

Electronically Filed  
Aug 05 2019 01:41 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**NOAS**

Doreen Spears Hartwell, Esq.

Nevada State Bar No. 7525

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HARTWELL THALACKER, LTD

11920 Southern Highlands Pkwy #201

Las Vegas, Nevada 89141

Phone; (702) 850-1074; Fax; (702) 508-9551

*Attorneys for Plaintiff-Counterdefendant Daniel Lakes*

*In Conjunction with the Legal Aid Center of Southern Nevada*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DANIEL LAKES, an individual

Plaintiff,

v.

BANK OF AMERICA, N.A., successor-by-merger to Countrywide Mortgage Ventures, LLC; U.S. BANK TRUST, TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST; ROGELIO CEDILLO, an individual; PARCELNOMICS, LLC, a Nevada limited liability company d/b/a INVESTMENT DEALS; NOUNE GRAEFF, an individual; DOES I-X, inclusive; and ROE CORPORATIONS, I-X, inclusive,

Defendants.

Case No.: A-17-759016-C

Dept. No.: 28

**NOTICE OF APPEAL**

Notice is hereby given in the above-entitled case, that Daniel Lakes hereby appeals to the Supreme Court of Nevada from the Notice of Entry of Findings of Facts, Conclusions of Law and Judgment entered on July 18, 2019.

1 Dated: this 29<sup>th</sup> day of July, 2019.

2 Hartwell Thalacker, Ltd.

3 /s/Doreen Spears Hartwell

4 Doreen Spears Hartwell, Esq.

5 Nevada Bar. No. 7525

6 Laura J. Thalacker, Esq.

7 Nevada Bar No. 5522

8 11920 Southern Highlands Pkwy, Suite 201

9 Las Vegas, Nevada 89141

10 *Attorneys for Daniel Lakes*

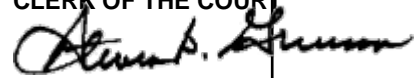
1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on July 29, 2019, a true and correct copy of Notice of Appeal was  
3 served via Odyssey's electronic service to the following:  
4

5 Abran E. Vigil  
6 Nevada Bar No. 7548  
7 Joel E. Tasca  
8 Nevada Bar No. 14124  
9 Holly Ann Priest  
10 Nevada Bar No. 13226  
11 BALLARD SPAHR, LLC  
12 1980 Festival Plaza Drive, Suite 900  
13 Las Vegas, Nevada 89135  
14 *Attorneys for Defendants U.S. Bank Trust,*  
15 *Trustee for LSF9 Master Participation Trust*

16 Sean L. Anderson, Esq.  
17 Nevada Bar No.7259  
18 P. Chase Pittensbarger, Esq.  
19 Nevada Bar No.13740  
20 LEACH, KERN, GRUCHOW, ANDERSON, SONG  
21 2525 Box Canyon Dr.  
22 Las Vegas, Nevada 89128  
23 *Attorneys for Counterdefendants Liberty at Huntington*  
24 *Homeowners' Association*

25  
26  
27  
28 s/ Doreen Spears Hartwell  
An employee of Hartwell Thalacker, Ltd.



ASTA  
Doreen Spears Hartwell, NSB #7525  
doreen@hartwellthalacker.com  
Laura J. Thalacker, NSB #5522  
laura@hartwellthalacker.com  
Hartwell Thalacker, Ltd.  
11920 Southern Highlands Pkwy, #201  
Las Vegas, Nevada 89141  
Ph: 702-850-1074; Fax: 702-508-9551  
*Attorneys for Daniel Lakes in Conjunction with  
Legal Aid Center of Southern Nevada.*

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

Daniel Lakes,  
Plaintiff,

v.

BANK OF AMERICA, N.A., successor-  
by- merger to Countrywide Mortgage  
Ventures, LLC; U.S. BANK TRUST,  
TRUSTEE FOR LSF9 MASTER  
PARTICIPATION TRUST; ROGELIO  
CEDILLO, an individual;  
PARCELNOMICS, LLC, a Nevada  
limited liability company d/b/a  
INVESTMENT DEALS; NOUNE  
GRAEFF, an individual; DOES I-X,  
inclusive; and ROE CORPORATIONS,  
I-X, inclusive,

Defendants.

Case No.: A-17-759016-C  
Dept. No.: 28

**CASE APPEAL STATEMENT**

1. Name of appellant filing this case appeal statement:  
**Daniel Lakes**
2. Identify the judge issuing the decision, judgment, or order appealed from:  
**The Honorable Ronald Israel**
3. Identify each appellant and the name and address of counsel for each appellant:

1       **Appellant:**     Daniel Lakes

2       **Counsel:**     Doreen Spears Hartwell. Esq.  
3                        Laura J. Thalacker, Esq.  
4                        Hartwell Thalacker, Ltd  
                          11920 Southern Highlands Pkwy #201  
                          Las Vegas, NV 89141

5       4.       Identify each respondent and the name and address of appellate counsel, if known, for each  
6       respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and  
7       provide the name and address of that respondent's trial counsel):

8               Respondents: U.S. Bank Trust

9               Counsel:     Joel E. Tasca, Esq.  
10                        Joseph P. Sakai, Esq.  
11                        BALLARD SPAHR LLP  
12                        1980 Festival Plaza Drive, Suite 900  
                          Las Vegas, Nevada 89135  
                          Telephone: (702) 471-7000

13  
14       5.       Indicate whether any attorney identified above in response to question 3 or 4 is not licensed  
15       to practice law in Nevada and, if so, whether the district court granted that attorney permission to  
16       appear under SCR 42 (attach a copy of any district court order granting such permission): **N/A**

17       6.       Indicate whether appellant was represented by appointed or retained counsel in the district  
18       court: **Retained Counsel**

19       7.       Indicate whether appellant is represented by appointed or retained counsel on appeal:

20               **Retained Counsel**

21       8.       Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of  
22       entry of the district court order granting such leave: Statement of Legal Aid filed 7/29/19

23       9.       Indicate the date the proceedings commenced in the district court (e.g., date complaint,  
24       indictment, information, or petition was filed): **Complaint filed 07/27/17.**

25       10.      Provide a brief description of the nature of the action and result in the district court,  
26  
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1 including the type of judgment or order being appealed and the relief granted by the district court:

2 This is a quiet title action initiated by Daniel Lakes, a bona fide purchaser, purchased the  
3 subject property from an individual without notice of U.S. Bank's unrecorded interest that was  
4 obtained a month prior to Mr. Lakes' purchase. Lakes appeals from summary judgment order  
5 granted in favor of U.S. Bank Trust.

6 11. Indicate whether the case has previously been the subject of an appeal to or original writ  
7 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the  
8 prior proceeding: **No**

9 12. Indicate whether this appeal involves child custody or visitation: **No**

10 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:  
11 **Yes**

12 HARTWELL THALACKER, LTD

13 /s/Doreen Spears Hartwell  
14 Doreen Spears Hartwell, Esq.  
15 Nev. State Bar No. 7525  
16 Laura J. Thalacker, Esq.  
17 Nevada State Bar No. 552  
18 11920 Southern Highlands Pkwy,  
19 Suite 201  
20 Las Vegas, Nevada 89141  
21 *Attorneys for Daniel Lakes*  
22  
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## CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2019, a true and correct copy of CASE  
APPEAL STATEMENT was served via Odyssey's electronic service to the  
following:

Abran E. Vigil  
Nevada Bar No. 7548  
Joel E. Tasca  
Nevada Bar No. 14124  
Holly Ann Priest  
Nevada Bar No. 13226  
BALLARD SPAHR, LLC  
1980 Festival Plaza Drive, Suite 900  
Las Vegas, Nevada 89135  
*Attorneys for Defendants U.S. Bank Trust,  
Trustee for LSF9 Master Participation Trust*

Sean L. Anderson, Esq.  
Nevada Bar No.7259  
P. Chase Pittensbarger, Esq.  
Nevada Bar No.13740  
LEACH, KERN, GRUCHOW, ANDERSON, SONG  
2525 Box Canyon Dr.  
Las Vegas, Nevada 89128  
*Attorneys for Counterdefendants Liberty at Huntington  
Homeowners' Association*

s/ Doreen Spears Hartwell  
An employee of Hartwell Thalacker, Ltd.

**SOLA**

DOREEN SPEARS HARTWELL, ESQ.

Nevada Bar No.: 7525

Hartwell Thalacker, Ltd.

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*Attorney for the Daniel Lakes*

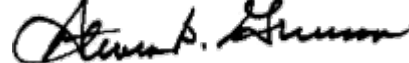
*In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project*

Electronically Filed

7/29/2019 12:34 PM

Steven D. Grierson

CLERK OF THE COURT



DISTRICT COURT  
CLARK COUNTY, NEVADA

DANIEL LAKES,

Plaintiff,

vs.

BANK OF AMERICA N.A., successor-bymerger  
to Countrywide Mortgage Ventures,  
LLC; U.S. BANK TRUST, Trustee for LSF9  
Master Participation Trust; ROGELIO  
CEDILLO, an individual; PARCELNOMICS,  
LLC, a Nevada limited liability company d/b/a  
INVESTMENT DEALS; NOUNE GRAEFF,  
an individual; DOES 1-L0, inclusive; and ROE  
CORPORATIONS 1-10, inclusive;

Defendants.

CASE NO. A-17-759016-C

DEPT. 28

**STATEMENT OF LEGAL AID  
REPRESENTATION  
(PURSUANT TO NRS 12.015)**

Party Filing Statement:

☒ Plaintiff/Petitioner

☐ Defendant/Respondent

STATEMENT

DANIEL LAKES, has qualified and has been accepted for placement as a Pro Bono client or as a direct client of LEGAL AID CENTER OF SOUTHERN NEVADA, a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: June 5, 2019.

BARBARA BUCKLEY, ESQ.

Legal Aid Center of Southern Nevada Preparer

Nevada Bar No.: 3918

/s/ Barbara E. Buckley

Signature of Legal Aid Center of Southern Nevada Preparer

Submitted by:

Doreen Spears Hartwell, Esq.

Hartwell Thalacker, Ltd.

11920 Southern Highland Pkwy. Ste. 201

Las Vegas, Nevada 89141

Telephone (702) 850-1076

Facsimile (702) 508-9551

doreen@hartwellthalacker.com



## EIGHTH JUDICIAL DISTRICT COURT

**CASE SUMMARY****CASE NO. A-17-759016-C**

**Daniel Lakes, Plaintiff(s)**  
**vs.**  
**Bank of America N.A., Defendant(s)**

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Location: **Department 28**  
 Judicial Officer: **Israel, Ronald J.**  
 Filed on: **07/27/2017**  
 Cross-Reference Case Number: **A759016**

**CASE INFORMATION**

**Statistical Closures**  
 06/10/2019 Summary Judgment

Case Type: **Other Title to Property**

Case Status: **06/10/2019 Closed**

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

Case Number A-17-759016-C  
 Court Department 28  
 Date Assigned 07/27/2017  
 Judicial Officer Israel, Ronald J.

**PARTY INFORMATION**

<b>Plaintiff</b>	<b>Lakes, Daniel</b>	<i>Lead Attorneys</i> <b>Hartwell, Doreen M. Spears</b> <i>Retained</i> 702-850-1074(W)
<b>Defendant</b>	<b>Bank of America N.A.</b>	
	<b>Cedillo, Rogelio</b>	
	<b>Graeff, Nouné</b>	
	<b>Parcelnomics LLC</b>	
	<b>US Bank Trust</b>	<b>Priest, Holly A.</b> <i>Retained</i> 702-471-7000(W)
<b>Appellant</b>	<b>Lakes, Daniel</b>	<b>Hartwell, Doreen M. Spears</b> <i>Retained</i> 702-850-1074(W)
<b>Counter Claimant</b>	<b>US Bank Trust</b>	<b>Priest, Holly A.</b> <i>Retained</i> 702-471-7000(W)
<b>Counter Defendant</b>	<b>Cedillo, Rogelio</b>	
	<b>Graeff, Nouné</b>	
	<b>Lakes, Daniel</b>	<b>Hartwell, Doreen M. Spears</b> <i>Retained</i> 702-850-1074(W)
	<b>Liberty at Huntington Homeowners Association</b>	<b>Anderson, Sean L.</b> <i>Retained</i> 702-538-9074(W)
	<b>Parcelnomics LLC</b>	

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

# CASE SUMMARY

CASE NO. A-17-759016-C

## EVENTS

07/27/2017	 Complaint Filed By: Appellant Lakes, Daniel <i>Complaint</i>
07/27/2017	 Initial Appearance Fee Disclosure Filed By: Appellant Lakes, Daniel <i>Initial Appearance Fee Disclosure</i>
08/02/2017	 Lis Pendens <i>Lis Pendens</i>
08/08/2017	 Summons Electronically Issued - Service Pending <i>Summons</i>
08/08/2017	 Summons Electronically Issued - Service Pending <i>Summons</i>
08/08/2017	 Summons Electronically Issued - Service Pending <i>Summons</i>
08/08/2017	 Summons Electronically Issued - Service Pending <i>Summons</i>
08/08/2017	 Summons Electronically Issued - Service Pending <i>Summons</i>
10/11/2017	 Affidavit of Service <i>Affidavit of Service</i>
10/11/2017	 Affidavit of Service <i>Affidavit of Service</i>
10/11/2017	 Affidavit of Due Diligence <i>Affidavit of Due Diligence</i>
10/11/2017	 Affidavit of Due Diligence <i>Affidavit of Due Dililgence</i>
10/11/2017	 Affidavit of Due Diligence <i>Affidavit of Due Diligence</i>
11/22/2017	 Motion to Extend Time to Serve Party: Appellant Lakes, Daniel <i>Daniel Lakes' Motion to Enlarge Time for Service of Process and for an Order Allowing Service by Publication as to Defendant Rogelio Cedillo</i>
11/29/2017	 Affidavit of Service <i>Affidavit of Service</i>
12/13/2017	 Answer and Counterclaim

# CASE SUMMARY

CASE NO. A-17-759016-C

Filed By: Counter Claimant US Bank Trust  
*U.S. Bank Trust's Answer to Plaintiff's Complaint and Counterclaim*

12/13/2017	 Initial Appearance Fee Disclosure Filed By: Counter Claimant US Bank Trust <i>Initial Appearance Fee Disclosure</i>
12/13/2017	 Summons Electronically Issued - Service Pending Party: Counter Claimant US Bank Trust <i>Summons - Investment Deals</i>
12/13/2017	 Summons Electronically Issued - Service Pending Party: Counter Claimant US Bank Trust <i>Summons - Noun Graeff</i>
12/13/2017	 Summons Electronically Issued - Service Pending Party: Counter Claimant US Bank Trust <i>Summons - Parcelnomics, LLC</i>
12/13/2017	 Summons Electronically Issued - Service Pending Party: Counter Claimant US Bank Trust <i>Summons - Liberty At Huntington Homeowners Association</i>
12/13/2017	 Summons Electronically Issued - Service Pending Party: Counter Claimant US Bank Trust <i>Summons - Rogelio Cedillo</i>
12/14/2017	 Notice of Change of Address <i>Notice of Change of Address (Effective December 18, 2017)</i>
12/22/2017	 Disclaimer of Interest Filed By: Defendant Bank of America N.A. <i>Disclaimer of Interest in the Property by Defendant Bank of America, N.A.</i>
01/11/2018	 Substitution of Attorney <i>Notice of Substitution</i>
01/12/2018	 Answer to Counterclaim Filed By: Counter Defendant Liberty at Huntington Homeowners Association <i>Liberty At Huntington Homeowners Association s Answer To U.S. Bank Trust s Counterclaim</i>
01/12/2018	 Initial Appearance Fee Disclosure <i>Liberty At Huntington Homeowners Association s Initial Appearance Fee Disclosure</i>
01/12/2018	 Disclosure Statement Party: Counter Defendant Liberty at Huntington Homeowners Association <i>Liberty At Huntington Homeowners Association s NRCP 7.1 Disclosure Statement</i>
01/22/2018	 Order Granting Motion <i>Order Granting Motion to Enlarge Time for Service of Process and for an Order Allowing Service by Publication</i>
01/22/2018	 Stipulation and Order

# CASE SUMMARY

CASE NO. A-17-759016-C

*Stipulation and Order to Extend Counter-Defendant Daniel Lakes' Time to Answer U.S. Bank's Counterclaim*

01/24/2018



Notice of Entry of Order

*Notice of Entry of Order to Extend Counter-Defendant Daniel Lakes' Time to Answer U.S. Bank's counterclaim*

01/24/2018



Notice of Entry of Order

*Notice of Entry of Order Granting Motion to Enlarge Time for Service of Process and for an Order Allowing Service by Publication*

01/31/2018



Notice of Entry

Filed By: Defendant Bank of America N.A.

*Notice Of Entry Of Disclaimer Of Interest In The Property By Defendant Bank Of America, N.A.*

02/07/2018



Answer to Counterclaim

Filed By: Appellant Lakes, Daniel

*Answer to Counterclaim*

02/14/2018



Joint Case Conference Report

Filed By: Appellant Lakes, Daniel

*Joint Case Conference Report*

02/15/2018



Affidavit of Service

Filed By: Appellant Lakes, Daniel

*Affidavit of Service - Parcelnomics*

03/19/2018



Substitution of Attorney

Filed by: Appellant Lakes, Daniel

*Substitution of Attorneys*

03/29/2018



Scheduling Order

*Scheduling Order*

03/30/2018



Affidavit of Publication of Summons

Filed By: Appellant Lakes, Daniel; Defendant Bank of America N.A.; Counter Claimant US Bank Trust; Counter Defendant Cedillo, Rogelio; Counter Defendant Parcelnomics LLC; Counter Defendant Graeff, Nouné; Counter Defendant Liberty at Huntington Homeowners Association

*Affidavit of Publication of Summons*

03/30/2018



Affidavit of Publication of Summons

Filed By: Appellant Lakes, Daniel; Defendant Bank of America N.A.; Counter Claimant US Bank Trust; Counter Defendant Cedillo, Rogelio; Counter Defendant Parcelnomics LLC; Counter Defendant Graeff, Nouné; Counter Defendant Liberty at Huntington Homeowners Association

*Affidavit of Publication of Summons*

04/10/2018



Order Setting Civil Bench Trial

*Order Setting Civil Non-Jury Trial*

10/12/2018



Motion for Leave to File

Party: Counter Claimant US Bank Trust

*Motion for Leave to File Amended Answer, Counterclaims and Cross Claimes*

# CASE SUMMARY

CASE NO. A-17-759016-C

11/19/2018	 Order Filed By: Counter Claimant US Bank Trust <i>Order Granting U.S. Bank Trust, Trustee for LSF9 Master Participation Trust's Motion to Amend the Answer, Counterclaims and Crossclaims to Complaint</i>
11/19/2018	 Notice of Entry of Order Filed By: Counter Claimant US Bank Trust <i>Notice of Entry of Order Granting U.S. Bank Trust, Trustee for LSF9 Master Participation Trust's Motion to Amend the Answer, Counterclaims and Crossclaims to Complaint</i>
11/26/2018	 Answer and Counterclaim Filed By: Counter Claimant US Bank Trust <i>U.S. Bank Trust's Amended Answer to Plaintiff's Complaint and Amended Counterclaim</i>
11/26/2018	 Initial Appearance Fee Disclosure Filed By: Counter Defendant Liberty at Huntington Homeowners Association <i>Initial Appearance Fee Disclosure</i>
11/26/2018	 Notice of Appearance Party: Counter Defendant Liberty at Huntington Homeowners Association <i>Notice of Appearance</i>
12/04/2018	 Substitution of Attorney Filed by: Counter Defendant Liberty at Huntington Homeowners Association <i>Substitution of Attorney</i>
12/18/2018	 Stipulation and Order Filed by: Counter Claimant US Bank Trust <i>Stipulation and Order to Continue Trial and Extend Discovery Deadlines (First Request)</i>
12/19/2018	 Notice of Entry of Stipulation and Order Filed By: Counter Claimant US Bank Trust <i>Notice of Stipulation and Order to Continue Trial and Extend Discovery Deadlines (First Request)</i>
12/21/2018	 Answer Filed By: Counter Defendant Liberty at Huntington Homeowners Association <i>Liberty at Huntington Homeowners' Association's Answer to U.S. Bank Trust's Amended Answer to Plaintiff's Complaint and Amended Counterclaim</i>
12/21/2018	 Response Filed by: Appellant Lakes, Daniel <i>Daniel Lakes' Response to US Bank's Amended Answer and Amended Counterclaim</i>
03/11/2019	 Demand for Prior Discovery Filed By: Appellant Lakes, Daniel <i>Daniel Lakes Response to US Bank's First Request for Documents</i>
04/10/2019	 Motion for Summary Judgment Filed By: Counter Defendant Liberty at Huntington Homeowners Association <i>Counterdefendant Liberty at Hungtinton Homeowners' Association's Motion for Summary Judgment (Oral Argument Requested)</i>
04/10/2019	

# CASE SUMMARY

CASE NO. A-17-759016-C

	 Motion for Summary Judgment Filed By: Counter Claimant US Bank Trust <i>U.S. Bank Trust, Trustee for LSF9 Master Participation Trust's Motion for Summary Judgment</i>
04/10/2019	 Appendix Filed By: Counter Claimant US Bank Trust <i>Appendix of Exhibits in Support of U.S. Bank Trust's Motion for Summary Judgment</i>
04/11/2019	 Clerk's Notice of Hearing <i>Clerk's Notice of Hearing</i>
04/24/2019	 Response Filed by: Counter Defendant Liberty at Huntington Homeowners Association <i>Liberty at Huntington Homeowners' Association's Response to U.S. Bank's Motion for Summary Judgment</i>
04/25/2019	 Opposition to Motion For Summary Judgment Filed By: Appellant Lakes, Daniel <i>Daniel Lakes' Opposition to U.S. Bank Trust's Motion for Summary Judgment</i>
05/13/2019	 Stipulation and Order Filed by: Counter Claimant US Bank Trust <i>Stipulation and Order to Continue Hearing and Extend Dispositive Motion Briefing Schedule</i>
05/13/2019	 Notice of Entry of Stipulation and Order Filed By: Counter Claimant US Bank Trust <i>Notice of Entry of Stipulation and Order</i>
05/21/2019	 Opposition to Motion For Summary Judgment Filed By: Counter Claimant US Bank Trust <i>Defendant U.S. Bank's Opposition to Liberty at Huntington Homeowner's Motion for Summary Judgment</i>
05/28/2019	 Reply to Opposition Filed by: Counter Claimant US Bank Trust <i>Defendant U.S. Bank Trust, N.A., Trustee for LSF9 Master Participation Trust's Reply to Plaintiff Daniel Lakes Opposition to U.S. Bank's Motion for Summary Judgment</i>
05/28/2019	 Reply to Opposition Filed by: Counter Claimant US Bank Trust <i>Defendant U.S. Bank Trust, N.A., Trustee for LSF9 Master Participation Trust's Reply to Cross Defendant Liberty at Huntington Homeowners Association's Opposition to Defendant's Motion for Summary Judgment</i>
05/28/2019	 Reply Filed by: Counter Defendant Liberty at Huntington Homeowners Association <i>Liberty at Huntington Homeowners' Association's Reply in Support of Motion for Summary Judgment</i>
05/30/2019	 Pre-Trial Disclosure Party: Counter Defendant Liberty at Huntington Homeowners Association <i>Liberty at Huntington Homeowners' Association's Pre-Trial Disclosures pursuant to NRCP 16.1(a)(3)</i>
06/10/2019	 Order to Statistically Close Case

# CASE SUMMARY

CASE NO. A-17-759016-C

*Civil Order To Statistically Close Case*

07/17/2019



Findings of Fact, Conclusions of Law and Judgment

Filed by: Counter Claimant US Bank Trust

*Findings of Fact and Conclusions of Law on Motions for Summary Judgment*

07/17/2019



Recorders Transcript of Hearing

*Pretrial Conference U.S. Bank Trust, Trustee for LSF9 Master Participation Trust's Motion for Summary Judgment Counterdefendant Liberty at Huntington Homeowners' Association's Motion for Summary Judgment*

07/18/2019



Notice of Entry

Filed By: Counter Claimant US Bank Trust

*Notice of Entry of Findings of Fact and Conclusions of Law on Motions for Summary Judgment*

07/29/2019



Statement of Legal Aid Representation and Fee Waiver

For: Appellant Lakes, Daniel

*Statement of Legal Aid Representation and Fee Waiver*

07/29/2019



Notice of Appeal

Filed By: Appellant Lakes, Daniel

*Notice of Appeal*

07/29/2019



Case Appeal Statement

Filed By: Appellant Lakes, Daniel

*Case Appeal Statement*

## **DISPOSITIONS**

07/17/2019

**Summary Judgment** (Judicial Officer: Israel, Ronald J.)

Debtors: Daniel Lakes (Plaintiff)

Creditors: US Bank Trust (Defendant)

Judgment: 07/17/2019, Docketed: 07/17/2019

## **HEARINGS**

01/03/2018



**Motion** (3:00 AM) (Judicial Officer: Israel, Ronald J.)

*Daniel Lake's Motion to Enlarge Time for Service of Process and For an Order Allowing Service by Publication as to Defendant Rogelio Cedillo*

Granted; Daniel Lake's Motion to Enlarge Time for Service of Process and For an Order Allowing Service by Publication as to Defendant Rogelio Cedillo

Journal Entry Details:

*Upon Court's review, COURT ORDERED, Plaintiff's Motion to Enlarge Time for Service of Process and for an Order Allowing Service by Publication as to Defendant Rogelio Cedillo, GRANTED. Time enlarged to serve Defendants Rogelio Cedillo and Parcelnomics LLC and Counsel to Serve by Publication in Nevada and Arizona. Counsel to prepare the order. Minute order pursuant to Law Clerk. CLERK'S NOTE: A copy of this minute order was e-served to all parties. kk 01/12/18.;*

10/16/2018



**Status Check: Trial Readiness** (9:45 AM) (Judicial Officer: Israel, Ronald J.)

*Status Check: Referral to Settlement Conference // Trial Readiness (Bench Trial 04/22/19)*

Matter Heard; Status Check: Referral to Settlement Conference // Trial Readiness (Bench Trial 04/22/19)

Journal Entry Details:

*Ms. Priest noted she believed the Plaintiff has Pro-Bono counsel and noted they are in discovery and she would be amending pleadings. Ms. Priest further noted this is a Housing and Economic Recovery Act of 2008 (H.E.R.A.) and Tender issue and would not be interested in a settlement conference.;*

# CASE SUMMARY

CASE NO. A-17-759016-C

11/15/2018



**Motion for Leave** (3:00 AM) (Judicial Officer: Israel, Ronald J.)

*Motion for Leave to File Amended Answer, Counterclaims and Cross Claimes*  
Granted; Motion for Leave to File Amended Answer, Counterclaims and Cross Claimes  
Journal Entry Details:

*There being no Opposition to the Motion; the time to oppose having passed in accordance with EDCR 2.20 and for good cause shown There being no Opposition to the Motion; the time to oppose having passed in accordance with EDCR 2.20 and for good cause shown that amendment of the Answer is necessary and proper in accordance with applicable law, the Court hereby GRANTS Defendant's Motion to for Leave to File Amended Answer, Counterclaims and Cross Claims both pursuant to EDCR 2.20 and on the merits. The Order has been signed and will be available for pick-up in the department 28 box on the 15th floor of the Regional Justice Center. Defendnat is allowed 30 days to file their newly Amended Answer, Counterclaims, and Cross Claims. CLERK'S NOTE: A copy of this minute order was e-served to counsel. kk 11/16/18,;*

03/26/2019

**CANCELED Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

*Vacated*

04/09/2019

**CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

*Vacated*

04/22/2019

**CANCELED Bench Trial** (1:30 PM) (Judicial Officer: Israel, Ronald J.)

*Vacated - per Stipulation and Order*

06/04/2019

**Pre Trial Conference** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

Matter Heard;

06/04/2019

**Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

*U.S. Bank Trust, Trustee for LSF9 Master Participation Trust's Motion for Summary Judgment*  
Granted; U.S. Bank Trust, Trustee for LSF9 Master Participation Trust's Motion for Summary Judgment

06/04/2019

**Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

*Counterdefendant Liberty at Huntington Homeowners' Association's Motion for Summary Judgment*

Moot; Counterdefendant Liberty at Huntington Homeowners' Association's Motion for Summary Judgment

06/04/2019



**All Pending Motions** (9:30 AM) (Judicial Officer: Israel, Ronald J.)

*All Pending Motions (06/04/19)*

Matter Heard;

Journal Entry Details:

*PRE-TRIAL CONFERENCE...US BANK TRUST TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST'S MOTION FOR SUMMARY JUDGMENT...COUNTERDEFENDANT LIBERTY AT HUNTINGTON HOMEOWNERS' ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT: Court noted this case is a Federal foreclosure & a tender issue. Mr. Sakai noted he had received information regarding Freddie Mack non-interest and therefore would withdraw the Federal foreclosure issue. Arguments by Counsel regarding the tender issue. Mr. Sakai stated the check was sent and cashed and they still had the foreclosure sale, it should have been a junior sale. Ms. Hartwell noted her client was the purchaser in January 2016 and noted there was three different transactions. Colloquy regarding the transfers of sale, NRS 116.125, bona fide purchaser, tender and sub-priority sale. Court finds the tender was made the sale was a sub-priority, mortgage was in place and Plaintiff, Mr. Lakes bought the property subject to the mortgage. Court finds there was no failure to record. COURT ORDERED, US Bank Trustee's Motion for Summary Judgment, GRANTED and FURTHER COURT ORDERED, Liberty at Huntington Homeowner's Association's Motion for Summary Judgment, MOOT. Trial Dates, VACATED. Court noted the issue of the fair market value would not be decided at this time. Court directed the State to prepare the order and pass it by Counsel,;*

06/18/2019

**CANCELED Calendar Call** (9:30 AM) (Judicial Officer: Israel, Ronald J.)



**CASE SUMMARY****CASE NO. A-17-759016-C**

07/01/2019	<i>Vacated - per Judge</i> <b>CANCELED Bench Trial</b> (1:30 PM) (Judicial Officer: Israel, Ronald J.) <i>Vacated - per Judge</i>	
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DATE	FINANCIAL INFORMATION	
	<b>Counter Defendant</b> Liberty at Huntington Homeowners Association Total Charges Total Payments and Credits <b>Balance Due as of 7/31/2019</b>	646.00 646.00 <b>0.00</b>
	<b>Counter Claimant</b> US Bank Trust Total Charges Total Payments and Credits <b>Balance Due as of 7/31/2019</b>	423.00 423.00 <b>0.00</b>
	<b>Appellant</b> Lakes, Daniel Total Charges Total Payments and Credits <b>Balance Due as of 7/31/2019</b>	304.00 304.00 <b>0.00</b>

## DISTRICT COURT CIVIL COVER SHEET

Clark

County, Nevada

Department 28

Case No.

(Assigned by Clerk's Office)

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

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

Daniel Patrick Lakes  
548 Primrose Hill Avenue  
Las Vegas, Nevada 89128  
(702) 659-4752

Attorney (name/address/phone):

Lauron A. Davis, Esq.  
SNSLP 411 East Bonneville Avenue, Suite 310  
Las Vegas, Nevada 89101  
(702) 229-6596

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

Bank of America N.A.; U.S. Bank Trust; Rogelio Cedillo;  
Parcelnomics, LLC; Nouna Graeff; ROE Corporations

Attorney (name/address/phone):

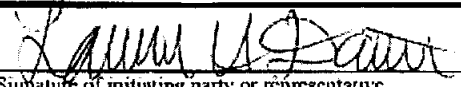
**II. Nature of Controversy** (please select the one most applicable filing type below)**Civil Case Filing Types**

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

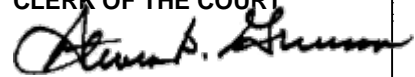
Business Court filings should be filed using the Business Court civil coversheet.

July 25, 2017

Date

  
 Signature of initiating party or representative

See other side for family-related case filings.



Joel E. Tasca  
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*Attorneys for Defendants U.S. Bank Trust,  
Trustee for LSF9 Master Participation Trust*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DANIEL LAKES, an Individual;  
Plaintiff,

Case No.: A-17-759016-C

Dept. No.: 28

v.

BANK OF AMERICA, N.A., successor-by-  
merger to Countrywide Mortgage  
Ventures, LLC; et. al.

Defendants.

U.S. BANK TRUST, TRUSTEE FOR  
LSF9 MASTER PARTICIPATION  
TRUST;

Counter-claimant,

v.

DANIEL LAKES, an individual;  
PARCELNOMICS, LLC; NOUNE  
GRAEFF, an individual; INVESTMENT  
DEALS; REGELIO CEDILLO, an  
individual; LIBERTY AT HUNTINGTON  
HOMEOWNERS ASSOCIATION,

Counter-defendants.

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

7/18/19



1                    **FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTIONS FOR**  
2                    **SUMMARY JUDGMENT**

3                    Defendant/Counter-Claimant/Cross-Claimant U.S. Bank Trust, Trustee for  
4 LSF9 Master Participation Trust's (U.S. Bank) motions for summary judgment  
5 against Plaintiff, Daniel Lakes (Lakes) and Defendant/Cross-Defendant Liberty At  
6 Huntington Homeowners' Association (HOA), and the HOA's motion for summary  
7 judgment against U.S. Bank came for hearing on June 4, 2019. Doreen Spears  
8 Hartwell, Esq. appeared on behalf of Plaintiff, Chase Pittsenbarger, Esq. appeared on  
9 behalf of the HOA, and Joseph P. Sakai, Esq. appeared on behalf of U.S. Bank. The  
10 Court, having reviewed the motions, the responses in opposition, and the replies in  
11 support, and good cause appearing, makes the following findings of fact and  
12 conclusions of law.

13                    **FINDINGS OF FACT**

14                    ***The Subject Property, Note, and Deed of Trust***

- 15                    1.        Lakes filed suit for quiet title alleging that he was a bona fide purchaser  
16                    who purchased the real property located at 548 Primrose Hill Ave., Las  
17                    Vegas, NV without notice of, and not subject to, an interim assignment  
18                    of a Deed of Trust from Freddie Mac to U.S. Bank.
- 19                    2.        A deed of trust listing Rogelio Cedillo as the borrower ("Borrower");  
20                    Countrywide KB Home Loans, a Countrywide Mortgage Ventures, LLC  
21                    series as the lender ("Lender"); and MERS, as beneficiary solely as  
22                    nominee for Lender and Lender's successors and assigns, was executed  
23                    on April 12, 2007, and recorded on April 16, 2007 ("Deed of Trust"). The  
24                    Deed of Trust granted Lender a security interest in real property known  
25                    as 548 Primrose Hill Ave in Las Vegas (the "Property") to secure the  
26                    repayment of a loan in the original amount of \$213,121.00 to the  
27                    Borrower (the promissory note and Deed of Trust together are the  
28                    "Loan").

2. On August 19, 2009, MERS, as nominee for Lender and Lender's successors and assigns, recorded an assignment of the Deed of Trust to Ocwen.

At the time of the HOA Sale on August 25, 2015, Ocwen was the servicer of the Loan for Freddie Mac.

3. On December 6, 2015, U.S. Bank acquired the Loan from Freddie Mac. On May 27, 2016, Ocwen recorded an assignment of the Deed of Trust to U.S. Bank. U.S. Bank is currently the beneficiary of record of the Deed of Trust and owner of the Loan.

*The HOA Foreclosure Sale and Plaintiff's Acquisition of the Property*

4. In July 2008 through April 2015, the HOA recorded a Lien for Delinquent Assessments concerning past due assessments, followed by a Notice of Default and Election to Sell, and a Notice of Foreclosure Sale against the Property.

5. On August 25, 2015, the HOA foreclosed on its lien and sold the Property to Parcelnomics, LLC, which paid \$4,470.00 according to the Foreclosure Deed recorded on September 1, 2015.

6. On September 1, 2015, Parcelnomics recorded a Grant, Bargain, Sale Deed purporting to convey its interest in the property to Investment Deals.

7. On October 23, 2015, Noune Graeff purchased the property from Investment Deals pursuant to a recorded Grant, Bargain, Sale Deed.

8. Lakes purchased the property for Noune Graeff for \$112,000 on January 20, 2016.

9. Lakes recorded the Grant, Bargain, Sale Deed for the property on January 20, 2016, without knowledge of U.S. Bank's unrecorded 12/6/15 assignment of Deed of Trust.,

*Ocwen's Superpriority Tender to the HOA*

8. After the HOA recorded its notice of default and prior to the foreclosure sale, Ocwen, then servicer of the Loan, tendered the super-priority portion of the HOA lien to the HOA.



1 assessments are entitled to this “super-priority” status. NRS § 116.3116(2)(b)-(c). The  
2 Nevada Supreme Court in *SFR Investments*, applying the plain language of the  
3 statute, explained “[a]s to first deeds of trust, NRS § 116.3116(2) thus splits an HOA  
4 lien into two pieces, a superpriority piece and a subpriority piece.” *SFR Investments*  
5 *Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411 (Nev. 2014). As explained by the  
6 *SFR* Court, “NRS 116.3116 gives a homeowners’ association (HOA) a superpriority  
7 lien on an individual homeowners’ property for up to nine months of unpaid HOA  
8 dues.” *Id.* at 409 (emphasis added). The *SFR* Court further provides the beneficiary of  
9 record of a deed of trust can preserve its interest by “determining the precise  
10 superpriority amount” and tendering it “in advance of the sale.” *Id.* at 418.

11 4. Since the *SFR Investments* decision, the Nevada Supreme Court held—  
12 again as a matter of statutory interpretation—the superpriority portion of an HOA  
13 lien does *not* include collection fees and foreclosure costs incurred by an HOA.  
14 *Horizons at Seven Hills Homeowners Ass’n v. Ikon Holdings*, 373 P.3d 66, 71–72  
15 (Nev. 2016). The *Ikon Holdings* court confirmed the superpriority amount is “limited  
16 to an amount equal to the common expense assessments due during the nine months  
17 before foreclosure.” *Id.*

18 5. Here, Ocwen tendered 9 months of monthly assessments – the full  
19 superpriority debt - entitled to superpriority protection which totaled \$3241.52. Upon  
20 receipt of the check from Ocwen, the HOA, through it’s agent, Red Rocks, accepted  
21 Ocwen’s tender and negotiated the check. It cannot be disputed that U.S. Bank’s  
22 predecessor in interest, Ocwen, did exactly what it was required to under Nevada law  
23 to protect the Deed of Trust.

#### 24 *The HOA Conducted a Sub-Priority Sale*

25 6. Because Ocwen satisfied the superpriority debt, the HOA foreclosed a  
26 subpriority lien and passed title subject to the Deed of Trust.

27 7. Under NRS 116.3116, an association's lien is split "into two pieces, a  
28 superpriority piece and a sub-priority piece.” *SFR Investments Pool 1, LLC v. U.S.*

1 *Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 410 (2014). "The superpriority piece"  
2 is "prior to a first deed of trust." *Id.* "The subpriority piece, consisting of all other  
3 HOA fees or assessments, is subordinate to a first deed of trust." *Id.*

4 8. The Nevada supreme court has made clear an association can choose to  
5 foreclose on either the subpriority or superpriority portion of its lien. *See Shadow*  
6 *Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366  
7 P.3d 1105, 1116 (2016) ("And if the association forecloses on its superpriority lien  
8 portion, the sale also would extinguish other subordinate interests in the property.")  
9 (emphasis added); *Stone Hollow Ave. Trust v. Bank of America, N.A.*, 382 P.3d 911  
10 (Table), 2016 WL 4543202 (Nev. 2016) (vacated on other grounds) (*Stone Hollow II*).  
11 An association's foreclosure of its subpriority lien does not extinguish a senior deed of  
12 trust. *See Stone Hollow*, 382 P.3d at 911.

13 9. The Nevada supreme court's holding in *SFR Investments* that an  
14 association's foreclosure of its superpriority lien could extinguish a senior deed of  
15 trust does not mean every association's foreclosure has such an effect – only proper  
16 superpriority foreclosures do.

17 10. Here, the evidence shows the HOA conducted a subpriority foreclosure,  
18 which could not extinguish the Deed of Trust. Accordingly, Plaintiff purchased the  
19 Property subject to BANA's Deed of Trust.

20 11. Lakes argument that U.S. Bank's interest in the Deed of Trust is void  
21 and unenforceable as to him pursuant to N.R.S. § 111.325 is without merit because  
22 the timing of the Assignment is immaterial to the HOA Sale not extinguishing the  
23 Deed of Trust. .

#### 24 *Remaining Issues*

25 12. U.S. Bank dropped its federal foreclosure bar arguments as being not  
26 applicable based on the chronology of events in this matter.

27 13. Any remaining issues raised in U.S. Bank's motion for summary  
28 judgment against Plaintiff are moot.



1 14. U.S. Bank's motion for summary judgment against the HOA is also  
2 moot.

3 15. The HOA's motion for summary judgment against U.S. Bank is also  
4 moot.

5 *The Deed of Trust Remains a Valid, Secured Encumbrance*

6 16. The HOA Sale did not extinguish the Deed of Trust.

7 17. The Deed of Trust remains a valid, secured encumbrance against the  
8 Property.

9 18. All persons or entities whom were granted title or an interest in the  
10 Property through the HOA Sale took such title or interest subject to the Deed of  
11 Trust.

12 19. U.S. Bank's Motion for Summary Judgment against Plaintiff is granted.


13 20. U.S. Bank's Motion for Summary Judgment against the HOA is denied  
14 as moot.

15 21. The HOA's Motion for Summary Judgment against U.S. Bank is denied  
16 as moot.

17 *Rule 54(b) Certification*

18 There being no reason for delay, this Order should be certified as final  
19 pursuant to NRCP 54(b). Accordingly, this Order is a final judgment for purposes of  
20 appeal.

21 DATED: this 12 day of July, 2019.

22   
23 DISTRICT COURT JUDGE MF  
24 RONALD J. ISRAEL  
25 A-17-759016-C  
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*Respectfully submitted by:*

Dated this \_\_\_\_ day of July, 2019

Ballard Spahr LLP


By: \_\_\_\_\_  
Joel E. Tasca, Esq.  
Joseph P. Sakai, Esq.  
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Las Vegas, Nevada 89134

*Attorneys for U.S. Bank Trust,  
Trustee for LSF9 Master Participation  
Trust*

*Approved as to form by:*

Dated this \_\_\_\_ day of July, 2019.

HARTWELL THALACKER, LTD.

  
DOREEN SPEARS HARTWELL, ESQ.  
Hartwell Thalacker, Ltd.  
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*Attorney for Plaintiff/Counter-  
Defendant,, Daniel Lakes*

*Approved as to form by:*

Dated this \_\_\_\_ day of July 2019:

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ANDERSON SONG

\_\_\_\_\_  
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T. CHASE PITTSBARGER, ESQ.  
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*Attorney for Cross-Defendant Liberty at  
Huntington Homeowners' Association*

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*Respectfully submitted by:*

Dated this \_\_\_\_ day of July, 2019

Ballard Spahr LLP

By:

Joel E. Tasca, Esq.  
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Trustee for LSF9 Master Participation  
Trust*

*Approved as to form by:*

Dated this \_\_\_\_ day of July, 2019.

HARTWELL THALACKER, LTD.

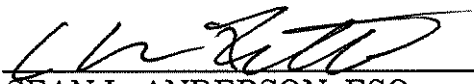
DOREEN SPEARS HARTWELL, ESQ.  
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Defendant,, Daniel Lakes*

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Dated this 10 day of July 2019:

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Huntington Homeowners' Association*

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*Attorneys for U.S. Bank Trust,  
Trustee for LSF9 Master Participation  
Trust*

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*Attorney for Plaintiff/Counter-Defendant,, Daniel Lakes*

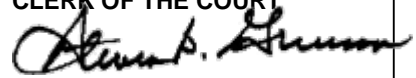
*Approved as to form by:*

Dated this \_\_\_\_ day of July 2019:

LEACH            KERN            GRUCHOW  
ANDERSON SONG

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*Attorneys for Defendants U.S. Bank Trust,  
Trustee for LSF9 Master Participation Trust*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

DANIEL LAKES, an Individual;

Plaintiff,

v.

BANK OF AMERICA, N.A., successor-by-  
merger to Countrywide Mortgage  
Ventures, LLC; et. al.

Defendants.

Case No.: A-17-759016-C

Dept. No.: 28

U.S. BANK TRUST, TRUSTEE FOR  
LSF9 MASTER PARTICIPATION  
TRUST;

Counter-claimant,

v.

DANIEL LAKES, an individual;  
PARCELNOMICS, LLC; NOUNE  
GRAEFF, an individual; INVESTMENT  
DEALS; REGELIO CEDILLO, an  
individual; LIBERTY AT HUNTINGTON  
HOMEOWNERS ASSOCIATION,

Counter-defendants.

**NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON  
MOTIONS FOR SUMMARY JUDGMENT**

1 PLEASE TAKE NOTICE that on the 17<sup>th</sup> day of July, 2019, the Clerk of the  
2 Court entered a **Findings of Fact and Conclusions of Law on Motions for Summary**  
3 **Judgment**, a copy of which is attached hereto.

4 DATED this 18<sup>th</sup> day of July, 2019.

5  
6 BALLARD SPAHR LLP

7 By: /s/ Joseph Sakai  
8 Joel E. Tasca  
9 Nevada Bar No. 14124  
10 Joseph P. Sakai  
11 Nevada Bar No. 13578  
12 1980 Festival Plaza Drive, Suite 900  
13 Las Vegas, Nevada 89135

14 *Attorneys for Defendant U.S. Bank Trust, Trustee*  
15 *for LSF9 Master Participation Trust*  
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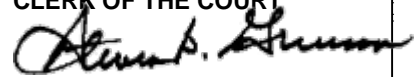
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18<sup>th</sup> day of July, 2019, and pursuant to N.R.C.P. 5(b), a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTIONS FOR SUMMARY JUDGMENT**, was served via the Court's Odyssey E-File and Serve system to the following parties:

Sean L. Anderson, Esq.  
T. Chase Pittsenbarger, Esq.  
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*Attorneys for Liberty at Huntington HOA*

Doreen Spears Hartwell, Esq.  
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/s/ M. Carlton  
An Employee of BALLARD SPAHR LLP



Joel E. Tasca  
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*Attorneys for Defendants U.S. Bank Trust,  
Trustee for LSF9 Master Participation Trust*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DANIEL LAKES, an Individual;  
Plaintiff,

Case No.: A-17-759016-C

Dept. No.: 28

v.

BANK OF AMERICA, N.A., successor-by-  
merger to Countrywide Mortgage  
Ventures, LLC; et. al.

Defendants.

U.S. BANK TRUST, TRUSTEE FOR  
LSF9 MASTER PARTICIPATION  
TRUST;

Counter-claimant,

v.

DANIEL LAKES, an individual;  
PARCELNOMICS, LLC; NOUNE  
GRAEFF, an individual; INVESTMENT  
DEALS; REGELIO CEDILLO, an  
individual; LIBERTY AT HUNTINGTON  
HOMEOWNERS ASSOCIATION,

Counter-defendants.

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

7/18/19





1                    **FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTIONS FOR**  
2                    **SUMMARY JUDGMENT**

3                    Defendant/Counter-Claimant/Cross-Claimant U.S. Bank Trust, Trustee for  
4 LSF9 Master Participation Trust's (U.S. Bank) motions for summary judgment  
5 against Plaintiff, Daniel Lakes (Lakes) and Defendant/Cross-Defendant Liberty At  
6 Huntington Homeowners' Association (HOA), and the HOA's motion for summary  
7 judgment against U.S. Bank came for hearing on June 4, 2019. Doreen Spears  
8 Hartwell, Esq. appeared on behalf of Plaintiff, Chase Pittsenbarger, Esq. appeared on  
9 behalf of the HOA, and Joseph P. Sakai, Esq. appeared on behalf of U.S. Bank. The  
10 Court, having reviewed the motions, the responses in opposition, and the replies in  
11 support, and good cause appearing, makes the following findings of fact and  
12 conclusions of law.

13                    **FINDINGS OF FACT**

14                    ***The Subject Property, Note, and Deed of Trust***

- 15                    1.        Lakes filed suit for quiet title alleging that he was a bona fide purchaser  
16                    who purchased the real property located at 548 Primrose Hill Ave., Las  
17                    Vegas, NV without notice of, and not subject to, an interim assignment  
18                    of a Deed of Trust from Freddie Mac to U.S. Bank.
- 19                    2.        A deed of trust listing Rogelio Cedillo as the borrower ("Borrower");  
20                    Countrywide KB Home Loans, a Countrywide Mortgage Ventures, LLC  
21                    series as the lender ("Lender"); and MERS, as beneficiary solely as  
22                    nominee for Lender and Lender's successors and assigns, was executed  
23                    on April 12, 2007, and recorded on April 16, 2007 ("Deed of Trust"). The  
24                    Deed of Trust granted Lender a security interest in real property known  
25                    as 548 Primrose Hill Ave in Las Vegas (the "Property") to secure the  
26                    repayment of a loan in the original amount of \$213,121.00 to the  
27                    Borrower (the promissory note and Deed of Trust together are the  
28                    "Loan").

2. On August 19, 2009, MERS, as nominee for Lender and Lender's successors and assigns, recorded an assignment of the Deed of Trust to Ocwen.

At the time of the HOA Sale on August 25, 2015, Ocwen was the servicer of the Loan for Freddie Mac.

3. On December 6, 2015, U.S. Bank acquired the Loan from Freddie Mac. On May 27, 2016, Ocwen recorded an assignment of the Deed of Trust to U.S. Bank. U.S. Bank is currently the beneficiary of record of the Deed of Trust and owner of the Loan.

*The HOA Foreclosure Sale and Plaintiff's Acquisition of the Property*

4. In July 2008 through April 2015, the HOA recorded a Lien for Delinquent Assessments concerning past due assessments, followed by a Notice of Default and Election to Sell, and a Notice of Foreclosure Sale against the Property.

5. On August 25, 2015, the HOA foreclosed on its lien and sold the Property to Parcelnomics, LLC, which paid \$4,470.00 according to the Foreclosure Deed recorded on September 1, 2015.

6. On September 1, 2015, Parcelnomics recorded a Grant, Bargain, Sale Deed purporting to convey its interest in the property to Investment Deals.

7. On October 23, 2015, Noune Graeff purchased the property from Investment Deals pursuant to a recorded Grant, Bargain, Sale Deed.

8. Lakes purchased the property for Noune Graeff for \$112,000 on January 20, 2016.

9. Lakes recorded the Grant, Bargain, Sale Deed for the property on January 20, 2016, without knowledge of U.S. Bank's unrecorded 12/6/15 assignment of Deed of Trust.,

*Ocwen's Superpriority Tender to the HOA*

8. After the HOA recorded its notice of default and prior to the foreclosure sale, Ocwen, then servicer of the Loan, tendered the super-priority portion of the HOA lien to the HOA.

### CONCLUSIONS OF LAW

### Standard of Proof

1. Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. NRCP 56(c); *see also Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005). After the movant has carried its burden to identify issues where there is no genuine issue of material fact, the non-moving party must "set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Wood*, 121 Nev. at 732.

2. While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, "that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Id.* at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). The governing law determines which "factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant." *Id.* Accordingly, Nevada courts follow the federal summary judgment standard, not the "slightest doubt" standard previously applicable before *Wood*. *Id.* at 1031, 1037.

*U.S. Bank's Predecessor In Interest, Ocwen, Tendered the Superpriority Amount of the HOA Lien Prior to the HOA Sale*

3. The HOA Sale did not extinguish the Deed of Trust because Ocwen, which was servicing the Loan at the time of the HOA sale, tendered the superpriority portion of the Lien prior to the sale. Under NRS § 116.3116(1), an HOA has a statutory lien for unpaid assessments. Also by statute, only nine-months of HOA

1 assessments are entitled to this “super-priority” status. NRS § 116.3116(2)(b)-(c). The  
2 Nevada Supreme Court in *SFR Investments*, applying the plain language of the  
3 statute, explained “[a]s to first deeds of trust, NRS § 116.3116(2) thus splits an HOA  
4 lien into two pieces, a superpriority piece and a subpriority piece.” *SFR Investments*  
5 *Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408, 411 (Nev. 2014). As explained by the  
6 *SFR* Court, “NRS 116.3116 gives a homeowners’ association (HOA) a superpriority  
7 lien on an individual homeowners’ property for up to nine months of unpaid HOA  
8 dues.” *Id.* at 409 (emphasis added). The *SFR* Court further provides the beneficiary of  
9 record of a deed of trust can preserve its interest by “determining the precise  
10 superpriority amount” and tendering it “in advance of the sale.” *Id.* at 418.

11 4. Since the *SFR Investments* decision, the Nevada Supreme Court held—  
12 again as a matter of statutory interpretation—the superpriority portion of an HOA  
13 lien does *not* include collection fees and foreclosure costs incurred by an HOA.  
14 *Horizons at Seven Hills Homeowners Ass’n v. Ikon Holdings*, 373 P.3d 66, 71–72  
15 (Nev. 2016). The *Ikon Holdings* court confirmed the superpriority amount is “limited  
16 to an amount equal to the common expense assessments due during the nine months  
17 before foreclosure.” *Id.*

18 5. Here, Ocwen tendered 9 months of monthly assessments – the full  
19 superpriority debt - entitled to superpriority protection which totaled \$3241.52. Upon  
20 receipt of the check from Ocwen, the HOA, through it’s agent, Red Rocks, accepted  
21 Ocwen’s tender and negotiated the check. It cannot be disputed that U.S. Bank’s  
22 predecessor in interest, Ocwen, did exactly what it was required to under Nevada law  
23 to protect the Deed of Trust.

#### 24 *The HOA Conducted a Sub-Priority Sale*

25 6. Because Ocwen satisfied the superpriority debt, the HOA foreclosed a  
26 subpriority lien and passed title subject to the Deed of Trust.

27 7. Under NRS 116.3116, an association's lien is split "into two pieces, a  
28 superpriority piece and a sub-priority piece.” *SFR Investments Pool 1, LLC v. U.S.*

1 *Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 410 (2014). "The superpriority piece"  
2 is "prior to a first deed of trust." *Id.* "The subpriority piece, consisting of all other  
3 HOA fees or assessments, is subordinate to a first deed of trust." *Id.*

4 8. The Nevada supreme court has made clear an association can choose to  
5 foreclose on either the subpriority or superpriority portion of its lien. *See Shadow*  
6 *Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132 Nev. Adv. Op. 5, 366  
7 P.3d 1105, 1116 (2016) ("And if the association forecloses on its superpriority lien  
8 portion, the sale also would extinguish other subordinate interests in the property.")  
9 (emphasis added); *Stone Hollow Ave. Trust v. Bank of America, N.A.*, 382 P.3d 911  
10 (Table), 2016 WL 4543202 (Nev. 2016) (vacated on other grounds) (*Stone Hollow II*).  
11 An association's foreclosure of its subpriority lien does not extinguish a senior deed of  
12 trust. *See Stone Hollow*, 382 P.3d at 911.

13 9. The Nevada supreme court's holding in *SFR Investments* that an  
14 association's foreclosure of its superpriority lien could extinguish a senior deed of  
15 trust does not mean every association's foreclosure has such an effect – only proper  
16 superpriority foreclosures do.

17 10. Here, the evidence shows the HOA conducted a subpriority foreclosure,  
18 which could not extinguish the Deed of Trust. Accordingly, Plaintiff purchased the  
19 Property subject to BANA's Deed of Trust.

20 11. Lakes argument that U.S. Bank's interest in the Deed of Trust is void  
21 and unenforceable as to him pursuant to N.R.S. § 111.325 is without merit because  
22 the timing of the Assignment is immaterial to the HOA Sale not extinguishing the  
23 Deed of Trust. .

#### 24 ***Remaining Issues***

25 12. U.S. Bank dropped its federal foreclosure bar arguments as being not  
26 applicable based on the chronology of events in this matter.

27 13. Any remaining issues raised in U.S. Bank's motion for summary  
28 judgment against Plaintiff are moot.

1 14. U.S. Bank's motion for summary judgment against the HOA is also  
2 moot.

3 15. The HOA's motion for summary judgment against U.S. Bank is also  
4 moot.

5 *The Deed of Trust Remains a Valid, Secured Encumbrance*

6 16. The HOA Sale did not extinguish the Deed of Trust.

7 17. The Deed of Trust remains a valid, secured encumbrance against the  
8 Property.

9 18. All persons or entities whom were granted title or an interest in the  
10 Property through the HOA Sale took such title or interest subject to the Deed of  
11 Trust.

12 19. U.S. Bank's Motion for Summary Judgment against Plaintiff is granted.


13 20. U.S. Bank's Motion for Summary Judgment against the HOA is denied  
14 as moot.

15 21. The HOA's Motion for Summary Judgment against U.S. Bank is denied  
16 as moot.

17 *Rule 54(b) Certification*

18 There being no reason for delay, this Order should be certified as final  
19 pursuant to NRCP 54(b). Accordingly, this Order is a final judgment for purposes of  
20 appeal.

21 DATED: this 12 day of July, 2019.

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23 DISTRICT COURT JUDGE MF  
24 RONALD J. ISRAEL  
25 A-17-759016-C  
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*Respectfully submitted by:*

Dated this \_\_\_\_ day of July, 2019

Ballard Spahr LLP


By: \_\_\_\_\_  
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Joseph P. Sakai, Esq.  
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*Attorneys for U.S. Bank Trust,  
Trustee for LSF9 Master Participation  
Trust*

*Approved as to form by:*

Dated this \_\_\_\_ day of July, 2019.

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Defendant,, Daniel Lakes*

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Dated this \_\_\_\_ day of July 2019:

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*Respectfully submitted by:*

Dated this \_\_\_\_ day of July, 2019

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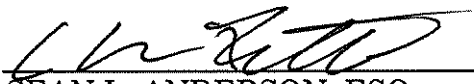
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1  
2 *Respectfully submitted by:*

3 Dated this 10<sup>th</sup> day of July, 2019

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10 *Trust*

*Approved as to form by:*

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**January 03, 2018**

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A-17-759016-C	Daniel Lakes, Plaintiff(s) vs. Bank of America N.A., Defendant(s)
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<b>January 03, 2018</b>	<b>3:00 AM</b>	<b>Motion</b>	<b>Daniel Lake's Motion to Enlarge Time for Service of Process and For an Order Allowing Service by Publication as to Defendant Rogelio Cedillo</b>
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**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:**

**REPORTER:**

**PARTIES**

**PRESENT:**

**JOURNAL ENTRIES**

- Upon Court's review, COURT ORDERED, Plaintiff's Motion to Enlarge Time for Service of Process and for an Order Allowing Service by Publication as to Defendant Rogelio Cedillo, GRANTED. Time enlarged to serve Defendants Rogelio Cedillo and Parcelnomics LLC and Counsel to Serve by Publication in Nevada and Arizona. Counsel to prepare the order. Minute order pursuant to Law Clerk.

CLERK'S NOTE: A copy of this minute order was e-served to all parties. kk 01/12/18.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**October 16, 2018**

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A-17-759016-C      Daniel Lakes, Plaintiff(s)  
vs.  
Bank of America N.A., Defendant(s)

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**October 16, 2018**

**9:45 AM**

**Status Check: Trial  
Readiness**

**Status Check:  
Referral to  
Settlement  
Conference // Trial  
Readiness (Bench  
Trial 04/22/19)**

**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:** Judy Chappell

**REPORTER:**

**PARTIES**

**PRESENT:** Priest, Holly A.      Attorney

**JOURNAL ENTRIES**

- Ms. Priest noted she believed the Plaintiff has Pro-Bono counsel and noted they are in discovery and she would be amending pleadings. Ms. Priest further noted this is a Housing and Economic Recovery Act of 2008 (H.E.R.A.) and Tender issue and would not be interested in a settlement conference.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property**

**COURT MINUTES**

**November 15, 2018**

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A-17-759016-C      Daniel Lakes, Plaintiff(s)  
vs.  
Bank of America N.A., Defendant(s)

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**November 15, 2018      3:00 AM      Motion for Leave      Motion for Leave to  
File Amended  
Answer,  
Counterclaims and  
Cross Claims**

**HEARD BY:** Israel, Ronald J.

**COURTROOM:** RJC Courtroom 15C

**COURT CLERK:** Kathy Thomas

**RECORDER:**

**REPORTER:**

**PARTIES  
PRESENT:**

**JOURNAL ENTRIES**

- There being no Opposition to the Motion; the time to oppose having passed in accordance with EDCR 2.20 and for good cause shown There being no Opposition to the Motion; the time to oppose having passed in accordance with EDCR 2.20 and for good cause shown that amendment of the Answer is necessary and proper in accordance with applicable law, the Court hereby GRANTS Defendant's Motion to for Leave to File Amended Answer, Counterclaims and Cross Claims both pursuant to EDCR 2.20 and on the merits. The Order has been signed and will be available for pick-up in the department 28 box on the 15th floor of the Regional Justice Center. Defendnat is allowed 30 days to file their newly Amended Answer, Counterclaims, and Cross Claims.

CLERK'S NOTE: A copy of this minute order was e-served to counsel. kk 11/16/18.

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Other Title to Property****COURT MINUTES****June 04, 2019**

A-17-759016-C      Daniel Lakes, Plaintiff(s)  
                                  vs.  
                                  Bank of America N.A., Defendant(s)

**June 04, 2019****9:30 AM****All Pending Motions****HEARD BY:** Israel, Ronald J.**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Kathy Thomas**RECORDER:** Judy Chappell**REPORTER:****PARTIES**

**PRESENT:**      Hartwell, Doreen M. Spears      Attorney  
                          Pittsenbarger, Timothy C.      Attorney  
                          Sakai, Joseph P.      Attorney

**JOURNAL ENTRIES**

- PRE-TRIAL CONFERENCE...US BANK TRUST TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST'S MOTION FOR SUMMARY JUDGMENT...COUNTERDEFENDANT LIBERTY AT HUNTINGTON HOMEOWNERS' ASSOCIATION'S MOTION FOR SUMMARY JUDGMENT:

Court noted this case is a Federal foreclosure & a tender issue. Mr. Sakai noted he had received information regarding Freddie Mack non-interest and therefore would withdraw the Federal foreclosure issue. Arguments by Counsel regarding the tender issue. Mr. Sakai stated the check was sent and cashed and they still had the foreclosure sale, it should have been a junior sale. Ms. Hartwell noted her client was the purchaser in January 2016 and noted there was three different transactions. Colloquy regarding the transfers of sale, NRS 116.125, bona fide purchaser, tender and sub-priority sale. Court finds the tender was made the sale was a sub-priority, mortgage was in place and Plaintiff, Mr. Lakes bought the property subject to the mortgage. Court finds there was no failure to record. COURT ORDERED, US Bank Trustee's Motion for Summary Judgment, GRANTED and FURTHER COURT ORDERED, Liberty at Huntington Homeowner's Association's Motion for Summary Judgment, MOOT. Trial Dates, VACATED. Court noted the issue of the fair market value would not be decided at this time. Court directed the State to prepare the order and pass it by

Counsel.

# 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; STATEMENT OF LEGAL AID REPRESENTATION (PURSUANT TO NRS 12.015); DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTIONS FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW ON MOTIONS FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES

DANIEL LAKES,

Plaintiff(s),

vs.

BANK OF AMERICA, N.A.; U.S. BANK TRUST, TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST; ROGELIO CEDILLO; PARCELNOMICS, LLC, DBA INVESTMENT DEALS; NOUNE GRAEFF,

Defendant(s),

Case No: A-17-759016-C

Dept No: XXVIII

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 31 day of July 2019.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk