

NOAS

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

REBEKKAH B. BODOFF, ESQ.

Nevada Bar No. 12703

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Telephone: (702) 634-5000

Facsimile: (702) 380-8572

Email: darren.brenner@akerman.com

Email: rebekkah.bodoff@akerman.com

Electronically Filed
May 17 2018 02:37 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

*Attorneys for U.S. Bank, N.A., Successor Trustee to
Bank of America, N.A., Successor by Merger to
LaSalle Bank, N.A., as Trustee to the Holders of the
Zuni Mortgage Loan Trust 2006-OA1, Mortgage
Loan Pass-Through Certificates, Series 2006-OA1*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST;

Plaintiff,

v.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS,

Defendants.

Case No.: A-14-704412-C

Dept. No.: XXIV

**DEFENDANT U.S. BANK, N.A., AS
TRUSTEE'S NOTICE OF APPEAL**

Notice is hereby given U.S. Bank, N.A., Successor Trustee to Bank of America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1 (**U.S. Bank**), appeals to the Supreme Court of Nevada from this Court's (1) Findings of Fact, Conclusions of Law, and Judgment entered on February 7, 2018, Notice of Entry of which was entered on February 8, 2018, (2) Findings of Fact, Conclusions of Law, and Judgment entered on April 13, 2018, Notice of Entry of which was entered on April 16, 2018, (3) Order Denying U.S. Bank, N.A., as Trustee's Motion for

Reconsideration under NRCF 59 entered on May 1, 2018, Notice of Entry of which was entered on May 1, 2018, and (4) all interlocutory orders incorporated therein.

DATED May 10, 2018.

AKERMAN LLP

/s/ Rebekkah B. Bodoff

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

REBEKKAH B. BODOFF, ESQ.

Nevada Bar No. 12703

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

*Attorneys for U.S. Bank, N.A., Successor Trustee to
Bank of America, N.A., Successor by Merger to LaSalle
Bank, N.A., as Trustee to the Holders of the Zuni
Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-
Through Certificates Series 2006-OA1*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on the 10th day of May, 2018, I caused to be served a true and correct copy of the foregoing **DEFENDANT U.S. BANK, N.A., AS TRUSTEE'S CASE APPEAL STATEMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to FRCP 5(b), the above referenced document was electronically filed on the date hereof with the Clerk of the Court for the United States District Court by using the Court's CM/ECF system and served through the Court's Notice of electronic filing system automatically generated to those parties registered on the Court's Master E-Service List as follows:

PENGILLY LAW FIRM

Chris Schnider

cschnider@pengillylawfirm.com

Olivia Schulze

oschulze@pengillylawfirm.com

WRIGHT FINLAY & ZAK, LLP

Brandon Lopipero

blopipero@wrightlegal.net

Dana J. Nitz

dnitz@wrightlegal.net

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

Eserve Contact

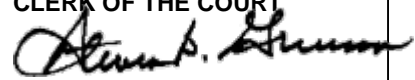
office@bohnlawfirm.com

Michael F Bohn Esq

mbohn@bohnlawfirm.com

/s/ Patricia Larsen

An employee of AKERMAN LLP



ASTA
DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
REBEKKAH B. BODOFF, ESQ.
Nevada Bar No. 12703
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: darren.brenner@akerman.com
Email: rebekkah.bodoff@akerman.com

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LaSalle Bank, N.A., as Trustee to the Holders of the
Zuni Mortgage Loan Trust 2006-OA1, Mortgage
Loan Pass-Through Certificates, Series 2006-OA1*

EIGHTH JUDICIAL DISTRICT COURT

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5316 CLOVER BLOSSOM CT TRUST;

Plaintiff,

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U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE LOAN
PASS-THROUGH CERTIFICATES SERIES
2006-OA1; and CLEAR RECON CORPS,

Defendants.

Case No.: A-14-704412-C

Dept. No.: XXIV

**DEFENDANT U.S. BANK, N.A., AS
TRUSTEE'S CASE APPEAL
STATEMENT**

U.S. Bank, N.A., Successor Trustee to Bank of America, N.A., Successor by Merger to
LaSalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1,
Mortgage Loan Pass-Through Certificates Series 2006-OA1, by and through its attorneys of record
at AKERMAN LLP, submits its Case Appeal Statement pursuant to NRAP 3(f)(3).

1. The appellant filing this case appeal statement is U.S. Bank, N.A., Successor Trustee to Bank
of America, N.A., Successor by Merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni
Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1
(Appellant).

1 2. The orders appealed are the (1) Findings of Fact, Conclusions of Law, and Judgment entered
2 on February 7, 2018, Notice of Entry of which was entered on February 8, 2018, (2) Findings of
3 Fact, Conclusions of Law, and Judgment entered on April 13, 2018, Notice of Entry of which was
4 entered on April 16, 2018, and (3) Order Denying U.S. Bank, N.A., as Trustee's Motion for
5 Reconsideration under NRCP 59 entered on May 1, 2018, Notice of Entry of which was entered on
6 May 1, 2018.

7 3. Counsels for Appellant are Darren T. Brenner, Esq., and Rebekkah B. Bodoff, Esq. of
8 AKERMAN LLP, 1635 Village Center Circle, Suite 200, Las Vegas, Nevada 89134.

9 4. Trial counsel for Respondent 5316 Clover Blossom Ct. Trust (**Clover Blossom**) is Michael
10 F. Bohn, Esq. of THE LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD., 376 East Warm Springs Road,
11 Suite 140, Las Vegas, Nevada 89119. Trial counsels for Respondent Country Garden Owners
12 Association (**HOA**) is James W. Pengilly, Esq. and Elizabeth B. Lowell, Esq. of PENGILLY LAW
13 FIRM, 1995 Village Center Circle, Suite 190, Las Vegas, Nevada 89134. Appellant is not aware
14 whether trial counsel will also act as appellate counsels for Clover Blossom or the HOA.

15 5. Counsels for Appellant are licensed to practice law in Nevada. Trial counsels for Clover
16 Blossom and the HOA are licensed to practice law in Nevada.

17 6. Appellant is represented by retained counsel in the district court.

18 7. Appellant is represented by retained counsel on appeal.

19 8. Appellant was not granted leave to proceed *in forma pauperis* by the district court.

20 9. The date proceedings commenced in the district court was July 25, 2014.

21 10. This case was previously subject to appeal in the Nevada Court of Appeals, Case No. 68915,
22 wherein the Court of Appeals vacated the district court's judgment in favor of Clover Blossom and
23 remanded the case for additional fact-finding related to Appellant's pre-foreclosure tender of the
24 super-priority amount, and more, through its loan servicer, Bank of America, N.A. (**BANA**), and
25 whether the sale was unfair and oppressive.

26 11. In this action, Clover Blossom alleges that it owns the property located at 5316 Clover
27 Blossom Court, North Las Vegas, Nevada 89031 (**Property**) free and clear of all liens as a result of
28 the HOA's foreclosure sale. Clover Blossom filed a complaint for quiet title to have the court

1 declare that it bought the Property free and clear of Appellant's Deed of Trust. Appellant filed quiet
2 title and declaratory relief counterclaims, seeking a declaration that the Deed of Trust survived the
3 HOA's foreclosure sale, and asserted cross-claims in the alternative against the HOA for unjust
4 enrichment, tortious interference with contractual relations, wrongful foreclosure, and breach of
5 NRS 116.1113, seeking damages from the HOA if the Deed of Trust was held to be extinguished
6 based on its rejection of BANA's pre-foreclosure tender of an amount greater than the statutory
7 super-priority amount. On remand, Clover Blossom moved to dismiss Appellant's counterclaims for
8 quiet title and declaratory relief, arguing that it took title free and clear because (1) it was a bona fide
9 purchaser, (2) the HOA's foreclosure sale was not unfair or oppressive, and (3) BANA's tender was
10 ineffective as to Clover Blossom because it was not recorded. The HOA also moved to dismiss
11 Appellant's cross-claims against it, arguing that the claims were time-barred. At the hearing on
12 these motions, the district court converted both motions to dismiss into motions for summary
13 judgment and granted them both, holding that the Deed of Trust was extinguished and entering
14 judgment in the HOA's favor on Appellant's claims against it. Appellant timely filed a motion to
15 reconsider the order granting Clover Blossom's converted motion for summary judgment, arguing
16 that the district court's conversion was improper because Appellant did not have notice that it would
17 occur, and thus failed to attach favorable summary-judgment evidence to its opposition. The district
18 court denied that motion. Appellant now appeals from the orders granting the converted motions for
19 summary judgment and the order denying its motion for reconsideration.

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12. This appeal does not involve child custody or visitation.

13. This appeal does not involve the possibility of settlement.

DATED: May 10, 2018.

AKERMAN LLP

/s/ Rebekkah B. Bodoff

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

REBEKKAH B. BODOFF, ESQ.

Nevada Bar No. 12703

1635 Village Center Circle, Suite 200

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Bank of America, N.A., Successor by Merger to LaSalle
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Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-
Through Certificates Series 2006-OA1*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on the 10th day of May, 2018, I caused to be served a true and correct copy of the foregoing **DEFENDANT U.S. BANK, N.A., AS TRUSTEE'S CASE APPEAL STATEMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to FRCP 5(b), the above referenced document was electronically filed on the date hereof with the Clerk of the Court for the United States District Court by using the Court's CM/ECF system and served through the Court's Notice of electronic filing system automatically generated to those parties registered on the Court's Master E-Service List as follows:

PENGILLY LAW FIRM

Chris Schnider

cschnider@pengillylawfirm.com

Olivia Schulze

oschulze@pengillylawfirm.com

WRIGHT FINLAY & ZAK, LLP

Brandon Lopipero

blopipero@wrightlegal.net

Dana J. Nitz

dnitz@wrightlegal.net

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

Eserve Contact

office@bohnlawfirm.com

Michael F Bohn Esq

mbohn@bohnlawfirm.com

/s/ Patricia Larsen

An employee of AKERMAN LLP

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-14-704412-C

5316 Clover Blossom CT Trust, Plaintiff(s)
vs.
U S Bank National Association, Defendant(s)

§
§
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§
§
§

Location: **Department 24**
Judicial Officer: **Crockett, Jim**
Filed on: **07/25/2014**
Case Number History:
Cross-Reference Case Number: **A704412**
Supreme Court No.: **68915**

CASE INFORMATION

Statistical Closures

04/13/2018 Summary Judgment
09/24/2015 Summary Judgment

Case Type: **Other Title to Property**

Case Flags: **Appealed to Supreme Court
Jury Demand Filed
Automatically Exempt from
Arbitration**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-14-704412-C
Court Department 24
Date Assigned 01/05/2015
Judicial Officer Crockett, Jim


PARTY INFORMATION

Plaintiff	5316 Clover Blossom CT Trust	Bohn, Michael F <i>Retained</i> 702-642-3113(W)
Defendant	Clear Recon Corps Removed: 09/30/2014 Dismissed	
	U S Bank National Association	Morgan, Melanie D. <i>Retained</i> 702-634-5000(W)
Counter Claimant	U S Bank National Association Removed: 04/13/2018 Dismissed	Morgan, Melanie D. <i>Retained</i> 702-634-5000(W)
Counter Defendant	5316 Clover Blossom CT Trust Removed: 04/13/2018 Dismissed	Bohn, Michael F <i>Retained</i> 702-642-3113(W)
Cross Claimant	U S Bank National Association Removed: 04/13/2018 Dismissed	Morgan, Melanie D. <i>Retained</i> 702-634-5000(W)
Cross Defendant	Country Garden Owners Association Removed: 04/13/2018 Dismissed	

DATE

EVENTS & ORDERS OF THE COURT














INDEX

07/25/2014	 Complaint Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Complaint</i>
07/25/2014	Case Opened

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-14-704412-C

08/13/2014	 Affidavit of Service Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Affidavit of Service</i>
08/13/2014	 Receipt of Copy Filed by: Plaintiff 5316 Clover Blossom CT Trust <i>Receipt of Copy</i>
08/26/2014	 Affidavit of Service Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Affidavit of Service for Clear Recon Corps</i>
09/25/2014	 Initial Appearance Fee Disclosure Filed By: Defendant U S Bank National Association <i>Initial Appearance Fee Disclosure</i>
09/25/2014	 Answer Filed By: Defendant U S Bank National Association <i>Defendant U.S. Bank, National Association, Successor by Merger to LaSalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-Through Certificates Series 2006-OA1</i>
09/30/2014	 Stipulation and Order Filed by: Defendant Clear Recon Corps <i>Stipulation and Order for Non-Monetary Judgment Between Clear Recon Corp and 5316 Clover Blossom Ct Trust</i>
10/02/2014	 Notice of Entry of Stipulation and Order Filed By: Defendant Clear Recon Corps <i>Notice of Entry of Stipulation and Order for Non Monetary Judgment Between Clear Recon Corp and 5316 Clover Blossom Ct Trust</i>
12/17/2014	 Joint Case Conference Report Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Joint Case Conference Report</i>
12/19/2014	 Scheduling Order <i>Scheduling Order</i>
01/05/2015	Case Reassigned to Department 24 <i>District Court Case Reassignment 2015</i>
01/14/2015	 Substitution of Attorney Filed by: Defendant U S Bank National Association <i>Substitution of Attorney</i>
01/14/2015	 Order Setting Civil Bench Trial <i>Order Setting Civil Bench Trial</i>
02/09/2015	 Motion to Amend Complaint Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Motion to Amend Complaint</i>
03/12/2015	

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-14-704412-C

	 Motion to Amend Complaint (9:00 AM) (Judicial Officer: Crockett, Jim) <i>PLAINTIFF'S MOTION TO AMEND COMPLAINT</i>
04/23/2015	 Amended Complaint Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Amended Complaint</i>
04/30/2015	 Certificate of Service Filed by: Plaintiff 5316 Clover Blossom CT Trust <i>Certificate of Service</i>
05/06/2015	 Order Granting Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Order Granting Motion to amend Complaint</i>
05/07/2015	 Notice of Entry Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Notice of Entry of Order</i>
05/18/2015	 Motion for Summary Judgment Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Motion for Summary Judgment</i>
05/22/2015	 Notice of Association of Counsel Filed By: Defendant U S Bank National Association <i>Notice of Appearance of Counsel on behalf of U.S. Bank National Association</i>
06/05/2015	 Substitution of Attorney Filed by: Defendant U S Bank National Association <i>Substitution of Counsel</i>
06/24/2015	 Stipulation and Order Filed by: Defendant U S Bank National Association <i>Stipulation And Order For Extension Of Time To Respond To Motion For Summary Judgment And Continue Hearing Date (First Request)</i>
06/29/2015	 Notice of Entry of Stipulation and Order Filed By: Defendant U S Bank National Association <i>Notice of Entry of Stipulation and Order for Extension of Time to Respond to Motion for Summary Judgment and Continue Hearing Date.</i>
07/21/2015	 Stipulation and Order Filed by: Defendant U S Bank National Association <i>Stipulation and Order Continuing Hearing on Plaintiff's Motion for Summary Judgment and Extending Time for U.S. Bank to Respond</i>
07/22/2015	 Opposition to Motion For Summary Judgment Filed By: Defendant U S Bank National Association <i>U.S. Bank, N.A.'s Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment Based on the Due Process Clause and Tender, or Alternatively, for Rule 56(f) Relief</i>
07/24/2015	 Initial Appearance Fee Disclosure Filed By: Defendant U S Bank National Association

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-14-704412-C

Initial Appearance Fee Disclosure for Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment Based on the Due Process Clause and Tender, Or Alternatively, for Rule 56(F) Relief

07/28/2015



Notice of Entry of Order

Filed By: Defendant U S Bank National Association
Notice Of Entry Of Stipulation and Order Continuing Hearing On Plaintiff's Motion For Summary Judgment And Extending Time For U.S. Bank To Respond

07/29/2015



Reply to Opposition

Filed by: Plaintiff 5316 Clover Blossom CT Trust
Reply in Support of Plaintiff's Motion for Summary Judgment and Opposition to Countermotion for Summary Judgment, or Alternatively, for Rule 56(F) Relief

08/06/2015

Motion for Summary Judgment (9:00 AM) (Judicial Officer: Crockett, Jim)
08/06/2015, 08/20/2015

Plaintiff's Motion for Summary Judgment

08/06/2015

Opposition and Countermotion (9:00 AM) (Judicial Officer: Crockett, Jim)
08/06/2015, 08/20/2015

U.S. Bank, N.A.'s Opposition to Plaintiff's Motion for Summary Judgment and Countermotion for Summary Judgment Based on the Due Process Clause and Tender, or Alternatively, for Rule 56(f) Relief

08/06/2015



All Pending Motions (9:00 AM) (Judicial Officer: Crockett, Jim)

08/13/2015



Supplement

Filed by: Plaintiff 5316 Clover Blossom CT Trust
Supplemental Points and Authorities in Support of Plaintiff's Motion for Summary Judgment and In Opposition to Defendant's Countermotion for Summary Judgment

08/13/2015



Reply in Support

Filed By: Defendant U S Bank National Association
U.S. Bank, N.A.'s Supplemental Briefing in Support of Its Countermotion for Summary Judgment and Opposition to Plaintiff's Motion for Summary Judgment

08/20/2015



All Pending Motions (3:00 AM) (Judicial Officer: Crockett, Jim)

09/10/2015



Notice of Entry of Judgment

Filed By: Plaintiff 5316 Clover Blossom CT Trust
Notice of Entry of Judgment

09/10/2015



Status Check (9:00 AM) (Judicial Officer: Crockett, Jim)

Status Check - Trial Readiness

09/10/2015



Findings of Fact, Conclusions of Law and Judgment

Filed by: Plaintiff 5316 Clover Blossom CT Trust
(Vacated 8/3/17) Findings of Fact, Conclusions of law, and Judgment Granting Quiet Title

09/23/2015



Order to Statistically Close Case

Civil Order to Statistically Close Case










09/28/2015



Notice














Filed By: Defendant U S Bank National Association
Notice of Disassociation

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-14-704412-C













09/28/2015	 Case Appeal Statement Filed By: Defendant U S Bank National Association <i>U.S. Bank, N.A.'S Case Appeal Statement</i>
09/28/2015	 Notice of Appeal Filed By: Defendant U S Bank National Association <i>U.S. Bank, N.A.'s Notice of Appeal</i>
10/20/2015	CANCELED Pre Trial Conference (9:30 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - per Judge</i>
11/12/2015	CANCELED Calendar Call (9:30 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - per Judge</i>
11/16/2015	CANCELED Bench Trial (10:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - per Judge</i> <i>Civil Bench Trial</i>
07/25/2017	 Motion to Strike Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Motion to Strike Demand for Jury Trial</i>
07/31/2017	 NV Supreme Court Clerks Certificate/Judgment -Remanded <i>Nevada Supreme Court Clerk's Certificate Judgment - Vacated and Remand</i>
07/31/2017	Clerk's Certificate (Judicial Officer: Crockett, Jim) Debtors: U S Bank National Association (Defendant) Creditors: 5316 Clover Blossom CT Trust (Plaintiff) Judgment: 07/31/2017, Docketed: 08/01/2017 Comment: Supreme Court No. 68915 APPEAL VACATED AND REMANDED
08/03/2017	 Order <i>Order Vacating Judgment and Setting Further Proceedings Re: The Court of Appeals Court</i> <i>Order Vacating Judgment and Remanding</i>
08/03/2017	Amended Summary Judgment (Judicial Officer: Crockett, Jim) Debtors: U S Bank National Association (Defendant) Creditors: 5316 Clover Blossom CT Trust (Plaintiff) Judgment: 08/03/2017, Docketed: 09/17/2015 Comment: Vacated
08/11/2017	 Opposition to Motion Filed By: Defendant U S Bank National Association <i>U.S. Bank, N.A., as Trustee's Opposition to 5316 Clover Blossom Ct Trust's Motion to Strike</i> <i>Demand for Jury Trial</i>
08/16/2017	 Stipulation and Order Filed by: Defendant U S Bank National Association <i>Stipulation and Order Extending Discovery (First Request)</i>
08/18/2017	 Notice of Entry of Stipulation and Order Filed By: Defendant U S Bank National Association <i>Notice of Entry of Stipulation and Order Extending Discovery (First Request)</i>
08/23/2017	 Reply in Support Filed By: Plaintiff 5316 Clover Blossom CT Trust

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-14-704412-C










Reply in Support of Motion to Strike Jury Demand

08/31/2017	 Motion to Strike (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Plaintiff's Motion to Strike Demand for Jury Trial</i>
09/28/2017	 Stipulation and Order Filed by: Defendant U S Bank National Association <i>Stipulation and Order to Amend Pleadings and Add Parties</i>
09/30/2017	 Notice of Entry of Stipulation and Order Filed By: Defendant U S Bank National Association <i>Notice of Entry of Stipulation and Order to Amend Pleading and Add Parties</i>
10/03/2017	 Further Proceedings (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Order Vacating Judgment and Setting Further Proceedings Re: The Court of Appeals Court Order Vacating Judgment and Remanding</i>
10/04/2017	 Order Granting Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Order Granting Plaintiff's motion to Strike Jury Demand</i>
10/05/2017	 Notice of Entry Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Notice of Entry of Order</i>
10/10/2017	 Answer and Counterclaim Filed By: Defendant U S Bank National Association <i>U.S. Bank, N.A., as Trustee's Answer to 5316 Clover Blossom Trust's Amended Complaint, Counterclaims, and Cross-Claims</i>
10/16/2017	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial</i>
10/19/2017	 Affidavit of Service Filed By: Defendant U S Bank National Association <i>Affidavit of Service on Country Garden Owners Association</i>
10/23/2017	 Motion to Dismiss Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>(2/7/18 Converted to Motion for Summary Judgment) Motion to Dismiss Counterclaim</i>
11/09/2017	 Opposition Filed By: Defendant U S Bank National Association <i>U.S. Bank, N.A., As Trustee s Opposition To 5316 Clover Blossom Ct Trust s Motion To Dismiss Counterclaim</i>
11/09/2017	 Motion to Dismiss Filed By: Cross Defendant Country Garden Owners Association <i>Country Garden Owners Association s Motion To Dismiss The Crossclaims Of U.S. Bank, National Association</i>
11/09/2017	 Initial Appearance Fee Disclosure Filed By: Cross Defendant Country Garden Owners Association <i>Country Garden Owners Association s Initial Appearance Fee Disclosure</i>





DEPARTMENT 24
CASE SUMMARY
CASE NO. A-14-704412-C

11/09/2017	 Disclosure Statement Party: Cross Defendant Country Garden Owners Association <i>Country Garden Owners Association s NRCP 7.1 Disclosure Statement</i>
11/21/2017	 Reply in Support Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Plaintiff's Reply in Support of Motion to Dismiss</i>
11/22/2017	 Amended Certificate of Service Party: Plaintiff 5316 Clover Blossom CT Trust <i>Amended Certificate of Service</i>
11/27/2017	 Opposition to Motion Filed By: Defendant U S Bank National Association <i>U.S. Bank, N.A., as Trustee's Opposition to Country Garden Owners Association's Motion to Dismiss</i>
11/29/2017	 Supplemental <i>Supplemental Authority in Support of Motion to Dismiss Counterclaim</i>
11/30/2017	 Motion to Dismiss (9:00 AM) (Judicial Officer: Crockett, Jim) 11/30/2017, 12/12/2017 <i>Plaintiff's Motion to Dismiss Counterclaim</i>
12/07/2017	 Reply in Support Filed By: Cross Defendant Country Garden Owners Association <i>Country Garden Owners Association s Reply In Support Of Motion To Dismiss The Crossclaims Of U.S. Bank, National Association</i>
12/12/2017	Motion to Dismiss (9:00 AM) (Judicial Officer: Crockett, Jim) <i>Cross Defendant Country Garden Owner's Association's Motion to Dismiss the Crossclaim of U.S. Bank National Association</i>
12/12/2017	 All Pending Motions (9:00 AM) (Judicial Officer: Crockett, Jim)
12/26/2017	 Notice of Change of Address Filed By: Defendant U S Bank National Association <i>Notice Of Change Of Address</i>
02/07/2018	Summary Judgment (Judicial Officer: Crockett, Jim) Debtors: U S Bank National Association (Defendant) Creditors: 5316 Clover Blossom CT Trust (Plaintiff) Judgment: 02/07/2018, Docketed: 02/08/2018
02/07/2018	 Findings of Fact, Conclusions of Law and Judgment <i>Findings of Fact, Conclusions of Law, and Judgment</i>
02/07/2018	 Notice Filed By: Defendant U S Bank National Association <i>Notice of Completion of NRED Mediation</i>
02/08/2018	 Status Check: Trial Readiness (9:00 AM) (Judicial Officer: Crockett, Jim)

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-14-704412-C

02/08/2018	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Notice of Entry of Findings of Fact, Conclusions of Law</i>
02/26/2018	 Motion to Reconsider Filed By: Defendant U S Bank National Association <i>U.S. Bank, N.A., as Trustee's Motion for Reconsideration Under NRCP 59</i>
03/01/2018	 Notice of Hearing Filed By: Defendant U S Bank National Association <i>Notice of Hearing on U.S. Bank, N.A., as Trustee's Motion for Reconsideration under NRCP 59</i>
03/14/2018	 Opposition Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Plaintiff's Opposition to U.s. Bank, N.A., as Trustee s Motion for Reconsideration under NRCP 59</i>
04/03/2018	 Motion For Reconsideration (3:00 AM) (Judicial Officer: Crockett, Jim) <i>Defendant U.S. Bank, N.A., as Trustee's Motion for Reconsideration under NRCP 59</i>
04/13/2018	Summary Judgment (Judicial Officer: Crockett, Jim) Debtors: U S Bank National Association (Cross Claimant) Creditors: Country Garden Owners Association (Cross Defendant) Judgment: 04/13/2018, Docketed: 04/16/2018
04/13/2018	 Findings of Fact, Conclusions of Law and Judgment Filed by: Cross Defendant Country Garden Owners Association <i>Order Granting Country Garden Owners' Association's Motion to Dismiss the Crossclaims of US Bank, National Association, Findings of Fact, Conclusions of Law, and Judgment</i>
04/13/2018	Order of Dismissal (Judicial Officer: Crockett, Jim) Debtors: U S Bank National Association (Defendant) Creditors: 5316 Clover Blossom CT Trust (Plaintiff) Judgment: 04/13/2018, Docketed: 04/16/2018 Comment: 4/18/18 Dismissed Per Dept (McBride) Debtors: U S Bank National Association (Counter Claimant) Creditors: 5316 Clover Blossom CT Trust (Counter Defendant) Judgment: 04/13/2018, Docketed: 04/16/2018 Comment: 4/18/18 Dismissed Per Dept (McBride) Debtors: U S Bank National Association (Cross Claimant) Creditors: Country Garden Owners Association (Cross Defendant) Judgment: 04/13/2018, Docketed: 04/16/2018 Comment: 4/18/18 Dismissed Per Dept (McBride)
04/16/2018	 Notice of Entry of Order <i>Notice Of Entry Of Order Granting Country Garden Owners Association s Motion To Dismiss The Crossclaims Of U.S. Bank, National Association, Findings Of Fact, Conclusions Of Law, And Judgment</i>
04/24/2018	CANCELED Pre Trial Conference (9:30 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - Case Closed</i>
05/01/2018	 Order Denying <i>Order Denying U.S. Ban, N.A., as Trustee's motion for Reconsideration under NRCP 59</i>
05/01/2018	 Notice of Change of Address

DEPARTMENT 24
CASE SUMMARY
CASE NO. A-14-704412-C

	Filed By: Plaintiff 5316 Clover Blossom CT Trust <i>Notice of Change of Address</i>	
05/01/2018	 Notice of Entry <i>Notice of Entry of Order</i>	
05/10/2018	 Notice of Change of Address <i>Amended Notice of Change of Address</i>	
05/10/2018	 Notice of Appeal Filed By: Defendant U S Bank National Association <i>Defendant U.S. Bank, N.A., as Trustee's Notice of Appeal</i>	
05/10/2018	 Case Appeal Statement Filed By: Defendant U S Bank National Association <i>Defendant US Bank, N.A., as Trustee's Case Appeal Statement</i>	
05/17/2018	CANCELED Calendar Call (9:30 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - Case Closed</i>	
05/21/2018	CANCELED Bench Trial (10:00 AM) (Judicial Officer: Crockett, Jim) <i>Vacated - Case Closed</i>	

DATE	FINANCIAL INFORMATION	
	Cross Defendant Country Garden Owners Association	
	Total Charges	223.00
	Total Payments and Credits	223.00
	Balance Due as of 5/14/2018	0.00
	Defendant U S Bank National Association	
	Total Charges	471.00
	Total Payments and Credits	471.00
	Balance Due as of 5/14/2018	0.00
	Plaintiff 5316 Clover Blossom CT Trust	
	Total Charges	470.00
	Total Payments and Credits	470.00
	Balance Due as of 5/14/2018	0.00
	Defendant U S Bank National Association	
	Appeal Bond Balance as of 5/14/2018	500.00

DISTRICT COURT CIVIL COVER SHEET

A-14-704412-C XVIII

County, Nevada

Case No. _____
(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <div style="text-align: center;">5316 CLOVER BLOSSOM CT TRUST</div>	Defendant(s) (name/address/phone): U.S. BANK, NATIONAL ASSOCIATION, SUCCESSOR TRUSTEE TO BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO LASALLE BANK, N.A., AS TRUSTEE TO THE HOLDERS OF THE ZUNI MORTGAGE LOAN TRUST 2006-0A1, MORTGAGE LOAN PASS-THROUGH CERTIFICATES SERIES 2006-0A1; and CLEAR RECON CORPS
Attorney (name/address/phone): <div style="text-align: center;">MICHAEL F. BOHN, ESQ. 376 East warm Springs Road, Suite 140 Las Vegas, NV 89119 (702) 642-3113</div>	Attorney (name/address/phone): <div style="text-align: center;">[Signature]</div>

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

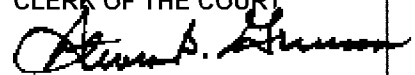
Business Court filings should be filed using the Business Court civil coversheet.

July 25, 2014

Date

/s/ Michael F. Bohn, Esq. /
Signature of initiating party or representative

See other side for family-related case filings.



1 **FFCL**
MICHAEL F. BOHN, ESQ.
2 Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
3 ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
4 atrippiedi@bohnlawfirm.com
LAW OFFICES OF
5 MICHAEL F. BOHN, ESQ., LTD.
376 E. Warm Springs Rd., Ste. 140
6 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
7 Attorney for plaintiff

8 DISTRICT COURT
CLARK COUNTY, NEVADA

9
10 5316 CLOVER BLOSSOM CT TRUST

11 Plaintiff,

12 vs.

13 U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
14 AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
15 THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
16 LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
17 CORPS

18 Defendants.

19 U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
20 AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
21 THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
22 LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1,

23 Counterclaimant,

24 vs.

25 5316 CLOVER BLOSSOM CT TRUST

26 Counterdefendant.
27
28

CASE NO.: A-14-704412-C
DEPT NO.: XXIV

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND JUDGMENT**

Date of Hearing: December 12, 2017
Time of Hearing: 9:00 a.m.

1 U.S. BANK, NATIONAL ASSOCIATION,
2 SUCCESSOR TRUSTEE TO BANK OF
3 AMERICA, N.A., SUCCESSOR BY MERGER
4 TO LASALLE BANK, N.A., AS TRUSTEE TO
5 THE HOLDERS OF THE ZUNI MORTGAGE
6 LOAN TRUST 2006-OA1, MORTGAGE
7 LOAN PASS-THROUGH CERTIFICATES
8 SERIES 2006-OA1,

9 Cross-claimant,

10 vs.

11 5316 CLOVER BLOSSOM CT TRUST

12 Cross-defendant.

13 Plaintiff 5316 Clover Blossom Ct Trust's motion to dismiss having come before the court on the
14 12th day of December, 2017, at 9:00 a.m., Adam R. Trippiedi, Esq. appearing on behalf of plaintiff; Scott
15 Lachman, Esq. appearing on behalf of defendant U.S. Bank, National Association, Successor Trustee to
16 Bank of America, N.A., Successor by Merger to Lasalle Bank, N.A., as Trustee to the Holders of the Zuni
17 Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-through Certificates Series 2006-OA1 ("US
18 Bank"); and Elizabeth B. Lowell, Esq. appearing on behalf of cross-defendant Country Garden Owners'
19 Association, and the court, having reviewed plaintiff's motion and defendant's opposition, and having
20 heard the arguments of counsel, makes its findings of fact, conclusion of law and judgment as follows.

21 **FINDINGS OF FACT**

22 1. 5316 Clover Blossom Ct Trust is the owner of real property commonly known as 5316 Clover
23 Blossom Court, North Las Vegas, Nevada (hereinafter referred to as "the Property").

24 2. The property is encumbered by a Declaration of Covenants, Conditions, and Restrictions for
25 Country Garden (Arbor Gate) (hereinafter referred to as the "CC&Rs").

26 3. 5316 Clover Blossom Ct Trust acquired the Property from Country Garden Owners'
27 Association (hereinafter the "HOA") at a foreclosure sale conducted on January 16, 2013.

28 4. The foreclosure sale arose from a delinquency in assessments due from the former owners to
the HOA pursuant to NRS Chapter 116.

1 5. US Bank is the beneficiary of a deed of trust that was originally recorded as an encumbrance
2 against the Property on June 30, 2004.

3 6. On June 20, 2011, an assignment of the deed of trust was recorded which assigned the
4 beneficial interest in the deed of trust to US Bank.

5 7. At some point, the former owner of the property became delinquent in paying assessments and
6 the HOA and its foreclosure agent, Alessi & Koenig, LLC (hereinafter "the foreclosure agent"), began
7 foreclosure proceedings based on the delinquent assessments.

8 8. On January 30, 2012, and again on February 6, 2012, the foreclosure agent served a Notice of
9 Delinquent Assessment Lien on the former owners of the property via regular and certified mail.

10 9. On February 22, 2012, the foreclosure agent recorded a Notice of Delinquent Assessment Lien
11 against the property.

12 10. On April 20, 2012, the foreclosure agent recorded a Notice of Default and Election to Sell
13 under homeowners association lien against the property.

14 11. On April 30, 2012, the foreclosure agent mailed copies of the notice of default to the former
15 owner, to MERS, to US Bank, and to other interested parties.

16 12. On October 31, 2012, a Notice of Foreclosure Sale was recorded against the property.

17 13. On October 25, 2012, the foreclosure agent mailed copies of the notice of foreclosure sale
18 to the former owner, US Bank, and other interested parties.

19 14. The foreclosure agent also served the notice of foreclosure sale on the former owners by
20 posting a copy of the notice in a conspicuous place on the Property, and also posted copies of the notice
21 in three public locations throughout Clark County.

22 15. The foreclosure agent also published the notice of sale in the Nevada Legal News.

23 16. As reflected by the conclusive recitals in the foreclosure deed, 5316 Clover Blossom Ct Trust
24 entered the high bid of \$8,200.00 at the public auction conducted on January 16, 2013, to purchase the
25 Property.

26 17. The foreclosure agent issued a deed upon sale, which was recorded on January 24, 2013, and
27 contains the following recitals:

1 This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116
2 et seq., and that certain Notice of Delinquent Assessment Lien, described herein.
3 Default occurred as set forth in a Notice of Default and Election to Sell which was
4 recorded in the office of the recorder of said county. All requirements of law regarding
the mailing of copies of notices and the posting and publication of the copies of the
Notice of Sale have been complied with. Said property was sold by said Trustee at
public auction on January 16, 2013 at the place indicated on the Notice of Trustee's Sale.

5 18. US Bank alleges that on November 21, 2012, US Bank, by way of its agent, sent
6 correspondence to the foreclosure agent requesting an accounting of the HOA arrears.

7 19. In response, the foreclosure agent sent a letter to US Bank's agent. The foreclosure
8 agent's letter stated that the total amount due was \$4,186.00.

9 20. On December 6, 2012, US Bank, by way of its agent, mailed a check in the amount of
10 \$1,494.50 to the foreclosure agent, along with an accompanying letter, in an effort to satisfy the
11 HOA's super-priority lien.

12 21. There is no evidence to indicate the HOA or foreclosure agent accepted or otherwise
13 responded to the \$1,494.50 check.

14 22. After sending the letter and \$1,494.50 check to the foreclosure agent, US Bank made no
15 other efforts to pay off the lien or otherwise prevent the foreclosure sale from going forward.

16 23. Prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion
17 of the HOA lien representing 9 months of assessments for common expenses.

18 24. US Bank did not present evidence of any fraud, oppression or unfairness in regards to the
19 foreclosure sale which would account for or bring about an unreasonably low purchase price.

20 25. 5316 Clover Blossom Ct Trust is a bona fide purchaser, and the US Bank has failed to
21 present sufficient proof to disprove that the 5316 Clover Blossom Ct Trust was a bona fide purchaser.

22 26. Any findings of fact which should be considered to be a conclusion of law shall be treated
23 as such.

24 CONCLUSIONS OF LAW

25 1. If, in a motion under NRCP 12(b)(5), matters outside the pleading are presented to and not
26 excluded by the court, the motion shall be treated as one for summary judgment and disposed of as
27 provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made

1 pertinent to such a motion by Rule 56. See NRCP 12(b).

2 2. This Court finds that, by virtue of the arguments presented in 5316 Clover Blossom Ct
3 Trust's motion to dismiss, US Bank's opposition, and 5316 Clover Blossom Ct Trust's reply, matters
4 outside the counterclaim were presented and, thus, 5316 Clover Blossom Ct Trust's motion to dismiss
5 was converted into a motion for summary judgment and this court is treating it as such.

6 3. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings
7 and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the
8 moving party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc.,
9 121 Nev. 724, 729, 121 P.3d 1026 (2005).

10 4. To defeat a motion for summary judgment the non-moving party bears the burden to "do
11 more than simply show there is some metaphysical doubt: as to the operative facts. Wood, 121 Nev.
12 at 732 (citing Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1983)).
13 Moreover, the non-moving party must come forward with specific facts showing a genuine issue
14 exists for trial. Matsushita, 475 U.S. at 587; Wood P.3d at 1130. Further, in ruling upon a motion for
15 summary judgment, the Court must view all evidence and inferences in the light most favorable to the
16 non-moving party. Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008).

17 5. When ruling on a motion for summary judgment, the court may take judicial notice of the
18 public records attached to the motion. Harlow v. MTC Financial Inc. 865 F. Supp.2d 1095 (D. Nev.
19 2012). The recorded exhibits to US Bank's counterclaim are public records of which the Court may,
20 and did take judicial notice. See NRS 47.150; Lemel v. Smith, 64 Nev. 545 (1947) (Judicial Notice
21 takes the place of proof and is of equal force.") "Documents accompanied by a certificate of
22 acknowledgment of a notary public or officer authorized by law to take acknowledgments are
23 presumed to be authentic." NRS 52.165.

24 6. Summary judgment in favor of 5316 Clover Blossom Ct Trust is proper.

25 7. The HOA foreclosure sale complied with all requirements of law, including but not limited
26 to, recording and mailing of copies of notice of delinquent assessment lien and notice of default and
27 election to sell under homeowners association lien, and the recording, mailing, posting, and

1 publication of the notice of foreclosure sale.

2 8. The law presumes foreclosure notices are received upon proof of mailing, and does not
3 require proof that the notices be received. Actual notice is not necessary as long as the statutory
4 requirements are met. Mailing of the notices is all that the statute requires. Hankins v. Administrator
5 of Veterans Affairs v. Administrator of Veterans Affairs 92 Nev. 578, 555 P.2d 483 (1976); Turner v.
6 Dewco 87 Nev. 14, 479 P.2d 462 (1971).

7 9. There is a public policy which favors a final and conclusive foreclosure sale as to the
8 purchaser. See 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr.
9 2d 711 (2011); McNeill Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2003); In re Suchy, 786
10 F.2d 900 (9th Cir. 1985); and Miller & Starr, California Real Property 3d §10:210.

11 10. There is a common law presumption that a foreclosure sale was conducted validly.
12 Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien
13 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353
14 (2014); Timm v. Dewsnup 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v.
15 McQueen, 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American
16 Bank and Trust Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208
17 Ga. App. 702, 431 S.E. 2d 475 (Ga. App 1993).

18 11. Nevada has a disputable presumption that “the law has been obeyed.” See NRS
19 47.250(16). This creates a disputable presumption that the foreclosure sale was conducted in
20 compliance with the law.

21 12. 5316 Clover Blossom Ct Trust, as the record title holder of the property, has a
22 presumption of validity in its favor, and US Bank “has the burden to show that the sale should be set
23 aside in light of” 5316 Clover Blossom Ct Trust’s status as the record title holder. Nationstar
24 Mortgage v. Saticoy Bay, LLC Series 2227 Shadow Canyon, 133 Nev. Adv. Op. 91 (2017).

25 13. The recitals in the foreclosure deed are sufficient and conclusive proof that the required
26 notices were mailed by the HOA. See NRS 116.31166 and NRS 47.240(6) which also provide that
27 conclusive presumptions include “[a]ny other presumption which, by statute, is expressly made

conclusive.” Because NRS 116.31166 contains such an expressly conclusive presumption, the recitals in the foreclosure deed are “conclusive proof” that US Bank bank was served with copies of the required notices for the foreclosure sale.

14. US Bank has not presented any evidence to show that equitable relief is warranted in this case or to disprove any of the recitals in the foreclosure deed.

15. US Bank has not presented any evidence to show any defect with the foreclosure sale or the recording and service of the notices prior to the foreclosure sale.

16. US Bank further argues that the low price when combined with fraud, unfairness, or oppression is sufficient to void said sale. However, US Bank failed to present any evidence of fraud, unfairness, or oppression in regards to the foreclosure sale.

17. US Bank argues there was fraud, oppression, or unfairness in the conduct of the sale because the foreclosure agent rejected US Bank’s tender. However, the fraud, oppression, or unfairness must bring about or account for the low purchase price. See Shadow Wood, et al. Examples would be collusion between the auctioneer and the purchaser to keep the price artificially low or an effort to prevent public notice of the auction. US Bank never explains how rejection of a tender accounts for a low purchase price.

18. Nevada Rule of Civil Procedure 9(b) requires that “[i]n all averments of fraud..., the circumstances constituting fraud... shall be stated with particularity.” US Bank, in alleging fraud in this matter, has not stated the basis for its fraud allegation with sufficient particularity or factual support.

19. There is no issue regarding whether the association foreclosed on the “super-priority” portion of its lien. The evidence and deed recitals show that both the notice of default and the notice of sale were properly mailed to US Bank. The language in both the notice of default and notice of sale shows that the HOA was foreclosing on a lien comprised of monthly assessments. As such, there is no genuine issue of material fact that the HOA possessed a super priority lien at the time of the foreclosure sale, and that the super priority lien was foreclosed upon. As stated in SFR, as to first deeds of trust, NRS 116.3116(2) splits an HOA lien into two pieces, a superpriority piece and a

1 subpriority piece. Unless the superpriority piece has been satisfied prior to the foreclosure sale, the
2 HOA foreclosure sale on its assessment lien would necessarily include both the superpriority piece
3 and a subpriority piece of the lien. US Bank failed to present any evidence that the superpriority
4 portion of the lien was satisfied prior to the foreclosure sale.

5 20. In considering whether equity supports setting aside the sale in question, the Court is to
6 consider any other factor bearing on the equities, including actions or inactions of both parties seeking
7 to set aside the sale and the impact on a bona fide purchaser for value. Shadow Wood at 1114
8 (finding “courts must consider the entirety of the circumstances that bear upon the equities”).

9 21. The attempted tender of assessments made by US Bank for \$1,494.50, does not affect
10 5316 Clover Blossom Ct Trust’s title to the property because US Bank had several different options to
11 prevent the sale from going forward and failed to do so. Specifically, US Bank could have “pa[id] the
12 entire amount and request[ed] a refund of the balance.” SFR at 418. US Bank also could have sought
13 “a temporary restraining order and preliminary injunction and fil[ed] a lis pendens on the property.”
14 Shadow Wood at 1114 n.7. US Bank failed to avail itself of any of these options and instead allowed
15 the HOA to foreclose.

16 22. US Bank’s tender letter contains conditions, including that the tender amount is “non-
17 negotiable”; that endorsement of the check “will be strictly construed as an unconditional
18 acceptance... of the facts” stated in the tender letter; and acceptance of the check is an
19 acknowledgment that the lien has been ““paid in full.”” Because of these conditions, the tender was
20 not valid and had no effect on the foreclosure sale of the HOA’s lien. Smith v. School Dist. No. 64
21 Marion County, 89 Kan. 225, 131 P. 557, 558 (1913) (“A conditional tender is not valid. Where it
22 appears that a larger sum than that tendered is claimed to be due, the offer is not effectual as a tender
23 if coupled with such conditions that acceptance of it as tendered involves an admission on the part of
24 the person accepting it that no more is due.”)

25 23. US Bank’s tender also contains conditions that were not consistent with Commission for
26 Common Interest Communities and Condominium Hotels’ (hereinafter “CCICCH”) Advisory
27 Opinion 2010-01 issued on December 8, 2010:

1 An association may collect as a part of the super priority lien (a) interest permitted by NRS
2 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any
3 statements of unpaid assessments and (d) the “costs of collecting” authorized by NRS
4 116.310313.

5 Accordingly, both a plain reading of the applicable provisions of NRS 116.3116 and
6 the policy determinations of commentators, the state of Connecticut and lenders
7 themselves support the conclusion that **associations should be able to include
8 specified costs of collecting as part of the association’s super priority lien.**

9 (emphasis added)

10 24. Furthermore, effective as of May 5, 2011, the CCICCH adopted NAC 116.470 in order to
11 set limits on the costs assessed in connection with a notice of delinquent assessment. NAC
12 116.470(4)(b) authorizes “[r]easonable attorney’s fees and actual costs, without any increase or
13 markup, incurred by the association for any legal services which do not include an activity described
14 in subsection 2.”

15 25. The fact that the foreclosure agent did not accept the tender does not affect 5316 Clover
16 Blossom Ct Trust’s title to the property because US Bank failed to take any steps to protect its interest
17 aside from mailing the letter and check, which was in an amount less than the full amount of the
18 HOA’s lien. Accordingly, US Bank is not entitled to equitable relief. Shadow Wood at 1114 n.7.

19 26. Specifically, the Nevada Supreme Court decision of Horizons at Seven Hills v. Ikon
20 Holdings, LLC, 132 Nev. Adv. Op. 35, 373 P.3d 66 (2016) did not exist on December 6, 2012, when
21 US Bank sent its tender, so the HOA and the foreclosure agent could not have relied upon that
22 authority.

23 27. To the contrary, the December 8, 2010, CCICCH opinion existed on December 6, 2012,
24 and the HOA and foreclosure agent could have relied upon that authority.

25 28. Furthermore, effective as of May 5, 2011, the CCICCH adopted NAC 116.470 in order to
26 set limits on the costs assessed in connection with a notice of delinquent assessment. NAC
27 116.470(4)(b) authorizes “[r]easonable attorney’s fees and actual costs, without any increase or
28 markup, incurred by the association for any legal services which do not include an activity described
in subsection 2.”

29. US Bank's further argues that the presence of a mortgage protection clause within the CC&Rs, which represents that the HOA lien "shall not affect the rights of the mortgagee under any first mortgage upon such Lot, Unit or Parcel," was evidence of fraud, oppression, and/or unfairness that rendered the foreclosure sale a subpriority sale. However, the mortgage protection language cited by US Bank was determined to be legally ineffective by the Nevada Supreme Court in SFR based on NRS 116.1104, which states that the provisions of NRS 116 "may not be varied by agreement, and rights conferred by it may not be waived." Based on SFR, this court finds the mortgage protection clause was invalid and thus was also not evidence of fraud, oppression, or unfairness.

30. Therefore, because US Bank's has failed to set forth material issues of fact demonstrating some fraud, unfairness, or oppression which led to the low purchase price, the Court finds that the price of the sale is not a legitimate basis to overturn the sale.

31. There is no issue of fact regarding whether the former owner was in default in payment of the assessments as well as whether the lien and foreclosure notices were properly served. The recitals in the foreclosure deed are conclusive as to these issues. Furthermore, 5316 Clover Blossom Ct Trust presented proof, which was not controverted, that the notices were mailed, published, and posted.

32. 5316 Clover Blossom Ct Trust is a bona fide purchaser ("BFP"). A subsequent purchaser is bona fide under common law principles if it takes the property "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." Bailey v. Butner, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947) (emphasis omitted); see also Moore v. De Bernardi, 47 Nev. 33, 54, 220 P. 544, 547 (1923) ("The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive.").

33. The evidence shows 5316 Clover Blossom Ct Trust purchased said property for valuable consideration in the amount of \$8,200.00 and had no actual, constructive, or inquiry notice of any dispute of title or defect in the sales process. Such evidence is clear from the fact US Bank did not pay

1 off the super-priority lien, attend the sale in question, record notice with the Clark County Recorder,
2 or attempt to take any other action to put potential buyers on notice of any dispute. US Bank was in
3 the position to take any number of simple steps to avoid a BFP issue and simply failed to take such
4 action. After being fully apprised of the pending foreclosure sale and taking no action, US Bank looks
5 now to enforce its rights. The Court notes that all that was required of US Bank to defeat BFP status
6 was to put purchasers on notice of their claim to the property by either showing up to the sale to
7 announce their claim of title, record a legal tender, file a lis pendens, or seek a temporary restraining
8 order. US Bank's argument that 5316 Clover Blossom Ct Trust cannot be a BFP based on the mere
9 fact that a Deed of Trust was recorded is not supported under the law.

10 34. In the absence of evidence to the contrary, US Bank had the burden of proving 5316
11 Clover Blossom Ct Trust was not a BFP because for 5316 Clover Blossom Ct Trust to prove it was a
12 BFP would be akin to proving a negative, i.e., proving 5316 Clover Blossom Ct Trust was not aware
13 of information which would defeat BFP status. See Shadow Wood at 1112 ("The question remains
14 whether NYCB demonstrated sufficient grounds to justify the district court in setting aside Shadow
15 Wood's foreclosure sale on NYCB's motion for summary judgment."); First Fidelity Thrift & Loan
16 Ass'n v. Alliance Bank, 60 Cal. App. 4th 1433, 1442, 71 Cal. Rptr. 2d 295 (1998) ("That Alliance
17 had knowledge of First Fidelity's equitable claim for reinstatement of its reconveyed deed of trust was
18 an element of First Fidelity's case.... Showing that Alliance was not an innocent purchaser for value
19 was hence an element of First Fidelity's claim.")

20 35. Equitable relief is only available when no adequate remedy at law exists. One who seeks
21 equitable relief cannot merely sit on its hands to its detriment. It would be a gross injustice for 5316
22 Clover Blossom Ct Trust, an innocent third party who paid valuable consideration, to have its
23 equitable rights subordinate to US Bank, who did nothing to protect itself at the foreclosure sale. See
24 generally Holmberg v. Armbrecht, 66 S. Ct. 582, 584 (1946)(quoting Russell v. Todd, 60 S. Ct. 527,
25 532 (1940)) (finding "[t]here must be conscience, good faith, and reasonable diligence, to call into
26 action the [equitable] powers of the court."). Therefore, the Court finds 5316 Clover Blossom Ct
27 Trust is a BFP, undisturbed by any issue raised in US Bank's opposition, as 5316 Clover Blossom Ct

1 Trust's equitable interest as an innocent purchaser cannot be outweighed by the inaction of US Bank.

2 36. US Bank is not entitled to equitable relief because it was on notice of the foreclosure sale
3 and failed to take adequate steps to protect its interest in the property. The Nevada Supreme Court
4 has stated, that "[w]here the complaining party has access to all the facts surrounding the questioned
5 transaction and merely makes a mistake as to the legal consequences of his act, equity should
6 normally not interfere, especially where the rights of third parties might be prejudiced thereby."
7 Shadow Wood, 366 P.3d at 1116 (quoting Nussbaumer v. Sup. Ct. in & for Yuma Cty., 107 Ariz.
8 504, 489 P.2d 843, 846 (1971)). In Shadow Wood, the Nevada Supreme Court held that
9 "[c]onsideration of harm to potentially innocent third parties is especially pertinent where [the lender]
10 did not use the legal remedies available to it to prevent the property from being sold to a third party,
11 such as by seeking a temporary restraining order and preliminary injunction and filing a lis pendens
12 on the property." Shadow Wood, 366 P.3d at 1114 fn. 7.

13 37. The policies and equities favor the 5316 Clover Blossom Ct Trust. In balancing the
14 equities, 5316 Clover Blossom Ct Trust's interest as the successor to a bona fide purchaser is not
15 outweighed by the inaction of US Bank.

16 38. US Bank shall take nothing by way of its counterclaim.

17 39. Any conclusion of law which should be a finding of fact shall be considered as such.

18 **ORDER and JUDGMENT**

19 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff 5316 Clover
20 Blossom Ct Trust's motion to dismiss, converted to a motion for summary judgment, is granted.

21 IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff 5316 Clover
22 Blossom Ct Trust and against defendant US Bank.

23 IT IS FURTHER ORDERED that title to the real property commonly known as 5316 Clover
24 Blossom Ct, North Las Vegas, Nevada 89031, and legally described as:

25 PARCEL I

26 LOT NINETY TWO (92) OF THE PLAT OF ARBOR GATE AS SHOWN BY MAP
27 THEREOF ON FILE IN BOOK 91 OF PLATS, PAGE 71, IN THE OFFICE OF THE
28 COUNTY RECORDER OF CLARK COUNTY, NEVADA.

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PARCEL II
A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND ENJOYMENT
IN AND TO THE ASSOCIATION PROPERTY AS SET FORTH IN THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
COUNTRY GARDEN (ARBOR GATE) A COMMON INTEREST COMMUNITY
RECORDED FEBRUARY 25, 2000 IN BOOK 20000225 AS DOCUMENT NO. 00963,
OF OFFICIAL RECORDS OF CLARK COUNTY, NEVADA, AS THE SAME MAY
FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED, WHICH
EASEMENT IS APPURTENANT TO PARCEL ONE.

APN 124-31-220-092

is hereby quieted in the name of 5316 Clover Blossom Ct Trust.

IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on January 16,
2013, as evidenced by the foreclosure deed recorded January 24, 2013, the interests of defendant US
Bank, as well as its successors and assigns in the property commonly known as 5316 Clover Blossom
Ct, North Las Vegas, Nevada 89031, are extinguished.

IT IS FURTHER ORDERED that defendant US Bank, as well as its successors and assigns,
have no further right, title or claim to the real property commonly known as 5316 Clover Blossom Ct,
North Las Vegas, Nevada 89031.

IT IS FURTHER ORDERED that defendant US Bank, as well as its successors and assigns, or
anyone acting on their behalf. are forever enjoined from asserting any estate, right, title or interest in
the real property commonly known as 5316 Clover Blossom Ct, North Las Vegas, Nevada 89031 as a
result of the deed of trust recorded on June 30, 2004, as instrument number 20040630-0002408.

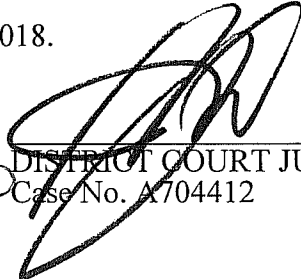
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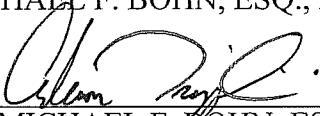
1 IT IS FURTHER ORDERED that defendant US Bank, as well as its successors and assigns or
2 anyone acting on their behalf, are forever barred from enforcing any rights against the real property
3 commonly known as 5316 Clover Blossom Ct, North Las Vegas, Nevada 89031 as a result of the
4 deed of trust recorded on June 30, 2004, as instrument number 20040630-0002408.

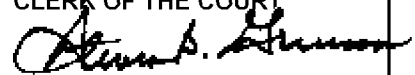
5 DATED this 5 day of February, 2018.

6
7 
8 DISTRICT COURT JUDGE
9 Case No. A704412

10 Respectfully submitted by:

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

13 By: 
14 MICHAEL F. BOHN, ESQ.
15 ADAM R. TRIPPIEDI, ESQ.
16 376 East Warm Springs Road, Ste. 140
17 Las Vegas, Nevada 89119
18 Attorney for plaintiff
19
20
21
22
23
24
25
26
27
28



1 **NEFF**
MICHAEL F. BOHN, ESQ.
2 Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
3 ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No.: 12294
4 atrippiedi@bohnlawfirm.com
LAW OFFICES OF
5 MICHAEL F. BOHN, ESQ., LTD.
376 East Warm Springs Road, Ste. 140
6 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX

7 Attorney for plaintiff

8
9 DISTRICT COURT
10 CLARK COUNTY NEVADA

11 5316 CLOVER BLOSSOM CT TRUST

12 Plaintiff,

13 vs.

14 U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF AMERICA,
15 N.A., SUCCESSOR BY MERGER TO LASALLE
BANK, N.A., AS TRUSTEE TO THE HOLDERS OF
16 THE ZUNI MORTGAGE LOAN TRUST 2006-OA1,
MORTGAGE LOAN PASS-THROUGH
17 CERTIFICATES SERIES 2006-OA1; and CLEAR
RECON CORPS

18 Defendants.

CASE NO.: A-14-704412-C
DEPT NO.: XXIV

19
20 **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW**

21 TO: Parties above-named; and

22 TO: Their Attorney of Record

23 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **FINDINGS OF FACT,**

24 ///

25 ///

26 ///

1 **CONCLUSIONS OF LAW** has been entered on the 7th day of February, 2018, in the above captioned
2 matter, a copy of which is attached hereto.

3 Dated this 8th day of February, 2018.

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

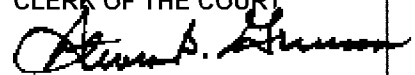
6
7 By: /s/ /Michael F. Bohn, Esq./
8 MICHAEL F. BOHN, ESQ.
9 376 E. Warm Springs Rd., Ste. 140
10 Las Vegas, NV 89119
11 Attorney for plaintiff

12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
14 OFFICES OF MICHAEL F. BOHN., ESQ., and on the 8th day of February, 2018, an electronic copy of
15 the **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW** was served on
16 opposing counsel via the Court's electronic service system to the following counsel of record:

17 Darren T. Brenner, Esq.
18 Rebekkah B. Bodoff, Esq.
19 AKERMAN LLP
20 1635 Village Center Circle, Suite 200
21 Las Vegas, Nevada 89134

22 /s/ /Marc Sameroff/
23 An Employee of the LAW OFFICES OF
24 MICHAEL F. BOHN, ESQ., LTD.
25
26
27
28



1 **FFCL**
MICHAEL F. BOHN, ESQ.
2 Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
3 ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
4 atrippiedi@bohnlawfirm.com
LAW OFFICES OF
5 MICHAEL F. BOHN, ESQ., LTD.
376 E. Warm Springs Rd., Ste. 140
6 Las Vegas, Nevada 89119
(702) 642-3113/ (702) 642-9766 FAX
7 Attorney for plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 5316 CLOVER BLOSSOM CT TRUST

11 Plaintiff,

12 vs.

13 U.S. BANK, NATIONAL ASSOCIATION,
14 SUCCESSOR TRUSTEE TO BANK OF
15 AMERICA, N.A., SUCCESSOR BY MERGER
16 TO LASALLE BANK, N.A., AS TRUSTEE TO
17 THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS

18 Defendants.

19 U.S. BANK, NATIONAL ASSOCIATION,
20 SUCCESSOR TRUSTEE TO BANK OF
21 AMERICA, N.A., SUCCESSOR BY MERGER
22 TO LASALLE BANK, N.A., AS TRUSTEE TO
23 THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1,

24 Counterclaimant,

25 vs.

26 5316 CLOVER BLOSSOM CT TRUST

27 Counterdefendant.

CASE NO.: A-14-704412-C
DEPT NO.: XXIV

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND JUDGMENT**

Date of Hearing: December 12, 2017
Time of Hearing: 9:00 a.m.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN TRUST 2006-OA1, MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1,

Cross-claimant,

vs.

5316 CLOVER BLOSSOM CT TRUST

Cross-defendant.

Plaintiff 5316 Clover Blossom Ct Trust's motion to dismiss having come before the court on the 12th day of December, 2017, at 9:00 a.m., Adam R. Trippiedi, Esq. appearing on behalf of plaintiff; Scott Lachman, Esq. appearing on behalf of defendant U.S. Bank, National Association, Successor Trustee to Bank of America, N.A., Successor by Merger to Lasalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-through Certificates Series 2006-OA1 ("US Bank"); and Elizabeth B. Lowell, Esq. appearing on behalf of cross-defendant Country Garden Owners' Association, and the court, having reviewed plaintiff's motion and defendant's opposition, and having heard the arguments of counsel, makes its findings of fact, conclusion of law and judgment as follows.

FINDINGS OF FACT

1. 5316 Clover Blossom Ct Trust is the owner of real property commonly known as 5316 Clover Blossom Court, North Las Vegas, Nevada (hereinafter referred to as "the Property").

2. The property is encumbered by a Declaration of Covenants, Conditions, and Restrictions for Country Garden (Arbor Gate) (hereinafter referred to as the "CC&Rs").

3. 5316 Clover Blossom Ct Trust acquired the Property from Country Garden Owners' Association (hereinafter the "HOA") at a foreclosure sale conducted on January 16, 2013.

4. The foreclosure sale arose from a delinquency in assessments due from the former owners to the HOA pursuant to NRS Chapter 116.

1 5. US Bank is the beneficiary of a deed of trust that was originally recorded as an encumbrance
2 against the Property on June 30, 2004.

3 6. On June 20, 2011, an assignment of the deed of trust was recorded which assigned the
4 beneficial interest in the deed of trust to US Bank.

5 7. At some point, the former owner of the property became delinquent in paying assessments and
6 the HOA and its foreclosure agent, Alessi & Koenig, LLC (hereinafter "the foreclosure agent"), began
7 foreclosure proceedings based on the delinquent assessments.

8 8. On January 30, 2012, and again on February 6, 2012, the foreclosure agent served a Notice of
9 Delinquent Assessment Lien on the former owners of the property via regular and certified mail.

10 9. On February 22, 2012, the foreclosure agent recorded a Notice of Delinquent Assessment Lien
11 against the property.

12 10. On April 20, 2012, the foreclosure agent recorded a Notice of Default and Election to Sell
13 under homeowners association lien against the property.

14 11. On April 30, 2012, the foreclosure agent mailed copies of the notice of default to the former
15 owner, to MERS, to US Bank, and to other interested parties.

16 12. On October 31, 2012, a Notice of Foreclosure Sale was recorded against the property.

17 13. On October 25, 2012, the foreclosure agent mailed copies of the notice of foreclosure sale
18 to the former owner, US Bank, and other interested parties.

19 14. The foreclosure agent also served the notice of foreclosure sale on the former owners by
20 posting a copy of the notice in a conspicuous place on the Property, and also posted copies of the notice
21 in three public locations throughout Clark County.

22 15. The foreclosure agent also published the notice of sale in the Nevada Legal News.

23 16. As reflected by the conclusive recitals in the foreclosure deed, 5316 Clover Blossom Ct Trust
24 entered the high bid of \$8,200.00 at the public auction conducted on January 16, 2013, to purchase the
25 Property.

26 17. The foreclosure agent issued a deed upon sale, which was recorded on January 24, 2013, and
27 contains the following recitals:

1 This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116
2 et seq., and that certain Notice of Delinquent Assessment Lien, described herein.
3 Default occurred as set forth in a Notice of Default and Election to Sell which was
4 recorded in the office of the recorder of said county. All requirements of law regarding
the mailing of copies of notices and the posting and publication of the copies of the
Notice of Sale have been complied with. Said property was sold by said Trustee at
public auction on January 16, 2013 at the place indicated on the Notice of Trustee's Sale.

5 18. US Bank alleges that on November 21, 2012, US Bank, by way of its agent, sent
6 correspondence to the foreclosure agent requesting an accounting of the HOA arrears.

7 19. In response, the foreclosure agent sent a letter to US Bank's agent. The foreclosure
8 agent's letter stated that the total amount due was \$4,186.00.

9 20. On December 6, 2012, US Bank, by way of its agent, mailed a check in the amount of
10 \$1,494.50 to the foreclosure agent, along with an accompanying letter, in an effort to satisfy the
11 HOA's super-priority lien.

12 21. There is no evidence to indicate the HOA or foreclosure agent accepted or otherwise
13 responded to the \$1,494.50 check.

14 22. After sending the letter and \$1,494.50 check to the foreclosure agent, US Bank made no
15 other efforts to pay off the lien or otherwise prevent the foreclosure sale from going forward.

16 23. Prior to the HOA foreclosure sale, no individual or entity paid the super-priority portion
17 of the HOA lien representing 9 months of assessments for common expenses.

18 24. US Bank did not present evidence of any fraud, oppression or unfairness in regards to the
19 foreclosure sale which would account for or bring about an unreasonably low purchase price.

20 25. 5316 Clover Blossom Ct Trust is a bona fide purchaser, and the US Bank has failed to
21 present sufficient proof to disprove that the 5316 Clover Blossom Ct Trust was a bona fide purchaser.

22 26. Any findings of fact which should be considered to be a conclusion of law shall be treated
23 as such.

24 CONCLUSIONS OF LAW

25 1. If, in a motion under NRCPC 12(b)(5), matters outside the pleading are presented to and not
26 excluded by the court, the motion shall be treated as one for summary judgment and disposed of as
27 provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made

1 pertinent to such a motion by Rule 56. See NRCP 12(b).

2 2. This Court finds that, by virtue of the arguments presented in 5316 Clover Blossom Ct
3 Trust's motion to dismiss, US Bank's opposition, and 5316 Clover Blossom Ct Trust's reply, matters
4 outside the counterclaim were presented and, thus, 5316 Clover Blossom Ct Trust's motion to dismiss
5 was converted into a motion for summary judgment and this court is treating it as such.

6 3. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings
7 and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the
8 moving party is entitled to judgment as a matter of law. See NRCP 56(c); Wood v. Safeway, Inc.,
9 121 Nev. 724, 729, 121 P.3d 1026 (2005).

10 4. To defeat a motion for summary judgment the non-moving party bears the burden to "do
11 more than simply show there is some metaphysical doubt: as to the operative facts. Wood, 121 Nev.
12 at 732 (citing Matsushita Electric Industrial Co. v. Zenith Radio, 475 U.S. 574, 586 (1983)).
13 Moreover, the non-moving party must come forward with specific facts showing a genuine issue
14 exists for trial. Matsushita, 475 U.S. at 587; Wood P.3d at 1130. Further, in ruling upon a motion for
15 summary judgment, the Court must view all evidence and inferences in the light most favorable to the
16 non-moving party. Torrealba v. Kesmetis, 124 Nev. 95, 178 P.3d 716 (2008).

17 5. When ruling on a motion for summary judgment, the court may take judicial notice of the
18 public records attached to the motion. Harlow v. MTC Financial Inc. 865 F. Supp.2d 1095 (D. Nev.
19 2012). The recorded exhibits to US Bank's counterclaim are public records of which the Court may,
20 and did take judicial notice. See NRS 47.150; Lemel v. Smith, 64 Nev. 545 (1947) (Judicial Notice
21 takes the place of proof and is of equal force.") "Documents accompanied by a certificate of
22 acknowledgment of a notary public or officer authorized by law to take acknowledgments are
23 presumed to be authentic." NRS 52.165.

24 6. Summary judgment in favor of 5316 Clover Blossom Ct Trust is proper.

25 7. The HOA foreclosure sale complied with all requirements of law, including but not limited
26 to, recording and mailing of copies of notice of delinquent assessment lien and notice of default and
27 election to sell under homeowners association lien, and the recording, mailing, posting, and

28

1 publication of the notice of foreclosure sale.

2 8. The law presumes foreclosure notices are received upon proof of mailing, and does not
3 require proof that the notices be received. Actual notice is not necessary as long as the statutory
4 requirements are met. Mailing of the notices is all that the statute requires. Hankins v. Administrator
5 of Veterans Affairs v. Administrator of Veterans Affairs 92 Nev. 578, 555 P.2d 483 (1976); Turner v.
6 Dewco 87 Nev. 14, 479 P.2d 462 (1971).

7 9. There is a public policy which favors a final and conclusive foreclosure sale as to the
8 purchaser. See 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr.
9 2d 711 (2011); McNeill Family Trust v. Centura Bank, 60 P.3d 1277 (Wyo. 2003); In re Suchy, 786
10 F.2d 900 (9th Cir. 1985); and Miller & Starr, California Real Property 3d §10:210.

11 10. There is a common law presumption that a foreclosure sale was conducted validly.
12 Fontenot v. Wells Fargo Bank, 198 Cal. App. 4th 256, 129 Cal. Rptr. 3d 467 (2011); Moeller v. Lien
13 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994); Burson v. Capps, 440 Md. 328, 102 A.3d 353
14 (2014); Timm v. Dewsnap 86 P.3d 699 (Utah 2003); Deposit Insurance Bridge Bank, N.A. Dallas v.
15 McQueen, 804 S.W. 2d 264 (Tex. App. 1991); Myles v. Cox, 217 So.2d 31 (Miss. 1968); American
16 Bank and Trust Co v. Price, 688 So.2d 536 (La. App. 1996); Meeker v. Eufaula Bank & Trust, 208
17 Ga. App. 702, 431 S.E. 2d 475 (Ga. App 1993).

18 11. Nevada has a disputable presumption that “the law has been obeyed.” See NRS
19 47.250(16). This creates a disputable presumption that the foreclosure sale was conducted in
20 compliance with the law.

21 12. 5316 Clover Blossom Ct Trust, as the record title holder of the property, has a
22 presumption of validity in its favor, and US Bank “has the burden to show that the sale should be set
23 aside in light of” 5316 Clover Blossom Ct Trust’s status as the record title holder. Nationstar
24 Mortgage v. Saticoy Bay, LLC Series 2227 Shadow Canyon, 133 Nev. Adv. Op. 91 (2017).

25 13. The recitals in the foreclosure deed are sufficient and conclusive proof that the required
26 notices were mailed by the HOA. See NRS 116.31166 and NRS 47.240(6) which also provide that
27 conclusive presumptions include “[a]ny other presumption which, by statute, is expressly made

conclusive.” Because NRS 116.31166 contains such an expressly conclusive presumption, the recitals in the foreclosure deed are “conclusive proof” that US Bank bank was served with copies of the required notices for the foreclosure sale.

14. US Bank has not presented any evidence to show that equitable relief is warranted in this case or to disprove any of the recitals in the foreclosure deed.

15. US Bank has not presented any evidence to show any defect with the foreclosure sale or the recording and service of the notices prior to the foreclosure sale.

16. US Bank further argues that the low price when combined with fraud, unfairness, or oppression is sufficient to void said sale. However, US Bank failed to present any evidence of fraud, unfairness, or oppression in regards to the foreclosure sale.

17. US Bank argues there was fraud, oppression, or unfairness in the conduct of the sale because the foreclosure agent rejected US Bank’s tender. However, the fraud, oppression, or unfairness must bring about or account for the low purchase price. See Shadow Wood, et al. Examples would be collusion between the auctioneer and the purchaser to keep the price artificially low or an effort to prevent public notice of the auction. US Bank never explains how rejection of a tender accounts for a low purchase price.

18. Nevada Rule of Civil Procedure 9(b) requires that “[i]n all averments of fraud..., the circumstances constituting fraud... shall be stated with particularity.” US Bank, in alleging fraud in this matter, has not stated the basis for its fraud allegation with sufficient particularity or factual support.

19. There is no issue regarding whether the association foreclosed on the “super-priority” portion of its lien. The evidence and deed recitals show that both the notice of default and the notice of sale were properly mailed to US Bank. The language in both the notice of default and notice of sale shows that the HOA was foreclosing on a lien comprised of monthly assessments. As such, there is no genuine issue of material fact that the HOA possessed a super priority lien at the time of the foreclosure sale, and that the super priority lien was foreclosed upon. As stated in SFR, as to first deeds of trust, NRS 116.3116(2) splits an HOA lien into two pieces, a superpriority piece and a

1 subpriority piece. Unless the superpriority piece has been satisfied prior to the foreclosure sale, the
2 HOA foreclosure sale on its assessment lien would necessarily include both the superpriority piece
3 and a subpriority piece of the lien. US Bank failed to present any evidence that the superpriority
4 portion of the lien was satisfied prior to the foreclosure sale.

5 20. In considering whether equity supports setting aside the sale in question, the Court is to
6 consider any other factor bearing on the equities, including actions or inactions of both parties seeking
7 to set aside the sale and the impact on a bona fide purchaser for value. Shadow Wood at 1114
8 (finding “courts must consider the entirety of the circumstances that bear upon the equities”).

9 21. The attempted tender of assessments made by US Bank for \$1,494.50, does not affect
10 5316 Clover Blossom Ct Trust’s title to the property because US Bank had several different options to
11 prevent the sale from going forward and failed to do so. Specifically, US Bank could have “pa[id] the
12 entire amount and request[ed] a refund of the balance.” SFR at 418. US Bank also could have sought
13 “a temporary restraining order and preliminary injunction and fil[ed] a lis pendens on the property.”
14 Shadow Wood at 1114 n.7. US Bank failed to avail itself of any of these options and instead allowed
15 the HOA to foreclose.

16 22. US Bank’s tender letter contains conditions, including that the tender amount is “non-
17 negotiable”; that endorsement of the check “will be strictly construed as an unconditional
18 acceptance... of the facts” stated in the tender letter; and acceptance of the check is an
19 acknowledgment that the lien has been ““paid in full.”” Because of these conditions, the tender was
20 not valid and had no effect on the foreclosure sale of the HOA’s lien. Smith v. School Dist. No. 64
21 Marion County, 89 Kan. 225, 131 P. 557, 558 (1913) (“A conditional tender is not valid. Where it
22 appears that a larger sum than that tendered is claimed to be due, the offer is not effectual as a tender
23 if coupled with such conditions that acceptance of it as tendered involves an admission on the part of
24 the person accepting it that no more is due.”)

25 23. US Bank’s tender also contains conditions that were not consistent with Commission for
26 Common Interest Communities and Condominium Hotels’ (hereinafter “CCICCH”) Advisory
27 Opinion 2010-01 issued on December 8, 2010:

1 An association may collect as a part of the super priority lien (a) interest permitted by NRS
2 116.3115, (b) late fees or charges authorized by the declaration, (c) charges for preparing any
3 statements of unpaid assessments and (d) the “costs of collecting” authorized by NRS
4 116.310313.

5 Accordingly, both a plain reading of the applicable provisions of NRS 116.3116 and
6 the policy determinations of commentators, the state of Connecticut and lenders
7 themselves support the conclusion that **associations should be able to include
8 specified costs of collecting as part of the association’s super priority lien.**

9 (emphasis added)

10 24. Furthermore, effective as of May 5, 2011, the CCICCH adopted NAC 116.470 in order to
11 set limits on the costs assessed in connection with a notice of delinquent assessment. NAC
12 116.470(4)(b) authorizes “[r]easonable attorney’s fees and actual costs, without any increase or
13 markup, incurred by the association for any legal services which do not include an activity described
14 in subsection 2.”

15 25. The fact that the foreclosure agent did not accept the tender does not affect 5316 Clover
16 Blossom Ct Trust’s title to the property because US Bank failed to take any steps to protect its interest
17 aside from mailing the letter and check, which was in an amount less than the full amount of the
18 HOA’s lien. Accordingly, US Bank is not entitled to equitable relief. Shadow Wood at 1114 n.7.

19 26. Specifically, the Nevada Supreme Court decision of Horizons at Seven Hills v. Ikon
20 Holdings, LLC, 132 Nev. Adv. Op. 35, 373 P.3d 66 (2016) did not exist on December 6, 2012, when
21 US Bank sent its tender, so the HOA and the foreclosure agent could not have relied upon that
22 authority.

23 27. To the contrary, the December 8, 2010, CCICCH opinion existed on December 6, 2012,
24 and the HOA and foreclosure agent could have relied upon that authority.

25 28. Furthermore, effective as of May 5, 2011, the CCICCH adopted NAC 116.470 in order to
26 set limits on the costs assessed in connection with a notice of delinquent assessment. NAC
27 116.470(4)(b) authorizes “[r]easonable attorney’s fees and actual costs, without any increase or
28 markup, incurred by the association for any legal services which do not include an activity described
in subsection 2.”

29. US Bank's further argues that the presence of a mortgage protection clause within the CC&Rs, which represents that the HOA lien "shall not affect the rights of the mortgagee under any first mortgage upon such Lot, Unit or Parcel," was evidence of fraud, oppression, and/or unfairness that rendered the foreclosure sale a subpriority sale. However, the mortgage protection language cited by US Bank was determined to be legally ineffective by the Nevada Supreme Court in SFR based on NRS 116.1104, which states that the provisions of NRS 116 "may not be varied by agreement, and rights conferred by it may not be waived." Based on SFR, this court finds the mortgage protection clause was invalid and thus was also not evidence of fraud, oppression, or unfairness.

30. Therefore, because US Bank's has failed to set forth material issues of fact demonstrating some fraud, unfairness, or oppression which led to the low purchase price, the Court finds that the price of the sale is not a legitimate basis to overturn the sale.

31. There is no issue of fact regarding whether the former owner was in default in payment of the assessments as well as whether the lien and foreclosure notices were properly served. The recitals in the foreclosure deed are conclusive as to these issues. Furthermore, 5316 Clover Blossom Ct Trust presented proof, which was not controverted, that the notices were mailed, published, and posted.

32. 5316 Clover Blossom Ct Trust is a bona fide purchaser ("BFP"). A subsequent purchaser is bona fide under common law principles if it takes the property "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." Bailey v. Butner, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947) (emphasis omitted); see also Moore v. De Bernardi, 47 Nev. 33, 54, 220 P. 544, 547 (1923) ("The decisions are uniform that the bona fide purchaser of a legal title is not affected by any latent equity founded either on a trust, [e]ncumbrance, or otherwise, of which he has no notice, actual or constructive.").

33. The evidence shows 5316 Clover Blossom Ct Trust purchased said property for valuable consideration in the amount of \$8,200.00 and had no actual, constructive, or inquiry notice of any dispute of title or defect in the sales process. Such evidence is clear from the fact US Bank did not pay

1 off the super-priority lien, attend the sale in question, record notice with the Clark County Recorder,
2 or attempt to take any other action to put potential buyers on notice of any dispute. US Bank was in
3 the position to take any number of simple steps to avoid a BFP issue and simply failed to take such
4 action. After being fully apprised of the pending foreclosure sale and taking no action, US Bank looks
5 now to enforce its rights. The Court notes that all that was required of US Bank to defeat BFP status
6 was to put purchasers on notice of their claim to the property by either showing up to the sale to
7 announce their claim of title, record a legal tender, file a lis pendens, or seek a temporary restraining
8 order. US Bank's argument that 5316 Clover Blossom Ct Trust cannot be a BFP based on the mere
9 fact that a Deed of Trust was recorded is not supported under the law.

10 34. In the absence of evidence to the contrary, US Bank had the burden of proving 5316
11 Clover Blossom Ct Trust was not a BFP because for 5316 Clover Blossom Ct Trust to prove it was a
12 BFP would be akin to proving a negative, i.e., proving 5316 Clover Blossom Ct Trust was not aware
13 of information which would defeat BFP status. See Shadow Wood at 1112 ("The question remains
14 whether NYCB demonstrated sufficient grounds to justify the district court in setting aside Shadow
15 Wood's foreclosure sale on NYCB's motion for summary judgment."); First Fidelity Thrift & Loan
16 Ass'n v. Alliance Bank, 60 Cal. App. 4th 1433, 1442, 71 Cal. Rptr. 2d 295 (1998) ("That Alliance
17 had knowledge of First Fidelity's equitable claim for reinstatement of its reconveyed deed of trust was
18 an element of First Fidelity's case.... Showing that Alliance was not an innocent purchaser for value
19 was hence an element of First Fidelity's claim.")

20 35. Equitable relief is only available when no adequate remedy at law exists. One who seeks
21 equitable relief cannot merely sit on its hands to its detriment. It would be a gross injustice for 5316
22 Clover Blossom Ct Trust, an innocent third party who paid valuable consideration, to have its
23 equitable rights subordinate to US Bank, who did nothing to protect itself at the foreclosure sale. See
24 generally Holmberg v. Armbrecht, 66 S. Ct. 582, 584 (1946)(quoting Russell v. Todd, 60 S. Ct. 527,
25 532 (1940)) (finding "[t]here must be conscience, good faith, and reasonable diligence, to call into
26 action the [equitable] powers of the court."). Therefore, the Court finds 5316 Clover Blossom Ct
27 Trust is a BFP, undisturbed by any issue raised in US Bank's opposition, as 5316 Clover Blossom Ct

1 Trust's equitable interest as an innocent purchaser cannot be outweighed by the inaction of US Bank.

2 36. US Bank is not entitled to equitable relief because it was on notice of the foreclosure sale
3 and failed to take adequate steps to protect its interest in the property. The Nevada Supreme Court
4 has stated, that "[w]here the complaining party has access to all the facts surrounding the questioned
5 transaction and merely makes a mistake as to the legal consequences of his act, equity should
6 normally not interfere, especially where the rights of third parties might be prejudiced thereby."
7 Shadow Wood, 366 P.3d at 1116 (quoting Nussbaumer v. Sup. Ct. in & for Yuma Cty., 107 Ariz.
8 504, 489 P.2d 843, 846 (1971)). In Shadow Wood, the Nevada Supreme Court held that
9 "[c]onsideration of harm to potentially innocent third parties is especially pertinent where [the lender]
10 did not use the legal remedies available to it to prevent the property from being sold to a third party,
11 such as by seeking a temporary restraining order and preliminary injunction and filing a lis pendens
12 on the property." Shadow Wood, 366 P.3d at 1114 fn. 7.

13 37. The policies and equities favor the 5316 Clover Blossom Ct Trust. In balancing the
14 equities, 5316 Clover Blossom Ct Trust's interest as the successor to a bona fide purchaser is not
15 outweighed by the inaction of US Bank.

16 38. US Bank shall take nothing by way of its counterclaim.

17 39. Any conclusion of law which should be a finding of fact shall be considered as such.

18 **ORDER and JUDGMENT**

19 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff 5316 Clover
20 Blossom Ct Trust's motion to dismiss, converted to a motion for summary judgment, is granted.

21 IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff 5316 Clover
22 Blossom Ct Trust and against defendant US Bank.

23 IT IS FURTHER ORDERED that title to the real property commonly known as 5316 Clover
24 Blossom Ct, North Las Vegas, Nevada 89031, and legally described as:

25 PARCEL I

26 LOT NINETY TWO (92) OF THE PLAT OF ARBOR GATE AS SHOWN BY MAP
27 THEREOF ON FILE IN BOOK 91 OF PLATS, PAGE 71, IN THE OFFICE OF THE
28 COUNTY RECORDER OF CLARK COUNTY, NEVADA.

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PARCEL II
A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AND ENJOYMENT
IN AND TO THE ASSOCIATION PROPERTY AS SET FORTH IN THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
COUNTRY GARDEN (ARBOR GATE) A COMMON INTEREST COMMUNITY
RECORDED FEBRUARY 25, 2000 IN BOOK 20000225 AS DOCUMENT NO. 00963,
OF OFFICIAL RECORDS OF CLARK COUNTY, NEVADA, AS THE SAME MAY
FROM TIME TO TIME BE AMENDED AND/OR SUPPLEMENTED, WHICH
EASEMENT IS APPURTENANT TO PARCEL ONE.

APN 124-31-220-092

is hereby quieted in the name of 5316 Clover Blossom Ct Trust.

IT IS FURTHER ORDERED that as a result of the foreclosure sale conducted on January 16,
2013, as evidenced by the foreclosure deed recorded January 24, 2013, the interests of defendant US
Bank, as well as its successors and assigns in the property commonly known as 5316 Clover Blossom
Ct, North Las Vegas, Nevada 89031, are extinguished.

IT IS FURTHER ORDERED that defendant US Bank, as well as its successors and assigns,
have no further right, title or claim to the real property commonly known as 5316 Clover Blossom Ct,
North Las Vegas, Nevada 89031.

IT IS FURTHER ORDERED that defendant US Bank, as well as its successors and assigns, or
anyone acting on their behalf. are forever enjoined from asserting any estate, right, title or interest in
the real property commonly known as 5316 Clover Blossom Ct, North Las Vegas, Nevada 89031 as a
result of the deed of trust recorded on June 30, 2004, as instrument number 20040630-0002408.

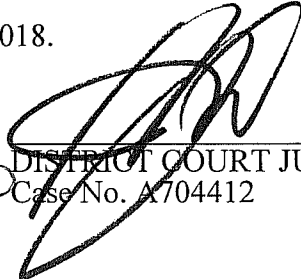
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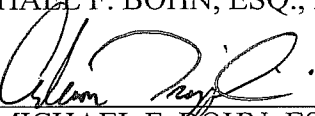
1 IT IS FURTHER ORDERED that defendant US Bank, as well as its successors and assigns or
2 anyone acting on their behalf, are forever barred from enforcing any rights against the real property
3 commonly known as 5316 Clover Blossom Ct, North Las Vegas, Nevada 89031 as a result of the
4 deed of trust recorded on June 30, 2004, as instrument number 20040630-0002408.

5 DATED this 5 day of February, 2018.

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7 
8 DISTRICT COURT JUDGE
9 Case No. A704412

10 Respectfully submitted by:

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

13 By: 
14 MICHAEL F. BOHN, ESQ.
15 ADAM R. TRIPPIEDI, ESQ.
16 376 East Warm Springs Road, Ste. 140
17 Las Vegas, Nevada 89119
18 Attorney for plaintiff
19
20
21
22
23
24
25
26
27
28

Steven D. Grierson

ORDR

James W. Pengilly, Esq.
Nevada Bar No. 6085
jpengilly@pengillylawfirm.com
Elizabeth B. Lowell, Esq.
Nevada Bar No. 8551
elowell@pengillylawfirm.com
PENGILLY LAW FIRM
1995 Village Center Cir., Suite 190
Las Vegas, NV 89134
T: (702) 889-6665; F: (702) 889-6664
Attorneys for Country Garden Owners' Association

DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST;

Plaintiff,

v.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS,

Defendants.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS,

CASE NO: A-14-704412-C
DEPT NO: XXIV

**ORDER GRANTING COUNTRY
GARDEN OWNERS'
ASSOCIATION'S MOTION TO
DISMISS THE CROSSCLAIMS OF
U.S. BANK, NATIONAL
ASSOCIATION, FINDINGS OF
FACT, CONCLUSIONS OF LAW,
AND JUDGMENT**

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

Counterclaimant,

v.

5316 CLOVER BLOSSOM CT TRUST;

Counter-Defendant.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS,

Cross-Claimant,

v.

COUNTRY GARDEN OWNERS'
ASSOCIATION;

Cross-Defendant.

**ORDER GRANTING COUNTRY GARDEN OWNERS' ASSOCIATION'S MOTION TO
DISMISS THE CROSSCLAIMS OF U.S. BANK, NATIONAL ASSOCIATION, FINDINGS
OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

This matter was heard in Department 24, on December 12, 2017, at 9:00 am, Adam R. Trippiedi, Esq. appearing on behalf of plaintiff; Scott Lachman, Esq. appearing on behalf of defendant U.S. Bank, National Association, Successor Trustee to Bank of America, N.A., Successor by Merger to Lasalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-through Certificates Series 2006-OA1 ("US Bank" or the "Bank"); and Elizabeth B. Lowell, Esq. appearing on behalf of cross-defendant Country Garden Owners'

1 Association (the "HOA"), and the court, having reviewed COUNTRY GARDEN OWNERS'
2 ASSOCIATION'S MOTION TO DISMISS THE CROSSCLAIMS OF U.S. BANK, NATIONAL
3 ASSOCIATION, U.S. Bank's opposition and the HOA's reply in support, the attached exhibits, and
4 having heard the arguments of counsel, makes its findings of fact, conclusion of law and judgment as
5 follows:

6 **FINDINGS OF FACT**

7 1. The subject of this litigation is a certain foreclosure sale of residential real property
8 located at 5316 Clover Blossom Court, North Las Vegas, Nevada 89031, APN 124-31-220-092 (the
9 "Property"). (Compl. at ¶6.)

10 2. On January 16, 2013, the HOA foreclosed its lien for delinquent assessments against
11 the Property ("Foreclosure Sale").

12 3. The Foreclosure Deed ("Foreclosure Deed") was recorded on January 24, 2013.

13 4. On July 25, 2014, the record owner of the Property, 5316 Blossom Ct. Trust (the
14 "Buyer"), filed this action, seeking to quiet title in the Property against the Bank.

15 5. The Bank filed its Answer on September 25, 2014.

16 6. On September 28, 2017, the Bank and the Buyer filed a stipulation and order allowing
17 the Bank to add its cross-claims against the HOA.

18 7. In U.S. Bank, N.A., as Trustee's Answer to 5316 Clover Blossom Trust's Amended
19 Complaint, Counterclaims, and Cross-Claims ("Cross-Claim"), the Bank asserts the following claims
20 against the HOA: Third Cause of Action, Unjust Enrichment, Fourth Cause of Action, Tortious
21 Interference with Contractual Relations; Fifth Cause of Action, Breach of the Duty of Good Faith;
22 and Sixth Cause of Action, Wrongful Defective Foreclosure.

23 8. The Cross-Claim does not contain a sworn statement pursuant to NRS 38.330 stating
24 that the issues addressed in the Cross-Claim have been mediated pursuant to the provisions of NRS
25 38.300 to 38.360, inclusive, but an agreement was not obtained.



PENGILLY LAW FIRM



CONCLUSIONS OF LAW

1. If, in a motion under NRCP 12(b)(5), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. *See* NRCP 12(b).

2. This Court finds that, by virtue of the arguments presented in the HOA's motion to dismiss, US Bank's opposition, and the HOA's reply, matters outside the cross-claims were presented and, thus, the HOA's motion to dismiss was converted into a motion for summary judgment and this court is treating it as such.

3. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law. *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026 (2005).

4. To defeat a motion for summary judgment the non-moving party bears the burden to "do more than simply show there is some metaphysical doubt: as to the operative facts. *Wood*, 121 Nev. at 732 (citing *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586 (1983)). Moreover, the non-moving party must come forward with specific facts showing a genuine issue exists for trial. *Matsushita*, 475 U.S. at 587; *Wood* P.3d at 1130. Further, in ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008).

5. When ruling on a motion for summary judgment, the court may take judicial notice of the public records attached to the motion. *Harlow v. MTC Financial Inc.* 865 F. Supp.2d 1095 (D. Nev. 2012). The recorded exhibits to the HOA's motion to dismiss and US Bank's cross-claim are public records of which the Court may, and did take judicial notice. *See* NRS 47.150; *Lemel v. Smith*, 64 Nev. 545 (1947) (Judicial Notice takes the place of proof and is of equal force.)

1 “Documents accompanied by a certificate of acknowledgment of a notary public or officer
2 authorized by law to take acknowledgments are presumed to be authentic.” NRS 52.165.

3 **A. The Applicable Statutes of Limitation Bar the Bank's Claims**

4 6. “In determining whether a statute of limitations has run against an action, the time
5 must be computed from the day the cause of action accrued.

6 7. A cause of action ‘accrues’ when a suit may be maintained thereon.” *Clark v.*
7 *Robison*, 944 P.2d 788, 789 (Nev. 1997).

8 8. Pursuant to Nevada Revised Statute 111.320, a recorded document will “impart
9 notice to all persons of the contents thereof” In addition, “[i]f the facts giving rise to the cause
10 of action are matters of public record then ‘[t]he public record gave notice sufficient to start the
11 statute of limitations running.’” *Job’s Peak Ranch Cmty. Ass’n, Inc. v. Douglas Cty.*, No. 55572,
12 2015 WL 5056232, at *3 (Nev. Aug. 25, 2015); *see also U.S. Bank Nat’l Ass’n v. Woodland Village*,
13 3:16-cv-00501-RCJ-WGC at DE #32, page 5, lines 21-23.

14 9. Nevada Revised Statute 11.190 describes the statutes of limitations that are applicable
15 to various causes of action. Pursuant to this statute, a six-year limitations period applies to “[a]n
16 action upon a contract, obligation or liability founded upon an instrument in writing.” A four-year
17 limitations period applies to a claim for unjust enrichment. A three-year limitations period applies to
18 “[a]n action upon a liability created by statute, other than a penalty or forfeiture.” A claim for
19 tortious interference with contract is also “subject to the three-year statute of limitations set forth in
20 NRS 11.190(3)(c).” *Stalk v. Mushkin*, 199 P.3d 838, 842 (Nev. 2009). Finally, pursuant to another
21 catch-all statute that follows NRS 11.190, NRS 11.220, “[a]n action for relief, not hereinbefore
22 provided for [within the Nevada Revised Statutes], must be commenced within 4 years after the
23 cause of action shall have accrued.”

24 10. The Bank's cross-claims for unjust enrichment, tortious interference with contractual
25 relations, breach of the duty of good faith, and wrongful or defective foreclosure are all barred by the

1 statute of limitations because their limitations period is either three or four years and the complaint
2 was filed four years and nine months after the Foreclosure Deed was recorded, giving the Bank
3 notice that its causes of action against the HOA had accrued.

4 *Unjust Enrichment*

5 11. "The statute of limitation for an unjust enrichment claim is four years." *In re Amerco*
6 *Derivative Litig.*, 252 P.3d 681, 703 (Nev. 2011)(citing NRS 11.190(2)(c)). The Bank's claim for
7 unjust enrichment accrued on January 24, 2013; however, the Bank did not file its claim until after
8 the four-year limitations period, in September of 2017.

9 *Tortious Interference with Contractual Relations*

10 12. The Bank's second cross-claim against the HOA is for tortious interference with
11 contractual relations. A claim for tortious interference with contract is also "subject to the three-year
12 statute of limitations set forth in NRS 11.190(3)(c)." *Stalk v. Mushkin*, 199 P.3d 838, 842 (Nev.
13 2009). Because this claim accrued on January 24, 2013, but was not filed until September of 2017 it
14 is barred by NRS 11.190(3)(c).

15 *Breach of the Duty of Good Faith*

16 13. The fifth cause of action in the Complaint is for breach of the duty of good faith that
17 is found within NRS 116.1113. Because this is a claim regarding a violation of a statute it is
18 governed by NRS 11.190(3)(a) which states that "[a]n action upon a liability created by state, other
19 than a penalty or forfeiture" must be brought within 3 years. Because this claim was not brought
20 until September 2017, more than four years after the recording of the foreclosure deed, this cause of
21 action is barred.

22 *Wrongful/Defective Foreclosure*

23 14. The sixth cause of action in the Complaint is for "Wrongful / Defective Foreclosure."
24 The Complaint's allegations center primarily on a discussion of an alleged tender by the Bank to the
25 HOA's collection company.



15. This claim should have a three-year statute of limitations.

A tortious wrongful foreclosure claim 'challenges the authority behind the foreclosure, not the foreclosure act itself.' Red Rock's authority to foreclose on the HOA lien on behalf of the HOA arose from Chapter 116, essentially rendering count three a claim for damages based on liability created by a statute. Therefore, count three is likewise time-barred under NRS 11.190(3)(a) because it was not brought within three years.

HSBC Bank USA v. Park Ave. Homeowners' Assn., 216CV460JCMNJK, 2016 WL 5842845, at *3 (D. Nev. Oct. 3, 2016) (Citing *McKnight Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev. 2013) (en banc).

16. Even assuming that a claim for wrongful foreclosure did not fall under NRS 11.190(3)(a), it would fall within the catch-all provision in NRS 11.220 and would have a four-year limitations period. Consequently, all of the bank's claims regarding violation of NRS Chapter 116 are time barred.

B. In Addition, the Bank Lacks Standing to Bring a Claim for Violation of NRS 116.1113

17. Nevada Revised Statute NRS 116.4117 creates a private right of action for violations of NRS 116, but specifically limits standing to bring such a claim to only specific classes of persons.

18. The relevant language of NRS 116.4117 provides as follows:

1. Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages or other appropriate relief for a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

- (a) By the association against:
 - (1) A declarant;
 - (2) A community manager; or
 - (3) A unit's owner.

- (b) By a unit's owner against:



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- (1) The association;
- (2) A declarant; or
- (3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

19. Nevada Revised Statute 116.095 defines "unit's owner" as "a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common-interest community, but does not include a person having an interest in a unit solely as security for an obligation." (emphasis added).

20. Based on this provision and on other provisions in Chapter 116, for example NRS 116.2119, the legislature knew that secured lenders had potential interests in property that could be subject to NRS Chapter 116, but chose not to include them in the list of entities with standing to bring a claim for violations of Chapter 116. Consequently, Plaintiff's claims for violation of NRS 116.1113 should also be dismissed for lack of standing.

C. To the Extent that the Bank's Claims Concern the CC&Rs, the Claims Should Still Be Dismissed Because the Bank Has Failed to Comply with NRS 38.310

21. Nevada Revised Statute 38.310 provides:

1. No civil action based upon a claim relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or

(b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property, may be commenced in any court in this State unless the action has been submitted to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.

2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.

22. Furthermore, Nevada Revised Statute 38.330 states that “[a]ny complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been mediated pursuant to the provisions of NRS 38.300 to 38.360, inclusive, but an agreement was not obtained.”

23. Although the Cross-Claim does not contain allegations regarding the CC&Rs, it does contain a claim for wrongful foreclosure. It does not contain an affidavit in compliance with NRS 38.330.

24. To the extent that the wrongful foreclosure claim requires the interpretation, enforcement or application of the CC&Rs, the claim should be dismissed so the Bank can comply with NRS 38.310.

D. The Doctrine of Equitable Tolling Does Not Apply

25. Equitable tolling allows the suspension of the running of a statute of limitations when the claim would have been filed timely but for a procedural technicality. *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983). Even when a procedural technicality is the basis for a claim's untimely filing, the doctrine should only be applied when “the danger of prejudice to the defendant is absent” and “the interests of justice so require.” *Seino v. Employers Ins. Co. of Nevada*, 121 Nev. 146, 152, 111 P.3d 1107, 1112 (2005) (quoting *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir.2002)).

26. When applying the doctrine of equitable tolling, the Nevada Supreme Court has examined the following non-exclusive factors to determine whether it would be just or fair to toll the statute of limitations:

the diligence of the claimant; the claimant's knowledge of the relevant facts; the claimant's reliance on authoritative statements by the administrative agency that misled the claimant about the nature of the claimant's rights; any deception or false assurances on the part of the employer against whom the claim is made; the prejudice to the employer that would actually result from delay during the time that the limitations period is tolled; and any other equitable considerations appropriate in the particular case.

1 *Copeland v. Desert Inn Hotel*, 673 P.2d 490, 492 (Nev. 1983).

2 27. In this case, the Bank claims that it is entitled to equitable tolling of the applicable
3 statutes; however, pursuant to the *Copeland* factors equitable tolling does not apply.

4 *The Delay in Filing Will Prejudice the HOA*

5 28. First, equitable tolling may never be applied if it will prejudice the defendant. *Seino*,
6 121 Nev. at 152. In this case, the Bank has not argued that the HOA will not be prejudiced by the
7 Bank's delay in filing the claims against the HOA.

8 29. Because the Bank has not come forward with specific facts to show there is a genuine
9 issue as to whether the HOA will be prejudiced by the delay in filing with its attendant loss of
10 memory for the potential witnesses to this matter, this factor weighs in favor of the HOA.

11 *The Bank Did Not Show that it Relied on the CC&Rs*

12 30. While the Bank argues that it relied on the mortgagee protection clause, the evidence
13 demonstrates the opposite.

14 31. In Exhibit G-3 to the Bank's Cross-Claim, the Bank's attorney states "a portion of
15 [the] HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of
16 assessments for common expenses incurred before the date of [the] notice of delinquent assessment."
17 The Bank's attorney then proceeds to take action based upon that statement, that is the Bank's
18 attorney sent a check to the HOA Trustee, as a tender, presumably based on an intention to satisfy
19 the portion of the HOA's lien that was "arguably prior to" the mortgage and protect the mortgage.

20 32. Had the Bank relied on the CC&Rs, it would not have taken that action. If the Bank
21 relied on anything, it appears that the Bank relied on the legal conclusion that its tender, even if
22 rejected, would protect its mortgage from extinguishment and obviate the need for the Bank to attend
23 the HOA foreclosure sale and bid to protect the mortgage. Therefore, this factor weighs against the
24 application of equitable tolling. *Copeland*, 673 P.2d at 492.

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The Bank had knowledge of the relevant facts

31. Furthermore, as discussed in the previous section, the Bank knew all of the relevant facts that created a claim against the HOA. The only missing element was the decision in the *SFR Case*, which the Nevada Supreme Court has said was merely a declaration of what the statute had always said. *K&P Homes v. Christiana Tr.*, 398 P.3d 292, 295 (Nev. 2017).

32. Neither the SFR Case nor this Court’s potential award is considered a “fact” that the Bank was unaware of back in January of 2013.

Instead these two things are an application of the law; and the Bank has failed to show that the Bank’s claims should be equitably tolled because the Bank lacked knowledge that it needed to make a claim against the HOA. *Copeland*, 673 P.2d at 492.

The Bank was not diligent

33. The sale in this case occurred on January 16, 2013. In July of 2014, the Plaintiff filed a complaint against the Bank to quiet title in the property that is the subject of this litigation. In September of 2014, just when the Bank file its response, the *SFR Case* was handed down.

34. The delay in filing the Cross-Claim weighs in favor of the HOA, because the Bank has not shown that it was diligent.

ORDER and JUDGMENT


IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Cross-Defendant, Country Gardens Owners Association’s motion to dismiss, converted to a motion for summary judgment, is GRANTED.

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IT IS FURTHER ORDERED that judgment is entered on behalf of Cross-Defendant and against Cross-Claimant US Bank on all of the cross-claims asserted by US Bank against Country Gardens Owners Association.

DATED this 16 day of April, 2018.

APPROVED BY:
AKERMAN, LLP

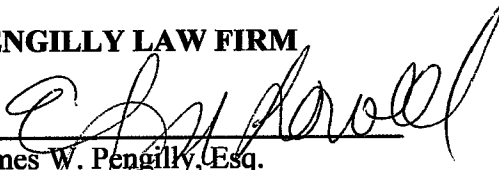

DISTRICT COURT JUDGE
(MS)
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: NOT SIGNED
DARREN T. BRENNER, Esq.
KAREN A. WHELAN, Esq.
SCOTT LACHMAN, ESQ.
1635 Village Center Circle, Suite 200
Las Vegas, NV 89134
*Attorney for defendant U.S. Bank,
National Association*

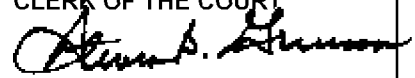
By: NOT SIGNED
MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

Respectfully Submitted by:

PENGILLY LAW FIRM


James W. Pengilly, Esq.
Nevada Bar No. 6085
Elizabeth Lowell, Esq.
Nevada Bar No. 8551
1995 Village Center Cir., Suite 190
Las Vegas, NV 89134
T: (702) 889-6665; F: (702) 889-6664
Attorneys for Country Gardens Owners Association





1 **NOEJ**

2 James W. Pengilly, Esq.
3 Nevada Bar No. 6085
4 jpengilly@pengillylawfirm.com
5 Elizabeth B. Lowell, Esq.
6 Nevada Bar No. 8551
7 elowell@pengillylawfirm.com

8 **PENGILLY LAW FIRM**

9 1995 Village Center Cir., Suite 190
10 Las Vegas, NV 89134
11 T: (702) 889-6665; F: (702) 889-6664
12 *Attorneys for Country Garden Owners' Association*

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DISTRICT COURT

CLARK COUNTY, NEVADA

5316 CLOVER BLOSSOM CT TRUST;

Plaintiff,

v.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER TO
LASALLE BANK, N.A., AS TRUSTEE TO THE
HOLDERS OF THE ZUNI MORTGAGE LOAN
PASS-THROUGH CERTIFICATES SERIES 2006-
OA1; and CLEAR RECON CORPS,

Defendants.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER TO
LASALLE BANK, N.A., AS TRUSTEE TO THE
HOLDERS OF THE ZUNI MORTGAGE LOAN
PASS-THROUGH CERTIFICATES SERIES 2006-
OA1; and CLEAR RECON CORPS,

Counterclaimant,

v.

5316 CLOVER BLOSSOM CT TRUST;

Counterdefendant.

CASE NO: A-14-704412-C
DEPT NO: XXIV

**NOTICE OF ENTRY OF ORDER
GRANTING COUNTRY GARDEN
OWNERS' ASSOCIATION'S
MOTION TO DISMISS THE
CROSSCLAIMS OF U.S. BANK,
NATIONAL ASSOCIATION,
FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT**

1 U.S. BANK, NATIONAL ASSOCIATION,
2 SUCCESSOR TRUSTEE TO BANK OF
3 AMERICA, N.A., SUCCESSOR BY MERGER TO
4 LASALLE BANK, N.A., AS TRUSTEE TO THE
5 HOLDERS OF THE ZUNI MORTGAGE LOAN
6 PASS-THROUGH CERTIFICATES SERIES 2006-
7 OA1; and CLEAR RECON CORPS,

8 Cross-Claimant,

9 v.

10 COUNTRY GARDEN OWNERS ASSOCIATION;

11 Cross-Defendant.

12 **NOTICE OF ENTRY OF ORDER GRANTING COUNTRY GARDEN**
13 **OWNERS' ASSOCIATION'S MOTION TO DISMISS THE**
14 **CROSSCLAIMS OF U.S. BANK, NATIONAL ASSOCIATION,**
15 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

16 PLEASE TAKE NOTICE that the attached Order Granting Country Garden Owners'
17 Association's Motion To Dismiss The Crossclaims Of U.S. Bank, National Association, Findings Of
18 Fact, Conclusions Of Law, And Judgment was entered in the above entitled action on the 13th day of
19 April, 2018.

20 DATED this 16th day of April, 2018.

21 **PENGILLY LAW FIRM**

22 

23 James W. Pengilly, Esq.
24 Nevada Bar No. 6085
25 Elizabeth Lowell, Esq.
26 Nevada Bar No. 8551
27 1995 Village Center Cir., Suite 190
28 Las Vegas, NV 89134
T: (702) 889-6665; F: (702) 889-6664
Attorneys for Country Gardens Owners Association

PENGILLY LAW FIRM



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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that on the 16th day of April, 2018, a copy of
**NOTICE OF ENTRY OF ORDER GRANTING COUNTRY GARDEN OWNERS’
ASSOCIATION’S MOTION TO DISMISS THE CROSSCLAIMS OF U.S. BANK,
NATIONAL ASSOCIATION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT**, was served upon those persons designated by the parties in the E-Service Master List
for the above-referenced matter in the Eighth Judicial District Court E-Filing System in compliance
with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada
Electronic Filing and Conversion Rules.

Contact	Email
Melanie D. Morgan, Esq.	melanie.morgan@akerman.com
Akerman Las Vegas Office	akermanlas@akerman.com
Brandon Lopipero	blopipero@wrightlegal.net
Dana J. Nitz	dnitz@wrightlegal.net
Elizabeth Streible	elizabeth.streible@akerman.com
Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq.	mbohn@bohnlawfirm.com
Rebekkah Bodoff	rebekkah.bodoff@akerman.com
Karen Whelan	karen.whelan@akerman.com

/s/ Olivia Schulze
An Employee of Pengilly Law Firm

1 **ORDR**

2 James W. Pengilly, Esq.

3 Nevada Bar No. 6085

4 jpengilly@pengillylawfirm.com

5 Elizabeth B. Lowell, Esq.

6 Nevada Bar No. 8551

7 elowell@pengillylawfirm.com

8 **PENGILLY LAW FIRM**

9 1995 Village Center Cir., Suite 190

10 Las Vegas, NV 89134

11 T: (702) 889-6665; F: (702) 889-6664

12 *Attorneys for Country Garden Owners' Association*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 5316 CLOVER BLOSSOM CT TRUST;

16 **Plaintiff,**

17 v.

18 U.S. BANK, NATIONAL ASSOCIATION,
19 SUCCESSOR TRUSTEE TO BANK OF
20 AMERICA, N.A., SUCCESSOR BY MERGER
21 TO LASALLE BANK, N.A., AS TRUSTEE TO
22 THE HOLDERS OF THE ZUNI MORTGAGE
23 LOAN PASS-THROUGH CERTIFICATES
24 SERIES 2006-OA1; and CLEAR RECON
25 CORPS,

26 **Defendants.**

27 U.S. BANK, NATIONAL ASSOCIATION,
28 SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS,

CASE NO: A-14-704412-C

DEPT NO: XXIV

**ORDER GRANTING COUNTRY
GARDEN OWNERS'
ASSOCIATION'S MOTION TO
DISMISS THE CROSSCLAIMS OF
U.S. BANK, NATIONAL
ASSOCIATION, FINDINGS OF
FACT, CONCLUSIONS OF LAW,
AND JUDGMENT**

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

Counterclaimant,

v.

5316 CLOVER BLOSSOM CT TRUST;

Counter-Defendant.

U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, N.A., SUCCESSOR BY MERGER
TO LASALLE BANK, N.A., AS TRUSTEE TO
THE HOLDERS OF THE ZUNI MORTGAGE
LOAN PASS-THROUGH CERTIFICATES
SERIES 2006-OA1; and CLEAR RECON
CORPS,

Cross-Claimant,

v.

COUNTRY GARDEN OWNERS'
ASSOCIATION;

Cross-Defendant.

**ORDER GRANTING COUNTRY GARDEN OWNERS' ASSOCIATION'S MOTION TO
DISMISS THE CROSSCLAIMS OF U.S. BANK, NATIONAL ASSOCIATION, FINDINGS
OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

This matter was heard in Department 24, on December 12, 2017, at 9:00 am, Adam R. Trippiedi, Esq. appearing on behalf of plaintiff; Scott Lachman, Esq. appearing on behalf of defendant U.S. Bank, National Association, Successor Trustee to Bank of America, N.A., Successor by Merger to Lasalle Bank, N.A., as Trustee to the Holders of the Zuni Mortgage Loan Trust 2006-OA1, Mortgage Loan Pass-through Certificates Series 2006-OA1 ("US Bank" or the "Bank"); and Elizabeth B. Lowell, Esq. appearing on behalf of cross-defendant Country Garden Owners'

1 Association (the "HOA"), and the court, having reviewed COUNTRY GARDEN OWNERS'
2 ASSOCIATION'S MOTION TO DISMISS THE CROSSCLAIMS OF U.S. BANK, NATIONAL
3 ASSOCIATION, U.S. Bank's opposition and the HOA's reply in support, the attached exhibits, and
4 having heard the arguments of counsel, makes its findings of fact, conclusion of law and judgment as
5 follows:

6 **FINDINGS OF FACT**

7 1. The subject of this litigation is a certain foreclosure sale of residential real property
8 located at 5316 Clover Blossom Court, North Las Vegas, Nevada 89031, APN 124-31-220-092 (the
9 "Property"). (Compl. at ¶6.)

10 2. On January 16, 2013, the HOA foreclosed its lien for delinquent assessments against
11 the Property ("Foreclosure Sale").

12 3. The Foreclosure Deed ("Foreclosure Deed") was recorded on January 24, 2013.

13 4. On July 25, 2014, the record owner of the Property, 5316 Blossom Ct. Trust (the
14 "Buyer"), filed this action, seeking to quiet title in the Property against the Bank.

15 5. The Bank filed its Answer on September 25, 2014.

16 6. On September 28, 2017, the Bank and the Buyer filed a stipulation and order allowing
17 the Bank to add its cross-claims against the HOA.

18 7. In U.S. Bank, N.A., as Trustee's Answer to 5316 Clover Blossom Trust's Amended
19 Complaint, Counterclaims, and Cross-Claims ("Cross-Claim"), the Bank asserts the following claims
20 against the HOA: Third Cause of Action, Unjust Enrichment, Fourth Cause of Action, Tortious
21 Interference with Contractual Relations; Fifth Cause of Action, Breach of the Duty of Good Faith;
22 and Sixth Cause of Action, Wrongful Defective Foreclosure.

23 8. The Cross-Claim does not contain a sworn statement pursuant to NRS 38.330 stating
24 that the issues addressed in the Cross-Claim have been mediated pursuant to the provisions of NRS
25 38.300 to 38.360, inclusive, but an agreement was not obtained.





CONCLUSIONS OF LAW

1. If, in a motion under NRCP 12(b)(5), matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. *See* NRCP 12(b).

2. This Court finds that, by virtue of the arguments presented in the HOA's motion to dismiss, US Bank's opposition, and the HOA's reply, matters outside the cross-claims were presented and, thus, the HOA's motion to dismiss was converted into a motion for summary judgment and this court is treating it as such.

3. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law. *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026 (2005).

4. To defeat a motion for summary judgment the non-moving party bears the burden to "do more than simply show there is some metaphysical doubt: as to the operative facts. *Wood*, 121 Nev. at 732 (citing *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586 (1983)). Moreover, the non-moving party must come forward with specific facts showing a genuine issue exists for trial. *Matsushita*, 475 U.S. at 587; *Wood* P.3d at 1130. Further, in ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. *Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008).

5. When ruling on a motion for summary judgment, the court may take judicial notice of the public records attached to the motion. *Harlow v. MTC Financial Inc.* 865 F. Supp.2d 1095 (D. Nev. 2012). The recorded exhibits to the HOA's motion to dismiss and US Bank's cross-claim are public records of which the Court may, and did take judicial notice. *See* NRS 47.150; *Lemel v. Smith*, 64 Nev. 545 (1947) (Judicial Notice takes the place of proof and is of equal force.)

1 “Documents accompanied by a certificate of acknowledgment of a notary public or officer
2 authorized by law to take acknowledgments are presumed to be authentic.” NRS 52.165.

3 **A. The Applicable Statutes of Limitation Bar the Bank's Claims**

4 6. “In determining whether a statute of limitations has run against an action, the time
5 must be computed from the day the cause of action accrued.

6 7. A cause of action ‘accrues’ when a suit may be maintained thereon.” *Clark v.*
7 *Robison*, 944 P.2d 788, 789 (Nev. 1997).

8 8. Pursuant to Nevada Revised Statute 111.320, a recorded document will “impart
9 notice to all persons of the contents thereof” In addition, “[i]f the facts giving rise to the cause
10 of action are matters of public record then ‘[t]he public record gave notice sufficient to start the
11 statute of limitations running.’” *Job’s Peak Ranch Cmty. Ass’n, Inc. v. Douglas Cty.*, No. 55572,
12 2015 WL 5056232, at *3 (Nev. Aug. 25, 2015); *see also U.S. Bank Nat’l Ass’n v. Woodland Village*,
13 3:16-cv-00501-RCJ-WGC at DE #32, page 5, lines 21-23.

14 9. Nevada Revised Statute 11.190 describes the statutes of limitations that are applicable
15 to various causes of action. Pursuant to this statute, a six-year limitations period applies to “[a]n
16 action upon a contract, obligation or liability founded upon an instrument in writing.” A four-year
17 limitations period applies to a claim for unjust enrichment. A three-year limitations period applies to
18 “[a]n action upon a liability created by statute, other than a penalty or forfeiture.” A claim for
19 tortious interference with contract is also “subject to the three-year statute of limitations set forth in
20 NRS 11.190(3)(c).” *Stalk v. Mushkin*, 199 P.3d 838, 842 (Nev. 2009). Finally, pursuant to another
21 catch-all statute that follows NRS 11.190, NRS 11.220, “[a]n action for relief, not hereinbefore
22 provided for [within the Nevada Revised Statutes], must be commenced within 4 years after the
23 cause of action shall have accrued.”

24 10. The Bank's cross-claims for unjust enrichment, tortious interference with contractual
25 relations, breach of the duty of good faith, and wrongful or defective foreclosure are all barred by the

1 statute of limitations because their limitations period is either three or four years and the complaint
2 was filed four years and nine months after the Foreclosure Deed was recorded, giving the Bank
3 notice that its causes of action against the HOA had accrued.

4 *Unjust Enrichment*

5 11. "The statute of limitation for an unjust enrichment claim is four years." *In re Amerco*
6 *Derivative Litig.*, 252 P.3d 681, 703 (Nev. 2011)(citing NRS 11.190(2)(c)). The Bank's claim for
7 unjust enrichment accrued on January 24, 2013; however, the Bank did not file its claim until after
8 the four-year limitations period, in September of 2017.

9 *Tortious Interference with Contractual Relations*

10 12. The Bank's second cross-claim against the HOA is for tortious interference with
11 contractual relations. A claim for tortious interference with contract is also "subject to the three-year
12 statute of limitations set forth in NRS 11.190(3)(c)." *Stalk v. Mushkin*, 199 P.3d 838, 842 (Nev.
13 2009). Because this claim accrued on January 24, 2013, but was not filed until September of 2017 it
14 is barred by NRS 11.190(3)(c).

15 *Breach of the Duty of Good Faith*

16 13. The fifth cause of action in the Complaint is for breach of the duty of good faith that
17 is found within NRS 116.1113. Because this is a claim regarding a violation of a statute it is
18 governed by NRS 11.190(3)(a) which states that "[a]n action upon a liability created by state, other
19 than a penalty or forfeiture" must be brought within 3 years. Because this claim was not brought
20 until September 2017, more than four years after the recording of the foreclosure deed, this cause of
21 action is barred.

22 *Wrongful/Defective Foreclosure*

23 14. The sixth cause of action in the Complaint is for "Wrongful / Defective Foreclosure."
24 The Complaint's allegations center primarily on a discussion of an alleged tender by the Bank to the
25 HOA's collection company.



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15. This claim should have a three-year statute of limitations.

A tortious wrongful foreclosure claim ‘challenges the authority behind the foreclosure, not the foreclosure act itself.’ Red Rock’s authority to foreclose on the HOA lien on behalf of the HOA arose from Chapter 116, essentially rendering count three a claim for damages based on liability created by a statute. Therefore, count three is likewise time-barred under NRS 11.190(3)(a) because it was not brought within three years.

HSBC Bank USA v. Park Ave. Homeowners’ Assn., 216CV460JCMNJK, 2016 WL 5842845, at *3 (D. Nev. Oct. 3, 2016) (Citing *McKnight Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev. 2013) (en banc).

16. Even assuming that a claim for wrongful foreclosure did not fall under NRS 11.190(3)(a), it would fall within the catch-all provision in NRS 11.220 and would have a four-year limitations period. Consequently, all of the bank’s claims regarding violation of NRS Chapter 116 are time barred.

B. In Addition, the Bank Lacks Standing to Bring a Claim for Violation of NRS 116.1113

17. Nevada Revised Statute NRS 116.4117 creates a private right of action for violations of NRS 116, but specifically limits standing to bring such a claim to only specific classes of persons.

18. The relevant language of NRS 116.4117 provides as follows:

1. Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief.

2. Subject to the requirements set forth in NRS 38.310 and except as otherwise provided in NRS 116.3111, a civil action for damages or other appropriate relief for a failure or refusal to comply with any provision of this chapter or the governing documents of an association may be brought:

- (a) By the association against:
 - (1) A declarant;
 - (2) A community manager; or
 - (3) A unit’s owner.

- (b) By a unit’s owner against:



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- (1) The association;
- (2) A declarant; or
- (3) Another unit's owner of the association.

(c) By a class of units' owners constituting at least 10 percent of the total number of voting members of the association against a community manager.

19. Nevada Revised Statute 116.095 defines "unit's owner" as "a declarant or other person who owns a unit, or a lessee of a unit in a leasehold common-interest community whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the common-interest community, but does not include a person having an interest in a unit solely as security for an obligation." (emphasis added).

20. Based on this provision and on other provisions in Chapter 116, for example NRS 116.2119, the legislature knew that secured lenders had potential interests in property that could be subject to NRS Chapter 116, but chose not to include them in the list of entities with standing to bring a claim for violations of Chapter 116. Consequently, Plaintiff's claims for violation of NRS 116.1113 should also be dismissed for lack of standing.

C. To the Extent that the Bank's Claims Concern the CC&Rs, the Claims Should Still Be Dismissed Because the Bank Has Failed to Comply with NRS 38.310

21. Nevada Revised Statute 38.310 provides:

1. No civil action based upon a claim relating to:

(a) The interpretation, application or enforcement of any covenants, conditions or restrictions applicable to residential property or any bylaws, rules or regulations adopted by an association; or

(b) The procedures used for increasing, decreasing or imposing additional assessments upon residential property, may be commenced in any court in this State unless the action has been submitted to mediation or arbitration pursuant to the provisions of NRS 38.300 to 38.360, inclusive, and, if the civil action concerns real estate within a planned community subject to the provisions of chapter 116 of NRS or real estate within a condominium hotel subject to the provisions of chapter 116B of NRS, all administrative procedures specified in any covenants, conditions or restrictions applicable to the property or in any bylaws, rules and regulations of an association have been exhausted.

2. A court shall dismiss any civil action which is commenced in violation of the provisions of subsection 1.



22. Furthermore, Nevada Revised Statute 38.330 states that “[a]ny complaint filed in such an action must contain a sworn statement indicating that the issues addressed in the complaint have been mediated pursuant to the provisions of NRS 38.300 to 38.360, inclusive, but an agreement was not obtained.”

23. Although the Cross-Claim does not contain allegations regarding the CC&Rs, it does contain a claim for wrongful foreclosure. It does not contain an affidavit in compliance with NRS 38.330.

24. To the extent that the wrongful foreclosure claim requires the interpretation, enforcement or application of the CC&Rs, the claim should be dismissed so the Bank can comply with NRS 38.310.

D. The Doctrine of Equitable Tolling Does Not Apply

25. Equitable tolling allows the suspension of the running of a statute of limitations when the claim would have been filed timely but for a procedural technicality. *Copeland v. Desert Inn Hotel*, 99 Nev. 823, 826, 673 P.2d 490, 492 (1983). Even when a procedural technicality is the basis for a claim's untimely filing, the doctrine should only be applied when “the danger of prejudice to the defendant is absent” and “the interests of justice so require.” *Seino v. Employers Ins. Co. of Nevada*, 121 Nev. 146, 152, 111 P.3d 1107, 1112 (2005) (quoting *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir.2002)).

26. When applying the doctrine of equitable tolling, the Nevada Supreme Court has examined the following non-exclusive factors to determine whether it would be just or fair to toll the statute of limitations:

the diligence of the claimant; the claimant's knowledge of the relevant facts; the claimant's reliance on authoritative statements by the administrative agency that misled the claimant about the nature of the claimant's rights; any deception or false assurances on the part of the employer against whom the claim is made; the prejudice to the employer that would actually result from delay during the time that the limitations period is tolled; and any other equitable considerations appropriate in the particular case.

1 *Copeland v. Desert Inn Hotel*, 673 P.2d 490, 492 (Nev. 1983).

2 27. In this case, the Bank claims that it is entitled to equitable tolling of the applicable
3 statutes; however, pursuant to the *Copeland* factors equitable tolling does not apply.

4 *The Delay in Filing Will Prejudice the HOA*

5 28. First, equitable tolling may never be applied if it will prejudice the defendant. *Seino*,
6 121 Nev. at 152. In this case, the Bank has not argued that the HOA will not be prejudiced by the
7 Bank's delay in filing the claims against the HOA.

8 29. Because the Bank has not come forward with specific facts to show there is a genuine
9 issue as to whether the HOA will be prejudiced by the delay in filing with its attendant loss of
10 memory for the potential witnesses to this matter, this factor weighs in favor of the HOA.

11 *The Bank Did Not Show that it Relied on the CC&Rs*

12 30. While the Bank argues that it relied on the mortgagee protection clause, the evidence
13 demonstrates the opposite.

14 31. In Exhibit G-3 to the Bank's Cross-Claim, the Bank's attorney states "a portion of
15 [the] HOA lien is arguably prior to BANA's first deed of trust, specifically the nine months of
16 assessments for common expenses incurred before the date of [the] notice of delinquent assessment."
17 The Bank's attorney then proceeds to take action based upon that statement, that is the Bank's
18 attorney sent a check to the HOA Trustee, as a tender, presumably based on an intention to satisfy
19 the portion of the HOA's lien that was "arguably prior to" the mortgage and protect the mortgage.

20 32. Had the Bank relied on the CC&Rs, it would not have taken that action. If the Bank
21 relied on anything, it appears that the Bank relied on the legal conclusion that its tender, even if
22 rejected, would protect its mortgage from extinguishment and obviate the need for the Bank to attend
23 the HOA foreclosure sale and bid to protect the mortgage. Therefore, this factor weighs against the
24 application of equitable tolling. *Copeland*, 673 P.2d at 492.

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The Bank had knowledge of the relevant facts

31. Furthermore, as discussed in the previous section, the Bank knew all of the relevant facts that created a claim against the HOA. The only missing element was the decision in the *SFR Case*, which the Nevada Supreme Court has said was merely a declaration of what the statute had always said. *K&P Homes v. Christiana Tr.*, 398 P.3d 292, 295 (Nev. 2017).

32. Neither the SFR Case nor this Court’s potential award is considered a “fact” that the Bank was unaware of back in January of 2013.

Instead these two things are an application of the law; and the Bank has failed to show that the Bank’s claims should be equitably tolled because the Bank lacked knowledge that it needed to make a claim against the HOA. *Copeland*, 673 P.2d at 492.

The Bank was not diligent

33. The sale in this case occurred on January 16, 2013. In July of 2014, the Plaintiff filed a complaint against the Bank to quiet title in the property that is the subject of this litigation. In September of 2014, just when the Bank file its response, the *SFR Case* was handed down.

34. The delay in filing the Cross-Claim weighs in favor of the HOA, because the Bank has not shown that it was diligent.

ORDER and JUDGMENT


IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Cross-Defendant, Country Gardens Owners Association’s motion to dismiss, converted to a motion for summary judgment, is GRANTED.

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//

IT IS FURTHER ORDERED that judgment is entered on behalf of Cross-Defendant and against Cross-Claimant US Bank on all of the cross-claims asserted by US Bank against Country Gardens Owners Association.

DATED this 16 day of April, 2018.

APPROVED BY:
AKERMAN, LLP

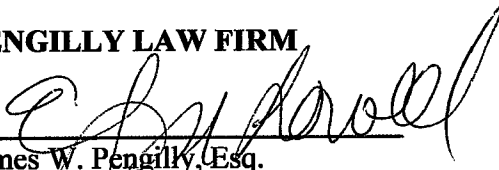

DISTRICT COURT JUDGE
(MS)
LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: NOT SIGNED
DARREN T. BRENNER, Esq.
KAREN A. WHELAN, Esq.
SCOTT LACHMAN, ESQ.
1635 Village Center Circle, Suite 200
Las Vegas, NV 89134
*Attorney for defendant U.S. Bank,
National Association*

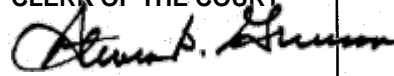
By: NOT SIGNED
MICHAEL F. BOHN, ESQ.
ADAM R. TRIPPIEDI, ESQ.
376 East Warm Springs Road, Ste. 140
Las Vegas, Nevada 89119
Attorney for plaintiff

Respectfully Submitted by:

PENGILLY LAW FIRM


James W. Pengilly, Esq.
Nevada Bar No. 6085
Elizabeth Lowell, Esq.
Nevada Bar No. 8551
1995 Village Center Cir., Suite 190
Las Vegas, NV 89134
T: (702) 889-6665; F: (702) 889-6664
Attorneys for Country Gardens Owners Association





1 **ORDD**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 ADAM R. TRIPPIEDI, ESQ.

6 Nevada Bar No. 12294

7 atrippiedi@bohnlawfirm.com

8 LAW OFFICES OF

9 MICHAEL F. BOHN, ESQ., LTD.

10 376 E. Warm Springs Rd., Ste. 140

11 Las Vegas, Nevada 89119

12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorney for plaintiff 5316 Clover Blossom Ct Trust

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 5316 CLOVER BLOSSOM CT TRUST

17 Plaintiff,

18 vs.

19 U.S. BANK, NATIONAL ASSOCIATION,
20 SUCCESSOR TRUSTEE TO BANK OF
21 AMERICA, N.A., SUCCESSOR BY MERGER
22 TO LASALLE BANK, N.A., AS TRUSTEE TO
23 THE HOLDERS OF THE ZUNI MORTGAGE
24 LOAN TRUST 2006-OA1, MORTGAGE
25 LOAN PASS-THROUGH CERTIFICATES
26 SERIES 2006-OA1; and CLEAR RECON
27 CORPS

28 Defendants.

CASE NO.: A-14-704412-C

DEPT NO.: XXIV

**ORDER DENYING U.S. BANK, N.A., AS
TRUSTEE'S MOTION FOR
RECONSIDERATION UNDER NRCP 59**

Date of Hearing: April 3, 2018

Time of Hearing: Chambers

1 U.S. BANK, NATIONAL ASSOCIATION,
2 SUCCESSOR TRUSTEE TO BANK OF
3 AMERICA, N.A., SUCCESSOR BY MERGER
4 TO LASALLE BANK, N.A., AS TRUSTEE TO
5 THE HOLDERS OF THE ZUNI MORTGAGE
6 LOAN TRUST 2006-OA1, MORTGAGE
7 LOAN PASS-THROUGH CERTIFICATES
8 SERIES 2006-OA1,

9 Counterclaimant,

10 vs.

11 5316 CLOVER BLOSSOM CT TRUST

12 Counterdefendant.

13 U.S. BANK, NATIONAL ASSOCIATION,
14 SUCCESSOR TRUSTEE TO BANK OF
15 AMERICA, N.A., SUCCESSOR BY MERGER
16 TO LASALLE BANK, N.A., AS TRUSTEE TO
17 THE HOLDERS OF THE ZUNI MORTGAGE
18 LOAN TRUST 2006-OA1, MORTGAGE
19 LOAN PASS-THROUGH CERTIFICATES
20 SERIES 2006-OA1,

21 Cross-claimant,

22 vs.

23 5316 CLOVER BLOSSOM CT TRUST

24 Cross-defendant.

25 The hearing on the defendant's U.S. Bank's motion for reconsideration under NRCP 59 having
26 been heard in chambers and the court having reviewed the motion and plaintiff's opposition, the court
27 finds as follows.

28 1. The information listed in the bankruptcy schedules and other pleadings filed by River Glider
Avenue Trust after the foreclosure sale does not affect the rights obtained by plaintiff by entering the high
bid at the public auction held on January 16, 2013.

2. By complying with the requirements of the Bankruptcy Code, River Glider Ave Trust did not
admit that any of the deeds of trust were not affected by the separate foreclosure of each HOA's

1 superpriority lien.

2 3. The defendant has not proved fraud, oppression or unfairness regarding the foreclosure sale.

3 4. Inadequacy of sale price is not itself sufficient grounds to set aside the HOA foreclosure sale.

4 5. The additional evidence that defendant seeks to discover cannot support granting equitable
5 relief in favor of defendant against plaintiff because the defendant's remedy is to recover damages against
6 the HOA and its foreclosure agent if defendant's offer was wrongfully rejected.

7 6. Defendant has not alleged or proved that it provided notice of its rejected tender claim to
8 plaintiff prior to the public auction. Pursuant to NRS 111.325, an unrecorded claim is void as to all
9 subsequent bona fide purchasers.

10 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
11 defendant's motion for reconsideration under NRCP 59 is denied.

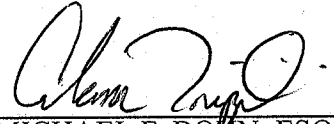
12 DATED the 23 day of April, 2018

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DISTRICT COURT JUDGE
(MS)

15 Respectfully submitted by:

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

18
19 By:  #12294
20 MICHAEL F. BOHN, ESQ.
21 376 East Warm Springs Road, Ste. 140
22 Las Vegas, Nevada 89119
23 Attorneys for plaintiff 5316 Clover Blossom Ct Trust
24
25
26
27
28

1 Reviewed by

2 AKERMAN LLP

3

4 By:

DARREN T. BRENNER, ESQ.

KAREN A. WHELAN, ESQ.

REBEKKAH B. BODOFF, ESQ.

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for U.S. Bank, N.A., solely as Successor

Trustee to Bank of America, N.A., successor by

merger to LaSalle Bank, N.A., as Trustee to the

Holders of the Zuni Mortgage Loan Trust 2006-OA1,

Mortgage Loan Pass-Through Certificates, Series

2006-OA1

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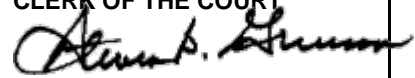
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1 **NEO**
MICHAEL F. BOHN, ESQ.
2 Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
3 ADAM R. TRIPPIEDI, ESQ.
Nevada Bar No. 12294
4 atrippiedi@bohnlawfirm.com
LAW OFFICES OF
5 LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.
6 2260 Corporate Circle, Suite 480
Henderson, Nevada 89074
7 (702) 642-3113/ (702) 642-9766 FAX

8 Attorney for plaintiff

9
10 DISTRICT COURT
11 CLARK COUNTY NEVADA

12 5316 CLOVER BLOSSOM CT TRUST

13 Plaintiff,

14 vs.

15 U.S. BANK, NATIONAL ASSOCIATION,
SUCCESSOR TRUSTEE TO BANK OF AMERICA,
16 N.A., SUCCESSOR BY MERGER TO LASALLE
BANK, N.A., AS TRUSTEE TO THE HOLDERS OF
17 THE ZUNI MORTGAGE LOAN TRUST 2006-OA1,
MORTGAGE LOAN PASS-THROUGH
18 CERTIFICATES SERIES 2006-OA1; and CLEAR
RECON CORPS

19 Defendants.

CASE NO.: A-14-704412-C
DEPT NO.: XXIV

20
21 **NOTICE OF ENTRY OF ORDER**

22 TO: Parties above-named; and

23 TO: Their Attorney of Record

24 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **ORDER DENYING U.S.**
25 **BANK, N.A., AS TRUSTEE'S MOTION FOR RECONSIDERATION UNDER NRCP 59** has been

26 ///

27 ///

1 entered on the 1st day of May 1, 2018, in the above captioned matter, a copy of which is attached hereto.

2 Dated this 1st day of May, 2018.

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

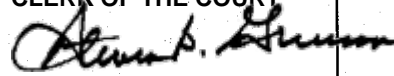
5 By: /s/ /Michael F. Bohn, Esq./
6 MICHAEL F. BOHN, ESQ.
7 2260 Corporate Circle, Suite 480
8 Henderson, Nevada 89074
9 Attorney for plaintiff

10 **CERTIFICATE OF SERVICE**

11 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of LAW
12 OFFICES OF MICHAEL F. BOHN., ESQ., and on the 1st day of May, 2018, an electronic copy of
13 the **NOTICE OF ENTRY OF ORDER** was served on opposing counsel via the Court's electronic
14 service system to the following counsel of record:

15 Darren T. Brenner, Esq.
16 Rebekkah B. Bodoff, Esq.
17 **AKERMAN LLP**
18 1635 Village Center Circle, Suite 200
19 Las Vegas, Nevada 89134

20 /s/ /Marc Sameroff/
21 An Employee of the LAW OFFICES OF
22 MICHAEL F. BOHN, ESQ., LTD.



1 **ORDD**

2 MICHAEL F. BOHN, ESQ.

3 Nevada Bar No.: 1641

4 mbohn@bohnlawfirm.com

5 ADAM R. TRIPPIEDI, ESQ.

6 Nevada Bar No. 12294

7 atrippiedi@bohnlawfirm.com

8 LAW OFFICES OF

9 MICHAEL F. BOHN, ESQ., LTD.

10 376 E. Warm Springs Rd., Ste. 140

11 Las Vegas, Nevada 89119

12 (702) 642-3113/ (702) 642-9766 FAX

13 Attorney for plaintiff 5316 Clover Blossom Ct Trust

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 5316 CLOVER BLOSSOM CT TRUST

17 Plaintiff,

18 vs.

19 U.S. BANK, NATIONAL ASSOCIATION,
20 SUCCESSOR TRUSTEE TO BANK OF
21 AMERICA, N.A., SUCCESSOR BY MERGER
22 TO LASALLE BANK, N.A., AS TRUSTEE TO
23 THE HOLDERS OF THE ZUNI MORTGAGE
24 LOAN TRUST 2006-OA1, MORTGAGE
25 LOAN PASS-THROUGH CERTIFICATES
26 SERIES 2006-OA1; and CLEAR RECON
27 CORPS

28 Defendants.

CASE NO.: A-14-704412-C

DEPT NO.: XXIV

**ORDER DENYING U.S. BANK, N.A., AS
TRUSTEE'S MOTION FOR
RECONSIDERATION UNDER NRCP 59**

Date of Hearing: April 3, 2018

Time of Hearing: Chambers

1 U.S. BANK, NATIONAL ASSOCIATION,
2 SUCCESSOR TRUSTEE TO BANK OF
3 AMERICA, N.A., SUCCESSOR BY MERGER
4 TO LASALLE BANK, N.A., AS TRUSTEE TO
5 THE HOLDERS OF THE ZUNI MORTGAGE
6 LOAN TRUST 2006-OA1, MORTGAGE
7 LOAN PASS-THROUGH CERTIFICATES
8 SERIES 2006-OA1,

9 Counterclaimant,

10 vs.

11 5316 CLOVER BLOSSOM CT TRUST

12 Counterdefendant.

13 U.S. BANK, NATIONAL ASSOCIATION,
14 SUCCESSOR TRUSTEE TO BANK OF
15 AMERICA, N.A., SUCCESSOR BY MERGER
16 TO LASALLE BANK, N.A., AS TRUSTEE TO
17 THE HOLDERS OF THE ZUNI MORTGAGE
18 LOAN TRUST 2006-OA1, MORTGAGE
19 LOAN PASS-THROUGH CERTIFICATES
20 SERIES 2006-OA1,

21 Cross-claimant,

22 vs.

23 5316 CLOVER BLOSSOM CT TRUST

24 Cross-defendant.

25 The hearing on the defendant's U.S. Bank's motion for reconsideration under NRCP 59 having
26 been heard in chambers and the court having reviewed the motion and plaintiff's opposition, the court
27 finds as follows.

28 1. The information listed in the bankruptcy schedules and other pleadings filed by River Glider
Avenue Trust after the foreclosure sale does not affect the rights obtained by plaintiff by entering the high
bid at the public auction held on January 16, 2013.

2. By complying with the requirements of the Bankruptcy Code, River Glider Ave Trust did not
admit that any of the deeds of trust were not affected by the separate foreclosure of each HOA's

1 superpriority lien.

2 3. The defendant has not proved fraud, oppression or unfairness regarding the foreclosure sale.

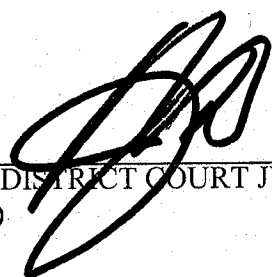
3 4. Inadequacy of sale price is not itself sufficient grounds to set aside the HOA foreclosure sale.

4 5. The additional evidence that defendant seeks to discover cannot support granting equitable
5 relief in favor of defendant against plaintiff because the defendant's remedy is to recover damages against
6 the HOA and its foreclosure agent if defendant's offer was wrongfully rejected.

7 6. Defendant has not alleged or proved that it provided notice of its rejected tender claim to
8 plaintiff prior to the public auction. Pursuant to NRS 111.325, an unrecorded claim is void as to all
9 subsequent bona fide purchasers.

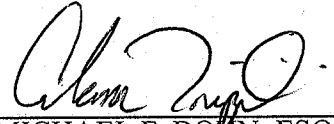
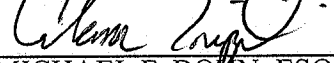
10 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
11 defendant's motion for reconsideration under NRCP 59 is denied.

12 DATED the 23 day of April, 2018

13
14 
15 DISTRICT COURT JUDGE
16 (MS)

15 Respectfully submitted by:

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

18  #12294
19 By:  for
20 MICHAEL F. BOHN, ESQ.
21 376 East Warm Springs Road, Ste. 140
22 Las Vegas, Nevada 89119
23 Attorneys for plaintiff 5316 Clover Blossom Ct Trust
24
25
26
27
28

1 Reviewed by

2 AKERMAN LLP

3

4 By:

DARREN T. BRENNER, ESQ.

KAREN A. WHELAN, ESQ.

REBEKKAH B. BODOFF, ESQ.

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for U.S. Bank, N.A., solely as Successor

Trustee to Bank of America, N.A., successor by

merger to LaSalle Bank, N.A., as Trustee to the

Holders of the Zuni Mortgage Loan Trust 2006-OA1,

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2006-OA1

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

March 12, 2015

A-14-704412-C 5316 Clover Blossom CT Trust, Plaintiff(s)
vs.
U S Bank National Association, Defendant(s)

**March 12, 2015 9:00 AM Motion to Amend
Complaint**

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Theresa Lee

RECORDER:

REPORTER:

PARTIES

PRESENT: Bohn, Michael F Attorney
Nitz, Dana Jonathon Attorney

JOURNAL ENTRIES

- Mr. Nitz stated that he has no opposition to Pltf's Motion to Amend Complaint. COURT ORDERED, motion GRANTED. Mr. Bohn to prepare the Order and circulate to Mr. Nitz to approve as to form and content. Pursuant to EDCR 7.21 the Order is to be submitted in 10 days.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 06, 2015

A-14-704412-C 5316 Clover Blossom CT Trust, Plaintiff(s)
vs.
U S Bank National Association, Defendant(s)

August 06, 2015

9:00 AM

All Pending Motions

HEARD BY: Crockett, Jim

COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Theresa Lee

RECORDER:

REPORTER: Bill Nelson

PARTIES

PRESENT: Bohn, Michael F Attorney
 Brenner, Darren T. Attorney
 Morgan, Melanie D. Attorney

JOURNAL ENTRIES

- PLTF'S MOTION FOR SUMMARY JUDGMENT...U.S. BANK, N.A.'S OPPOSITION TO PLTF'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT BASED ON THE DUE PROCESS CLAUSE AND TENDER, OR ALTERNATIVELY, FOR RULE 56(f) RELIEF

The Court reviewed all of the papers and is inclined to Grant the Pltf's Motion for Summary Judgment and Deny Deft's Countermotion for Summary Judgment and Deny Deft's Request for 56(f) relief. It is the sale that took place at a permissible non judicial foreclosure, and the Bank had alternative choices and chose not to exercise options to save its First Trust Deed. The Trustees Deed is conclusive proof binding on everyone who may have interest in the property.

The Court opened the floor for arguments by counsel in addition to what is not contained in their briefs. Ms. Morgan requested an opportunity to file a Reply before the Court issues its Order, but would like to make her record today. COURT ORDERED, Ms. Morgan will have until 8/13/15 to file a Reply, and the matter is CONTINUED to the Chamber Calendar for Decision and no one needs to

make an appearance.

Colloquy between Court and counsel. Arguments by Mr. Brenner and Mr. Bohn with regard to a conclusive presumption. Ms. Morgan inquired as to the conclusive nature of the recital deeds. It is the Court's opinion that the Statute is constitutional in terms of its notice provisions and the reasons are articulated in the Statute NRS 47.250 and 47.240. Court stated it is conclusive as to all the recitals contained in the Trustees Deed. Mr. Brenner requested permission to brief that issue. The Trustees Deed and SFR is conclusive proof of all of the recitals contained therein and binding upon everyone. Court recited from the SFR Supreme Court opinion. Court further stated, the Statute is conclusive proof as opposed to conclusive presumption. Further argument by Mr. Brenner. The Court is not saying its mind cannot be changed, but we are talking about conclusive proof and not conclusive presumption, and counsel can include that in their supplemental briefs. All counsel can submit their supplement briefs in a blind brief and submit by 8/13/15 and the Court will decide in Chambers on 8/20/15.

8/20/15 @ 3:00 A.M. (Chamber Calendar) DECISION: PLTF'S MOTION FOR SUMMARY JUDGMENT...U.S. BANK, N.A.'S OPPOSITION TO PLTF'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT BASED ON THE DUE PROCESS CLAUSE AND TENDER, OR ALTERNATIVELY, FOR RULE 56(f) RELIEF

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 20, 2015

A-14-704412-C 5316 Clover Blossom CT Trust, Plaintiff(s)
vs.
U S Bank National Association, Defendant(s)

August 20, 2015

3:00 AM

All Pending Motions

HEARD BY: Crockett, Jim

COURTROOM: Phoenix Building Courtroom -
11th Floor

COURT CLERK: Theresa Lee

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- PLTF'S MOTION FOR SUMMARY JUDGMENT...U.S. BANK, N.A.'S OPPOSITION TO PLTF'S MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR SUMMARY JUDGMENT BASED ON THE DUE PROCESS CLAUSE AND TENDER, OR ALTERNATIVELY, FOR RULE 56(f) RELIEF

The parties requested additional time to submit briefs at the 8/6/15 hearing, which the Court allowed and to be filed by 8/13/15. After reviewing the parties newest submissions, the Court is standing by its original inclination and that is as follows: COURT ORDERED, Pltf's Motion for Summary Judgment is GRANTED; Deft's Countermotion for Summary Judgment is DENIED and Deft's Countermotion for 56(f) relief is DENIED.

Pltf to prepare the Order and circulate to counsel to approve as to form and content and submit to this Court in 10 days pursuant to EDCR 7.21.

CLERK'S NOTE: A copy of this Minute Order was distributed to: Michael Bohn (mbohn@bohnlawfirm.com) Melanie Morgan (melanie.morgan@akerman.com)

September 10, 2015

March 12, 2015

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 31, 2017

A-14-704412-C	5316 Clover Blossom CT Trust, Plaintiff(s) vs. U S Bank National Association, Defendant(s)
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August 31, 2017 9:00 AM Motion to Strike

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER:

PARTIES

PRESENT:	Garner, Rex D.	Attorney
	Trippiedi, Adam R.	Attorney

JOURNAL ENTRIES

- Court noted Counsel's arguments as stated in the briefs, stated its inclination, and noted the hearing regarding further proceedings. Court noted the Supreme Court wanted this Court to reconsider 56(f) relief and in the stipulation signed by Commissioner Bulla, Court stated the dates for discovery. Court further voiced its concern on page 3, lines 12 and 13, that parties agree with Supreme Court, and stated what the Supreme Court did say. Colloquy regarding parties stipulation. COURT ORDERED, jury demand STRICKEN as to this case. Because stipulation is signed then you don't need to appear. If there are then issues, Counsel can notify Court on 10/3/17.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

October 03, 2017

A-14-704412-C 5316 Clover Blossom CT Trust, Plaintiff(s)
vs.
U S Bank National Association, Defendant(s)

October 03, 2017 9:00 AM Further Proceedings

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER:

PARTIES

PRESENT: Bohn, Michael F Attorney
 Combs, Jamie Attorney

JOURNAL ENTRIES

- Court noted the Supreme Court's order and giving parties a chance to conduct discovery, noted parties submitted a stipulation. Court advised it would like parties to conduct a 16.1 conference and inquired as to whether one was conducted previously. Colloquy regarding discovery noting the Discovery commissioner signed an order for trial to be set after 4/9/18. Ms. Combs noted discovery cut-off of 1/24/18. Court stated the discovery plan has been met. Mr. Bohn further noted there is an order to strike the jury demand and convert it to a bench trial.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

November 30, 2017

A-14-704412-C 5316 Clover Blossom CT Trust, Plaintiff(s)
vs.
U S Bank National Association, Defendant(s)

November 30, 2017 9:00 AM Motion to Dismiss

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER:

PARTIES

PRESENT: Whelan, Karen Attorney

JOURNAL ENTRIES

- Noting the absence of Mr. Bohn, and the courtroom empty, COURT ORDERED, matter CONTINUED. Ms. Whelan to notify Mr. Bohn of the continued date.

12/12/17 9:00 AM PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIM...COUNTY GARDEN OWNER'S ASSOCIATION'S MOTION TO DISMISS THE CROSSCLAIM OF U.S. BANK NATIONAL ASSOCIATION

*CLERK'S NOTE: Mr. Bohn appeared thereafter and was informed of the continued date./kh 11-30-17

Cross Defendant Country Garden Owner's Association's Motion to Dismiss, both to be treated as a motion for summary judgment and GRANTED. Court advised it needs findings of fact and conclusion of law that Court can agree with, Counsel to submit to opposing Counsel its proposed order for approval as to form and content only, and submit even without agreement to the Court within TEN days per EDCR 7.21.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

February 08, 2018

A-14-704412-C	5316 Clover Blossom CT Trust, Plaintiff(s) vs. U S Bank National Association, Defendant(s)
---------------	--------------------------------------------------------------------------------------------------

**February 08, 2018 9:00 AM Status Check: Trial
Readiness**

HEARD BY: Crockett, Jim **COURTROOM:** Phoenix Building Courtroom -
11th Floor

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER:

PARTIES

PRESENT:	Combs, Jamie	Attorney
	Lowell, Elizabeth B.	Attorney
	Trippiedi, Adam R.	Attorney

JOURNAL ENTRIES

- Cout reminded the order signed 2/5/18 was sent out but is not yet filed and Mr. Trippiedi advised they filed it yesterday. Ms. Lowell presented the Court with the order granting the motion to dismiss Country Gardens. Court inquired whether this disposes of the entire case and parties agreed it does. Country Gardens to include a 54(b) certification. Trial dates STAND.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

April 03, 2018

A-14-704412-C	5316 Clover Blossom CT Trust, Plaintiff(s) vs. U S Bank National Association, Defendant(s)
---------------	--------------------------------------------------------------------------------------------------

April 03, 2018

3:00 AM

**Motion For
Reconsideration**

HEARD BY: Crockett, Jim

COURTROOM: Phoenix Building 11th Floor
116

COURT CLERK: Katrina Hernandez

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- COURT FINDS arguments regarding reasoning and authorities in Plaintiff's opposition to be persuasive and DENIES the motion for reconsideration. Court directs Plaintiff's Counsel to prepare an order that articulates the analysis in the Plaintiff's opposition, in the form of an appropriate order denying the motion for reconsideration, to be prepared within TEN days per EDCR 7.21; no need to submit to opposing Counsel for approval, to be reviewed solely by the Court.

*CLERK'S NOTE: Minute order sent via e-mail to mbohn@bohnlawfirm.com;
office@bohnlawfirm.com; blopipero@wrightlegal.net; dnitz@wrightlegal.net./kh 4-4-18



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

DARREN T. BRENNER, ESQ.
1635 VILLAGE CENTER CIR., STE 200
LAS VEGAS, NV 89134

DATE: May 14, 2018
CASE: A-14-704412-C

RE CASE: 5316 CLOVER BLOSSOM CT TRUST vs. U.S BANK NATIONAL ASSOCIATION

NOTICE OF APPEAL FILED: May 10, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. The district court clerk shall apprise appellant of the deficiencies in writing, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

**Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

DEFENDANT U.S. BANK, N.A., AS TRUSTEE'S NOTICE OF APPEAL;
DEFENDANT U.S. BANK, N.A., AS TRUSTEE'S CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW; ORDER GRANTING COUNTRY GARDEN OWNERS' ASSOCIATION'S MOTION TO DISMISS THE CROSSCLAIMS OF U.S. BANK, NATIONAL ASSOCIATION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING COUNTRY GARDEN OWNERS' ASSOCIATION'S MOTION TO DISMISS THE CROSSCLAIMS OF U.S. BANK, NATIONAL ASSOCIATION, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; ORDER DENYING U.S. BANK, N.A., AS TRUSTEE'S MOTION FOR RECONSIDERATION UNDER NRCP 59; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

5316 CLOVER BLOSSOM CT TRUST,

Plaintiff(s),

vs.

U.S BANK NATIONAL ASSOCIATION,

Defendant(s),

Case No: A-14-704412-C

Dept No: XXIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 14 day of May 2018.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk