> 27/4	28/21 29/4 29/5	<b>injunctions [1]</b>	51/17 51/18 53/18	45/10 46/20 48/11
<b>him [1]</b> 31/21	30/4 30/6 30/20	23/18	54/23 56/5	48/16 49/8 51/2
<b>himself [1]</b> 12/19	32/9 33/6 34/7 34/8	<b>insider [1]</b> 19/12	<b>issued [1]</b> 10/2	53/4 53/17 54/5
<b>his [9]</b> 4/20 13/2	38/19 38/20 39/6	<b>insolvency [1]</b>	<b>issues [9]</b> 6/18	54/18
31/20 38/9 40/22	39/7 39/16 39/24	53/18	11/16 32/18 32/20	<b>Justice [1]</b> 15/12
43/5 53/21 53/23	42/21 47/22 48/11	<b>insolvent [4]</b> 48/19	36/7 39/1 40/2 51/6	<b>Justice Pickering [1]</b> 15/12

(6) happens - Justice Pickering

<b>K</b>	<b>less [4]</b> 7/22 15/10 46/5 48/18 <b>lesser [1]</b> 14/20 <b>let [7]</b> 5/1 8/19 12/7 27/11 51/18 56/4 56/5 <b>let's [4]</b> 4/7 6/3 11/16 24/20 <b>level [4]</b> 21/6 26/12 29/15 51/8 <b>liabilities [2]</b> 52/25 53/24 <b>lien [13]</b> 12/5 12/9 12/23 13/8 14/17 20/7 35/18 36/5 50/11 52/2 52/15 53/9 53/10 <b>liens [2]</b> 16/20 51/25 <b>lieu [1]</b> 10/19 <b>light [3]</b> 7/10 8/16 36/3 <b>like [48]</b> 6/22 8/5 8/15 9/22 10/14 10/16 10/21 10/21 12/2 15/8 16/21 17/20 19/10 19/12 19/19 19/20 20/1 20/2 20/2 20/6 20/7 20/13 20/18 20/19 20/22 20/23 20/23 20/24 23/13 27/3 29/4 33/13 38/17 41/7 41/16 41/21 42/20 42/23 44/25 47/25 47/25 48/11 50/5 51/2 55/7 55/12 55/14 55/18 <b>limited [1]</b> 44/4 <b>line [2]</b> 6/20 15/3 <b>listed [4]</b> 42/24 46/21 47/16 47/19 <b>listen [2]</b> 22/16 24/3 <b>listening [3]</b> 30/6 33/1 39/6 <b>listing [1]</b> 17/4 <b>litigation [2]</b> 9/14 14/24 <b>little [7]</b> 4/21 6/19 19/6 33/4 39/7 42/7 55/23 <b>living [1]</b> 27/8 <b>LLC's [1]</b> 6/15 <b>LLP [2]</b> 2/4 3/3 <b>logic [1]</b> 18/19 <b>long [1]</b> 9/17 <b>look [16]</b> 11/4 11/7	20/5 20/13 21/1 23/8 24/20 26/24 37/5 38/21 39/10 39/23 40/1 46/8 48/2 50/15 <b>looked [3]</b> 19/10 19/12 25/5 <b>looking [2]</b> 12/1 21/4 <b>lot [8]</b> 5/2 10/7 10/9 30/21 34/12 48/7 48/20 54/21 <b>love [3]</b> 11/23 18/25 27/8 <b>low [2]</b> 30/12 30/17 <b>luck [1]</b> 48/10	<b>M</b> <b>made [6]</b> 9/13 13/25 47/23 50/24 51/3 52/24 <b>Mahan [2]</b> 26/17 26/18 <b>mailing [6]</b> 38/2 42/25 45/23 47/3 47/10 47/20 <b>mailings [1]</b> 42/2 <b>main [1]</b> 24/21 <b>maintained [1]</b> 16/19 <b>maintenance [1]</b> 10/18 <b>make [23]</b> 8/6 10/22 14/4 17/17 22/17 24/2 24/5 24/17 28/2 33/11 34/7 37/9 37/16 42/8 42/9 42/15 44/24 45/10 46/19 48/7 54/5 54/18 55/6 <b>makes [8]</b> 10/25 13/4 23/14 23/20 30/21 44/24 48/10 54/21 <b>making [4]</b> 7/18 14/11 33/7 36/17 <b>malt [1]</b> 11/13 <b>man [1]</b> 21/2 <b>mandate [2]</b> 9/16 25/11 <b>mandatory [1]</b> 36/10 <b>manner [5]</b> 20/9 20/17 21/20 22/18 29/10 <b>many [5]</b> 11/4 13/19 16/16 16/16	17/9 <b>market [15]</b> 15/11 15/24 16/5 16/14 16/15 16/22 16/23 17/5 17/11 18/17 19/18 20/10 21/11 21/15 24/4 <b>massive [1]</b> 15/17 <b>material [5]</b> 18/12 39/2 39/12 40/2 54/6 <b>matter [14]</b> 5/1 6/6 16/4 18/11 26/19 27/7 27/7 29/21 30/1 43/6 48/17 49/13 51/16 57/6 <b>may [5]</b> 24/12 27/4 27/5 27/5 27/5 <b>maybe [4]</b> 8/14 11/21 20/6 55/25 <b>MCCARTHY [1]</b> 2/4 <b>me [18]</b> 5/1 9/25 10/25 11/21 17/15 18/21 18/21 20/13 21/24 22/23 30/22 31/8 33/5 38/19 47/22 54/22 55/7 56/5 <b>mean [41]</b> 6/19 6/20 6/22 6/23 6/25 6/25 7/2 7/5 7/5 9/7 10/15 10/21 11/1 12/23 13/7 13/10 15/8 16/15 17/9 17/14 21/12 21/22 21/23 22/6 22/14 25/1 25/4 27/3 29/4 31/3 32/25 34/2 39/15 42/10 42/23 43/3 48/7 50/25 51/4 51/14 52/12 <b>meaning [1]</b> 15/23 <b>means [2]</b> 16/1 54/24 <b>meant [2]</b> 49/25 50/1 <b>mechanical [2]</b> 41/25 42/3 <b>mediation [1]</b> 35/7 <b>meet [2]</b> 17/21 52/2 <b>meets [1]</b> 43/23 <b>mention [1]</b> 49/5 <b>mentioned [1]</b> 49/6 <b>met [5]</b> 30/24 43/9 44/11 53/1 54/15	<b>MICHAEL [2]</b> 2/15 2/17 <b>might [9]</b> 8/18 9/7 13/20 16/23 20/9 20/14 23/4 28/20 55/22 <b>million [1]</b> 9/21 <b>mind [5]</b> 8/12 32/10 33/7 41/23 42/8 <b>Minnesota [3]</b> 45/18 47/1 47/13 <b>minute [1]</b> 41/23 <b>Misrepresenting [1]</b> 27/14 <b>misspeaking [1]</b> 28/20 <b>mold [1]</b> 17/25 <b>mole [1]</b> 51/2 <b>monetary [2]</b> 23/12 23/19 <b>money [6]</b> 9/12 10/8 31/11 35/16 36/20 37/1 <b>months [3]</b> 46/13 53/11 53/13 <b>more [9]</b> 7/22 11/3 13/17 13/17 13/23 17/15 21/5 25/19 25/21 <b>morning [4]</b> 4/9 6/1 6/2 6/7 <b>Morris [1]</b> 50/4 <b>mortgage [18]</b> 12/23 14/17 22/1 24/22 25/5 25/6 26/4 26/12 26/18 26/20 26/21 27/22 27/24 28/4 28/5 29/3 29/25 49/6 <b>most [2]</b> 36/20 53/13 <b>Mostly [1]</b> 20/18 <b>motion [9]</b> 6/14 6/15 11/17 34/16 35/1 39/9 45/15 47/4 47/9 <b>move [1]</b> 11/16 <b>Mr [2]</b> 12/16 15/8 <b>Mr. [28]</b> 4/13 5/10 9/8 11/18 12/3 12/15 12/17 12/17 15/15 16/12 19/16 21/7 21/23 29/8 30/21 31/4 31/17 34/10 40/16 40/23 41/1 42/5 43/3 51/16 53/1 53/19
----------	---	--	---	--	---

(7) Kephart - Mr.

<p><b>M</b></p> <p><b>Mr.... [2]</b> 53/20 55/5</p> <p><b>Mr. Alessi [2]</b> 40/16 43/3</p> <p><b>Mr. Beckom [1]</b> 4/13</p> <p><b>Mr. Beckom's [1]</b> 5/10</p> <p><b>Mr. Bohn [6]</b> 31/4 34/10 40/23 41/1 42/5 53/19</p> <p><b>Mr. Bohn's [1]</b> 51/16</p> <p><b>Mr. Brunson [1]</b> 15/15</p> <p><b>Mr. Edwards [3]</b> 12/15 53/1 53/20</p> <p><b>Mr. Edwards' [1]</b> 12/17</p> <p><b>Mr. Haddad [4]</b> 12/3 12/17 19/16 29/8</p> <p><b>Mr. Trippiedi [8]</b> 9/8 11/18 16/12 21/7 21/23 30/21 31/17 55/5</p> <p><b>much [4]</b> 9/12 17/13 47/24 56/9</p> <p><b>multiple [5]</b> 10/12 13/3 29/6 44/22 46/4</p> <p><b>must [1]</b> 27/13</p> <p><b>my [44]</b> 5/3 7/4 7/17 8/3 10/16 11/6 14/15 15/19 17/18 18/19 18/23 18/25 21/2 22/2 22/7 23/1 25/12 29/17 30/22 31/4 31/23 32/10 33/2 33/17 37/6 37/21 37/23 37/25 38/7 41/6 41/23 42/8 43/20 43/23 45/22 48/7 50/13 54/12 55/19 55/23 57/9 57/11 57/14 57/14</p>	<p>29/16</p> <p><b>need [1]</b> 48/13</p> <p><b>negative [1]</b> 18/22</p> <p><b>NEVADA [24]</b> 1/7 4/1 5/16 6/21 7/10 7/15 8/16 9/24 15/23 25/4 26/6 27/2 36/3 36/23 38/25 40/5 48/25 49/17 49/20 50/15 50/23 51/12 57/2 57/15</p> <p><b>never [5]</b> 17/5 25/9 25/13 48/23 52/17</p> <p><b>new [1]</b> 51/1</p> <p><b>next [3]</b> 4/6 22/2 31/23</p> <p><b>nice [1]</b> 7/7</p> <p><b>nine [2]</b> 53/11 53/12</p> <p><b>Ninth [2]</b> 8/20 51/5</p> <p><b>no [37]</b> 1/1 2/11 6/8 6/19 7/2 7/5 10/24 12/16 15/23 16/3 16/20 17/16 17/18 19/22 21/21 25/17 25/17 25/17 27/19 28/14 28/16 31/5 31/25 35/20 37/2 37/13 38/16 39/20 40/2 43/19 43/25 44/8 44/8 44/9 50/6 51/11 54/6</p> <p><b>None [1]</b> 11/8</p> <p><b>normal [3]</b> 17/15 27/2 44/20</p> <p><b>normally [3]</b> 38/7 45/7 55/23</p> <p><b>North [1]</b> 47/12</p> <p><b>not [87]</b></p> <p><b>note [3]</b> 4/8 6/3 16/13</p> <p><b>NOTES [1]</b> 57/8</p> <p><b>nothing [3]</b> 35/24 48/6 48/10</p> <p><b>notice [37]</b> 27/1 27/23 28/19 28/22 28/22 35/18 35/23 38/4 38/8 40/18 41/15 43/11 43/14 43/15 44/14 44/16 44/21 44/22 44/23 45/12 45/19 45/20 45/24 45/25 46/1 46/2 46/3 46/6 46/11 46/16 46/17</p>	<p>46/17 46/18 46/20 47/6 47/8 47/9</p> <p><b>notices [5]</b> 38/2 41/3 41/5 43/4 45/4</p> <p><b>Noticing [1]</b> 43/7</p> <p><b>noticings [1]</b> 42/2</p> <p><b>notwithstanding [2]</b> 20/8 23/23</p> <p><b>now [19]</b> 5/7 5/18 5/19 7/18 8/16 9/3 9/12 13/9 14/10 14/19 18/19 19/22 21/14 23/19 25/9 28/21 33/2 39/24 49/9</p> <p><b>NRS [4]</b> 27/13 48/17 49/5 51/21</p> <p><b>NRS 112.150 [1]</b> 51/21</p> <p><b>NRS 112.191 [2]</b> 48/17 49/5</p> <p><b>NRS 116.1113 [1]</b> 27/13</p> <p><b>number [10]</b> 18/7 18/10 28/25 29/1 31/24 38/24 38/25 40/3 40/4 47/5</p> <p><b>NV [4]</b> 1/23 2/8 2/20 3/6</p>	<p><b>omitting [1]</b> 53/6</p> <p><b>on [64]</b></p> <p><b>once [4]</b> 30/22 31/20 40/11 43/23</p> <p><b>one [32]</b> 8/14 8/18 8/23 9/1 11/10 12/1 14/20 18/7 18/10 18/18 20/5 20/9 24/21 28/20 29/6 30/15 31/24 33/23 34/9 35/10 38/24 39/12 40/3 43/4 44/8 45/17 45/18 45/21 46/21 48/5 49/10 54/4</p> <p><b>onion [1]</b> 38/21</p> <p><b>only [13]</b> 8/25 9/1 9/2 9/11 10/8 15/16 18/7 19/13 25/12 43/21 53/5 54/23 55/13</p> <p><b>opener [1]</b> 11/3</p> <p><b>opinion [5]</b> 10/16 11/7 15/15 26/17 35/13</p> <p><b>opinions [1]</b> 35/11</p> <p><b>opportunity [1]</b> 56/2</p> <p><b>opposed [1]</b> 50/20</p> <p><b>opposition [3]</b> 37/24 45/15 52/6</p> <p><b>oppression [18]</b> 15/10 24/15 26/5 26/9 26/13 29/15 29/20 29/23 30/10 30/11 30/17 32/10 32/18 33/19 33/21 34/19 35/5 55/1</p> <p><b>or [67]</b></p> <p><b>oral [1]</b> 19/1</p> <p><b>order [4]</b> 12/25 13/13 49/1 53/24</p> <p><b>Oregon [1]</b> 47/11</p> <p><b>other [12]</b> 7/6 7/13 8/23 9/11 11/16 26/9 30/16 36/16 43/1 52/15 54/13 55/4</p> <p><b>others [1]</b> 14/13</p> <p><b>otherwise [2]</b> 13/6 19/19</p> <p><b>our [21]</b> 4/8 6/3 10/23 24/13 26/20 27/18 30/24 34/15 34/16 35/1 40/9 43/9 43/25 44/11 47/4 47/9 47/19 48/20 52/6 54/15</p>	<p>54/16</p> <p><b>out [21]</b> 9/25 10/8 11/11 15/1 16/9 16/25 19/5 19/6 21/9 23/20 37/4 42/2 43/5 44/24 45/4 46/4 46/6 46/11 48/10 49/14 51/2</p> <p><b>over [6]</b> 9/21 11/12 25/21 25/24 37/12 53/12</p> <p><b>overturned [1]</b> 24/16</p> <p><b>own [2]</b> 14/10 41/15</p> <p><b>owner [5]</b> 12/20 12/20 12/21 52/22 52/25</p> <p><b>ownership [3]</b> 10/17 14/6 14/8</p>
<p><b>N</b></p> <p><b>nails [1]</b> 17/20</p> <p><b>NAME [1]</b> 57/14</p> <p><b>NATIONAL [2]</b> 1/9 47/11</p> <p><b>nature [1]</b> 27/15</p> <p><b>necessarily [3]</b> 23/4 32/5 32/17</p> <p><b>necessary [1]</b></p>				<p><b>P</b></p> <p><b>page [3]</b> 4/6 35/1 52/7</p> <p><b>page 28 [1]</b> 52/7</p> <p><b>page 4 [1]</b> 35/1</p> <p><b>paid [3]</b> 35/6 35/24 45/1</p> <p><b>part [2]</b> 28/4 38/8</p> <p><b>particularity [1]</b> 33/21</p> <p><b>parties [5]</b> 19/19 21/11 42/3 44/2 54/6</p> <p><b>party [2]</b> 32/8 46/9</p> <p><b>patience [1]</b> 39/18</p> <p><b>Paul [3]</b> 45/18 47/1 47/13</p> <p><b>pause [1]</b> 5/25</p> <p><b>paying [1]</b> 53/21</p> <p><b>PEAK [1]</b> 3/5</p> <p><b>PECOS [1]</b> 2/18</p> <p><b>peeling [1]</b> 38/21</p> <p><b>PEGGY [4]</b> 1/23 57/4 57/17 57/17</p> <p><b>penalty [1]</b> 12/25</p> <p><b>pending [1]</b> 33/4</p> <p><b>people [5]</b> 13/19 23/2 29/2 40/11 49/10</p> <p><b>per [1]</b> 28/1</p> <p><b>percent [2]</b> 15/11 25/8</p> <p><b>period [1]</b> 9/2</p> <p><b>perjury [1]</b> 12/25</p> <p><b>person [6]</b> 14/6 26/23 38/3 40/17 42/13 42/16</p>

(8) Mr.... - person

<p><b>P</b></p> <p><b>personal</b> [1] 42/14</p> <p><b>persons</b> [1] 52/9</p> <p><b>perspective</b> [1] 40/1</p> <p><b>phrase</b> [1] 53/8</p> <p><b>physical</b> [6] 17/25 18/1 18/15 20/21 20/24 21/6</p> <p><b>Pickering</b> [1] 15/12</p> <p><b>piece</b> [1] 17/11</p> <p><b>pivotal</b> [1] 38/23</p> <p><b>PLACE</b> [1] 57/7</p> <p><b>placed</b> [1] 16/22</p> <p><b>plain</b> [1] 49/23</p> <p><b>plaintiff</b> [3] 1/10 2/2 9/20</p> <p><b>plan</b> [1] 17/9</p> <p><b>pled</b> [1] 33/20</p> <p><b>point</b> [12] 8/7 8/13 19/7 30/10 32/2 37/4 38/23 38/24 40/24 41/2 43/19 46/4</p> <p><b>points</b> [1] 53/5</p> <p><b>policy</b> [2] 25/14 36/17</p> <p><b>pop</b> [1] 51/2</p> <p><b>portion</b> [3] 35/18 44/20 52/13</p> <p><b>Portland</b> [1] 47/10</p> <p><b>position</b> [11] 6/23 13/12 13/21 13/22 20/12 24/13 27/18 32/15 38/24 39/23 54/17</p> <p><b>positions</b> [3] 39/1 40/4 49/16</p> <p><b>possible</b> [1] 36/20</p> <p><b>potentially</b> [4] 16/16 20/6 23/13 33/14</p> <p><b>poured</b> [1] 21/9</p> <p><b>practice</b> [1] 43/21</p> <p><b>practiced</b> [1] 9/17</p> <p><b>precedent</b> [2] 48/24 49/14</p> <p><b>precluded</b> [1] 15/4</p> <p><b>preexisting</b> [1] 17/7</p> <p><b>presented</b> [1] 37/23</p> <p><b>preserve</b> [1] 8/3</p> <p><b>presumably</b> [1] 44/18</p> <p><b>presumption</b> [4] 36/14 36/21 36/23</p>	<p>53/20</p> <p><b>presumptions</b> [2] 36/13 53/19</p> <p><b>pretty</b> [1] 4/23</p> <p><b>prevent</b> [3] 50/1 50/1 51/14</p> <p><b>price</b> [20] 15/13 15/16 16/1 16/3 19/22 19/25 20/25 24/11 24/11 24/14 27/7 29/13 30/2 30/3 30/12 30/18 34/1 35/11 35/13 55/2</p> <p><b>prices</b> [1] 50/2</p> <p><b>principal</b> [3] 12/4 29/8 29/9</p> <p><b>principles</b> [1] 37/12</p> <p><b>prior</b> [2] 17/6 38/4</p> <p><b>priority</b> [1] 36/6</p> <p><b>probably</b> [5] 9/1 13/24 24/12 49/10 53/4</p> <p><b>problem</b> [5] 6/8 18/6 19/5 31/5 31/25</p> <p><b>problematic</b> [1] 48/6</p> <p><b>problems</b> [1] 12/2</p> <p><b>procedure</b> [2] 15/1 16/10</p> <p><b>proceeding</b> [1] 14/18</p> <p><b>proceedings</b> [4] 5/25 56/14 57/6 57/12</p> <p><b>process</b> [1] 42/12</p> <p><b>procured</b> [1] 44/25</p> <p><b>produced</b> [1] 36/8</p> <p><b>production</b> [5] 30/25 43/10 43/23 44/11 54/16</p> <p><b>proof</b> [3] 26/5 29/23 47/9</p> <p><b>proper</b> [6] 22/4 35/18 37/9 41/5 43/7 44/20</p> <p><b>properly</b> [2] 12/10 16/19</p> <p><b>properties</b> [2] 13/3 18/8</p> <p><b>property</b> [22] 12/9 14/17 15/15 16/24 17/3 17/4 17/11 26/20 27/9 27/16 31/6 31/14 32/25 35/14 35/15 41/3</p>	<p>51/24 51/25 52/2 52/22 52/23 54/24</p> <p><b>proposition</b> [1] 53/8</p> <p><b>propounded</b> [1] 34/18</p> <p><b>protect</b> [2] 52/10 52/10</p> <p><b>protection</b> [11] 24/22 25/5 25/6 26/4 26/12 26/21 27/22 27/25 28/4 28/5 29/25</p> <p><b>protections</b> [1] 41/10</p> <p><b>prove</b> [1] 50/7</p> <p><b>provide</b> [1] 35/17</p> <p><b>PROVIDED</b> [1] 2/11</p> <p><b>provides</b> [1] 49/12</p> <p><b>provision</b> [1] 51/11</p> <p><b>provisions</b> [5] 36/10 48/22 49/16 49/20 49/24</p> <p><b>proximately</b> [1] 9/19</p> <p><b>public</b> [9] 12/24 25/14 27/14 27/23 29/12 36/17 38/3 38/8 45/7</p> <p><b>publicly</b> [1] 28/8</p> <p><b>published</b> [2] 10/2 14/2</p> <p><b>purchase</b> [5] 19/22 30/12 30/18 34/1 55/2</p> <p><b>purchased</b> [1] 12/21</p> <p><b>purchaser</b> [7] 12/21 35/22 38/9 41/10 41/17 42/5 45/5</p> <p><b>pure</b> [3] 11/7 12/7 48/16</p> <p><b>purported</b> [1] 12/20</p> <p><b>purposes</b> [2] 48/4 53/14</p> <p><b>pursuant</b> [1] 28/24</p> <p><b>put</b> [5] 15/14 16/4 27/24 29/22 37/25</p> <p><b>putting</b> [1] 39/7</p> <p><b>Q</b></p> <p><b>question</b> [21] 16/11 16/13 22/3 22/5 23/4 24/12 25/12 29/17 29/20</p>	<p>30/22 31/4 31/23 32/11 33/2 34/25 36/24 37/6 37/21 39/12 39/20 50/13</p> <p><b>questions</b> [9] 12/12 22/8 31/13 32/9 33/6 34/3 34/18 34/24 54/7</p> <p><b>quick</b> [1] 4/23</p> <p><b>quiet</b> [1] 19/16</p> <p><b>quite</b> [1] 42/15</p> <p><b>quote</b> [1] 52/12</p> <p><b>R</b></p> <p><b>raise</b> [1] 6/23</p> <p><b>raised</b> [1] 38/24</p> <p><b>ran</b> [2] 12/8 14/2</p> <p><b>rarely</b> [1] 51/1</p> <p><b>reach</b> [1] 52/14</p> <p><b>read</b> [5] 29/2 40/13 40/22 50/12 52/12</p> <p><b>readily</b> [1] 18/1</p> <p><b>ready</b> [1] 5/22</p> <p><b>real</b> [6] 11/14 16/17 17/11 27/9 31/6 32/24</p> <p><b>realize</b> [1] 11/10</p> <p><b>really</b> [16] 4/19 7/7 9/12 9/18 17/10 19/4 23/8 23/11 23/21 32/6 34/8 40/6 48/8 48/10 54/10 55/6</p> <p><b>reason</b> [8] 10/9 17/3 25/10 25/13 25/14 33/6 45/9 55/13</p> <p><b>reasonable</b> [2] 17/16 26/23</p> <p><b>reasonableness</b> [1] 35/2</p> <p><b>reasonably</b> [3] 48/18 49/12 50/8</p> <p><b>recent</b> [1] 7/10</p> <p><b>reconveyance</b> [1] 35/25</p> <p><b>record</b> [15] 4/8 6/4 8/3 12/24 35/23 38/3 38/9 38/13 40/18 40/21 44/19 50/23 54/5 55/6 57/11</p> <p><b>recorded</b> [1] 28/8</p> <p><b>Recording</b> [4] 44/15 45/18 46/3 47/15</p> <p><b>Recordings</b> [3] 44/17 46/25 47/12</p>	<p><b>records</b> [1] 27/16</p> <p><b>regard</b> [2] 18/12 32/18</p> <p><b>regarding</b> [3] 32/2 32/18 33/8</p> <p><b>regards</b> [1] 44/13</p> <p><b>register</b> [1] 48/3</p> <p><b>registered</b> [1] 47/25</p> <p><b>related</b> [1] 9/15</p> <p><b>relates</b> [1] 42/11</p> <p><b>relevant</b> [1] 36/1</p> <p><b>relied</b> [1] 40/4</p> <p><b>relief</b> [3] 23/18 37/3 46/9</p> <p><b>remainder</b> [1] 7/25</p> <p><b>remedies</b> [1] 35/5</p> <p><b>remedy</b> [4] 37/1 37/2 37/8 37/14</p> <p><b>remember</b> [6] 9/13 23/16 33/3 33/23 38/14 47/23</p> <p><b>render</b> [1] 42/3</p> <p><b>reply</b> [1] 5/10</p> <p><b>report</b> [2] 16/4 18/7</p> <p><b>REPORTED</b> [1] 1/23</p> <p><b>REPORTER</b> [1] 57/4</p> <p><b>REPORTER'S</b> [2] 1/14 57/1</p> <p><b>represented</b> [1] 43/12</p> <p><b>representing</b> [4] 19/14 19/16 21/13 29/8</p> <p><b>request</b> [1] 36/9</p> <p><b>require</b> [1] 50/5</p> <p><b>required</b> [5] 24/16 40/20 42/2 47/24 48/9</p> <p><b>reserved</b> [1] 33/9</p> <p><b>resolve</b> [1] 8/23</p> <p><b>Resource</b> [1] 6/15</p> <p><b>Resources</b> [5] 4/10 6/10 12/4 15/14 29/9</p> <p><b>respectfully</b> [1] 21/25</p> <p><b>respects</b> [1] 13/5</p> <p><b>respond</b> [3] 38/17 39/17 51/19</p> <p><b>response</b> [5] 17/19 34/23 34/25 36/9 44/12</p> <p><b>responses</b> [3]</p>
---	--	---	---	---

(9) personal - responses



<b>R</b> <b>responses...</b> [3] 38/22 39/11 39/25 <b>responsive</b> [1] 55/24 <b>rest</b> [1] 24/13 <b>restatement</b> [1] 45/9 <b>restrictions</b> [1] 28/25 <b>result</b> [3] 15/3 50/1 51/14 <b>return</b> [1] 44/19 <b>reversal</b> [1] 33/10 <b>reviewing</b> [2] 38/3 40/12 <b>revised</b> [1] 49/8 <b>right</b> [41] 4/6 4/7 4/17 5/2 5/3 5/7 5/9 5/16 6/13 7/3 7/11 7/15 7/16 7/18 8/1 9/12 9/23 10/10 11/9 12/24 15/7 17/23 20/17 22/9 24/22 25/7 25/18 25/23 25/25 28/11 28/21 32/20 32/21 32/25 34/4 38/14 39/24 40/15 42/5 54/4 56/8 <b>rights</b> [4] 8/5 53/11 54/12 55/15 <b>ripped</b> [1] 21/9 <b>rise</b> [1] 26/12 <b>RMR</b> [2] 1/23 57/17 <b>ROAD</b> [1] 2/18 <b>role</b> [2] 23/10 23/17 <b>roof</b> [2] 20/22 21/1 <b>room</b> [1] 10/25 <b>roulette</b> [1] 27/10 <b>Rs</b> [4] 21/25 28/6 29/2 29/10 <b>rule</b> [2] 7/1 29/21 <b>ruled</b> [3] 25/19 25/19 26/18 <b>rules</b> [3] 14/25 14/25 16/10 <b>ruling</b> [1] 26/2 <b>running</b> [2] 4/13 4/21	34/12 36/1 37/14 39/4 44/9 46/8 46/20 48/2 57/7 <b>sale</b> [71] <b>sales</b> [14] 16/18 18/9 27/9 27/10 27/13 30/2 30/3 35/17 36/18 36/20 41/7 41/8 48/18 49/5 <b>Saticoy</b> [5] 5/4 7/15 11/15 14/21 16/7 <b>save</b> [1] 55/20 <b>saves</b> [1] 5/13 <b>saw</b> [1] 43/5 <b>say</b> [11] 11/11 21/1 26/2 26/22 31/8 34/13 36/17 38/21 49/12 54/13 54/23 <b>saying</b> [24] 8/12 11/9 12/4 12/22 15/2 15/3 17/17 20/4 20/5 20/11 20/13 20/20 26/19 26/23 29/3 30/20 30/21 38/20 39/3 39/10 39/14 45/11 48/21 53/17 <b>says</b> [8] 28/23 35/11 35/14 35/21 37/19 48/24 49/17 55/19 <b>scenario</b> [9] 10/3 14/5 14/5 16/23 17/7 20/5 20/14 21/14 42/13 <b>scheme</b> [2] 49/23 53/9 <b>scotch</b> [1] 11/12 <b>screen</b> [1] 27/5 <b>second</b> [5] 14/9 24/9 30/4 30/8 30/10 <b>section</b> [2] 52/7 52/16 <b>Section 1</b> [1] 52/7 <b>sections</b> [1] 37/18 <b>secured</b> [4] 35/25 52/11 52/17 52/18 <b>Securities</b> [1] 35/23 <b>see</b> [14] 6/13 8/24 9/11 11/3 11/4 13/17 13/17 13/23 20/2 22/5 27/11 27/12 35/19 40/2	<b>seeking</b> [1] 46/9 <b>seem</b> [2] 24/7 51/13 <b>seemingly</b> [1] 21/12 <b>seems</b> [1] 17/15 <b>seen</b> [2] 23/1 37/24 <b>sell</b> [1] 45/2 <b>seller</b> [5] 16/2 18/5 19/25 21/14 43/13 <b>sellers</b> [1] 21/1 <b>selling</b> [1] 29/12 <b>send</b> [1] 48/9 <b>sense</b> [6] 10/22 17/17 30/21 33/11 42/9 42/9 <b>sent</b> [6] 45/12 45/20 45/25 45/25 46/21 47/6 <b>separate</b> [2] 14/18 51/17 <b>serious</b> [2] 12/2 12/2 <b>serve</b> [1] 40/20 <b>served</b> [5] 40/17 42/13 42/17 43/1 43/8 <b>service</b> [2] 42/12 42/14 <b>Services</b> [1] 45/17 <b>set</b> [6] 20/9 34/16 34/16 34/20 37/11 45/12 <b>setting</b> [1] 22/16 <b>seventh</b> [1] 55/14 <b>SFR</b> [6] 24/24 25/4 26/22 35/4 35/9 36/1 <b>Shadow</b> [7] 15/24 22/25 24/15 37/4 37/17 41/9 46/5 <b>sheer</b> [1] 21/6 <b>SHORTHAND</b> [1] 57/4 <b>should</b> [14] 8/9 11/17 13/5 20/19 30/25 32/25 34/20 38/9 38/10 45/6 50/10 50/11 50/15 51/13 <b>shouldn't</b> [1] 31/10 <b>show</b> [4] 30/25 45/5 52/22 53/23 <b>showing</b> [3] 35/20 52/24 52/24 <b>shows</b> [1] 14/23	<b>side</b> [1] 9/11 <b>sign</b> [1] 27/3 <b>signed</b> [1] 12/24 <b>simply</b> [4] 14/23 16/6 16/7 16/8 <b>since</b> [4] 13/11 27/23 31/24 32/24 <b>single</b> [2] 11/13 16/18 <b>single-family</b> [1] 16/18 <b>sink</b> [1] 21/9 <b>sir</b> [3] 6/8 32/16 34/11 <b>sit</b> [3] 8/19 18/22 26/24 <b>sitting</b> [5] 21/2 23/1 23/9 24/1 43/10 <b>situation</b> [2] 19/21 21/4 <b>Slow</b> [1] 35/12 <b>small</b> [1] 39/7 <b>sneaking</b> [1] 8/7 <b>so</b> [58] <b>socially</b> [1] 11/12 <b>sold</b> [4] 21/19 26/25 27/15 50/2 <b>some</b> [7] 12/2 19/20 29/23 43/1 43/24 44/18 55/18 <b>somebody</b> [4] 4/20 17/20 21/9 43/24 <b>something</b> [8] 8/15 11/12 18/10 20/2 20/7 30/4 32/11 55/15 <b>somewhere</b> [2] 8/15 55/20 <b>soon</b> [2] 5/1 5/21 <b>sorry</b> [2] 32/2 41/1 <b>sort</b> [2] 29/23 44/18 <b>sought</b> [1] 31/11 <b>sounds</b> [2] 5/24 20/13 <b>SOUTH</b> [1] 2/18 <b>Southwest</b> [1] 45/17 <b>speak</b> [1] 53/19 <b>speaking</b> [1] 54/12 <b>specific</b> [3] 9/13 12/9 29/18 <b>specifically</b> [12] 15/24 25/5 26/18 28/23 42/24 45/22 49/5 49/6 49/9 49/16 49/25 50/16	<b>specifics</b> [1] 28/3 <b>spend</b> [1] 49/8 <b>split</b> [1] 6/24 <b>spoken</b> [2] 5/17 5/19 <b>sponte</b> [1] 51/7 <b>Sportsco</b> [1] 50/4 <b>SS</b> [1] 46/25 <b>St</b> [3] 45/18 47/1 47/13 <b>stand</b> [2] 21/23 44/7 <b>standard</b> [2] 43/9 43/22 <b>standing</b> [1] 10/25 <b>standpoint</b> [2] 11/8 32/17 <b>stands</b> [1] 23/12 <b>staring</b> [1] 28/21 <b>start</b> [2] 50/25 51/1 <b>started</b> [1] 40/11 <b>starters</b> [1] 12/3 <b>state</b> [9] 7/8 8/8 8/20 9/2 10/24 27/23 45/22 57/2 57/14 <b>stated</b> [1] 52/21 <b>states</b> [2] 51/23 52/13 <b>status</b> [2] 17/3 17/12 <b>statute</b> [9] 10/6 25/16 27/21 29/5 36/12 41/21 43/7 49/12 50/11 <b>statutes</b> [3] 36/23 42/1 51/12 <b>statutory</b> [5] 49/23 50/4 51/11 52/3 53/9 <b>stay</b> [2] 13/1 13/13 <b>STENOTYPE</b> [2] 57/5 57/8 <b>step</b> [1] 5/22 <b>stepping</b> [1] 41/11 <b>Stewart</b> [1] 4/11 <b>still</b> [8] 6/23 18/16 20/18 24/17 26/20 26/20 35/23 41/3 <b>stipulate</b> [2] 55/13 55/25 <b>stipulation</b> [1] 56/1 <b>stop</b> [1] 46/15 <b>Streight</b> [3] 16/1 19/24 21/10 <b>strict</b> [1] 51/10
--	---	--	--	--

(10) responses... - strict

<b>S</b>	54/19 55/19 <b>suspicion [1]</b> 8/7	50/9 54/9 55/15 <b>their [21]</b> 13/22 22/24 24/3 24/20 33/15 34/16 34/21 35/5 36/19 36/20 39/22 39/23 41/15 42/24 42/25 43/23 45/15 45/23 46/16 47/16 50/2 <b>them [12]</b> 5/14 9/21 11/8 35/8 38/23 39/25 40/1 43/18 45/21 51/18 54/12 55/24 <b>then [29]</b> 7/24 11/16 13/11 13/20 14/7 19/7 19/15 20/9 22/4 22/17 24/4 25/2 28/1 31/13 37/9 40/23 41/12 41/16 42/14 42/25 45/4 45/24 47/12 49/1 53/4 53/21 53/22 54/1 55/20 <b>theory [1]</b> 40/9 <b>there [60]</b> <b>there's [36]</b> 7/2 7/5 9/11 10/7 10/9 10/10 13/6 14/24 16/20 17/9 17/13 17/21 17/24 19/9 20/15 21/8 23/11 23/19 27/3 31/11 33/9 35/19 36/17 36/24 36/25 39/20 40/2 42/10 44/8 48/24 49/13 50/6 50/20 52/15 53/12 54/6 <b>THEREAFTER [1]</b> 57/7 <b>these [8]</b> 12/24 18/23 27/10 27/13 33/6 36/17 39/19 54/7 <b>they [92]</b> <b>they'll [2]</b> 9/10 10/9 <b>they're [10]</b> 8/22 14/16 15/4 21/1 21/15 26/2 29/24 44/1 48/8 49/18 <b>they've [1]</b> 5/19 <b>thing [8]</b> 14/20 18/18 33/20 34/1 34/9 38/3 38/7 45/7 <b>things [11]</b> 7/8 7/9	11/10 13/10 17/1 17/9 23/19 29/24 34/13 44/25 47/24 <b>think [67]</b> <b>this [93]</b> <b>THOMAS [2]</b> 2/5 6/5 <b>those [14]</b> 5/13 7/9 17/1 17/25 18/1 21/25 22/6 22/9 22/15 23/18 34/23 42/17 48/22 50/12 <b>thought [2]</b> 16/12 48/6 <b>thoughts [1]</b> 18/23 <b>thousand [1]</b> 8/15 <b>three [6]</b> 13/25 33/23 46/13 47/13 53/5 53/6 <b>thrift [1]</b> 49/9 <b>throat [1]</b> 13/2 <b>through [5]</b> 38/23 39/23 39/24 40/22 46/16 <b>throw [2]</b> 16/9 27/11 <b>thrown [1]</b> 15/1 <b>time [12]</b> 6/8 8/8 8/22 9/2 9/18 11/9 43/19 46/6 52/1 55/23 56/10 57/7 <b>times [1]</b> 13/19 <b>TIMOTHY [1]</b> 1/17 <b>title [8]</b> 15/18 18/9 19/16 19/23 31/13 32/24 38/9 42/7 <b>today [1]</b> 50/20 <b>told [2]</b> 4/20 31/21 <b>too [1]</b> 16/12 <b>TOOK [1]</b> 57/5 <b>top [6]</b> 13/14 19/15 21/16 29/9 43/14 49/1 <b>tore [1]</b> 20/22 <b>Townhomes [2]</b> 4/12 6/12 <b>traditional [3]</b> 16/17 17/4 50/6 <b>trail [2]</b> 4/16 4/25 <b>trailing [1]</b> 6/6 <b>transact [1]</b> 47/25 <b>transaction [3]</b> 16/18 32/19 33/22 <b>transactions [1]</b> 49/3 <b>TRANSCRIBED [1]</b> 57/8 <b>transcript [3]</b> 1/14	40/23 57/10 <b>transfer [11]</b> 44/6 48/15 49/16 49/20 49/25 51/21 51/22 52/1 52/19 53/2 53/14 <b>transferred [1]</b> 52/23 <b>transfers [3]</b> 49/4 53/16 53/16 <b>trial [10]</b> 11/3 11/13 22/9 22/10 23/15 23/17 23/24 37/22 54/12 55/14 <b>tried [1]</b> 14/7 <b>trigger [1]</b> 32/11 <b>TRIPPIEDI [11]</b> 2/16 4/10 6/9 9/8 11/18 16/12 21/7 21/23 30/21 31/17 55/5 <b>true [4]</b> 20/14 34/23 55/9 57/10 <b>truly [3]</b> 9/18 14/14 48/8 <b>trust [21]</b> 15/5 24/17 31/1 35/3 36/19 42/25 44/14 44/15 44/19 44/25 45/12 45/16 45/23 46/22 47/10 47/16 48/2 48/5 49/7 49/9 52/18 <b>trustee [3]</b> 21/13 43/12 45/2 <b>trying [5]</b> 26/22 30/4 34/8 54/1 55/6 <b>TUESDAY [2]</b> 1/20 4/1 <b>two [13]</b> 6/24 13/24 19/19 20/25 21/11 29/24 38/25 40/4 41/6 41/24 45/16 47/5 51/12 <b>type [1]</b> 45/6 <b>types [9]</b> 16/25 16/25 17/1 17/5 20/15 22/6 23/19 41/6 41/24 <b>TYPEWRITING [1]</b> 57/8 <b>typically [4]</b> 23/16 32/20 34/3 34/23
	<b>T</b>		<b>U</b>	
<b>STUART [2]</b> 3/4 6/11 <b>stuck [1]</b> 50/23 <b>stuff [1]</b> 40/12 <b>sua [1]</b> 51/7 <b>subject [4]</b> 31/1 41/10 48/22 52/15 <b>submit [1]</b> 55/25 <b>submitted [2]</b> 37/23 37/24 <b>subpoena [1]</b> 36/9 <b>subrogation [1]</b> 23/8 <b>SUBSCRIBED [1]</b> 57/13 <b>subsection [2]</b> 36/12 37/19 <b>subsidiary [1]</b> 44/18 <b>substance [1]</b> 14/12 <b>substantive [1]</b> 6/17 <b>such [1]</b> 51/13 <b>suddenly [1]</b> 19/21 <b>sufficient [1]</b> 33/15 <b>SUITE [2]</b> 2/7 2/19 <b>sum [1]</b> 14/12 <b>summary [12]</b> 6/14 6/16 22/15 34/17 37/19 39/2 39/9 39/13 43/9 43/22 45/15 47/4 <b>superpriority [3]</b> 35/18 36/2 36/5 <b>SUPERVISION [1]</b> 57/9 <b>support [3]</b> 33/14 33/18 53/8 <b>supported [2]</b> 38/25 40/5 <b>supports [1]</b> 42/11 <b>supposed [2]</b> 27/10 46/14 <b>suppress [1]</b> 26/15 <b>supreme [19]</b> 5/17 7/10 7/15 8/9 8/14 8/16 8/18 8/20 9/24 10/23 11/5 11/6 15/23 25/4 46/7 48/24 50/15 50/23 51/12 <b>sure [12]</b> 13/10 14/5 21/23 24/17 28/2 34/7 36/17 45/10 46/19 54/5	<b>tabbing [1]</b> 39/24 <b>table [2]</b> 7/20 9/12 <b>take [7]</b> 13/21 15/19 16/13 18/22 19/19 27/1 46/18 <b>taken [4]</b> 8/8 24/24 38/24 39/1 <b>takes [2]</b> 7/19 36/5 <b>talk [6]</b> 7/8 11/22 11/24 25/21 40/10 43/4 <b>talking [12]</b> 9/3 12/15 14/22 20/24 23/16 28/14 32/24 34/3 40/11 50/25 51/1 51/10 <b>talks [1]</b> 41/9 <b>task [1]</b> 55/7 <b>TAYLOR [3]</b> 3/4 4/11 6/11 <b>tell [6]</b> 18/21 21/24 23/6 23/21 25/11 38/19 <b>tells [1]</b> 16/7 <b>tender [1]</b> 38/14 <b>term [1]</b> 15/24 <b>tested [1]</b> 16/24 <b>testified [1]</b> 40/17 <b>testimony [3]</b> 13/14 22/17 40/13 <b>tests [1]</b> 50/4 <b>than [9]</b> 13/23 15/10 17/15 21/5 46/5 48/18 53/24 54/13 55/4 <b>thank [7]</b> 5/23 6/6 11/25 19/3 56/8 56/9 56/11 <b>that [296]</b> <b>that's [50]</b> 7/15 9/1 9/5 9/8 10/4 10/8 10/8 11/10 11/11 11/15 11/20 12/6 12/23 12/23 18/24 21/17 21/22 22/3 24/16 25/19 25/21 26/22 27/6 29/15 30/13 31/3 32/15 33/9 34/1 34/8 34/22 34/23 35/4 36/7 37/13 37/17 38/2 39/6 39/14 40/6 43/5 43/15 45/6 45/14 47/21 48/5 49/23		<b>UCC9 [2]</b> 27/6 49/5 <b>ultimate [7]</b> 14/15 21/18 23/14 24/5 32/22 33/7 37/16	

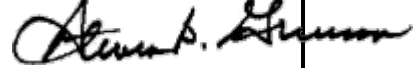
(11) STUART - ultimate

<p><b>U</b></p> <p><b>ultimately</b> [6] 8/23 14/2 21/18 23/24 33/3 39/11</p> <p><b>unconstitutional</b> [1] 41/22</p> <p><b>uncontroverted</b> [1] 42/16</p> <p><b>under</b> [25] 12/25 15/18 16/6 16/17 16/23 17/6 18/9 19/24 20/5 24/15 26/6 27/13 37/11 42/17 43/8 44/6 44/19 48/15 49/4 49/15 49/20 50/4 51/22 53/3 57/9</p> <p><b>underlying</b> [1] 13/20</p> <p><b>understand</b> [18] 9/4 9/16 10/20 11/9 27/19 27/19 28/3 34/14 36/4 37/13 39/16 45/11 46/20 52/4 54/18 55/3 55/10 55/11</p> <p><b>understanding</b> [3] 5/4 22/7 43/21</p> <p><b>undisputed</b> [2] 40/18 43/2</p> <p><b>unequivocally</b> [1] 40/16</p> <p><b>unfair</b> [3] 27/17 29/7 43/10</p> <p><b>unfairness</b> [18] 15/9 19/10 24/15 26/5 26/9 29/15 29/20 29/24 30/10 30/11 30/17 32/10 32/19 33/22 33/24 34/19 35/5 55/1</p> <p><b>uniform</b> [7] 10/11 10/17 48/15 51/20 51/22 52/19 53/2</p> <p><b>unique</b> [1] 13/4</p> <p><b>unknown</b> [1] 17/13</p> <p><b>unless</b> [7] 12/11 13/6 20/21 22/7 22/9 31/11 55/18</p> <p><b>unopposed</b> [1] 22/8</p> <p><b>unreasonable</b> [4] 32/15 35/2 35/15 50/17</p> <p><b>Unruh</b> [3] 15/25 19/24 21/10</p> <p><b>unsecured</b> [3]</p>	<p>52/11 52/14 52/16 <b>until</b> [1] 46/12</p> <p><b>up</b> [16] 4/6 5/2 8/8 8/17 9/9 9/24 11/6 14/2 16/22 20/12 21/23 29/24 37/5 40/23 41/2 51/7</p> <p><b>upon</b> [6] 13/18 16/16 16/25 17/3 17/12 40/4</p> <p><b>us</b> [34] 4/6 6/5 6/14 6/22 8/9 8/14 11/6 14/23 16/7 24/12 35/19 35/23 35/24 36/9 38/2 40/8 40/20 42/23 42/24 43/8 44/15 44/17 44/18 44/23 45/18 46/3 46/4 47/10 47/11 47/12 47/15 48/24 51/22 55/23</p> <p><b>use</b> [2] 15/22 20/1</p> <p><b>used</b> [3] 15/24 17/20 53/10</p> <p><b>using</b> [4] 18/8 29/5 29/5 42/21</p> <p><b>usurp</b> [1] 23/10</p> <p><b>V</b></p> <p><b>valid</b> [7] 27/25 36/15 36/22 49/1 51/25 52/15 53/9</p> <p><b>valley</b> [3] 8/12 35/22 51/5</p> <p><b>value</b> [19] 15/11 15/25 16/5 16/14 16/15 16/23 17/11 18/17 19/18 21/11 21/15 24/4 24/23 48/18 49/13 50/8 53/23 53/24 54/24</p> <p><b>valued</b> [1] 17/16</p> <p><b>various</b> [1] 52/15</p> <p><b>VEGAS</b> [5] 2/8 2/20 3/6 4/1 27/8</p> <p><b>version</b> [1] 27/9</p> <p><b>versus</b> [6] 4/7 14/22 15/25 22/19 23/15 23/19</p> <p><b>very</b> [8] 9/8 10/6 21/22 22/25 43/3 50/25 55/23 56/9</p> <p><b>view</b> [1] 41/24</p> <p><b>violation</b> [1] 25/7</p> <p><b>vis</b> [2] 48/4 48/4</p> <p><b>vis-à-vis</b> [1] 48/4</p> <p><b>void</b> [16] 35/17 36/6 36/8 41/12</p>	<p>41/14 41/19 41/21 41/22 42/4 42/18 43/15 43/17 44/4 44/24 44/25 50/20</p> <p><b>voidable</b> [8] 41/8 41/9 41/14 41/20 43/16 44/4 45/3 50/21</p> <p><b>voided</b> [2] 31/1 50/10</p> <p><b>voiding</b> [1] 49/19</p> <p><b>W</b></p> <p><b>Wait</b> [1] 14/8</p> <p><b>walk</b> [1] 36/14</p> <p><b>wall</b> [2] 17/22 21/8</p> <p><b>want</b> [15] 11/21 19/4 23/21 25/11 28/2 32/1 33/8 34/7 34/10 34/13 36/19 45/10 46/19 54/5 54/18</p> <p><b>wants</b> [2] 31/2 36/19</p> <p><b>was</b> [74]</p> <p><b>wasn't</b> [10] 5/4 10/1 12/16 14/2 16/21 20/16 21/19 27/25 43/7 45/24</p> <p><b>way</b> [6] 8/23 23/7 24/7 44/20 51/13 56/5</p> <p><b>ways</b> [1] 21/24</p> <p><b>we</b> [62]</p> <p><b>we'll</b> [4] 4/25 4/25 5/2 5/2</p> <p><b>we're</b> [16] 8/6 11/14 12/15 18/23 20/24 26/19 26/19 26/23 27/10 32/7 32/7 32/24 33/3 40/12 44/11 51/10</p> <p><b>we've</b> [8] 10/16 12/10 13/10 30/24 43/16 43/16 43/17 52/6</p> <p><b>week</b> [2] 14/21 14/21</p> <p><b>weigh</b> [2] 24/5 24/8</p> <p><b>well</b> [21] 6/17 7/13 12/20 15/22 19/22 20/1 23/6 24/20 25/15 26/11 29/22 30/3 30/13 33/13 34/2 34/7 38/16 38/18 39/21 41/2 43/12</p> <p><b>went</b> [9] 9/24 43/5</p>	<p>44/16 46/6 46/11 47/10 47/11 47/12 47/13</p> <p><b>were</b> [18] 7/7 7/7 19/13 19/15 19/20 21/12 26/22 29/10 29/12 32/13 43/11 46/14 46/16 46/17 47/24 48/21 56/14 57/8</p> <p><b>West</b> [2] 4/12 6/11</p> <p><b>wet</b> [1] 21/2</p> <p><b>whack</b> [1] 51/2</p> <p><b>whack-a-mole</b> [1] 51/2</p> <p><b>what</b> [69]</p> <p><b>what's</b> [6] 11/2 18/13 24/16 26/9 30/8 33/4</p> <p><b>whatever</b> [5] 17/3 26/13 29/1 29/1 31/2</p> <p><b>whatsoever</b> [2] 36/1 43/25</p> <p><b>when</b> [17] 5/4 15/9 19/13 23/16 27/15 29/18 36/18 38/1 41/25 41/25 42/1 44/19 45/3 47/5 47/25 48/18 50/16</p> <p><b>where</b> [18] 6/16 8/19 9/18 10/4 13/25 14/5 18/21 19/21 19/23 20/6 20/9 20/14 20/17 21/4 22/6 26/8 48/3 50/17</p> <p><b>WHEREOF</b> [1] 57/13</p> <p><b>whether</b> [15] 10/15 17/13 17/14 22/3 22/17 23/23 24/1 29/4 29/19 33/9 36/25 39/11 41/5 48/21 50/17</p> <p><b>which</b> [18] 8/9 11/17 15/25 16/1 27/1 27/21 28/8 29/25 36/22 43/13 45/16 48/23 49/25 51/13 52/7 52/16 53/7 55/1</p> <p><b>who</b> [6] 12/3 19/10 19/19 30/23 31/3 52/22</p> <p><b>whom</b> [1] 47/6</p> <p><b>why</b> [7] 9/5 16/13</p>	<p>18/13 24/4 24/19 33/6 43/25</p> <p><b>will</b> [7] 8/19 8/23 30/23 39/3 39/11 40/2 46/4</p> <p><b>WILLIAMS</b> [1] 1/17</p> <p><b>willing</b> [8] 16/1 16/2 18/4 18/5 19/25 19/25 20/25 55/24</p> <p><b>window</b> [1] 15/1</p> <p><b>within</b> [1] 52/16</p> <p><b>without</b> [2] 53/17 54/12</p> <p><b>WITNESS</b> [1] 57/13</p> <p><b>wonderful</b> [2] 7/8 7/9</p> <p><b>Wood</b> [7] 15/24 22/25 24/15 37/4 37/17 41/9 46/5</p> <p><b>word</b> [1] 52/8</p> <p><b>words</b> [2] 15/23 53/6</p> <p><b>world</b> [1] 11/14</p> <p><b>worry</b> [1] 25/12</p> <p><b>worth</b> [4] 15/16 21/5 35/14 53/11</p> <p><b>would</b> [42] 8/14 9/1 10/2 10/7 13/23 14/15 16/14 16/15 17/5 17/6 17/6 17/16 17/19 18/16 18/16 21/10 21/18 22/4 22/16 25/13 26/12 26/13 26/14 26/14 26/24 29/22 32/11 32/12 33/14 33/18 38/7 42/6 42/6 42/13 47/23 48/1 48/7 48/8 54/23 55/7 55/12 55/24</p> <p><b>wouldn't</b> [5] 22/15 23/24 37/15 42/17 55/13</p> <p><b>writ</b> [2] 8/13 14/2</p> <p><b>wrong</b> [12] 10/25 17/20 21/24 22/23 23/4 30/20 38/19 40/17 41/3 42/13 42/16 47/22</p> <p><b>X</b></p> <p><b>XVI</b> [1] 1/3</p> <p><b>Y</b></p> <p><b>yeah</b> [13] 5/12</p>
--	--	---	---	--

(12) ultimately - yeah

<p><b>Y</b></p> <p><b>yeah... [12]</b> 5/18 5/20 6/19 7/2 7/23 10/13 18/3 22/13 22/14 42/19 47/21 51/6 <b>years [4]</b> 13/25 16/9 37/12 43/22 <b>yes [6]</b> 5/8 7/12 21/10 31/18 39/15 40/16 <b>yesterday [1]</b> 4/20 <b>you [156]</b> <b>you're [26]</b> 9/3 10/4 14/10 15/2 15/3 18/25 20/4 20/11 20/12 20/13 20/17 21/4 23/12 23/16 23/17 29/3 30/20 30/21 34/2 34/5 38/20 39/3 39/10 39/14 45/11 48/10 <b>your [25]</b> 4/9 4/11 5/23 5/24 6/7 14/9 14/9 19/7 20/12 24/18 30/4 31/22 32/1 34/6 34/25 36/14 39/5 39/8 39/18 44/13 45/14 48/3 51/20 56/9 56/11</p> <p><b>Z</b></p> <p><b>zero [1]</b> 46/16 <b>zone [1]</b> 18/1 <b>zoning [1]</b> 10/18 <b>Zzyzx [1]</b> 26/17</p>				
--	--	--	--	--

(13) yeah... - Zzyzx



1 CASE NO. A-12-667690-C

2 DOCKET U

3 DEPT. XVI

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

\* \* \* \* \*

9

U S BANK NATIONAL ASSOCIATION,

)

10

Plaintiff,

)

11

vs.

)

12

GEORGE EDWARDS,

)

13

Defendant.

)

14

15

REPORTER'S TRANSCRIPT

16

OF

17

BENCH TRIAL

18

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

19

DISTRICT COURT JUDGE

20

21

DATED TUESDAY, OCTOBER 2, 2017

22

23

24

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

25

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

EDWARD APPENDIX 1643

1 APPEARANCES:

2 FOR THE PLAINTIFF US BANK:

3

4 MCCARTHY HOLTHUS LLP

5 BY: THOMAS BECKOM, ESQ.

6 BY: PRISCILLA BAKER, ESQ.

7 9510 W SAHARA AVENUE

8 SUITE 200

9 LAS VEGAS, NV 89117

10 (702) 685-0329

11 (702) 866-339-5691 Fax

12 NO EMAIL PROVIDED

13

14

15 FOR RESOURCES GROUP LLC:

16

17 LAW OFFICES OF RICHARD VILKIN, P.C.

18 BY: RICHARD J. VILKIN, ESQ.

19 1286 CRIMSON SAGE AVENUE

20 HENDERSON, NV 89012

21 (702) 476-3211

22 (702) 476-3212 Fax

23 RICHARD@VILKINLAW.COM

24

25

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

EDWARD APPENDIX 1644

1 APPEARANCES CONTINUED:

2

3 GEISENDORF LAW OFFICE

4 BY: CHARLES L. GEISENDORF, ESQ.

5 2470 ST. ROSE PARKWAY

6 SUITE 309

7 HENDERSON, NV 89074

8 (702) 873-5868

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

EDWARD APPENDIX 1645

## INDEX

## WITNESS

## PAGE

BRYAN HEIFNER

Direct Examination By Mr. Beckom . . . . .	17
Cross-Examination By Mr. Vilkin . . . . .	45
Redirect Examination By Mr. Beckom . . . . .	56
Recross-Examination By Mr. Vilkin . . . . .	59
Further Redirect Examination By Mr. Beckom . . . . .	61

KIM KALLFELZ

Direct Examination By Mr. Beckom . . . . .	67
Cross-Examination By Mr. Vilkin . . . . .	77
Redirect Examination By Ms. Baker . . . . .	78

DAVID ALESSI

Direct Examination By Mr. Beckom . . . . .	83
Cross-Examination By Mr. Vilkin . . . . .	141

IYAD EDDIE HADDAD

Direct Examination By Mr. Beckom . . . . .	152
Cross-Examination By Mr. Vilkin . . . . .	192
Recross-Examination By Mr. Vilkin . . . . .	203

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment.

EDWARD APPENDIX 1646



## EXHIBITS

EXHIBIT	DESCRIPTION	MARKED	RECEIVED
3	Equiline Agreement		21
17A	Document		34
4	deed of trust		36
17	Document		50
12	Documents		155
11	Document		165

\* \* \* \* \*

1 LAS VEGAS, NEVADA, TUESDAY, OCTOBER 2, 2017

2 9:55 A.M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

09:48:14 5 THE COURT: All right. Good morning.

6 MR. VILKIN: Good morning, your Honor.

7 THE COURT: And let's go ahead and note our  
8 appearances on the record.

09:55:33 10 MR. VILKIN: Richard Vilkin for defendant and  
11 counter-claimant Resources Group LLC as trustee.

12 MR. GEISENDORF: Charles Geisendorf for  
13 Resources Group.

14 THE COURT: All right. Has everybody noted  
09:55:47 15 their appearance?

16 MR. BECKOM: Thomas Beckom on behalf of US  
17 Bank and with me here is Priscilla Baker also from  
18 McCarthy Holthus as well as Bryan Heifner on behalf of  
19 US Bank.

09:55:57 20 MR. VILKIN: Also with us, your Honor, is  
21 Eddie Haddad, the manager of Resources Group.

22 MR. HADDAD: Good morning, your Honor.

23 THE COURT: Good morning. So anyway, at this  
24 time are we ready to proceed?

09:56:07 25 MR. VILKIN: Yes, your Honor.

09:56:08 1 THE COURT: Okay.

2 MR. VILKIN: But --

3 THE COURT: From a witness perspective, how  
4 many witnesses do you anticipate calling?

09:56:13 5 MR. BECKOM: We're hoping to -- we have six  
6 witnesses total for this entire case. We're hoping to  
7 get -- knock out the four fact witnesses and take  
8 experts tomorrow is my understanding.

9 THE COURT: I understand.

09:56:22 10 MR. VILKIN: Your Honor, we do have some  
11 logistical issues that I'd like to present to the  
12 Court. We've got two witnesses that have other  
13 obligations this afternoon. Our plan was to take the  
14 bank's witness first. That should be relatively short.  
09:56:39 15 Then we have the sales trustee who will be somewhat  
16 lengthy. He's supposed to testify in another matter at  
17 1:00 o'clock.

18 There's also an HOA witness who just told me  
19 that she has to be somewhere else at a board meeting at  
09:56:54 20 2:00 o'clock.

21 So in talking to counsel beforehand, we're not  
22 sure we can get done, we can get all those done by --  
23 to accommodate all these witnesses.

24 THE COURT: I understand.

09:57:07 25 MR. VILKIN: So we're open to --

09:57:08 1 THE COURT: I'm not really concerned about  
2 that, and I'll tell you why. That's one of the  
3 beauties of a bench trial. Right? I only become  
4 concerned with witness availability in a jury trial  
09:57:21 5 setting. We'll get this case done. If we don't get it  
6 done exactly when we plan to get it done, we'll get it  
7 done within the next week or so. So I'm not worried  
8 about it. I'll get a chance to work with all the  
9 witnesses, and so on. We'll work with the  
09:57:35 10 availability.

11 MR. VILKIN: All right. Thank you, your  
12 Honor.

13 THE COURT: So that should be a nonissue.

14 MR. BECKOM: And one pragmatic thing I would  
09:57:39 15 request is that Mr. Heifner here was staying at  
16 Tropicana last night.

17 THE COURT: I heard about that, yes.

18 MR. BECKOM: Yes. We would ask respectfully  
19 that after he gives his testimony this morning, if we  
09:57:49 20 could just let him go. He's had very little sleep over  
21 the last 24 hours just because of some of the incidents  
22 that happened down on the strip.

23 MR. VILKIN: Would he be available tomorrow if  
24 needed? He's leaving today?

09:58:07 25 MR. BECKOM: He's leaving tomorrow at

09:58:07 1 10:00 a.m.

2 MR. VILKIN: All right.

3 THE COURT: Yeah. I mean, hypothetically, I

4 mean, I don't know exactly what's going to happen, but

09:58:18 5 I do understand probably the necessity for him to leave

6 today. I have no problem with that. If for whatever

7 reason he needs to be recalled, we can handle that

8 telephonically. I mean, think about it. I will have a

9 chance to have met him live. If there's anything

09:58:32 10 additional we need, I can do it telephonically.

11 MR. VILKIN: That would be great, your Honor.

12 THE COURT: I don't see where there's an issue

13 because it -- these are very unfortunate times; right?

14 MS. BAKER: True.

09:58:42 15 THE COURT: Probably the best way to say it.

16 So, okay, opening statements.

17 MS. BAKER: Yes, your Honor.

18 THE COURT: And, ma'am, you need the lectern.

19 Let's see if we can get her set up,

09:58:55 20 Mr. Marshal, if she needs.

21 THE MARSHAL: Your Honor.

22 THE COURT: Yes, a lectern.

23 THE MARSHAL: The lectern. Yes, your Honor.

24 Excuse me. Ladies and gentlemen, will this suffice or

09:59:06 25 do you want that big beast out in the hallway?

09:59:10 1

MR. VILKIN: No.

2

THE MARSHAL: I have to ask, so ...

3

MS. BAKER: That's fine.

4

Good morning, your Honor.

09:59:28 5

THE COURT: Good morning --

6

MS. BAKER: This case is regarding property

7

located at 4254 Rolling Stone Drive, Las Vegas, Nevada,  
89103.

9

When plaintiff US Bank first became involved

09:59:39 10

in this property, the owner of the property was George

11

Edwards. He entered into an agreement with US Bank on

12

a home equity line of credit. He signed a note on

13

March 3, 2009, for credit of \$50,000. It was secured

14

by a future advances deed of trust that was recorded

09:59:59 15

against the property. The monthly payments were

16

201-dollar -- \$201.09.

17

Mr. Edwards became in default on the note and

18

the deed of trust in November 2, 2001 (sic). During

19

about that time, the borrower also passed away, but US

10:00:22 20

Bank wanted to keep or work with the heirs and the

21

borrower to keep the property with them. However,

22

there was a hitch in the plan. The borrower also

23

became delinquent in the HOA assessments.

24

The delinquency began in February 2010.

10:00:44 25

Glenview West Townhome Associations, which is the

Peggy Isom, CCR 541, RMR

(702) 671-4402 - CROERT48@GMAIL.COM

Pursuant to NRS 239.053, illegal to copy without payment. EDWARD APPENDIX 1652

10:00:48 1 defendants herein placed a lien on the property in  
2 January 14, 2011. The HOA assessments were \$130 a  
3 month. So the property ended up being sold in January  
4 25th, 2012, for \$5,331. The value of the property is  
10:01:11 5 estimated anywhere between \$35,000 and \$48,000 at that  
6 time, which was about 11 percent of the fair market  
7 value.

8 Before going to sale, after the lien was  
9 recorded, Robert Hazel, as part of the estate,  
10:01:32 10 attempted to make a part -- well, made a partial  
11 payment on the HOA liens for about \$700, which only  
12 delayed the sale from November 2011, the HOA sale to  
13 January 25th, 2012.

14 The HOA recorded a notice of default in March  
10:01:54 15 2011, however, the evidence will show that US bank was  
16 not served notice of the notice of default. They were  
17 served notice of the sale, which were sent to two  
18 different addresses which were on the deed of trust  
19 listed.

10:02:12 20 Pursuant to NRS 106 there was a requirement  
21 that if US Bank wanted to get notice anywhere other  
22 than what was addressed in the recordings of the notice  
23 of default, it would have had to record a new -- record  
24 notice that it wanted to be at a different address,  
10:02:29 25 which it did not do. US Bank wanted to be served where

10:02:33 1 it was stated in the notice of default. Which was also  
2 shown and the notice of sale was actually served at the  
3 two addresses that were used in the notice -- or in the  
4 deed of trust.

10:02:47 5 The evidence will also show that there were no  
6 bidders at the sale. It was sold back to the trust --  
7 a trust, as well as the CC&Rs had a subordination  
8 agreement putting people on notice that the lien would  
9 have been subordinate to the first deed of trust  
10:03:08 10 regardless.

11 The evidence will also show that Resources  
12 Group is not a bona fide purchaser because the deed of  
13 trust put everybody on notice that there was a lien  
14 against the property, the sale was prior to SFR as well  
10:03:28 15 as Bourne Valley, which was then deeded the property in  
16 May 2012. Listed this property in the bankruptcy  
17 subject to the deed of trust. And that's where the  
18 Bourne Valley put a value of the property at \$35,000,  
19 signed under penalty of perjury.

10:03:56 20 Based on the situation, US Bank now seeks a  
21 judicial foreclosure. And evidence will show that US  
22 Bank isn't entitled to the judicial foreclosure --  
23 entitled to enforce the note, and they're the current  
24 beneficiary of the deed of trust. Thank you.

10:04:18 25 THE COURT: Thank you, ma'am.



10:04:20 1 MR. VILKIN: Good morning, your Honor. On  
2 behalf of defendant and counter-claimant Resources  
3 Group LLC as trustee for the Bourne Valley Court Trust,  
4 the current defendant, my client, obtained the property  
10:04:37 5 after the sale by way of grant, bargain and sale deed.  
6 But at the sale, Eddie Haddad was the person who  
7 appeared at the sale and purchased the property for,  
8 counsel is correct, \$5,331.

9 This was a public auction. It was advertised  
10:04:59 10 in the Nevada Legal News and posted around town, so it  
11 conformed to all the requirements of the sale.

12 And Mr. Haddad was the high bidder at the sale  
13 and paid cash that day and had title vested in an  
14 entity known at 4254 Rolling Stone Drive Trust, and  
10:05:19 15 Resources Group was the trustee of that trust and later  
16 transferred the property to the current plaintiff  
17 Bourne Valley Court Trust.

18 So at the time of the sale Mr. Haddad had no  
19 information about any allegations that you'll hear in  
10:05:43 20 this case concerning alleged defects in the sale. He  
21 knew nothing about it. The only thing he knew at the  
22 time of sale was what was contained in the recorded  
23 documents on the property. And there's nothing in any  
24 of the recorded documents that talk about any of the  
10:06:02 25 alleged defects that the bank is going to focus on.

10:06:06 1 And, in fact, you just heard in argument that  
2 the fact that the first deed of trust was recorded on  
3 the property was enough to destroy his status as a bona  
4 fide purchaser; however, that is not the law in this  
10:06:19 5 state. And the Shadow Wood case, the Nevada Supreme  
6 Court said the fact that a holder of a first deed of  
7 trust may bring an action of quiet title is not  
8 sufficient to destroy bona fide purchaser status.

9 So we believe the evidence is going to show  
10:06:36 10 that our client was a bona fide purchaser without  
11 notice of any defect in title or anything else that  
12 should prevent him from quieting title in this action.  
13 Because this is a quiet title action and both parties  
14 have alleged quiet title against each other.

10:06:54 15 The Court will hear evidence that the sale was  
16 not commercially reasonable because the price was  
17 approximately 10 percent of the alleged value at the  
18 time of the sale. However, in order to be commercially  
19 unreasonable, there also needs to be evidence of fraud,  
10:07:13 20 oppression, or unfairness leading to the lower price.  
21 And we don't believe there's any such evidence that's  
22 going to be presented to the Court.

23 With regard to the notice issue, your Honor,  
24 the first and most important part of this is that in  
10:07:33 25 order to be entitled to notice under NRS 116 at the

10:07:38 1 time of the sale in January of 2012, the bank was  
2 required to notify the association of its secured  
3 interest. Otherwise, it wasn't entitled to notice.  
4 This is the so-called opt-in aspect of Nevada law which  
10:07:56 5 the Nevada Supreme Court has ruled is constitutional.  
6 So there was no requirement that the bank get any of  
7 the notices in this case.

8           However, they, in fact, did get the notices.  
9 But it was voluntary. And what happened was -- even  
10:08:14 10 though counsel has told you they didn't get notice,  
11 what happened was they recorded a deed of trust, your  
12 Honor, which had three addresses on it. And the Court  
13 will get to see that document. And at the top of the  
14 document it had a name and an address of where to mail  
10:08:31 15 the recorded deed of trust. And that is the address  
16 that the sales trustee used in mailing out the notices  
17 in this case.

18           There were in addition two other addresses  
19 that the bank included in that deed of trust, but the  
10:08:48 20 bank said nothing in the document about where to send  
21 the notices. And so the bank created the confusion by  
22 having the three addresses, but not saying where they  
23 wanted the notices or where they wanted any information  
24 sent.

10:09:03 25           Finally, with regard to the superpriority lien

10:09:13 1 issues in this case. As the Court knows, the  
2 superpriority lien consists of nine months of  
3 assessments immediately proceeding the institution of  
4 an action to enforce the lien.

10:09:24 5 In this case the institution of the action  
6 began in January of 2011 when the notice of delinquent  
7 assessment lien was recorded. So the superpriority  
8 lien consisted of nine months of assessments prior to  
9 that dating back to April of 2013. The evidence is  
10:09:43 10 going to show that when this sale occurred, the  
11 association was paid assessments actually going back  
12 two months earlier, and so the nine months calculated  
13 out to about \$1170. There was a partial payment for  
14 \$414. But it still wasn't sufficient to pay off the  
10:10:09 15 superpriority lien. And the HOA was, in fact, paid off  
16 its superpriority lien, and the evidence is going to  
17 show that's, in fact, what was foreclosed on at this  
18 sale. So we're going to ask the Court at the end to  
19 quiet title in the name of defendant. And thank you.

10:10:28 20 THE COURT: Thank you, sir.

21 Anything else from the defense? Is that it?

22 MR. GEISENDORF: That's it.

23 THE COURT: Okay.

24 MR. BECKOM: US Bank would call as their first  
10:10:36 25 witness Bryan Heifner, corporate representative of US

09:30:19 1 clear what -- how you have to rule, but --

2 THE COURT: Yeah. I mean, there's no  
3 discussion, right?

4 MR. TRIPPIEDI: Not from my end.

09:30:25 5 THE COURT: I mean, there's no -- I mean,  
6 everything -- all the other discussions we had before  
7 were really nice academic discussions, and they were  
8 wonderful things to talk about, and state, and all  
9 those wonderful things. But at the end of the day in  
09:30:42 10 light of the recent decision of the Nevada Supreme  
11 Court, you know what I'm going to do, right?

12 MR. TRIPPIEDI: Yes.

13 MR. BECKOM: Well, we do have other arguments.

14 THE COURT: Okay. So with the decision of the  
09:30:54 15 Nevada Supreme Court, and that's *Saticoy Bay*; right?

16 MR. TRIPPIEDI: Right. Durango.

17 THE COURT: What impact does that have on my  
18 decision making right now?

19 MR. TRIPPIEDI: It takes the constitutional  
09:31:02 20 arguments off the table.

21 THE COURT: Okay.

22 MR. TRIPPIEDI: More or less.

23 THE COURT: Yeah.

24 MR. TRIPPIEDI: Then we go forward on the  
09:31:07 25 remainder of the arguments.

09:31:09 1 THE COURT: All right. So ...

2 MR. BECKOM: And so, I guess, just for the  
3 record just to preserve my --

4 THE COURT: Absolutely.

09:31:13 5 MR. BECKOM: -- appeal rights, like, you know,  
6 we're not abandoning that claim. We continue to make  
7 that claim. I have a sneaking suspicion at this point  
8 in time the state action issue is going to be taken up  
9 by the US Supreme Court, which should be interesting.

09:31:25 10 So --

11 THE COURT: I think, you know -- and I don't  
12 mind saying this. I think that Bourne Valley, the  
13 chances of a writ being granted at that point with the  
14 US Supreme Court would have been maybe one in a  
09:31:38 15 thousand, somewhere something like that.

16 Now, in light of the Nevada Supreme Court's  
17 decision, I think the chances go up exponentially, and  
18 it might be one in 10. I just don't think the Supreme  
19 Court will let the decision sit there where you have  
09:32:01 20 conflicts between Ninth Circuit and the state Supreme  
21 Court. I don't think they do that, do they? I can't  
22 think of any time they're ever done that. They  
23 ultimately will resolve it one way or the other. That  
24 is how I see it.

09:32:13 25 MR. TRIPPIEDI: The only impediment to that is

09:32:15 1 that's an issue that would probably only affect one  
2 state and only in the certain time period because the  
3 law has changed now. So you're talking about --

4 THE COURT: I understand that.

09:32:24 5 MR. TRIPPIEDI: So that's why I think that  
6 there, you know --

7 THE COURT: I mean, you might -- you know,  
8 Mr. Trippiedi, that's a very important issue to bring  
9 up, you know, the law changing. And I don't know what  
09:32:35 10 they'll do with that.

11 But the only other side I see is there's so  
12 much money on the table right now. And a really good  
13 example of that is I remember I made a specific  
14 decision in a construction defect litigation as it  
09:32:49 15 related to the award of attorney's fees and costs. And  
16 I follow the mandate of Chapter 40 -- you understand  
17 this because you practiced in that area for a long  
18 time -- where I really and truly said, you know what,  
19 the attorney's fees incurred have to be proximately  
09:33:04 20 caused by the construction defect. And the plaintiff  
21 asked for over a million dollars in fees. I gave them,  
22 like, \$40,000. They didn't beat the offer of judgment;  
23 right?

24 Went up to the Nevada Supreme Court, and they  
09:33:14 25 affirmed me. But in the interim, AB125 came out. I

09:33:20 1 think that if there wasn't a change in the law they  
2 would have issued a published decision on that because  
3 it's a great factual scenario. And I kind of think  
4 that's where you're going.

09:33:29 5 But on the -- and with the change in the  
6 statute, because, in essence, there was very few cases  
7 that would have impacted anyway. But there's a lot of  
8 money out there. That's kind of -- that's the only  
9 reason I think they'll hear that. There's a lot.

09:33:44 10 There's billions, right?

11 MR. BECKOM: And it's against a uniform act.  
12 It goes across multiple different jurisdictions.

13 THE COURT: Yeah.

14 MR. BECKOM: Interesting, like, you know, it's  
09:33:51 15 an interesting argument about whether or not -- I mean,  
16 like, we've -- it's always been my opinion that the  
17 HOA, the Uniform Common Interest Ownership Act is an  
18 abrogation of the city zoning and maintenance authority  
19 in lieu of being governed by the city.

09:34:03 20 THE COURT: I understand that.

21 MR. BECKOM: And, like, I mean, like --

22 THE COURT: It does make sense; doesn't it?

23 MR. BECKOM: Our Supreme Court has decided  
24 that there is no state action. And, apparently, that  
09:34:09 25 just makes me wrong standing in this room, but ...



09:34:12 1 THE COURT: I mean, you know, it's -- it's at  
2 the end of the day -- you know, what's -- what I found  
3 I think is an eye opener. I see it more from a trial  
4 judge because I see so many cases, and you look at  
09:34:29 5 courts of appeals and supreme courts, and so on, even  
6 you can go up to the US Supreme Court. And in my  
7 opinion, you look at it from a pure intellectual  
8 standpoint discussing the law. None of them get it  
9 right all the time. If you understand what I'm saying.  
09:34:48 10 That's one of the things you kind of realize. And  
11 that's great fodder for, you know, discussion, say, out  
12 socially over a glass of fine scotch or something,  
13 single malt, you know. But as a trial judge, you know,  
14 we're back in the real world. At the end of the day I  
09:35:10 15 got to follow *Saticoy Bay*. So that's kind of how --  
16 let's move on to the other issues then.

17 Which motion should we deal with first?

18 MR. BECKOM: I can lead off if Mr. Trippiedi  
19 is okay.

09:35:21 20 MR. TRIPPIEDI: That's fine.

21 MR. BECKOM: Maybe he doesn't want to hear me  
22 talk. I don't know.

23 MR. TRIPPIEDI: Go ahead. I love to hear you  
24 talk.

09:35:27 25 MR. BECKOM: Thank you. You know, at the end

09:35:29 1 of the day with this one, Judge, you know, looking at  
2 it, like, there was some serious, serious problems on  
3 this case. For starters, Mr. Haddad, who is the  
4 principal of Resources Group filed a bankruptcy saying  
09:35:43 5 that was encumbered by a lien. He's judicially  
6 estopped from asserting any differently. That's just a  
7 pure legal issue that I'll let the Court decide, but he  
8 ran into bankruptcy court claiming that there was a  
9 lien encumbering this specific property. And I think  
09:35:58 10 we've properly evidenced this, so I'll just leave that  
11 to the discretion of the Court unless you have any  
12 questions.

13           Additionally, the --

14           THE COURT: What impact does that have? And  
09:36:07 15 we're talking about -- is that Mr. Edwards?

16           MR. BECKOM: No. Mr. Edwards -- it wasn't  
17 Mr. Edwards' bankruptcy. Mr. Haddad --

18           THE COURT: Okay.

19           MR. BECKOM: -- filed a bankruptcy himself.  
09:36:14 20 The owner of the -- the owner -- well, the purported  
21 purchased owner and purchaser from the HOA sale filed a  
22 bankruptcy saying that this was encumbered by a  
23 mortgage lien in 2012. And that's just, I mean, that's  
24 public record right there. He signed all these  
09:36:32 25 documents under penalty of perjury in order to get a

09:36:34 1 bankruptcy stay in front of the bankruptcy Court  
2 claiming that he had creditors at his throat, so across  
3 multiple different properties.

4 That in and of itself makes this case unique  
09:36:44 5 in the respects that he should be judicially estopped  
6 from asserting otherwise. Unless there's, you know, I  
7 mean, he got the benefits of the bankruptcy by claiming  
8 that it was encumbered by a lien by a creditor. He  
9 can't come into this Court now claiming that it's not.

09:37:00 10 I mean, I'm sure we've all learned things  
11 since then, but it doesn't change the fact that he's  
12 judicially estopped from that position because he got  
13 the benefit of that bankruptcy stay order.

14 On top of that, there was testimony developed  
09:37:12 15 in this case --

16 THE COURT: And, you know, judicial estoppel,  
17 and it's fascinating, but I see more -- I see more  
18 cases involving judicial estoppel based upon -- and I  
19 guess it's because many times you have people filing  
09:37:27 20 bankruptcy, and then there might be an underlying civil  
21 action in district court. And they take a position in  
22 bankruptcy Court adverse to their position in district  
23 court. I see that more than you would think.

24 And, in fact, I had a case probably about two  
09:37:43 25 or three years ago where I actually made a judicial

09:37:48 1 determination that there was estoppel involved. And  
2 ultimately a writ was ran up. It wasn't published, but  
3 I was affirmed on that issue.

4 And what it -- what happened was just to make  
09:37:56 5 sure the scenario was clear. It was a scenario where I  
6 think a person disclaimed ownership of an asset, and  
7 then they came down and into district court and tried  
8 to claim ownership of that asset. And I said Wait a  
9 second here. You filed your -- on your form you said  
09:38:11 10 you didn't own it, and now you're judicially estopped  
11 from, you know, making that assertion. And that was  
12 the sum and substance of that case. I think I've had  
13 others.

14 But what impact does that have, truly, as far  
09:38:25 15 as what my ultimate decision would be in this case?

16 MR. BECKOM: You know, they're claiming that  
17 this property is encumbered by a mortgage lien in a  
18 separate federal court proceeding. I don't think they  
19 can come in here now and claim that it's not. I think  
09:38:37 20 if one thing the lesser discussed decision from I think  
21 it was last week, week before that, the *Saticoy Bay*  
22 *versus JPMorgan Chase* case talking about the 41A  
23 dismissal. If anything it shows us that simply because  
24 there's an HOA foreclosure litigation going on that all  
09:38:55 25 the, you know, common law rules and rules of civil

09:38:58 1 procedure just don't get thrown out the window.

2 THE COURT: So you're saying, I guess, the  
3 bottom line is you're saying that as a result of that  
4 bankruptcy filing, they're precluded from alleging  
09:39:12 5 extinguishment of the first deed of trust.

6 MR. BECKOM: Absolutely. And even if we  
7 don't, you know, it doesn't just end right there. At  
8 the end of the day, Mr. -- I mean, like there --  
9 there -- when we get into the fraud, unfairness, and  
09:39:27 10 oppression aspects of it, this is a sale for less than  
11 20 percent of fair market value. This is what  
12 Justice Pickering said is an obviously inadequate sale  
13 price.

14 Resources Group has put forth a counter expert  
09:39:44 15 opinion of a Mr. Brunson claiming that the property is  
16 only worth the price -- I think it was around \$5,000  
17 for this condo because it was encumbered by massive  
18 title defects. It was under force sale compulsion. I  
19 think my take on that and --

09:40:02 20 THE COURT: This is fascinating.

21 MR. BECKOM: -- hopefully I can convince you  
22 of that as well is that appellate bodies don't use  
23 words that have no meaning. And Nevada Supreme Court  
24 in *Shadow Wood* specifically used the term fair market  
09:40:14 25 value, which is defined by another case *Unruh versus*

09:40:18 1 *Streight*, which means the price between a willing buyer  
2 and a willing seller.

3           There is no compulsory price there. That  
4 expert report they put forth is erroneous as a matter  
09:40:27 5 of law. It is not fair market value. It is  
6 compulsion. It was sale under compulsion. And simply,  
7 again, simply *Saticoy Bay V JPMorgan Chase* tells us  
8 that simply because an HOA foreclosure is involved, we  
9 don't throw out the last 150 years of common law and  
09:40:46 10 rules of civil procedure.

11           THE COURT: Here's the question I have for  
12 you. And I thought about this, too. And Mr. Trippiedi  
13 can take note of this. Why isn't that a question of  
14 fact as to what fair market value would be? And what I  
09:41:00 15 mean by that is this. Fair market value, I would  
16 think, potentially can change based upon many, many  
17 factors. For example, under a traditional real estate  
18 sales transaction involving a single-family home,  
19 assuming the home is in -- is properly maintained, and  
09:41:27 20 there's no liens, and, you know, and it's in a decent  
21 area, and wasn't abandoned or anything like that, and  
22 it was kept up, and that was placed on the market,  
23 under that scenario, there might be a fair market value  
24 for that property that could be tested easily based  
09:41:51 25 upon the types of offers that come out and the types of

09:41:54 1 comps in the area and those types of things.

2           In contrast, what if you have a distressed  
3 property and for whatever reason based upon the status  
4 of the property in a traditional, you know, listing on  
09:42:15 5 the market, it would never bring the types of offers  
6 that would -- that a home would under the prior  
7 scenario I gave you, it could be preexisting  
8 construction defects, or it could be it's in a flood  
9 plan, or, I mean, there's so many different things to  
09:42:36 10 really factor in. And so couldn't it be argued that  
11 the fair market value of a piece of real property could  
12 be impacted by its status based upon the fact that  
13 there's so much unknown as to whether or not the HOA  
14 sale is final, whether -- I mean, you know, because it  
09:43:03 15 seems to me that it's more than just what a normal home  
16 would be valued at in a reasonable condition with no  
17 encumbrance. Does it make sense what I'm saying?

18           MR. BECKOM: No, it does. And, I guess, my  
19 response to that would be so if it's a construction  
09:43:25 20 defect issue like somebody used the wrong nails that  
21 don't meet code or, you know, there's a big hole in the  
22 wall, and --

23           THE COURT: Right.

24           MR. BECKOM: And, you know, there's a bunch of  
09:43:34 25 mold in there, those are physical, or it's in a flood

09:43:37 1 zone, those are physical impediments. They are readily  
2 observable.

3 THE COURT: Yeah.

4 MR. BECKOM: And by a willing buyer and a  
09:43:44 5 willing seller.

6 The problem that at least I have with the  
7 Brunson report is, number one, the comparables are only  
8 using forced sale properties based on a legal defective  
9 title. That is with sales under compulsion. And that  
09:43:58 10 is, number one, something that can be decided as a  
11 matter of law by the Court and not a genuine issue of  
12 material fact in that regard.

13 THE COURT: And why is that? What's the  
14 difference between a legal defect and impediment and a  
09:44:12 15 physical defect and impediment? Because at the end of  
16 the day I would think that would still impact fair  
17 market value.

18 MR. BECKOM: One thing --

19 THE COURT: Now, and if my legal logic is  
09:44:25 20 not -- is flawed, you fine gentlemen have been in front  
21 of me enough where tell me what you think. Because I'm  
22 not going to sit back and take that as a negative.  
23 These are just my thoughts I'm having as we're having  
24 this discussion. That's all it is.

09:44:40 25 MR. BECKOM: Oh, I love it. You're my



09:44:42 1 favorite judge to actually have oral argument in front  
2 of.

3 THE COURT: Thank you.

4 MR. BECKOM: You really want to ferret  
09:44:47 5 everything out. It's not a problem at all.

6 I'm going to go out here for a little bit and  
7 then bring it back to your point.

8 THE COURT: Okay.

9 MR. BECKOM: So we alleged there's an  
09:44:53 10 unfairness that it looked like Alessi & Koenig who had  
11 conducted the sale, they had engaged in all this  
12 insider dealing. It looked like that they had  
13 actually -- not only when they conducted the sale were  
14 they representing the homeowners association conducting  
09:45:06 15 the sale, but then on top of that they were  
16 representing Mr. Haddad in quiet title actions.

17 And bringing it back to the issue of fair  
18 market value is that I think it's a legal issue because  
19 otherwise, like, you know, you can take two parties who  
09:45:25 20 arguably were, like, there was some form of collusion  
21 going on and create a legal situation where suddenly  
22 now -- well, no, \$5,000 is inadequate purchase price,  
23 where it's not. It's a legal defect on title based on  
24 a forced sale under *Unruh v Streight*, that is not the  
09:45:45 25 price between a willing buyer and a willing seller.

09:45:47 1 Well, you know, almost like the highest and best use  
2 like what you see in eminent domain or something like  
3 that.

4 THE COURT: So, in essence, what you're saying  
09:45:56 5 is you are saying, Look, Judge, under one scenario  
6 potentially where there is a legal defect like maybe a  
7 lien or something like that, and the sale  
8 notwithstanding occurred in a commercially acceptable  
9 manner, then that might be one set of facts where the  
09:46:23 10 sale is fair market.

11 But I think you're -- and I'm not saying  
12 you're giving up your position, but you can -- but what  
13 it sounds like to me you're saying, Look, Judge, that  
14 might be true. However, here we have a scenario where  
09:46:37 15 there's conflict of interest, and the types of sale  
16 that occurred wasn't in a commercially acceptable  
17 manner, right? Is that kind of where you're going?

18 MR. BECKOM: Certainly. Mostly, like, I still  
19 think that it should be, like --

09:46:50 20 THE COURT: I'm not saying --

21 MR. BECKOM: Unless it's a physical defect,  
22 like, you know, King Kong came, tore the roof off.  
23 Like, I think at the end of the day, like, you know,  
24 we're talking about physical defects there, like, you  
09:47:01 25 know, and that a price between two willing buyers and

09:47:04 1 sellers, they're going to look at the roof and say,  
2 man, I'm going to get wet sitting on my couch. Here's  
3 \$5,000 bucks.

4 But there you're looking at a situation where  
09:47:14 5 it's just -- it's that house was worth more than that  
6 just on a sheer physical factual level. If  
7 Mr. Trippiedi had come in here with an appraisal that  
8 had said there's holes in the wall, the counters are  
9 ripped out, somebody poured concrete down the sink,  
09:47:29 10 yes, that would affect the *Unruh v Streight* definition  
11 of fair market value. But here you had two parties  
12 that were, you know, seemingly in collusion. I mean,  
13 you had an HOA sale trustee representing both the buyer  
14 and the seller creating a legal scenario that now  
09:47:50 15 they're claiming has depressed market value.

16 On top --

17 THE COURT: That's going to what I  
18 ultimately -- I guess, the ultimate conclusion would be  
19 that the home wasn't sold in an acceptable or in a  
09:48:06 20 commercially acceptable manner.

21 MR. BECKOM: Agreed. No. I don't think it  
22 was. I think that that's a very -- I mean, this -- I  
23 mean, I'm sure Mr. Trippiedi is going to stand up here  
24 and tell me I'm wrong about 19 different ways, but I  
09:48:17 25 respectfully disagree. You had CC&Rs. Those

09:48:20 1 mortgage --

2 THE COURT: And this is going to be my next  
3 question. If that's the case, whether the sale was  
4 proper and fair and commercially acceptable, then would  
09:48:31 5 that be a question of fact for the jury? Kind of see  
6 where I'm going on this? I mean, because those types  
7 of factual determinations it's my understanding, unless  
8 it's unopposed, that creates questions of fact. And I  
9 don't decide those unless it's a bench trial, right.

09:48:48 10 MR. BECKOM: I think this is a bench trial, is  
11 it not?

12 MR. TRIPPIEDI: I think it is.

13 MR. BECKOM: Yeah.

14 THE COURT: Yeah, okay. But, I mean, I  
09:48:53 15 wouldn't -- I don't think I decide those in a summary  
16 judgment setting. I would have to listen to all the  
17 testimony and then make a determination as to whether  
18 the sale occurred in a commercially acceptable manner  
19 versus there was a conflict of interest or collusion  
09:49:11 20 involved.

21 MR. BECKOM: Correct.

22 THE COURT: I can't.

23 MR. BECKOM: Correct me if I'm wrong, and I  
24 think I've heard their office argue this before, so I  
09:49:18 25 think the *Shadow Wood* decision was very clearly a court

09:49:22 1 sitting in equity. It was my -- at least I've seen  
2 people argue this that courts in equitable  
3 determinations are a determination for the Court and  
4 not necessarily jury question. I might be wrong on  
09:49:32 5 that, and I haven't briefed it.

6 THE COURT: Well, I can tell you this, and  
7 this is going way back. I think I had an insurance  
8 subrogation case. But if you really look at the case  
9 law, a court sitting in equity doesn't always  
09:49:50 10 automatically usurp the role of the fact finder, i.e.,  
11 a jury. And it really -- and there's case law that  
12 stands for this that if you're asking for monetary  
13 damages and the like, even if it's potentially an  
14 equitable issue that the jury makes that ultimate  
09:50:07 15 determination versus a trial judge.

16 And remember, typically, when you're talking  
17 about equity and the role of a trial judge, you're  
18 dealing with equitable relief, injunctions, and those  
19 types of things versus monetary damages. Now there's  
09:50:21 20 case law out there that makes that distinction if you  
21 really dig deep. I just want to tell you that it's  
22 there.

23 But notwithstanding whether this is a bench  
24 trial or not, wouldn't that ultimately be a  
09:50:34 25 determination of the finders of fact in this case?

09:50:40 1 Because whether I'm sitting in equity or not, I have to  
2 make a determination as to conflict of interest. I  
3 have to listen to the expert. Their explanation as to  
4 the differences in fair market value and why. Then  
09:50:58 5 weigh and balance the evidence and make an ultimate  
6 decision.

7 Doesn't it seem that way? Or ...

8 MR. TRIPPIEDI: If I could weigh in for a  
9 second.

09:51:06 10 MR. BECKOM: Go ahead.

11 MR. TRIPPIEDI: The price, okay. The price  
12 may be a factual question. We can probably both of us  
13 argue that for the rest of the day. But our position  
14 is you don't get to the price because you don't have  
09:51:21 15 fraud, oppression, or unfairness under *Shadow Wood*.

16 That's what's required to get this sale overturned or  
17 to apply, to make sure the deed of trust still applies.  
18 We don't have that. And I think, your Honor --

19 THE COURT: And why don't we have that?

09:51:36 20 MR. TRIPPIEDI: Well, let's look at their  
21 arguments on that issue. The first and main one is  
22 that the mortgage protection clause, right, that was a  
23 value.

24 THE COURT: That was taken care of in SFR.

09:51:47 25 MR. TRIPPIEDI: Correct.

09:51:48 1 THE COURT: I mean --

2 MR. TRIPPIEDI: And then --

3 THE COURT: I don't even have to deal with  
4 that issue. I mean, the Nevada Supreme Court in SFR  
09:51:53 5 specifically looked at it, at the mortgage protection  
6 clause and said the mortgage protection clause was in  
7 violation of Chapter 116; right?

8 MR. TRIPPIEDI: 100 percent correct.

9 THE COURT: Okay. Now, and, but they never  
09:52:05 10 gave a reason. I think they had -- but I'm going to  
11 follow the mandate. I just want to tell you that so  
12 you don't have to worry about that. My only question  
13 was they never gave a reason. I think they would have  
14 to give a public policy reason.

09:52:17 15 MR. TRIPPIEDI: Well, it does. It comes from  
16 the statute 116.104.

17 THE COURT: No, no, no. You don't have to  
18 explain that. I'm not even going to go there; right?  
19 They ruled what they ruled. That's more --

09:52:27 20 MR. TRIPPIEDI: So --

21 THE COURT: That's more talk over academic  
22 discussion --

23 MR. TRIPPIEDI: Right.

24 THE COURT: -- over a cup of coffee.

09:52:32 25 MR. TRIPPIEDI: Right.

09:52:33 1 THE COURT: So you don't have to explain it.  
2 I'm ruling the following what they're going to say.  
3 What they said.

4 MR. TRIPPIEDI: So the mortgage protection  
09:52:39 5 clause is not proof of fraud, oppression, or unfairness  
6 because it's invalidated under Nevada law.

7 THE COURT: Exactly.

8 MR. TRIPPIEDI: So where do we go from there?  
9 What's the other fraud, oppression, or unfairness? I  
09:52:49 10 guess --

11 THE COURT: Well, I don't even think a  
12 mortgage protection clause would even rise to the level  
13 of fraud, oppression, or whatever; would it?

14 MR. TRIPPIEDI: The idea would be it would  
09:52:56 15 suppress bidding or chill bidding.

16 MR. BECKOM: The argument there it's based on  
17 an opinion by Judge Mahan in federal court in Zzyzx 2.  
18 Judge Mahan specifically ruled that mortgage -- it's  
19 not a matter of we're not coming to court saying we're  
09:53:19 20 still -- our mortgage still encumbers this property  
21 because of the mortgage protection clause. Not at all.  
22 And I think that's what they were trying to say in SFR.

23 What we're saying is that a reasonable person  
24 would sit down and look at what is essentially an  
09:53:33 25 advertisement for the asset being sold. And this



09:53:37 1 advertisement, which they take constructive notice of  
2 is directly contrary to Nevada law. And the normal --  
3 I mean, like, if there's a big sign that, you know, on  
4 the highway that said come down to Best Buy, you may or  
09:53:50 5 may not get a big screen, and it may or may not be  
6 encumbered by a UCC9, that's going to depress the  
7 price. It's a matter of advertising. It's a matter  
8 of -- you know, I love living in Las Vegas. But  
9 foreclosure sales aren't the version of real property  
09:54:08 10 roulette. We're not supposed to go to these sales and  
11 throw the dice and see, or, you know, let the balls go  
12 around and see what happens.

13           These sales under NRS 116.1113 they must be  
14 conducted in good faith. Misrepresenting to the public  
09:54:24 15 the nature of the asset being sold, especially when  
16 it's filed in the property records, is just absolutely  
17 not good faith and completely unfair. At least that is  
18 our position on it. But I'll --

19           THE COURT: I understand. No, I understand  
09:54:36 20 that. I do.

21           MR. TRIPPIEDI: But the statute 116.1104 which  
22 invalidates the mortgage protection clause has been law  
23 in this state since 1991. So the public was on notice  
24 of that. I don't care if they put the mortgage  
09:54:52 25 protection clause in the CCRs because it wasn't valid

09:54:55 1 per law. So then we don't have --

2 THE COURT: But I want to make sure I  
3 understand the specifics of the facts here. Was the  
4 mortgage protection clause a part of the sale?

09:55:09 5 MR. TRIPPIEDI: The mortgage protection clause  
6 is contained in the CC&Rs --

7 THE COURT: Okay.

8 MR. TRIPPIEDI: -- which are publicly recorded  
9 documents.

09:55:16 10 THE COURT: But it didn't have anything to do  
11 with the sale in and of itself, right?

12 MR. TRIPPIEDI: The idea is if you have this  
13 clause --

14 THE COURT: No, I get that. But I'm talking  
09:55:22 15 about --

16 MR. TRIPPIEDI: No.

17 THE COURT: -- as far as the advertisements of  
18 the sale.

19 MR. BECKOM: The notice of sale, I believe,  
09:55:27 20 actually -- or one of -- and I might be misspeaking  
21 because I'm not staring at the documents right now, but  
22 I believe either the notice of default or the notice of  
23 sale specifically says we are conducting this sale  
24 pursuant to the, you know, the covenants, conditions,  
09:55:40 25 and restrictions of Glen Eagles filed in book number

09:55:44 1 whatever, instrument number whatever.

2 That directs people to go read the CC&Rs  
3 saying you're buying this encumbered by a mortgage.  
4 And whether or not -- I mean, and, again, like, I'm not  
09:55:57 5 using that statute as a basis in law. I'm using at  
6 least one of multiple bases in equity to evidence that  
7 the sale is unfair because you have: Alessi & Koenig  
8 was representing Mr. Haddad, the principal of this, the  
9 principal of Resources Group, on top of the fact that  
09:56:14 10 you had CC&Rs that were advertising in a manner that  
11 was directly inconsistent to apparently what everyone  
12 knew they were selling except for the public.

13 And I think as I briefed as the price goes  
14 down, at least from the old case law that cites this,  
09:56:30 15 the level of fraud, unfairness, or oppression that's  
16 necessary to evidence this goes down.

17 THE COURT: Here's my question on that at the  
18 end of the day. And when it comes to that specific  
19 issue as to whether or not the sale involved fraud,  
09:56:48 20 oppression, or unfairness is that a question of fact  
21 for the jury? Or do I rule as a matter of law?

22 MR. TRIPPIEDI: Well, they would have to put  
23 forth some sort of proof of the fraud, oppression, or  
24 unfairness. So the two things that they're bringing up  
09:57:02 25 are the mortgage protection clause which is invalidated

09:57:06 1 as a matter of law, and --

2 THE COURT: -- sales price.

3 MR. TRIPPIEDI: Well, the sales price comes  
4 second, your Honor. This is something that I'm trying  
09:57:11 5 to --

6 THE COURT: I'm listening.

7 MR. TRIPPIEDI: You know.

8 THE COURT: What's the second component?

9 MR. TRIPPIEDI: The first component is fraud,  
09:57:16 10 oppression, or unfairness. And the second point is  
11 that the fraud, oppression or unfairness brought about  
12 or accounts for the low purchase price.

13 THE COURT: Well, that's causation. I get  
14 that.

09:57:26 15 MR. TRIPPIEDI: So you got to have one before  
16 the other. Correct. You got to have the fraud,  
17 oppression, or unfairness that leads to the low  
18 purchase price.

19 So, you know.

09:57:33 20 THE COURT: I'm not saying you're wrong,  
21 Mr. Trippiedi. What you're saying makes a lot of sense  
22 to me. But at the end of the day my question once  
23 again will be who decides that?

24 MR. BECKOM: I think that we've met our burden  
09:57:46 25 of production to show that this sale should be either

09:57:52 1 voided or declared subject to the deed of trust  
2 depending on whatever the Court wants to do.

3 THE COURT: Who decides that? I mean, that's  
4 my question for everybody. Mr. Bohn, you can jump in.  
09:58:00 5 I have no problem with that.

6 MR. BOHN: I know the real property belongs to  
7 the bench, not the jury.

8 THE COURT: Okay. So you say it belongs to me  
9 and not the jury.

09:58:07 10 MR. BOHN: There shouldn't be a jury in this  
11 case unless there's money damages being sought.

12 THE COURT: Okay.

13 MR. BOHN: And even then questions of title to  
14 property are handled by the Court and not by the jury.

09:58:18 15 MR. BECKOM: I think he just agreed with you.

16 THE COURT: Everyone agrees?

17 MR. BOHN: Mr. Trippiedi.

18 MR. TRIPPIEDI: Yes.

19 THE COURT: Does everyone agree?

09:58:29 20 MR. BECKOM: I think he agreed once his boss  
21 told him to.

22 MR. TAYLOR: Your Honor.

23 THE COURT: Okay. Here's my next question for  
24 you: Because since everyone agrees, number one, I have  
09:58:43 25 no problem with agreeing with everyone.

09:58:45 1 MR. TAYLOR: Your Honor, I did want to add  
2 regarding that point. Sorry.

3 THE COURT: Okay. I don't know if you agree  
4 or not.

09:58:49 5 MR. TAYLOR: I don't necessarily think the HOA  
6 agrees with that. I know we don't really have a direct  
7 conflict with this dispute here. We're not -- we're  
8 not a party to the counterclaim and what not. But from  
9 what I'm hearing, questions as to, you know,

09:59:08 10 unfairness, fraud, oppression, it does in my mind  
11 trigger something that would be a question of fact the  
12 jury would have to decide what contributed to the sale,  
13 what was -- what facts were employed that could have  
14 influenced to be a fraudulent sale or commercially  
09:59:25 15 unreasonable? That's just the HOA's position.

16 THE COURT: And, sir, from an academic  
17 standpoint I can't necessarily disagree with that in  
18 this regard: Issues regarding fraud, oppression,  
19 and/or unfairness of a transaction and causation are  
09:59:38 20 typically issues of fact for juries, right?

21 MR. TAYLOR: Right.

22 THE COURT: Or the ultimate fact finder. Here  
23 we have a competing argument that, you know what,  
24 Judge, since we're just talking about title to real  
09:59:53 25 property, the Court should decide that, right? I mean,

09:59:58 1 I am listening.

2 Now, here's my question for you, and I don't  
3 remember this being ultimately decided because we're  
4 going a little bit far afield of what's pending in  
10:00:06 5 front of me, but I think it's an important issue. And  
6 the reason why I'm asking these questions is  
7 essentially this: I don't mind making the ultimate  
8 decision, but I don't want to have an issue regarding  
9 whether there's a factual dispute that's reserved for  
10:00:26 10 the finders of fact being a basis for reversal on  
11 appeal. Does that make sense?

12 MR. TRIPPIEDI: What is the factual dispute?

13 THE COURT: Well, the factual dispute, like,  
14 potentially, could be what facts would support an  
10:00:43 15 allegation of fraud? What -- and are their sufficient  
16 facts?

17 MR. BECKOM: My --

18 THE COURT: What facts would support an  
19 allegation of oppression? Or and, you know -- and the  
10:00:54 20 thing about it, fraud has to be pled with  
21 particularity. We know that. Oppression, I don't  
22 think does. And the unfairness of the transaction,  
23 remember it can be one of three, what constitutes  
24 unfairness?

10:01:07 25 MR. TRIPPIEDI: It has -- it has to bring

10:01:08 1 about the purchase price. That's the important thing.

2 THE COURT: Well, but, I mean, but you're  
3 talking about typically questions of causation are  
4 determined, you know, by the jury, right?

10:01:19 5 MR. TRIPPIEDI: You're the fact finder, here,  
6 your Honor.

7 THE COURT: Well, I want to make sure I'm the  
8 fact finder. That's all I'm trying to really get to.

9 MR. BECKOM: The one thing that --

10:01:27 10 THE COURT: Mr. Bohn, what -- do you want to  
11 add anything to that, sir?

12 MR. BOHN: And you said a lot. I got a few  
13 things I want to say.

14 THE COURT: I understand.

10:01:37 15 MR. BOHN: You know, in our first -- they have  
16 set forth in their -- and we set forth in our motion  
17 for summary judgment answers to interrogatories  
18 propounded by the bank. Or we asked questions of the  
19 bank as far as what is fraud, oppression, or unfairness  
10:01:55 20 as they set forth here. And they should be bound by  
21 their answers to interrogatories.

22 THE COURT: That's a discovery issue. And,  
23 typically, that's true. What was the response to those  
24 questions?

10:02:06 25 MR. BOHN: The response to the question, your



10:02:07 1 Honor, is on page 4 of our motion. First, the sale is  
2 commercially unreasonable because the reasonableness of  
3 the sale of \$5300 extinguished a deed of trust of  
4 \$50,000. SFR already handled that. That's not fraud,  
10:02:21 5 oppression, or unfairness. They had their remedies.  
6 They could have paid off it. They could have gotten an  
7 injunction. They could have gotten to mediation. They  
8 had items available to them they could have done before  
9 the sale. They didn't do it. SFR handled that first  
10:02:33 10 one.

11 Brokers price opinions says --

12 THE COURT: Slow down.

13 MR. BOHN: Broker's price opinion they have,  
14 says the property is worth \$62,000. So it's  
10:02:46 15 unreasonable to acquire property for that kind of  
16 money.

17 Sales void because the HOA did not provide  
18 proper notice of the superpriority portion of the lien  
19 to US Bank. I don't see any evidence of that. There's  
10:03:01 20 no affidavits showing that.

21 It says the defendant is not a bona fide  
22 purchaser of the valley because it had constructive  
23 notice that US Banks Securities was still of record and  
24 did nothing to assure US Bank was paid in full to  
10:03:13 25 effectuate reconveyance of its secured interest. That

10:03:16 1 is not relevant whatsoever. The SFR said the  
2 superpriority --

3 THE COURT: In light of the Nevada law. I  
4 understand that. Go ahead.

10:03:23 5 MR. BOHN: So the superpriority lien takes  
6 priority. We -- (indecipherable) 4th, 116 is void  
7 because of constitutional issues. That's been handled.

8 5th, sale is void. An HOA has not produced  
9 documentation in response to US Bank's subpoena request  
10:03:39 10 demonstrating they complied with mandatory provisions  
11 of 116.3115.

12 There is a statute 47.250 subsection 16  
13 Disputable Presumptions that the law has been obeyed.  
14 So we walk into court, your Honor, with a presumption  
10:03:58 15 the sale is valid.

16 There is case law from other jurisdictions  
17 that say there's a public policy in making sure these  
18 sales are final and binding. Because when the bank  
19 wants to foreclose on their deed of trust, they want to  
10:04:10 20 get the most possible money they can for their sales.

21 There is also a common law presumption that  
22 the sale is valid which goes hand in hand with the  
23 disputable presumption of the Nevada statutes.

24 So, and they also -- there's also the question  
10:04:29 25 of whether or not there's equitable jurisdiction in

10:04:31 1 this case. If they have a money damages remedy, if  
2 they have an adequate remedy of law, this Court has no  
3 equitable jurisdiction to grant relief.

4 I'd also point out that in Shadow Wood, the  
10:04:44 5 Court came up with four factors you have to look at.

6 THE COURT: So here's my question.

7 MR. BOHN: Okay.

8 THE COURT: If they have an adequate remedy at  
9 law, then is it proper for the fact finder to make the  
10:04:59 10 actual decision in this case?

11 MR. BECKOM: Foreclosures have been set under  
12 equity principles for over a hundred years.

13 THE COURT: No, I understand that. But that's  
14 what he's -- he said they have an adequate remedy of  
10:05:10 15 law. And the Court doesn't -- wouldn't be in equity to  
16 make the ultimate decision in this case.

17 MR. BOHN: That's -- you know, Shadow Wood is  
18 divided into four sections A, B, C, and D. And  
19 subsection A says you can't grant summary judgment if  
10:05:23 20 you have all the facts before you.

21 And my question is if you go to -- if we go to  
22 trial, what are we going to have that haven't been  
23 presented here? I -- my client submitted an affidavit.  
24 I haven't seen an affidavit submitted in opposition to  
10:05:37 25 what my client put forth in there.

10:05:40 1 When they complain about contacts they had  
2 with US Bank or mailing of notices, that's not the kind  
3 of thing that a person reviewing the public record is  
4 going to be on notice of prior to the foreclosure sale.

10:05:53 5 And if they contend that the HOA or the  
6 foreclosure agent conducted the sale improperly, and  
7 it's the kind of thing my client would not normally be  
8 on notice of because it's not part of the public  
9 record, he's a bona fide purchaser. His title should  
10 not be disturbed, and any damages they have should be  
11 in a claim against the HOA or the HOA foreclosure  
12 agents.

13 THE COURT: And for the record I don't  
14 remember this being a tender case at all, right?

10:06:20 15 MR. TAYLOR: It's not.

16 MR. BECKOM: No. But if you -- I guess, well,  
17 with leave of the Court, I'd like to respond.

18 THE COURT: Well, I'll give you a chance. So,  
19 in essence, and you can tell me if I'm wrong, you  
20 can -- what you're saying is this: And I'm just kind  
21 of peeling away the onion. You say, Look, Judge, the  
22 discovery responses offered by the bank in this case  
23 are pivotal because as you go through them point by  
24 point raised, number one, the position taken by the  
10:07:00 25 bank isn't supported by Nevada law. And number two,

10:07:05 1 the positions taken by the bank do not create issues of  
2 material fact. And, consequently, summary judgment  
3 will be appropriate. Is that what you're saying?

4 MR. BOHN: I couldn't have said it better,  
10:07:17 5 your Honor.

6 THE COURT: That's -- I'm just listening. And  
7 I'm just kind of putting it in a small little bag here  
8 as to -- and so the key to granting or denying your  
9 motion for summary judgment is essentially this, Judge,  
10:07:31 10 and this is what you're saying, Look at the discovery  
11 responses and they will ultimately determine whether  
12 it's a question of material fact. And there isn't one.  
13 And, consequently, you can grant summary judgment.  
14 That's what you're saying.

10:07:45 15 MR. BOHN: Yes, I mean --

16 THE COURT: I get it. I understand. And I'm  
17 going to give you a chance to respond to that. I  
18 appreciate your patience. This is a fascinating case.  
19 All these cases are intellectually challenging.  
10:07:57 20 There's no question about it.

21 MR. BECKOM: Well --

22 THE COURT: What do I do with that? Their  
23 position is, Look, Judge, you know, go through their --  
24 because I'm actually tabbing it right now. Go through  
10:08:08 25 the discovery responses in detail and dissect them.

10:08:12 1 Look at them clinically from a legal perspective, and  
2 you will see that there's no material issues of genuine  
3 fact in this case, number one.

4 And number two, the positions relied upon by  
10:08:24 5 the bank are not supported by Nevada law. What do I do  
6 with that? That's really --

7 MR. BECKOM: The interrogatory was a  
8 contention interrogatory before -- getting us to  
9 explain our theory of the case before we ever got to  
10:08:37 10 talk to anybody.

11 Once we started talking to people, if you --  
12 if we're going to be reviewing discovery stuff, I  
13 encourage you to read the deposition testimony of David  
14 Alessi.

10:08:49 15 THE COURT: Is that in here, right?

16 MR. BECKOM: Yes. Mr. Alessi unequivocally  
17 testified that he served the wrong person with the  
18 notice of default. It is undisputed on this record and  
19 based on what we have that David Alessi and Alessi &  
10:09:06 20 Koenig did not serve US Bank with all the required  
21 foreclosure documents. That is on the record. I  
22 encourage you to read through his deposition  
23 transcript. And then, you know, Mr. Bohn brings up an  
24 interesting point here.

10:09:21 25 MR. BOHN: Bohn.

10:09:22 1 MR. BECKOM: Bohn. Bohn, sorry. Mr. Bohn  
2 brings up an interesting point here that, Well, if the  
3 notices are wrong, we still get the property

4 irrespective because how are we ever going to know  
10:09:35 5 whether or not the notices are proper? It has always  
6 been my contention that there are two types of  
7 foreclosure, like, actions against foreclosure sales.

8 There are voidable sales. And that is what  
9 Shadow Wood talks about. The voidable sale and equity  
10:09:53 10 subject to the bona fide purchaser protections because  
11 equity is stepping in.

12 Then there is the void sale. There is a great  
13 deal of case law that we have briefed discussing the  
14 difference between a void and voidable sale. If a  
10:10:08 15 homeowner does not get notice of their own foreclosure,  
16 then at the end of the day, they don't, like -- even if  
17 there is a purchaser there, they don't get the house  
18 not because --

19 THE COURT: It's void.

10:10:21 20 MR. BECKOM: -- because it's voidable. It's  
21 just void. It's gone. Just like if the statute had  
22 been declared unconstitutional. It's void. It's gone.

23 The minute they didn't -- I -- in my mind I  
24 view that there are two types of actions to attack  
10:10:34 25 foreclosures. When there is a mechanical issue, when

10:10:38 1 the statutes have not been followed, when all the  
2 required noticings and mailings don't go out to the  
3 appropriate parties, mechanical defects render the sale  
4 void because they have not followed the law.

10:10:51 5 And because Mr. Bohn is right, any purchaser  
6 at the sale would not get -- you know, would always get  
7 title irrespective of how little the law was actually  
8 followed. And in my mind that just does not make  
9 sense. And it does not make sense --

10:11:06 10 THE COURT: I mean, there's case law that  
11 supports that as it relates to, hypothetically, there  
12 was a defect in service of process. And a good  
13 scenario would be, Hey, we served the wrong person. It  
14 was personal service. Then you got a default judgment.  
10:11:20 15 And you could -- you could make it -- it becomes quite  
16 clear, and it's uncontroverted that the wrong person  
17 was served. Under those circumstance, wouldn't the  
18 judgment be void?

19 MR. BECKOM: Yeah. I think what happened was  
10:11:32 20 there was like --

21 THE COURT: Okay. I'm just using that as an  
22 example.

23 MR. BECKOM: US Bank, I mean, like -- they --  
24 US Bank had listed their address specifically for  
10:11:41 25 mailing in their deed of trust, and then they just



10:11:42 1 served some other address that was in the document.

2 But at the end of the day it was undisputed  
3 that -- I mean, and Mr. Alessi, I think, was very  
4 excited to talk about one of the foreclosure notices  
10:11:52 5 went out. At least that's what I saw in his

6 deposition. But that doesn't matter because they  
7 didn't follow the statute. Noticing wasn't proper  
8 because US Bank didn't get served. And under the  
9 summary judgment standard, we have met our burden of

10:12:08 10 production here that the sale was unfair sitting in  
11 equity and they were on notice of this because of the  
12 sale trustee represented by the buyer as well as the  
13 seller, which has always been found to be collusion.

14 On top of that, we didn't get notice of the  
10:12:24 15 notice of default. And, again, that's a void sale. So

16 we've got elements of a voidable sale. We've got  
17 elements of a void sale. And we've got elements of  
18 them being judicially estopped. I think at the end of  
19 the day there is enough here, and at no point in time

10:12:42 20 has anyone come back to this Court. And, you know, my  
21 understanding -- and I've only been in practice for  
22 about five years -- of summary judgment standard is  
23 once my client meets their burden of production,

24 somebody has got some explaining to do. And there has

10:12:58 25 been no explanation whatsoever for why our contentions

10:13:01 1 are factually inaccurate. Because they're not.  
2 Because they happen. Because I think all the parties  
3 know that this has happened, and because either the  
4 sale is void or voidable. And in this limited instance  
10:13:14 5 even with the constitutionality and the fraud in the  
6 transfer arguments aside, under foreclosure law, this  
7 is inaccurate and this is not -- this cannot stand.  
8 And there's no issue of fact there. No one has come  
9 back and said this didn't happen. No, all of this  
10:13:28 10 happened.

11 We're met our burden of production.

12 THE COURT: Any response to that?

13 MR. BOHN: Briefly, your Honor. In regards to  
14 the notice of default, the deed of trust has an address  
10:13:47 15 on the deed of trust. US Recording I believe it is.  
16 And the notice of default went to that address. So it  
17 didn't -- and it's the address for US Recordings  
18 presumably some sort of subsidiary of US Bank, but it's  
19 on the deed of trust under the "when record return to"  
10:14:10 20 portion. And that is the normal, proper way to give  
21 notice.

22 The notice of sale did go to multiple  
23 addresses for US Bank. The fact that a notice did not  
24 go out doesn't make the sale void. What makes a sale  
10:14:26 25 void is things like the deed of trust was procured by

10:14:28 1 fraud or forgery. Or it has been paid in full. Or the  
2 trustee didn't have the authority to sell it.

3 So it gets the voidable aspect when you go to  
4 improper notices going out. But then again you have to  
10:14:40 5 show that the purchaser at the foreclosure sale knew of  
6 or should have known of that. And that's the type of  
7 thing that normally is not known to the public that  
8 counsel did admit to.

9 And for that reason, and the restatement --

10:14:58 10 THE COURT: I just want to make sure I  
11 understand the facts. You're saying that on the first  
12 deed of trust, notice was sent to the address as set  
13 forth; is that correct?

14 MR. BOHN: That's correct, your Honor.

10:15:16 15 Exhibit 2 to their opposition or motion for summary  
16 judgment is the deed of trust which has two addresses.  
17 One for Southwest Financial Services in Cincinnati.  
18 Another one for US Recording in St. Paul, Minnesota.  
19 The notice of sale --

10:15:37 20 THE COURT: And notice was sent to both? Or  
21 one of them? Or ...

22 MR. BECKOM: My client does specifically state  
23 on the deed of trust that their mailing address is, and  
24 then gives an address. The notice of default wasn't  
10:15:48 25 sent there. The notice of sale was sent there, but not

10:15:52 1 the notice of default.

2 MR. BOHN: The notice of default did go to the  
3 US Recording address. And the notice of sale did go to  
4 multiple addresses for US Bank. I will point out that  
10:16:05 5 in the Shadow Wood case there was less than 30 days  
6 between the time the notice of sale went out and the  
7 foreclosure sale happened. And the Supreme Court there  
8 said, you know, you have to look at the actions of the  
9 party that is, you know, seeking equitable relief. And  
10:16:21 10 in that case they didn't do anything.

11 Here the notice of sale went out in October of  
12 2011. And the sale didn't happen until the following  
13 January. So they had approximately three months to do  
14 what they were supposed to do. So if you evaluate what  
10:16:36 15 did they do to stop the sale factor, the answer is  
16 zero. They were on notice through their agent of the  
17 notice of default. They were on direct notice of the  
18 notice of sale and didn't take any action.

19 THE COURT: And I want to make sure I  
10:16:50 20 understand what you just said. The notice of default  
21 was sent to one of the addresses listed on the first  
22 deed of trust?

23 MR. BOHN: Correct.

24 THE COURT: Okay.

10:17:09 25 MR. BOHN: To SS Recordings on Country Drive

*Uniform Fraudulent Transfer Act* Section 1 Official Comment 12 citing *Hearn 45 St. Corp. v. Jano*, 283 N.Y. 139, 27 N.E.2d 814, 128 A.L.R. 1285 (1940) (execution and foreclosure sales); *Lefkowitz v. Finkelstein Trading Corp.*, 14 F.Supp. 898, 899 (S.D.N.Y. 1936) (execution sale); *Langan v. First Trust & Deposit Co.*, 277 App.Div. 1090, 101 N.Y.S.2d 36 (4th Dept. 1950), *aff'd*, 302 N.Y. 932, 100 N.E.2d 189 (1951) (mortgage foreclosure); *Catabene v. Wallner*, 16 N.J.Super. 597, 602, 85 A.2d 300, 302 (1951) (mortgage foreclosure).

The statute is clear on its face that every mode, including the involuntary disposition of an asset and specifically a foreclosure sale, is subject to the UFTA. There can be no argument that this is not a transfer. The evidence will show the HOA foreclosed on January 25, 2012 yet U.S. Bank will evidence that the Deed of Trust which U.S. Bank claims their rights has encumbered the property since 2009. The evidence will show the first Lien Notice did was not issued until 2010. All of this demonstrates that the Deed of Trust predated the HOA's lien and/ or foreclosure rights.

## **2. An HOA foreclosure does not provide reasonably equivalent value in Nevada.**

The UFTA actually specifically contemplates voiding foreclosures. True to this point NRS §112.170 exempts certain foreclosures from the act, yet ***does not*** exempt the HOA foreclosure. NRS §112.170 states in pertinent part that:

“a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default **under a mortgage, deed of trust or security agreement.**”

The Nevada UFTA expressly delineates between a lien created by agreement and a statutory lien. NRS §112.150(8). Yet the term “statutory lien” is nowhere to be found in NRS §112.170(2). The HOA super-priority lien is clearly a statutory lien in direct derogation to the common law.

When construing a statute Courts must first inquire whether an ambiguity exists in the language of the statute. *State v. Quinn* 117 Nev. 709, 718 (2001). If the words of the statute have a definite and ordinary meaning, Courts should not look beyond the plain language of the statute unless it is

clear that the meaning was not intended. *Id.* On this analysis, the language in NRS Chapter 112 is plain on its face that a statutory HOA lien is not included as receiving reasonably equivalent value under state law. This places the HOA lien outside of the purview and protections of NRS §112.170

The Nevada Supreme Court has additionally noted that when a statute, such as NRS §112.170 includes a list of items to be included, the anything not included on the list is to be expressly excluded. *Galloway v. Truesdell* 83 Nev. 13 (1967)(the maxim *Expressio Unius Est Exclusio Alterius* states the expression of one thing leads to the exclusion of other) *see also SFR Invs. Pool I, LLC v. U.S. Bank N.A.* 334 P.3d 408 (Nev. 2014)(stating that under the maxim *Expressio Unius Est Exclusio Alterius* the only enumerated restriction in NRS 116 on an HOA foreclosure was institution of a foreclosure mediation and that therefore this excluded the requirement for a judicial foreclosure). The term statutory lien and/ or HOA lien is not included in NRS §112.170. Under *Truesdell* this draws a negative inference that an HOA foreclosure was never intended to be included under the protections of NRS §112.170.

NRS §112.170 does not say “HOA foreclosure” or “foreclosure under NRS Chapter 116.” Under NRS §112.170 this type of foreclosure is excluded from the statute. The legislature is presumed to be aware of every single provision of law when they draft a statute. Even when NRS §112.220 was revised by legislature in 1999, after the enactment of NRS §116.3116 *et seq.*, in the adoption of an updated Uniform Commercial Code, the legislature continued to not exempt the HOA. Both NRS §112.220 as well as NRS §116.3116 were actually amended in 1999, side by side, in Senate Bill 62 as Sections 162 and 163 yet even then the legislature never took the additional step of exempting the HOA foreclosure from NRS Chapter 112 and only exempted the Uniform Commercial Code<sup>4</sup> specifically and by name and specific reference to the statute. NRS §112.220(5)(b) Moreover, under basic due process principals in this state NRS §116.3116 does

<sup>4</sup> Available at <http://www.leg.state.nv.us/Statutes/70th/Stats199903.html#Stats199903page389> (Last Visited November 5, 2015)

not provide a defense to a claim under the UFTA. *Wright v. Cradlebaugh* 3 Nev. 341 (1867)(holding that a Statute providing that a deed was “conclusive proof” would violate the Nevada Constitution and therefore cannot be interpreted in that manner). At this juncture this Court should not only presume this was intentional, but the balance of everything leads to the conclusion that this *actually* intentional.

**3. Since the HOA foreclosure does not provide statutory reasonably equivalent value, Value must Be Assessed from the Creditor’s Perspective at Market Value**

To the extent that the Resources attempts to argue that somehow the value of the asset was tainted by a legal and factual scenario instigated by the HOA and their purchasers, this argument will be without merit. Value under NRS Chapter 112 must be analyzed from the creditor’s perspective and at market value.

The underlying policy behind the UFTA is to preserve a debtor’s assets for the benefit of creditors. *Herup v. First Boston Fin., LLC* 123 Nev. 228 at FN 15 (2007) In light of this basic public policy behind the act, reasonably equivalent value analysis must be performed from the creditor’s perspective of value of the asset, not the Defendants. *Brandt v. nVidia Corp (In re 3dfx Interactive, Inc)* 389 B.R. 842 (reasonably equivalent value must be determined from the creditor’s, not the debtor’s perspective); *Pjara Dunes Rental Agency Inc v. Spitters* 174 B.R. 557, 578 (Bankr. N.D. Cal 1994)(same); *Frontier Bank v. Brown* 371 F.3d 1056, 1059(9<sup>th</sup> Cir 2004)(primary focus is on the net effect of the transaction on the debtor’s estate and the funds available to pay creditors).

. U.S. Bank’s expert appraisal will testify the property was worth \$48,000.00 at the time of the sale. The property sold for \$5,331.00. This is not reasonably equivalent value for this asset.

**4. The Relevant Transfer Date is the Date the Deed was Recorded.**

U.S. Bank had a secured deed of trust at the time of the fraudulent transfer and recorded their Deed of Trust in 2009. As such there can be no argument that U.S. Bank is covered under NRS §112.190(1).

In this instant case, the transfer being challenged is not the creation of the HOA lien, but rather the HOA's foreclosure sale of the Property which involuntarily disposed of the Borrower's interest in the property. Numerous courts have held that the relevant transfer date is not the date of the creation of the lien, but the date of the foreclosure sale itself. *CF Realty Trust v. Town of Hampstead* 160 B.R. 461 (1993)(rejecting the town's argument that the transfer occurred on the date the town recorded the tax collector's lien and holding that the transfer occurred on the date the deed was recorded because that's the date when the interest of the debtor is transferred); *see also Butler v. Lomas & Nettleton Co.*, 862 F.2d 1015 (Bankr. Ct. App. 3<sup>rd</sup> Cir 1988) (holding that the time of the transfer in determining whether a fraudulent conveyance occurred is the time of the sheriff's sale); *In re Brown* 104 B.R. 609 (Bankr. S.D.N.Y 1989)(a transfer under the fraudulent conveyance statute occurs at the time of the foreclosure sale); *Skagit Valley Publ. Co. v. Kajac. Inc* 1997 Wash App. LEXIS 531 (1997) (holding that under the UFTA, the transfer date is the date of the foreclosure sale).

Under the case law, as long as U.S. Bank's deed of trust encumbered the property at the time of the transfer, the HOA transfer is subject to the provisions of NRS §112.190(1). Additionally by the plain language of NRS §116.3116 the Association only has a lien when fines, assessment, or construction penalties become due. They do not have a lien and enforceable debt in perpetuity<sup>5</sup>.

The evidence will show that at the time of the HOA foreclosure in January, 2012; U.S. Bank's Deed of Trust had encumbered the property for 3 years. There is no legitimate argument that U.S. Bank's deed did not encumber the property. Moreover, it does not matter whether or not the HOA recorded their CC&R's "first" under this act. All that does matter is that U.S. Bank's obligation was in existence at the time of the foreclosure. They most definitely were. On this basis, there is no genuine issue of material fact on this point.

<sup>5</sup> The association has a lien on a unit for any construction penalty that is imposed against the unit's owner pursuant to [NRS 116.310305](#), any assessment levied against that unit or any fines imposed against the unit's owner **from the time the construction penalty, assessment or fine becomes due.** NRS §116.3116(1)(Emphasis Added).



#### **5. Mr. Edwards was insolvent.**

Under NRS §112.160(2) all U.S. Bank need do it demonstrate that the Homeowner was not paying his debts as they came due. The Official Comments to the Uniform Act state that “the presumption imposes on the party against whom the presumption is direct the burden of proving the nonexistence of insolvency.” Additionally the official comment to the act indicates that U.S. Bank would not need to prove nonpayment on a majority of debts in order to prove general nonpayment. Finally, if a creditor can prove that the sum of a debtor’s debt is greater than their assets at fair valuation then the Debtor is considered insolvent. NRS §112.160(1).

U.S. Bank was attempting to foreclose on the Subject Property. The HOA was attempting to foreclose on the Subject Property. U.S. Bank’s witness will testify that Edwards was neither paying property taxes, his property insurance, nor his mortgage which is now unsecured. On this basis Mr. Edwards was not paying his debts as they came due.

#### **IV. CONCLUSION**

On this basis, U.S. Bank respectfully requests that the January 25, 2012 HOA foreclosure sale be declared subject to U.S. Bank’s Deed of Trust or void. This would seem to be a “fair” remedy and the evidence will show this. *Shadow Wood* dictates that this Court can and should consider a fair remedy weighing the rights of the purchaser and U.S. Bank here.

DATED: September 28, 2017

McCarthy & Holthus, LLP

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**October 02, 2017**

---

A-12-667690-C      U S Bank National Association, Plaintiff(s)  
vs.  
George Edwards, Defendant(s)

---

**October 02, 2017      9:30 AM      Bench Trial - FIRM**

**HEARD BY:** Williams, Timothy C.      **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Tena Jolley

**REPORTER:** Peggy Isom

**PARTIES**

**PRESENT:** Baker, Priscilla L.      Attorney for Plaintiff  
Beckom, Thomas N.      Attorney for Plaintiff  
Geisendorf, Charles L.      Attorney for Defendant Resources  
Group LLC  
Vilkin, Richard J.      Attorney for Defendant Resources  
Group LLC

**JOURNAL ENTRIES**

- BENCH TRIAL - DAY 1

Opening Statements by Ms. Baker and Mr. Vilkin. Testimony and Exhibits presented (see Worksheets).

COURT ORDERED, BENCH TRIAL CONTINUED.

CONTINUED TO: 10/3/17 10:30 AM BENCH TRIAL (DAY 2)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**October 03, 2017**

---

A-12-667690-C	U S Bank National Association, Plaintiff(s) vs. George Edwards, Defendant(s)
---------------	--

---

**October 03, 2017      10:30 AM      Bench Trial - FIRM**

**HEARD BY:** Williams, Timothy C.      **COURTROOM:** RJC Courtroom 12D

**COURT CLERK:** Tena Jolley

**REPORTER:** Peggy Isom

**PARTIES**

<b>PRESENT:</b>	Baker, Priscilla L.	Attorney for Plaintiff
	Beckom, Thomas N.	Attorney for Plaintiff
	Geisendorf, Charles L.	Attorney for Defendant Resources Group LLC
	Vilkin, Richard J.	Attorney for Defendant Resources Group LLC

**JOURNAL ENTRIES**

- BENCH TRIAL - DAY 2

Testimony presented and Exhibits admitted (see Worksheets). Plaintiff RESTED. Testimony presented and Exhibits admitted (see worksheets). Defendant RESTED. Following closing arguments by Mr. Beckom and Mr. Vilkin, COURT ORDERED, matter CONTINUED for Chambers Decision.

10/17/17 CONTINUED FOR CHAMBERS DECISION

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Title to Property**

**COURT MINUTES**

**October 17, 2017**

---

A-12-667690-C      U S Bank National Association, Plaintiff(s)  
vs.  
George Edwards, Defendant(s)

---

**October 17, 2017      3:00 AM      Bench Trial - FIRM**

**HEARD BY:** Williams, Timothy C.      **COURTROOM:** RJC Courtroom 12D

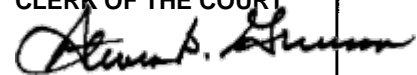
**COURT CLERK:** Tena Jolley

**PARTIES**

**PRESENT:**      None. Minute Order Only, no hearing held.

**JOURNAL ENTRIES**

- See Findings of Fact and Conclusions of Law filed October 31. 2017.



1 FFCL

2  
3  
4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

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

8 Plaintiff,

9 vs.

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

10 GEORGE R. EDWARDS, an individual, ANY  
11 ALL PERSON UNKOWN CLAIMING TO BE  
12 PERSONAL REPRESENTATIVES OF GEORGE  
13 R.EDWARDS ESTATE OR DULY APPOINTED,  
14 QUALIFIED, AND ACTING EXECUTOR OF  
15 THE WILL OF THE ESTATE OF GEORGE R.  
16 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

17 Defendants.  
18

19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 The above-entitled case, having come on for bench trial on October 2 and 3, 2017,  
21 before Department XVI of the Eighth Judicial District Court, in and for Clark County,  
22 Nevada, with the Honorable Timothy C. Williams presiding. Priscilla L. Baker, Esq. and  
23 Thomas N. Beckom, Esq., of the law firm of McCarthy & Holthus appearing for Plaintiff,  
24 U.S. Bank National Association, ND, a National Association; Charles L. Geisendorf,  
25 Esq., and Richard J. Vilkin, Esq., of the law firm of Geisendorf & Vilkin, appearing for  
26 Defendant Resources Group, LLC.

27 . . .  
28

1 This Court, after having reviewed the papers, pleadings, and briefs on file herein,  
2 hearing testimony of witnesses and oral argument of counsel, the Court hereby makes the  
3 following Findings of Fact and Conclusions of Law:  
4

5 **FINDINGS OF FACT**

- 6 1. On March 26, 2009, a Deed of Trust as to the subject property was recorded in  
7 Clark County, Nevada listing the grantor as George R. Edwards and the lender as  
8 U.S. Bank National Association ND, a national banking association organized  
9 under the laws of the United States. The subject property was legally described as  
10 Lot Nineteen (19) of Glenview West Townhome, as shown by Map thereof on file  
11 in Book 30 of Plats, Page 65, in the Office of the County Recorder of Clark  
12 County. The subject property was also described as Assessor's Parcel Number  
13 163-24-111-021. (The "subject property.")  
14  
15 2. The Deed of Trust stated the address of U.S. Bank to be: US Recordings, 2925  
16 Country Drive STE 201, ST. Paul, MN 55117.  
17  
18 3. On January 4, 2011, a Notice of Delinquent Assessment Lien was recorded on the  
19 subject property in Clark County, Nevada by Alessi & Koenig, LLC on behalf of  
20 Glenview West Townhouses Association. A non-recorded copy of that Notice of  
21 Delinquent Assessment Lien had previously been mailed to the grantor and owner  
22 of the subject property, George R. Edwards, at the subject property street address  
23 of 4254 Rollingstone Drive, Las Vegas, NV 89103 on December 20, 2010.  
24  
25 4. George R. Edwards first became delinquent in his payment of homeowner  
26 monthly assessments on November 1, 2009. He remained delinquent on all  
27 monthly assessments between November 1, 2009, and the date of foreclosure sale  
28

1 on January 25, 2012, with the exception of one payment of \$414 made in  
2 December 2011. The monthly assessment amount was \$130.

3 5. On March 29, 2011, a Notice of Default and Election to Sell was recorded against  
4 the subject property by Alessi & Koenig, LLC on behalf of Glenview West  
5 Townhouses Association ("HOA").

6 6. On April 5, 2011, a copy of the Notice of Default and Election to Sell was mailed  
7 by Alessi & Koenig, the agent for the HOA, to U.S. Bank at US Recordings, 2925  
8 Country Drive STE 201, ST. Paul, MN 55117.

9 7. On October 13, 2011, a copy of the Notice of Sale was recorded in Clark County,  
10 Nevada.

11 8. On or soon after September 16, 2011, a non-recorded copy of the Notice of Sale  
12 was mailed by Alessi & Koenig LLC to U.S. Bank at US Recordings, 2925  
13 Country Drive STE 201, ST. Paul, MN 55117.

14 9. On January 25, 2011, Alessi & Koenig sold the subject property at public auction  
15 to 4254 Rollingstone Avenue Trust for the high bid price of \$5,331.

16 10. The Trustee's Deed Upon Sale states in part:

17 This conveyance is made pursuant to the powers conferred  
18 on Trustee by NRS 116 et seq., and that certain Notice of  
19 Delinquent Assessment Lien, described herein [recorded  
20 January 4, 2011]. Default occurred as set forth in a Notice  
21 of Default and Election to Sell which was recorded in the  
22 office of the recorder of said county. All requirements of  
23 law regarding the mailing of copies of notices and the  
24 posting and publication of the copies of the Notice of Sale  
25 have been complied with.

26 11. On January 25, 2012, Iyad Eddie Haddad appeared at the public auction and was  
27 the high bidder for a price of \$5,331 which he paid in cash that day.  
28 ...

- 1 12. Mr. Haddad instructed that the property be vested in 4254 Rollingstone Avenue  
2 Trust.
- 3 13. Prior to the sale, Mr. Haddad had no information about the property other than  
4 what was contained in the recorded documents, including no information as to  
5 any dispute as to title. He received no information from the HOA or its trustee  
6 about the property prior to sale, other than it was going to be sold at public  
7 auction.
- 8  
9 14. The sales trustee Alessi & Koenig paid to the HOA from the proceeds of the sale  
10 the total amount of \$2995.60 to cover all past due assessments dating back to  
11 November 1, 2009, with the exception of the \$414 payment made in December  
12 2011.
- 13 15. The nine months of assessments from April 4, 2010, to January 4, 2011, remained  
14 unpaid throughout the foreclosure, up to and including the date of sale, and were  
15 paid in full to the HOA from the proceeds of the sale in the amount of \$1,170 (9  
16 months X \$130 per month = \$1,170).
- 17  
18 16. On May 29, 2012, a Grant Bargain Sale Deed was recorded in Clark County,  
19 Nevada in which 4254 Rollingstone Avenue Trust transferred and conveyed the  
20 subject property to Resources Group, LLC as trustee for the Bourne Valley Court  
21 Trust dated 5/4/2012.
- 22  
23 17. The subject property was included in a Chapter 11 bankruptcy case in 2012 and  
24 2013. However, in that Chapter 11 bankruptcy case, captioned *In re: Saticoy Bay*  
25 *LLC Series Bowman Lair, Debtor* (Case No. 13-12463-btb, District of Nevada),  
26 the court ordered the petition dismissed without taking any action as to the  
27 petition or granting any relief.  
28



## CONCLUSIONS OF LAW

1. In Nevada, a homeowners association (“HOA”) has a lien for delinquent assessments, a portion of which has priority over a first deed of trust. NRS 116.3116(2); *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_, 334 P.3d 408, 419 (2014). When the HOA forecloses on its lien, this extinguishes all inferior liens. *Ibid.*
2. When an HOA forecloses on its lien for delinquent assessments, the purchaser at the foreclosure sale receives a “deed without warranty which conveys to the grantee all title of the unit’s owner to the unit [.]” NRS 116.31164(3)(a).
3. The Nevada Supreme Court has affirmed that deed recitals are “conclusive” to the matters recited in NRS 116.31166 “in the absence of grounds for equitable relief.” *Shadow Wood Homeowners Assn., Inc. v. New York Comm. Bancorp, Inc.*, 132 Nev. \_\_\_, \_\_\_, 366 P.3d 1105, 1111-1112 (2016).
4. NRS 116.31164 concerns mailing of the Notice of Default and Election to Sell and the recording of same, the elapsing of 90 days, and the giving of Notice of Sale. Such a deed containing those recitals is conclusive against the unit’s former owner, his or her heirs and assigns, and all other persons....” NRS 116.31166(1)-(2); *Shadow Wood v. New York Comm., supra*, at 1110.
5. Given the recitals’ conclusive effects, a party contesting the sale has the burden to overcome these conclusive presumptions. “A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof.” *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995).
6. At the time of the foreclosure in this case, there was no requirement under Nevada law that a holder of a first deed of trust be mailed the Notice of Default unless that

- 1 holder gave notice to the association of the existence of its secured interest at least  
2 30 days prior to the recordation of the Notice of Default. NRS 116.31163(2).
- 3 7. At the time of the foreclosure in this case, there was no requirement under Nevada  
4 law that a holder of a first deed of trust be mailed the Notice of Sale unless that  
5 holder gave notice to the association of the existence of its secured interest prior  
6 to the recordation of the Notice of Sale. NRS 116.311635(1)(b)(2).  
7
- 8 8. U.S. Bank did not make the notifications to the HOA of its secured interest as  
9 required by NRS 116.31163(2) and NRS 116.31165(1)(b)(2).
- 10 9. The conclusive effects of the Trustee's Deed Upon Sale have not been overcome  
11 in this case.
- 12 10. In addition, the facts proved show that Alessi & Koenig, LLC complied with all  
13 requirements of law in conducting this non-judicial foreclosure pursuant to NRS  
14 116.3116 et seq..  
15
- 16 11. Alessi & Koenig timely and properly served the Notice of Default and the Notice  
17 of Sale on U.S. Bank as if U.S. Bank had made the notification specified in NRS  
18 116.31163(2) and NRS 311635(1)(b)(2).
- 19 12. The Uniform Fraudulent Transfer Act (NRS 112.140 et seq.) has no application to  
20 the foreclosure and sale in the case at bar. For one, the subject property is not  
21 subject to the Act because the property was encumbered by a lien (the HOA lien),  
22 which is excluded under the Act. NRS 112.150(2)(a)). Second, the Act was  
23 designed to protect unsecured creditors (and not secured mortgage holders) and  
24 not to interfere with or displace the separate statutory requirements of NRS  
25 116.3116 et seq.  
26
- 27 13. The doctrine of judicial estoppel has as its purpose to prevent a party from taking  
28

1 inconsistent positions that arise from intentional wrongdoing or an attempt to  
2 obtain an unfair advantage. *Marcuse v. Del Webb Communities, Inc.*, 123 Nev.  
3 278, 163 P.3d 462, 468-469 (2007). The doctrine does not preclude changes in  
4 position that are not intended to sabotage the judicial process. *Ibid.*

5 14. There are five requirements to invoke the doctrine of judicial estoppel: "1) the  
6 same party has taken two positions; (2) the positions were taken in judicial or  
7 quasi-judicial administrative proceedings; (3) the party was successful in asserting  
8 the first position (i.e., the tribunal adopted the position or accepted it as true); (4)  
9 the two positions are totally inconsistent; and (5) the first position was not taken  
10 as a result of ignorance, fraud, or mistake." *Marcuse v. Del Webb Communities,*  
11 *Inc., supra*, 163 P.3d at 468-469.

12 15. The doctrine of judicial estoppel does not apply in this case for three separate and  
13 independent reasons: 1) Defendant and Counterclaimant's affiliate was not  
14 successful in asserting any position as to the first deed of trust in the bankruptcy  
15 proceedings as the bankruptcy court did not adopt the affiliate's position and in  
16 fact dismissed the affiliated party's Chapter 11 petition with no action taken in  
17 an Order filed as Doc 76 entered 10/03/2013 (*In re Saticoy Bay LLC Series*  
18 *Bowman Lair*, Debtor (Case 13-12463-btb)); 2) the two positions taken in the  
19 bankruptcy court and the instant court are not totally inconsistent; and 3) the  
20 conduct did not sabotage the judicial process.

21 16. Plaintiff U.S. Bank had numerous options to avoid the foreclosure on its first deed  
22 of trust which it did not utilize. It could have tendered and/or paid off the super-  
23 priority portion of the lien prior to the sale. It could have also, as stated by the  
24 Nevada Supreme Court, paid off the entire HOA lien or established an escrow  
25  
26  
27  
28

1 account for such payments. It could also have filed a court action to enjoin the  
2 sale and recorded a lis pendens on the subject property. Thus, the inequity of  
3 which U.S. Bank complains is "of its own making." See *SFR Investments Pool 1,*  
4 *LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_\_, \_\_\_\_, 334 P.3d 408, 414 (2014).

5 17. Because U.S. Bank did not pursue any of its legal remedies to stop the sale or  
6 inform potential purchasers prior to the sale as to a dispute as to title, it is not  
7 entitled to equitable relief. *Davenport v. State Farm*, 81 Nev. 361, 404 P.2d 10, 14  
8 (1965); 19 Am Jur., Equity, Sec. 107, p. 107 and Sec. 119, pp. 120-121.

9 18. With regard to the issue of commercial reasonableness of the sale, an allegation of  
10 inadequate purchase price alone is insufficient to set aside a foreclosure sale,  
11 "there must also be a showing of fraud, unfairness, or oppression." *Shadow Wood*  
12 *v. New York Comm.*, *supra*, 366 P.3d at 1110. See also, *Golden v. Tomiyasu*, 79  
13 Nev. 503, 387 P.2d 989, 995 (1963) ("inadequacy of price, however gross, is not  
14 in itself a sufficient ground for setting aside a trustee's sale legally made, there  
15 must be in addition proof of some element of fraud, unfairness or oppression *as*  
16 *accounts for and brings about the inadequacy of price*" (internal citations  
17 omitted) (emphasis added)).

18 19. In this case, the subject property sold for \$5,331. There has been no showing to  
19 prove fraud, unfairness or oppression leading to this sales price.

20 20. Defendant and Counterclaimant's predecessor, 4254 Rollingstone Avenue Trust,  
21 was a bona fide purchaser for value, at the HOA foreclosure sale, without notice,  
22 actual or constructive or inquiry, of any defects in the sale or any pre-sale dispute  
23 as to title. There is nothing in law or equity that should prevent Defendant and  
24 Counterclaimant Resources Group LLC as trustee for the Bourne Valley Court  
25  
26  
27  
28

1 Trust dated 5/4/2012 from having clear and unencumbered title to the subject  
2 property.

3 21. The holding of the Nevada Supreme Court *SFR Investments Pool 1, LLC v. U.S.*  
4 *Bank, N.A.*, 130 Nev. \_\_\_\_, \_\_\_\_, 334 P.3d 408 (2014) that foreclosure on a  
5 homeowner's lien extinguishes a first deed of trust is retroactive. *K&P Homes v.*  
6 *Christiana Trust*, 133 Nev., Advance Opinion 51 (filed July 27, 2017, Nevada  
7 Supreme Court Case No. 69966).

8  
9 22. It was proper for Alessi & Koenig to include "the total amount of the lien"—and  
10 not just the super-priority amount—in its recorded notices. *SFR Investments Pool*  
11 *1, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_\_, \_\_\_\_, 334 P.3d 408, 418 (2014).

12 23. The mortgage protection clause in the HOA's CC&Rs does not protect U.S. Bank.  
13 The Nevada Supreme Court expressly rejected that argument in the *SFR* decision.  
14 The Court stated: "NRS 116.1104 defeats this argument. It states that Chapter  
15 116's 'provisions may not be varied by agreement, and rights conferred by it may  
16 not be waived...[e]xcept as *expressly* provided in' Chapter 116. (Emphasis  
17 added.) 'Nothing in [NRS] 116.3116 expressly provides for a waiver of the  
18 HOA's right to a priority position for the HOA's super priority lien.'" *SFR*  
19 *Investments Pool 1 v. U.S. Bank, supra*, 334 P.3d at 419 (case quoted omitted).

20  
21 24. It is ordered that title is quieted in the subject property in Defendant and  
22 Counterclaimant Resources Group, LLC as trustee for the Bourne Valley Court  
23 Trust dated 5/4/2012, free and clear of all liens and encumbrances by, and forever  
24 enjoining, Defendant U.S. Bank National Association ND from asserting any  
25 estate, title, right, interest, or claim to the subject property adverse to Defendant  
26 and Counterclaimant Resources Group, LLC as trustee of the Bourne Valley  
27  
28

1 Court Trust dated 5/4/2012.

2 25. The Court directs that this is a final judgment as between Defendant and  
3 Counterclaimant Resources Group, LLC as trustee of the Bourne Valley Court  
4 Trust dated 5/4/2012 on the one hand and Defendant U.S. Bank National  
5 Association ND on the other hand, pursuant to NRCP 54(b), as there is no just  
6 reason for delay of entry of judgment and the court directs entry of final judgment  
7 as between these parties.  
8

9 IT IS SO ORDERED AND ADJUDGED this 31<sup>st</sup> day of October, 2017.

10  
11   
12 \_\_\_\_\_  
13 DISTRICT COURT JUDGE

14  
15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on the date filed, this document was electronically served to  
17 all registered parties for case number A667690 as follows:

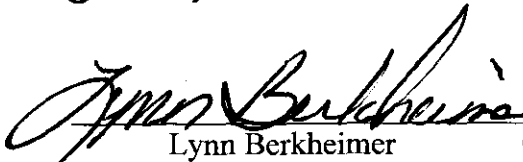
18 Benjamin D. Petiprin, Esq. [bpetiprin@zievelaw.com](mailto:bpetiprin@zievelaw.com)

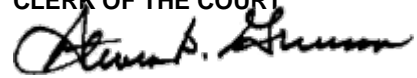
19 Amber Geiman . [ageiman@lawhjc.com](mailto:ageiman@lawhjc.com)

20 Kristin Schuler-Hintz . [dcnv@mccarthyholthus.com](mailto:dcnv@mccarthyholthus.com)

21 Stuart Taylor . [staylor@lawhjc.com](mailto:staylor@lawhjc.com)

22 Thomas N. Beckom . [tbeckom@mccarthyholthus.com](mailto:tbeckom@mccarthyholthus.com)  
23

24   
25 \_\_\_\_\_  
26 Lynn Berkheimer  
27 Judicial Executive Assistant  
28



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 defendant and counterclaimant*  
*Resources Group, LLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

<p>U.S. BANK NATIONAL ASSOCIATION ND, A NATIONAL ASSOCIATION,</p> <p>Plaintiff,</p> <p>v.</p> <p>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,</p> <p>Defendants.</p> <hr/> <p>RESOURCES GROUP, LLC,</p> <p>Counter-claimant,</p> <p>v.</p> <p>U.S. BANK NATIONAL ASSOCIATION, ND,</p> <p>Counter-claimant.</p> <hr/>	<p>Case No.: A-12-667690-C</p> <p>Dept. No.: XVI</p> <p>NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL JUDGMENT PURSUANT TO NRCP 54(b) BETWEEN RESOURCES GROUP, LLC AND U.S. BANK NATIONAL ASSOCIATION, ND</p>
---	--

TO ALL PARTIES AND ATTORNEYS:

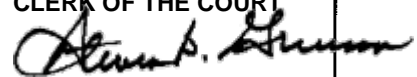
PLEASE TAKE NOTICE that the court has signed and filed on October 31, 2017 its Findings of Fact and Conclusions of Law in this case as between Resources Group, LLC and U.S. Bank National Association, ND, pursuant to NRCP 54(b). A true copy of said document is attached.

Date: November 1, 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 defendant and  
counterclaimant Resources Group,  
LLC*





1 FFCL  
2  
3

4 **DISTRICT COURT**  
5 **CLARK COUNTY, NEVADA**

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

8 Plaintiff,

9 vs.

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

10 GEORGE R. EDWARDS, an individual, ANY  
11 ALL PERSON UNKOWN CLAIMING TO BE  
12 PERSONAL REPRESENTATIVES OF GEORGE  
13 R.EDWARDS ESTATE OR DULY APPOINTED,  
14 QUALIFIED, AND ACTING EXECUTOR OF  
15 THE WILL OF THE ESTATE OF GEORGE R.  
16 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

17 Defendants.  
18

19 **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

20 The above-entitled case, having come on for bench trial on October 2 and 3, 2017,  
21 before Department XVI of the Eighth Judicial District Court, in and for Clark County,  
22 Nevada, with the Honorable Timothy C. Williams presiding. Priscilla L. Baker, Esq. and  
23 Thomas N. Beckom, Esq., of the law firm of McCarthy & Holthus appearing for Plaintiff,  
24 U.S. Bank National Association, ND, a National Association; Charles L. Geisendorf,  
25 Esq., and Richard J. Vilkin, Esq., of the law firm of Geisendorf & Vilkin, appearing for  
26 Defendant Resources Group, LLC.

27 . . .  
28

1 This Court, after having reviewed the papers, pleadings, and briefs on file herein,  
2 hearing testimony of witnesses and oral argument of counsel, the Court hereby makes the  
3 following Findings of Fact and Conclusions of Law:  
4

5 **FINDINGS OF FACT**

- 6 1. On March 26, 2009, a Deed of Trust as to the subject property was recorded in  
7 Clark County, Nevada listing the grantor as George R. Edwards and the lender as  
8 U.S. Bank National Association ND, a national banking association organized  
9 under the laws of the United States. The subject property was legally described as  
10 Lot Nineteen (19) of Glenview West Townhome, as shown by Map thereof on file  
11 in Book 30 of Plats, Page 65, in the Office of the County Recorder of Clark  
12 County. The subject property was also described as Assessor's Parcel Number  
13 163-24-111-021. (The "subject property.")  
14  
15 2. The Deed of Trust stated the address of U.S. Bank to be: US Recordings, 2925  
16 Country Drive STE 201, ST. Paul, MN 55117.  
17  
18 3. On January 4, 2011, a Notice of Delinquent Assessment Lien was recorded on the  
19 subject property in Clark County, Nevada by Alessi & Koenig, LLC on behalf of  
20 Glenview West Townhouses Association. A non-recorded copy of that Notice of  
21 Delinquent Assessment Lien had previously been mailed to the grantor and owner  
22 of the subject property, George R. Edwards, at the subject property street address  
23 of 4254 Rollingstone Drive, Las Vegas, NV 89103 on December 20, 2010.  
24  
25 4. George R. Edwards first became delinquent in his payment of homeowner  
26 monthly assessments on November 1, 2009. He remained delinquent on all  
27 monthly assessments between November 1, 2009, and the date of foreclosure sale  
28

1 on January 25, 2012, with the exception of one payment of \$414 made in  
2 December 2011. The monthly assessment amount was \$130.

3 5. On March 29, 2011, a Notice of Default and Election to Sell was recorded against  
4 the subject property by Alessi & Koenig, LLC on behalf of Glenview West  
5 Townhouses Association ("HOA").

6 6. On April 5, 2011, a copy of the Notice of Default and Election to Sell was mailed  
7 by Alessi & Koenig, the agent for the HOA, to U.S. Bank at US Recordings, 2925  
8 Country Drive STE 201, ST. Paul, MN 55117.

9 7. On October 13, 2011, a copy of the Notice of Sale was recorded in Clark County,  
10 Nevada.

11 8. On or soon after September 16, 2011, a non-recorded copy of the Notice of Sale  
12 was mailed by Alessi & Koenig LLC to U.S. Bank at US Recordings, 2925  
13 Country Drive STE 201, ST. Paul, MN 55117.

14 9. On January 25, 2011, Alessi & Koenig sold the subject property at public auction  
15 to 4254 Rollingstone Avenue Trust for the high bid price of \$5,331.

16 10. The Trustee's Deed Upon Sale states in part:

17 This conveyance is made pursuant to the powers conferred  
18 on Trustee by NRS 116 et seq., and that certain Notice of  
19 Delinquent Assessment Lien, described herein [recorded  
20 January 4, 2011]. Default occurred as set forth in a Notice  
21 of Default and Election to Sell which was recorded in the  
22 office of the recorder of said county. All requirements of  
23 law regarding the mailing of copies of notices and the  
24 posting and publication of the copies of the Notice of Sale  
25 have been complied with.

26 11. On January 25, 2012, Iyad Eddie Haddad appeared at the public auction and was  
27 the high bidder for a price of \$5,331 which he paid in cash that day.  
28 ...

- 1 12. Mr. Haddad instructed that the property be vested in 4254 Rollingstone Avenue  
2 Trust.
- 3 13. Prior to the sale, Mr. Haddad had no information about the property other than  
4 what was contained in the recorded documents, including no information as to  
5 any dispute as to title. He received no information from the HOA or its trustee  
6 about the property prior to sale, other than it was going to be sold at public  
7 auction.
- 8  
9 14. The sales trustee Alessi & Koenig paid to the HOA from the proceeds of the sale  
10 the total amount of \$2995.60 to cover all past due assessments dating back to  
11 November 1, 2009, with the exception of the \$414 payment made in December  
12 2011.
- 13 15. The nine months of assessments from April 4, 2010, to January 4, 2011, remained  
14 unpaid throughout the foreclosure, up to and including the date of sale, and were  
15 paid in full to the HOA from the proceeds of the sale in the amount of \$1,170 (9  
16 months X \$130 per month = \$1,170).
- 17  
18 16. On May 29, 2012, a Grant Bargain Sale Deed was recorded in Clark County,  
19 Nevada in which 4254 Rollingstone Avenue Trust transferred and conveyed the  
20 subject property to Resources Group, LLC as trustee for the Bourne Valley Court  
21 Trust dated 5/4/2012.
- 22  
23 17. The subject property was included in a Chapter 11 bankruptcy case in 2012 and  
24 2013. However, in that Chapter 11 bankruptcy case, captioned *In re: Saticoy Bay*  
25 *LLC Series Bowman Lair, Debtor* (Case No. 13-12463-btb, District of Nevada),  
26 the court ordered the petition dismissed without taking any action as to the  
27 petition or granting any relief.  
28

## CONCLUSIONS OF LAW

1. In Nevada, a homeowners association (“HOA”) has a lien for delinquent assessments, a portion of which has priority over a first deed of trust. NRS 116.3116(2); *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_, \_\_\_, 334 P.3d 408, 419 (2014). When the HOA forecloses on its lien, this extinguishes all inferior liens. *Ibid.*
2. When an HOA forecloses on its lien for delinquent assessments, the purchaser at the foreclosure sale receives a “deed without warranty which conveys to the grantee all title of the unit’s owner to the unit [.]” NRS 116.31164(3)(a).
3. The Nevada Supreme Court has affirmed that deed recitals are “conclusive” to the matters recited in NRS 116.31166 “in the absence of grounds for equitable relief.” *Shadow Wood Homeowners Assn., Inc. v. New York Comm. Bancorp, Inc.*, 132 Nev. \_\_\_, \_\_\_, 366 P.3d 1105, 1111-1112 (2016).
4. NRS 116.31164 concerns mailing of the Notice of Default and Election to Sell and the recording of same, the elapsing of 90 days, and the giving of Notice of Sale. Such a deed containing those recitals is conclusive against the unit’s former owner, his or her heirs and assigns, and all other persons....” NRS 116.31166(1)-(2); *Shadow Wood v. New York Comm., supra*, at 1110.
5. Given the recitals’ conclusive effects, a party contesting the sale has the burden to overcome these conclusive presumptions. “A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof.” *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995).
6. At the time of the foreclosure in this case, there was no requirement under Nevada law that a holder of a first deed of trust be mailed the Notice of Default unless that

- 1 holder gave notice to the association of the existence of its secured interest at least  
2 30 days prior to the recordation of the Notice of Default. NRS 116.31163(2).
- 3 7. At the time of the foreclosure in this case, there was no requirement under Nevada  
4 law that a holder of a first deed of trust be mailed the Notice of Sale unless that  
5 holder gave notice to the association of the existence of its secured interest prior  
6 to the recordation of the Notice of Sale. NRS 116.311635(1)(b)(2).  
7
- 8 8. U.S. Bank did not make the notifications to the HOA of its secured interest as  
9 required by NRS 116.31163(2) and NRS 116.31165(1)(b)(2).
- 10 9. The conclusive effects of the Trustee's Deed Upon Sale have not been overcome  
11 in this case.
- 12 10. In addition, the facts proved show that Alessi & Koenig, LLC complied with all  
13 requirements of law in conducting this non-judicial foreclosure pursuant to NRS  
14 116.3116 et seq..  
15
- 16 11. Alessi & Koenig timely and properly served the Notice of Default and the Notice  
17 of Sale on U.S. Bank as if U.S. Bank had made the notification specified in NRS  
18 116.31163(2) and NRS 311635(1)(b)(2).
- 19 12. The Uniform Fraudulent Transfer Act (NRS 112.140 et seq.) has no application to  
20 the foreclosure and sale in the case at bar. For one, the subject property is not  
21 subject to the Act because the property was encumbered by a lien (the HOA lien),  
22 which is excluded under the Act. NRS 112.150(2)(a)). Second, the Act was  
23 designed to protect unsecured creditors (and not secured mortgage holders) and  
24 not to interfere with or displace the separate statutory requirements of NRS  
25 116.3116 et seq.  
26
- 27 13. The doctrine of judicial estoppel has as its purpose to prevent a party from taking  
28

1 inconsistent positions that arise from intentional wrongdoing or an attempt to  
2 obtain an unfair advantage. *Marcuse v. Del Webb Communities, Inc.*, 123 Nev.  
3 278, 163 P.3d 462, 468-469 (2007). The doctrine does not preclude changes in  
4 position that are not intended to sabotage the judicial process. *Ibid.*

5 14. There are five requirements to invoke the doctrine of judicial estoppel: "1) the  
6 same party has taken two positions; (2) the positions were taken in judicial or  
7 quasi-judicial administrative proceedings; (3) the party was successful in asserting  
8 the first position (i.e., the tribunal adopted the position or accepted it as true); (4)  
9 the two positions are totally inconsistent; and (5) the first position was not taken  
10 as a result of ignorance, fraud, or mistake." *Marcuse v. Del Webb Communities,*  
11 *Inc., supra*, 163 P.3d at 468-469.

12 15. The doctrine of judicial estoppel does not apply in this case for three separate and  
13 independent reasons: 1) Defendant and Counterclaimant's affiliate was not  
14 successful in asserting any position as to the first deed of trust in the bankruptcy  
15 proceedings as the bankruptcy court did not adopt the affiliate's position and in  
16 fact dismissed the affiliated party's Chapter 11 petition with no action taken in  
17 an Order filed as Doc 76 entered 10/03/2013 (*In re Saticoy Bay LLC Series*  
18 *Bowman Lair*, Debtor (Case 13-12463-btb)); 2) the two positions taken in the  
19 bankruptcy court and the instant court are not totally inconsistent; and 3) the  
20 conduct did not sabotage the judicial process.

21 16. Plaintiff U.S. Bank had numerous options to avoid the foreclosure on its first deed  
22 of trust which it did not utilize. It could have tendered and/or paid off the super-  
23 priority portion of the lien prior to the sale. It could have also, as stated by the  
24 Nevada Supreme Court, paid off the entire HOA lien or established an escrow  
25  
26  
27  
28

1 account for such payments. It could also have filed a court action to enjoin the  
2 sale and recorded a lis pendens on the subject property. Thus, the inequity of  
3 which U.S. Bank complains is "of its own making." See *SFR Investments Pool 1,*  
4 *LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_\_, \_\_\_\_, 334 P.3d 408, 414 (2014).

5 17. Because U.S. Bank did not pursue any of its legal remedies to stop the sale or  
6 inform potential purchasers prior to the sale as to a dispute as to title, it is not  
7 entitled to equitable relief. *Davenport v. State Farm*, 81 Nev. 361, 404 P.2d 10, 14  
8 (1965); 19 Am Jur., Equity, Sec. 107, p. 107 and Sec. 119, pp. 120-121.

9 18. With regard to the issue of commercial reasonableness of the sale, an allegation of  
10 inadequate purchase price alone is insufficient to set aside a foreclosure sale,  
11 "there must also be a showing of fraud, unfairness, or oppression." *Shadow Wood*  
12 *v. New York Comm.*, *supra*, 366 P.3d at 1110. See also, *Golden v. Tomiyasu*, 79  
13 Nev. 503, 387 P.2d 989, 995 (1963) ("inadequacy of price, however gross, is not  
14 in itself a sufficient ground for setting aside a trustee's sale legally made, there  
15 must be in addition proof of some element of fraud, unfairness or oppression *as*  
16 *accounts for and brings about the inadequacy of price*" (internal citations  
17 omitted) (emphasis added)).

18 19. In this case, the subject property sold for \$5,331. There has been no showing to  
19 prove fraud, unfairness or oppression leading to this sales price.

20 20. Defendant and Counterclaimant's predecessor, 4254 Rollingstone Avenue Trust,  
21 was a bona fide purchaser for value, at the HOA foreclosure sale, without notice,  
22 actual or constructive or inquiry, of any defects in the sale or any pre-sale dispute  
23 as to title. There is nothing in law or equity that should prevent Defendant and  
24 Counterclaimant Resources Group LLC as trustee for the Bourne Valley Court  
25  
26  
27  
28



1 Trust dated 5/4/2012 from having clear and unencumbered title to the subject  
2 property.

3 21. The holding of the Nevada Supreme Court *SFR Investments Pool 1, LLC v. U.S.*  
4 *Bank, N.A.*, 130 Nev. \_\_\_\_, \_\_\_\_, 334 P.3d 408 (2014) that foreclosure on a  
5 homeowner's lien extinguishes a first deed of trust is retroactive. *K&P Homes v.*  
6 *Christiana Trust*, 133 Nev., Advance Opinion 51 (filed July 27, 2017, Nevada  
7 Supreme Court Case No. 69966).

8  
9 22. It was proper for Alessi & Koenig to include "the total amount of the lien"—and  
10 not just the super-priority amount—in its recorded notices. *SFR Investments Pool*  
11 *1, LLC v. U.S. Bank, N.A.*, 130 Nev. \_\_\_\_, \_\_\_\_, 334 P.3d 408, 418 (2014).

12 23. The mortgage protection clause in the HOA's CC&Rs does not protect U.S. Bank.  
13 The Nevada Supreme Court expressly rejected that argument in the *SFR* decision.  
14 The Court stated: "NRS 116.1104 defeats this argument. It states that Chapter  
15 116's 'provisions may not be varied by agreement, and rights conferred by it may  
16 not be waived...[e]xcept as *expressly* provided in' Chapter 116. (Emphasis  
17 added.) 'Nothing in [NRS] 116.3116 expressly provides for a waiver of the  
18 HOA's right to a priority position for the HOA's super priority lien.'" *SFR*  
19 *Investments Pool 1 v. U.S. Bank, supra*, 334 P.3d at 419 (case quoted omitted).  
20

21 24. It is ordered that title is quieted in the subject property in Defendant and  
22 Counterclaimant Resources Group, LLC as trustee for the Bourne Valley Court  
23 Trust dated 5/4/2012, free and clear of all liens and encumbrances by, and forever  
24 enjoining, Defendant U.S. Bank National Association ND from asserting any  
25 estate, title, right, interest, or claim to the subject property adverse to Defendant  
26 and Counterclaimant Resources Group, LLC as trustee of the Bourne Valley  
27  
28

1 Court Trust dated 5/4/2012.

2 25. The Court directs that this is a final judgment as between Defendant and  
3 Counterclaimant Resources Group, LLC as trustee of the Bourne Valley Court  
4 Trust dated 5/4/2012 on the one hand and Defendant U.S. Bank National  
5 Association ND on the other hand, pursuant to NRCP 54(b), as there is no just  
6 reason for delay of entry of judgment and the court directs entry of final judgment  
7 as between these parties.  
8

9 IT IS SO ORDERED AND ADJUDGED this 31<sup>st</sup> day of October, 2017.

10  
11   
12 \_\_\_\_\_  
13 DISTRICT COURT JUDGE

14  
15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on the date filed, this document was electronically served to  
17 all registered parties for case number A667690 as follows:

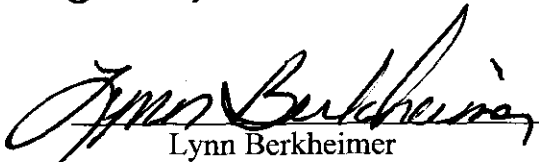
18 Benjamin D. Petiprin, Esq. [bpetiprin@zievelaw.com](mailto:bpetiprin@zievelaw.com)

19 Amber Geiman . [ageiman@lawhjc.com](mailto:ageiman@lawhjc.com)

20 Kristin Schuler-Hintz . [dcnv@mccarthyholthus.com](mailto:dcnv@mccarthyholthus.com)

21 Stuart Taylor . [staylor@lawhjc.com](mailto:staylor@lawhjc.com)

22 Thomas N. Beckom . [tbeckom@mccarthyholthus.com](mailto:tbeckom@mccarthyholthus.com)

23  
24   
25 \_\_\_\_\_  
26 Lynn Berkheimer  
27 Judicial Executive Assistant  
28

**Certificate of E-Service**

I hereby certify that on November 1, 2017, I served the following document(s):

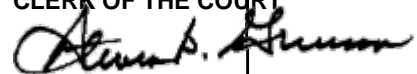
A copy of the preceding NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND FINAL JUDGMENT PURSUANT TO NRCP 54(b) BETWEEN RESOURCES GROUP, LLC AND U.S. BANK NATIONAL ASSOCIATION, ND.

- By Electronic Transmission: by transmitting the document to the parties registered to received service for this case via this Court's mandatory e-service system.
- By Mail: by placing the document(s) listed above in a sealed envelope, postage prepaid, in the US Mail, addressed as set forth below.

George R. Edwards Trust  
c/o Robert Hazell  
14983 Mammoth Place  
Fontana, CA 92336  
***Defendant***

ANY AND ALL PERSONS 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  
14983 Mammoth Place  
Fontana, CA 92336  
***Defendant***

/s/ Stacie Geisendorf  
an employee of Geisendorf & Vilkin, PLLC



OSCC

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

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

CASE NO.: A-12-667690-C

DEPARTMENT 16

**CIVIL ORDER TO STATISTICALLY CLOSE CASE**

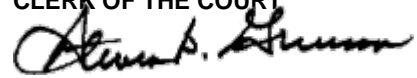
Upon review of this matter and good cause appearing,  
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to  
statistically close this case for the following reason:

**DISPOSITIONS:**

- ☐ Default Judgment
- ☐ Judgment on Arbitration
- ☐ Stipulated Judgment
- ☐ Summary Judgment
- ☐ Involuntary Dismissal
- ☐ Motion to Dismiss by Defendant(s)
- ☐ Stipulated Dismissal
- ☐ Voluntary Dismissal
- ☐ Transferred (before trial)
- ☐ Non-Jury – Disposed After Trial Starts
- ☒ Non-Jury – Judgment Reached
- ☐ Jury – Disposed After Trial Starts
- ☐ Jury – Verdict Reached
- ☐ Other Manner of Disposition

DATED this 1st day of November, 2017.

  
TIMOTHY C. WILLIAMS  
DISTRICT COURT JUDGE



**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  
(702)685-0329(Phone)  
(866)339-5691(Fax)  
Attorneys for U.S. Bank

**IN THE EIGHTH JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF CLARK, 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; 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

**NOTICE OF APPEAL**

/.../...

/.../...

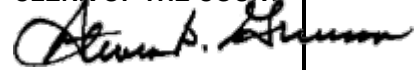
/.../...

NOTICE is hereby given in the above-captioned matter that U.S. BANK NATIONAL ASSOCIATION ND, A NATIONAL ASSOCIATION (“U.S. BANK”); appeals to the Supreme Court of Nevada from the Notice of Entry of Findings of Fact and Conclusions of Law and Final Judgment Pursuant to NRCP 54(b) between Resources Group LLC and U.S. Bank National Association ND entered on November 1, 2017.

DATED: November 22, 2017.

McCarthy & Holthus, LLP

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



1 CASE NO. A-12-667690-C

2 DOCKET U

3 DEPT. XVI

4

5

6

DISTRICT COURT

7

CLARK COUNTY, NEVADA

8

\* \* \* \* \*

9

U S BANK NATIONAL ASSOCIATION,

)

10

Plaintiff,

)

11

vs.

)

12

GEORGE EDWARDS,

)

13

Defendant.

)

14

REPORTER'S TRANSCRIPT  
OF  
HEARING

15

16

17

BEFORE THE HONORABLE JUDGE TIMOTHY C. WILLIAMS

18

DISTRICT COURT JUDGE

19

20

DATED TUESDAY, FEBRUARY 7, 2017

21

22

23

REPORTED BY: PEGGY ISOM, RMR, NV CCR #541,

24

25

1 APPEARANCES:

2 FOR THE PLAINTIFF:

3

4 MCCARTHY HOLTHUS LLP

5 BY: THOMAS BECKOM, ESQ.

6 9510 W SAHARA AVENUE

7 SUITE 200

8 LAS VEGAS, NV 89117

9 (702) 685-0329

10 (702) 866-339-5691 Fax

11 NO EMAIL PROVIDED

12

13 FOR THE DEFENDANT:

14

15

LAW OFFICES OF MICHAEL F. BOHN

16

BY: ADAM TRIPPIEDI, ESQ.

17

BY: MICHAEL BOHN, ESQ.

18

4520 SOUTH PECOS ROAD

19

SUITE 2

20

LAS VEGAS, NV 89121

21

(702) 642-3113

22

ATRIPPIEDI@BOHNLAWFIRM.COM

23

24

25



1 APPEARANCES CONTINUED:

2

3 HALL, JAFFE & CLAYTON, LLP

4 BY: STUART TAYLOR, ESQ.

5 7425 PEAK DRIVE

6 LAS VEGAS, NV 89128

7 (702) 316-4111

8 (702) 316-4114

9

10

11

12

13 \* \* \* \* \*

14

15

16

17

18

19

20

21

22

23

24

25

1 LAS VEGAS, NEVADA; TUESDAY, FEBRUARY 7, 2017

2 9:21 A.M.

3 P R O C E E D I N G S

4 \* \* \* \* \*

5

6 THE COURT: All right. Next up page 11, US  
7 Bank versus Edwards. All right. Gentlemen, let's go  
8 ahead and note our appearances for the record.

9 MR. TRIPPIEDI: Good morning, your Honor.

09:21:45 10 Adam Trippiedi for Resources Group, defendant.

11 MR. TAYLOR: Stewart Taylor, your Honor, for  
12 Glenview West Townhomes Association.

13 MR. TRIPPIEDI: Mr. Beckom is running late  
14 so ...

09:21:57 15 THE COURT: Okay.

16 MR. TRIPPIEDI: I guess we can trail this.

17 THE COURT: All right. I guess, any idea how  
18 late he's going to be?

19 MR. TRIPPIEDI: I really don't know. I  
09:22:04 20 just -- I was told by his office or somebody yesterday  
21 that he's running a little late so ...

22 THE COURT: He's in Kephart's department, I  
23 guess. Kephart, does he go pretty quick?

24 MR. TRIPPIEDI: I think so, generally.

09:22:21 25 THE COURT: So what we'll do, we'll just trail

09:22:22 1 this matter. As soon as he gets here, let me know.  
2 We'll call it right up because I think we'll have a lot  
3 of good discussion on this case, right, because it's my  
4 understanding *Saticoy Bay* wasn't decided when all this  
09:22:34 5 was filed; correct?

6 MR. TRIPPIEDI: Correct.

7 THE COURT: Now, it's been decided, right?

8 MR. TRIPPIEDI: Yes.

9 THE COURT: So it changes everything, right?

09:22:42 10 MR. TRIPPIEDI: I think in Mr. Beckom's reply  
11 he kind of acknowledges that.

12 THE COURT: Yeah.

13 MR. TRIPPIEDI: He kind of saves those  
14 arguments for appeal, but he's not going to argue them  
09:22:49 15 here.

16 THE COURT: What do you do, right? Nevada  
17 Supreme Court has spoken.

18 MR. TRIPPIEDI: For now, yeah.

19 THE COURT: For now. But they've spoken.

09:23:01 20 MR. TRIPPIEDI: Yeah.

21 THE COURT: It is what it is. So as soon as  
22 he's ready, I'll step back on the bench.

23 MR. TRIPPIEDI: Thank you, your Honor.

24 MR. TAYLOR: Sounds good, your Honor.

09:23:12 25 (brief pause in proceedings.)

09:29:29 1 THE COURT: Okay. Gentlemen, good morning.

2 MR. TRIPPIEDI: Good morning.

3 THE COURT: Let's go ahead and note our

4 appearances for the record.

09:29:33 5 MR. BECKOM: Thomas Beckom on behalf of the US

6 Bank. And I thank you for trailing the matter this

7 morning, your Honor.

8 THE COURT: No problem, sir. Any time.

9 MR. TRIPPIEDI: Adam Trippiedi for defendant

09:29:43 10 Resources Group.

11 MR. TAYLOR: Stuart Taylor for Glenview West

12 Townhomes Association, defendant.

13 THE COURT: All right. So, gentlemen, I see

14 we have US Bank's motion for summary judgment. We have

09:29:55 15 defendant counter-claimant Resource Groups LLC's motion

16 for summary judgment. Where do we go from here?

17 MR. BECKOM: Well, the substantive law changed

18 on the constitutional issues.

19 THE COURT: No. I mean, yeah, a little bit.

09:30:07 20 So, I mean, the bottom line is I'm going to follow

21 Nevada law.

22 MR. BECKOM: Absolutely. I mean, like, US

23 Banks' position, I mean, we still have to raise it. We

24 have a certain split between two appellate bodies. I

09:30:17 25 mean, obviously, we don't expect you -- I mean, it's

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

Case No. 74575

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

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

**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. 7**

---

Kristin A. Schuler-Hintz, Esq (NSB#7171)  
Thomas N. Beckom, Esq (NSB#12554)  
McCARTHY HOLTHUS LLP  
9510 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
Phone No. (702) 685-0329  
*Attorney for Appellant*

## **TABLE OF CONTENTS**

1. Affidavits	1504
2. Pre-Trial Memorandum	1505
3. Joint Pre-trial Memorandum	1510
4. U.S. Bank's Brief in Support of Trial	1517
5. Journal Entries	1544
6. Judgment	1571
7. Transcripts from Summary Judgment Hearing	1573
8. Transcripts from Day One of Trial	1643

**F. TIME REQUIRED FOR TRIAL**

- a. Plaintiff estimates that trial will take 2-3 days.

DATED: September 13, 2017

McCarthy & Holthus, LLP

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

### Title to Property

## COURT MINUTES

September 14, 2017

A-12-667690-C      U S Bank National Association, Plaintiff(s)  
vs.  
George Edwards, Defendant(s)

**September 14, 2017      10:30 AM      Pretrial/Calendar Call**

**HEARD BY:** Williams, Timothy C.

COURTROOM: RJC Courtroom 12D

**COURT CLERK:** Natalie Ortega

## PARTIES

<b>PRESENT:</b>	Beckom, Thomas N.	Attorney for Plaintiff
	Thongkham, Chatree, ESQ	Attorney for Defendant – Glenview West Townhomes Association
	Vilkin, Richard J.	Attorney for Defendant – Resources Group LLC.

## JOURNAL ENTRIES

- COURT ORDERED, Bench Trial date STANDS.

PRINT DATE: 09/22/2017

Page 1 of 1

Minutes Date: September 14, 2017



*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 Plaintiff

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 on 9/7/2017 at 3:33 PM I served the above listed documents to Glenview West Townhomes Association c/o Marquis Aubach Coffing P.C., Registered Agent by personally delivering and leaving a copy at 10001 Park Run Drive, Las Vegas, NV 89145 with Kali Graham - Legal Assistant, a person of suitable age and discretion, authorized by Registered Agent to accept service of process at the above address shown on the current certificate of designation filed with the Secretary of State.

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

Gender: Female, Race: Caucasian, Age: 30's, Height: 5'4", Weight: 150 lbs., Hair: Brown, 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.

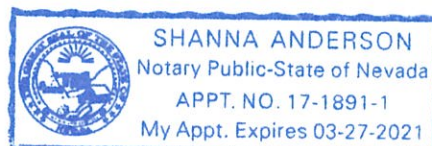
Judith Mae All  
Registered Work Card# R-040570  
State of Nevada

State of: Nevada  
County of: Clark

Subscribed and sworn before me, a  
Notary Public, this 12<sup>th</sup> day of  
Sept 2017

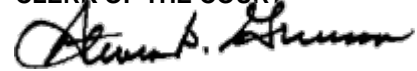
BY: Judith Mae All

*Shanna Anderson*  
Shanna Anderson  
Notary Public  
My Commission expires on: 3/27/2021



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





GEISENDORF & VILKIN, PLLC  
Richard J. Vilkin, Esq. (8301)  
2470 St. Rose Parkway, Suite 309  
Henderson, Nevada 89074  
Tel: (702) 873-5868  
charles@gvattorneys.com  
richard@gvattorneys.com  
Attorney for Defendant Resources Group, LLC

**DISTRICT COURT, CLARK COUNTY, NEVADA**

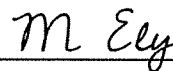
<b>Plaintiff / Petitioner:</b> U.S. BANK NATIONAL ASSOCIATION, ND	<b>Case No:</b> A-12-667690-C Dept. No. XVI
<b>Defendant / Respondent:</b> GEORGE R. EDWARDS, et al.	AFFIDAVIT/DECLARATION OF SERVICE - DAVID ALESSI

I, MICHELLE ELY, R-004357, being duly sworn, or under penalty of perjury, state that at all times relevant, I was over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents.

That on Thu, Sep 14 2017 at 12:04 PM, at the address of 9500 W FLAMINGO RD STE 205, within LAS VEGAS, NV, the undersigned duly served the following document(s): TRIAL SUBPOENA TO DAVID ALESSI; \$26.00 WITNESS FEE CHECK in the above entitled action upon DAVID ALESSI, by then and there personally delivering 1 true and correct copy(ies) of the above documents into the hands of and leaving same with DAVID ALESSI.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct. No Notary is Required per NRS 53.045.

Date: September 19, 2017



MICHELLE ELY R-004357

ACE Executive Services, LLC (NV #2021C)  
8275 S EASTERN AVE STE 200  
LAS VEGAS, NV 89123  
702 919-7223  
Job: 1649992 (RESOURCES GROUP, LLC)

*Steven D. Grierson*

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 defendant and counterclaimant  
Resources Group, LLC*

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.

RESOURCES GROUP, LLC,

Counter-claimant,

v.

U.S. BANK NATIONAL ASSOCIATION, ND,

Counter-claimant.

Case No.: A-12-667690-C

Dept. No.: XVI

PRE-TRIAL MEMORANDUM OF  
DEFENDANT AND  
COUNTERCLAIMANT  
RESOURCES GROUP, LLC;  
OBJECTIONS TO THE PRE TRIAL  
MEMORANDUM OF PLAINTIFF

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

1  
2  
3  
4 On September 11, 2017, the undersigned traveled to the office of counsel for plaintiff,  
5 McCarthy Holthus, for the purpose of conducting the meeting required by EDCR 2.67. The  
6 undersigned met with attorney Thomas Beckom of McCarthy Holthus. The 2.67 meeting was  
7 conducted and all requirements completed. Counsel agreed on how to number exhibits and  
8 everything else. There were no disputes.

9  
10 Counsel Beckom informed the undersigned that he had drafted a Pre Trial Memorandum.  
11 The undersigned requested that a Word version of same be sent to the undersigned (and provided  
12 his email) so that the undersigned could make his insertions to complete a Joint Pre Trial  
13 Memorandum as required by EDCR 2.67. Counsel Beckom agreed to this. The undersigned  
14 never received the Word version. On September 13, 2017, without consulting the undersigned,  
15 counsel Beckom went ahead and filed a separate Pre Trial Memorandum in violation of EDCR  
16 2.67, which requires a Joint Pre Trial Memorandum.

17  
18 Defendant and counterclaimant Resources Group, LLC objects to the Pre Trial  
19 Memorandum filed by plaintiff as not in compliance with EDCR 2.67 because it is not joint,  
20 because it is an advocacy document on behalf of plaintiff, because plaintiff inserts a long list of  
21 purported facts when EDCR 2.67 requires a "brief statement of the facts," because Resource  
22 Group, LLC's affirmative defenses were not included, and because the list of documents does  
23 not include some documents agreed to at the 2.67 meeting.

24  
25 Defendant and counter-claimant Resources Group, LLC hereby presents its Pre-Trial  
26 Memorandum

27  
28 I.

1        Brief statement of facts: Defendant purchased the subject residential property (4254  
2        Rollingstone Drive, Las Vegas, NV 89103) at an HOA foreclosure sale on January 12, 2012.  
3        Plaintiff owned the beneficial interest in a deed of trust on the property at the time of sale.  
4        Plaintiff contends that its deed of trust survived the sale, defendant claims that it was  
5        extinguished.  
6

7  
8        Claims for relief: Both plaintiff/counterdefendant US Bank and  
9        defendant/counterclaimant Resources Group, LLC seek quiet title and declaratory relief as to the  
10       residential property located at 4254 Rollingstone Drive, Las Vegas, NV.  
11

12  
13       Defendant's Affirmative Defenses: Defendant/counterclaimant Resources Group, LLC  
14       has asserted affirmative defenses of failure to state a claim upon which relief can be granted;  
15       plaintiff's damages if any were caused by its own acts or omissions; plaintiff's damages if any  
16       were caused by third persons over whom this answering defendant has no control; plaintiff is  
17       guilty of laches and unclean hands; plaintiff is barred from discovery by virtue of the doctrine of  
18       equitable estoppel; and plaintiff has failed to mitigate its damages.  
19  
20

21  
22       Exhibits: The following exhibits were agreed to by the parties as to admissibility and  
23       authenticity at the EDCR 2.67 meeting:

24       Exhibit 1: USB 1-25

25       Exhibit 2: USB 26-175

26       Exhibit 3: USB 176-261

27       Exhibit 4: USB: 262-263  
28

1 Exhibit 7: USB 417-488

2 Exhibit 8: Tax deed recorded 6/12/2012 by Resources Group, LLC

3 Exhibit 9: Grant, Bargain and Sale Deed recorded 5/29/2012 by Resources Group, LLC

4  
5  
6 The following exhibits were not agreed to as to admissibility and authenticity:

7 Exhibit 5: USB 264-310

8 Exhibit 6: USB 311-361

9 Exhibit 11: Plaintiff expert's report

10 Exhibit 12: Defendant expert's report

11 Exhibit 13: Defendant's interrogatories to and responses of plaintiff

12 Exhibit 14: Defendant's request for admissions to and responses of plaintiff

13 Exhibit 15: Defendant's request for production to and responses of plaintiff

14  
15  
16  
17 Defendant's witnesses: Defendant intends to call the following witnesses:

- 18 1. Iyad Eddie Haddad, manager of Resources Group, LLC.
- 19 2. David Alessi, principal of the sales trustee Alessi & Koenig, LLC.
- 20 3. Michael Brunson, plaintiff's valuation expert.
- 21 4. The 30(b)(6) witness for plaintiff.
- 22 5. The 30(b)(6) witness for the Glenview HOA.
- 23
- 24

25 The principal issue of law to be decided at this trial is whether the first deed of trust of  
26 plaintiff was extinguished by the homeowner association foreclosure sale pursuant to *SFR*  
27  
28

1 *Investments Pool I, LLC v. U.S. Bank*, 334 P.3d 408, 130 Nev. Adv. Op. 75 (2014). Plaintiff

2 contends it was not, defendant contends it was.

3  
4 Time for trial: Counsel for defendant estimates time for trial at two days.

5  
6 Date: September 24, 2017

GEISENDORF & VILKIN, PLLC

7  
8 By: /s/ Richard J. Vilkin

9 Richard J. Vilkin, Esq. (8301)

10 2470 St. Rose Parkway, Suite 309

11 Henderson, Nevada 89074

12 *Attorneys for defendant and*  
13 *counterclaimant Resources Group,*  
14 *LLC*

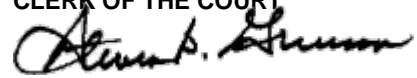
15 Certificate of Service

16 On September 24 2017, I served the foregoing by E-Service by serving same by  
17 electronic service on the Eighth District Court Odyssey File and Serve system by requesting that  
18 the document be e-served on all persons who have signed up for e-service for this case.

19 Executed this 24th day of September, 2017 at Henderson, NV. I declare the above is true.

20 /s/ Richard Vilkin

21 Richard Vilkin  
22  
23  
24  
25  
26  
27  
28



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 defendant and counterclaimant*  
*Resources Group, LLC*

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.

RESOURCES GROUP, LLC,

Counter-claimant,

v.

U.S. BANK NATIONAL ASSOCIATION, ND,

Counter-claimant.

Case No.: A-12-667690-C

Dept. No.: XVI

JOINT PRE-TRIAL  
MEMORANDUM

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



On September 11, 2017, all parties conferred at the office of counsel for plaintiff, McCarthy Holthus, for the purpose of conducting the meeting required by EDCR 2.67. In attendance at this meeting was Thomas N. Beckom, Esq on behalf of U.S. Bank N.A. and Richard Vilkin, Esq on behalf of Resources Group, LLC. The 2.67 meeting was conducted and all requirements completed. The parties have agreed to the designation of exhibits as well as admissibility as stated below. The parties also agree to withdraw their separate Pre Trial Memorandums previously filed.

**I.**

**A. BRIEF STATEMENT OF FACTS**

Defendant purchased the subject residential property (4254 Rollingstone Drive, Las Vegas, NV 89103) at an HOA foreclosure sale on January 12, 2012. Plaintiff owned the beneficial interest in a deed of trust on the property at the time of sale. Plaintiff contends that its deed of trust survived the sale, defendant claims that it was extinguished. Specifically, U.S. Bank claims that they will be able to evidence an insufficient purchase price as well as elements of fraud, unfairness, and oppression in the conduct of this sale. Furthermore U.S. Bank contends that Resources Group is not a bona purchaser based on its presale knowledge, information contained in the filed documents, as well as documents filed in the Bankruptcy proceeding for the Bourne Valley Court Trust of which this property was included. Resources Group disputes these claims and claims that U.S. Bank did not exhaust its legal remedies and thus is not entitled to equitable relief, that the sale was properly conducted under Nevada law, and that it is a bona fide purchaser with no notice of any dispute as to title.

/.../.../

/.../.../

**B. CLAIMS FOR RELIEF**

Both plaintiff/counterdefendant US Bank and defendant/counterclaimant Resources Group, LLC seek quiet title and declaratory relief as to the residential property located at 4254 Rollingstone Drive, Las Vegas, NV. In addition U.S. Bank seeks a judicial foreclosure judgment from this Court allowing them to foreclose on the property which is the Subject of the action.

**C. DEFENDANT'S AFFIRMATIVE DEFENSES**

Defendant/counterclaimant Resources Group, LLC has asserted affirmative defenses of failure to state a claim upon which relief can be granted; plaintiff's damages if any were caused by its own acts or omissions; plaintiff's damages if any were caused by third persons over whom this answering defendant has no control; plaintiff is guilty of laches and unclean hands; plaintiff is barred from discovery by virtue of the doctrine of equitable estoppel; and plaintiff has failed to mitigate its damages.

**D. PLAINTIFF'S AFFIRMATIVE DEFENSES TO THE COUNTERCLAIM**

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 14<sup>th</sup> 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 5<sup>th</sup> 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.

**E. EXHIBITS:**

The following exhibits were agreed to by the parties as to admissibility and authenticity at the EDCR 2.67 meeting:

Exhibit 1: USB 1

Exhibit 2: USB 002-004

Exhibit 3: USB 0005-0010

Exhibit 4: USB: 0011-0019

Exhibit 5: USB0020-0022

Exhibit 6: USB0023-0025

Exhibit 7: USB0026-175

Exhibit 8: USB 176-261

Exhibit 9- USB 262-263

Exhibit 12: USB 417-488

The following exhibits were not agreed to as to admissibility and authenticity:

Exhibit 10: USB 264-310

Exhibit 11: USB 311-361

Exhibit 13: Plaintiff expert's report

Exhibit 14: Defendant expert's report

Exhibit 15: Defendant's interrogatories to and responses of plaintiff

Exhibit 16: Defendant's request for admissions to plaintiff and responses of plaintiff

Exhibit 17: Defendant's request for production to and responses of plaintiff

Plaintiff/ Defendant's witnesses: The parties intend to call the following witnesses:

1. Iyad Eddie Haddad, manager of Resources Group, LLC.
2. David Alessi, principal of the sales trustee Alessi & Koenig, LLC.
3. Michael Brunson, Defendant's valuation expert.
4. George Holmes, Plaintiff's Valuation Expert.
5. The 30(b)(6) witness for plaintiff.
6. The 30(b)(6) witness for the Glenview HOA.

The principal issue of law to be decided at this trial is whether the first deed of trust of plaintiff was extinguished by the homeowner association foreclosure sale pursuant to *SFR Investments Pool 1, LLC v. U.S. Bank*, 334 P.3d 408, 130 Nev. Adv. Op. 75 (2014). Plaintiff contends it was not, defendant contends it was. Specifically, Plaintiff contends that due to issue in the sale process the sale should be set aside under *Shadow Wood Homeowners Ass'n v. New York Cmty Bancorp Inc.* 366 P.3d 1105 (Nev. 2016).

Time for trial: Counsel for defendant estimates time for trial at 2-3 days.

Date: September 26, 2017

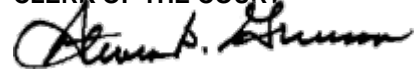
Date: September 26, 2017

**GEISENDORF & VILKIN, PLLC**

**McCARTHY HOLTHUS LLP**

By: /s/ Richard J. Vilkin  
Richard J. Vilkin, Esq. (8301)  
2470 St. Rose Parkway, Suite 309  
Henderson, Nevada 8907  
*Attorneys for defendant and  
counterclaimant Resources Group, LLC*

By: /s/ Thomas N. Beckom, Esq  
Thomas N. Beckom, Esq(12554)  
9510 West Sahara Ave., Suite 200  
Las Vegas, NV 89117  
*Attorneys for U.S. Bank*



**McCarthy & Holthus, LLP**

Kristin A. Schuler-Hintz, Esq., Nevada SBN 7171

Thomas N. Beckom, Esq Nevada SBN 12554

McCarthy & Holthus, LLP

9510 W. Sahara, Suite 200

Las Vegas, NV 89117

Phone (702) 685-0329

Fax (866) 339-5691

KHintz@mccarthyholthus.com

TBeckom@mccarthyholthus.com

Attorneys for Plaintiff,

*U.S. BANK ND*

**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. )

**U.S. BANK'S BRIEF IN SUPPORT OF  
TRIAL**

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 submits this trial brief pursuant  
to EDCR 7.27. U.S. Bank respectfully requests that this Court should declare that Resources Group

LLC (hereinafter “Resources”) either took this property subject to U.S. Bank’s Deed of Trust or that the sale is void.

## **I. INTRODUCTION**

This Court today will be one sitting in equity weighing all the facts and circumstances of this case. The nexus of this claim is that on January 25, 2012; the Glenview West Townhomes HOA (the “HOA”) sold real property commonly known as 4254 Rollingstone Dr., Las Vegas, NV 89103 (hereinafter referred to as “Subject Property”). The evidence in this case will show that this sale price was \$5,331.00 as the property was purchased by 4254 Rollingstone Drive Trust and thereafter transferred to Resources Group LLC (“RESOURCES”) while U.S. Bank’s expert will testify that the value of the property was \$48,000.00 at the time of the sale and/ or 11.1% of the fair market value of this property. This property was for an obviously inadequate price. The property was secured by a deed of trust in favor U.S. Bank.

On August 30, 2012; U.S. Bank sued on one claim for a judicial foreclosure alleging that it properly held constructive possession of the note and the deed of trust and moreover that George R. Edwards was not paying the payment under the loan note and deed of trust. U.S. Bank sued all subordinate interests of record, including a “subordinate” interest held by Resources whom had ostensibly purchased at an HOA foreclosure sale. On September 18, 2014; the Nevada Supreme Court issued it’s opinion in *SFR Invs. Pool 1, LLC v. U.S. Bank N.A.* 334 P.3d 408 (2014) stating that portions of an HOA lien are “super priority.” This changed the face of the litigation as in response Resources had brought a claim against U.S. Bank for Quiet Title stemming from the sale. U.S. Bank responded and asserted affirmative defense that *inter alia* the sale was a fraudulent transfer under NRS §112.190(1); was voidable by this Court sitting in equity as a result of a low purchase price and elements of fraud, unfairness, and oppression.



During the course of this litigation, the Nevada Supreme Court issued a clarifying opinion in *Shadow Wood Homeowners Ass'n v. New York Cmty Bancorp* 366 P.3d 1105 (Nev. 2016). The Nevada Supreme Court clarified that under the equitable power of the District Court, a sale could be set aside if there was insufficiency of price, plus some element of fraud, unfairness, and oppression. The potential bona fide purchaser status of a purchaser at an HOA foreclosure sale must also be considered. While assuredly, the burden of proof is a preponderance of the evidence here, it is especially worth noting at this juncture that U.S. Bank contends their burden is slight given the sale price. As the price goes down, and in this instance the property was purchased for a mere 11.1% of its asserted fair market value, a court can and should seize on any potential unfairness as a means to void this sale. *Ballentyne v. Smith* 205 U.S. 285 (1907). At the end of the day, if this Court sitting in equity finds that anything is slightly unfair with this sale, then the Court has the power to void this sale or declare this subject to the mortgage.

This is not a high burden for U.S. Bank to meet today.

## **II. FACTS**

U.S. Bank believes they will be able to evidence at trial the following:

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. While the Note itself was lost, U.S. Bank was entitle to enforce the note at the time of the loss and the loss of possession was not the result of a transfer by U.S. Bank or a lawful seizure.

3. The Subject Property was located in the Glenview West Townhomes HOA and governed by the Covenants Conditions and Restrictions of Blue Diamond Ranch..
4. The CC&R's are patently misleading and include illegal provisions. 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.

5. On November 3, 2010; Alessi sent Mr. Edwards a pre-lien letter stating that \$1,855.00 was due and owed.
6. 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.
7. On this basis, Alessi, on behalf of Glenview, liened the Subject Property.
8. 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.
9. 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 17<sup>th</sup> Avenue SW, Fargo, ND 58103.
10. David Alessi, the person most knowledgeable for Alessi & Koenig will testify that at no point was the Notice of Default ever mailed to U.S. Bank's address.
11. 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.

12. On January 25, 2012; the property sold for \$5,331.00 dollars, less than the amount owed, to the 4254 Rollingstone Dr. Trust.
13. No one bid on the Subject Property at the Sale.
14. 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.
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.
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, the independent witnesses from Alessi will testify 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 during the Bankruptcy
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 Actions.
23. The relationship between Alessi & Koenig and Haddad was so close, that Alessi actually paid Mr. Haddad's transfer tax.

### **III. STANDARDS FOR TRIAL**

#### **A. JUDICIAL FORECLOSURE AND ESTABLISHMENT OF A LOST NOTE**

A beneficiary under a deed of trust has two potential remedies for a breach under the mortgage agreement: (1) to proceed with a non judicial foreclosure under NRS Chapter 107 or (2) to proceed judicially under NRS §40.430 *et seq. Nevada Land & Mortgage Co. v. Hidden wells Ranch* 83 Nev. 501 (1967). This has been the law for quite some time in that once a mortgage company can show a breach under a secured promissory note, then they can absolutely proceed under NRS §40.430. *McMillan v. United Mortgage Co.* 82 Nev. 117 (1966).

In addition, U.S. Bank will also have to prove its ability to enforce a lost note. This governed by NRS §104.3309 which has its own elements needed to prove U.S. Bank ability to enforce. NRS §104.3309 states:

- “1. A person not in possession of an instrument is entitled to enforce the instrument if:
- (a) The person seeking to enforce the instrument:
    - (1) Was entitled to enforce the instrument when loss of possession occurred; or
    - (2) Has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;
  - (b) The loss of possession was not the result of a transfer by the person or a lawful seizure; and
  - (c) The person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.
2. A person seeking enforcement of an instrument under subsection 1 must prove the terms of the instrument and his or her right to enforce the instrument. If that proof is made, NRS 104.3308 applies to the case as if the person seeking enforcement had produced the

instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.”

This statutory provision allows U.S. Bank to enforce lost or stolen instruments through constructive possession of the promissory note as codified through Nevada’s Uniform Commercial Code (hereinafter “UCC”). *A.I. Credit Corp v. Gohres* 299 F.Supp.2d 1156 (D.Nev. 2004). U.S. Bank will need to prove that they were entitled to enforce the instrument, there was no lawful seizure, and that the mortgage note’s whereabouts cannot be determined. NRS §104.3309. U.S. Bank must also prove the terms of the mortgage note. *Id.* In addition, U.S. Bank will be able to prove that the borrower is adequately protected from a subsequent holder. *Id.* at (2). This element is meant to deal with issues such as the legitimacy of the promissory note or if there is the possibility that a third party may later surface and try to enforce the same promissory note. *Branch Banking & trust Co. v. S&S Dev. Inc* 620 Fed. Appx 698 (11 Cir. 2015). Adequate protection need not be provided in every case, if there is certainty that the current party is the proper party to enforce the obligation. *Id.*

U.S. Bank will evidence through testimony that they have constructive possession of the note, that the note was not lost via a transfer or law seizure, and that no subsequent party will appear claiming possession of the note through the testimony of its witness. U.S. Bank will also testify that there is a breach of the note and that they are entitled to foreclose assuming that their Deed of trust is still attached to the property. As outline below, they will be able to prove this element as well.

## **B. QUIET TITLE**

As outlined *infra* U.S. bank comes to this Court, sitting in equity, for assistance. Equity and common sense have always consistently gone hand in hand. *Gass v. Hampton* 16 Nev. 185 (1881)(apply equity and common sense hand in hand); *Sims v. Irvine* 3 U.S. 425 (1799)(same);

*Friends for All Children Inc v. Lockheed Aircraft Corp* 746 F.2d 816 (DC. App. 1984)(noting that equity and common sense go hand in hand). As outlined below, U.S. Bank contends that the sale is for an “obviously inadequate” price and moreover that due to misstatements in the HOA lien documents that the bidding was chilled, that there was an inappropriate relationship between the seller and the buyer, and that U.S. Bank did not receive the Notice of Sale.

As a predicate matter, Resources has the burden to establish quiet title in itself. In Nevada in a quiet title action, the burden of proof rests with the plaintiff to prove good title. *Breliant v. Preferred Equities corp* 918 P.2d 314 (Nev. 1996). Nevada courts post *Shadow Wood* have typically imposed this burden on a purchaser at a HOA foreclosure sale. *Las Vegas Dev. Grp LLC v. Yfantis* 2016 U.S. dist. LEXIS 39735 (D.Nev 2016) citing *Shadow Wood Homeowners Ass’n v. New York Cmty Bancorp* 366 P.3d 1105 (Nev. 2016).

*Shadow Wood* lay out three relevant and germane inquiries in this matter. There must be an inadequate price, plus some element of fraud, unfairness, or oppression. *Shadow Wood Homeowners Ass’n v. New York Cmty Bancorp* 366 P.3d 1105 (Nev. 2016). Additionally, bona fide purchaser status must be considered. *Id.* U.S. Bank will discuss each in turn.

**1. U.S. Bank will evidence that the price is insufficient**

**i. The Subject Property Must be Assessed Based on It’s Highest and Best Use and/ or Market Value**

In *Shadow Wood v. N.Y. Comm Bank*, the Nevada Supreme Court delineated a standard for analyzing this sale and announced, in line with the Restatement of Property: Mortgages §8.3 that “Fair Market Value” was the proper indicator here. 132 Nev. Adv. Op. 5 at 15 (2016). U.S. Bank anticipates that Resources will argue some form of “HOA litigation embroiled foreclosure value” however U.S. Bank contends here that arguing “HOA foreclosure value” is simply not relevant in this action as fair market value is the only true indicator.

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

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

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

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

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

*Blacks Law Dictionary* 597 (6<sup>th</sup> Ed. 1990)

Finally “Fair Market Value” is not a new idea in Nevada and Fair Market Value is defined as as "the price which a purchaser, willing but not obligated to pay, would pay an owner willing but not obligated to sell, taking into consideration all uses to which the property is adopted and might in reason be applied." *Lee v. Verex Assur* 103 Nev. 515 (Nev. 1987) *also Unruh v. Streight* 96 Nev. 684 (Nev. 1980).Black’s then goes on to state that Fair Market Value must be assessed based on the “highest and most profitable use.” *Id.* On this basis, the “value” assessment must be done at Fair Market Value based on the highest and best use per *Shadow Wood*. Even the Restatement takes the following approach:

“The standard by which “gross inadequacy” is measured is the fair market value of the real estate. For this purpose, the latter means, not the fair “fair forced sale” value of the real estate, but the price which would result from negotiation and mutual agreement, after ample time to find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser who is willing to buy, but not compelled to take a particular piece of real estate.” *Restatement of Property Third: Mortgages* §8.3 Comment(b)

The appraisal produced by U.S. Bank appraises the property at \$48,000.00 based on a fair market purchase price with a willing buyer and seller.

U.S. Bank will meet the first prong of the *Shadow Wood* test on the day of trial.

/.../...

**ii. A Sale of Less than 20% is Proof of Unfairness**

In *Shadow Wood* the Nevada Supreme Court adopted the Restatement of Property Mortgages Section §8.3 as the bench mark for gross inadequacy. Numerous other jurisdictions have held that *gross* inadequacy is grounds to set aside a foreclosure sale. U.S. Bank contends this is now the law in Nevada and that an “obviously inadequate” purchase price is proof of unfairness sufficient to satisfy *Golden* and *Shadow Wood*.. The Restate of Property Mortgage 3d §8.3(a) states

“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 defective unless the price is grossly inadequate.”

The Gross Inadequacy bench mark is the law in multiple other jurisdictions. *Baskurt v. Beal* 101 P.3d 1041 (Ak 2004)(invalidating sale based on price alone where it was grossly inadequate at 15 % of fair market value). *Crown Life Ins. Co. v. Candlewood Ltd* 112 N.M. 633 (NM 1991)(15% of fair market value was inadequate and was a basis to set aside the sale on price alone); *United Oklahoma Bank v. Moss* 1990 OK 50 (Okla 1990)(20% of fair market value inadequate and reversing trial court when said court refused to vacate the sale);. *Rife v. Woolfolk* 169 W.Va 660 (W.Va 1982)(holding 14% of fair market value inadequate and that “there need be no showing of fraud, or any impropriety in the conduct of the sale, to set aside a sale where the price paid is so inadequate that it shocks the conscience”); *also Shadow Wood Homeowners Association inc v. NY Com. Bank* 132 Nev. Adv. Op 5 at 15 (2016) *citing Restatement (Third) of Prop: Mortgages* §8.3 cmt b.(1997)(“A court is warranted in invalidating a sale where the price is less than 20 percent of fair market ....”).

In analyzing and adopting the Restatement §8.3, the Supreme Court of Arizona noted that a sale of real property under power of sale...may be set aside solely on the basis that the bid price was *grossly* inadequate.” *Krohn v. Sweetheart Props LTD* 203 Ariz. 205 (Az 2002). In Arizona,



as in Nevada, there must be an insufficiency of price plus a elements of fraud unfairness, or oppression as accounts for and brings about the inadequacy of price. *Id.* at 212.

Yet in adopting the Restatement §8.3 the Arizona Supreme Court noted that “*gross inadequacy is proof of unfairness*” sufficient to set aside a sale and further adopted the Restatement §8.3 at the 20% benchmark. *Id.*

U.S. Bank contends that the Nevada Supreme Court has now adopted this stance. *Shadow Wood Homeowners Association inc v. NY Com. Bank* 132 Nev. Adv. Op 5 at 15 (2016) *citing Restatement (Third) of Prop: Mortgages* §8.3 cmt b.(1997)(“A court is warranted in invalidating a sale where the price is less than 20 percent of fair market ...”).The 3<sup>rd</sup> Circuit Court of Appeals has noted in applying Restatement §8.3 that:

Under the Restatement, Third of Property: Mortgages § 8.3, with respect to the adequacy of a foreclosure sale price, the term "gross inadequacy" is clarified to some extent by the Comment which provides that a court "is warranted in invalidating a sale where the price is less than 20 percent of fair market value and, absent other foreclosure defects, is usually not warranted in invalidating a sale that yields in excess of that amount." Restatement (Third) of Prop.: Mortgages § 8.3 cmt. b. (1997). The Comment further states that the trial court's judgment in matters of price adequacy is entitled to particular deference but notes that in "extreme cases a price may be so low (typically well under 20% of fair market value) that it would be an abuse of discretion for the court to refuse to invalidate it."

*Bank of N.S. v. Family Broad Inc.* 121 Fed. Appx. 440 (2005)

The State of Washington, in applying Restatement §8.3 takes the same approach. *Alpha Imperial Bldg v. Schnitzer Family Investment , LLC* 2005 Wash.App. LEXIS 482 (Wa App. 2005)(noting that that a foreclosure sale can and should be set aside under Restatement §8.3 if it is less than 20%).

Here U.S. Bank has performed an appraisal showing that the property was worth \$48,000.00 at the time of the foreclosure sale. Resources paid \$5,331.00 for the Subject Property at the time of the sale. This is 11.1% of Fair Market Value and under Shadow Wood and the Restatement §8.3 this is grossly and/ or “obviously” inadequate. On this basis, the sale can be voided or declared subject to U.S. Bank’s Deed of Trust.

## **2. U.S. Bank will evidence that the sale is unfair**

Even if the price is not unfair as a matter of law, sufficient unfairness is present to void this sale under *Tomiyasu* and *Shadow Wood*. U.S. Bank contends that the “unfairness” is a moving target and that the “unfairness” necessary to void a sale moves down. This sale is for less than 3% of Fair Market Value.

There is little actual case law in Nevada as to what constitutes “unfairness.” The U.S. Supreme Court in *Ballentyne* indicated that when the inadequacy of price is great then the slightest circumstances of unfairness will operate to set aside the sale. *Ballentyne v. Smith* 205 U.S. 285 (1907). The Nevada Federal Court has recently used *Ballentyne* as a basis to void a sale under *Shadow Wood. Zyzx 2 v. Dizon* 2016 U.S. Dist. LEXIS 39467 (D.Nev. 2016)( “if there be great inadequacy, slight circumstances of unfairness in the conduct of the party benefited by the sale will be sufficient to justify setting it aside. It is difficult to formulate any rule more definite than this, and each case must stand upon its own peculiar facts.”). The Arizona Supreme Court has echoed this sentiment. *Krohn v. Sweetheart Props LTD* 203 Ariz 205 (Ariz 2002) *citing Baldwin v. Brown* 193 Cal. 345 (Cal 1924). Other jurisdictions have further indicated that that “when the inadequacy of consideration is great and the notice of sale given by the officers is vague, or from any act of his, bidders are kept away from the place of sale, who would have bid for the land if there, an unconscionable advantage was obtained by the purchaser, who bid off the land at a grossly inadequate price, a court of equity will interfere and set aside the sale so made.” *Parker v. Glenn* 72 Ga. 637 (1884) This sentiment has been expressed more recently in Missouri, in that a defective Notice of Sale, no matter how slight the defect, is grounds for a court in equity in invalidate the sale when the price is grossly inadequate. *Meng v. Citimortgage Inc* 2013 U.S. Dist. LEXIS 45402 (Mo 2013).

Unfairness is not limited to mere actions of the purchaser and/ or trustee in some circumstances. “Unfairness from any cause which operates to the prejudice of an interested will abundantly justify

a...court in refusing to approve a sale. *Levy v. Broadway-Carmen Bldg Corp* 366 Ill 279 (Ill 1937) Unfairness is not a set standard. Under California law “gross inadequacy of price coupled with even slight unfairness or irregularity is a sufficient basis” for setting aside a sale. *Whitman v. Transtate Title Co.* 165 Cal. App. 3d 312 (1985)

Illustrations of “slight unfairness” are numerous. A grossly inadequate price coupled with a failure to postpone a sale is considered slightly unfairness in California. *Whitman v. Transtate Title Co.* 165 Cal.App.3d 312 (1985). The 9<sup>th</sup> Circuit has found also under California Law that listing a property as being on the “Southwest Corner” as opposed to the “Southwest Quarter” coupled with a grossly inadequate sales prices is unfair and grounds to avoid a sale when there is a grossly inadequate price. *In re Worcester* 811 F.2d 1224 (9<sup>th</sup> Cir. 1987). Indeed in Arkansas, stating that one is selling property “under attachment” as opposed to “under execution” when coupled with a grossly inadequate sales prices is considered sufficient unfairness to set aside a sale. *Hinton v. Elliot* 187 Ark. 907 (1933). “Where there is gross inadequacy, the courts seize upon slight additional circumstances which render confirmation inequitable.” *Id.* at 910.

The Supreme Court of the United States in *Ballentyne* noted that there was sufficient unfairness present when there was (1) a meager sum bid by a purchaser and (2) the property was worth well in excess of the price sold that on that basis the sale could be set aside. *Ballentyne v. Smith* 205 U.S. 285 (1907). *Graffam v. Burgess* sets out numerous interesting things which constitute unfairness. *Graffam v. Burgess* 117 U.S. 180 (1886). A storm on the day of a judicial sale has been found to unfair. *Id.* 192. Additionally “Gross inadequacy of price...needs but slight additional support, such as utter absence of description of property to be sold...”

*Kloepping v. Stellmacher* is another interesting microcosm of mortgage foreclosure law. In New Jersey inadequacy of price itself is not sufficient to set aside a conveyance, nor is it *per se* proof of fraud. 21 N.J. 328 (1871). In *Kloepping* no fraud was shown as to the purchaser or the sheriff conducting the sale and the totality of the circumstance showed the sale was conducted

legally. *Id.* *Kloepping* received process and indeed actually tore up the summons. *Id.* The sale was set aside. *Id.*

U.S. Bank will evidence slight unfairness today as delineated *infra*.

**i. The Notice of Sale Fails to Guarantee the Property**

The evidence will show that the HOA causes a problem in their Notice of Sale and states:

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs...

NRS §116.31165 governs the Notice of Sale. NRS §116.31165(3)(b) only requires expressly the following statement in the Notice of Sale:

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

NRS §116.31165(3)(a) requires “the amount necessary to satisfy the lien as of the date of the proposed sale” The HOA’s Notice of Sale includes these two provisions. NRS §116.31165 however does not require the following statement:

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designations, if any, shown herein. Said sale will be made, without covenant or warranty, expressed or implied, regarding title, possession or encumbrances, to pay the remaining principal sum of a note, homeowner's assessment or other obligation secured by this lien, with interest and other sum as provided therein; plus advances, if any, under the terms thereof and interest on such advances, plus fees, charges, expenses, of the Trustee and trust created by said lien. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonably estimated costs...

It is the portion of this notice which U.S. Bank takes issue in the respects that the sale is made without covenant or warranty, assumedly to acknowledge the lack of a warranty deed, yet

then goes on to state that the purchaser may not have (1) title, (2) possession, and may (3) have to pay a mortgage.

Despite the sale's location in Las Vegas, Foreclosure Law does not contemplate an invitation to play real property "roulette" which is what the Notice of Sale does. The Notice of Sale adds in verbal surplusage, not required by statute, which invites a bidder to "spin the wheel" and purchase a *chance* to possibly own a piece of real property. The HOA states the buyer may not get a house. Similar to *Worcester* and *Hinton* cited above the HOA simply cannot hide behind NRS 116.31164 (requiring a deed without warranty) as grounds to justify a notice of sale which is an invitation to gamble, not an advertisement for real property. If placed the word "corner" instead of "quarter" is unfair then if the Court adopts the reasoning in *Worcester* the sale must be set aside. 811 F.2d 1224 (9<sup>th</sup> Cir. 1987). In fact, this notice of sale is similar to selling property "under attachment" as opposed to "under execution" and U.S. Bank contends the Arkansas Supreme Court would also set this sale aside. *Hinton v. Elliot* 187 Ark. 907 (1933). U.S. Bank contends that this advertisement actually discourages the public from attending this sale in light of this and no party not "in the know" would attend this sale. For emphasis, "where there is gross inadequacy, the courts seize upon slight additional circumstances which render confirmation inequitable." *Id.* at 910. This Notice of Sale meets the unfairness threshold here.

**ii. The Notice of Lien and the Notice of Default Allude to a Sub Priority Lien Sale**

As delineated *supra* the Notice of Lien and both Notices of Default reference NRS §117.070 as the statute which the HOA may be foreclosing under. The reference to NRS §117.070 is critical because NRS §117.070 states that a Condominium lien is a sub priority lien. NRS §117.070 specifically states

"Such lien shall be prior to all other liens recorded subsequent to the recordation of the notice of assessment except that the declaration of restrictions may provide for the subordination thereof to any other liens and encumbrances. Unless sooner satisfied and released or the enforcement thereof initiated as provided in subsection 3, such lien shall

expire and be of no further force or effect 1 year from the date of recordation of the notice of assessment, but the 1-year period may be extended by the management body for not to exceed 1 additional year by recording a written extension thereof.”

It is critical here that an HOA needs to explain what they are selling to the public. The purpose of an HOA sale is to maximize the value of assets for the benefit of the homeowners, the HOA, and all of the secured lenders. The lien documents need to be calculated to generate bidders. Here time and time again, the HOA tries to use some genre of catch all not to conduct the sale in good faith but protect themselves. This is not and should not be how a foreclosure sale operates. As delineated *infra* these cumulative errors here lead to an inequitable result for U.S. Bank and Mr. Webb. Similar to *Worcester* and *Hinton* this sale should either be set aside or declared subject to U.S. Bank’s Deed of Trust.

### **iii. The Bidding Was Inadvertently Chilled**

The cumulative errors in the Notice of Sale, Notice of Default, and Notice of Lien ultimately led to inadvertent bid chilling on the day of the sale as will be evidenced by the testimony of Iydad Haddad and others.

Chilled bidding can and is a type of unfairness sufficient to set aside a foreclosure sale. *Gelfert v. National city Bank* 313 U.S. 221, 232 (1941). Misunderstanding as to the risk associated with a particular piece of real property which causally relate to chilled bidding do constitute unfairness to set aside a sale. *Golfland Enteertainment Ctrs. V. Peaks Inv.* 119 F.3d 852, 860 (10<sup>th</sup> Cir 1997); *United States v. Clinger* 2002 U.S. Dist. LEXIS 20458 (D.Colo 2002); also *United States v. Tempelman* 2002 U.S. Dist. LEXIS 3111 (D.NH 2002)

U.S. Bank contends the bidding was unintentionally chilled per the Restatement as adopted by *Shadow Wood*. “Chilled bidding” comes in 2 forms: intentional and unintentional. *Alpha Imperial Bldg LLC v. Schnitzer Family Investment LLC* 2005 Wash. App. LEXIS 482 (WashApp. 2005). Intentional chilled bidding occurs when there is collusion for the purpose of holding down the bids.

*Id.* The second, and more applicable, standard however consists of inadvertent and unintentional acts by the trustee that have the effect of suppressing the bidding. *Id.*

The evidence will show that Mr. Haddad was aware bidding was chilled at these sales. The HOA inadvertently, in effort to mitigate their own liability, advertised (a lien sale which may have been subject to a mortgage. These cumulative errors by the HOA invoke the *Balentyne* sliding scale analysis wherein minor unfairness voids the sale, especially at less than 3% of Fair Market Value. “Unfairness from any cause which operates to the prejudice of an interested will abundantly justify a...court in refusing to approve a sale. *Levy v. Broadway-Carmen Bldg Corp* 366 Ill 279 (Ill 1937). This is another reason for a court in equity to either declare this sale subject to the deed of trust or set aside the sale.

#### **iv. The HOA misrepresented the asset being sold in their CC&R’s**

In *Zyzzx 2 v. Dizon* the Honorable Judge Mahan again 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 (such as here) and the purchaser paid \$15,000.00 for the property (three times what Resources 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) a Notice of Sale which completely disclaims title and Section 5.08 of 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) U.S. Bank, and (3) the Public the nature of what was being sold. Testimony from the HOA and a reading of the CC&R's will show this. It is small wonder that the sale was for such a paltry amount based on the chilled bidding and misrepresentation which Resources took constructive notice of.

**v. Fraudulent Conduct of Alessi**

Finally there is the issue of the fraudulent conduct of Alessi and Resources in this transaction. Ryan Kerbow, an individual who conducted a sale which was not noticed on U.S. Bank, was the *purchaser's attorney*. The Notice of Default was not noticed on U.S. Bank, which is completely undisputed. The CC&R's misrepresented the lien status of the lien. No one showed up at this sale. This is insider dealing at it's worst.

**vi. Failure to Serve the Notice of Default is Unfair and/ or renders the Sale Void**

This writer is of the opinion that a foreclosure in this manner is not "voidable" but "void." This is an important difference. The Honorable Justice Lee H. Rosenthal summed up what Deutsche advances here in *Ocwen Loan Servicing LLC v. Gonzalez Fin Holding Inc* 77 Supp. 584 (S.D. Tx 2015) when she ruled that "If a property transfer is void, rather than voidable, then it cannot be taken by a bona fide purchaser." This is not the only jurisdiction to hold as such. *Rosenberg v. Schmidt* 727 P.2d 778 (Ak 1986)(stating that a lack of a substantive basis to foreclose renders a sale "void" and that only voidable sales raise an issue of bona fide purchaser status).

It is well established that a void, as opposed to voidable sale, can be invalidated regardless of any purported bona fide purchaser status. *Sonderman v. Remington Constr. Co.* 127 N.J. 96 (1996); *Fjeldsted v. Lien (In re Fjeldsted)* 293 B.R. 12 (2003)("bona fide purchaser status alone is not cause to validate a [void]sale"); *Ocwen Loan Servicing LLC v. Gonzalez Fin Holding Inc* 77 Supp. 584 (S.D. Tx 2015)("if the foreclosure sale is void, rather than voidable, then it cannot be taken by a bona fide purchaser").



In *Dimock v. Emerald Properties* the California State Court of Appeals ruled that even conclusive presumptions can be overcome by a void deed. 81 Cal.App.4<sup>th</sup> 868 (Cal. 2000). The Court ruled that the recitals in the deed must specifically state that something has occurred, as “conclusive” in order for the conclusive recitals to render a Deed “voidable” rather than “void.” *Id.* Due to an errant substitution of Trustee in that case, and no specific “conclusive” recitation that the trustee was the proper trustee, the sale was rendered “void” not “voidable”.

Here the evidence will show that the Notice of Default was never served on U.S. Bank, the beneficiary under the Deed of Trust. (The proper procedures were not followed. This sale is not voidable, this sale is void.

### **3. Resources will not be found to be a bona fide purchaser**

The evidence will show that Resources is not a bona fide purchaser for two reasons. First Resources will not meet their burden of production under Nevada law as bona fide purchaser status is their burden. Secondly, they had constructive notice of the defective lien documents which resulted in the chilled bidding.

It is incumbent on Resources here to prove they are bona fide purchasers. *Price v. Ward* 26 Nev. 387 (1902)(“ The burden is on the purchaser to show that he did not have notice of a third person's title”) *Moore v. De Bernardi* 47 Nev. 33 (1923)(Burden is on Purchaser to Establish Bona Fide Purchaser Status). The Nevada Supreme Court cited to both *Moore* as well as *Bailey* in *Shadow Wood. Shadow Wood HOA v. N.Y. Cmmt* Back 132 Nev. Adv. Op. 5 At 23 (2016). In *Bailey* the burden of establishing bona fide purchaser status was directly at issue and the Nevada Supreme Court held:

“The authorities are practically unanimous in holding that, in a suit by one asserting a prior equity, unless exceptional circumstances exist, the duty devolves upon the defendant, who seeks to establish a superior equity upon the basis that he is a bona fide purchaser, to both allege and prove all of the essential elements constituting him such bona fide purchaser, that is to say, a purchaser for a valuable consideration without notice of the prior agreement and the equity resulting therefrom.”

*Bailey v. Butner* 64 Nev. 1 (1947)

Moreover in Nevada this is a general common sense approach. *Cooper v. Pacific Auto Ins. Co.* 95 Nev. 798 (1979). For example, in Nevada an individual cannot purchase a car at a bar for \$5,000.00, be given all lawful documents for ownership of the car, have no actual notice of any issues, and thereafter claim bona fide purchaser status. *Cooper v. Pacific Auto Ins. Co.* 95 Nev. 798 (1979). This is because, as the trial judge in that case found, basic common sense dictates that you should not buy a discounted car at a bar while having no clue what you are getting. *Id.* In Nevada people are simply not “bona fide” when common sense dictates that something is amiss. *Id.*

Once someone is put on inquiry notice of something as basic as whether or not the property was free and clear of a mortgage or whether or not they were going to be trespassed, in Nevada time and time again this ripens the burden of proof for bona fide purchaser status *to the party asserting the status.* *Berg v. Fredicks* 591 P.2d 246 (Nev. 1979). Legitimate questions of possession have always raised a presumption **against** bona fide purchaser status in favor of the party moving to set aside the transaction. *Brophy Mining Co. v. Brophy & Dale Gold & Silver Mining Co.* 15 Nev. 101 (1880). It is incumbent on RESOURCES to demonstrate that they are bona fide purchasers.

Under *Berg* Notices of Default, the chilled bidding, and the Mortgage Protection Clause raise a presumption against bona fide purchaser status here. The Notice of Sale disclaims *everything*. At this point, under *Berg* the burden shifts to Resources as under *Berg* “[the] purchaser put upon inquiry may rebut the presumption of notice by showing that he made due investigation without discovering the prior right or title he was bound to investigate.” *Berge v. Fredericks* 95 Nev. 183 (1979). The Honorable Justice Belknap summarize this very effectively in 1902 when he wrote on behalf of a unanimous Nevada Supreme Court that

“Purchasers are bound to use a due degree of caution in making their purchases, or they will not be entitled to protection. Caveat emptor is one of the best settled maxims of the law, and applies exclusively to a purchaser. He must take care, and make due inquiries, or he may not be a bona fide purchaser. He is bound not only by actual, but also by constructive notice, which is the same in its effect as actual notice. He must look to the title papers under which

he buys, and is charged with notice of all the facts appearing upon their face, or to the knowledge of which anything there appearing will conduct him. He has no right to shut his eyes or his ears to the inlet of information, and then say he is a bona fide purchaser without notice." (Simmons Creek Coal Co. v. Doran, 142 U.S. 437; Everdson v. Mayhew, 65 Cal. 163; Beatty v. Crewdson, 124 Cal. 577.)  
*Price v. Ward* 26 Nev. 387 (1902)

It is completely unclear to this writer how a Notice which says "You may have to pay a mortgage and may not have title" is not sufficient to put Resources on inquiry and even constructive notice that there was an issue with their title. This language is not required *anywhere* in NRS §116.3116 *et seq* and essential functions as a caveat emptor for the purchaser. .

#### **B. THIS SALE IS VOID UNDER THE UNIFORM FRAUDULENT TRANSFER ACT**

Additionally, the HOA sale will be found void as a constructively fraudulent transfer under NRS §112.190(1). In describing why states should adopt fraudulent transfer law the Uniform Law Commission has made the following statement:

"Credit is essential to the economic life of this country. Consumer credits, commercial credit, secured and unsecured credit enter into our lives every day. Credit remains available so long as those who extend it are given certain assurances about their rights at default<sup>1</sup>."

The UFTA , as adopted through NRS Chapter 112, is intended to provide these assurances. NRS §112.190(1) which states in pertinent part that a transfer of an asset of a debtor is voidable if the creditor's claim arose before the transfer and the debtor received less than reasonably equivalent value at a time when he or she was insolvent and/or became insolvent thereafter. The Nevada Supreme Court has stated that the underlying policy behind the UFTA is to "preserve the debtor's assets for the benefit of creditors." *Herup v. First Boston Fin., LLC* 123 Nev. 228 at FN 15 (2007)<sup>2</sup>. A claim under NRS §112.190(1) is very straight forward. It does not require proof of intent to defraud and all a creditor must prove is that (1) their claim arose before the transfer, (2) there was

<sup>1</sup> Available at <http://www.uniformlaws.org/Narrative.aspx?title=Why States Should Adopt UFTA>

<sup>2</sup> For clarity to the Court, this pleading periodically references Bankruptcy law. In Nevada Bankruptcy law is *in pari material* to the UFTA and therefore it is persuasive and therefore this is proper. *Herup v. First Boston Fin., LLC* 123 Nev. 228 at FN 15 (2007)

a lack of reasonably equivalent value in the exchange, and (3) the debtor was insolvent at the time of making the transfer or became insolvent afterwards. *Sportsco Enters v. Morris* 112 Nev. 625, 631(1996).

As outlined in greater depth below, U.S. Bank can prove all of the elements of a constructively fraudulent transfer under NRS §112.190(1). Per NRS §112.210(1)(a), this Court must order this transfer avoided to the extent necessary to satisfy U.S. Bank's claim.

### **1. The HOA Foreclosure was a Covered Transfer under the Act**

Under the UFTA any transfer which greatly reduces the value of assets available to creditors is considered a covered transfer under the act. In interpreting the state of Washington's UFTA, a federal court in Washington has noted that "any transaction that greatly reduces the value of a debtor's estate may be a transfer." *Aqua-Chem, Inc v. Marine Sys.* 2014 U.S. Dist. LEXIS (2014). A Florida Bankruptcy Court has echoed this sentiment in that a transfer is to be construed as broadly as possible and that "all technicality and narrowness of meaning is precluded." *In re Thrift Dutchman, Inc* 97 B.R. 101 (Fl 1988). The Nevada Bankruptcy Court has noted that the term "transfer" is to be construed as broadly as possible as fraudulent transfer law was intended to provide the maximum protection of creditors. *Lehtonen v. Time Warner Inc.* 332 B.R. 417 (D.Nev 2005). Additionally, NRS §112.150(12) clarifies what is considered a transfer and specifically states that transfer means "every mode" and goes on to state that involuntary disposition or parting with an asset, such as a foreclosure, is considered a transfer<sup>3</sup>.

Finally, to take away any question on this to the contrary, Official Comment 12 to Section 1 of the Uniform Act which discusses the meaning of "transfer" refers to no less than four (4) cases, all of which involve execution and foreclosure sales and states that are covered under the act.

<sup>3</sup> "Transfer" means **every mode**, direct or indirect, absolute or conditional, voluntary or **involuntary**, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance." NRS §112.150(12) (Emphasis Added).