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7 Attorney for plaintiff

Electronically Filed
Apr 17 2018 02:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 7510 PERLA DEL MAR AVE TRUST,
11 Plaintiff,

CASE NO.: A-13-686277-C
DEPT NO.: XXX

12 vs.

13 BANK OF AMERICA, N.A.; NORTH
14 AMERICAN TITLE COMPANY, A NEVADA
15 CORPORATION; MOUNTAINS EDGE
16 MASTER ASSOCIATION; and DOMINIC J.
NOLAN,

17 Defendants.

NOTICE OF APPEAL

18 NOTICE IS HEREBY GIVEN that Plaintiff, 7510 Perla Del Mar Ave Trust, hereby appeals to
19 the Supreme Court of Nevada from the Amended Findings of Fact, Conclusions of Law and Judgment
20 entered on March 21, 2018.

21 DATED this 12th day of April 2018.

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

24 By: /s/ Michael F. Bohn, Esq./
25 MICHAEL F. BOHN, ESQ.
26 376 E. Warm Springs Road, Suite 140
27 Las Vegas, Nevada 89119
28 Attorney for plaintiff

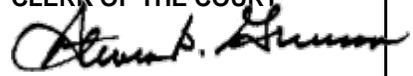
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 12th day of April, 2018 an electronic copy of the **NOTICE OF APPEAL** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Darren T. Brenner, Esq.
Rebekkah B. Bodoff, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada, 89134
Attorney for defendant Bank of America, N.A.

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



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

7 Attorney for plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 7510 PERLA DEL MAR AVE TRUST,
11 Plaintiff,

12 vs.

13 BANK OF AMERICA, N.A.; NORTH
14 AMERICAN TITLE COMPANY, A NEVADA
15 CORPORATION; MOUNTAINS EDGE
16 MASTER ASSOCIATION; and DOMINIC J.
NOLAN,

17 Defendants.

CASE NO.: A-13-686277-C
DEPT NO.: XXX

18 **CASE APPEAL STATEMENT**

- 19 1. The appellant filing this case appeal statement is 7510 Perla Del Mar Ave Trust.
20 2. The judge issuing the judgment appealed from is the honorable Jerry A. Wiese.
21 3. The parties to the proceedings in District Court 7510 Perla Del Mar Ave Trust, plaintiff
22 and Bank of America, N.A.; North American Title Company; Mountains Edge Master Association;
23 and Dominic J. Nolan, defendants. Mandolin Homeowners Association and Nevada Association
24 Services, Inc, Cross Defendants.
25 4. The parties to this appeal are the appellant 7510 Perla Del Mar Ave Trust; the respondent
26 is Bank of America, N.A.
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of Law Offices of Michael F. Bohn., Esq., and on the 12th day of April, 2018, an electronic copy of the **CASE APPEAL STATEMENT** was served on opposing counsel via the Court's electronic service system to the following counsel of record:

Darren T. Brenner, Esq.
Rebekkah B. Bodoff, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada, 89134
Attorney for defendant Bank of America, N.A.

/s/ Marc Sameroff

An Employee of the LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-13-686277-C

7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

§
§
§
§
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§

Location: **Department 30**
Judicial Officer: **Wiese, Jerry A.**
Filed on: **08/01/2013**
Cross-Reference Case Number: **A686277**
Supreme Court No.: **65069**

CASE INFORMATION

Statistical Closures
01/23/2014 Judgment on Arbitration

Case Type: **Title to Property**
Subtype: **Quiet Title**

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

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	A-13-686277-C
Court	Department 30
Date Assigned	08/01/2013
Judicial Officer	Wiese, Jerry A.

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	7510 Perla Del Mar Ave Trust	Bohn, Michael F <i>Retained</i> 702-642-3113(W)
Defendant	Bank of America, N.A.	Stern, Ariel E. <i>Retained</i> 702-634-5000(W)
	Mountains Edge Master Association Removed: 12/27/2013 Dismissed	Kerr, Gregory P. <i>Retained</i> 7023415200(W)
	Nolan, Dominic J Removed: 02/19/2014 Dismissed	
	North America Title Company Removed: 02/19/2014 Dismissed	
Counter Claimant	Bank of America, N.A. Removed: 03/21/2018 Dismissed	Stern, Ariel E. <i>Retained</i> 702-634-5000(W)
Counter Defendant	7510 Perla Del Mar Ave Trust Removed: 03/21/2018 Dismissed	Bohn, Michael F <i>Retained</i> 702-642-3113(W)
Cross Claimant	Bank of America, N.A. Removed: 03/21/2018 Dismissed	Stern, Ariel E. <i>Retained</i> 702-634-5000(W)
	Bank of America, N.A. Removed: 03/21/2018 Dismissed	Stern, Ariel E. <i>Retained</i> 702-634-5000(W)
Cross Defendant	Desert Shores Community Association	

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CASE NO. A-13-686277-C

Removed: 03/21/2018
Dismissed

Mandolin Homeowners Association

Removed: 03/21/2018
Dismissed

Nevada Association Services Inc

Removed: 03/21/2018
Dismissed

Nevada Association Services Inc

Removed: 03/21/2018
Dismissed

DATE	EVENTS & ORDERS OF THE COURT	INDEX
08/01/2013	 Complaint Filed By: Plaintiff 7510 Perla Del Mar Ave Trust <i>Complaint</i>	
08/01/2013	Case Opened	
09/18/2013	 Amended Complaint Filed By: Plaintiff 7510 Perla Del Mar Ave Trust <i>Amended complaint</i>	
10/09/2013	 Affidavit of Service Filed By: Plaintiff 7510 Perla Del Mar Ave Trust <i>Affidavit of Service</i>	
10/09/2013	 Affidavit of Service Filed By: Plaintiff 7510 Perla Del Mar Ave Trust <i>Affidavit of Service</i>	
10/14/2013	 Affidavit of Service Filed By: Plaintiff 7510 Perla Del Mar Ave Trust <i>Affidavit of Service - Nolan</i>	
11/15/2013	 Initial Appearance Fee Disclosure Filed By: Defendant Bank of America, N.A. <i>Initial Appearance Fee Disclosure</i>	
11/15/2013	 Motion to Dismiss Filed By: Defendant Bank of America, N.A. <i>Bank of America, N.A.'s Motion to Dismiss</i>	
11/18/2013	 Certificate of Service Filed by: Defendant Bank of America, N.A. <i>Certificate of Service</i>	
11/20/2013	 Default Filed By: Plaintiff 7510 Perla Del Mar Ave Trust <i>Default</i>	
11/20/2013	 Initial Appearance Fee Disclosure Filed By: Defendant Mountains Edge Master Association <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>	

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-13-686277-C

11/20/2013  Notice of Appearance
Party: Defendant Mountains Edge Master Association
Notice of Appearance of Counsel

12/04/2013  Opposition and Countermotion
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Opposition to Motion to Dismiss and Countermotion to Stay Case

12/12/2013  Reply in Support
Filed By: Defendant Bank of America, N.A.
Bank of America, N.A.'s Reply in Support of its Motion to Dismiss

12/19/2013 **Motion to Dismiss** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Bank of America, N.A.'s Motion to Dismiss

12/19/2013 **Opposition and Countermotion** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Plaintiff's Opposition to Motion to Dismiss and Countermotion to Stay Case

12/19/2013  **All Pending Motions** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

12/27/2013  Stipulation and Order for Dismissal Without Prejudice
Filed By: Defendant Mountains Edge Master Association
Stipulation and Order of Dismissal of Mountains Edge Master Association

12/27/2013 **Order of Dismissal Without Prejudice** (Judicial Officer: Wiese, Jerry A.)
Debtors: 7510 Perla Del Mar Ave Trust (Plaintiff)
Creditors: Mountains Edge Master Association (Defendant)
Judgment: 12/27/2013, Docketed: 01/03/2014

01/08/2014  Notice of Entry of Stipulation & Order for Dismissal
Filed By: Defendant Mountains Edge Master Association
Notice of Entry of Stipulation and Order of Dismissal of Mountains Edge Master Association

01/23/2014  Order to Statistically Close Case
Order to Statistically Close Case

02/19/2014  Order Granting Motion
Filed By: Defendant Bank of America, N.A.
Order Granting Bank of America, N.A.'s Motion to Dismiss

02/19/2014  Notice of Entry of Order
Filed By: Defendant Bank of America, N.A.
Notice of Entry of Order

02/20/2014  Notice of Appeal
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Notice of Appeal

02/20/2014  Case Appeal Statement
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Case Appeal Statement

03/03/2014  Notice of Entry of Order

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-13-686277-C

Filed By: Defendant Bank of America, N.A.
Notice of Entry of Order

03/03/2014

 Order Granting Motion

Filed By: Defendant Bank of America, N.A.
Amended Order Granting Bank of America, N.A.'s Motion to Dismiss to Reflect Court's Order Granting 7510 Perla Del Mar Ave. Trust's Request for N.R.C.P. 45(b) Certification

04/21/2014

 Motion to Amend

Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Motion for Amended Order

04/21/2014

 Ex Parte Motion

Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Ex Parte Motion for Order Shortening Time

04/24/2014

 Order Shortening Time

Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Order Shortening Time

04/24/2014

 Certificate of Mailing

Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Certificate of Mailing

05/08/2014

 **Motion to Dismiss** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Plaintiff's Motion for Amended Order

05/08/2014

 Amended Order

Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Amended Order Granting Bank of Americas Motion to Dismiss

05/08/2014

 Notice of Entry of Order
Notice of Entry of Order

05/08/2014

Amended Order of Dismissal (Judicial Officer: Wiese, Jerry A.)
Debtors: 7510 Perla Del Mar Ave Trust (Plaintiff)
Creditors: Bank of America, N.A. (Defendant), North America Title Company (Defendant),
Dominic J Nolan (Defendant)
Judgment: 05/08/2014, Docketed: 02/26/2014

12/17/2014

 Stipulation

Filed by: Defendant Bank of America, N.A.
Stipulation Requesting Certification

12/22/2014

 Order

Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Certification Order

12/22/2014

 Notice of Entry of Order

Filed By: Defendant Bank of America, N.A.
Notice of Entry of Certification Order

05/14/2015

 Stipulation and Order

Filed by: Plaintiff 7510 Perla Del Mar Ave Trust
Stipulation and Order

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-13-686277-C

05/14/2015  Notice of Entry of Order
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Notice of Entry of Order

07/20/2015  Answer
Filed By: Defendant Bank of America, N.A.
Bank of America, N.A.'s Answer

09/25/2015  List of Witnesses
Filed By: Defendant Bank of America, N.A.
DEFENDANT BANK OF AMERICA'S INITIAL DISCLOSURES PURSUANT TO RULE 16.1

10/01/2015  Joint Case Conference Report
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Joint Case Conference Report

12/09/2015  Scheduling Order
Scheduling Order

01/06/2016  Order Setting Civil Non-Jury Trial
Order Setting Civil Non-Jury Trial

03/09/2016  Motion for Leave to File
Party: Defendant Bank of America, N.A.
Defendant Bank Of America, N.A.'S Motion For Leave To Amend Answer To Add Affirmative Defenses, To Assert Counterclaims, And To Join Parties And Add Claims

03/31/2016  Affidavit of Service
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Affidavit of Service

04/14/2016  **Motion to Amend Answer** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Defendant Bank Of America, N.A.'S Motion For Leave To Amend Answer To Add Affirmative Defenses, To Assert Counterclaims, And To Join Parties And Add Claims

06/01/2016  Order Granting Motion
Filed By: Defendant Bank of America, N.A.
Order Granting Defendant Bank of America, N.A.'s Motion for Leave to Amend Answer to Add Affirmative Defenses, to Assert Counterclaims and to Join Parties and Add Claims

06/06/2016  Notice of Entry of Stipulation and Order
Filed By: Defendant Bank of America, N.A.
Notice Of Entry Of Order Granting Defendant Bank Of America, N.A.'S Motion For Leave To Amend Answer To Add Affirmative Defenses, To Assert Counterclaims, And To Join Parties And Add Claims

06/08/2016  Amended Answer
Filed By: Defendant Bank of America, N.A.
Defendant Bank Of America, N.A.'S Amended Answer To Complaint, Counterclaims Against Plaintiff, And Crossclaims Against Desert Shores Community Association And Nevada Association Services, Inc.

06/14/2016  Order

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-13-686277-C

Order Vacating Pre Trial Conference Presently Scheduled on 8/8/16 at 9:00am

- 06/23/2016  Motion to Dismiss
Filed By: Defendant Bank of America, N.A.
Motion To Dismiss Desert Shores Community Association
- 07/05/2016  Answer to Counterclaim
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Plaintiff 7510 Perla Del Mar Ave Trust's Answer to Counterclaim
- 07/07/2016  Affidavit of Service
Filed By: Defendant Bank of America, N.A.
Affidavit of Service on Desert Shores Community Association
- 07/07/2016  Affidavit of Service
Filed By: Defendant Bank of America, N.A.
Affidavit of Service on Nevada Association Services Inc
- 07/08/2016  Order Setting Civil Non-Jury Trial
Amended Order Setting Civil Non-Jury Trial
- 07/16/2016  Stipulation and Order
Filed by: Defendant Bank of America, N.A.
Stipulation and Order Allowing Bank of America, N.A. to Amend its Answer and Counter/Cross-Claims
- 07/18/2016  Stipulation and Order
Filed by: Defendant Bank of America, N.A.
Stipulation and Order for Extension of Discovery Deadlines (First Request)
- 07/19/2016  Notice of Entry
Filed By: Defendant Bank of America, N.A.
Notice of Entry of Stipulation and Order of Discovery Deadlines (First Request)
- 07/19/2016  Notice of Entry of Stipulation and Order
Filed By: Defendant Bank of America, N.A.
Notice of Entry of Stipulation and Order Allowing Bank of America, N.A. to Amend it's Answer and Counter/Cross Claims
- 07/21/2016  Notice of Entry of Order
Filed By: Defendant Bank of America, N.A.
(Withdrawn 7/22/16) Order Granting Defendant Bank of America, N.A.'s Motion to Stay Execution of Judgment
- 07/22/2016  Notice of Withdrawal
Filed By: Defendant Bank of America, N.A.
Notice of Withdrawal of Notice of Entry of Order Granting Defendant Bank of America, N.A.'s Motion to Stay Execution of Judgment
- 08/02/2016  Amended Answer
Filed By: Defendant Bank of America, N.A.
Defendant Bank Of America, N.A.'s Amended Answer To Complaint, Counterclaims Against Plaintiff, And Crossclaims Against Desert Shores Community Association And Nevada Association Services, Inc.

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-13-686277-C

08/08/2016 **CANCELED Pre Trial Conference (9:00 AM)** (Judicial Officer: Wiese, Jerry A.)
Vacated

08/10/2016  Crossclaim
Filed By: Defendant Bank of America, N.A.
Defendant Bank of America, N.A.'s Amended Answer to Complaint, CounterClaims Against Plaintiff, and CrossClaims Against Mandolin Homeowners Association and Nevada Association Services, Inc. (To Correct Improperly Named Cross-Defendants)

08/18/2016  Affidavit of Service
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Affidavit Of Service

08/22/2016  Affidavit of Service
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Affidavit Of Service

08/25/2016  Motion to Dismiss
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Plaintiff 7510 Perla Del Mar Ave Trust's Motion to Dismiss

09/14/2016  Stipulation and Order
Filed by: Defendant Bank of America, N.A.
Stipulation and Order to Extend Briefing Schedule on Plaintiff/Counter-Defendant's Motion to Dismiss

09/15/2016  Notice of Entry
Filed By: Defendant Bank of America, N.A.
Notice Of Entry Of Stipulation And Order To Extend Briefing Schedule On Plaintiff/Counter Defendant's Motion To Dismiss

09/15/2016  Opposition to Motion to Dismiss
Filed By: Defendant Bank of America, N.A.
Defendant Bank of America, N.A.'s Opposition to Plaintiff's Motion to Dismiss

09/20/2016  Reply in Support
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Plaintiff/Counterdefendant 7510 Perla Del Mar Ave Trust's Reply in Support of Motion to Dismiss

09/27/2016  **Motion to Dismiss (9:00 AM)** (Judicial Officer: Wiese, Jerry A.)
Plaintiff 7510 Perla Del Mar Ave Trust's Motion to Dismiss

10/06/2016  Motion for Summary Judgment
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Motion for Summary Judgment

10/06/2016  Motion for Summary Judgment
Filed By: Defendant Bank of America, N.A.
Defendant Bank of America's Motion for Summary Judgment

10/11/2016  Order Denying Motion
Filed By: Defendant Bank of America, N.A.
Order Denying Plaintiff's Motion to Dismiss

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-13-686277-C

10/13/2016  Notice of Entry
Filed By: Defendant Bank of America, N.A.
Notice Of Entry Of Order Denying Plaintiffs Motion To Dismiss

10/14/2016  Pre-trial Memorandum
Filed by: Defendant Bank of America, N.A.
Bank of America's Pretrial Memorandum

10/17/2016  **Pre Trial Conference** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

10/19/2016  Opposition to Motion For Summary Judgment
Filed By: Defendant Bank of America, N.A.
Defendant Bank of America's Opposition to Plaintiff's Motion for Summary Judgment

10/25/2016  Supplement to Motion for Summary Judgment
Filed by: Plaintiff 7510 Perla Del Mar Ave Trust
Supplement in Support of Plaintiff's motion for Summary Judgment

11/04/2016  Opposition to Motion For Summary Judgment
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Opposition to Bank of America's Motion for Summary Judgment

11/04/2016  Reply in Support
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Plaintiff/Counterdefendant 7510 Perla Del Mar Ave Trust's Reply in Support of Motion for Summary Judgment

11/07/2016 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated

11/14/2016 **CANCELED Bench Trial** (1:30 PM) (Judicial Officer: Wiese, Jerry A.)
Vacated

11/22/2016  Reply in Support
Filed By: Defendant Bank of America, N.A.
Defendant Bank Of America's Reply In Support Of Its Motion For Summary Judgment

12/01/2016 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Defendant Bank of America's Motion for Summary Judgment

12/01/2016 **Motion for Summary Judgment** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Plaintiff's Motion for Summary Judgment

12/01/2016  **All Pending Motions** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

03/20/2017  **Pre Trial Conference** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

03/22/2017  Order Setting Civil Non-Jury Trial
Amended Order Setting Civil Bench Trail, Pre Trial Conference and Calendar Call

03/31/2017  Motion for Default Judgment
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Motion for Default Judgment Against Defendant Dominic J. Nolan

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-13-686277-C

04/03/2017  Certificate of Mailing
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Certificate of Mailing

04/10/2017 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated

04/17/2017 **CANCELED Bench Trial** (1:30 PM) (Judicial Officer: Wiese, Jerry A.)
Vacated

05/02/2017  **Motion for Default Judgment** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Plaintiff's Motion for Default Judgment Against Defendant Dominic J. Nolan

05/09/2017  Default Judgment
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Default Judgment

05/09/2017  Notice of Entry of Default Judgment
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Notice of Entry of Default Judgment

05/09/2017 **Default Judgment** (Judicial Officer: Wiese, Jerry A.)
Debtors: Dominic J Nolan (Defendant)
Creditors: 7510 Perla Del Mar Ave Trust (Plaintiff)
Judgment: 05/09/2017, Docketed: 05/16/2017

05/25/2017  Amended Order Setting Civil Non-Jury Trial
Second Amended Order Setting Civil Non-Jury Trial

07/03/2017  Answer to Counterclaim
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Plaintiff 7510 Perla Del Mar Ave Trust's Answer to Amended Counterclaim

07/10/2017  **Pre Trial Conference** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)

07/13/2017  Stipulation and Order
Filed by: Defendant Bank of America, N.A.
Stipulation and Order to Reopen Discovery and Reset Trial and All Related Dates (First Request)

07/20/2017  Notice of Entry of Stipulation and Order
Filed By: Defendant Bank of America, N.A.
Notice of Entry of Stipulation and Order to Reopen Discovery and Reset Trial and all Related Dates (First Request)

07/24/2017 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer: Wiese, Jerry A.)
Vacated

07/31/2017 **CANCELED Bench Trial** (1:30 PM) (Judicial Officer: Wiese, Jerry A.)
Vacated - per Stipulation and Order

08/07/2017  Amended Order Setting Jury Trial
Second Amended Order Setting Jury Trial

10/30/2017  Motion for Summary Judgment

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-13-686277-C

Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Motion for Summary Judgment

11/17/2017  Opposition to Motion For Summary Judgment
Filed By: Defendant Bank of America, N.A.
Defendant Bank of America s Opposition to Plaintiff s Renewed Motion for Summary Judgment

11/22/2017  Reply in Support
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Plaintiff/Counterdefendant 7510 Perla Del Mar Ave Trust's Reply in Support of Motion for Summary Judgment

11/29/2017  Supplemental
Filed by: Plaintiff 7510 Perla Del Mar Ave Trust
SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

11/30/2017  **Motion for Summary Judgment (9:00 AM)** (Judicial Officer: Wiese, Jerry A.)
Plaintiff's Motion for Summary Judgment

12/07/2017  Amended Order Setting Civil Non-Jury Trial
Third Amended Order Setting Civil Non-Jury Trial

12/29/2017  Notice of Change of Address
Filed By: Defendant Bank of America, N.A.
Notice Of Change Of Address

01/05/2018  Pre-trial Memorandum
Joint EDCR 2.67 Pre-Trial memorandum

01/08/2018  **Pre Trial Conference (9:00 AM)** (Judicial Officer: Wiese, Jerry A.)

01/29/2018 **CANCELED Calendar Call (9:00 AM)** (Judicial Officer: Wiese, Jerry A.)
Vacated - per Judge

02/05/2018 **CANCELED Bench Trial (10:30 AM)** (Judicial Officer: Wiese, Jerry A.)
Vacated - per Judge

02/08/2018  Pre-trial Memorandum
Filed by: Plaintiff 7510 Perla Del Mar Ave Trust
Plaintiff's Pre-Trial memorandum Pursuant ro EDCR 7.27

02/09/2018  Trial Brief
Filed By: Defendant Bank of America, N.A.
Trial Brief

02/12/2018  **Bench Trial (10:30 AM)** (Judicial Officer: Wiese, Jerry A.)
02/12/2018-02/13/2018

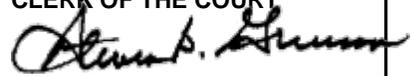
02/12/2018  Stipulation
Filed by: Defendant Bank of America, N.A.
Stipulated Facts

03/20/2018  Findings of Fact, Conclusions of Law and Judgment

DEPARTMENT 30
CASE SUMMARY
CASE NO. A-13-686277-C

Filed by: Defendant Bank of America, N.A.
Findings Of Fact And Conclusions Of Law

- 03/21/2018 **Amended Order of Dismissal With Prejudice** (Judicial Officer: Wiese, Jerry A.)
Debtors: 7510 Perla Del Mar Ave Trust (Plaintiff)
Creditors: Bank of America, N.A. (Defendant)
Judgment: 03/21/2018, Docketed: 03/20/2018
Debtors: Desert Shores Community Association (Cross Defendant), Nevada Association Services Inc (Cross Defendant), Mandolin Homeowners Association (Cross Defendant), Nevada Association Services Inc (Cross Defendant)
Creditors: Bank of America, N.A. (Cross Claimant, Cross Claimant)
Judgment: 03/21/2018, Docketed: 03/21/2018
Debtors: 7510 Perla Del Mar Ave Trust (Counter Defendant)
Creditors: Bank of America, N.A. (Counter Claimant)
Judgment: 03/21/2018, Docketed: 03/21/2018
- 03/21/2018  Findings of Fact, Conclusions of Law and Judgment
Amended Findings of Fact, Conclusions of Law and Judgment
- 03/22/2018  Notice of Entry of Order
Notice of Entry of Order: Amended Findings of Fact, Conclusions of Law, and Judgment
- 03/28/2018  Memorandum of Costs and Disbursements
Filed By: Defendant Bank of America, N.A.
Bank of America's [Proposed] Memorandum of Fees and Costs
- 04/12/2018  Notice of Appeal
Filed By: Plaintiff 7510 Perla Del Mar Ave Trust
Notice of Appeal
- 04/12/2018  Case Appeal Statement
Case Appeal Statement



DISTRICT COURT
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH
AMERICAN TITLE COMPANY;
MOUNTAINS EDGE MASTER
ASSOCIATION; and DOMINIC J. NOLAN,

Defendants.

Case No.: A-13-686277-C
Dept.: XXX

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

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

7510 PERLA DEL MAR AVE TRUST and
MOUNTAINS EDGE MASTER
ASSOCIATION,

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION
and NEVADA ASSOCIATION SERVICES,
INC.

Cross-Defendants.

This matter came before the court on February 12, 2018 for bench trial. Michael F. Bohn, Esq. appeared for Plaintiff/Counter-Defendant 7510 Perla Del Mar Avenue Trust (**Plaintiff**) and Darren T. Brenner, Esq. and Karen A. Whelan, Esq. appeared for Defendant/Counterclaimant Bank of America, N.A. (**BANA**). The court having reviewed the paper and pleadings on file, heard the testimony of the witnesses, considered evidence, and hearing the argument counsel, entered findings of fact, conclusions of law, and judgment.

1 The Court now enters the following Amended Findings, Conclusions, and Judgment.

2 **FINDINGS OF FACT**

3 ***The Deed of Trust***

4 1. This matter involves a dispute over title to a property known commonly as
5 7510 Perla Del Mar Avenue, Las Vegas, Nevada (the **Property**). **Stipulated Fact No. 1.**

6 2. Dominic Nolan, the former owner of the Property, purchased the property
7 located at 97510 Perla Del Mar Ave., Las Vegas, Nevada in 2010. **Stipulated Fact No.**
8 **1; Trial Exhibit 3.**

9 3. The Property is located within the Mandolin Phase 3 at Mountain’s Edge
10 (HOA) planned unit development and is subject to the HOA’s CC&Rs, recorded on
11 September 14, 2006 and June 26, 2007, Instrument Nos. 20060914-0001790 and
12 20070626-0003072. (CC&Rs). **Stipulated Fact No. 2; Trial Exhibits 34 and 35.**

13 4. The property is also located within the Mountain’s Edge Master Association
14 planned unit development and is encumbered by the CC&Rs of the Master Association.
15 **Stipulated Fact No. 3.**

16 5. On December 9, 2010, the former owner entered into a senior deed of trust
17 with KBA Mortgage, LLC (the **Deed of Trust**) for the Property. The original value of the
18 Deed of Trust was \$164,032.00. **Trial Exhibit 3.**

19 6. The Deed of Trust was recorded on December 10, 2010 as Instrument No.
20 20101210-00002325 **Stipulated Fact No. 5; Trial Exhibit 3.**

21 7. The Deed of Trust includes a Planned Unit Development Rider (**PUD Rider**).
22 The PUD Rider, Section F, provides: “If the Borrower does not pay PUD dues and
23 assessments when due, then Lender may pay them.” **Trial Exhibit 3.**

24 ***The Mortgage Savings Clause and Provisions of the CC&Rs Applicable to Deeds of Trust***

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1 8. Section 9 of the Deed of Trust, Protection of Lender's Interest in the Property
2 and Rights Under this Security Instrument, provides that the Lender may pay "any sums
3 secured by a lien which has priority over" the Deed of Trust. **Trial Exhibit 3.**

4 9. Section 2.5.3 of the CC&Rs states:

5 Except to the extent permitted under the Act (NRS 116.3116[2]), a lien under
6 this Section is prior to all other liens and encumbrances on a Unit except: (1)
7 liens and encumbrances recorded before the recordation of this Declaration; (2)
8 a first Security Interest on the Unit recorded before the date on which the
assessment sought to be enforced became delinquent; and (3) liens for real
estate taxes and other governmental assessments or charges against the Unit.

9 **Trial Exhibit 34 at Bate number BANA/Nolan-01-000157**

10 10. Section 6.2.3 of the CC&Rs also states:

11 Notice of Actions: The Association shall give prompt written notice to each
12 Eligible Mortgagee and Eligible Insurer of:...

13 (b) Any delinquency in the payment of Common Expense Assessments
14 owed by a Unit Owner which remains uncured for a period of sixty (60) days
15 and whose Unit is subject to a first Security Interest held, insured or
guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable.

16 ***Id.* at Bate number BANA/Nolan-01-000203.**

17 11. 6.2.6 of the CC&Rs also states:

18 The Association must maintain current copies of the Declaration, Bylaws,
19 Rules, the Association's articles of incorporation, books, records, and financial
20 statements of the Association. The Association shall permit any Eligible
mortgagee or Eligible Insurer, or other first mortgagee if Unites, to inspect the
books and records of the Association during normal business hours.

21 ***Id.* at Bate number BANA/Nolan-01-000206.**

22 12. Section 6.3.11 of the CC&Rs provides:

23 Any breach or amendment of this Declaration shall not affect or impair the lien
24 or charge of any Security Interest made in good faith and for value on any Unit
25 (or any Improvements respectively thereon); provided, however, that any
subsequent Unit Owner of such property shall be bound hereby whether such
26 Unit Owner's title was acquired by foreclosure, in a trustee's sale or otherwise.

27 ***Id.* at Bate number BANA/Nolan-01-000208.**

1 20. On March 7, 2012, after recording the Notice of Default and Election to Sell,
2 NAS, on behalf of the HOA, mailed the notice of default to the former owner, BANA,
3 MERS, and other interested parties via certified mail. **Stipulated Fact 13; Trial Exhibit 37**
4 **– Bates number BANA/Nolan-01-000287 - 289.**

5 21. Prior to the HOA foreclosure sale, on March 16, 2012, the law firm of Miles,
6 Bauer, Bergstrom & Winters, LLP, acting as counsel for MERS as nominee for Bank of
7 America, N.A., as successor by merger to BAC Home Loans Servicing, LP, sent a letter to
8 NAS regarding payment of the super-priority lien, the terms of which included a request for
9 identification of the super-priority portion measure at a maximum of nine months of unpaid
10 assessments, and offer to pay that amount upon proof of the same. **Stipulated Fact No. 17;**
11 **Trial Exhibit 20.** The letter was authored by attorney Rock Jung. **TT 135:2-11; Trial**
12 **Exhibit 32.** The letter was similar to thousands of requests sent by Miles Bauer during this
13 time period to NAS. **TT 125:14-25, 164:13-21.**

14 22. The March 16, 2012 letter sent by Miles Bauer was received by NAS. **TT**
15 **117:1-5 and 118:1-22. Stipulated Fact No. 18.**

16 23. NAS did not respond based on its claim that doing so would violate the
17 FDCPA. **TT 137:18-139:10; Stipulated Fact No. 18.**

18 24. The parties stipulated the letter was received by NAS. At trial, plaintiff
19 attempted to withdraw the stipulation because the letter was not in NAS's file. However,
20 testimony by Chris Yergensen, NAS's former in-house counsel, established that it was not
21 uncommon for letters sent by Miles Bauer to never make it to the file. **TT 164:22-165:24.**
22 Mr. Yergensen explained: "typically with the Miles Bauer letters, and as I have testified
23 before, because of the routine nature, I just think that, to some degree, some of the
24 employees at NAS got a little bit lazy. I mean it was the same form letter every time. So
25 you see occasionally that the letter didn't make it particularly to the collection file because it
26 just feel on deaf ears".

27 25. Prior to the time this letter was sent, it was NAS's practice to respond to Miles
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1 Bauer by providing a ledger that described and provided an itemization of the components of
2 the lien. **TT 125:8-19, 174:3-9.** NAS was not compensated for this service. **TT 176:3-178-**
3 **1.** Mr. Yergensen explained that NAS ceased this practice at some point in 2012 because of
4 the FDCPA. NAS started providing ledgers again in our around July of 2013 based on a
5 change in state law. **TT 174:3-175:3.** When NAS started providing ledgers again in 2013,
6 it began charging \$150 for this service based on a statute it believed authorized it to do so.
7 **TT 175:11-16.**

8 26. Miles Bauer's request for a ledger in this matter fell within the period of time
9 NAS was not providing ledgers or any response to Miles Bauer's requests. Mr. Yergensen
10 acknowledged that NAS was aware it was taking a risk in making the business decision to
11 refuse to respond to Miles Bauer during this period. **TT 166:10-167:5, 175:4-16.**

12 27. As explained by Mr. Jung and, when Miles Bauer did not receive a response to
13 their request for payoff, they would search their data base to determine if another property
14 within the association had previously been collected on, and if there was a ledger in that file
15 they could use to attempt to determine the super-priority payoff amount. **TT 126:13-20.**
16 Miles Bauer did not have such a ledger in this instance.

17 28. This court is satisfied that Miles Bauer would have issued a payment of at least
18 the super-priority component of the lien if NAS had responded with this information or if
19 Miles Bauer otherwise had the information reasonably available from another source.¹ Even
20 if Miles Bauer had been able to determine the precise amount of the super-priority, NAS's
21 policy was to reject these payments unless they were for the full amount of the lien. Miles
22 Bauer's practice was to send a check by runner to deliver payment. NAS's practice was to
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24 ¹ The typical Miles Bauer tender process was demonstrated through Miles Bauer's efforts to pay the Mountains Edge
25 Master Association on the super-priority portion of its lien. On September 10, 2012, BANA, through its counsel at
26 Miles Bauer, sent a letter to the Master Association offering to pay the sum of nine months of common assessments pre-
27 dating the former owner's default, requesting proof of that amount, and requesting information regarding the Master
28 Association's proposed sale of the property. **Stipulated Fact 19; Trial Exhibit 22.** On October 4, 2012, Miles Bauer,
by hand delivery, sent a check for \$932.83, representing 9 months of unpaid assessments, and a voluntary payment of
collection costs/fees, to the Master Association. **Trial Exhibits 24, 25, and 26.**

1 have its receptionist reject the payment at the door unless it was for the full amount of the
2 lien. The receptionist would not consult NAS's management, legal department, or
3 collections staff before rejecting. **TT 172:3-173:18.**

4 29. NAS, on November 15, 2012, NAS, on behalf of the HOA, recorded a Notice
5 of Foreclosure Sale against the Property, as Instrument No. 201211150002280. The notice
6 set a sale for December 14, 2012. **Stipulated Fact No. 23; Trial Exhibit 9.**

7 30. On November 13, 2012, NAS, on behalf of the HOA, mailed the Notice of
8 Foreclosure Sale to the former owner, BANA, and other interested parties. **Stipulated Fact**
9 **No. 24; Trial Exhibit 37 Bates number BANA/Nolan-01-000357 - 362**

10 31. NAS, on behalf of the HOA, posted the Notice of Foreclosure Sale on the
11 Property and in three places throughout the county in November 15, 2012. **Stipulated Fact**
12 **No. 25; Trial Exhibit 52.**

13 32. The Master Association provided a statement of account showing the total
14 amount the former owner owed the Master Association through September 20, 2012 in
15 response to Miles Bauer's letter. **Trial Exhibit 23.**

16 33. Miles Bauer, on BANA's behalf, delivered a check in the amount of \$932.83
17 to the Master Association, c/o Silver State, on or about October 4, 2012. This apparently
18 included \$225 representing nine months' worth of unpaid assessments, plus a payment of
19 collection costs and fees.

20 34. NAS, on behalf of the HOA, published the Notice of Foreclosure Sale in
21 Nevada Legal News on three dates (November 21, 2012, November 30, 2012 and December
22 7, 2012. **Stipulated Fact No. 26; Trial Exhibit 53.**

23 35. On February 1, 2013, Plaintiff appeared at the public auction and acquired the
24 property at the HOA foreclosure sale with a bid of \$14,600, as evidenced by the foreclosure
25 deed recorded on February 7, 2013. **Stipulated Facts No. 27 and 28; Trial Exhibit 10.**
26 NAS issued a deed upon sale, which was recorded on February 7, 2013. **Trial Exhibit 10.**

27 36. BANA, successor by merger to BAC Home Loans Servicing, LP f/k/a
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1 Countrywide Home Loans Servicing, LP assigned the deed of trust to Nationstar Mortgage,
2 LLC, via an assignment of the deed of trust recorded with the Clark County Recorder on
3 July 10, 2013, as Instrument No. 201307100000782. **Stipulated Fact No. 23; Trial Exhibit**
4 **11.**

5 37. BANA retained expert appraiser Matthew Lubawy to perform a retroactive
6 Fair Market Value Appraisal of the property at the time of the February 1, 2013 HOA sale,
7 as defined in *Unruch v. Streight*, 96 Nev. 684, 615 P.2d 247 (1980) and the Restatement
8 (third) of Property § 8.3. BANA's expert is qualified to render an opinion regarding the Fair
9 Market Value of the Property on February 1, 2013. As stated in Mr. Lubawy's expert report,
10 the Fair Market Value at the time of the HOA sale was \$158,500. **Stipulated Fact No. 31;**
11 **Trial Exhibit 33.**

12 38. NAS routinely rejected attempts to pay superpriority liens, even after
13 reinstating the practice of providing payoff demands for which they charged \$150.00. **TT**
14 **136:9-18; 145:9-146:4.**

15 39. The owner of the subject property is 7510 Perla Del Mar Avenue Trust. Eddie
16 Haddad, who is a sophisticated real estate investor who holds a Nevada Real Estate Broker's
17 license and established the trust, has over 20 years of experience in real estate. He owns and
18 operates Great Bridge Properties, which is a real estate brokerage. He also owns a real estate
19 management company called Resources Management Group, LLC. Resources Management
20 Group is the company Mr. Haddad uses to manage many of his real estate acquisitions,
21 including the subject property. He is the *de facto* manager of the 7510 Perla Del Mar Avenue
22 Trust. **TT 8:25-10:3**

23 40. Eddie Haddad attended and bid at hundreds of HOA foreclosure sales every
24 year. **TT 12:14-19.** Through that process, he has acquired hundreds of properties at
25 foreclosure sales over the years. **TT 12:20-22.**

26 **CONCLUSIONS OF LAW**

1 1. "A quiet title action . . . is the proper method by which to adjudicate disputed
2 ownership of real property rights." *Howell v. Ricci*, 124 Nev. 1222, 1224, 197 P.3d 1044,
3 1046 (2008). "An action may be brought by any person against another who claims an estate
4 or interest in real property, adverse to him, for the purpose of determining such adverse
5 claim." NRS 40.010.

6 2. Here, Plaintiff seeks to quiet title in its name and extinguish the Deed of Trust
7 as a result of the HOA foreclosure sale. The court finds the sale did not extinguish the Deed
8 of Trust because: (1) the superpriority portion of the lien was tendered prior to the sale; and
9 (2) the equities balance in favor of BANA.

10 ***I. BANA's Offer Redeemed the Super-Priority As a Matter of Law.***

11 3. NRS116.3116 provides in part:

12 The lien is also prior to all security interests described in paragraph (b) to the extent
13 of any charges incurred by the association on a unit pursuant to NRS 116.310312 and
14 to the extent of the assessments for common expenses based on the periodic budget
15 adopted by the ***association pursuant to NRS 116.3115 which would have become
due in the absence of acceleration during the 9 months immediately preceding
institution of an action to enforce the lien***

16 *(emphasis added)*

17 4. The only portion of the HOA's lien that is prior to the first deed of trust's
18 interest is that amount for up to nine months of assessments only. *Horizons at Seven Hills
19 Homeowners Assoc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35 (Apr. 28, 2016).

20 5. In *SFR Investments*, the Nevada Supreme Court held that a first deed of trust
21 holder's pre-foreclosure tender prevents the first deed of trust from being extinguished. 334
22 P.3d at 414 ("[A]s junior lienholder, [the holder of the first deed of trust] could have paid off
23 the [HOA] lien to avert loss of its security[.]").

24 6. The HOA's foreclosure begins at the recording of the notice of delinquent
25 assessment lien. *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank,
26 N.A.*, 388 P.3d 226, 231, 133 Nev. Adv. Op. 3 __ (2017). *See also Property Plus*
27

1 *Investments, LLC v. Mortgage Electronic Registration Systems Inc., et al.*, 133 Nev. Ad. Op.
2 62__ (September 2017).

3 7. The parties stipulated that prior to the HOA foreclosure sale, Miles Bauer, on
4 behalf of the beneficiary of the first deed of trust, requested the lien balance from NAS. NAS
5 stipulated that it received this letter, but it did not respond to Miles Bauer's letter based upon
6 its claim that doing so would violate the FDCPA.

7 8. BANA's offer to pay coupled with NAS's refusal to accept, acknowledge, or
8 even respond, was sufficient to redeem the seniority for the first deed of trust. As a matter of
9 law, tender is complete when "the money is offered to a creditor who is entitled to receive
10 it." *Cladianos v. Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) (emphasis added); *see*
11 *also Fresk v. Kramer*, 99 P.3d 282, 286-87 (Or. 2004) (emphasis added); *see also* 74 Am.
12 Jur. 2d Tender § 22 (2014). Money need not actually change hands. "[W]hen a party, able
13 and willing to do so, offers to pay another a sum of money and is told that it will not be
14 accepted, the offer is a tender without the money being produced." *Guthrie v. Curnutt*, 417
15 F.2d 764, 765-766 (10th Cir. 1969); *accord Ebert v. Western States Refining Co.*, 75 Nev.
16 217, 221-222, 337 P.2d 1075, 1077 (1959) (Tender of rent sufficient where offered by tenant
17 and refused by landlord).

18 9. Bank of America, through its counsel Miles Bauer, offered to pay the super-
19 priority
20 portion of the lien. Miles Bauer was ready, willing, and able to provide payment for a super-
21 priority tender. Based on the testimony of Rock Jung and Jessica Woodbridge, Miles Bauer
22 was hired by BANA to do just that. The testimony evidences that Miles Bauer was hired to
23 pay the super-priority portion of the lien or more, and it would have done so, as it did
24 hundreds of times, if information was provided from NAS as requested. In addition to
25 providing thousands of similar tender payments, Miles Bauer provided an (over)payment of
26 tender to the Master Association. Having demonstrated they were ready, willing and able to
27 pay when the Master Association provided Miles Bauer the information they needed to do
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1 so, it is evident that had NAS provided what was requested, Miles Bauer would have issued
2 a check to Mandolin as well. This court concludes that Miles Bauer was ready, willing and
3 able to pay the superpriority portion of the lien as well as additional fees and costs. The
4 testimony from Chris Yergensen and Susan Moses at trial corroborated this conclusion.
5 NAS knew that the only proof of an accounting needed to obtain a super-priority check was
6 an itemized letter, and it knew that Miles Bauer would send such a check if it had that
7 information. There was no evidence or argument at trial to suggest a contrary conclusion.²

8 10. As a matter of law, the FDCPA only prohibits third-party communications
9 made “in connection with the collection of a debt.” 15 U.S.C. § 1692c(b). A communication
10 is made in connection with the collection of a debt only if the “animating purpose of the
11 communication [is] to induce payment by the debtor.” *McIvor v. Credit Control Services,*
12 *Inc.*, 773 F.3d 909, 914 (8th Cir. 2014); *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 266
13 (3d Cir. 2013); *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011);
14 *Gburek v. Litton Loan Servicing*, 614 F.3d 380, 382 (7th Cir.2010). Foreclosing on a lien is
15 not a “debt collection” as defined by the FDCPA, and is thus outside the statute’s purview.
16 *See Santoro v. CTC Foreclosure Serv.*, 12 Fed. App’x. 476, 480 (9th Cir. 2001); *Warren v.*
17 *Countrywide Home Loans, Inc.*, 342 Fed. App’x 458, 460 (11th Cir. 2009) (explaining that
18 “the plain language of the FDCPA supports” the conclusion that “foreclosing on a security
19 interest is not debt collection activity”); *Montgomery v. Huntington Bank*, 346 F.3d 693, 700
20 (6th Cir. 2003); *Nadalin v. Automobile Recovery Bureau, Inc.*, 169 F.3d 1084, 1085 (7th Cir.
21 1999). NAS’s refusal to respond on the basis of the FDCPA was unreasonable for multiple
22 reasons.. It was just an excuse to be able to go forward with the foreclosure sale. The court
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24 ² In fact, BANA’s offer was in excess of the actual super-priority lien in this case. “[T]he superpriority lien ...is limited
25 to an amount equal to the common expense assessments due during the nine months before foreclosure.” *Horizon at*
26 *Seven Hills Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL 1704199 at *6
27 (emphasis added). The HOA’s foreclosure begins at the recording of the notice of delinquent assessment lien. *Saticoy*
28 *Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 231 (2017).NAS agreed there
were only five months’ worth of assessments prior to the NOL (and the homeowner satisfied all but \$39.10 of the super-
priority).

1 does not accept NAS's position that the HOA was prohibited from disclosing information
2 about the super-priority component of the lien, if any, under the FDCPA. First, the entirety
3 of the lien was already a matter of public record. Second, NAS, itself, had a practice of
4 disclosing, at no cost, what it believed to be the super-priority component up to at least 2012.
5 Third, even if the FDCPA would otherwise prevent disclosure of information that is already
6 a matter of public record, the CC&Rs expressly set forth BANA's right to obtain this
7 information. The CC&Rs are a covenant that ran with the land, and operate as Nolan's
8 consent. Nevada's Supreme Court defines CC&Rs in both contractual and real property
9 terms. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P. 3d 1155, 1160-1161 (Nev. 2007)
10 (CC&Rs are a source of contractual rights, run with the land, and provide a burden and a
11 benefit of rights to the property owner, *superseded on other grounds* 125 Nev. 397, 215 P.3d
12 27 (2009). NAS was, therefore, obligated to provide the requested information to Miles
13 Bauer.

14 11. NAS' refusal to accept the offer to pay the super-priority or otherwise provide
15 an account ledger to Miles Bauer cannot form a basis to defeat the tender. "[A]ny
16 affirmative tender of performance is excused when performance has in effect been prevented
17 by the other party... It is a principle of fundamental justice that if a promisor is himself the
18 cause of the failure of performance, either of an obligation due him or of a condition upon
19 which his own liability depends, he cannot take advantage of the failure." 15 Williston, A
20 Treatise on the Law of Contracts, § 47:4 (4th ed. 2017).

21 12. Even if super-priority notice had been provided, the super-priority and
22 anything less than payment in full would have been rejected, as stated in the testimony of
23 Moses and Yergensen. "A tender is not necessary where the declarations of the offeree are
24 such as to indicate that the actual offer of money will be rejected; the law does not require a
25 man to do a vain and fruitless thing; a strict and formal tender is not necessary where it
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1 appears that if it had been made it would have been refused.” *Enfield v. Huffman Motor Co.*,
2 117 Cal. App. 2d 800, 807 (1953).

3 13. Consequently, the bank’s tender offer through Miles Bauer was all that the
4 bank needed to do to protect its interest in the property. Alternatively, the Court concludes
5 that payment of the super-priority would have been futile because that payment would have
6 been rejected. Therefore, as a matter of law, BANA’s first deed of trust was not
7 extinguished by the subject foreclosure sale.

8 14. Even if Miles Bauer had learned the amount of the superpriority component—
9 either from NAS or through an archived ledger from Mandolin — actual payment of the
10 superpriority amount would have been futile. The evidence established that NAS had an
11 ordinary course of business of rejecting payments from Miles Bauer if the payments were
12 only for the superpriority component.

13 15. Based upon the foregoing, and good cause appearing, the Court hereby finds
14 and concludes that because of the bank’s tender of the super-priority portion of the HOA’s
15 lien, the bank preserved its interest in the subject property, and the HOA foreclosed on only
16 the sub-priority portion of its lien.

17 16. The Court further finds that Plaintiff’s status as a bona fide purchaser is moot
18 by virtue of the superpriority component having been extinguished by the Miles Bauer
19 rejected tender.

20 **II. Equitable Balancing**

21 17. In addition to defenses available at law, the court possesses the equitable
22 power to determine whether an HOA sale extinguished a deed of trust. *Nationstar*
23 *Mortgage, LLC, v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 1133 Nev. Adv. Op. 91
24 (Nov. 22, 2017); *Shadow Wood Homeowners Ass’n v. New York Cmty. Bancorp, Inc.*, 132
25 Nev. Adv. Op. 5, 366 P.3d 1105, (2016). Recently in *Shadow Canyon*, the Court explained
26 that while price alone is not sufficient to invalidated a sale, when the sale price is palpably
27 and greatly inadequate, coupled with unfairness, fraud, oppression or irregularity, the sale
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1 may be set aside. Only slight evidence of unfairness is needed to set aside the foreclosure
2 sale. *See Shadow Canyon*, 405 P.3d at 649

3 18. The parties stipulated that on February 1, 2013, Plaintiff purchased the subject
4 property at the HOA foreclosure sale with a bid of \$14,600.00. BANA's expert appraiser
5 determined the fair market value (FMV) of the property at the time of the February 1, 2013
6 HOA sale, to be \$158,500.00. The purchase price was less than 9% of the FMV. The point
7 of the *Restatement (Third) of Real Property: Mortgages* §8.3 (1997) approach analyzed by
8 *Shadow Wood Homeowners Ass 'n v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366
9 P.3d 1105, 1114 (2016) is to compare the fair market value of the property versus what it
10 actually sold for at the foreclosure sale, and if the foreclosure sale price is less than 20% of
11 the fair market value, then that fact can render the price to be "palpably and greatly
12 inadequate" which, in conjunction with other circumstances that reflect fraud, unfairness, or
13 oppression, can support setting aside the sale. *See Shadow Canyon*, 405 P.3d at 649

14 19. The price contemplated by this test is not the amount that a reasonable
15 purchaser at a foreclosure sale would have paid. Under *Shadow Wood*, the Fair Market
16 Value standard is defined as a sale which is not the fair "forced sale" value of the real estate,
17 but the price which would result from negotiation and mutual agreement, after ample time to
18 find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser
19 who is willing to buy, but not compelled to take a particular piece of real estate. *Restatement*
20 *(Third) of Prop.: Mortgages* § 8.3 cmt. b (1997). *See also Shadow Wood Homeowners Ass'n*
21 *v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, (2016).

22 20. Although this Court does not agree, the binding Nevada Supreme Court
23 precedent in *Shadow Wood*, indicates that Fair Market Value does not consider whether the
24 price of \$14,600 was "fair" in comparison to other HOA foreclosure sales. The Fair Market
25 Value standard contemplates what the property would have sold for outside of the forced
26 sale setting. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev.
27 Adv. Op. 5, 366 P.3d 1105, (2016). Even so, the Court only sets aside a foreclosure sale if
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1 the fraud, oppression, or unfairness “causes” the low price. In this case, this Court is not
2 convinced that the low price resulted from any fraud, oppression, or unfairness, and
3 consequently, the foreclosure sale will not be set aside or considered a “wrongful
4 foreclosure.”

5 21. In considering whether Plaintiff was a bona fide purchaser for value (**BFP**), the
6 Court is not convinced that this analysis is appropriate when dealing with a forced or
7 distressed sale such as an HOA foreclosure sale.

8 22. Generally, a BFP analysis is appropriate when dealing with UCC issues, and
9 the sale of goods on the open market. The Nevada Supreme Court has indicated, however,
10 that consideration of a purchaser’s BFP status may be appropriate for cases such as this. The
11 Court has recently indicated that a subsequent purchaser is bona fide under common-law
12 principles if it takes the property for a valuable consideration and without notice of the prior
13 equity, and without notice of facts which upon diligent inquiry would be indicated and from
14 which notice would be imputed to him, if he failed to make such inquiry. *Shadow Wood at*
15 *1115, citing Bailey v. Butner, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947); Moore v.*
16 *DeBernardi, 47 Nev. 33, 54, 220 P. 544, 547 (1923).*

17 23. Mr. Haddad, who testified for the Plaintiff trust, has been a real estate investor
18 for more than 20 years. Mr. Haddad, and Plaintiff, admitted that prior to purchasing the
19 property, they knew that the Deed of Trust had been recorded against the property. The
20 Planned Unit Development Rider to this Deed of Trust placed them on record notice that “If
21 Borrower does not pay assessments when due, the lender may pay them.” Mr. Haddad
22 conceded that he made no inquiry as to whether there was a payment on the super-priority
23 portion of the lien, or attempted payment on the super-priority portion of the lien, of any
24 party, including NAS, the HOA, Bank of America, or any other individual or entity. When
25 Mr. Haddad decided to purchase the property despite there being a recorded deed of trust
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1 against it, without inquiring whether there had been an attempt to pay the superpriority
2 portion of the lien, he took the risk that the deed may be encumbered by a first deed of trust.

3 24. The recorded notice of sale, as well as the published notice in the Nevada
4 Legal news, both indicated that the sale was made without warranty.

5 25. The purchaser at an HOA foreclosure sale can only obtain what the seller has
6 to give. There is no warranty or guaranty, and consequently, whatever the seller had is the
7 most that Plaintiff could acquire. Since the superpriority amount was tendered, and this
8 Court finds that such tender protected BANA's security interest in the property, Plaintiff
9 obtained only the title or interest in the property that was available for sale.

10 26. Based upon the facts and circumstances as set forth herein, and in the
11 pleadings, the Court concludes that the only interest the HOA had to convey was the
12 subpriority portion of their lien. The Plaintiff's took interest in the property, is subject to
13 BANA's deed of trust.

14 JUDGMENT

15 The Court having made its Findings of Fact and Conclusions of Law,

16 **IT IS ORDERED, ADJUDGED, and DECREED** the HOA foreclosed on only the
17 sub-priority portion of its lien; and

18 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the super-
19 priority portion of the HOA's lien was discharged and extinguished prior to the HOA
20 foreclosures sale as a result of the tender by the bank; and

21 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that Plaintiff 7510
22 Perla Del Mar Ave. Trust purchased an interest in the Property, located at 7510 Perla Del
23 Mar Avenue, Las Vegas, Nevada subject to BANA's deed of trust, which remains a first
24 position lien against the Property; and

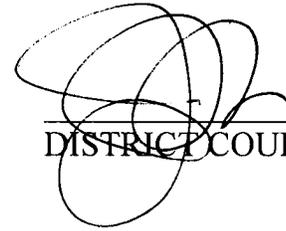
25 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that BANA's Deed
26 of Trust recorded on December 10, 2010 remains a first position lien against the Property
27 and is superior to the interest conveyed in the Foreclosure Deed; and
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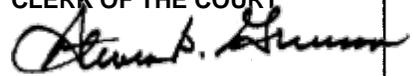
IT IS FURTHER ORDERED, ADJUDGED, and DECREED that all remaining claims not specifically mentioned, including all claims in Plaintiff's Complaint, are mooted by the findings above and thereby dismissed with prejudice; and

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that BANA shall have its cost of suit, any issues regarding attorneys' fees to be deferred pending motion practice directed thereto.

DATED 21 March, 2018.



DISTRICT COURT JUDGE



DISTRICT COURT
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

Case No.: A-13-686277-C
Dept.: XXX

v.

BANK OF AMERICA, N.A.; NORTH
AMERICAN TITLE COMPANY;
MOUNTAINS EDGE MASTER
ASSOCIATION; and DOMINIC J. NOLAN,

Defendants.

**NOTICE OF ENTRY OF ORDER:
AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND JUDGMENT**

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

7510 PERLA DEL MAR AVE TRUST and
MOUNTAINS EDGE MASTER
ASSOCIATION,

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION
and NEVADA ASSOCIATION SERVICES,
INC.

Cross-Defendants.

You are hereby notified that this Court entered an Amended Findings of Fact, Conclusions of Law, and Judgment, a copy of which is attached hereto.

DATED this 20th day of March 2018.



JERRY A. WILSE
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFP system, or, if no e-mail was provided, mailed or placed in the Clerk's Office attorney folder for:

ariel.stern@akerman.com

akermanlas@akerman.com

elizabeth.streible@akerman.com

office@bohnlawfirm.com

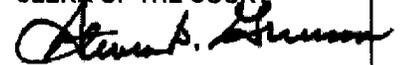
mbohn@bohnlawfirm.com

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karen.whelan@akerman.com



Tatyana Ristic, JEA



DISTRICT COURT
CLARK COUNTY, NEVADA

7510 PERLA DEL MAR AVE TRUST,

Plaintiff,

v.

BANK OF AMERICA, N.A.; NORTH
AMERICAN TITLE COMPANY;
MOUNTAINS EDGE MASTER
ASSOCIATION; and DOMINIC J. NOLAN,

Defendants.

Case No.: A-13-686277-C
Dept.: XXX

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

BANK OF AMERICA, N.A.,

Counter-Claimant,

v.

7510 PERLA DEL MAR AVE TRUST and
MOUNTAINS EDGE MASTER
ASSOCIATION,

Counter-Defendants.

BANK OF AMERICA, N.A.,

Cross-Claimant,

v.

MANDOLIN HOMEOWNERS ASSOCIATION
and NEVADA ASSOCIATION SERVICES,
INC.

Cross-Defendants.

This matter came before the court on February 12, 2018 for bench trial. Michael F. Bohn, Esq. appeared for Plaintiff/Counter-Defendant 7510 Perla Del Mar Avenue Trust (**Plaintiff**) and Darren T. Brenner, Esq. and Karen A. Whelan, Esq. appeared for Defendant/Counterclaimant Bank of America, N.A. (**BANA**). The court having reviewed the paper and pleadings on file, heard the testimony of the witnesses, considered evidence, and hearing the argument counsel, entered findings of fact, conclusions of law, and judgment.

1 The Court now enters the following Amended Findings, Conclusions, and Judgment.

2 **FINDINGS OF FACT**

3 ***The Deed of Trust***

4 1. This matter involves a dispute over title to a property known commonly as
5 7510 Perla Del Mar Avenue, Las Vegas, Nevada (the **Property**). **Stipulated Fact No. 1.**

6 2. Dominic Nolan, the former owner of the Property, purchased the property
7 located at 97510 Perla Del Mar Ave., Las Vegas, Nevada in 2010. **Stipulated Fact No.**
8 **1; Trial Exhibit 3.**

9 3. The Property is located within the Mandolin Phase 3 at Mountain's Edge
10 (HOA) planned unit development and is subject to the HOA's CC&Rs, recorded on
11 September 14, 2006 and June 26, 2007, Instrument Nos. 20060914-0001790 and
12 20070626-0003072. (CC&Rs). **Stipulated Fact No. 2; Trial Exhibits 34 and 35.**

13 4. The property is also located within the Mountain's Edge Master Association
14 planned unit development and is encumbered by the CC&Rs of the Master Association.
15 **Stipulated Fact No. 3.**

16 5. On December 9, 2010, the former owner entered into a senior deed of trust
17 with KBA Mortgage, LLC (the **Deed of Trust**) for the Property. The original value of the
18 Deed of Trust was \$164,032.00. **Trial Exhibit 3.**

19 6. The Deed of Trust was recorded on December 10, 2010 as Instrument No.
20 20101210-00002325 **Stipulated Fact No. 5; Trial Exhibit 3.**

21 7. The Deed of Trust includes a Planned Unit Development Rider (**PUD Rider**).
22 The PUD Rider, Section F, provides: "If the Borrower does not pay PUD dues and
23 assessments when due, then Lender may pay them." **Trial Exhibit 3.**

24
25 ***The Mortgage Savings Clause and Provisions of the CC&Rs Applicable to Deeds of Trust***

1 8. Section 9 of the Deed of Trust, Protection of Lender's Interest in the Property
2 and Rights Under this Security Instrument, provides that the Lender may pay "any sums
3 secured by a lien which has priority over" the Deed of Trust. **Trial Exhibit 3.**

4 9. Section 2.5.3 of the CC&Rs states:

5 Except to the extent permitted under the Act (NRS 116.3116[2]), a lien under
6 this Section is prior to all other liens and encumbrances on a Unit except: (1)
7 liens and encumbrances recorded before the recordation of this Declaration; (2)
8 a first Security Interest on the Unit recorded before the date on which the
assessment sought to be enforced became delinquent; and (3) liens for real
estate taxes and other governmental assessments or charges against the Unit.

9 **Trial Exhibit 34 at Bate number BANA/Nolan-01-000157**

10 10. Section 6.2.3 of the CC&Rs also states:

11 Notice of Actions: The Association shall give prompt written notice to each
12 Eligible Mortgagee and Eligible Insurer of:...

13 (b) Any delinquency in the payment of Common Expense Assessments
14 owed by a Unit Owner which remains uncured for a period of sixty (60) days
15 and whose Unit is subject to a first Security Interest held, insured or
guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable.

16 **Id. at Bate number BANA/Nolan-01-000203.**

17 11. 6.2.6 of the CC&Rs also states:

18 The Association must maintain current copies of the Declaration, Bylaws,
19 Rules, the Association's articles of incorporation, books, records, and financial
20 statements of the Association. The Association shall permit any Eligible
mortgagee or Eligible Insurer, or other first mortgagee if Unites, to inspect the
books and records of the Association during normal business hours.

21 **Id. at Bate number BANA/Nolan-01-000206.**

22 12. Section 6.3.11 of the CC&Rs provides:

23 Any breach or amendment of this Declaration shall not affect or impair the lien
24 or charge of any Security Interest made in good faith and for value on any Unit
25 (or any Improvements respectively thereon); provided, however, that any
26 subsequent Unit Owner of such property shall be bound hereby whether such
Unit Owner's title was acquired by foreclosure, in a trustee's sale or otherwise.

27 **Id. at Bate number BANA/Nolan-01-000208.**

1 20. On March 7, 2012, after recording the Notice of Default and Election to Sell,
2 NAS, on behalf of the HOA, mailed the notice of default to the former owner, BANA,
3 MERS, and other interested parties via certified mail. **Stipulated Fact 13; Trial Exhibit 37**
4 **– Bates number BANA/Nolan-01-000287 - 289.**

5 21. Prior to the HOA foreclosure sale, on March 16, 2012, the law firm of Miles,
6 Bauer, Bergstrom & Winters, LLP, acting as counsel for MERS as nominee for Bank of
7 America, N.A., as successor by merger to BAC Home Loans Servicing, LP, sent a letter to
8 NAS regarding payment of the super-priority lien, the terms of which included a request for
9 identification of the super-priority portion measure at a maximum of nine months of unpaid
10 assessments, and offer to pay that amount upon proof of the same. **Stipulated Fact No. 17;**
11 **Trial Exhibit 20.** The letter was authored by attorney Rock Jung. **TT 135:2-11; Trial**
12 **Exhibit 32.** The letter was similar to thousands of requests sent by Miles Bauer during this
13 time period to NAS. **TT 125:14-25, 164:13-21.**

14 22. The March 16, 2012 letter sent by Miles Bauer was received by NAS. **TT**
15 **117:1-5 and 118:1-22. Stipulated Fact No. 18.**

16 23. NAS did not respond based on its claim that doing so would violate the
17 FDCPA. **TT 137:18-139:10; Stipulated Fact No. 18.**

18 24. The parties stipulated the letter was received by NAS. At trial, plaintiff
19 attempted to withdraw the stipulation because the letter was not in NAS's file. However,
20 testimony by Chris Yergensen, NAS's former in-house counsel, established that it was not
21 uncommon for letters sent by Miles Bauer to never make it to the file. **TT 164:22-165:24.**
22 Mr. Yergensen explained: "typically with the Miles Bauer letters, and as I have testified
23 before, because of the routine nature, I just think that, to some degree, some of the
24 employees at NAS got a little bit lazy. I mean it was the same form letter every time. So
25 you see occasionally that the letter didn't make it particularly to the collection file because it
26 just feel on deaf ears".

27 25. Prior to the time this letter was sent, it was NAS's practice to respond to Miles
28

1 Bauer by providing a ledger that described and provided an itemization of the components of
2 the lien. TT 125:8-19, 174:3-9. NAS was not compensated for this service. TT 176:3-178-
3 1. Mr. Yergensen explained that NAS ceased this practice at some point in 2012 because of
4 the FDCPA. NAS started providing ledgers again in our around July of 2013 based on a
5 change in state law. TT 174:3-175:3. When NAS started providing ledgers again in 2013,
6 it began charging \$150 for this service based on a statute it believed authorized it to do so.
7 TT 175:11-16.

8 26. Miles Bauer's request for a ledger in this matter fell within the period of time
9 NAS was not providing ledgers or any response to Miles Bauer's requests. Mr. Yergensen
10 acknowledged that NAS was aware it was taking a risk in making the business decision to
11 refuse to respond to Miles Bauer during this period. TT 166:10-167:5, 175:4-16.

12 27. As explained by Mr. Jung and, when Miles Bauer did not receive a response to
13 their request for payoff, they would search their data base to determine if another property
14 within the association had previously been collected on, and if there was a ledger in that file
15 they could use to attempt to determine the super-priority payoff amount. TT 126:13-20.
16 Miles Bauer did not have such a ledger in this instance.

17 28. This court is satisfied that Miles Bauer would have issued a payment of at least
18 the super-priority component of the lien if NAS had responded with this information or if
19 Miles Bauer otherwise had the information reasonably available from another source.¹ Even
20 if Miles Bauer had been able to determine the precise amount of the super-priority, NAS's
21 policy was to reject these payments unless they were for the full amount of the lien. Miles
22 Bauer's practice was to send a check by runner to deliver payment. NAS's practice was to
23

24 ¹ The typical Miles Bauer tender process was demonstrated through Miles Bauer's efforts to pay the Mountains Edge
25 Master Association on the super-priority portion of its lien. On September 10, 2012, BANA, through its counsel at
26 Miles Bauer, sent a letter to the Master Association offering to pay the sum of nine months of common assessments pre-
27 dating the former owner's default, requesting proof of that amount, and requesting information regarding the Master
28 Association's proposed sale of the property. Stipulated Fact 19; Trial Exhibit 22. On October 4, 2012, Miles Bauer,
by hand delivery, sent a check for \$932.83, representing 9 months of unpaid assessments, and a voluntary payment of
collection costs/fees, to the Master Association. Trial Exhibits 24, 25, and 26.

1 have its receptionist reject the payment at the door unless it was for the full amount of the
2 lien. The receptionist would not consult NAS's management, legal department, or
3 collections staff before rejecting. **TT 172:3-173:18.**

4 29. NAS, on November 15, 2012, NAS, on behalf of the HOA, recorded a Notice
5 of Foreclosure Sale against the Property, as Instrument No. 201211150002280. The notice
6 set a sale for December 14, 2012. **Stipulated Fact No. 23; Trial Exhibit 9.**

7 30. On November 13, 2012, NAS, on behalf of the HOA, mailed the Notice of
8 Foreclosure Sale to the former owner, BANA, and other interested parties. **Stipulated Fact**
9 **No. 24; Trial Exhibit 37 Bates number BANA/Nolan-01-000357 - 362**

10 31. NAS, on behalf of the HOA, posted the Notice of Foreclosure Sale on the
11 Property and in three places throughout the county in November 15, 2012. **Stipulated Fact**
12 **No. 25; Trial Exhibit 52.**

13 32. The Master Association provided a statement of account showing the total
14 amount the former owner owed the Master Association through September 20, 2012 in
15 response to Miles Bauer's letter. **Trial Exhibit 23.**

16 33. Miles Bauer, on BANA's behalf, delivered a check in the amount of \$932.83
17 to the Master Association, c/o Silver State, on or about October 4, 2012. This apparently
18 included \$225 representing nine months' worth of unpaid assessments, plus a payment of
19 collection costs and fees.

20 34. NAS, on behalf of the HOA, published the Notice of Foreclosure Sale in
21 Nevada Legal News on three dates (November 21, 2012, November 30, 2012 and December
22 7, 2012. **Stipulated Fact No. 26; Trial Exhibit 53.**

23 35. On February 1, 2013, Plaintiff appeared at the public auction and acquired the
24 property at the HOA foreclosure sale with a bid of \$14,600, as evidenced by the foreclosure
25 deed recorded on February 7, 2013. **Stipulated Facts No. 27 and 28; Trial Exhibit 10.**
26 NAS issued a deed upon sale, which was recorded on February 7, 2013. **Trial Exhibit 10.**

27 36. BANA, successor by merger to BAC Home Loans Servicing, LP f/k/a
28

1 Countrywide Home Loans Servicing, LP assigned the deed of trust to Nationstar Mortgage,
2 LLC, via an assignment of the deed of trust recorded with the Clark County Recorder on
3 July 10, 2013, as Instrument No. 201307100000782. **Stipulated Fact No. 23; Trial Exhibit**
4 **11.**

5 37. BANA retained expert appraiser Matthew Lubawy to perform a retroactive
6 Fair Market Value Appraisal of the property at the time of the February 1, 2013 HOA sale,
7 as defined in *Unruch v. Streight*, 96 Nev. 684, 615 P.2d 247 (1980) and the Restatement
8 (third) of Property § 8.3. BANA's expert is qualified to render an opinion regarding the Fair
9 Market Value of the Property on February 1, 2013. As stated in Mr. Lubawy's expert report,
10 the Fair Market Value at the time of the HOA sale was \$158,500. **Stipulated Fact No. 31;**
11 **Trial Exhibit 33.**

12 38. NAS routinely rejected attempts to pay superpriority liens, even after
13 reinstating the practice of providing payoff demands for which they charged \$150.00. **TT**
14 **136:9-18; 145:9-146:4.**

15 39. The owner of the subject property is 7510 Perla Del Mar Avenue Trust. Eddie
16 Haddad, who is a sophisticated real estate investor who holds a Nevada Real Estate Broker's
17 license and established the trust, has over 20 years of experience in real estate. He owns and
18 operates Great Bridge Properties, which is a real estate brokerage. He also owns a real estate
19 management company called Resources Management Group, LLC. Resources Management
20 Group is the company Mr. Haddad uses to manage many of his real estate acquisitions,
21 including the subject property. He is the *de facto* manager of the 7510 Perla Del Mar Avenue
22 Trust. **TT 8:25-10:3**

23 40. Eddie Haddad attended and bid at hundreds of HOA foreclosure sales every
24 year. **TT 12:14-19.** Through that process, he has acquired hundreds of properties at
25 foreclosure sales over the years. **TT 12:20-22.**

26 **CONCLUSIONS OF LAW**

1 1. "A quiet title action . . . is the proper method by which to adjudicate disputed
2 ownership of real property rights." *Howell v. Ricci*, 124 Nev. 1222, 1224, 197 P.3d 1044,
3 1046 (2008). "An action may be brought by any person against another who claims an estate
4 or interest in real property, adverse to him, for the purpose of determining such adverse
5 claim." NRS 40.010.

6 2. Here, Plaintiff seeks to quiet title in its name and extinguish the Deed of Trust
7 as a result of the HOA foreclosure sale. The court finds the sale did not extinguish the Deed
8 of Trust because: (1) the superpriority portion of the lien was tendered prior to the sale; and
9 (2) the equities balance in favor of BANA.

10 ***I. BANA's Offer Redeemed the Super-Priority As a Matter of Law.***

11 3. NRS116.3116 provides in part:

12 The lien is also prior to all security interests described in paragraph (b) to the extent
13 of any charges incurred by the association on a unit pursuant to NRS 116.310312 and
14 to the extent of the assessments for common expenses based on the periodic budget
15 adopted by the ***association pursuant to NRS 116.3115 which would have become
due in the absence of acceleration during the 9 months immediately preceding
institution of an action to enforce the lien***

16 *(emphasis added)*

17 4. The only portion of the HOA's lien that is prior to the first deed of trust's
18 interest is that amount for up to nine months of assessments only. *Horizons at Seven Hills
19 Homeowners Assoc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35 (Apr. 28, 2016).

20 5. In *SFR Investments*, the Nevada Supreme Court held that a first deed of trust
21 holder's pre-foreclosure tender prevents the first deed of trust from being extinguished. 334
22 P.3d at 414 ("[A]s junior lienholder, [the holder of the first deed of trust] could have paid off
23 the [HOA] lien to avert loss of its security[.]").

24 6. The HOA's foreclosure begins at the recording of the notice of delinquent
25 assessment lien. *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank,
26 N.A.*, 388 P.3d 226, 231, 133 Nev. Adv. Op. 3 __ (2017). *See also Property Plus*
27

1 *Investments, LLC v. Mortgage Electronic Registration Systems Inc., et al.*, 133 Nev. Ad. Op.
2 62__ (September 2017).

3 7. The parties stipulated that prior to the HOA foreclosure sale, Miles Bauer, on
4 behalf of the beneficiary of the first deed of trust, requested the lien balance from NAS. NAS
5 stipulated that it received this letter, but it did not respond to Miles Bauer's letter based upon
6 its claim that doing so would violate the FDCPA.

7 8. BANA's offer to pay coupled with NAS's refusal to accept, acknowledge, or
8 even respond, was sufficient to redeem the seniority for the first deed of trust. As a matter of
9 law, tender is complete when "the money is offered to a creditor who is entitled to receive
10 it." *Cladianos v. Friedhoff*, 69 Nev. 41, 45, 240 P.2d 208, 210 (1952) (emphasis added); *see*
11 *also Fresk v. Kramer*, 99 P.3d 282, 286-87 (Or. 2004) (emphasis added); *see also* 74 Am.
12 Jur. 2d Tender § 22 (2014). Money need not actually change hands. "[W]hen a party, able
13 and willing to do so, offers to pay another a sum of money and is told that it will not be
14 accepted, the offer is a tender without the money being produced." *Guthrie v. Curnutt*, 417
15 F.2d 764, 765-766 (10th Cir. 1969); *accord Ebert v. Western States Refining Co.*, 75 Nev.
16 217, 221-222, 337 P.2d 1075, 1077 (1959) (Tender of rent sufficient where offered by tenant
17 and refused by landlord).

18 9. Bank of America, through its counsel Miles Bauer, offered to pay the super-
19 priority
20 portion of the lien. Miles Bauer was ready, willing, and able to provide payment for a super-
21 priority tender. Based on the testimony of Rock Jung and Jessica Woodbridge, Miles Bauer
22 was hired by BANA to do just that. The testimony evidences that Miles Bauer was hired to
23 pay the super-priority portion of the lien or more, and it would have done so, as it did
24 hundreds of times, if information was provided from NAS as requested. In addition to
25 providing thousands of similar tender payments, Miles Bauer provided an (over)payment of
26 tender to the Master Association. Having demonstrated they were ready, willing and able to
27 pay when the Master Association provided Miles Bauer the information they needed to do
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1 so, it is evident that had NAS provided what was requested, Miles Bauer would have issued
2 a check to Mandolin as well. This court concludes that Miles Bauer was ready, willing and
3 able to pay the superpriority portion of the lien as well as additional fees and costs. The
4 testimony from Chris Yergensen and Susan Moses at trial corroborated this conclusion.
5 NAS knew that the only proof of an accounting needed to obtain a super-priority check was
6 an itemized letter, and it knew that Miles Bauer would send such a check if it had that
7 information. There was no evidence or argument at trial to suggest a contrary conclusion.²

8 10. As a matter of law, the FDCPA only prohibits third-party communications
9 made “in connection with the collection of a debt.” 15 U.S.C. § 1692c(b). A communication
10 is made in connection with the collection of a debt only if the “animating purpose of the
11 communication [is] to induce payment by the debtor.” *McIvor v. Credit Control Services,*
12 *Inc.*, 773 F.3d 909, 914 (8th Cir. 2014); *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 266
13 (3d Cir. 2013); *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011);
14 *Gburek v. Litton Loan Servicing*, 614 F.3d 380, 382 (7th Cir.2010). Foreclosing on a lien is
15 not a “debt collection” as defined by the FDCPA, and is thus outside the statute’s purview.
16 *See Santoro v. CTC Foreclosure Serv.*, 12 Fed. App’x. 476, 480 (9th Cir. 2001); *Warren v.*
17 *Countrywide Home Loans, Inc.*, 342 Fed. App’x 458, 460 (11th Cir. 2009) (explaining that
18 “the plain language of the FDCPA supports” the conclusion that “foreclosing on a security
19 interest is not debt collection activity”); *Montgomery v. Huntington Bank*, 346 F.3d 693, 700
20 (6th Cir. 2003); *Nadalin v. Automobile Recovery Bureau, Inc.*, 169 F.3d 1084, 1085 (7th Cir.
21 1999). NAS’s refusal to respond on the basis of the FDCPA was unreasonable for multiple
22 reasons.. It was just an excuse to be able to go forward with the foreclosure sale. The court
23

24 ² In fact, BANA’s offer was in excess of the actual super-priority lien in this case. “[T]he superpriority lien ...is limited
25 to an amount equal to the common expense assessments due during the nine months before foreclosure.” *Horizon at*
26 *Seven Hills Homeowners Association, Inc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35, at 13, 2016 WL 1704199 at *6
27 (emphasis added). The HOA’s foreclosure begins at the recording of the notice of delinquent assessment lien. *Saticoy*
28 *Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d 226, 231 (2017).NAS agreed there
were only five months’ worth of assessments prior to the NOL (and the homeowner satisfied all but \$39.10 of the super-
priority).

1 does not accept NAS's position that the HOA was prohibited from disclosing information
2 about the super-priority component of the lien, if any, under the FDCPA. First, the entirety
3 of the lien was already a matter of public record. Second, NAS, itself, had a practice of
4 disclosing, at no cost, what it believed to be the super-priority component up to at least 2012.
5 Third, even if the FDCPA would otherwise prevent disclosure of information that is already
6 a matter of public record, the CC&Rs expressly set forth BANA's right to obtain this
7 information. The CC&Rs are a covenant that ran with the land, and operate as Nolan's
8 consent. Nevada's Supreme Court defines CC&Rs in both contractual and real property
9 terms. *Boulder Oaks Cmty. Ass'n v. B & J Andrews*, 169 P. 3d 1155, 1160-1161 (Nev. 2007)
10 (CC&Rs are a source of contractual rights, run with the land, and provide a burden and a
11 benefit of rights to the property owner, *superseded on other grounds* 125 Nev. 397, 215 P.3d
12 27 (2009). NAS was, therefore, obligated to provide the requested information to Miles
13 Bauer.

14 11. NAS' refusal to accept the offer to pay the super-priority or otherwise provide
15 an account ledger to Miles Bauer cannot form a basis to defeat the tender. "[A]ny
16 affirmative tender of performance is excused when performance has in effect been prevented
17 by the other party... It is a principle of fundamental justice that if a promisor is himself the
18 cause of the failure of performance, either of an obligation due him or of a condition upon
19 which his own liability depends, he cannot take advantage of the failure." 15 Williston, A
20 Treatise on the Law of Contracts, § 47:4 (4th ed. 2017).

21 12. Even if super-priority notice had been provided, the super-priority and
22 anything less than payment in full would have been rejected, as stated in the testimony of
23 Moses and Yergensen. "A tender is not necessary where the declarations of the offeree are
24 such as to indicate that the actual offer of money will be rejected; the law does not require a
25 man to do a vain and fruitless thing; a strict and formal tender is not necessary where it
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27
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1 appears that if it had been made it would have been refused.” *Enfield v. Huffman Motor Co.*,
2 117 Cal. App. 2d 800, 807 (1953).

3 13. Consequently, the bank’s tender offer through Miles Bauer was all that the
4 bank needed to do to protect its interest in the property. Alternatively, the Court concludes
5 that payment of the super-priority would have been futile because that payment would have
6 been rejected. Therefore, as a matter of law, BANA’s first deed of trust was not
7 extinguished by the subject foreclosure sale.

8 14. Even if Miles Bauer had learned the amount of the superpriority component—
9 either from NAS or through an archived ledger from Mandolin — actual payment of the
10 superpriority amount would have been futile. The evidence established that NAS had an
11 ordinary course of business of rejecting payments from Miles Bauer if the payments were
12 only for the superpriority component.

13 15. Based upon the foregoing, and good cause appearing, the Court hereby finds
14 and concludes that because of the bank’s tender of the super-priority portion of the HOA’s
15 lien, the bank preserved its interest in the subject property, and the HOA foreclosed on only
16 the sub-priority portion of its lien.

17 16. The Court further finds that Plaintiff’s status as a bona fide purchaser is moot
18 by virtue of the superpriority component having been extinguished by the Miles Bauer
19 rejected tender.

20 **II. Equitable Balancing**

21 17. In addition to defenses available at law, the court possesses the equitable
22 power to determine whether an HOA sale extinguished a deed of trust. *Nationstar*
23 *Mortgage, LLC, v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 1133 Nev. Adv. Op. 91
24 (Nov. 22, 2017); *Shadow Wood Homeowners Ass’n v. New York Cmty. Bancorp, Inc.*, 132
25 Nev. Adv. Op. 5, 366 P.3d 1105, (2016). Recently in *Shadow Canyon*, the Court explained
26 that while price alone is not sufficient to invalidated a sale, when the sale price is palpably
27 and greatly inadequate, coupled with unfairness, fraud, oppression or irregularity, the sale
28

1 may be set aside. Only slight evidence of unfairness is needed to set aside the foreclosure
2 sale. *See Shadow Canyon*, 405 P.3d at 649

3 18. The parties stipulated that on February 1, 2013, Plaintiff purchased the subject
4 property at the HOA foreclosure sale with a bid of \$14,600.00. BANA's expert appraiser
5 determined the fair market value (FMV) of the property at the time of the February 1, 2013
6 HOA sale, to be \$158,500.00. The purchase price was less than 9% of the FMV. The point
7 of the *Restatement (Third) of Real Property: Mortgages* §8.3 (1997) approach analyzed by
8 *Shadow Wood Homeowners Ass 'n v. N.Y. Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366
9 P.3d 1105, 1114 (2016) is to compare the fair market value of the property versus what it
10 actually sold for at the foreclosure sale, and if the foreclosure sale price is less than 20% of
11 the fair market value, then that fact can render the price to be "palpably and greatly
12 inadequate" which, in conjunction with other circumstances that reflect fraud, unfairness, or
13 oppression, can support setting aside the sale. *See Shadow Canyon*, 405 P.3d at 649

14 19. The price contemplated by this test is not the amount that a reasonable
15 purchaser at a foreclosure sale would have paid. Under *Shadow Wood*, the Fair Market
16 Value standard is defined as a sale which is not the fair "forced sale" value of the real estate,
17 but the price which would result from negotiation and mutual agreement, after ample time to
18 find a purchaser, between a vendor who is willing, but not compelled to sell, and a purchaser
19 who is willing to buy, but not compelled to take a particular piece of real estate. *Restatement*
20 *(Third) of Prop.: Mortgages* § 8.3 cmt. b (1997). *See also Shadow Wood Homeowners Ass'n*
21 *v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, (2016).

22 20. Although this Court does not agree, the binding Nevada Supreme Court
23 precedent in *Shadow Wood*, indicates that Fair Market Value does not consider whether the
24 price of \$14,600 was "fair" in comparison to other HOA foreclosure sales. The Fair Market
25 Value standard contemplates what the property would have sold for outside of the forced
26 sale setting. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev.
27 Adv. Op. 5, 366 P.3d 1105, (2016). Even so, the Court only sets aside a foreclosure sale if
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1 the fraud, oppression, or unfairness “causes” the low price. In this case, this Court is not
2 convinced that the low price resulted from any fraud, oppression, or unfairness, and
3 consequently, the foreclosure sale will not be set aside or considered a “wrongful
4 foreclosure.”

5 21. In considering whether Plaintiff was a bona fide purchaser for value (BFP), the
6 Court is not convinced that this analysis is appropriate when dealing with a forced or
7 distressed sale such as an HOA foreclosure sale.

8 22. Generally, a BFP analysis is appropriate when dealing with UCC issues, and
9 the sale of goods on the open market. The Nevada Supreme Court has indicated, however,
10 that consideration of a purchaser’s BFP status may be appropriate for cases such as this. The
11 Court has recently indicated that a subsequent purchaser is bona fide under common-law
12 principles if it takes the property for a valuable consideration and without notice of the prior
13 equity, and without notice of facts which upon diligent inquiry would be indicated and from
14 which notice would be imputed to him, if he failed to make such inquiry. *Shadow Wood at*
15 *1115, citing Bailey v. Butner, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947); Moore v.*
16 *DeBernardi, 47 Nev. 33, 54, 220 P. 544, 547 (1923).*

17 23. Mr. Haddad, who testified for the Plaintiff trust, has been a real estate investor
18 for more than 20 years. Mr. Haddad, and Plaintiff, admitted that prior to purchasing the
19 property, they knew that the Deed of Trust had been recorded against the property. The
20 Planned Unit Development Rider to this Deed of Trust placed them on record notice that “If
21 Borrower does not pay assessments when due, the lender may pay them.” Mr. Haddad
22 conceded that he made no inquiry as to whether there was a payment on the super-priority
23 portion of the lien, or attempted payment on the super-priority portion of the lien, of any
24 party, including NAS, the HOA, Bank of America, or any other individual or entity. When
25 Mr. Haddad decided to purchase the property despite there being a recorded deed of trust
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1 against it, without inquiring whether there had been an attempt to pay the superpriority
2 portion of the lien, he took the risk that the deed may be encumbered by a first deed of trust.

3 24. The recorded notice of sale, as well as the published notice in the Nevada
4 Legal news, both indicated that the sale was made without warranty.

5 25. The purchaser at an HOA foreclosure sale can only obtain what the seller has
6 to give. There is no warranty or guaranty, and consequently, whatever the seller had is the
7 most that Plaintiff could acquire. Since the superpriority amount was tendered, and this
8 Court finds that such tender protected BANA's security interest in the property, Plaintiff
9 obtained only the title or interest in the property that was available for sale.

10 26. Based upon the facts and circumstances as set forth herein, and in the
11 pleadings, the Court concludes that the only interest the HOA had to convey was the
12 subpriority portion of their lien. The Plaintiff's took interest in the property, is subject to
13 BANA's deed of trust.

14 JUDGMENT

15 The Court having made its Findings of Fact and Conclusions of Law,

16 **IT IS ORDERED, ADJUDGED, and DECREED** the HOA foreclosed on only the
17 sub-priority portion of its lien; and

18 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that the super-
19 priority portion of the HOA's lien was discharged and extinguished prior to the HOA
20 foreclosures sale as a result of the tender by the bank; and

21 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that Plaintiff 7510
22 Perla Del Mar Ave. Trust purchased an interest in the Property, located at 7510 Perla Del
23 Mar Avenue, Las Vegas, Nevada subject to BANA's deed of trust, which remains a first
24 position lien against the Property; and

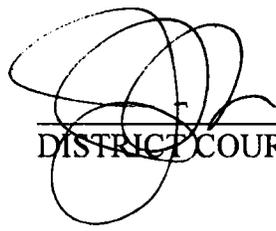
25 **IT IS FURTHER ORDERED, ADJUDGED, and DECREED** that BANA's Deed
26 of Trust recorded on December 10, 2010 remains a first position lien against the Property
27 and is superior to the interest conveyed in the Foreclosure Deed; and
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IT IS FURTHER ORDERED, ADJUDGED, and DECREED that all remaining claims not specifically mentioned, including all claims in Plaintiff's Complaint, are mooted by the findings above and thereby dismissed with prejudice; and

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that BANA shall have its cost of suit, any issues regarding attorneys' fees to be deferred pending motion practice directed thereto.

DATED 21 March, 2018.



DISTRICT COURT JUDGE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 19, 2013

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

December 19, 2013 9:00 AM All Pending Motions

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Keri Cromer

RECORDER:

REPORTER: Jennifer O'Neill

PARTIES

PRESENT: Bohn, Michael F Attorney
Shevorski, Steven G. Attorney

JOURNAL ENTRIES

- BANK OF AMERICA, N.A.'S MOTION TO DISMISS...PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS AND COUNTERMOTION TO STAY CASE

COURT ORDERED, 54(b) Certification GRANTED; Bank of America, N.A.'s Motion GRANTED; Plaintiff's Countermotion DENIED. Mr. Shevorski to prepare the Order; Mr. Bohn to review as to form and content.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

May 08, 2014

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

May 08, 2014 9:00 AM Motion to Dismiss

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT: Perri, Kelly M. Attorney

JOURNAL ENTRIES

- Pltf's Motion for Amended Order

There being no opposition submitted. COURT ORDERED, motion GRANTED. Order signed in open Court.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

April 14, 2016

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

April 14, 2016 9:00 AM Motion to Amend Answer

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT:

JOURNAL ENTRIES

- Defendant Bank Of America, N.A.'S Motion For Leave To Amend Answer To Add Affirmative Defenses, To Assert Counterclaims, And To Join Parties And Add Claims

Per EDCR 2.2. (c), (d), matter granted due lack of timely opposition, vacated from hearing calendar of 4/14/16, and transferred to chamber calendar of today for ruling.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 27, 2016

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

September 27, 2016 9:00 AM Motion to Dismiss

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Keri Cromer

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT:

JOURNAL ENTRIES

- Adam Trippiedi, Esq., present for Plaintiff and Rex Garner, Esq., present for Bank of America. Arguments by counsel regarding the merits of the motion. Court stated its findings and ORDERED, Motion DENIED WITHOUT PREJUDICE. Mr. Garner to prepare to order; Mr. Trippiedi to review as to form and content.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 17, 2016

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

October 17, 2016 9:00 AM Pre Trial Conference

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER:

PARTIES

PRESENT: Scaturro, Tenesa S. Attorney

JOURNAL ENTRIES

- COURT ORDERED, trial date RESET.

3/20/17 9:00 AM PRETRIAL CONFERENCE

4/10/17 9:00 AM CALENDAR CALL

4/17/17 1:30 PM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 01, 2016

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

December 01, 2016 9:00 AM All Pending Motions

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT: Bohn, Michael F Attorney
 Stern, Ariel E. Attorney

JOURNAL ENTRIES

- Pltf's Motion for Summary Judgment

Deft Bank of America Motion for Summary Judgment

Statements by counsel regarding notice and tender. Court finds genuine issue of material fact remaining as to: Commercial Reasonableness, Notice, Unconstitutionality of Chapter 116 and the Court preferred to wait for the Supreme Court to rule on the regarding Saticoy Bay. COURT ORDERED, motions DENIED WITHOUT PREJUDICE.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

May 02, 2017

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

**May 02, 2017 9:00 AM Motion for Default
Judgment**

HEARD BY: Wiese, Jerry A.

COURTROOM: RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT: Cooper, Thera Attorney

JOURNAL ENTRIES

- Plaintiff's Motion for Default Judgment Against Defendant Dominic J. Nolan

There being no opposition and good cause appearing. COURT ORDERED, motion GRANTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

July 10, 2017

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

July 10, 2017 9:00 AM Pre Trial Conference

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Amber McClane

PARTIES

PRESENT: Bohn, Michael F Attorney
 Scaturro, Tenesa S. Attorney

JOURNAL ENTRIES

- Counsel stipulated to extend discovery and reset the trial. COURT ORDERED, trial date STANDS pending a stipulation and order to be submitted.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

November 30, 2017

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

**November 30, 2017 9:00 AM Motion for Summary
Judgment**

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Alice Jacobson

RECORDER:

REPORTER: Kristy Clark

PARTIES

PRESENT: Bohn, Michael F Attorney
 Morgan, Melanie D. Attorney

JOURNAL ENTRIES

- Pltf's Motion for Summary Judgment

Mr. Bohn argued that notice was given and that tender was made improperly to the master association not the sub-association. Furthermore, was the record title holder. Opposition by Ms. Morgan. Argument regarding tender. Court finds a genuine issue of fact remaining. COURT ORDERED, motion DENIED. Mr. Morgan to prepare the order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 08, 2018

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

January 08, 2018 9:00 AM Pre Trial Conference

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Kory Schlitz

RECORDER:

REPORTER: Amber McClane

PARTIES

PRESENT: Bohn, Michael F Attorney
 Brenner, Darren T. Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Mr. Bohn indicated ready to proceed with trial. COURT ORDERED, trial date SET.

2/12/18 10:30 A.M. BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 12, 2018

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

February 12, 2018 10:30 AM Bench Trial

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Natalie Ortega

RECORDER:

REPORTER: Kimberly Farkas

PARTIES

PRESENT: Bohn, Michael F Attorney
 Brenner, Darren T. Attorney

JOURNAL ENTRIES

- Opening statements by counsel. Testimony presented and exhibits presented (see worksheet). Deposition published FILED IN OPEN COURT. Plaintiff rest. Argument regarding 52 (b) motion and equity in Defendants favor. Further testimony presented (see worksheet).

LUNCH RECESS.

Court reconvened. Testimony continued. Arguments regarding stipulation facts and relevance. Testimony presented (see worksheet). Sealed exhibits presented (see worksheet). Defense rests. COURT ORDERED, bench trial CONTINUED. Court allowed Defense request to add or substitute Nationstar as a party.

BENCH TRIAL CONTINUED TO: 2/13/18 10:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 13, 2018

A-13-686277-C 7510 Perla Del Mar Ave Trust, Plaintiff(s)
vs.
Bank of America, N.A., Defendant(s)

February 13, 2018 10:30 AM Bench Trial

HEARD BY: Wiese, Jerry A. **COURTROOM:** RJC Courtroom 14A

COURT CLERK: Natalie Ortega

RECORDER:

REPORTER: Kimberly Farkas

PARTIES

PRESENT: Bohn, Michael F Attorney
 Brenner, Darren T. Attorney

JOURNAL ENTRIES

- Closing arguments by counsel. Bench trial concluded. COURT ORDERED, matter under ADVISMENT.

Binder 1 of 2

JOINT TRIAL EXHIBITS

CASE NO. : A-13-686277-C

Exhibit #	Title/Description/Bates #	Date Offered	Objection	Date Admitted	
1	Nevada Association Services December 8, 2011 Pre-lien Letter BANA/Nolan-01-000260-000265	2-12-18	stip	2-12-18	WA
2	Brunson Jiu Appraisal Review - Dated July 15, 2016				WA
3	Deed of Trust, 2010121-00002325, BANA/Nolan-01-000010-000033				WA
4	Notice of Delinquent Assessment Lien, 20120104-0001123, BANA/Nolan-01-000035				WA
5	Assignment of Deed of Trust, 20120106-0000225, BANA/Nolan-01-000036-000037				WA
6	Notice of Default (HOA) 20120227-0002448, BANA/Nolan-01-000042-000043				WA
7	Notice of Default and Election to Sell 20120814-0001300, BANA/Nolan-01-000044-000045				WA
8	Notice of Delinquent Assessment Lien, 20120202-0001210, BANA/Nolan-01-000046-000047				WA
9	Notice of Foreclosure Sale, 20121115-0002280, BANA/Nolan-01-000048-000049				WA
10	Foreclosure Deed, 20130207-0001210, BANA/Nolan-01-000038-000040				WA
11	Assignment of Deed of Trust, 2013071-00000782, BANA/Nolan-01-000051-000052				WA
12	Notice of Delinquent Assessment Lien, 20130827-0000568 BANA/Nolan-01-000054-000055				WA
13	Substitution of Trustee, 2013028-0000481, BANA/Nolan-01-000056				WA
14	Notice of Rescission of Notice of Default, 20140113-0000978, BANA/Nolan-01-000057-000058				WA
15	Release of Notice of Lien, 20140113-0001481, BANA-01-000061-000062				WA
16	Release of Notice of Lien, 20140113-0001482, BANA/Nolan-01-000063-000064				WA
17	Notice of Default (DoT) 20140902-0002988, BANA/Nolan-01-000067-000073				WA
18	Request for Notice, 20150227-0003362, BANA/Nolan-01-000074				WA
19	Miles Bauer Borrower Letter Affidavit - March, 2012 BANA/Nolan-01-000076-000077				WA
20	Miles Bauer Letter to Borrower - March 16, 2012 BANA/Nolan-01-000079-000082				WA
21	Miles Bauer Affidavit - September - October, 2012 BANA/Nolan-01-000083-000085				WA

Exhibit #	Title/Description/Bates #	Date Offered	Objection	- Date Admitted
22	Miles Bauer Letter to HOA - September 10, 2012 BANA/Nolan-01-000087-000088	2-12-18	Stip	2-12-18 WA
23	Silver State Letter to Miles Bauer Demand - September 20, 2012 BANA/Nolan-01-000090			WA
24	Miles Bauer Tender Letter to Silver State Trustee - October 4, 2012 BANA/Nolan-01-000092-000093			WA
25	Tender Check - October 1, 2012 BANA/Nolan-01-000094			WA
26	Legal Wings Delivery - October 5, 2012 BANA/Nolan-01-000096			WA
27	Voided Tender Check - October 26, 2012 BANA/Nolan-01-000098-000099			WA
28	Miles Bauer Screen Shot - BANA/Nolan-01-000101			WA
29	Miles Bauer Letter Affidavit - September 10, 2012 BANA/Nolan-01-000102-000103			WA
30	Miles Bauer Letter to Borrower - September 10, 2012 BANA/Nolan-01-000105-000108			WA
31	Miles Bauer Affidavit - March 16, 2012 BANA/Nolan-01-000109-000110			WA
32	Miles Bauer Letter to Nevada Association Services - March 16, 2012 BANA/Nolan-01-000112-000113			WA
33	BANA Expert Report, BANA/Nolan-01-000114-000128			WA
34	Declaration of CC&Rs, BANA/Nolan-01-000129-000214			WA
35	First Amendment to Declaration of CC&Rs, BANA/Nolan-01-000215-000218			WA
36	Mandolin HOA's Response to Subpoena Duces Tecum, , BANA/Nolan-01-000219-000247			WA
37	File Maintained by NAS, BANA/Nolan-01-000253-000448			WA
38	Updated Payment History, BANA/Nolan-01-000449-000454	2-12-18	Stip	2-12-18 WA
39	Updated Payoff Description, BANA/Nolan-01-000455-000457	2-12-18	Stip	2-12-18 WA
40	Promissory Note, BANA/Nolan-01-000458-000460			WA
41	River Gilder Trust Bankruptcy Petition, BANA/Nolan-01-000461-000500	2-12-18	2-12-18	2-12-18 WA
42	Haddad Motion to Use Cash Collateral, BANA/Nolan-01-000501-000511			WA
43	Order on Motion to Use Cash Collateral, BANA/Nolan-01-000512-000513			WA

Exhibit #	Title/Description/Bates #	Date Offered	Objection	Date Admitted	
44	Haddad Lien-Stripping Motion, BANA/Nolan-01-000514-000519	2-12-18	ST-D	2-12-18	WA
45	Haddad Filings Admitting Encumbrance on Properties, BANA/Nolan-01-000520-000614				WA
46	7510 Perla Del Mar Ave Trust Responses to Request for Admissions				WA
47	7510 Perla Del Mar Ave Trust Responses to Interrogatories				WA
48	7510 Perla Del Mar Ave Trust Responses to Request for Production				WA
49	BANA's Responses to Request for Admissions				WA
50	BANA's Responses to Interrogatories				WA
51	BANA's Responses to Requests for Production				WA
52	Affidavit of Posting of Notice of Trustee's Sale BANA/Nolan-01-000386 – BANA/Nolan-01-000388				WA
53	Affidavit of Publication – Nevada Legal News BANA/Nolan-01-000389				WA

Binder 2 of 2

Exhibit #	Title/Description/Bates #	Date Offered	Objection	Date Admitted	
44	Haddad Lien-Stripping Motion, BANA/Nolan-01-000514-000519	2-12-18	stip	2-12-18	WS
45	Haddad Filings Admitting Encumbrance on Properties, BANA/Nolan-01-000520-000614				WS
46	7510 Perla Del Mar Ave Trust Responses to Request for Admissions				WS
47	7510 Perla Del Mar Ave Trust Responses to Interrogatories				WS
48	7510 Perla Del Mar Ave Trust Responses to Request for Production				WS
49	BANA's Responses to Request for Admissions				WS
50	BANA's Responses to Interrogatories				WS
51	BANA's Responses to Requests for Production				WS
52	Affidavit of Posting of Notice of Trustee's Sale BANA/Nolan-01-000386 - BANA/Nolan-01-000388				WS
53	Affidavit of Publication - Nevada Legal News BANA/Nolan-01-000389				WS



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

MICHAEL F. BOHN, ESQ.
376 E. WARM SPRINGS RD., STE 140
LAS VEGAS, NV 89119

DATE: April 16, 2018
CASE: A-13-686277-C

RE CASE: 7510 PERLA DEL MAR AVE TRUST vs. BANK OF AMERICA, N.A.

NOTICE OF APPEAL FILED: April 12, 2018

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

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

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

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

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

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

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; NOTICE OF ENTRY OF ORDER: AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

7510 PERLA DEL MAR AVE TRUST,

Plaintiff(s),

vs.

BANK OF AMERICA, N.A.,

Defendant(s),

Case No: A-13-686277-C

Dept No: XXX

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 16 day of April 2018.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

