

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

NATIONSTAR MORTGAGE LLC,

Appellant,

vs.

SATICOY BAY LLC SERIES 4641  
VIAREGGIO CT,

Respondent.

Supreme Court No. 77874  
District Court Case No. A689240

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**APPEAL**

From the Eighth Judicial District Court, Department XIV  
The Honorable Adriana Escobar, District Judge  
District Court Case No. A-13-689240-C

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**JOINT APPENDIX, VOLUME VIII**

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DATED June 17, 2019.

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## **CERTIFICATE OF SERVICE**

I certify that I electronically filed on June 17, 2019, the foregoing **JOINT APPENDIX, VOLUME VIII** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[ ] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena  
An employee of Akerman LLP

1 year.

2 Q Okay. So would it be correct to say then that there  
3 is not any contract other than the funding detail report which  
4 evidences the transfer from First National Bank of Arizona to  
5 Freddie Mac?

6 A So I think that for purposes of looking, we would  
7 look to that report to show the loans that were sold to us by  
8 that seller on a certain date for a certain amount. That would  
9 be the governing document.

10 Q Okay. And where is this funding detail report to be  
11 located?

12 A Our legal department would have a copy of it.

13 Q Where would the original be?

14 A It may be with the seller, and it may be something  
15 that we hold, but we would certainly at least have a copy of  
16 that document.

17 Q So you're not even -- sitting here today, you could  
18 not tell me where the funding detail report for the purchase of  
19 this loan regarding the property at 6119 Magic Mesa Court is;  
20 is that correct?

21 A No. I stated we would have a copy, possibly the  
22 original, within our legal department that manages those  
23 contracts.

24 Q Okay. Did you review the funding detail report  
25 before you testified today?

1           A     For this particular loan, no.

2           Q     Okay. So you don't know if this funding detail  
3 report even exists?

4           A     Again, every loan that we've sold, that we've  
5 purchased through that process, we would retain a copy of that  
6 report.

7           Q     Now, you also testified that you require the servicer  
8 to put the property into its name; is that correct?

9           A     No, we require the servicer --

10           MR. BENNER: Objection. Misstates the prior  
11 testimony.

12           MR. BOHN: Well, I asked him if it was correct. So.

13           THE COURT: So I'm going to overrule it because he's  
14 asking if that is correct. So.

15           THE WITNESS: So that's not correct.

16           BY MR. BOHN:

17           Q     Okay. I believe you did testify though that you do  
18 require the servicer to foreclose in its name; is that correct?

19           A     That's correct.

20           Q     Okay. And in this particular -- well, you also  
21 testified that MERS -- if the loan gets transferred within the  
22 MERS system, you don't require MERS to prepare an assignment  
23 over to Freddie Mac; is that correct?

24           A     Correct.

25           Q     Okay. But in this particular case there was, in

1 fact, an assignment of the deed of trust from MERS to Chase.  
2 That's Exhibit No. 3, correct?

3 A Correct.

4 Q And can you tell us why that was done.

5 A So we require servicers to foreclose in their name,  
6 and in order to do so, they are required to have the deed of  
7 trust in this case assigned from MERS as a beneficiary to Chase  
8 as a beneficiary for purposes of enforcing the deed of trust.

9 Q And this assignment was done December 23rd, 2010,  
10 correct?

11 A Correct.

12 Q And is it your testimony that the assignment is only  
13 done when anticipation of foreclosure is -- when you're  
14 anticipating foreclosure on the trust deed?

15 A Well, initially from MERS, correct.

16 Q And why does MERS require the servicer foreclose in  
17 its name -- excuse me. Why does Freddie require the servicer  
18 to foreclose in its name as opposed to MERS or even Freddie?

19 A Well, that's our business requirement, but there has  
20 been litigation prior to that where there was questioned that  
21 MERS had the capacity to initiate a foreclosure. So both MERS  
22 and Freddie Mac require the deed of trust to be signed from  
23 them to the servicer for purposes of enforcing it.

24 Q Okay. There have been instances, have there not,  
25 where the deed of trust was transferred to Freddie, and Freddie

1 would conduct its own foreclosure, correct?

2 A There are limited circumstances where we would  
3 require or allow the deed of trust to be assigned to Freddie  
4 Mac for purposes of foreclosure, yes.

5 Q Okay. And what are some of the circumstances?

6 A The main reason is if the servicer also holds a  
7 second mortgage or a second deed of trust where they would be a  
8 not only plaintiff, but a defendant in the same property. So  
9 we require them to assign it to Freddie Mac and then conduct a  
10 foreclosure on that first lien mortgage in our name.

11 Q When you say they would be a plaintiff and the  
12 defendant, you're referring to the states in which you have to  
13 judicially foreclose, correct?

14 A Well, judicially and/or nonjudicially. For purposes  
15 of execution, we require it anywhere where they have a second  
16 lien interest in the property.

17 Q On the page 637 part of Exhibit No. 4, the TOS  
18 summary report, what is the first date that the servicing  
19 was -- according to this the servicing was transferred to J.P.  
20 Morgan?

21 A The effective date, I believe, is July 16th, 2007.

22 Q And yet there was another transfer within Chase on --  
23 it's kind of blurry -- it looks like August 10th, 2009; is  
24 that --

25 A It looks like October 16th, 2009, but, correct.



1           Q     Okay. Now, the next page, which is the mortgage  
2 payment history report, from here can you tell us when the loan  
3 would've gone into default?

4           A     It went into default on different occasions, but if  
5 you look at the third column, that is the due date of the last  
6 paid installment. So that means the month in which the last  
7 payment the borrower was obligated to pay made a payment, and  
8 if you trace that compared to the very last column on the  
9 right, that's the actual date of the reporting. If that date  
10 in 2000 in the third column gets behind the date, at least in  
11 that month, then that loan would have been in delinquency, and  
12 at some point they would have initiated foreclosure.

13               This report does not say anything where a foreclosure  
14 was ever initiated. It just shows the reporting of the  
15 information about when the loan was due and what the principal  
16 balance was at the time. Nowhere here will you see that  
17 foreclosure was initiated by, in this case, Chase.

18           Q     Okay. The second page, page 2 of 3, there's two  
19 notations of inactive loan. What does that mean?

20           A     So when a loan -- when the borrower stops paying, the  
21 servicer is obligated to continue to pass through the interest  
22 that's due Freddie Mac every month up until a point in time  
23 where they can -- it says they're allowed to transmit a code to  
24 us to inactivate the loan, meaning they're -- at that point in  
25 time, they've determined the loan's in default. The borrower's

1 not going to pay it, and we wish to stop passing through  
2 payments to Freddie Mac. That's when they inactivate it, and  
3 they no longer have to pass through interest to Freddie Mac.

4 Q You testified about two things that Freddie will do.  
5 They'll either hold the loan as an investment, or they will  
6 make a -- sell it as a securitized mortgage-backed security?

7 A Well, no. So we will hold it for an investment, or  
8 we will securitize the cash flows associated with those loans  
9 and sell the cash flows to investors.

10 Q Okay. And you said in that case the -- Freddie Mac  
11 was the trustee for the investors?

12 A Yes, we are the trustee that managed the cash flows  
13 for those investors.

14 Q And so the investors would be the owners of those  
15 loans?

16 A No, Freddie Mac owns the loans. We have securitized  
17 and pledged the cash flows from the loans which we owned to  
18 those investors.

19 Q So Freddie Mac would be the trustee and the owner?

20 A Correct.

21 Q Of the loan?

22 A Freddie Mac would be the owner, and we'd be the  
23 trustee of the security. They are not the trustee of the  
24 loans.

25 Q Okay. In a situation like this, when the loan has

1 been assigned to Chase bank, wouldn't it be appropriate to  
2 characterize Chase as the trustee for --

3 A No.

4 Q Why not?

5 A They are just the recorded beneficiary of the deed of  
6 trust. They don't own the deed of trust, and they don't own  
7 the note. They're just the recorded entity with the county  
8 recorder's office as a beneficiary.

9 Q What's the difference between being a beneficiary on  
10 a deed of trust and the owner?

11 A Well, they don't have an ownership interest in it.  
12 They are just -- for purposes of public information, they're  
13 recorded as who needs to be contacted if there's -- anybody has  
14 a question related to that deed of trust, and we require them  
15 to be that entity.

16 Q Well, with the only persons that could make inquiry  
17 about the loan would be the borrowers; isn't that correct?

18 A No. If someone else had a interest in the property,  
19 they would have the ability to contact Chase. So junior lien  
20 holders would be able to contact Chase, and then once it's  
21 validated that they have an interest in the property, Chase  
22 would talk to them about it.

23 Q So you don't have an understanding of any federal  
24 laws that would prohibit Chase to give that information to  
25 anyone without the consent of the buyer?

1 MR. BENNER: Objecting. Seeking a legal conclusion.

2 THE COURT: I'll sustain that.

3 MR. BOHN: I'm just asking if he has an  
4 understanding. It's a yes or no question.

5 THE COURT: Except for you're asking the -- he's  
6 having to interpret, not just asking if the law exists. You're  
7 asking whether the law is going to impact it. So I'm going to  
8 sustain it. It's calling for a legal conclusion.

9 BY MR. BOHN:

10 Q Okay. Now, you also testified earlier that Freddie  
11 requires all their servicers to be familiar with the laws of  
12 the state in which the property is located; is that correct?

13 A Correct.

14 Q Okay. So you would expect Chase to be familiar with  
15 the HOA laws in the state of Nevada if they were going to  
16 service loans in the state of Nevada; is that correct?

17 A Yeah, they would be -- we would require them to make  
18 sure that they know the local requirements to ensure our lien  
19 is protected.

20 Q Okay. And Freddie has regulations requiring the  
21 servicer to take steps to make sure that the loan is protected;  
22 isn't that correct?

23 A So our seller servicer guide gives them instructions  
24 not on how to protect their interest, just that when they have  
25 to protect their interest what things we would require them to

1 either notify us or what things we would pay them for.

2 Q Okay.

3 A We don't tell them how to ensure our lien interest is  
4 protected.

5 Q So if the borrower is not paying taxes, the servicer  
6 would be required to pay the taxes and seek reimbursement from  
7 Freddie; is that correct?

8 A If -- yes, if those taxes could impact our ability to  
9 enforce the lien, yes.

10 Q And if the borrower wasn't paying, there wouldn't be  
11 any items to escrow to pay for insurance, and the servicer  
12 would be required to pay the insurance and then Freddie would  
13 reimburse them for that insurance payment; is that correct?

14 A So, yes. If the -- well, we require that the  
15 properties for which we have an interest in, that there is when  
16 required insurance on the property, yes.

17 Q Well, insurance is pretty much always required, isn't  
18 it?

19 A So condominiums aren't -- insurance -- the borrower  
20 does not pay insurance that Freddie Mac requires the servicer  
21 to ensure for a condominium. It's usually the condominium  
22 building that holds that insurance.

23 Q But if the HOA didn't provide the insurance and it  
24 was a requirement of the loan, then the servicer would have to  
25 pay -- force place the insurance on the property; isn't that

1 correct?

2 A Correct.

3 MR. BENNER: Objection. Relevancy.

4 THE COURT: Well --

5 BY MR. BOHN:

6 Q Okay. What about HOA --

7 THE COURT: Counsel, since I have a belated objection  
8 and he already answered, I'm going to overrule the objection.

9 MR. BENNER: Okay.

10 THE COURT: And, Counsel, you're going to tie this  
11 into the present property?

12 MR. BOHN: Oh, yes.

13 THE COURT: Okay. I'll give you a little short  
14 extension here to get that taken care of. Thank you.

15 BY MR. BOHN:

16 Q So if the -- and Freddie actually has servicing  
17 guidelines specifically requiring the servicers to pay  
18 assessments owed to the HOA or the -- what's secured -- the  
19 PUD, the Planned Unit Development?

20 A It's in our guidelines, tell the servicers to -- in  
21 this case were talking about HOA dues --

22 Q Correct.

23 A -- we require them to pay HOA dues, and we would  
24 reimburse them if it could impact our lien position.

25 Q And, in fact, the deed of trust requires the borrower

1 to pay the assessments and, quote, Other item which can attain  
2 priority over the security instrument; isn't that correct?

3 A I believe that's correct that the borrower would have  
4 to pay those, yes.

5 Q And the planned unit development rider also requires  
6 the borrower to pay those HOA dues; isn't that correct?

7 MR. BENNER: Objection. The documents speak for  
8 themselves.

9 THE COURT: Are we referencing a particular exhibit  
10 that's admitted, or are we --

11 MR. BOHN: Exhibit 2, the planned unit development  
12 rider which we spoke of earlier, Chase 0084.

13 THE COURT: Okay. Well, since I have an objection  
14 that the document speaks for itself, do you want to address  
15 that, or do you want me just to rule on it?

16 MR. BOHN: I am trying to set the basis for other  
17 questions regarding the payment of the HOA dues and the Freddie  
18 Mac requirements that they be paid by the servicer.

19 THE COURT: The way that question's specifically  
20 asked, the Court's going to sustain the objection. You can  
21 move on to the next question to get to your area of inquiry.  
22 Thank you.

23 BY MR. BOHN:

24 Q What remedies does Freddie Mac have if a servicer  
25 does not perform the acts to protect the interest of the deed

1 of trust?

2 A If our lien is terminated on a property and the  
3 servicer did not act to protect our interest, we could seek  
4 reimbursement from them for the loss we incur.

5 Q So in this particular case, if it's ultimately ruled  
6 that the foreclosures -- the HOA foreclosure sale on  
7 February 1, 2013, was properly conducted and that the deed of  
8 trust was extinguished, Freddie Mac would have remedies against  
9 Chase Bank; isn't that correct?

10 MR. BENNER: Objection. Hypothetical and calling for  
11 a legal conclusion.

12 THE COURT: Counsel, do want to address that?

13 MR. BOHN: Your Honor, he's testified about the  
14 servicing guidelines and the remedies that are available to  
15 Chase. I'm just asking about those remedies.

16 THE COURT: I'm going to -- the way the question's  
17 asked I'm going to sustain on calling for a legal conclusion  
18 and calling for a hypothetical of a lay witness here.

19 BY MR. BOHN:

20 Q You testified earlier in regards to the assignment of  
21 the deed of trust Exhibit 3 that MERS -- well, Exhibit 3, the  
22 entity that assigned the assignment of the deed of trust is  
23 MERS; is that correct?

24 A Correct.

25 Q And you also testified that they assign only the deed



1 of trust; is that correct?

2 A Well, they assigned their interest in the loan, which  
3 was the deed of trust, correct.

4 Q You also said they do not have an interest in the  
5 note; is that correct?

6 A That's correct.

7 Q Why does the assignment also have the language,  
8 Together with the promissory note secured by said deed of  
9 trust?

10 A They add that language in there. My understanding is  
11 that they add that language just to make it clear that they  
12 have no interest in that loan, but they never had an interest  
13 in the promissory note.

14 Q But they do have an interest in a deed of trust?

15 MR. BENNER: Objection. Asked and answered.

16 MR. BOHN: Just trying to clarify, Your Honor.

17 THE COURT: I'm going to overrule the objection.

18 THE WITNESS: Yes, they had a beneficial interest in  
19 the deed of trust.

20 BY MR. BOHN:

21 Q And with the recording of the assignment, the  
22 beneficiary of record became Chase Home Finance LLC; is that  
23 correct?

24 A Correct.

25 Q So if an HOA was to foreclose and was to want to

1 obtain consent from Freddie Mac, there would be no way from the  
2 public records to show that Freddie Mac held an interest in  
3 this deed of trust, would there be?

4 MR. BENNER: Objection. Hypothetical.

5 THE COURT: Sustained.

6 BY MR. BOHN:

7 Q Are you aware in regards to this property at 6119  
8 Magic Mesa of any recorded documents that would put the public  
9 on notice of the fact that Freddie Mac had an interest in this  
10 property?

11 A No.

12 MR. BOHN: Court's indulgence, Your Honor.

13 THE COURT: Okay.

14 BY MR. BOHN:

15 Q Does Freddie have a national policy regarding the  
16 states in which the HOAs are given a super-priority lien?

17 MR. BENNER: Objection. Beyond the scope. I believe  
18 we were only focusing on Nevada for this matter.

19 MR. BOHN: I'll narrow it.

20 BY MR. BOHN:

21 Q Does Freddie have a policy regarding Nevada  
22 properties with HOAs that grant super-priority liens?

23 A So I don't think we have a policy related to super  
24 liens, but in the state of Nevada, if the servicer pays a  
25 certain number of months' worth of HOAs for a certain number of

1 months, we would agree to reimburse them for that cost.

2 Q And by your regulation, that's limited to six months?

3 A I believe that's the amount of -- that we would  
4 reimburse the servicer for in the state of Nevada, yes.

5 Q Okay. And why would you reimburse the servicer for  
6 those?

7 A It was a business decision.

8 MR. BOHN: I have no further questions, Your Honor.

9 THE COURT: Okay. Redirect, Counsel.

10 REDIRECT EXAMINATION

11 BY MR. BENNER:

12 Q Okay. Previously you mentioned that the screenshots  
13 and the Midas and the loan servicer system are updated --  
14 updated basically automatically, correct?

15 A Correct.

16 Q Okay. So if there was a merger between First  
17 National Bank of Arizona and First National Bank of Nevada, the  
18 system -- that would be inputted, and the system would update  
19 itself, correct?

20 A Well, when the seller would notify us of a name  
21 change, then that would automatically update within Midas's  
22 system as well, yes.

23 Q Okay. So prior to any type of a merger or such, it  
24 indicates the one entity, and then post merger it would  
25 indicate the new entity or the new name?

1           A     Correct.

2           Q     Okay. And on plaintiff's questioning regarding the  
3 assignment, you mentioned that the assignment would require --  
4 from MERS to a servicer it would require it to include language  
5 when that was an assignment initially from MERS. Can you  
6 clarify what you meant by in the case of initially from MERS.

7           A     So if the -- if MERS was the recorded beneficiary of  
8 the deed of trust, in those circumstances they would be  
9 required to assign their interest in the deed of trust to the  
10 new entity, which in this case was Chase.

11          Q     Okay. And it's when the -- when the new entity, in  
12 this instance Chase took up servicing, then that was to  
13 facilitate, as you had previously stated, the efficiency of  
14 having a servicer conduct the day-to-day management of the  
15 loan, correct?

16          A     Well, the loan could remain -- so Chase was servicing  
17 the loan long before it was assigned to them. MERS is there as  
18 a tracking system that tracks who the servicer is and who the  
19 owner of the loan is. At the time when Chase made the decision  
20 to initiate a foreclosure, they typically would request that  
21 MERS assign the beneficiary interest, the recorded interest to  
22 them for purposes of enforcing it, yes.

23          Q     Okay. So when you say enforcing it, what do you mean  
24 by enforcing it?

25          A     So typically when the borrower is in default and

1 they're going to initiate foreclosure, we require and MERS  
2 requires the foreclosure to be done in the servicer's name --  
3 well, MERS requires it to be done not in their name, and we  
4 require it to be under the servicer's name. So then they would  
5 request MERS to assign the deed of trust to that entity.

6 Q Okay. So is it fair to say then that you won't see  
7 something that says MERS is foreclosing on this property,  
8 correct?

9 A Correct.

10 Q Okay. So and now when you said that there's -- when  
11 you said that there's a mortgage-banked security -- sorry --  
12 what was the term, the mortgage banked or --

13 MR. BOHN: Mortgage backed security.

14 BY MR. BENNER:

15 Q -- mortgage-backed security, and that's -- Freddie  
16 Mac is acting as the trustee. You mean solely of the security,  
17 not the trustee in the sense of the foreclosure, correct?

18 A Correct, different trustee.

19 Q Okay. So different meanings for the term?

20 A Correct.

21 Q Now, and let's also clarify a little bit that when  
22 we're using the language beneficiary versus owner, as far as  
23 the owner goes, we're talking about the investor Freddie Mac,  
24 correct?

25 A Correct.

1           Q     Okay. But when we are speaking about the  
2 beneficiary, we mean, okay, this is the entity that can  
3 foreclose pursuant to the -- presumably pursuant to the state  
4 regulations and Freddie Mac's requirements, correct?

5           A     Correct.

6           Q     Okay. Now, and you'd previously stated that the  
7 requirements of Freddie Mac are -- for the servicers are  
8 outlined in the seller servicing agreement, correct?

9           A     Correct.

10          Q     Okay. So essentially the selling servicing agreement  
11 directs the activity but doesn't state how that activity is to  
12 occur, correct?

13          A     Correct.

14          Q     Okay. And referencing our previous discussion  
15 regarding the requirements for selling and servicing of the  
16 loan, an authorized representative is not going to take  
17 activity outside of the servicing agreements just of its own  
18 accord, correct?

19          A     Correct.

20          Q     Okay. So that's the agreement regarding the handling  
21 and the directives for servicing to still be compliant with the  
22 Freddie Mac servicing contract?

23          A     Correct.

24          Q     Okay. Was there a selling and servicing agreement  
25 with MERS?

1           A     Never.  No.

2           Q     And why is that?

3           A     They're not a party to the seller -- they're not a  
4 party to that contract.

5           Q     Okay.  And you previously also indicated that the  
6 screenshots show that there was an interest-bearing and another  
7 portion that was a -- it looks -- I believe you said a deferred  
8 account, correct?

9           A     Correct.

10          Q     Okay.  So essentially that's just an indication of  
11 the terms of a modification, not of a differentiation of the  
12 loan into a first or a second, correct?

13          A     No.  So when we defer the mortgage under the HAMP  
14 modification program, if we agreed to defer a portion of the  
15 principal balance, that portion becomes noninterest bearing  
16 when it comes to the borrower, and then the existing UPB is  
17 interest bearing, and that part is basically a balloon at the  
18 end of the loan.  It's still part of the same loan.

19          Q     And that's in order to, as you said, meet with the  
20 HAMP guidelines and not necessarily as a reflection of the  
21 property value or anything along those lines, correct?

22          A     Correct.

23               MR. BENNER:  Okay.  Now one moment, please, with the  
24 Court's indulgence.

25     /   /   /

1 BY MR. BENNER:

2 Q Okay. So and just to clarify a little bit further,  
3 the funding detail reports, would that have shown multiple  
4 loans or would that show a singular loan --

5 A In both cases, it would be --

6 Q -- regarding this --

7 A -- multiple loans that a seller has agreed to sell to  
8 Freddie Mac on a certain day.

9 Q So this particular loan would just be a single line  
10 entry in that larger section, correct?

11 A Correct. It would be a one line entry of the loan  
12 number, the property address of the borrower and then the  
13 amount of the purchase.

14 Q Okay. And is that funding detail report basically a  
15 requirement of being an authorized seller of the loan to allow  
16 the loan into the contract between Freddie Mac and the  
17 authorized seller?

18 A Oh, that would -- only an authorized seller would be  
19 eligible to sell a loan to us, and therefore a funding detail  
20 report would only be generated by an approved seller in  
21 approved set of loans that they agreed to sell it to us under  
22 that master agreement we spoke about.

23 Q Okay. And are you aware of any correspondences in  
24 this matter from an additional party regarding the first deed  
25 of trust and the amount to pay off the first deed of trust?



1           A     No.

2           Q     Previously you testified that if someone had an  
3 interest, such as the second deed of trust, that they could be  
4 an authorized party to request that information, correct?

5           A     Yeah, they could request information about how much  
6 is due on the loan, like a payoff statement. That was about  
7 all they would be provided.

8           Q     Okay. And what would they need to provide to be able  
9 to request that information as a -- as a -- if you require an  
10 example, as a second deed of trust which you had mentioned?

11          A     Right. Yeah. So the servicer would be responsible  
12 to know what documents they would require from that entity to  
13 validate their interest in the property. Usually it would be a  
14 copy of that deed of trust that they hold on the loan against  
15 the property.

16          Q     Okay. And that request would go to the servicer, for  
17 instance in this case Chase, correct?

18          A     Correct. Yes.

19          Q     Okay. And is the requirements for disclosing that  
20 information set forth in the selling and servicing guide?

21          A     The only thing we have in the seller servicer guide  
22 is we direct the servicers that if a borrower asks who their  
23 investor is we require them to tell them that it's Freddie Mac.  
24 The local rules and laws would dictate under which  
25 circumstances they were required or obligated to provide that

1 information to other parties.

2 MR. BENNER: Okay. That's all.

3 THE COURT: Recross, Counsel.

4 MR. BOHN: Court's indulgence, please.

5 MR. BENNER: Shall we take a short break perhaps?

6 MR. BOHN: I may not have any further questions.

7 THE COURT: Do you need a break?

8 MR. BENNER: Well, if we're going to end up, let's  
9 see, but I was --

10 MR. BOHN: If I could have 60 seconds, I may be done.

11 THE COURT: The Court's going to have one question if  
12 counsel don't mind afterwards then depending on the question I  
13 have that's asked.

14 MR. BOHN: No further questions, Your Honor.

15 MR. BENNER: I am going to request the break before  
16 we --

17 THE COURT: Go ahead.

18 MR. BENNER: -- do the final one.

19 THE COURT: Sure.

20 MR. BENNER: So a 5, 10-minute break?

21 THE COURT: Sure.

22 MR. BOHN: Are we done with this witness then?

23 THE COURT: The Court had one question for the  
24 witness.

25 MR. BENNER: Well, the Court --

1 MR. BOHN: Oh, okay.

2 MR. BENNER: The Court's going to have one.

3 THE COURT: I can ask -- if you want me to ask, if to  
4 fill in the blank question, I'm just going to -- if you need a  
5 break, we'll do a break and we'll come back, but instead of  
6 talking about it, which way do you want it?

7 MR. BENNER: I know Your Honor prefers to have us  
8 hear the question and decide if there's any possibility of  
9 problem with it. So I wouldn't mind knowing what the question  
10 is to think about it.

11 THE COURT: Sure. I have no problem telling both the  
12 parties what the Court's one question is.

13 MR. BENNER: Okay.

14 MR. BOHN: Sure.

15 THE COURT: Do you want a break first, or do you want  
16 me to tell you right now?

17 MR. BENNER: Well, let's --

18 MR. BOHN: Don't hold us in suspense.

19 MR. BENNER: Yeah.

20 THE COURT: Huh?

21 MR. BENNER: Let's not leave us on a cliffhanger.  
22 Let's go ahead.

23 THE COURT: Oh, no, no, no, no, no. Okay. As of  
24 January 30th, 2013, fill in the blank: Blank owned the deed of  
25 trust. That's what the Court's question was going to be.

1 MR. BENNER: Okay.

2 MR. BOHN: Okay.

3 THE COURT: And you can have your break, and then you  
4 can tell me if you object to the Court's question or not, and  
5 then I'll ask it or not ask it depending on what the parties --  
6 10 minutes, come back.

7 MR. BENNER: Okay. Thank you, Your Honor.

8 (Proceedings recessed 3:45 p.m. to 3:56 p.m.)

9 THE COURT: Okay. Back on the record.

10 So the Court right before the break -- so since all  
11 the parties had finished with their questioning, the Court was  
12 stating that it had one question that it would like to ask this  
13 witness just for point of clarification. I stated what the one  
14 question is. So let me hear with the parties' response is.  
15 Does anyone object to that?

16 MR. BENNER: I have no objection to that one  
17 question, Your Honor.

18 MR. BOHN: I have no objection, Your Honor.

19 THE COURT: Okay. So for ease I'll just state what  
20 the one question was: On January 30th, 2013, blank owned the  
21 deed of trust. How would you fill in that blank?

22 THE WITNESS: Freddie Mac.

23 THE COURT: Thank you. Okay.

24 MR. BENNER: And if I can make one representation,  
25 Your Honor, I did have the documents run off from what I

1 stated. I want to present that that was not a  
2 misrepresentation on my part about running the documents off  
3 the Exhibit 6, and it --

4 THE COURT: I'm sorry. Counsel, meaning running it  
5 off, meaning you had 2013, or you got -- I'm not sure what  
6 you're saying for Exhibit 6. I'm sorry.

7 MR. BENNER: Oh, sorry. For Exhibit 6, the seller  
8 servicer guide regarding that the documents were available --  
9 are available on the allregs site, that there is a link to it.  
10 I had those during the questioning run off per the 2013.  
11 There's a formatting difference, but it has the -- it has the  
12 actual website on it. It has the -- it appears the only  
13 difference is in the numbering and the type of the script in  
14 it. I have copies for the Court and for opposing counsel if  
15 you'd like to take a look.

16 MR. BOHN: It wasn't produced prior to today, and on  
17 that basis I would object to its admission.

18 THE COURT: Was there any agreement between the  
19 parties otherwise with regards to the -- I'm going to shorten  
20 it and just call it servicing agreement. Obviously it's  
21 servicer -- service --

22 MR. BENNER: No, Your Honor, otherwise than the  
23 mistaken agreement earlier today, but we've already addressed  
24 that that was opposing counsel had the objection.

25 THE COURT: Okay. Well, in light of the fact that it

1 wasn't produced and in light of the fact that there wasn't  
2 agreement to otherwise allow it -- you know, it's not like a  
3 substituting, you do two page 56's and so you need to  
4 substitute a 57 for a 56 -- the Court's going to have to  
5 because I have the objection deny the request.

6 Were you seeking now to admit --

7 MR. BENNER: Well, yes.

8 THE COURT: -- modified 6? Is that where you were  
9 going with that?

10 MR. BENNER: Well, to review it and to say because he  
11 had said he -- there were only slight -- not to mischaracterize  
12 the testimony but just to abbreviate -- that there were only  
13 slight administrative --

14 THE COURT: There's nothing material?

15 MR. BENNER: Yeah, that there were no material  
16 changes. So as far as, okay, here's -- here's the document as  
17 it was publicly available on the site. Here's what was  
18 presented. There's no material differences between the two.

19 THE COURT: So are you asking that he review it while  
20 he's on the stand now page by page, each of the two documents?

21 MR. BENNER: I don't think that that would --

22 THE COURT: I mean, I'm just trying to get an  
23 understanding of what the ask is. If you wouldn't mind kind of  
24 explaining what the ask is.

25 MR. BENNER: Well, the ask is to take a look through

1 and see, not necessarily page by page, line by line, but to be  
2 able to refresh his recollection on, okay, what were those  
3 changes. Were any of those -- were any of those material? He  
4 represented that, no, they were not, and so that he could  
5 review them between the 2013 and 2016 and have that testimony  
6 stand essentially saying these were -- there weren't any  
7 material differences.

8 THE COURT: I'm sorry. Counsel, I'm going to let you  
9 respond, and then the Court's going to make a ruling. Go  
10 ahead.

11 MR. BOHN: Again, the documents haven't been produced  
12 prior to today. He did testify of servicing guidelines that he  
13 did write, and he can certainly testify as to what those  
14 guidelines are, but I don't think it would add anything if he  
15 compared the two side by side and pointed out the differences,  
16 and I think it's a -- not a good use of time and otherwise not  
17 relevant and certainly within your discretion at this point.

18 THE COURT: Well, what I'm trying to understand,  
19 Counsel -- I'm sorry if I'm being a little dense -- but you had  
20 no further questions of this witness.

21 MR. BENNER: Correct.

22 THE COURT: So the witness would have been excused  
23 but for the fact you asked for a break right before the Court  
24 said it was going to -- if no objection was going to ask the  
25 one question, which it did. So are you seeking to admit a

1 different exhibit? Because I already have the testimony. The  
2 witness has testified as he's testified, and I'm paraphrasing,  
3 nothing material. So are you seeking additional oral testimony  
4 from this witness? Are you seeking to admit Exhibit 6 as is?  
5 Are you seeking to admit a substituted Exhibit 6 or some other  
6 alternative that I'm not fully understanding? Sorry.

7 MR. BENNER: Well, I was -- I was anticipating the  
8 challenge by opposing counsel -- which he's not made -- of  
9 saying, well, you didn't -- you wrote it, but this wasn't the  
10 exact. He said there might have been material differences. I  
11 was going to say, well, if his testimony can be substantiated  
12 that these aren't material differences. I wrote it. I recall  
13 it. But from what I gather, opposing counsel's not contesting  
14 his testimony. So I don't know that we necessarily need to go  
15 down the road of what the material differences are if opposing  
16 counsel's not trying to say, oh, his testimony could've been  
17 impacted by those slight technical changes.

18 MR. BOHN: Is there a question out of that?

19 MR. BENNER: Well, I was just -- am I  
20 mischaracterizing what your agreement is essentially?

21 MR. BOHN: Yeah, his testimony is certainly  
22 admissible, but the new documents I believe are not.

23 MR. BENNER: Okay. So I think we've addressed that  
24 point, and --

25 THE COURT: Is there something you're requesting the



1 Court rule on?

2 MR. BENNER: I think with the stipulation of opposing  
3 counsel we can take care of the testimony. I would -- I would  
4 try to admit these and ask that the Court rule on that simply  
5 because we've gone through it, but we both had our chance to  
6 speak regarding that.

7 THE COURT: Okay. Sorry. So you are -- you want a  
8 ruling or you don't? Because -- I'm sorry -- when you said  
9 that since he stipulated you didn't need to deal with it, and  
10 then you said you possibly want a ruling. So if you want a  
11 ruling, I'd be glad to give a ruling. If you don't want a  
12 ruling, then I'll say, call your next witness. I'm fine either  
13 way.

14 MR. BENNER: Let's go for a ruling on if the new  
15 version can be admitted.

16 THE COURT: Well, based on the objection of counsel  
17 and a document that I have not seen, has not been handed to  
18 counsel and was not -- it was represented it was never produced  
19 during discovery or never provided to opposing party prior to  
20 around 4 o'clock today in the midst of trial, the Court's going  
21 to have to deny the request to substitute a 2013 version that  
22 you printed out for a 2016. I don't know if it's the same  
23 number of pages. I don't know if it's the exact same sections.  
24 I don't even know if 2013 it was in effect in February 1, 2013,  
25 or some other date in 2013. So in light of all of those I have

1 to deny the request.

2 But since you're pro offering that, my clerk's going  
3 to need a copy of it because I am not admitting it, but it's  
4 not on an exhibit list. Yes, I know.

5 THE CLERK: Would that be 22?

6 THE COURT: So is that going to be a Proposed 22, or  
7 was it a substituted 6?

8 MR. BENNER: I would say it's a substituted 6.

9 THE COURT: I mean, since I've already denied 6, I  
10 will tell you probably from a clarity of record you probably  
11 want to do it as a Proposed 22.

12 MR. BENNER: Okay. Let's keep the record clear then  
13 and make it a Proposed 22.

14 THE COURT: Is that right, Madame Clerk, that that's  
15 more --

16 THE CLERK: Yes.

17 THE COURT: Yes, that's what I thought Madame Clerk's  
18 going to tell me.

19 Okay. So if you could provide Madame Clerk with your  
20 Proposed 22, feel free to walk over and -- and so denying the  
21 exhibit is in no way changing any of the testimony of this  
22 witness and what the Court can and cannot take into account.  
23 The Court's not making any ruling on the witness's testimony,  
24 only on Proposed Exhibit 22 that's being submitted for the  
25 first time during the midst of trial and because of an

1 objection of plaintiff's counsel, okay.

2 MR. BENNER: Okay.

3 THE COURT: For the reasons stated. Okay. So thank  
4 you so very much.

5 That was the Court's one question. In light of the  
6 Court's one question, did anyone have any follow-up questions,  
7 or is this witness excused, and if the witness is excused, is  
8 it for all purposes?

9 MR. BOHN: The Court's question was who was the owner  
10 of the deed of trust on January 31st?

11 THE COURT: Yeah. I phrased it a little bit  
12 differently. I said, On January 30th, 2013, fill in the  
13 blank. Blank owned the deed of trust. I'm pretty close to  
14 paraphrasing what I said.

15 MR. BOHN: And the answer was Freddie --

16 THE COURT: You can ask the witness.

17 The answer was?

18 THE WITNESS: Freddie Mac.

19 FOLLOW-UP EXAMINATION

20 BY MR. BOHN:

21 Q On the same date, who was the owner of the promissory  
22 note?

23 A Freddie Mac.

24 MR. BOHN: I have no other questions.

25 THE COURT: And do you have any follow-up to the

1 Court's question?

2 MR. BENNER: No follow-ups to the Court's question or  
3 opposing counsel's follow-up to the follow-up.

4 THE COURT: Okay. I do appreciate it. Thank you so  
5 very much.

6 Is this witness excused for all purposes or subject  
7 to recall?

8 MR. BENNER: Excused for all purposes.

9 MR. BOHN: Excused for all purposes.

10 THE COURT: Thank you so very much. Thank you for  
11 your time. Please watch your step on the way out. I  
12 appreciate it.

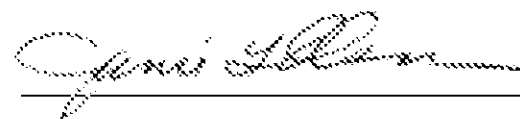
13 (End of transcribed excerpt of proceedings.)

14 -oOo-

15 ATTEST: I do hereby certify that I have truly and correctly  
16 transcribed the audio/video proceedings in the above-entitled  
17 case.

18

19



20

Janie L. Olsen  
Transcriber

21

22

23

24

25

*Steven D. Grierson*

1 SUBT  
2 MELANIE D. MORGAN, ESQ.  
3 Nevada Bar No. 8215  
4 DONNA M. WITTIG  
5 Nevada Bar No. 11015  
6 AKERMAN LLP  
7 1635 Village Center Circle, Suite 200  
8 Las Vegas, Nevada 89134  
9 Telephone: (702) 634-5000  
10 Facsimile: (702) 380-8572  
11 Email: melanie.morgan@akerman.com  
12 Email: donna.wittig@akerman.com

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 CUILLORY,

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

SUBSTITUTION OF COUNSEL FOR  
NATIONSTAR MORTGAGE LLC

///

///

///

12403568;1

JA1782

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200  
LAS VEGAS, NEVADA 89134  
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AKERMAN LLP

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TEL.: (702) 634-5000 - FAX: (702) 380-8572

1 Defendant/Counterclaimant Nationstar Mortgage LLC hereby consents to the substitution of  
2 Melanie D. Morgan, Esq. and Donna M. Wittig, Esq., of AKERMAN LLP as its counsel in the place  
3 and stead of WRIGHT, FINLAY & ZAK, LLP in the above-entitled matter.

4 DATED this 18 day of January, 2018.

5 NATIONSTAR MORTGAGE LLC

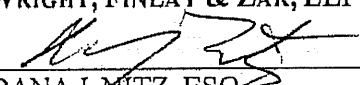
6 By: 

7 A. J. Loll, Vice President  
8 Nationstar Mortgage LLC  
9

10 Dana J. Nitz, Esq. of the law firm of WRIGHT, FINLAY & ZAK, LLP consents to the  
11 substitution of Melanie D. Morgan, Esq. and Donna M. Wittig, Esq., of AKERMAN LLP as counsel  
12 of record in its place and stead on behalf of Defendant/Counterclaimant Nationstar Mortgage LLC.

13 DATED this \_\_\_ day of January, 2018.

14 WRIGHT, FINLAY & ZAK, LLP

15   
16 DANA J. NITZ, ESQ.

17 Nevada Bar No. 000050  
18 7785 W. Sahara Ave., Suite 200  
19 Las Vegas, Nevada 89117

20 Melanie D. Morgan, Esq. and Donna M. Wittig, Esq., of the law firm AKERMAN LLP,  
21 consent to substitution as counsel of record for Defendant/Counterclaimant Nationstar Mortgage  
22 LLC in the place and stead of WRIGHT, FINLAY & ZAK, LLP.

23 DATED this 9th day of January, 2018.

24 AKERMAN LLP

25   
26 MELANIE D. MORGAN, ESQ.

27 Nevada Bar No. 8215  
28 DONNA M. WITTIG  
Nevada Bar No. 11015  
1635 Village Center Circle, Suite 200  
Las Vegas, Nevada 89134

AKERMAN LLP

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 24<sup>th</sup> of January, 2018 and pursuant to NRCP 5(b), I served  
via the Clark County electronic filing system a true and correct copy of the foregoing  
**SUBSTITUTION OF COUNSEL FOR NATIONSTAR MORTGAGE LLC**, addressed to:

**Law Office of Michael F. Bohn**

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

**Wright Finlay & Zak LLP**

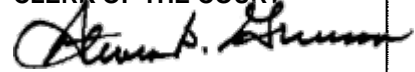
Regina A. Habermas                      rhabermas@wrightlegal.net  
NVEfile                                      nvefile@wrightlegal.net  
Brandon Lopipero                          blopipero@wrightlegal.net

Jason M. Peck, Esq.

**~~Cooper Castle Law Firm LLP~~**

5275 S. Durango Dr.  
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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  
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 4<sup>th</sup> 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

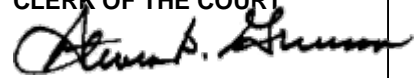
DONNA M. WITTIG

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Las Vegas, Nevada 89134

*Attorneys for Nationstar Mortgage LLC*



**NEFF**  
MELANIE D. MORGAN, ESQ.  
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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 11<sup>th</sup>

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

DATED this 14<sup>th</sup> 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 14<sup>th</sup> 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

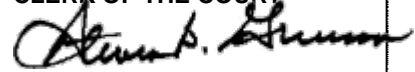
/s/ Carla Llarena

An employee of AKERMAN LLP



# **EXHIBIT A**

# **EXHIBIT A**



**FFCL**  
MELANIE D. MORGAN, ESQ.  
Nevada Bar No. 8215  
DONNA M. WITTIG  
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Facsimile: (702) 380-8572  
Email: melanie.morgan@akerman.com  
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,

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FINDINGS OF FACT, CONCLUSIONS  
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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  
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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 4<sup>th</sup> 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

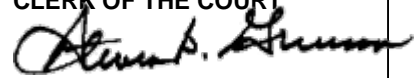
DONNA M. WITTIG

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*Attorneys for Nationstar Mortgage LLC*



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14 *Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC*

15 **EIGHTH JUDICIAL DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 SATICOY BAY LLC SERIES 4641  
18 VIAREGGIO CT,

19 Plaintiffs,

20 v.

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

24 Defendants.

25 NATIONSTAR MORTGAGE LLC,

26 Counterclaimant,

27 v.

28 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.

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 7<sup>th</sup>, 2019.

7 **AKERMAN LLP**

8 /s/ Donna M. Wittig

9 MELANIE D. MORGAN, ESQ.

10 Nevada Bar No. 8215

11 DONNA M. WITTIG

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15 *Attorneys for Defendant/Counterclaimant Nationstar*  
16 *Mortgage LLC*  
17  
18  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 7<sup>th</sup> 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:

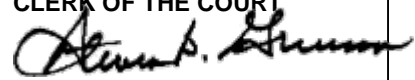
**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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

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Michael F Bohn Esq                  mbohn@bohnlawfirm.com

/s/ Carla Llarena

An employee of AKERMAN LLP



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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.

Case No.: A-13-689240-C

Dept.: XIV

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

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.

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 7<sup>th</sup> 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:

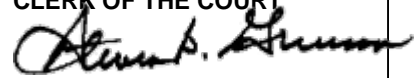
**(ELECTRONIC SERVICE)** Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof & served through the Notice Of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

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

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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

**NOTICE OF POSTING OF APPEAL  
BOND**

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 ALL INTERESTED PARTIES HEREIN:**

Defendant/Counterclaimant Nationstar Mortgage LLC, by and through its attorneys at the law firm of Akerman LLC, hereby lodges with this Court an APPEAL BOND in the amount of Five

Hundred Dollars and No Cents (\$500.00) with the Clerk of the Court, a copy of the receipt is attached hereto as **Exhibit A**.

DATED January 15<sup>th</sup>, 2019.

**AKERMAN LLP**

/s/ Donna M. Wittig

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Nevada Bar No. 8215

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Nevada Bar No. 11015

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Las Vegas, Nevada 89134

*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 15<sup>th</sup> day of January, 2019 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF POSTING OF APPEAL BOND**, 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.**

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Michael F Bohn Esq                  mbohn@bohnlawfirm.com

/s/ Carla Llarena

An employee of AKERMAN LLP

# **EXHIBIT A**

# **EXHIBIT A**

**OFFICIAL RECEIPT**  
**District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101**

Payor  
Akerman LLP

Receipt No.  
**2019-01367-CCCLK**

Transaction Date  
01/8/2019

Description		Amount Paid
On Behalf Of Nationstar Mortgage LLC		
A-13-689240-C		
Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)		
Appeal Bond		
Appeal Bond		500.00
SUBTOTAL		500.00
PAYMENT TOTAL		500.00
Check (Ref #26001499) Tendered		500.00
Total Tendered		500.00
Change		0.00
01/08/2019	Cashier	Audit
04:04 PM	Station AIKO	36345010

**OFFICIAL RECEIPT**