

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

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13 *Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 SATICOY BAY LLC SERIES 4641
17 VIAREGGIO CT,

18 Plaintiffs,

19 v.

20 NATIONSTAR MORTGAGE LLC, COOPER
21 CASTLE LAW FIRM, LLP; and MONIQUE
22 GUILLORY,

23 Defendants.

24 NATIONSTAR MORTGAGE LLC,

25 Counterclaimant,

26 v.

27 SATICOY BAY LLC SERIES 4641
28 VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Case No.: A-13-689240-C

Dept.: XIV

NOTICE OF APPEAL

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1 Defendant/counterclaimant Nationstar Mortgage LLC submits this notice of appeal to the
2 Nevada Supreme Court of the court's findings of fact, conclusions of law and order concerning
3 plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct's motion for summary
4 judgment, which was filed on December 11, 2018. Notice of entry of this order was filed on
5 December 14, 2018.

6 DATED January 7th, 2019.

7 **AKERMAN LLP**

8 /s/ Donna M. Wittig

9 MELANIE D. MORGAN, ESQ.

10 Nevada Bar No. 8215

11 DONNA M. WITTIG

12 Nevada Bar No. 11015

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14 Las Vegas, Nevada 89134

15 *Attorneys for Defendant/Counterclaimant Nationstar*
16 *Mortgage LLC*
17
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 7th day of January, 2019 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF APPEAL**, in the following manner:

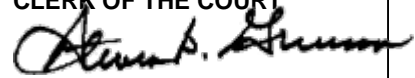
(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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

Eserve Contact office@bohnlawfirm.com
Michael F Bohn Esq mbohn@bohnlawfirm.com

/s/ Carla Llarena

An employee of AKERMAN LLP



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Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NATIONSTAR MORTGAGE LLC'S
CASE APPEAL STATEMENT**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

Defendant/counterclaimant Nationstar Mortgage LLC submits its case appeal statement pursuant to NRAP 3(f)(3).

1. The appellant filing this case appeal statement is Nationstar Mortgage LLC.

1 2. The order appealed is the district court's findings of fact, conclusions of law and order
2 concerning plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct's motion for
3 summary judgment, which was filed on December 11, 2018, and any order made appealable thereby.
4 This order became a final appealable judgment when a notice of entry of order was filed on
5 December 14, 2018.

6 3. Nationstar's counsel are Melanie D. Morgan, Esq. and Donna M. Wittig, Esq. of
7 Akerman LLP, 1635 Village Center Circle, Suite 200, Las Vegas, Nevada 89134.

8 4. Respondent Saticoy Bay LLC Series 4641 Viareggio Ct.'s trial counsel was Michael F
9 Bohn, Esq. and Adam R. Trippiedi, Esq., Law Offices of Michael F. Bohn, Esq., LTD., 2260
10 Corporate Circle, Suite 480, Henderson, Nevada 89074. Appellant is unaware whether respondent's
11 trial counsel will also act as its appellate counsel.

12 5. Nationstar's counsel are licensed to practice law in Nevada. Respondent's trial
13 counsel are licensed to practice law in Nevada.

14 6. Nationstar is represented by retained counsel in the district court.

15 7. Nationstar is represented by retained counsel on appeal.

16 8. Nationstar was not granted leave to proceed in forma pauperis by the district court.

17 9. The date proceedings commenced in the district court was September 25, 2013.

18 10. Respondent commenced an action to quiet title and for declaratory relief concerning
19 the real property located at 4641 Viareggio Court, Las Vegas, Nevada 89147. Respondent alleged it
20 acquired title to the property pursuant to a homeowners association (**HOA**) foreclosure sale, and that
21 the HOA sale extinguished the first-lien deed of trust encumbering the property. Respondent alleged
22 it is entitled to a judgment it owns the property free and clear of all liens including the first deed of
23 trust as a result of the HOA sale. Nationstar filed an answer and counter-claim. Nationstar alleged:
24 (i) Federal Home Loan Mortgage Corporation (**Freddie Mac**) was the owner of the note secured by
25 the senior deed of trust at the time of the HOA sale and remains the current owner; (ii) Nationstar
26 services the loan for Freddie Mac; and (iii) in its role as Freddie Mac's contractual loan servicer,
27 Nationstar is the record beneficiary under the deed of trust. Nationstar further alleged: (i) the
28 **Federal Foreclosure Bar**, 12 U.S.C. § 4617(j)(3), protects Freddie Mac's interest in the deed of

1 trust, and preempts the state foreclosure statute, NRS 116 *et seq.*, to the extent it purportedly permits
2 the nonconsensual extinguishment of Freddie Mac's property interests while Freddie Mac is under
3 the conservatorship of the Federal Housing Finance Agency (**FHFA**); (ii) the HOA sale did not
4 extinguish Freddie Mac's deed of trust, thereby precluding respondent from claiming a free and clear
5 interest in the property, because the FHFA did not consent to the extinguishment of Freddie Mac's
6 interest in the deed of trust; and (iii) Nationstar may assert the Federal Foreclosure Bar to protect its
7 own interest in the deed of trust as the record beneficiary and to protect Freddie Mac's interest as
8 Freddie Mac's contractually authorized loan servicer. Nationstar also alleged the HOA sale should
9 be set aside on equitable grounds because the sale was unfair and the property was sold for a grossly
10 inadequate price. In granting summary judgment in favor of respondent, the district court held the
11 Federal Foreclosure Bar did not apply because the evidence purportedly did not show the FHFA or
12 Freddie Mac had any interest in the deed of trust and their interest was not recorded; the HOA sale
13 was not commercially unreasonable as there was no evidence of fraud, unfairness, or oppression; and
14 NRS 116 *et seq.* does not violate due process. Nationstar appeals from this order and judgment.

15 11. This case has not previously been the subject of an appeal to or original writ
16 proceeding in the Supreme Court.

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

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

19 DATED January 7th, 2019.

20 **AKERMAN LLP**

21 /s/ Donna M. Wittig

22 MELANIE D. MORGAN, ESQ.

23 Nevada Bar No. 8215

24 DONNA M. WITTIG

25 Nevada Bar No. 11015

26 1635 Village Center Circle, Suite 200

27 Las Vegas, Nevada 89134

28 *Attorneys for Defendant/Counterclaimant Nationstar
Mortgage LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 7th day of January, 2019 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NATIONSTAR MORTGAGE LLC'S CASE APPEAL STATEMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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

Eserve Contact office@bohnlawfirm.com
Michael F Bohn Esq mbohn@bohnlawfirm.com

/s/ Carla Llarena

An employee of AKERMAN LLP

CASE SUMMARY**CASE NO. A-13-689240-C**

Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
 vs.
 Nationstar Mortgage LLC, Defendant(s)

§
§
§
§
§

Location: **Department 14**
 Judicial Officer: **Escobar, Adriana**
 Filed on: **09/25/2013**
 Case Number History:
 Cross-Reference Case Number: **A689240**

CASE INFORMATION**Statistical Closures**

12/11/2018 Summary Judgment

Case Type: **Title to Property**

Subtype: **Quiet Title**

Case Status: **12/11/2018 Closed**

DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-13-689240-C
 Court Department 14
 Date Assigned 02/15/2016
 Judicial Officer Escobar, Adriana

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Saticoy Bay LLC Series 4641 Viareggio Ct.	Bohn, Michael F <i>Retained</i> 702-642-3113(W)
Defendant	Cooper Castle Law Firm LLP	Peck, Jason M, ESQ <i>Retained</i> 702-228-3176(W)
	Guillory, Monique	
	Nationstar Mortgage LLC	Morgan, Melanie D. <i>Retained</i> 702-634-5000(W)
Counter Claimant	Nationstar Mortgage LLC	Morgan, Melanie D. <i>Retained</i> 702-634-5000(W)
Counter Defendant	Naples Community Homeowners Association Removed: 08/12/2015 Dismissed	McGrath, Thomas E. <i>Retained</i> 702-724-2648(W)
	Saticoy Bay LLC Series 4641 Viareggio Ct.	Bohn, Michael F <i>Retained</i> 702-642-3113(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

09/25/2013



Complaint













Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct.
Complaint

09/25/2013

Case Opened









CASE SUMMARY

CASE NO. A-13-689240-C

10/16/2013	 Affidavit of Service Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Affidavit of Service - Monique Guillory</i>
10/16/2013	 Affidavit of Service Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Affidavit of Service - The Cooper Castle Law Firm LLP</i>
10/29/2013	 Affidavit of Service Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Affidavit of Service - Nationstar Mortgage LLC</i>
11/19/2013	 Default Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Default - Monique Guillory</i>
12/02/2013	 Initial Appearance Fee Disclosure Filed By: Counter Claimant Nationstar Mortgage LLC <i>Initial Appearance Fee Disclosure</i>
12/02/2013	 Motion to Dismiss Filed By: Counter Claimant Nationstar Mortgage LLC <i>Defendant Nationstar Mortgage, LLC and The Cooper Castle Law Firm, LLP's Motion to Dismiss</i>
12/03/2013	 Amended Certificate of Mailing Filed By: Counter Claimant Nationstar Mortgage LLC <i>Amended Certificate of Mailing</i>
12/05/2013	 Opposition to Motion to Dismiss Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Opposition to Motion to Dismiss and Countermotion to Stay Case</i>
01/16/2014	 Reply in Support Filed By: Counter Claimant Nationstar Mortgage LLC <i>Reply in Support of Motion to Dismiss</i>
04/15/2014	 Order Denying Motion Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Order</i>
04/18/2014	 Notice of Entry of Order Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Entry of Order</i>
08/25/2014	 Notice of Association of Counsel Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Association of Counsel</i>
09/25/2014	 Substitution of Attorney Filed by: Counter Claimant Nationstar Mortgage LLC <i>Substitution of Attorneys</i>
12/01/2014	 Motion for Order

CASE SUMMARY

CASE NO. A-13-689240-C

	Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Motion to Lift Stay</i>
01/08/2015	 Notice of Association of Counsel Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Association of Counsel</i>
01/20/2015	 Substitution of Attorney Filed by: Counter Claimant Nationstar Mortgage LLC <i>Substitution of Attorney</i>
02/12/2015	 Notice of Entry of Order Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Entry of Order</i>
02/12/2015	 Order Granting Motion Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Order Granting Motion to Lift Stay</i>
03/13/2015	 Answer and Counterclaim Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar's Answer to the Complaint and Counterclaim</i>
03/19/2015	 Motion to Dismiss Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Motion to Dismiss Counterclaim</i>
04/09/2015	 Affidavit of Service Filed By: Counter Claimant Nationstar Mortgage LLC <i>Affidavit of Service - Naples Community Homeowners Association</i>
04/15/2015	 Stipulation and Order Filed by: Counter Claimant Nationstar Mortgage LLC <i>Stipulation and Order</i>
04/16/2015	 Notice of Entry of Stipulation and Order Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Entry of Stipulation and Order</i>
04/20/2015	 Opposition to Motion Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar's Opposition to Plaintiff's Motion to Dismiss Counterclaim and, in the Alternative, Motion for Continuance, and its Countermotion for Summary Judgment</i>
04/21/2015	 Initial Appearance Fee Disclosure Filed By: Counter Claimant Nationstar Mortgage LLC <i>Initial Appearance Fee Disclosure</i>
04/29/2015	 Motion to Dismiss Filed By: Counter Defendant Naples Community Homeowners Association <i>Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community</i>
04/29/2015	 Initial Appearance Fee Disclosure

CASE SUMMARY

CASE NO. A-13-689240-C

	Filed By: Counter Defendant Naples Community Homeowners Association <i>Initial Appearance Fee Disclosure</i>
05/04/2015	 Reply in Support Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Reply in Support of Plaintiff's Motion to Dismiss Counterclaim and Opposition to Countermotion for Summary Judgment</i>
05/05/2015	 Affidavit of Service Filed By: Counter Claimant Nationstar Mortgage LLC <i>Affidavit of Service - Office of the Attorney General</i>
05/08/2015	 Declaration Filed By: Counter Claimant Nationstar Mortgage LLC <i>Declaration of Counsel in Support of Nationstar's Opposition to Plaintiff's Motion to Dismiss Counterclaim and, in the Alternative, Motion for Continuance, and its Countermotion for Summary Judgment</i>
05/13/2015	 Joint Case Conference Report Filed By: Counter Claimant Nationstar Mortgage LLC <i>Joint Case Conference Report</i>
05/15/2015	 Supplemental Filed by: Counter Claimant Nationstar Mortgage LLC <i>Supplemental Exhibit in Support of Nationstar's Opposition to Plaintiff's Motion to Dismiss Counterclaim and, in the Alternative, Motion for Continuance, and its Countermotion for Summary Judgment</i>
05/18/2015	 Opposition to Motion Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar's Opposition to Naples Community Homeowners Association's Motion to Dismiss Counterclaim</i>
06/11/2015	 Reply in Support Filed By: Counter Defendant Naples Community Homeowners Association <i>Reply Brief in Support of Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/ Third-Party Defendant Naples Community Homeowners Association Only</i>
06/12/2015	 Scheduling Order <i>Scheduling Order</i>
07/07/2015	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial and Calendar Call</i>
07/28/2015	 Order <i>Order Granting Plaintiff's Motion to Dismiss and Denying Nationstar Mortgage, LLC's Countermotion for Summary Judgment</i>
08/12/2015	 Order For Dismissal Without Prejudice Filed By: Counter Defendant Naples Community Homeowners Association <i>Order to Dismiss Without Prejudice Counterclaimant Nationstar Mortgage LLC Counterclaims as to Counter Defendant/Third Party Defendant Naples Community Homeowners Association Only</i>
09/09/2015	

CASE SUMMARY

CASE NO. A-13-689240-C

	 Notice of Lis Pendens Filed by: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Lis Pendens</i>
02/15/2016	Case Reassigned to Department 14 <i>Reassigned From Judge Ellsworth - Dept 5</i>
07/26/2016	 Notice Filed By: Counter Claimant Nationstar Mortgage LLC <i>Defendant/Counterclaimant Nationstar Mortgage LLC's Notice of Completion of Mediation Pursuant to NRS 38.310</i>
09/09/2016	 Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial</i>
01/18/2017	 Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial</i>
01/18/2017	 Stipulation and Order Filed by: Counter Claimant Nationstar Mortgage LLC <i>Stipulation and Order to Extend Discovery and Dispositive Motion Deadlines and Continue Trial Date (First Request)</i>
01/19/2017	 Motion to Amend Answer Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC's Motion for Leave to Amend its Answer and Assert Counterclaims on Order Shortening Time</i>
01/31/2017	 Opposition to Motion Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Plaintiff's Opposition to Nationstar Mortgage, LLC's Motion for Leave to Amend Answer and Assert Counterclaims</i>
05/15/2017	 Motion for Summary Judgment Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Motion for Summary Judgment</i>
06/09/2017	 Order Denying Motion Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Order Denying Defendant Nationstar Mortgage, LLC's Motion for Leave to Amend its Answer and Assert Counterclaims</i>
07/28/2017	 Pre-Trial Disclosure Party: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Plaintiff's NRCP 16.1(a)(3) Pretrial Disclosures</i>
07/31/2017	 Motion for Default Judgment Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Motion for Default Judgment Against Defendant Monique Guillory</i>
08/01/2017	 Certificate of Mailing Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Certificate of Mailing</i>
08/04/2017	

CASE SUMMARY

CASE NO. A-13-689240-C

	 Pre-trial Memorandum Filed by: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Joint EDCR 2.67 Pre-Trial Memorandum</i>
08/10/2017	 Opposition Filed By: Counter Claimant Nationstar Mortgage LLC <i>Defendant/Counterclaimant Nationstar Mortgage, LLC's Opposition to Plaintiff's Motion for Summary Judgment</i>
08/10/2017	 Request for Judicial Notice Filed By: Counter Claimant Nationstar Mortgage LLC <i>Request for Judicial Notice in Support of Defendant/Counterclaimant Nationstar Mortgage, LLC's Opposition to Plaintiff's Motion for Summary Judgment</i>
08/29/2017	 Motion Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Motion for Voluntary Dismissal Against Defendant Cooper Castle Law Firm, Llp</i>
09/12/2017	 Findings of Fact, Conclusions of Law and Judgment Filed by: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Findings of Fact, Conclusions of Law, and Judgment</i>
09/13/2017	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Entry of Judgment</i>
09/25/2017	 Default Judgment Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Default Judgment Against Defendant Monique Guillory</i>
09/26/2017	 Notice of Entry of Default Judgment Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Entry of Default Judgment</i>
10/02/2017	 Motion to Reconsider Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment</i>
10/05/2017	 Order Granting Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Order Granting Motion for Voluntary Dismissal</i>
10/05/2017	 Notice of Entry Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Entry of Order</i>
10/17/2017	 Opposition Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Plaintiff's Opposition to Nationstar Mortgage, LLC's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment</i>
12/19/2017	 Request for Judicial Notice Filed By: Counter Claimant Nationstar Mortgage LLC

CASE SUMMARY

CASE NO. A-13-689240-C

Request for Judicial Notice in Support of Defendant/Counterclaimant Nationstar Mortgage, LLC's Amended Opposition to Plaintiff's Motion for Summary Judgment

12/19/2017



Opposition

Filed By: Counter Claimant Nationstar Mortgage LLC
Defendant/Counterclaimant Nationsatr Mortgage LLC's Amended Opposition to Plaintiff's Motion for Summary Judgment

01/11/2018



Reply to Opposition

Filed by: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct.
Reply to Opposition to motion for Summary Judgment

01/24/2018



Substitution of Attorney

Filed by: Counter Claimant Nationstar Mortgage LLC
Substitution Of Counsel For Nationstar Mortgage LLC

12/11/2018



Findings of Fact, Conclusions of Law and Judgment

Filed by: Counter Claimant Nationstar Mortgage LLC
Nationstar Mortgage LLC's Findings of Fact, Conclusions of Law, and Judgment

12/14/2018



Notice of Entry of Findings of Fact, Conclusions of Law

Filed By: Counter Claimant Nationstar Mortgage LLC
Notice of Entry of Nationstar Mortgage, LLC's Findings of Fact, Conclusions of Law, and Judgment

01/07/2019



Notice of Appeal

Filed By: Counter Claimant Nationstar Mortgage LLC
Notice of Appeal

01/07/2019



Case Appeal Statement

Filed By: Counter Claimant Nationstar Mortgage LLC
Nationstar Mortgage LLC's Case Appeal Statement

DISPOSITIONS

07/28/2015

Order of Dismissal (Judicial Officer: Ellsworth, Carolyn)

Debtors: Nationstar Mortgage LLC (Counter Claimant)
Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Counter Defendant)
Judgment: 07/28/2015, Docketed: 08/04/2015

08/12/2015

Order of Dismissal Without Prejudice (Judicial Officer: Ellsworth, Carolyn)

Debtors: Nationstar Mortgage LLC (Counter Claimant)
Creditors: Naples Community Homeowners Association (Counter Defendant)
Judgment: 08/12/2015, Docketed: 08/19/2015

09/12/2017

Summary Judgment (Judicial Officer: Escobar, Adriana)

Debtors: Nationstar Mortgage LLC (Defendant)
Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff)
Judgment: 09/12/2017, Docketed: 09/13/2017

09/25/2017

Default Judgment (Judicial Officer: Escobar, Adriana)

Debtors: Monique Guillory (Defendant)
Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff)
Judgment: 09/25/2017, Docketed: 10/02/2017

10/05/2017

Order of Dismissal (Judicial Officer: Escobar, Adriana)

Debtors: Cooper Castle Law Firm LLP (Defendant)

CASE SUMMARY

CASE NO. A-13-689240-C


Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff)
Judgment: 10/05/2017, Docketed: 10/05/2017


12/11/2018 **Summary Judgment** (Judicial Officer: Escobar, Adriana)
Debtors: Nationstar Mortgage LLC (Defendant)
Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff)
Judgment: 12/11/2018, Docketed: 12/12/2018
Comment: Certain Claim

HEARINGS

01/24/2014 **Motion to Dismiss** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Events: 12/02/2013 Motion to Dismiss
Defendant Nationstar Mortgage, LLC and The Cooper Castle Law Firm, LLP's Motion to Dismiss
Motion Denied;

01/24/2014 **Opposition and Countermotion** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Opposition to Motion to Dismiss and Countermotion to Stay Case
Motion Granted;


01/24/2014  **All Pending Motions** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Defendant Nationstar Mortgage, LLC and The Cooper Castle Law Firm, LLP's Motion to Dismiss; Opposition to Motion to Dismiss and Countermotion to Stay Case
Stayed; Defendant Nationstar Mortgage, LLC and The Cooper Castle Law Firm, LLP's Motion to Dismiss; Opposition to Motion to Dismiss and Countermotion to Stay Case
Journal Entry Details:
Kelly Perry present with Mr. Bohn. Court advised it had been staying most of these types of cases as there is a decision pending from the Supreme Court. Mr. Bohn advised there has not been a date set for hearing at this time. Mr. Peck stated the defense did not want any unnecessary work, however, believes the Plaintiff should post bond. Mr. Bohn advised if the Motion to Dismiss was granted, they would be requesting 54b Certification and noted the Supreme Court has not required a bond be posted in these cases. Statement by Mr. Peck. Mr. Bohn advised his client is paying insurance and fees and will continue to do so. Court believes a stay is appropriate and ORDERED, Countermotion to Stay Case is GRANTED and Defendants' Motion to Dismiss is DENIED. Mr. Bohn to prepare the order and provide to opposing counsel for review prior to submitting to the Court for signature.;

01/06/2015  **Motion** (3:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Plaintiff's Motion to Lift Stay
Granted;
Journal Entry Details:
MOTION TO LIFT STAY No opposition having been filed, COURT ORDERED, Motion GRANTED, prevailing party to prepare order. ;


05/15/2015 **Motion to Dismiss** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Plaintiff's Motion to Dismiss Counterclaim
Under Advisement;

05/15/2015 **Opposition and Countermotion** (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Nationstar's Opposition to Plaintiff's Motion to Dismiss Counterclaim and, in the Alternative, Motion for Continuance, and its Countermotion for Summary Judgment

MINUTES

 **All Pending Motions** (05/15/2015 at 9:00 AM) (Judicial Officer: Ellsworth, Carolyn)
Under Advisement;

SCHEDULED HEARINGS

 **All Pending Motions** (05/15/2015 at 9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

CASE SUMMARY

CASE NO. A-13-689240-C

05/15/2015



All Pending Motions (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Matter Heard;

Journal Entry Details:

PLAINTIFF S MOTION TO DISMISS COUNTERCLAIM NATIONSTAR S OPPOSITION TO DISMISS COUNTERCLAIM AND, IN THE ALTERNATIVE, MOTION FOR CONTINUANCE, AND ITS COUNTERMOTION FOR SUMMARY JUDGMENT Court NOTED its tentative ruling which was distributed to counsel as follows: I. **FACTUAL BACKGROUND** Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff) is the record title holder of the property located at 4641 Viareggio Court, Las Vegas, Nevada (the Property). The Property is subject to the covenants, codes, and restrictions of Counter defendant Naples Community Homeowners Association (the HOA). Plaintiff acquired title to the Property via a foreclosure sale held by the HOA on delinquent assessment liens it held on the Property. Defendant/Counterclaimant Nationstar Mortgage, LLC (Nationstar) held a first priority deed of trust on the Property. Following the foreclosure sale on August 22, 2013 at which Saticoy Bay acquired title to the Property, Nationstar filed a Notice of Default and Election to Sell. Saticoy Bay then filed suit against, inter alia, Nationstar, alleging claims for: (1) injunctive relief; (2) declaratory relief/quiet title; and (3) unlawful detainer (against the former property owner). Nationstar filed an Answer and Counterclaim on March 13, 2015, alleging claims for: (1) quiet title/declaratory relief, against Saticoy Bay and the HOA; (2) injunctive relief against Saticoy Bay and the HOA; and (3) wrongful foreclosure (against the HOA only). Saticoy Bay moved to dismiss the Counterclaim on March 19, 2015. Nationstar filed an Opposition thereto and a Countermotion for Summary Judgment on April 20, 2015, pursuant to an extended deadline by stipulation. II. **ANALYSIS** A. **Legal Standards** Motion to Dismiss Saticoy Bay moves for dismissal under NRCP 12(b)(5), which mandates dismissal when it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle it to relief. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). This standard requires this Court to examine the content of Nationstar s Counterclaim. See *McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 12 9 Nev. Adv. Op. 64, 310 P.3d 555, 558 (2013) (analyzing a complaint s claims in deciding a 12(b)(5) motion to dismiss). However, [i] f, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, 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. NRCP 12(b) Here, as noted by Nationstar, Saticoy Bay has included documents outside the pleading itself with its Motion to Dismiss a copy of the foreclosure deed and a copy of decision by the U.S. District Court for the District of Nevada. Nationstar argues that Saticoy s Motion should therefore be construed as a motion for summary judgment. However, there are exceptions to when a court should consider a Rule 12(b)(5) motion as a motion for summary judgment. One exception is where the complaint/counterclaim attaches the documents referenced by the Motion to Dismiss. *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). Another is that the court may take judicial notice of matters of public record. *Id.* The Foreclosure Deed is attached as Exhibit 7 to Nationstar s Counterclaim and the District Court decision will not be considered by the Court. Thus, this Court need not construe Saticoy Bay s Motion as one for summary judgment. Motions for Summary Judgment Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. NRCP 56. (emphasis added) The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial. If the moving party will bear the burden of persuasion, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. But if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party s claim or (2) pointing out that there is an absence of evidence to support the nonmoving party s case. *Cuzze v. Univ. and Community College System of Nevada*, 123 Nev. 598, 172 P.2d 131 (2007). Here, it is important to note that Nationstar may have been hoist by its own petard with regard to its entitlement to summary judgment. Curiously, Nationstar has included a list of approximately seven disputed facts in its Opposition/Motion. Opp. at 6. It lists these facts in refuting Saticoy Bay s entitlement to dismissal of the Counterclaim but, to the extent that these facts are material (which they appear to be, as they directly underlie the claims in the Counterclaim), Nationstar would likewise not be entitled to summary judgment. On this basis alone, the Court could arguably

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deny Nationstar's Motion. B. Analysis The Counterclaim asserts only two claims against Saticoy Bay: (1) quiet title; and (2) injunctive relief. Relative to the first, Nationstar has no title interest to the Property, but rather holds or held only a lien and, therefore, has no standing to assert a quiet title claim. As this was not a ground asserted by Saticoy Bay, it will not be discussed further here. Relative to the second claim, Nationstar seeks injunctions prohibiting Saticoy Bay from selling the Property, and requiring it to pay all taxes, insurance, and HOA dues until the matter is resolved. However, injunctions are to prevent future damage from occurring and generally will not redress wrongs already committed. See *Sherman v. Clark*, 4 Nev. 139, 141 (1868). Since the foreclosure has already occurred, and has extinguished Nationstar's interest pursuant to the Supreme Court's decision in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014), reh'g denied (Oct. 16, 2014), their injunctive relief claim is problematic. Again, since Saticoy Bay did not assert this as a ground for dismissal, it will not be discussed further here. Nationstar presents several grounds to oppose to Motion to Dismiss. I believe each of these grounds, presented below, are likewise insufficient but they are presented for full consideration. 1. Whether the foreclosure sale was properly noticed Saticoy Bay argues that its foreclosure deed provides conclusive proof that the foreclosure process was properly conducted under NRS 116. In response, Nationstar asserts that the notice of default was deficient because it does not describe the deficiency in payment or alert third parties as to what is being foreclosed assessments, fines, nuisance abatements, or something else. It also generally avers that the foreclosure deed does not provide conclusive proof because, otherwise, every foreclosure sale under NRS Chapter 116 is presumed to be a valid sale on a super-priority lien. Opp. at 21:4-5. Saticoy Bay appears to be correct in its assertion that NRS 116 provides a conclusive presumption as to the validity of a HOA lien foreclosure sale under certain circumstances. NRS 116.31166(1) provides: The recitals in a deed made pursuant to [the foreclosure of a HOA lien under this Chapter] of: (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell; (b) The elapsing of the 90 days; and (c) The giving of notice of sale, are conclusive proof of the matters recited. Saticoy Bay attached a filed copy of the Foreclosure Deed as Exhibit 1 to its Motion. That deed provides that the Notice of Mailing of Delinquent Assessment was recorded and then mailed to the owners and that, subsequently, a Notice of Default and Election to Sell was recorded on January 24, 2012. Thus, subsection (a) is satisfied. The Foreclosure Deed further states that more than ninety (90) days elapsed from mailing the Notice of Default and Election to Sell to interested parties. Thus, subsection (b) is satisfied. Lastly, the Foreclosure Deed states that a Notice of Sale was published for three weeks in the Nevada Legal News, was recorded, and posted in three of the most public places in Clark County as well as on the Property. Thus, subsection (c) is satisfied. Saticoy Bay has therefore sufficiently demonstrated that the Foreclosure Deed provides conclusive proof that proper notice was given. Nationstar argues that Saticoy Bay's position would mean that every foreclosure sale under NRS Chapter 116 is presumed to be a valid sale on a super-priority lien. Opp. at 21:4-5. This, however, ascribes an overly broad interpretation to the argument. Where a statute is unambiguous, a court is not permitted to look beyond the statute itself when determining its meaning. *Westpark Owners' Ass'n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007). A statute is ambiguous when it is capable of more than one reasonable interpretation. *Orion Portfolio Servs. 2, L.L.C. v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. ___, ___, 245 P.3d 527, 531 (2010). As outlined above, NRS 116.31166(1) does establish conclusive proof as to matters of notice of the sale - this is apparent from the face of the statute itself. Those provisions are not susceptible to more than one reasonable interpretation. Thus, the Foreclosure Deed appears to provide conclusive proof as to matters of notice of delinquency and the foreclosure sale. Moreover, those matters cannot be genuinely disputed factual issues, as they are conclusively established pursuant to NRS 116.31166(1). Hence, Nationstar's claims for wrongful foreclosure should be dismissed. Its motion for summary judgment on that point should also be denied because, even if there are not disputed issues of material fact, it is not entitled to judgment as a matter of law. 2. Whether the notice provisions in NRS 116 for HOA lien foreclosures violate due process Nationstar contends that NRS 116.31163 and NRS 116.31168 facially violate due process rights because, rather than requiring mandatory notice to lenders, they require notice only to those that have opted in to receive notice from the HOA. NRS 116.31163 provides: The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by first-class mail to: 1. Each person who has requested notice pursuant to NRS 107.090 or 116.31168; 2. Any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest. NRS 116.31168(1) provides that [t]he provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community. Saticoy Bay argues that these provisions do not violate due process because they do not limit lenders notice to those to which it has opted to receive. Saticoy Bay points to the fact that NRS 116.31168(1)

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incorporates the provisions of NRS 107.090 relative to notice. NRS 107.090(3) provides that [t]he trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to: (a) [e]ach person who has recorded a request for a copy of the notice; and (b) [e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust. It is not entirely clear that NRS 116.31168(1) incorporates all the provisions of NRS 107.090(3), however. NRS 107.090 primarily addresses those who have recorded requests for notices. Although subsection (3)(b) also requires notice to be sent to subordinate interest holders, it seems more logical that NRS 116.31168(1), which similarly addresses giving notice to those who have requested it, incorporates only those portions of NRS 107.090 that address the same topic. Therefore, Saticoy Bay's position is less clear cut than it would have one believe. At the same time, SFR did note that the requirements of law include compliance with NRS 116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, see NRS 116.31168(1). SFR, 334 P.3d at 418. Additionally, the Foreclosure Deed conclusively proves that a notice of default and election to sell was actually provided to all parties of interest, which would include Nationstar. The Notice of Sale was thereafter published and posted in conspicuous public places, including upon the Property. 3. Whether Nationstar's deed of trust was preserved by the HOA's CC&Rs Saticoy Bay argues that, while the CC&Rs at issue here do contain a mortgage savings clause, that clause is pre-empted by NRS 116.1104. Nationstar responds by contending that the mortgage savings clause is valid and that its interest was therefore not extinguished by the foreclosure. This issue appears to have been directly addressed and decided by the Supreme Court in SFR. The Court there held that: [NRS 116.1104] states Chapter 116's provisions may not be varied by agreement, and rights conferred by it may not be waived ... [e]xcept as expressly provided in Chapter 116. (Emphasis added.) Nothing in [NRS] 116.3116 expressly provides for a waiver of the HOA's right to a priority position for the HOA's super priority lien [even by including a mortgage savings clause in the CC&Rs]. SFR, 334 P.3d at 419 (citations omitted). Thus, Nationstar's position is directly at odds with the SFR decision. Indeed, its Opposition seems to acknowledge this conflict and states that to the extent SFR conflicts with the premise that the HOA could choose to subordinate its interests to the first mortgagee for the greater good of the association it should be overturned. Opp. at 18:11-14. Of course, this Court is in no position to overturn a decision of the Supreme Court. In any event, Nationstar's mortgage was not preserved by the mortgage savings clause in the CC&Rs under existing law. Therefore, Nationstar's Complaint should be dismissed because it cannot pursue the claims contained therein where its interest in the Property has been extinguished. Furthermore, regardless of the existence of disputed material facts, Nationstar would not be entitled to judgment as a matter of law for these same reasons and its Motion for Summary Judgment should be denied. 4. Whether the nonjudicial foreclosure process in NRS 116 violates Takings Clauses Nationstar also argues that the SFR decision and nonjudicial foreclosure under NRS 116 and the SFR interpretation thereof violates the Takings Clauses of the United States and Nevada Constitutions. In order for there to be a violation of the Takings Clauses, the use for which real property is appropriated must be a public use that is, it must serve a public purpose. See *Kelo v. City of New London, Conn.*, 545 U.S. 469, 480 (2005); *Dayton Gold & Silver Mining Co. v. Seawell*, 11 Nev. 394, 410 (1876). At the outset, it is highly doubtful that Nationstar has any real property interest in the Property that could have been taken as that word is meant in the context of the Takings Clauses. Nationstar held only a security interest in the Property via a deed of trust. This is akin to a lien on the Property and liens are a monetary encumbrance on property, which cloud[] title, not a vested right in title. *Hamm v. Arrowcreek Homeowners Ass'n*, 124 Nev. 290, 298, 183 P.3d 895, 901 (2008). Even if Nationstar had a compensable interest in the Property, its takings claim must still fail. It is difficult to see how the foreclosure of a HOA lien could constitute public use. Moreover, there is also no real government action here that would constitute a taking under the Takings Clauses. Typically, such actions are in the nature of a physical intrusion onto one's property or regulating one's property such that the property loses economic value. See generally *City of Las Vegas v. Cliff Shadows Prof'l Plaza*, 293 P.3d 860 (Nev. 2013); *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645 (2006). Thus, its motion for summary judgment on this point should be denied. 5. Whether the HOA Lien here Violates NRS 116.3116 Nationstar also argues that the HOA lien that was foreclosed upon violated NRS 116 and that, because it was statutorily improper, this invalidates the resulting foreclosure. The essence of Nationstar's argument on this point is that NRS 116.3116(1) limits what may be included in a HOA's super-priority lien and that this does not include collection costs and attorney's fees. This precise issue is currently before the Supreme Court in the case of *Horizons at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, Case No. 63178, and is pending final disposition. But the Court need not decide that issue because the argument is made too late in the case, as to Saticoy Bay. Here, the foreclosure sale has already occurred. Although the argument is preserved as to the HOA, the ship has sailed on Saticoy Bay. Mr. Tan argued under the SFR decision the Nevada Supreme Court held that proper foreclosure of

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HOA lien extinguishes first deed of trust. The recital in the foreclosure deed here is proper before the Court, it is a public document, all requirements were followed; therefore, the foreclosure is presumed to be proper and first deed of trust held by the defendants is extinguished and there is no interest in the property. Mr. Nitz stated plaintiff's argument is flawed. Plaintiff is reading SFR in that the foreclosure deed extinguishes the deed of trust and that is not what SFR said. SFR says that a properly conducted HOA lien foreclosure sale can extinguish the deed of trust. Mr. Nitz stated the circumstances that were presented to the NVSC on that decision, have to be considered. The NVSC was considering a motion to dismiss that was granted in the district court. At the motion to dismiss stage, because the complaint alleged that all of the notices were given and because the complaint alleged the foreclosure deed had those recitations, that they met the burden of demonstrating a viable claim for relief. The NVSC did not say those conclusively establish for all cases that the foreclosure deed extinguishes the deed of trust; it's just at that stage of the pleadings. Court inquired if the statute itself make these things self-executed so that there is a presumption. Mr. Nitz stated the problem with that analysis is an affront to due process. Mr. Tan argued notice is required and stated, although there are several provisions, as far as lenders are concerned as beneficiaries of deed of trust they are required to receive notice. If Defendant Nationstar Mortgage had no interest, then they wouldn't have been necessary to be named in the complaint. Mr. Nitz stated a lien interest is sufficient. SFR left open challenges to the validity of the sale. Further arguments by Mr. Nitz regarding foreclosure notices, fair market value of the property and commercial reasonable sales. As to the ability to cure, MR. Tan argued SFR addressed that. The banks as holders of deeds of trust can go in and asking what is the super priority lien amount and paying for it. Further arguments. COURT ORDERED, matter UNDER ADVISEMENT. ;

06/19/2015



Motion to Dismiss (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community

Dismissed Without Prejudice;

Journal Entry Details:

Counsel advised they read the Court's tentative ruling and submitted matter. COURT ORDERED, matter DISMISSED WITHOUT PREJUDICE. Mr. McGrath to prepare the Order.;

09/29/2016

CANCELED Calendar Call (10:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Vacated - Superseding Order

02/09/2017



Motion for Leave (9:30 AM) (Judicial Officer: Escobar, Adriana)

Nationstar Mortgage, LLC's Motion for Leave to Amend its Answer and Assert Counterclaims on OST

Denied;

Journal Entry Details:

Ms. Habermas stated as she demonstrated in the motion, leave should be granted to allow her to assert new affirmative defenses as well as counterclaims for quiet title and declaratory relief against the Plaintiff. Further arguments in support of her motions. Mr. Trippiedi stated that as to affirmative defenses, we have moved to keep it out because due process. Constitutionality was decided two weeks ago by the NSC. NRS116 finds there is no State action, therefore there is no due process violation. The order has been issued, published and is now law in Nevada. Further arguments in support of his position. Arguments by Ms. Habermas regarding failure to give proper notice and to act in good faith. Failure to act in good faith is a form of oppression, fraud or unfairness. Statements regarding the CC&Rs and unjust enrichment claim. Following further arguments of counsel, The Court noted it read the decision issued by Judge Ellsworth. The 2015 order GRANTS Plaintiff's Motion to Dismiss and DENIES Nationstar Mortgage's counter-motion for Summary Judgment and in this Court's view, that ruling STANDS. It is a final order and this Court is not willing to disregard. Ms. Habermas stated there have been a number of cases cited since that order was entered, including Shadow Wood, Horizon Seven Hills vs. ICON Holdings and these cases have given further guidance. The Court stated that we are at the point where the NRED negotiations are complete. COURT FINDS, 1) We have claims against Plaintiff and this Court decides they had nothing to do with the NRED mediations; they were previously dismissed via the 12(b)(5) motion. In this Court's view they are futile as they are treated as a final judgment thus they DENIED. If counsel disagrees with that, they may move for reconsideration or brief the issue. This Court does not see a change of law under Rule 60 and doesn't believe that SFR changed the law at all; it just interpreted it. All claims against the Plaintiff purchaser were dismissed and that stands. 2) Claims against the

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HOA for the most part were different and they were allowed except for a couple of them. Those remain. The order filed on 8/12/15 by Judge Ellsworth is without prejudice, so this comes in except for the cause of action for quiet title, cause of action for injunctive relief. It has already been dismissed as against the Plaintiff and the cause of action for unjust enrichment as to Plaintiff is barred by the voluntary payment document. COURT ORDERED, it is GRANTING the motion except for the causes of action One, Two and Eight and any other portion will be allowed in. FURTHER, Plaintiff's claims against Defendant are denied because the previous order still stands. Mr. Trippiedi to prepare the order in Word and provide to Chambers. Also, a copy is to be provided to Ms. Habernas for review as to content and form.;

06/15/2017



Motion for Summary Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana)

06/15/2017, 07/27/2017, 08/10/2017

Plaintiff's Motion for Summary Judgment

Off Calendar; Plaintiff's Motion for Summary Judgment

Continued;

Granted;

Off Calendar; Plaintiff's Motion for Summary Judgment

Continued;

Granted;

Journal Entry Details:

Ms. Habernas stated she was unaware this matter was on calendar and thought it was continued which is why an opposition has not been filed. She requested a two week continuance. Mr. Trippiedi advised that his client has not given him the authority to continue this matter. Additionally, this motion was filed in May and no opposition has been filed. COURT ORDERED, continuance is GRANTED; opposition is due on 8/3/17 and reply is due on 8/10/17. CONTINUED TO: 8/10/17 9:30 AM;

Off Calendar; Plaintiff's Motion for Summary Judgment

Continued;

Granted;

Journal Entry Details:

Plaintiff's Motion for Summary Judgment No parties present. COURT ORDERED, OFF CALENDAR.;

08/10/2017

Calendar Call (9:30 AM) (Judicial Officer: Escobar, Adriana)

Vacate;

08/10/2017



All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana)

Matter Heard;

Journal Entry Details:

CALENDAR CALL...PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT Mr. Bohn requested that his motion be granted as Ms. Habernas failed to file an opposition despite being granted two extensions. Statement by Ms. Habernas; she stated she had trouble filing her opposition over the weekend. Mr. Bohn stated the opposition was dated today. COURT ORDERED, Plaintiff's Motion for Summary Judgment is GRANTED as there is no good cause to put the rules aside. FURTHER, trial date is VACATED. Mr. Bohn to prepare the order to include findings of fact and conclusions of law.;

08/22/2017

CANCELED Bench Trial (9:30 AM) (Judicial Officer: Ellsworth, Carolyn)

Vacated

09/07/2017

CANCELED Motion for Default Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana)

Vacated

Motion for Default Judgment Against Defendant Monique Guillory

09/21/2017



Motion for Default Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana)

Plaintiff's Motion for Default Judgment Against Defendant Monique Guillory

Granted; Motion for Default Judgment

Journal Entry Details:

Mr. Trippiedi stated Ms. Gilroy has been served and defaulted and that he is seeking quiet title against her. He further stated she has not appeared in this matter and has not filed an opposition to this motion. Upon Court's inquiry, he advised that Cooper Castle no longer exists and a Motion for Voluntary Dismissal has been filed; he is not necessary for a default in this

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case. COURT ORDERED, motion is GRANTED. Order provided to the Court for its review and signature.;

09/27/2017



Minute Order (4:55 PM) (Judicial Officer: Escobar, Adriana)

Re: Motion for Voluntary Dismissal

Minute Order - No Hearing Held;

Journal Entry Details:

Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct filed a motion for voluntary dismissal of Defendant Cooper Castle Law Firm LP on August 29, 2017. The matter was subsequently scheduled for hearing on September 28. No opposition having been filed and good cause showing, pursuant to EDCR 2.20 and EDCR 2.23(c) the Court hereby GRANTS the Motion for voluntary dismissal. The Court hereby VACATES the September 28, 2017 hearing. Plaintiff is directed to prepare a proposed order and to submit it to chambers for signature. CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Michael Bohn, Esq. (Law Offices of Michael F. Bohn) Jason Peck, Esq. (THE CASTLE LAW GROUP), Richard Ehlers, Esq. (WRIGHT FINLAY & ZAK).;

09/28/2017

CANCELED Motion (9:30 AM) (Judicial Officer: Escobar, Adriana)

Vacated

Plaintiff's Motion for Voluntary Dismissal Against Defendant Cooper Castle Law Firm LP

11/02/2017



Motion For Reconsideration (9:30 AM) (Judicial Officer: Escobar, Adriana)

Nationstar Mortgage, LLC's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment

Granted; Nationstar Mortgage, LLC's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment

Journal Entry Details:

Ms. Habermas stated there was no intentional misconduct; the failure to timely file an opposition was due to a series of mistakes made in her office. She requested that the judgment be set aside and matter set for oral judgment. COURT ORDERED, Motion to Alter or Amend Judgment is GRANTED. Mr. Bohn stated that the matter had been continued more than one time for counsel to file an opposition. Following CONFERENCE AT BENCH, COURT ORDERED, matter set for hearing. Mr. Bohn is to file a reply to the opposition and the matter will be heard on the merits. FURTHER, sanctions will be determined against the defense at that time. Mr. Bohn to prepare the order. 12/5/17 9:30 AM PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;

12/05/2017



Motion for Summary Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana)

12/05/2017, 01/18/2018

Plaintiff's Motion for Summary Judgment

Continued;

Granted; Plaintiff's Motion for Summary Judgment

Journal Entry Details:

Dana Nitz and Regina Habermas appearing for Defendant Nationstar Mortgage LLC. Following arguments by counsel, COURT ORDERED, an order will be issued.;

Continued;

Granted; Plaintiff's Motion for Summary Judgment

Journal Entry Details:

Ms. Habermas informed the Court that Mr. Bohn could not be in Court today, but they discussed continuing the matter. COURT ORDERED, CONTINUED; Ms. Habermas to contact Mr. Bohn with the continuance date. CONTINUED TO: 1/18/18 9:30 AM;

02/26/2018



Decision (11:30 AM) (Judicial Officer: Escobar, Adriana)

Plaintiff's Motion for Summary Judgment

Granted;

Journal Entry Details:

Plaintiff's motion for summary judgment came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on January 18, 2018. After considering the pleadings and argument of counsel, the Court GRANTS Plaintiff's motion. The Court finds Plaintiff has sufficiently established that, absent flaws in the HOA foreclosure sale or potential equitable reasons for setting aside the sale, Plaintiff is entitled to judgment as a matter of law on its quiet title claim. In opposition, Defendant argues that

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Plaintiff's claim is preempted by the federal foreclosure bar, or 12 U.S.C. 4617(j)(3); that Plaintiff is not a BFP; that the HOA sale was commercially unreasonable; and that NRS 116's superpriority lien scheme violates due process. As to the first argument, the Court finds that Defendant has not met its burden of establishing a genuine issue of material fact. The Court agrees that, if the federal foreclosure bar applies, the HOA's foreclosure could not affect FHFA's interest in the deed of trust, and thus that the property would still be encumbered by the deed of trust. However, this requires a finding that FHFA in fact owned a legally cognizable interest in the deed of trust. In Nevada, a security interest is only effective against a third party once it is recorded. See *In re Montierth*, 354 P.3d 648, 650 (Nev. 2015). Defendant has not disputed the fact that no recorded document reflects any FHFA interest in the deed of trust, much less that any recorded document makes any mention of Freddie Mac having an interest in the deed of trust. The only evidence that Defendant has provided in an effort to prove Freddie Mac's ownership is alleged business records of Freddie Mac, coupled with an affidavit stating that Freddie Mac's business records reflect ownership of the subject loan at the time of the HOA sale. However, even if this information is sufficient to show that Freddie Mac believed it had ownership of the loan, this evidence would conflict with the judicially noticeable public record. Because no interest of Freddie Mac or FHFA was recorded, there is no such interest that would be effective as against the HOA or Plaintiff. Thus, the federal foreclosure bar does not apply here. Next, a sale cannot be held commercially unreasonable based on price alone, as this conclusion requires a finding of fraud, unfairness, or oppression that brings about and causes a low sale price. *Nationstar Mortgage v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641 (Nev. 2017). In support of its argument, Defendant suggests that fraud, unfairness, or oppression are shown by the existence of a mortgage protection clause in the HOA's CC&Rs, by the HOA's failure to try to get the best price possible at foreclosure, and by the HOA's inclusion of fees and costs in its calculation of its lien. The Court finds that none of these issues presents evidence of fraud, unfairness, or oppression. A clause such as the one in the relevant CC&Rs here, which states that the HOA's foreclosure cannot extinguish a mortgage deed of trust, is void under NRS 116.1104, as held in *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014), and thus the HOA's act of foreclosing is not rendered fraudulent, unfair, or oppressive due to the clause's presence in the CC&Rs. Additionally, the Court notes that NRS Chapter 116 imposes no duty on an HOA to get the best price possible at foreclosure, as affirmed in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017), where the Nevada Supreme Court rejected the argument that an HOA has the burden of establishing that it took all steps possible to obtain the highest sales price it could. Finally, an HOA lien is not invalid for including fines, as addressed in the recent *Shadow Canyon* case, where *Nationstar* made the very same argument. The Nevada Supreme Court rejected this argument, finding that such an interpretation is untenable, and that the legislature apparently intended to prevent foreclosure on a lien that is comprised solely of fines, but not a lien that includes both delinquent assessments and fines. In sum, Defendant has identified no evidence of fraud, unfairness, or oppression, so the sale cannot be held commercially unreasonable. Finally, the remaining arguments by Defendant do not impact the Court's decision. The Nevada Supreme Court has conclusively held that NRS 116 does not violate due process, in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 388 P.3d 970 (Nev. 2017). Moreover, because Defendant has not presented any meritorious reason for setting aside the sale, Plaintiff's potential status as a bona fide purchaser is not a necessary determination. Therefore, Defendant has not met its burden in resisting summary judgment, and the Court finds judgment as a matter of law in Plaintiff's favor is appropriate. Plaintiff's motion is therefore GRANTED. Counsel for Plaintiff is directed to prepare a proposed order including detailed findings of fact and conclusions of law, which is to be approved by Defendant's counsel as to form and content prior to submitting the order to chambers in Microsoft word format, by email to dept14lc@clarkcountycourts.us CLERK'S NOTE: Michael Bohn (mbohn@bohnlawfirm.com) notified via e-mail.;

A-13-689240-C

County, Nevada

V

(Assigned by Clerk's Office)

I. Party Information

Defendant(s) (name/address/phone):

NATIONSTAR MORTGAGE, LLC; COOPER CASTLE

LAW FIRM, LLP; AND MONIQUE GUILLORY

Attorney (name/address/phone):

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II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

<p>Real Property</p> <p><input type="checkbox"/> Landlord/Tenant</p> <p><input type="checkbox"/> Unlawful Detainer</p> <p><input type="checkbox"/> Title to Property</p> <p><input type="checkbox"/> Foreclosure</p> <p><input type="checkbox"/> Liens</p> <p><input checked="" type="checkbox"/> Quiet Title</p> <p><input type="checkbox"/> Specific Performance</p> <p><input type="checkbox"/> Condemnation/Eminent Domain</p> <p><input type="checkbox"/> Other Real Property</p> <p><input type="checkbox"/> Partition</p> <p><input type="checkbox"/> Planning/Zoning</p>	<p>Negligence</p> <p><input type="checkbox"/> Negligence -- Auto</p> <p><input type="checkbox"/> Negligence -- Medical/Dental</p> <p><input type="checkbox"/> Negligence -- Premises Liability (Slip/Fall)</p> <p><input type="checkbox"/> Negligence -- Other</p>	<p>Torts</p> <p><input type="checkbox"/> Product Liability</p> <p><input type="checkbox"/> Product Liability/Motor Vehicle</p> <p><input type="checkbox"/> Other Torts/Product Liability</p> <p><input type="checkbox"/> Intentional Misconduct</p> <p><input type="checkbox"/> Torts/Defamation (Libel/Slander)</p> <p><input type="checkbox"/> Interfere with Contract Rights</p> <p><input type="checkbox"/> Employment Torts (wrongful termination)</p> <p><input type="checkbox"/> Other Torts</p> <p><input type="checkbox"/> Anti-trust</p> <p><input type="checkbox"/> Fraud/Misrepresentation</p> <p><input type="checkbox"/> Insurance</p> <p><input type="checkbox"/> Legal Tort</p> <p><input type="checkbox"/> Unfair competition</p>
<p>Probate</p> <p><input type="checkbox"/> Summary Administration</p> <p><input type="checkbox"/> General Administration</p> <p><input type="checkbox"/> Special Administration</p> <p><input type="checkbox"/> Set Aside Estates</p> <p><input type="checkbox"/> Trust/Conservatorships</p> <p><input type="checkbox"/> Individual Trustee</p> <p><input type="checkbox"/> Corporate Trustee</p> <p><input type="checkbox"/> Other Probate</p>	<p>Other Civil Filing Types</p> <p><input type="checkbox"/> Construction Defect</p> <p><input type="checkbox"/> Chapter 40</p> <p><input type="checkbox"/> General</p> <p><input type="checkbox"/> Breach of Contract</p> <p><input type="checkbox"/> Building & Construction</p> <p><input type="checkbox"/> Insurance Carrier</p> <p><input type="checkbox"/> Commercial Instrument</p> <p><input type="checkbox"/> Other Contracts/Acct/Judgment</p> <p><input type="checkbox"/> Collection of Actions</p> <p><input type="checkbox"/> Employment Contract</p> <p><input type="checkbox"/> Guarantee</p> <p><input type="checkbox"/> Sale Contract</p> <p><input type="checkbox"/> Uniform Commercial Code</p> <p><input type="checkbox"/> Civil Petition for Judicial Review</p> <p><input type="checkbox"/> Other Administrative Law</p> <p><input type="checkbox"/> Department of Motor Vehicles</p> <p><input type="checkbox"/> Worker's Compensation Appeal</p>	<p><input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box)</p> <p><input type="checkbox"/> Transfer from Justice Court</p> <p><input type="checkbox"/> Justice Court Civil appeal</p> <p><input type="checkbox"/> Civil Writ</p> <p><input type="checkbox"/> Other Special Proceeding</p> <p><input type="checkbox"/> Other Civil Filing</p> <p><input type="checkbox"/> Compromise of Minor's Claim</p> <p><input type="checkbox"/> Conversion of Property</p> <p><input type="checkbox"/> Damage to Property</p> <p><input type="checkbox"/> Employment Security</p> <p><input type="checkbox"/> Enforcement of Judgment</p> <p><input type="checkbox"/> Foreign Judgment - Civil</p> <p><input type="checkbox"/> Other Personal Property</p> <p><input type="checkbox"/> Recover of Property</p> <p><input type="checkbox"/> Stockholder Suit</p> <p><input type="checkbox"/> Other Civil Matters</p>

III. Business Court Requested (Please check applicable category; *for Clark and Washoe Counties only.*)

Enhanced Case Mgmt/Business

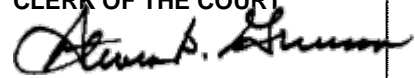
Other Business Court Matters

Trademarks (NRS 600A)

[Signature]

Signature of initiating party or representative

See other side for family-related case filings.



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DONNA M. WITTIG
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Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NATIONSTAR MORTGAGE LLC'S
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

On February 25, 2018, this Court heard plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct's motion for summary judgment. Defendant/counterclaimant Nationstar Mortgage LLC opposed the motion. Michael F. Bohn of the Law Offices of Michael F. Bohn, Esq.,

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 - FAX: (702) 380-8572

☐ Motion to Dismiss by Def(s)
☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☒ Summary Judgment
☐ Default Judgment
☐ Judgment of Arbitration

1 Ltd. appeared on behalf of plaintiff. Regina A. Habermas of Wright, Finlay & Zak, LLP appeared
2 on behalf of Nationstar. The Court having reviewed the pleadings and heard arguments hereby
3 makes findings of facts, conclusions of law, and orders as follows:

4 **FINDINGS OF FACT**

5 1. Saticoy Bay is the owner of the real property commonly known as 4641 Viareggio
6 Court, Las Vegas, Nevada.

7 2. Saticoy Bay acquired its interest in the property at foreclosure sale which occurred on
8 August 22, 2013 as evidenced by the foreclosure deed recorded on September 6, 2013.

9 3. Monique Guillory is the former owner of the property.

10 4. The property is encumbered by a Declaration of Covenants, Conditions and
11 Restrictions and Reservation of Easements (CC&Rs) in favor of the Naples Community
12 Homeowners Association (HOA).

13 5. The foreclosure deed arose from a delinquency in assessments due from the former
14 owner Guillory to the HOA pursuant to NRS Chapter 116.

15 6. Guillory executed a promissory note and obtain a loan in the original principal
16 amount of \$58,400 loan from First Magnus Financial Corporation.

17 7. Guillory also executed a first-lien deed of trust, which secured the loan and
18 encumbered the property. The deed of trust identified First Magnus as the lender, and Mortgage
19 Electronic Registration Systems, Inc. (MERS) as nominee for lender and lender's successors and
20 assigns as the beneficiary.

21 8. The deed of trust was initially assigned from MERS as nominee to Aurora Loan
22 Services LLC in an assignment on February 11, 2011.

23 9. The deed of trust was subsequently assigned from Aurora to Nationstar in an
24 assignment recorded on October 18, 2012.

25 10. The HOA retained the law firm of Leach Johnson Song & Gruchow as the foreclosure
26 agent to collect the unpaid assessments due on the subject property.

27 11. On August 18, 2011, the foreclosure agent sent the former owner a copy of the notice
28 of delinquent assessment lien.

- 1 12. On August 18, 2011, the foreclosure agent recorded the notice of lien.
- 2 13. On January 24, 2012, the foreclosure agent recorded the notice of default and election
- 3 to sell. The notice of default was mailed to the former owner Guillory, MERS, and Aurora.
- 4 14. On July 30, 2012, the foreclosure agent recorded a notice of foreclosure sale.
- 5 15. The foreclosure agent also mailed a copy of the notice of sale to the former owner
- 6 Guillory, MERS, and Aurora.
- 7 16. The notice of foreclosure sale under the lien for delinquent assessments was also
- 8 served upon the unit owner by posting a copy of the notice in a conspicuous place on the property.
- 9 17. The Notice of Sale was also posted in three locations within the county.
- 10 18. The foreclosure agent also published the notice of sale in Nevada Legal News on
- 11 three dates.
- 12 19. As reflected by the recitals in the foreclosure deed, Saticoy Bay appeared at the
- 13 public auction conducted on August 22, 2013, and entered the high bid of \$5,563.00 to purchase the
- 14 Property.
- 15 20. The HOA foreclosure agent issued a deed upon sale which was recorded on
- 16 September 6, 2013, and contains the following recitals:

17 This conveyance is made pursuant to the authority and powers vested to Naples

18 by Chapter 116 of Nevada Revised Statutes and the provisions of the

19 Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000

20 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark

21 County, Nevada, and any subsequent modifications, amendments or updates of

the said Declaration of Covenants, Conditions and Restrictions, and Naples

having complied with all applicable statutory requirements of the State of

Nevada, and performed all duties required by such Declaration of Covenants,

Conditions and Restrictions.

22 A Notice of Delinquent Assessment Lien was recorded on August 18, 2011

23 in Book 20110818, Instrument No. 02904 of the Official Records of the

24 Clark County Recorder, Nevada, said Notice having been mailed by

25 certified mail to the owners of record; a Notice of Default and Election to

26 Sell Real Property to Satisfy Assessment Lien was recorded on January 24,

27 2012 in Book 20120124, Instrument No. 00764 in the Official Records,

28 Clark County, Nevada, said document having been mailed by certified mail

to the owner of record and all parties of interest, and more than ninety (90)

days having elapsed from the mailing of said Notice of Default, a Notice of

Sale was published once a week for three consecutive weeks commencing

on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said

Notice of Sale was recorded on July 30, 2012 in Book 20120730 as

Instrument 01448 of the Official Records of the Clark County Recorder,

Nevada, and at least twenty days before the date fixed therein for the sale, a

1 true and correct copy of said Notice of Sale was posted in three of the most
2 public places in Clark County, Nevada, and in a conspicuous place on the
property located at 4641 Viareggio Ct., Las Vegas, NV.

3 On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a
4 Nevada Corporation, Front Entrance Lobby, 930 South 4th Street, Las
Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its
5 power of sale and did sell the above described property at public auction.
Grantee, being the highest bidder at said sale, became the purchaser and
6 owner of said property for the sum of FIVE THOUSAND FIVE
HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the
7 United States, in full satisfaction of the indebtedness secured by the lien of
Naples.

8 21. Federal Home Loan Mortgage Corporation's (**Freddie Mac**) business records and
9 testimony of a Freddie Mac employee state that Freddie Mac purchased the loan, including both the
10 note and the deed of trust, on March 29, 2007 and continued to own the loan at the time of the HOA
11 sale.

12 22. Nationstar was servicing the loan on behalf of Freddie Mac at the time of the HOA
13 sale.

14 CONCLUSIONS OF LAW

15 1. The Court finds Saticoy Bay has sufficiently established that, absent flaws in the
16 HOA foreclosure sale or potential equitable reasons for setting aside the sale, Saticoy Bay is entitled
17 to judgment as a matter of law on its quiet title claim.

18 2. The Court finds that Nationstar has not met its burden of establishing a genuine issue
19 of material fact as to whether Saticoy Bays claim is preempted by the federal foreclosure bar, 12
20 U.S.C. § 4617(j)(3).

21 3. The Court agrees that, if the federal foreclosure bar applies, the HOA's foreclosure
22 could not affect FHFA's interest in the deed of trust, and thus that the property would still be
23 encumbered by the deed of trust. However, this requires a finding that FHFA in fact owned a legally
24 cognizable interest in the deed of trust. In Nevada, a security interest is only effective against a third
25 party once it is recorded. *See In re Montierth*, 354 P.3d 648, 650 (Nev. 2015).

26 4. Nationstar has not disputed the fact that no recorded document reflects any Federal
27 Housing Finance Agency (**FHFA**) interest in the deed of trust, much less that any recorded
28 document makes any mention of Freddie Mac having an interest in the deed of trust. The only

1 evidence that Nationstar has provided in an effort to prove Freddie Mac's ownership are business
2 records of Freddie Mac, coupled with an affidavit stating that Freddie Mac's business records reflect
3 ownership of the subject loan at the time of the HOA sale. However, even if this information is
4 sufficient to show that Freddie Mac believed it had ownership of the loan, this evidence would
5 conflict with the judicially noticeable public record.

6 5. Because no interest of Freddie Mac or FHFA was recorded, there is no such interest
7 that would be effective as against the HOA or Saticoy Bay. Thus, the federal foreclosure bar does
8 not apply here.

9 6. An HOA sale cannot be held commercially unreasonable based on price alone, as this
10 conclusion requires a finding of fraud, unfairness, or oppression that brings about and causes a low
11 sale price. *Nationstar Mortgage v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641
12 (Nev. 2017).

13 7. Nationstar contends that fraud, unfairness, or oppression are shown by the existence
14 of a mortgage protection clause in the HOA's CC&Rs, by the HOA's failure to try to get the best
15 price possible at foreclosure, and by the HOA's inclusion of fees and costs in its calculation of its
16 lien. The Court finds that none of these issues presents evidence of fraud, unfairness, or oppression.

17 8. A clause such as the one in the relevant CC&Rs here, which states that the HOA's
18 foreclosure cannot extinguish a mortgage deed of trust, is void under NRS 116.1104, as held in *SFR*
19 *Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014), and thus the HOA's act of foreclosing is
20 not rendered fraudulent, unfair, or oppressive due to the clause's presence in the CC&Rs.

21 9. NRS Chapter 116 imposes no duty on an HOA to get the best price possible at
22 foreclosure, as affirmed in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754
23 (Nev. 2017), where the Nevada Supreme Court rejected the argument that an HOA has the burden of
24 establishing that it took all steps possible to obtain the highest sales price it could.

25 10. An HOA lien is not invalid for including fines, as addressed in the recent *Shadow*
26 *Canyon* case. The Nevada Supreme Court rejected this argument, finding that such an interpretation
27 is untenable, and that the legislature apparently intended to prevent foreclosure on a lien that is
28 comprised solely of fines, but not a lien that includes both delinquent assessments and fines.

11. Nationstar has identified no evidence of fraud, unfairness, or oppression, so the HOA sale cannot be held commercially unreasonable.

12. Nationstar's remaining arguments do not impact the Court's decision. The Nevada Supreme Court has conclusively held that NRS 116 does not violate due process, in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 388 P.3d 970 (Nev. 2017).

13. Because Nationstar has not presented any meritorious reason for setting aside the sale, Plaintiff's potential status as a bona fide purchaser is not a necessary determination.

14. Nationstar has not met its burden in resisting summary judgment, and the Court finds judgment as a matter of law in Saticoy Bay's favor is appropriate.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct's motion for summary judgment is granted as to its quiet title claim.

IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct against defendant/counter-claimant Nationstar Mortgage LLC as to the quiet title claim.

DATED December 6, 2018.


DISTRICT COURT JUDGE

Respectfully submitted:


AKERMAN LLP

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

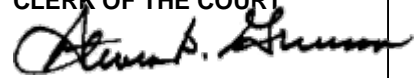
DONNA M. WITTIG

Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC



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Email: donna.wittig@akerman.com

Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NOTICE OF ENTRY OF NATIONSTAR
MORTGAGE LLC'S FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND
JUDGMENT**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that NATIONSTAR MORTGAGE LLC'S FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND JUDGMENT has been entered by this Court on the 11th

day of December, 2018, in the above-captioned matter. A copy of said Order is attached hereto as
Exhibit A.

DATED this 14th day of December, 2018.

AKERMAN LLP

/s/ Donna M. Wittig

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG

Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 14th day of December, 2018, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF NATIONSTAR MORTGAGE LLC'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List as follows:

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

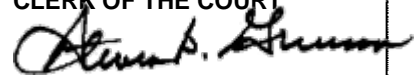
Eserve Contact	office@bohnlawfirm.com
Michael F Bohn Esq	mbohn@bohnlawfirm.com

/s/ Carla Llarena

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



FFCL
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Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

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☐ Motion to Dismiss by Def(s)
☐ Voluntary Dismissal
☐ Involuntary Dismissal
☐ Stipulated Dismissal
☒ Summary Judgment
☐ Default Judgment
☐ Judgment of Arbitration

1 Ltd. appeared on behalf of plaintiff. Regina A. Habermas of Wright, Finlay & Zak, LLP appeared
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6 Court, Las Vegas, Nevada.

7 2. Saticoy Bay acquired its interest in the property at foreclosure sale which occurred on
8 August 22, 2013 as evidenced by the foreclosure deed recorded on September 6, 2013.

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10 4. The property is encumbered by a Declaration of Covenants, Conditions and
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14 owner Guillory to the HOA pursuant to NRS Chapter 116.

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- 9 17. The Notice of Sale was also posted in three locations within the county.
- 10 18. The foreclosure agent also published the notice of sale in Nevada Legal News on
- 11 three dates.
- 12 19. As reflected by the recitals in the foreclosure deed, Saticoy Bay appeared at the
- 13 public auction conducted on August 22, 2013, and entered the high bid of \$5,563.00 to purchase the
- 14 Property.
- 15 20. The HOA foreclosure agent issued a deed upon sale which was recorded on
- 16 September 6, 2013, and contains the following recitals:

17 This conveyance is made pursuant to the authority and powers vested to Naples

18 by Chapter 116 of Nevada Revised Statutes and the provisions of the

19 Declaration of Covenants, Conditions and Restrictions, recorded May 7, 2000

20 in Book 20000507 as Instrument No. 00911, in the Official Records of Clark

21 County, Nevada, and any subsequent modifications, amendments or updates of

the said Declaration of Covenants, Conditions and Restrictions, and Naples

having complied with all applicable statutory requirements of the State of

Nevada, and performed all duties required by such Declaration of Covenants,

Conditions and Restrictions.

22 A Notice of Delinquent Assessment Lien was recorded on August 18, 2011

23 in Book 20110818, Instrument No. 02904 of the Official Records of the

24 Clark County Recorder, Nevada, said Notice having been mailed by

25 certified mail to the owners of record; a Notice of Default and Election to

26 Sell Real Property to Satisfy Assessment Lien was recorded on January 24,

27 2012 in Book 20120124, Instrument No. 00764 in the Official Records,

28 Clark County, Nevada, said document having been mailed by certified mail

to the owner of record and all parties of interest, and more than ninety (90)

days having elapsed from the mailing of said Notice of Default, a Notice of

Sale was published once a week for three consecutive weeks commencing

on September 20, 2012, in the Nevada Legal News, a legal newspaper. Said

Notice of Sale was recorded on July 30, 2012 in Book 20120730 as

Instrument 01448 of the Official Records of the Clark County Recorder,

Nevada, and at least twenty days before the date fixed therein for the sale, a

1 true and correct copy of said Notice of Sale was posted in three of the most
2 public places in Clark County, Nevada, and in a conspicuous place on the
property located at 4641 Viareggio Ct., Las Vegas, NV.

3 On August 22, 2013 at 10:00 a.m. of said day, at Nevada Legal News, a
4 Nevada Corporation, Front Entrance Lobby, 930 South 4th Street, Las
Vegas, Nevada, 89101, Naples, by and through its Agent, exercised its
5 power of sale and did sell the above described property at public auction.
Grantee, being the highest bidder at said sale, became the purchaser and
6 owner of said property for the sum of FIVE THOUSAND FIVE
HUNDRED SIXTY THREE (\$5,563.00) Dollars, cash, lawful money of the
7 United States, in full satisfaction of the indebtedness secured by the lien of
Naples.

8 21. Federal Home Loan Mortgage Corporation's (**Freddie Mac**) business records and
9 testimony of a Freddie Mac employee state that Freddie Mac purchased the loan, including both the
10 note and the deed of trust, on March 29, 2007 and continued to own the loan at the time of the HOA
11 sale.

12 22. Nationstar was servicing the loan on behalf of Freddie Mac at the time of the HOA
13 sale.

14 CONCLUSIONS OF LAW

15 1. The Court finds Saticoy Bay has sufficiently established that, absent flaws in the
16 HOA foreclosure sale or potential equitable reasons for setting aside the sale, Saticoy Bay is entitled
17 to judgment as a matter of law on its quiet title claim.

18 2. The Court finds that Nationstar has not met its burden of establishing a genuine issue
19 of material fact as to whether Saticoy Bays claim is preempted by the federal foreclosure bar, 12
20 U.S.C. § 4617(j)(3).

21 3. The Court agrees that, if the federal foreclosure bar applies, the HOA's foreclosure
22 could not affect FHFA's interest in the deed of trust, and thus that the property would still be
23 encumbered by the deed of trust. However, this requires a finding that FHFA in fact owned a legally
24 cognizable interest in the deed of trust. In Nevada, a security interest is only effective against a third
25 party once it is recorded. *See In re Montierth*, 354 P.3d 648, 650 (Nev. 2015).

26 4. Nationstar has not disputed the fact that no recorded document reflects any Federal
27 Housing Finance Agency (**FHFA**) interest in the deed of trust, much less that any recorded
28 document makes any mention of Freddie Mac having an interest in the deed of trust. The only

1 evidence that Nationstar has provided in an effort to prove Freddie Mac's ownership are business
2 records of Freddie Mac, coupled with an affidavit stating that Freddie Mac's business records reflect
3 ownership of the subject loan at the time of the HOA sale. However, even if this information is
4 sufficient to show that Freddie Mac believed it had ownership of the loan, this evidence would
5 conflict with the judicially noticeable public record.

6 5. Because no interest of Freddie Mac or FHFA was recorded, there is no such interest
7 that would be effective as against the HOA or Saticoy Bay. Thus, the federal foreclosure bar does
8 not apply here.

9 6. An HOA sale cannot be held commercially unreasonable based on price alone, as this
10 conclusion requires a finding of fraud, unfairness, or oppression that brings about and causes a low
11 sale price. *Nationstar Mortgage v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641
12 (Nev. 2017).

13 7. Nationstar contends that fraud, unfairness, or oppression are shown by the existence
14 of a mortgage protection clause in the HOA's CC&Rs, by the HOA's failure to try to get the best
15 price possible at foreclosure, and by the HOA's inclusion of fees and costs in its calculation of its
16 lien. The Court finds that none of these issues presents evidence of fraud, unfairness, or oppression.

17 8. A clause such as the one in the relevant CC&Rs here, which states that the HOA's
18 foreclosure cannot extinguish a mortgage deed of trust, is void under NRS 116.1104, as held in *SFR*
19 *Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014), and thus the HOA's act of foreclosing is
20 not rendered fraudulent, unfair, or oppressive due to the clause's presence in the CC&Rs.

21 9. NRS Chapter 116 imposes no duty on an HOA to get the best price possible at
22 foreclosure, as affirmed in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754
23 (Nev. 2017), where the Nevada Supreme Court rejected the argument that an HOA has the burden of
24 establishing that it took all steps possible to obtain the highest sales price it could.

25 10. An HOA lien is not invalid for including fines, as addressed in the recent *Shadow*
26 *Canyon* case. The Nevada Supreme Court rejected this argument, finding that such an interpretation
27 is untenable, and that the legislature apparently intended to prevent foreclosure on a lien that is
28 comprised solely of fines, but not a lien that includes both delinquent assessments and fines.

11. Nationstar has identified no evidence of fraud, unfairness, or oppression, so the HOA sale cannot be held commercially unreasonable.

12. Nationstar's remaining arguments do not impact the Court's decision. The Nevada Supreme Court has conclusively held that NRS 116 does not violate due process, in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 388 P.3d 970 (Nev. 2017).

13. Because Nationstar has not presented any meritorious reason for setting aside the sale, Plaintiff's potential status as a bona fide purchaser is not a necessary determination.

14. Nationstar has not met its burden in resisting summary judgment, and the Court finds judgment as a matter of law in Saticoy Bay's favor is appropriate.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the motion of plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct's motion for summary judgment is granted as to its quiet title claim.

IT IS FURTHER ORDERED that judgment is entered on behalf of plaintiff/counter-defendant Saticoy Bay LLC Series 4641 Viareggio Ct against defendant/counter-claimant Nationstar Mortgage LLC as to the quiet title claim.

DATED December 6, 2018.


DISTRICT COURT JUDGE

Respectfully submitted:


AKERMAN LLP

MELANIE D. MORGAN, ESQ.

Nevada Bar No. 8215

DONNA M. WITTIG

Nevada Bar No. 11015

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 24, 2014

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

January 24, 2014	9:00 AM	All Pending Motions	Defendant Nationstar Mortgage, LLC and The Cooper Castle Law Firm, LLP's Motion to Dismiss; Opposition to Motion to Dismiss and Countermotion to Stay Case
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HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 03B

COURT CLERK: Katherine Streuber

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Bohn, Michael F Attorney
Peck, Jason M, ESQ Attorney

JOURNAL ENTRIES

- Kelly Perry present with Mr. Bohn. Court advised it had been staying most of these types of cases as there is a decision pending from the Supreme Court. Mr. Bohn advised there has not been a date set for hearing at this time. Mr. Peck stated the defense did not want any unnecessary work, however, believes the Plaintiff should post bond. Mr. Bohn advised if the Motion to Dismiss was granted, they would be requesting 54b Certification and noted the Supreme Court has not required a bond be posted in these cases. Statement by Mr. Peck. Mr. Bohn advised his client is paying insurance and fees and will continue to do so. Court believes a stay is appropriate and ORDERED, Countermotion to Stay Case is GRANTED and Defendants' Motion to Dismiss is DENIED. Mr. Bohn to prepare the order and provide to opposing counsel for review prior to submitting to the Court for

signature.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 06, 2015

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

January 06, 2015

3:00 AM

Motion

HEARD BY: Ellsworth, Carolyn

COURTROOM:

COURT CLERK: Denise Trujillo

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- MOTION TO LIFT STAY

No opposition having been filed, COURT ORDERED, Motion GRANTED, prevailing party to prepare order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

May 15, 2015

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

May 15, 2015

9:00 AM

All Pending Motions

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Shelly Landwehr

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:

Nitz, Dana Jonathon
Tan, Gerald L.

Attorney
Attorney

JOURNAL ENTRIES

- PLAINTIFF S MOTION TO DISMISS COUNTERCLAIM NATIONSTAR S OPPOSITION TO DISMISS COUNTERCLAIM AND, IN THE ALTERNATIVE, MOTION FOR CONTINUANCE, AND ITS COUNTERMOTION FOR SUMMARY JUDGMENT

Court NOTED its tentative ruling which was distributed to counsel as follows:

I. FACTUAL BACKGROUND

Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff) is the record title holder of the property located at 4641 Viareggio Court, Las Vegas, Nevada (the Property). The Property is subject to the covenants, codes, and restrictions of Counter defendant Naples Community Homeowners Association (the HOA). Plaintiff acquired title to the Property via a foreclosure sale held by the HOA on delinquent assessment liens it held on the Property.

Defendant/Counterclaimant Nationstar Mortgage, LLC (Nationstar) held a first priority deed of trust on the Property. Following the foreclosure sale on August 22, 2013 at which Saticoy Bay acquired title to the Property, Nationstar filed a Notice of Default and Election to Sell. Saticoy Bay

then filed suit against, inter alia, Nationstar, alleging claims for: (1) injunctive relief; (2) declaratory relief/quiet title; and (3) unlawful detainer (against the former property owner). Nationstar filed an Answer and Counterclaim on March 13, 2015, alleging claims for: (1) quiet title/declaratory relief, against Saticoy Bay and the HOA; (2) injunctive relief against Saticoy Bay and the HOA; and (3) wrongful foreclosure (against the HOA only).

Saticoy Bay moved to dismiss the Counterclaim on March 19, 2015. Nationstar filed an Opposition thereto and a Countermotion for Summary Judgment on April 20, 2015, pursuant to an extended deadline by stipulation.

II. ANALYSIS

A. Legal Standards

Motion to Dismiss

Saticoy Bay moves for dismissal under NRCP 12(b)(5), which mandates dismissal when it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle it to relief. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). This standard requires this Court to examine the content of Nationstar's Counterclaim. See *McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. Adv. Op. 64, 310 P.3d 555, 558 (2013) (analyzing a complaint's claims in deciding a 12(b)(5) motion to dismiss).

However, [i]f, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, 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. NRCP 12(b)

Here, as noted by Nationstar, Saticoy Bay has included documents outside the pleading itself with its Motion to Dismiss—a copy of the foreclosure deed and a copy of decision by the U.S. District Court for the District of Nevada. Nationstar argues that Saticoy's Motion should therefore be construed as a motion for summary judgment.

However, there are exceptions to when a court should consider a Rule 12(b)(5) motion as a motion for summary judgment. One exception is where the complaint/counterclaim attaches the documents referenced by the Motion to Dismiss. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). Another is that the court may take judicial notice of matters of public record. *Id.* The Foreclosure Deed is attached as Exhibit 7 to Nationstar's Counterclaim and the District Court decision will not be considered by the Court. Thus, this Court need not construe Saticoy Bay's Motion as one for summary judgment.

Motions for Summary Judgment

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. NRCP 56. (emphasis added) The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial. If the moving party will bear the burden of persuasion, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. But if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim or (2) pointing out that there is an absence of evidence to support the nonmoving party's case. *Cuzze v. Univ. and Community College System of Nevada*, 123 Nev. 598, 172 P.2d 131 (2007).

Here, it is important to note that Nationstar may have been hoist by its own petard with regard to its entitlement to summary judgment. Curiously, Nationstar has included a list of approximately seven disputed facts in its Opposition/Motion. Opp. at 6. It lists these facts in refuting Saticoy Bay's entitlement to dismissal of the Counterclaim but, to the extent that these facts are material (which they appear to be, as they directly underlie the claims in the Counterclaim), Nationstar would likewise not be entitled to summary judgment. On this basis alone, the Court could arguably deny Nationstar's Motion.

B. Analysis

The Counterclaim asserts only two claims against Saticoy Bay: (1) quiet title; and (2) injunctive relief. Relative to the first, Nationstar has no title interest to the Property, but rather holds or held only a lien and, therefore, has no standing to assert a quiet title claim. As this was not a ground asserted by Saticoy Bay, it will not be discussed further here. Relative to the second claim, Nationstar seeks injunctions prohibiting Saticoy Bay from selling the Property, and requiring it to pay all taxes, insurance, and HOA dues until the matter is resolved. However, injunctions are to prevent future damage from occurring and generally will not redress wrongs already committed. See *Sherman v. Clark*, 4 Nev. 139, 141 (1868). Since the foreclosure has already occurred, and has extinguished Nationstar's interest pursuant to the Supreme Court's decision in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014), reh'g denied (Oct. 16, 2014), their injunctive relief claim is problematic. Again, since Saticoy Bay did not assert this as a ground for dismissal, it will not be discussed further here.

Nationstar presents several grounds to oppose to Motion to Dismiss. I believe each of these grounds, presented below, are likewise insufficient but they are presented for full consideration.

1. Whether the foreclosure sale was properly noticed

Saticoy Bay argues that its foreclosure deed provides conclusive proof that the foreclosure process was properly conducted under NRS 116. In response, Nationstar asserts that the notice of default was deficient because it does not describe the deficiency in payment or alert third parties as to what is being foreclosed assessments, fines, nuisance abatements, or something else. It also generally avers that the foreclosure deed does not provide conclusive proof because, otherwise, every foreclosure sale under NRS Chapter 116 is presumed to be a valid sale on a super-priority lien. Opp. at 21:4-5.

Saticoy Bay appears to be correct in its assertion that NRS 116 provides a conclusive presumption as to the validity of a HOA lien foreclosure sale under certain circumstances. NRS 116.31166(1) provides:

The recitals in a deed made pursuant to [the foreclosure of a HOA lien under this Chapter] of:

- (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;
 - (b) The elapsing of the 90 days; and
 - (c) The giving of notice of sale,
- are conclusive proof of the matters recited.

Saticoy Bay attached a filed copy of the Foreclosure Deed as Exhibit 1 to its Motion. That deed provides that the Notice of Mailing of Delinquent Assessment was recorded and then mailed to the owners and that, subsequently, a Notice of Default and Election to Sell was recorded on January 24, 2012. Thus, subsection (a) is satisfied. The Foreclosure Deed further states that more than ninety (90) days elapsed from mailing the Notice of Default and Election to Sell to interested parties. Thus, subsection (b) is satisfied. Lastly, the Foreclosure Deed states that a Notice of Sale was published for three weeks in the Nevada Legal News, was recorded, and posted in three of the most public places in Clark County as well as on the Property. Thus, subsection (c) is satisfied. Saticoy Bay has therefore sufficiently demonstrated that the Foreclosure Deed provides conclusive proof that proper notice was given.

Nationstar argues that Saticoy Bay's position would mean that every foreclosure sale under NRS Chapter 116 is presumed to be a valid sale on a super-priority lien. Opp. at 21:4-5. This, however, ascribes an overly broad interpretation to the argument. Where a statute is unambiguous, a court is not permitted to look beyond the statute itself when determining its meaning. *Westpark Owners' Ass'n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007). A statute is ambiguous when it is capable of more than one reasonable interpretation. *Orion Portfolio Servs. 2, L.L.C. v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. ___, ___, 245 P.3d 527, 531 (2010). As outlined above, NRS 116.31166(1) does establish conclusive proof as to matters of notice of the sale - this is apparent from the face of the statute itself. Those provisions are not susceptible to more than one reasonable interpretation. Thus, the Foreclosure Deed appears to provide conclusive proof as to matters of notice of delinquency and the foreclosure sale. Moreover, those matters cannot be genuinely disputed factual issues, as they are conclusively established pursuant to NRS 116.31166(1). Hence, Nationstar's claims for wrongful foreclosure should be dismissed. Its motion for

summary judgment on that point should also be denied because, even if there are not disputed issues of material fact, it is not entitled to judgment as a matter of law.

2. Whether the notice provisions in NRS 116 for HOA lien foreclosures violate due process

Nationstar contends that NRS 116.31163 and NRS 116.31168 facially violate due process rights because, rather than requiring mandatory notice to lenders, they require notice only to those that have opted in to receive notice from the HOA.

NRS 116.31163 provides:

The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by first-class mail to:

1. Each person who has requested notice pursuant to NRS 107.090 or 116.31168;
2. Any holder of a recorded security interest encumbering the unit s owner s interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest.

NRS 116.31168(1) provides that [t]he provisions of NRS 107.090 apply to the foreclosure of an association s lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit s owner and the common-interest community. Saticoy Bay argues that these provisions do not violate due process because they do not limit lenders notice to those to which it has opted to receive. Saticoy Bay points to the fact that NRS 116.31168(1) incorporates the provisions of NRS 107.090 relative to notice.

NRS 107.090(3) provides that [t]he trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to: (a) [e]ach person who has recorded a request for a copy of the notice; and (b) [e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

It is not entirely clear that NRS 116.31168(1) incorporates all the provisions of NRS 107.090(3), however. NRS 107.090 primarily addresses those who have recorded requests for notices. Although subsection (3)(b) also requires notice to be sent to subordinate interest holders, it seems more logical that NRS 116.31168(1), which similarly addresses giving notice to those who have requested it, incorporates only those portions of NRS 107.090 that address the same topic. Therefore, Saticoy Bay s position is less clear cut than it would have one believe.

At the same time, SFR did note that the requirements of law include compliance with NRS 116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, see NRS 116.31168(1). SFR, 334 P.3d at 418. Additionally, the Foreclosure Deed conclusively proves that a notice of default and

election to sell was actually provided to all parties of interest, which would include Nationstar. The Notice of Sale was thereafter published and posted in conspicuous public places, including upon the Property.

3. Whether Nationstar's deed of trust was preserved by the HOA's CC&Rs

Saticoy Bay argues that, while the CC&Rs at issue here do contain a mortgage savings clause, that clause is pre-empted by NRS 116.1104. Nationstar responds by contending that the mortgage savings clause is valid and that its interest was therefore not extinguished by the foreclosure.

This issue appears to have been directly addressed and decided by the Supreme Court in SFR. The Court there held that:

[NRS 116.1104] states Chapter 116's provisions may not be varied by agreement, and rights conferred by it may not be waived ... [e]xcept as expressly provided in Chapter 116. (Emphasis added.) Nothing in [NRS] 116.3116 expressly provides for a waiver of the HOA's right to a priority position for the HOA's super priority lien [even by including a mortgage savings clause in the CC&Rs].

SFR, 334 P.3d at 419 (citations omitted). Thus, Nationstar's position is directly at odds with the SFR decision. Indeed, its Opposition seems to acknowledge this conflict and states that to the extent SFR conflicts with the premise that the HOA could choose to subordinate its interests to the first mortgagee for the greater good of the association it should be overturned. Opp. at 18:11-14. Of course, this Court is in no position to overturn a decision of the Supreme Court. In any event, Nationstar's mortgage was not preserved by the mortgage savings clause in the CC&Rs under existing law. Therefore, Nationstar's Complaint should be dismissed because it cannot pursue the claims contained therein where its interest in the Property has been extinguished. Furthermore, regardless of the existence of disputed material facts, Nationstar would not be entitled to judgment as a matter of law for these same reasons and its Motion for Summary Judgment should be denied.

4. Whether the nonjudicial foreclosure process in NRS 116 violates Takings Clauses

Nationstar also argues that the SFR decision and nonjudicial foreclosure under NRS 116 and the SFR interpretation thereof violates the Takings Clauses of the United States and Nevada Constitutions. In order for there to be a violation of the Takings Clauses, the use for which real property is appropriated must be a public use—that is, it must serve a public purpose. See *Kelo v. City of New London, Conn.*, 545 U.S. 469, 480 (2005); *Dayton Gold & Silver Mining Co. v. Seawell*, 11 Nev. 394, 410 (1876). At the outset, it is highly doubtful that Nationstar has any real property interest in the Property that could have been taken as that word is meant in the context of the Takings Clauses. Nationstar held only a security interest in the Property via a deed of trust. This is akin to a lien on the Property and liens are a monetary encumbrance on property, which cloud[] title, not a vested right in title. *Hamm v. Arrowcreek Homeowners Ass'n*, 124 Nev. 290, 298, 183 P.3d 895, 901 (2008). Even if Nationstar had a compensable interest in the Property, its takings claim must still fail. It is difficult to see how the foreclosure of a HOA lien could constitute public use.

Moreover, there is also no real government action here that would constitute a taking under the Takings Clauses. Typically, such actions are in the nature of a physical intrusion onto one's property or regulating one's property such that the property loses economic value. See generally *City of Las Vegas v. Cliff Shadows Prof'l Plaza*, 293 P.3d 860 (Nev. 2013); *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645 (2006). Thus, its motion for summary judgment on this point should be denied.

5. Whether the HOA Lien here Violates NRS 116.3116

Nationstar also argues that the HOA lien that was foreclosed upon violated NRS 116 and that, because it was statutorily improper, this invalidates the resulting foreclosure. The essence of Nationstar's argument on this point is that NRS 116.3116(1) limits what may be included in a HOA's super-priority lien and that this does not include collection costs and attorney's fees. This precise issue is currently before the Supreme Court in the case of *Horizons at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, Case No. 63178, and is pending final disposition. But the Court need not decide that issue because the argument is made too late in the case, as to *Saticoy Bay*. Here, the foreclosure sale has already occurred. Although the argument is preserved as to the HOA, the ship has sailed on *Saticoy Bay*.

Mr. Tan argued under the SFR decision the Nevada Supreme Court held that proper foreclosure of HOA lien extinguishes first deed of trust. The recital in the foreclosure deed here is proper before the Court, it's a public document, all requirements were followed; therefore, the foreclosure is presumed to be proper and first deed of trust held by the defendants is extinguished and there is no interest in the property.

Mr. Nitz stated plaintiff's argument is flawed. Plaintiff is reading SFR in that the foreclosure deed extinguishes the deed of trust and that is not what SFR said. SFR says that a properly conducted HOA lien foreclosure sale can extinguish the deed of trust. Mr. Nitz stated the circumstances that were presented to the NVSC on that decision, have to be considered. The NVSC was considering a motion to dismiss that was granted in the district court. At the motion to dismiss stage, because the complaint alleged that all of the notices were given and because the complaint alleged the foreclosure deed had those recitations, that they met the burden of demonstrating a viable claim for relief. The NVSC did not say those conclusively establish for all cases that the foreclosure deed extinguishes the deed of trust; it's just at that stage of the pleadings. Court inquired if the statute itself make these things self-executed so that there is a presumption. Mr. Nitz stated the problem with that analysis is an affront to due process.

Mr. Tan argued noticed is required and stated, although there are several provisions, as far as lenders are concerned as beneficiaries of deed of trust they are required to receive notice. If Defendant Nationstar Mortgage had no interest, then they wouldn't have been necessary to be named in the complaint. Mr. Nitz stated a lien interest is sufficient. SFR left open challenges to the validity of the sale. Further arguments by Mr. Nitz regarding foreclosure notices, fair market value of the property

and commercial reasonable sales. As to the ability to cure, MR. Tan argued SFR addressed that. The banks as holders of deeds of trust can go in and asking what is the super priority lien amount and paying for it. Further arguments.

COURT ORDERED, matter UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

June 19, 2015

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

June 19, 2015

9:00 AM

Motion to Dismiss

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Billie Jo Craig

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Crowton, Chelsea A., ESQ Attorney
 McGrath, Thomas E. Attorney

JOURNAL ENTRIES

- Counsel advised they read the Court's tentative ruling and submitted matter. COURT ORDERED, matter DISMISSED WITHOUT PREJUDICE. Mr. McGrath to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 09, 2017

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

February 09, 2017 9:30 AM Motion for Leave

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Habermas, Regina A. Attorney
 Trippiedi, Adam R. Attorney

JOURNAL ENTRIES

- Ms. Habermas stated as she demonstrated in the motion, leave should be granted to allow her to assert new affirmative defenses as well as counterclaims for quiet title and declaratory relief against the Plaintiff. Further arguments in support of her motions. Mr. Trippiedi stated that as to affirmative defenses, we have moved to keep it out because due process. Constitutionality was decided two weeks ago by the NSC. NRS116 finds there is no State action, therefore there is no due process violation. The order has been issued, published and is now law in Nevada. Further arguments in support of his position. Arguments by Ms. Habermas regarding failure to give proper notice and to act in good faith. Failure to act in good faith is a form of oppression, fraud or unfairness. Statements regarding the CC&Rs and unjust enrichment claim. Following further arguments of counsel, The Court noted it read the decision issued by Judge Ellsworth. The 2015 order GRANTS Plaintiff's Motion to Dismiss and DENIES Nationstar Mortgage's countermotion for Summary Judgment and in this Court's view, that ruling STANDS. It is a final order and this Court is not willing to disregard. Ms. Habermas stated there have been a number of cases cited since that order was entered, including Shadow Wood, Horizon Seven Hills vs. ICON Holdings and these cases have given further guidance. The Court stated that we are at the point where the NRED negotiations are complete.

COURT FINDS, 1) We have claims against Plaintiff and this Court decides they had nothing to do

with the NRED mediations; they were previously dismissed via the 12(b)(5) motion. In this Court's view they are futile as they are treated as a final judgment thus they DENIED. If counsel disagrees with that, they may move for reconsideration or brief the issue. This Court does not see a change of law under Rule 60 and doesn't believe that SFR changed the law at all; it just interpreted it. All claims against the Plaintiff purchaser were dismissed and that stands. 2) Claims against the HOA for the most part were different and they were allowed except for a couple of them. Those remain. The order filed on 8/12/15 by Judge Ellsworth is without prejudice, so this comes in except for the cause of action for quiet title, cause of action for injunctive relief. It has already been dismissed as against the Plaintiff and the cause of action for unjust enrichment as to Plaintiff is barred by the voluntary payment document. COURT ORDERED, it is GRANTING the motion except for the causes of action One, Two and Eight and any other portion will be allowed in. FURTHER, Plaintiff's claims against Defendant are denied because the previous order still stands. Mr. Trippiedi to prepare the order in Word and provide to Chambers. Also, a copy is to be provided to Ms. Habernas for review as to content and form.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

June 15, 2017

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

June 15, 2017

9:30 AM

**Motion for Summary
Judgment**

**Plaintiff's Motion for
Summary Judgment**

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Sharon Chun

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Plaintiff's Motion for Summary Judgment

No parties present. COURT ORDERED, OFF CALENDAR.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

July 27, 2017

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

July 27, 2017

9:30 AM

**Motion for Summary
Judgment**

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 03F

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Habermas, Regina A. Attorney
 Trippiedi, Adam R. Attorney

JOURNAL ENTRIES

- Ms. Habermas stated she was unaware this matter was on calendar and thought it was continued which is why an opposition has not been filed. She requested a two week continuance. Mr. Trippiedi advised that his client has not given him the authority to continue this matter. Additionally, this motion was filed in May and no opposition has been filed. COURT ORDERED, continuance is GRANTED; opposition is due on 8/3/17 and reply is due on 8/10/17.

CONTINUED TO: 8/10/17 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 10, 2017

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

August 10, 2017

9:30 AM

All Pending Motions

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT:

Bohn, Michael F

Attorney

Habermas, Regina A.

Attorney

JOURNAL ENTRIES

- CALENDAR CALL...PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Mr. Bohn requested that his motion be granted as Ms. Habermas failed to file an opposition despite being granted two extensions. Statement by Ms. Habermas; she stated she had trouble filing her opposition over the weekend. Mr. Bohn stated the opposition was dated today. COURT ORDERED, Plaintiff's Motion for Summary Judgment is GRANTED as there is no good cause to put the rules aside. FURTHER, trial date is VACATED. Mr. Bohn to prepare the order to include findings of fact and conclusions of law.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 21, 2017

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

September 21, 2017 9:30 AM

**Motion for Default
Judgment**

**Motion for Default
Judgment**

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Haly Pannullo
Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Trippiedi, Adam R. Attorney

JOURNAL ENTRIES

- Mr. Trippiedi stated Ms. Gilroy has been served and defaulted and that he is seeking quiet title against her. He further stated she has not appeared in this matter and has not filed an opposition to this motion. Upon Court's inquiry, he advised that Cooper Castle no longer exists and a Motion for Voluntary Dismissal has been filed; he is not necessary for a default in this case. COURT ORDERED, motion is GRANTED. Order provided to the Court for its review and signature.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 27, 2017

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

September 27, 2017 4:55 PM Minute Order

HEARD BY: Escobar, Adriana

COURTROOM: Chambers

COURT CLERK: Michelle Jones

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct filed a motion for voluntary dismissal of Defendant Cooper Castle Law Firm LP on August 29, 2017. The matter was subsequently scheduled for hearing on September 28. No opposition having been filed and good cause showing, pursuant to EDCR 2.20 and EDCR 2.23(c) the Court hereby GRANTS the Motion for voluntary dismissal.

The Court hereby VACATES the September 28, 2017 hearing. Plaintiff is directed to prepare a proposed order and to submit it to chambers for signature.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Michael Bohn, Esq. (Law Offices of Michael F. Bohn) Jason Peck, Esq. (THE CASTLE LAW GROUP), Richard Ehlers, Esq. (WRIGHT FINLAY & ZAK).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

November 02, 2017

A-13-689240-C	Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)
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November 02, 2017 9:30 AM

**Motion For
Reconsideration**

**Nationstar Mortgage,
LLC's Motion for
Reconsideration,
Motion for Relief,
and Motion to Alter
or Amend Judgment**

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT:	Bohn, Michael F Habermas, Regina A.	Attorney Attorney
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JOURNAL ENTRIES

- Ms. Habermas stated there was no intentional misconduct; the failure to timely file an opposition was due to a series of mistakes made in her office. She requested that the judgment be set aside and matter set for oral judgment. COURT ORDERED, Motion to Alter or Amend Judgment is GRANTED. Mr. Bohn stated that the matter had been continued more than one time for counsel to file an opposition. Following CONFERENCE AT BENCH, COURT ORDERED, matter set for hearing. Mr. Bohn is to file a reply to the opposition and the matter will be heard on the merits. FURTHER, sanctions will be determined against the defense at that time. Mr. Bohn to prepare the order.

12/5/17 9:30 AM PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 05, 2017

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

**December 05, 2017 9:30 AM Motion for Summary
Judgment**

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Habermas, Regina A. Attorney

JOURNAL ENTRIES

- Ms. Habermas informed the Court that Mr. Bohn could not be in Court today, but they discussed continuing the matter. COURT ORDERED, CONTINUED; Ms. Habermas to contact Mr. Bohn with the continuance date.

CONTINUED TO: 1/18/18 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 18, 2018

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

January 18, 2018

9:30 AM

**Motion for Summary
Judgment**

**Plaintiff's Motion for
Summary Judgment**

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Bohn, Michael F

Attorney

JOURNAL ENTRIES

- Dana Nitz and Regina Habermas appearing for Defendant Nationstar Mortgage LLC. Following arguments by counsel, COURT ORDERED, an order will be issued.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 26, 2018

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

February 26, 2018 11:30 AM Decision

HEARD BY: Escobar, Adriana

COURTROOM: Chambers

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Plaintiff's motion for summary judgment came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on January 18, 2018.

After considering the pleadings and argument of counsel, the Court GRANTS Plaintiff's motion. The Court finds Plaintiff has sufficiently established that, absent flaws in the HOA foreclosure sale or potential equitable reasons for setting aside the sale, Plaintiff is entitled to judgment as a matter of law on its quiet title claim. In opposition, Defendant argues that Plaintiff's claim is preempted by the federal foreclosure bar, or 12 U.S.C. 4617(j)(3); that Plaintiff is not a BFP; that the HOA sale was commercially unreasonable; and that NRS 116's superpriority lien scheme violates due process.

As to the first argument, the Court finds that Defendant has not met its burden of establishing a genuine issue of material fact. The Court agrees that, if the federal foreclosure bar applies, the HOA's foreclosure could not affect FHFA's interest in the deed of trust, and thus that the property would still be encumbered by the deed of trust. However, this requires a finding that FHFA in fact owned a legally cognizable interest in the deed of trust. In Nevada, a security interest is only effective against a third party once it is recorded. See *In re Montierth*, 354 P.3d 648, 650 (Nev. 2015). Defendant has not disputed the fact that no recorded document reflects any FHFA interest in the deed of trust, much less that any recorded document makes any mention of Freddie Mac having an interest in the deed of

trust. The only evidence that Defendant has provided in an effort to prove Freddie Mac's ownership is alleged business records of Freddie Mac, coupled with an affidavit stating that Freddie Mac's business records reflect ownership of the subject loan at the time of the HOA sale. However, even if this information is sufficient to show that Freddie Mac believed it had ownership of the loan, this evidence would conflict with the judicially noticeable public record. Because no interest of Freddie Mac or FHFA was recorded, there is no such interest that would be effective as against the HOA or Plaintiff. Thus, the federal foreclosure bar does not apply here.

Next, a sale cannot be held commercially unreasonable based on price alone, as this conclusion requires a finding of fraud, unfairness, or oppression that brings about and causes a low sale price. *Nationstar Mortgage v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641 (Nev. 2017). In support of its argument, Defendant suggests that fraud, unfairness, or oppression are shown by the existence of a mortgage protection clause in the HOA's CC&Rs, by the HOA's failure to try to get the best price possible at foreclosure, and by the HOA's inclusion of fees and costs in its calculation of its lien. The Court finds that none of these issues presents evidence of fraud, unfairness, or oppression. A clause such as the one in the relevant CC&Rs here, which states that the HOA's foreclosure cannot extinguish a mortgage deed of trust, is void under NRS 116.1104, as held in *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014), and thus the HOA's act of foreclosing is not rendered fraudulent, unfair, or oppressive due to the clause's presence in the CC&Rs. Additionally, the Court notes that NRS Chapter 116 imposes no duty on an HOA to get the best price possible at foreclosure, as affirmed in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017), where the Nevada Supreme Court rejected the argument that an HOA has the burden of establishing that it took all steps possible to obtain the highest sales price it could. Finally, an HOA lien is not invalid for including fines, as addressed in the recent *Shadow Canyon* case, where *Nationstar* made the very same argument. The Nevada Supreme Court rejected this argument, finding that such an interpretation is untenable, and that the legislature apparently intended to prevent foreclosure on a lien that is comprised solely of fines, but not a lien that includes both delinquent assessments and fines. In sum, Defendant has identified no evidence of fraud, unfairness, or oppression, so the sale cannot be held commercially unreasonable.

Finally, the remaining arguments by Defendant do not impact the Court's decision. The Nevada Supreme Court has conclusively held that NRS 116 does not violate due process, in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 388 P.3d 970 (Nev. 2017). Moreover, because Defendant has not presented any meritorious reason for setting aside the sale, Plaintiff's potential status as a bona fide purchaser is not a necessary determination.

Therefore, Defendant has not met its burden in resisting summary judgment, and the Court finds judgment as a matter of law in Plaintiff's favor is appropriate. Plaintiff's motion is therefore GRANTED.

Counsel for Plaintiff is directed to prepare a proposed order including detailed findings of fact and conclusions of law, which is to be approved by Defendant's counsel as to form and content prior to submitting the order to chambers in Microsoft word format, by email to

dept14lc@clarkcountycourts.us

CLERK'S NOTE: Michael Bohn (mbohn@bohnlawfirm.com) notified via e-mail.

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):

NOTICE OF APPEAL; NATIONSTAR MORTGAGE LLC'S CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; NATIONSTAR MORTGAGE LLC'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; NOTICE OF ENTRY OF NATIONSTAR MORTGAGE LLC'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; DISTRICT COURT MINUTES

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT.,

Plaintiff(s),

vs.

NATIONSTAR MORTGAGE, LLC; COOPER
CASTLE LAW FIRM, LLP; MONIQUE
GUILLORY,

Defendant(s),

Case No: A-13-689240-C

Dept No: XIV

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 9 day of January 2019.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

AKERMAN LLP

57452 CLERK SUPREME COURT OF NEVADA

01/08/19

CHECK NO. 26001498

G/L ACCOUNT #	DATE	INVOICE NUMBER	DESCRIPTION	MATTER	AMOUNT
299810000000000000	01/08/19	01082019DMW	CRINV File Notice of Appeal - Case No: A-13-689240-C, Send to Carlota D. Liarena, LV	0334368	250.00
				TOTAL	\$250.00

AKERMAN LLP

57452 CLERK SUPREME COURT OF NEVADA

01/08/19

CHECK NO. 26001498

G/L ACCOUNT #	DATE	INVOICE NUMBER	DESCRIPTION	MATTER	AMOUNT
299810000000000000	01/08/19	01082019DMW	CRINV File Notice of Appeal - Case No: A-13-689240-C, Send to Carlota D. Liarena, LV	0334368	250.00
				TOTAL	\$250.00

AKERMAN LLP

495 N KELLER ROAD
SUITE 300
MAITLAND, FL 32751
PHONE (407)254-2397

Las Vegas, NV

26001498

631

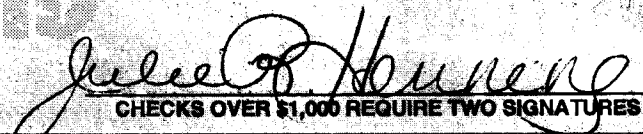
DATE 01/08/19

AMOUNT OF CHECK

\$250.00*****

PAY TWO HUNDRED FIFTY AND 00/100 Dollars

A13-689240-C

OPERATING ACCOUNT
VOID AFTER 90 DAYSTO THE
ORDER OFCLERK SUPREME COURT OF NEVADA
201 S CARSON ST
STE 201
CARSON CITY, NV 89701
CHECKS OVER \$1,000 REQUIRE TWO SIGNATURES

⑈ 26001498 ⑆ 063107513 ⑆ 2000032043949 ⑈