

Electronically Filed
Jan 10 2020 10:14 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

1 **NOAS**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 2810 West Charleston Boulevard, #75
8 Las Vegas, Nevada 89102
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **AIRMOTIVE INVESTMENTS, LLC**

9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 ***

12 AIRMOTIVE INVESTMENTS, LLC, a Nevada)
13 limited liability company,)

14 Plaintiff,)

Case No. A-12-654840-C
Dept. No. XXIII

15 vs.)

16 BANK OF AMERICA, GENEVIEVE UNIZA-)
17 ENRIQUEZ, DOES 1 THROUGH 20, AND)
18 ROE CORPORATIONS 1 THROUGH 20,)
19 INCLUSIVE,)

20 Defendants.)

21 BANK OF AMERICA, N.A.)

22 Counterclaimant,)

23 vs.)

24 AIRMOTIVE INVESTMENTS, LLC,)

25 Counter-Defendant.)

26 **NOTICE OF APPEAL**

27 NOTICE IS HEREBY GIVEN that Plaintiff/Counter-Defendant, AIRMOTIVE
28 INVESTMENTS, LLC, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES,
LTD., hereby appeals to the Supreme Court of the State of Nevada from (1) the Decision and

1 Order entered on or about October 17, 2019; (2) the Order Awarding Costs to Bank of America,
2 N.A. entered on or about November 25, 2019; (3) the Stipulation and Order to Dismiss and for
3 Final Judgment entered on or about December 12, 2019; and (4) all rulings and interlocutory
4 orders giving rise to or made appealable by said final judgment.

5 DATED this 2nd day of January, 2020.

6 ROGER P. CROTEAU & ASSOCIATES, LTD.

7
8 /s/ Timothy E. Rhoda

9 ROGER P. CROTEAU, ESQ.

10 Nevada Bar No. 4958

11 TIMOTHY E. RHODA, ESQ.

12 Nevada Bar No. 7878

13 2810 West Charleston Boulevard, #75

14 Las Vegas, Nevada 89102

15 (702) 254-7775

16 *Attorney for Plaintiff*

17 **AIRMOTIVE INVESTMENTS, LLC**
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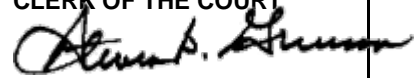
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 X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda
An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.



ASTA
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
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2810 West Charleston Boulevard, #75
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Attorney for Plaintiff
AIRMOTIVE INVESTMENTS, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

AIRMOTIVE INVESTMENTS, LLC, a Nevada)
limited liability company,)

Plaintiff,)

Case No. A-12-654840-C
Dept. No. XXIII

vs.)

BANK OF AMERICA, GENEVIEVE UNIZA-)
ENRIQUEZ, DOES 1 THROUGH 20, AND)
ROE CORPORATIONS 1 THROUGH 20,)
INCLUSIVE,)

Defendants.)

BANK OF AMERICA, N.A.)

Counterclaimant,)

vs.)

AIRMOTIVE INVESTMENTS, LLC,)

Counter-Defendant.)

CASE APPEAL STATEMENT

COMES NOW, Plaintiff/Counter-Defendant, AIRMOTIVE INVESTMENTS, LLC, by
and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby submits
its Case Appeal Statement.

1 **1. Name of appellant filing this case appeal statement:**

2 AIRMOTIVE INVESTMENTS, LLC

3 **2. Identify the judge issuing the decision, judgment, or order appealed from:**

4 The Honorable Stefany A. Miley

5 **3. Set forth the name, law firm, address, and telephone number of all counsel**
6 **on appeal and identify the party or parties whom they represent:**

7 a. AIRMOTIVE INVESTMENTS, LLC

8 Roger P. Croteau, Esq.
9 Timothy E. Rhoda, Esq.
10 Roger P. Croteau & Associates, Ltd.
11 2810 West Charleston Boulevard, #75
12 Las Vegas, Nevada 89102
13 (702) 254-7775

14 **4. Identify each respondent and the name and address of appellate counsel, if**
15 **known, for each respondent (if the name of a respondent's appellate counsel**
16 **is unknown, indicate as much and provide the name and address of that**
17 **respondent's trial counsel:**

18 a. GENEVIEVE UNIZA-ENRIQUEZ

19 This party did not appear in the action and was dismissed pursuant to a
20 Stipulation and Order to Dismiss and for Final Judgment.

21 b. BANK OF AMERICA, N.A.

22 Respondent's appellate counsel is unknown at this time but will
23 presumably be Respondent's trial counsel:

24 Darren T. Brenner, Esq.
25 Scott R. Lachman, Esq.
26 Akerman, LLP
27 1635 Village Center Circle, Suite 200
28 Las Vegas, Nevada 89134
 Telephone: (702) 634-5000

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

 N/A

1 **6. Indicate whether appellant was represented by appointed or retained counsel**
2 **in the district court:**

3 Retained counsel

4 **7. Indicate whether appellant is represented by appointed or retained counsel**
5 **on appeal:**

6 Retained counsel

7 **8. Indicate whether appellant was granted leave to proceed in forma pauperis,**
8 **and the date of entry of the district court order granting such leave:**

9 N/A

10 **9. Indicate the date the proceedings commenced in the district court, e.g., date**
11 **complaint, indictment, information, or petition was filed:**

12 The original Complaint in this matter was filed on January 17, 2012, in the
13 Eighth Judicial District Court of the State of Nevada in and for Clark County,
14 Nevada.

15 **10. Provide a brief description of the nature of the action and result in the**
16 **district court, including the type of judgment or order being appealed and**
17 **the relief granted by the district court:**

18 The action is a primarily a quiet title and declaratory judgment action
19 related to real property that was the subject of a HOA lien foreclosure sale
20 pursuant to NRS Chapter 116. The district court granted summary judgment to
21 Bank of America, N.A., finding that its security interest in the real property at
22 issue herein was not extinguished pursuant to the so-called “Federal Foreclosure
23 Bar” of 12 U.S.C. §4617.

24 **11. Indicate whether the case has previously been the subject of an appeal or an**
25 **original writ proceeding in the Supreme Court and, if so, the caption and**
26 **Supreme Court docket number of the prior proceeding:**

27 The matter was previously the subject of Appeal No. 65083, *Las Vegas*
28 *Development Group, LLC v. Bank of America, N.A.* Said appeal was resolved by

1 stipulation subsequent to this Court's seminal decision in the matter of *SFR*
2 *Investments*.

3 **12. Indicate whether this appeal involves child custody or visitation:**

4 N/A

5 **13. If this is a civil case, indicate whether this appeal involves the possibility of**
6 **settlement:**

7 Appellant believes that a settlement conference may be beneficial and that the
8 possibility of settlement exists.

9 DATED this 2nd day of January, 2020.

10 ROGER P. CROTEAU & ASSOCIATES, LTD.

11
12 /s/ Timothy E. Rhoda
13 ROGER P. CROTEAU, ESQ.
14 Nevada Bar No. 4958
15 TIMOTHY E. RHODA, ESQ.
16 Nevada Bar No. 7878
17 2810 West Charleston Boulevard, #75
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20 *Attorney for Plaintiff*
21 **AIRMOTIVE INVESTMENTS, LLC**
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 VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

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Page 5 of 5 6279 Downpour Court

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. A-12-654840-C**

Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

§
§
§
§
§
§

Location: **Department 23**
 Judicial Officer: **Miley, Stefany**
 Filed on: **01/17/2012**
 Cross-Reference Case Number: **A654840**
 Supreme Court No.: **65083**

CASE INFORMATION**Statistical Closures**

12/12/2019 Stipulated Dismissal

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

Case Status: **12/12/2019 Dismissed**

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

Case Number A-12-654840-C
 Court Department 23
 Date Assigned 01/17/2012
 Judicial Officer Miley, Stefany












PARTY INFORMATION

Plaintiff	Airmotive Investments LLC	<i>Lead Attorneys</i> Croteau, Roger P, ESQ <i>Retained</i> 702-254-7775(W)
	Las Vegas Development Group LLC Removed: 04/09/2019 Dismissed	Croteau, Roger P, ESQ <i>Retained</i> 702-254-7775(W)
Defendant	BAC Home Loans Servicing LP Removed: 08/01/2013 Inactive	Stern, Ariel E. <i>Retained</i> 702-634-5000(W)
	Bank of America	Stern, Ariel E. <i>Retained</i> 702-634-5000(W)
	Uniza-Enriquez, Genevieve Removed: 12/12/2019 Dismissed	
Counter Claimant	Bank of America N A Removed: 04/09/2019 Dismissed	
Counter Defendant	Las Vegas Development Group LLC Removed: 04/09/2019 Dismissed	Croteau, Roger P, ESQ <i>Retained</i> 702-254-7775(W)
Cross Claimant	Bank of America N A Removed: 12/12/2019 Dismissed	
Cross Defendant	Absolute Collection Services LLC Removed: 12/12/2019 Dismissed	
	Palo Verde Ranch HOA	

CASE SUMMARY**CASE NO. A-12-654840-C**

Removed: 12/12/2019

Dismissed

DATE	EVENTS & ORDERS OF THE COURT	INDEX
	<u>EVENTS</u>	
01/17/2012	 Complaint Filed By: Counter Defendant Las Vegas Development Group LLC <i>Complaint to Quiet Title to Real Property</i>	
01/17/2012	Case Opened	
01/18/2012	 Lis Pendens Filed By: Counter Defendant Las Vegas Development Group LLC <i>Notice of Pendency of Action</i>	
02/27/2012	 Motion to Dismiss Filed By: Defendant Bank of America <i>Defendants, Bank of America and BAC Home Loans Servicing LP Motion to Dismiss, or in the Alternative, for More Definite Statement</i>	
02/27/2012	 Initial Appearance Fee Disclosure Filed By: Defendant Bank of America <i>Initial Appearance Fee Disclosure</i>	
03/09/2012	 Stipulation and Order Filed by: Counter Defendant Las Vegas Development Group LLC <i>Stipulation and [Proposed] Order Re Plaintiff's Filing of Their Opposition Brief to Defendants Motion to Dismiss on March 27, 2012 and Defendants to File Their Reply Brief of April 5, 2012</i>	
03/23/2012	 Opposition to Motion Filed By: Counter Defendant Las Vegas Development Group LLC <i>Plaintiff's Opposition to Defendant's Motion to Dismiss, Or In the Alternative, For More Definite Statement</i>	
04/03/2012	 Reply to Opposition Filed by: Defendant Bank of America <i>Defendants Bank of America and BAC Home Loans Servicing LP Reply to Plaintiff's Opposition to Defendant's Motion to Dismiss or in the Alternative for More Definite Statement</i>	
04/12/2012	 Answer Filed By: Defendant Bank of America <i>Answer</i>	
05/31/2012	 NRCP 16.1 Initial List of Witnesses and Documents Filed By: Counter Defendant Las Vegas Development Group LLC <i>Plaintiff's Initial Disclosures Pursuant to NRCP 16.1</i>	
08/09/2012	 Notice Filed By: Counter Defendant Las Vegas Development Group LLC <i>Notice of counsel's vacation out of the country</i>	
08/25/2012	 Motion for Summary Judgment Filed By: Defendant Bank of America <i>Defendants' Motion for Summary Judgment</i>	

CASE SUMMARY

CASE NO. A-12-654840-C

08/25/2012



Appendix

Filed By: Defendant Bank of America

Appendix of Exhibits to Defendants' Motion for Summary Judgment

09/11/2012



Stipulation and Order

Filed by: Defendant Bank of America

Stipulation and [Proposed] Order Regarding Continuing Hearing Date on Defendants' Motion for Summary Judgment and Extending Due Date for Plaintiff's to File Their Opposition Brief

09/12/2012



Notice of Entry of Order

Filed By: Defendant Bank of America

Notice of Entry of Order

09/14/2012



Motion to Amend Complaint

Filed By: Counter Defendant Las Vegas Development Group LLC

Motion to Amend Complaint

09/14/2012



Certificate of Mailing

Filed By: Counter Defendant Las Vegas Development Group LLC

Certification of Service of Motion to Amend Complaint

09/24/2012



Joint Case Conference Report

Filed By: Counter Defendant Las Vegas Development Group LLC

Joint Case Conference Report

09/25/2012



Certificate of Service

Filed by: Counter Defendant Las Vegas Development Group LLC

Certificate of Service of Joint Case Conference Report

10/03/2012



Opposition

Filed By: Defendant Bank of America

Defendants' Opposition to Plaintiff's Motion to Amend Complaint

10/09/2012



Notice to Appear for Discovery Conference

Notice to Appear for Discovery Conference

10/10/2012



Reply

Filed by: Counter Defendant Las Vegas Development Group LLC

Plaintiff's Reply in Support of Plaintiff's Motion to Amend The Complaint

10/11/2012



Certificate of Mailing

Filed By: Counter Defendant Las Vegas Development Group LLC

Certification of Service of Plaintiff's Reply in Support of Plaintiff's Motion to Amend The Complaint

10/12/2012



Amended Joint Case Conference Report

Filed By: Defendant Bank of America

10/23/2012



Stipulation and Order

Filed by: Defendant Bank of America

Stipulation and Order regarding continuing hearing date on defendants' motion for summary judgment and extending due date for plaintiff's to file their opposition brief














CASE SUMMARY

CASE NO. A-12-654840-C

11/06/2012	 Scheduling Order <i>Scheduling Order</i>
11/09/2012	 Stipulation and Order Filed by: Defendant Bank of America <i>Stipulation and Order regarding continuing deadlines for defendants to plead in response to plaintiff's first amended complaint and plaintiff's response to discovery requests</i>
11/13/2012	 Notice of Withdrawal of Motion Filed By: Defendant Bank of America <i>Notice of Withdrawal of Motion for Summary Judgment</i>
11/13/2012	 Substitution of Attorney Filed by: Defendant Bank of America <i>Substitution of Counsel</i>
11/13/2012	 Certificate of Service Filed by: Defendant Bank of America <i>Certificate of Service</i>
11/14/2012	 Order Setting Civil Jury Trial <i>Order Setting Civil Jury Trial and Calendar Call</i>
04/10/2013	 Substitution of Attorney Filed by: Counter Defendant Las Vegas Development Group LLC <i>Substitution of Counsel</i>
08/01/2013	 Second Amended Complaint Filed By: Counter Defendant Las Vegas Development Group LLC <i>Second Amended Complaint</i>
08/01/2013	 Stipulation and Order Filed by: Counter Defendant Las Vegas Development Group LLC <i>Stipulation and Order for Leave to Amend First Amended Complaint</i>
08/01/2013	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Las Vegas Development Group LLC <i>Notice of Entry of Stipulation and Order</i>
08/15/2013	 Motion to Dismiss Filed By: Defendant Bank of America <i>Bank of America, N.A.'s Motion to Dismiss Second Amended Complaint</i>
08/16/2013	 Certificate of Service Filed by: Defendant Bank of America <i>Certificate of Service</i>
08/28/2013	 Opposition Filed By: Counter Defendant Las Vegas Development Group LLC <i>Opposition to Motion to Dismiss</i>
09/06/2013	 Affidavit Filed By: Counter Defendant Las Vegas Development Group LLC <i>Affidavit of Service Summons</i>

CASE SUMMARY

CASE NO. A-12-654840-C

09/09/2013	 Reply in Support Filed By: Defendant Bank of America <i>Bank of America, N.A.'s Reply in Support of Motion to Dismiss Second Amended Complaint</i>
10/10/2013	 Notice of Entry of Order Filed By: Defendant Bank of America <i>Notice of Entry of Order</i>
10/10/2013	 Order Filed By: Defendant Bank of America <i>Order Granting Bank of America, N.A.'s Motion to Dismiss Second Amended Complaint</i>
10/18/2013	 Certificate of Service Filed by: Counter Defendant Las Vegas Development Group LLC <i>Certificate of Service</i>
10/18/2013	 Motion to Reconsider Filed By: Counter Defendant Las Vegas Development Group LLC <i>Motion for Reconsideration</i>
11/04/2013	 Notice of Change of Firm Name Filed By: Defendant Bank of America <i>Notice of Change of Firm Name</i>
11/04/2013	 Opposition to Motion Filed By: Defendant Bank of America <i>Bank of America, N.A.'s Opposition to Motion for Reconsideration</i>
11/07/2013	 Notice of Rescheduling <i>Notice of Rescheduling of Hearing</i>
11/15/2013	 Reply Filed by: Counter Defendant Las Vegas Development Group LLC <i>Reply In Support of Motion for Reconsideration</i>
11/15/2013	 Substitution of Attorney Filed by: Counter Defendant Las Vegas Development Group LLC <i>Substitution of Attorney</i>
11/18/2013	 Notice of Rescheduling <i>Notice of Rescheduling of Hearing</i>
11/19/2013	 Certificate of Mailing Filed By: Counter Defendant Las Vegas Development Group LLC <i>Certificate of Mailing</i>
01/23/2014	 Order Denying Motion Filed By: Defendant Bank of America <i>Order Denying Plaintiff's Motion for Reconsideration</i>
01/27/2014	 Notice of Entry of Order Filed By: Defendant Bank of America

CASE SUMMARY

CASE NO. A-12-654840-C

Notice of Entry of Order

02/21/2014



Notice of Appeal

Filed By: Counter Defendant Las Vegas Development Group LLC

Notice of Appeal

02/21/2014



Case Appeal Statement

Filed By: Counter Defendant Las Vegas Development Group LLC

Case Appeal Statement

11/26/2014



Stipulation

Filed by: Defendant Bank of America

Stipulation Requesting the Court for Reconsideration and Certification

02/06/2015



Order Scheduling Status Check

Order Scheduling Status Check Re: Supreme Court Order

02/24/2015



Stipulation and Order

Filed by: Counter Defendant Las Vegas Development Group LLC

Stipulation and Order to Vacate Order Granting Motion to Dismiss Second Amended Complaint

02/25/2015



Notice of Entry of Order

Filed By: Counter Defendant Las Vegas Development Group LLC

Notice of Entry of Order

03/26/2015



Answer to Amended Complaint

Filed By: Defendant Bank of America

Answer To Second Amended Complaint And Counterclaim

03/26/2015



Initial Appearance Fee Disclosure

Filed By: Defendant Bank of America

Initial Appearance Fee Disclosure

05/13/2015



Motion to Dismiss

Filed By: Counter Defendant Las Vegas Development Group LLC

Plaintiff's Motion to Dismiss Counterclaim

06/01/2015



Opposition to Motion

Filed By: Defendant Bank of America

Response in Opposition to Las Vegas Development Group, LLC's Motion to Dismiss Counterclaim

06/29/2015



Notice of Hearing

Notice of Rescheduling of Hearing

08/07/2015



Motion for Leave to File

Party: Defendant Bank of America

Bank of America's Motion for Leave to Amend its Answer to Add an Affirmative Defense and Counterclaim and to Join Parties to Add Claims

01/28/2016



Order Granting

Filed By: Counter Defendant Las Vegas Development Group LLC

Order Granting Motion for Leave to Amend

CASE SUMMARY

CASE NO. A-12-654840-C

01/28/2016	 Notice of Entry Filed By: Counter Defendant Las Vegas Development Group LLC <i>Notice of Entry of ORder Granting Motion for Leave to Amend</i>
02/05/2016	 Notice of Rescheduling <i>Notice of Rescheduling Of Hearing</i>
02/29/2016	 Third Amended Complaint Filed by: Counter Defendant Las Vegas Development Group LLC <i>Third Amended Complaint</i>
02/29/2016	 Amended Answer Filed By: Defendant Bank of America <i>Bank of America, N.A.'s Amended Answer, Counterclaims, and Crossclaims To Second Amended Complaint</i>
04/27/2016	 Notice of Rescheduling <i>Notice of Rescheduling of Hearing</i>
05/12/2016	 Answer to Third Party Complaint Filed By: Defendant Bank of America <i>Bank Of America, N.A.'S Answer To Third Amended Complaint And Counterclaims</i>
05/27/2016	 Notice <i>Notice Vacating Date and Time of Hearing</i>
10/31/2016	 Order Scheduling Status Check <i>Order Scheduling Status Check - Case Status</i>
02/06/2017	 Joint Case Conference Report Filed By: Defendant Bank of America <i>Second Amended Joint Case Conference Report</i>
08/17/2017	 Notice of Hearing <i>Notice of Hearing</i>
03/05/2018	 Notice of Hearing <i>Notice of Hearing</i>
03/21/2018	 Stipulation and Order Filed by: Counter Defendant Las Vegas Development Group LLC <i>Stipulation and Order to Waive Five Year Rule</i>
07/02/2018	 Order Scheduling Status Check <i>Order Scheduling Status Check</i>
09/24/2018	 Stipulation and Order Filed by: Cross Claimant Bank of America N A <i>Stipulation and Order to Reopen and Extend Discovery Deadlines</i>
09/25/2018	 Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order to Reopen and Extend Discovery Deadlines</i>

CASE SUMMARY

CASE NO. A-12-654840-C

10/02/2018	 Order Setting Civil Bench Trial <i>Order Setting Civil Bench Trial and Calendar Call</i>
04/05/2019	 Motion for Summary Judgment Filed By: Cross Claimant Bank of America N A <i>Bank of America, N.A.'s Motion for Summary Judgment</i>
04/08/2019	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
04/09/2019	 Stipulation and Order Filed by: Defendant Bank of America <i>Stipulation and Order to Substitute Airmotive Investments LLC for Las Vegas Development Group, LLC</i>
04/09/2019	 Notice of Entry <i>Notice of entry of Stipulation and Order to Substitute Airmotive Investments, LLC for Las Vegas Development Group</i>
06/10/2019	 Amended Order Setting Civil Non-Jury Trial <i>Order Re-Setting Civil Bench Trial and Calendar Call</i>
06/10/2019	 Stipulation and Order Filed by: Plaintiff Airmotive Investments LLC <i>STIPULATION AND ORDER TO EXTEND BRIEFING SCHEDULE AND CONTINUE HEARING ON MOTION FOR SUMMARY JUDGMENT, AND CONTINUE TRIAL</i>
07/08/2019	 Order Setting Civil Bench Trial <i>Order Re-Setting Civil Bench Trial and Calendar Call</i>
07/17/2019	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Airmotive Investments LLC <i>Opposition to Motion for Summary Judgment</i>
07/29/2019	 Stipulation and Order Filed by: Defendant Bank of America <i>Stipulation and Order Continuing Hearing on Bank of America's Motion for Summary Judgment</i>
07/30/2019	 Notice of Entry <i>Notice of Entry of Stipulation and Order Continuing Hearing on Bank of America's Motion for Summary Judgment</i>
09/05/2019	 Reply in Support Filed By: Cross Claimant Bank of America N A <i>Bank of America, N.A.'s Reply in Support of Motion for Summary Judgment</i>
10/17/2019	 Decision and Order <i>Decision and Order</i>
10/21/2019	 Memorandum of Costs and Disbursements Filed By: Defendant Bank of America <i>Bank of Ameirca, N.A.'s Memorandum of Costs</i>

CASE SUMMARY

CASE NO. A-12-654840-C

10/25/2019



Notice of Entry of Order

Filed By: Cross Claimant Bank of America N A
Notice of Entry of Decision and Order

11/25/2019



Order

Filed By: Defendant Bank of America
Order Awarding Costs to Bank of America, N.A.

11/27/2019



Notice of Entry

Notice of Entry of Order Awarding Cost to Bank of America, N.A.

12/12/2019



Stipulation and Order for Dismissal

Filed by: Plaintiff Airmotive Investments LLC
Stipulation and Order to Dismiss and for Final Judgment

12/18/2019



Notice of Entry of Order

Filed By: Plaintiff Airmotive Investments LLC
Notice of Entry of Order

12/19/2019



Order to Statistically Close Case

Civil Order to Statistically Close Case

01/02/2020



Notice of Appeal

Filed By: Plaintiff Airmotive Investments LLC
Notice of Appeal

01/02/2020



Case Appeal Statement

Filed By: Plaintiff Airmotive Investments LLC
Case Appeal Statement

DISPOSITIONS

10/10/2013

Order of Dismissal With Prejudice (Judicial Officer: Miley, Stefany)

Debtors: Las Vegas Development Group LLC (Plaintiff)

Creditors: Bank of America (Defendant)

Judgment: 10/10/2013, Docketed: 12/03/2013

04/09/2019

Order of Dismissal (Judicial Officer: Miley, Stefany)

Debtors: Las Vegas Development Group LLC (Plaintiff)

Creditors: Bank of America (Defendant)

Judgment: 04/09/2019, Docketed: 04/09/2019

Debtors: Las Vegas Development Group LLC (Counter Defendant)

Creditors: Bank of America N A (Counter Claimant)

Judgment: 04/09/2019, Docketed: 04/09/2019

10/17/2019

Summary Judgment (Judicial Officer: Miley, Stefany)

Debtors: Airmotive Investments LLC (Plaintiff)

Creditors: Bank of America (Defendant), Genevieve Uniza-Enriquez (Defendant)

Judgment: 10/17/2019, Docketed: 10/18/2019

Comment: Certain Claim

Debtors: Palo Verde Ranch HOA (Cross Defendant), Absolute Collection Services LLC (Cross Defendant)

Creditors: Bank of America N A (Cross Claimant)

Judgment: 10/17/2019, Docketed: 10/18/2019

Comment: Certain Claim

11/25/2019

Order (Judicial Officer: Miley, Stefany)

CASE SUMMARY

CASE NO. A-12-654840-C

Debtors: Airmotive Investments LLC (Plaintiff)
Creditors: Bank of America (Defendant)
Judgment: 11/25/2019, Docketed: 11/26/2019
Total Judgment: 2,761.34

12/12/2019

Order of Dismissal With Prejudice (Judicial Officer: Miley, Stefany)

Debtors: Bank of America (Defendant)
Creditors: Airmotive Investments LLC (Plaintiff)
Judgment: 12/12/2019, Docketed: 12/13/2019
Debtors: Bank of America N A (Counter Claimant)
Creditors: Las Vegas Development Group LLC (Counter Defendant)
Judgment: 12/12/2019, Docketed: 12/13/2019
Debtors: Palo Verde Ranch HOA (Cross Defendant), Absolute Collection Services LLC (Cross Defendant)
Creditors: Bank of America N A (Cross Claimant)
Judgment: 12/12/2019, Docketed: 12/13/2019

12/12/2019

Order of Dismissal Without Prejudice (Judicial Officer: Miley, Stefany)

Debtors: Genevieve Uniza-Enriquez (Defendant)
Creditors: Airmotive Investments LLC (Plaintiff)
Judgment: 12/12/2019, Docketed: 12/13/2019

HEARINGS

04/10/2012



Motion to Dismiss (9:30 AM) (Judicial Officer: Miley, Stefany)

Defendants, Bank of America and BAC Home Loans Servicing LP Motion to Dismiss, or in the Alternative, for More Definite Statement

Motion Denied;

Journal Entry Details:

Nicholas Boylan, Esq., present on behalf of Plaintiff telephonically. Savera Sandhu-Smith, Esq., present on behalf of Defendants. Ms. Sandhu-Smith argued the standard here is set under Rule 8, and while the Opposition doesn't indicate that the elements are set forth, there is no legal basis to support the quiet title claim which is the only claim being brought forth. Ms. Sandhu-Smith further argued the Complaint is totally devoid of how Las Vegas Development acquired the property, when it acquired it and took possession of it and if there is any deed of trust. Ms. Sandhu-Smith additionally argued the Defense cannot provide an answer that properly responds to the Complaint as it stands. Further argument by Ms. Sandhu-Smith. Mr. Boylan argued it is a quiet title claim, not a fraud claim and so there shouldn't be a requirement of how, when, where and who. Mr. Boylan further argued he thinks this is a delay going on and indicated he has requested Counsel to provide documents showing they have the note and mortgage lien on this property which they have been unable to do. Mr. Boylan further argued he would submit the pleading is sufficient. Additional argument by counsel. COURT stated its findings and ORDERED, Motion DENIED advising the Complaint is sufficient for the Defense to answer. Upon Court's inquiry, Ms. Sandhu-Smith advised an answer can be filed by Friday. COURT FURTHER ORDERED, Defr's answer is due by 4/13/12. ;

10/16/2012



Motion to Amend Complaint (9:30 AM) (Judicial Officer: Miley, Stefany)

Plaintiff's Motion to Amend Complaint

Motion Granted;

Journal Entry Details:

Nicholas Boylan, Esq., present telephonically on behalf of Plaintiff. Christopher Henderson, Esq., and Laraine Burrell, Esq., present on behalf of Defendants. Mr. Boylan advised he is seeking to add a second cause of action for violation of NRS 107.080. Colloquy regarding upcoming Defr's Motion for Summary Judgment. Mr. Henderson argued Plaintiff's lawsuit is to quiet title and essentially stall the foreclosure process; Defrs have a valid, recorded assignment of first deed of trust and Defrs initiated the foreclosure process even before the Home Owners Association sale. Further arguments by Mr. Henderson. Mr. Boylan argued Defrs became aware Plaintiff became a recorded owner and attempted to start the process again; this cause of action indicates Defrs can't proceed with the foreclosure action because they haven't done it properly. Additional arguments by Mr. Henderson and Mr. Boylan. COURT FINDS the Rules do indicate leave shall be freely given and there has been enough showing by the Plaintiff to amend the Complaint and ORDERED, Motion GRANTED. Further colloquy regarding Defr's

CASE SUMMARY

CASE NO. A-12-654840-C

Motion for Summary Judgment. ;

10/23/2012



Discovery Conference (9:00 AM) (Judicial Officer: Bulla, Bonnie)

Scheduling Order Will Issue;

Journal Entry Details:

Counsel indicated hopeful on settlement. Counsel anticipate 1 - 2 days for trial re: Quiet Title. No settlement conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 4/01/13; adding parties, amended pleadings, and initial expert disclosures DUE 12/31/12; rebuttal expert disclosures DUE 1/30/13; dispositive motions TO BE FILED BY 4/29/13. Scheduling Order will issue.;

11/27/2012

CANCELED Motion for Summary Judgment (9:30 AM) (Judicial Officer: Miley, Stefany)

Vacated - per Clerk

Deft's Motion for Summary Judgment

08/20/2013

CANCELED Calendar Call (11:00 AM) (Judicial Officer: Miley, Stefany)

Vacated

08/26/2013

CANCELED Jury Trial (1:00 PM) (Judicial Officer: Miley, Stefany)

Vacated

09/17/2013



Motion to Dismiss (9:30 AM) (Judicial Officer: Miley, Stefany)

Bank of America, N.A.'s Motion to Dismiss Second Amended Complaint

Motion Granted;

Journal Entry Details:

Marilyn Fine, Esq., present on behalf of Plaintiff. Natalie Winslow, Esq., present on behalf of Defendant. Upon Court's inquiry, Ms. Fine confirmed the binder the Court received this morning was the Motion, Opposition, and Reply and not a supplement. Arguments by counsel. COURT ADOPTED the Findings of Fact and Conclusions of Law as set forth in Deft's Brief, stated its FINDINGS and ORDERED, Motion GRANTED. COURT FURTHER ORDERED, this is a final decision with respect to Bank of America only. Defense to prepare the order with findings of fact and conclusions of law for review by Plaintiff. ;

12/03/2013



Motion For Reconsideration (9:30 AM) (Judicial Officer: Miley, Stefany)

12/03/2013, 12/17/2013

Plaintiff's Motion For Reconsideration

Matter Continued;

Motion Denied;

Journal Entry Details:

Jacob Bundick, Esq., and Natalie Winslow, Esq., present on behalf of Defendant Bank of America. Based on the papers and pleading therein, COURT stated its FINDINGS and ORDERED, Motion DENIED. Defense to prepare the order for review by Plaintiff. ;

Matter Continued;

Motion Denied;

Journal Entry Details:

Timothy Rhoda, Esq., present on behalf of Plaintiff. Natalie Winslow, Esq., present on behalf of Defendant. Mr. Rhoda advised the parties agreed to continue the matter; COURT SO ORDERED. CONTINUED TO: 12/17/13 9:30 AM ;

02/24/2015

CANCELED Status Check (9:30 AM) (Judicial Officer: Miley, Stefany)

Vacated - per Stipulation and Order

Supreme Court Order

07/14/2015



Motion to Dismiss (9:30 AM) (Judicial Officer: Miley, Stefany)

Plaintiff's Motion to Dismiss Counterclaim

Motion Denied; Plaintiff's Motion to Dismiss Counterclaim

Journal Entry Details:

Court stated there seemed important parties were missing. Ms. Schmidt advised they have quiet title, noted they could not assert against them and stated they were attempting to determine title. Court noted the validity of the sale was being contested, whether they were

CASE SUMMARY

CASE NO. A-12-654840-C

able to cure and stated it was not sure the Plaintiff could give information in the Court Claim. Argument by Ms. Schmidt noting motion might be premature and requested case proceed with discovery. Counsel then stated if the Court believes there to be validity, they would move for leave to file amended counter claim. Mr. Croteau believes the defense needed to amend their counter claim, argued disclaimed interest and noted defense is stating their deed of trust was never extinguished. Counsel then argued the purchase had been done properly and noted the defense is wanting the Plaintiff to bring in the HOA. Ms. Schmidt advised her client does not have a claim with the HOA and argued deed of trust. **COURT ORDERED, motion DENIED. FURTHER, the HOA which did the foreclosure sale will be brought in as a part. Mr. Croteau to prepare the order and provide to opposing counsel for review prior to submitting to the Court for signature.;**

09/15/2015



Motion for Leave (9:30 AM) (Judicial Officer: Bixler, James)

Bank of America's Motion for Leave to Amend its Answer to Add an Affirmative Defense and Counterclaim and to Join Parties to Add Claims

Motion Granted; Bank of America's Motion for Leave to Amend its Answer to Add an Affirmative Defense and Counterclaim and to Join Parties to Add Claims

Journal Entry Details:

Mr. Croteau advised this is the oldest HOA case, noted they would like to file an Amended Complaint and defense would file an Amended Answer along with Counter Claim. COURT ORDERED, motion GRANTED. Mr. Croteau to prepare the order and provide to opposing counsel for review prior to submitting to the Court for signature.;

06/14/2016

CANCELED Status Check: Status of Case (9:30 AM) (Judicial Officer: Miley, Stefany)
Vacated - Moot

01/10/2017



Status Check (9:30 AM) (Judicial Officer: Miley, Stefany)

Status Check Re: Case Status

Matter Heard; Status Check Re: Case Status

Journal Entry Details:

Court there had been no activity since May of 2016. Mr. Garner advised there would be a filing of an Amended Joint Case Conference and stated parties have had discussions. COURT ORDERED, matter SET for status check. Matter recalled. Mr. Croteau present. Court advised of setting and representations made by defense counsel. Argument by counsel. 02-07-17 9:30 AM STATUS CHECK: AMENDED JCCR;

02/07/2017



Status Check (9:30 AM) (Judicial Officer: Miley, Stefany)

Status Check: Amended JCCR

Matter Heard; Status Check: Amended JCCR

Journal Entry Details:

Court noted no further action was needed by this Court, however, it believed a Second Amended Joint Case Conference Report was needed. Court further noted it will look into whether there is a need for waiver of the Five Year Rule.;

09/26/2017



Status Check (9:30 AM) (Judicial Officer: Miley, Stefany)

Status Check Re: Case Status, Scheduling Order and Waiving the Five Year Rule

Matter Heard; Status Check Re: Case Status, Scheduling Order and Waiving the Five Year Rule

Journal Entry Details:

Ms. Winslow advised counsel handling this case is out on medical leave and stated they were going through the case file to what is happening. Court inquired of Second Amended Joint Case Conference Report. Counsel advised it had been filed months ago and noted they met with Discovery Commissioner. Court noted parties needed to provide a waiver of the 5 year rule and stated the stipulation was needed within 30 days. Colloquy regarding case status. Court advised it would speak with the Chief Judge and advise the parties of the outcome. Court also noted the case might be all right due to the appeal. Ms. Winslow agreed a stipulation would help.;

03/20/2018



Status Check (9:30 AM) (Judicial Officer: Miley, Stefany)




Case Status - See Dec 22, 2017 Notice Emailed to Parties

Matter Heard; Case Status - See Dec 22, 2017 Notice Emailed to Parties

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-12-654840-C

	<p>Journal Entry Details: <i>Order Waiving Five Year Rule SIGNED IN OPEN COURT and returned to counsel for filing. Court inquired whether discovery had been completed. Ms. Combs requested discovery be re-opened briefly. Court directed parties to contact Discovery Commissioner for updated trial schedule.;</i></p>
09/11/2018	<p> Status Check (9:30 AM) (Judicial Officer: Miley, Stefany) <i>STATUS CHECK RE CASE STATUS - RESET TRIAL DATE</i> Matter Heard; STATUS CHECK RE CASE STATUS - RESET TRIAL DATE Journal Entry Details: <i>Mr. Rhoda advised the bank had recently requested discovery be re-opened which they have agreed to waive the 5 Year Rule and noted they are preparing a stipulation. COURT SO NOTED. Court advised new schedule and trial date must be included in the trial order.;</i></p>
09/10/2019	<p> Motion for Summary Judgment (9:00 AM) (Judicial Officer: Miley, Stefany) 09/10/2019, 10/10/2019 <i>Bank of America, N.A.'S Motion for Summary Judgment</i> Matter Continued; Bank of America, N.A.'S Motion for Summary Judgment Granted; Matter Continued; Bank of America, N.A.'S Motion for Summary Judgment Granted; Journal Entry Details: <i>Court noted issue is the applicability of the Federal Foreclosure Bar and whether the property was in fact owned by Fannie at the time of the subject HOA sale and whether the Federal Foreclosure Bar would apply. Following arguments by counsel, COURT ORDERED, matter CONTINUED and decision will issue. CONTINUED TO: 10/10/19 (CHAMBERS) 10/10/19 DECISION (CHAMBERS);</i></p>
10/10/2019	<p>Decision (3:00 AM) (Judicial Officer: Miley, Stefany) Decision Made;</p>
10/10/2019	<p> All Pending Motions (3:00 AM) (Judicial Officer: Miley, Stefany) <i>Decision; Bank of America, N.A.'S Motion for Summary Judgment</i> Minute Order - No Hearing Held; Decision; Bank of America, N.A.'S Motion for Summary Judgment Journal Entry Details: <i>Pursuant to Decision and Order filed on October 17, 2019, COURT ORDERED, motion GRANTED. FURTHER, Defendant's motion for Summary Judgment as to Defendant's Counter Claims for quiet title and declaratory relief is GRANTED.;</i></p>
11/05/2019	<p>CANCELED Calendar Call (11:00 AM) (Judicial Officer: Miley, Stefany) <i>Vacated - per Order</i></p>
11/12/2019	<p>CANCELED Bench Trial (1:00 PM) (Judicial Officer: Miley, Stefany) <i>Vacated - per Order</i></p>

DATE

FINANCIAL INFORMATION

Defendant BAC Home Loans Servicing LP	
Total Charges	30.00
Total Payments and Credits	30.00
Balance Due as of 1/6/2020	0.00
Cross Claimant Bank of America N A	
Total Charges	200.00
Total Payments and Credits	200.00
Balance Due as of 1/6/2020	0.00
Counter Defendant Las Vegas Development Group LLC	
Total Charges	325.50
Total Payments and Credits	325.50
Balance Due as of 1/6/2020	0.00

CASE SUMMARY

CASE NO. A-12-654840-C

Defendant Bank of America

Total Charges

423.00

Total Payments and Credits

423.00

Balance Due as of 1/6/2020

0.00

Plaintiff Airmotive Investments LLC

Total Charges

24.00

Total Payments and Credits

24.00

Balance Due as of 1/6/2020

0.00

CIVIL COVER SHEET

A-12-654840-C

____ County, Nevada

Case No. _____

XXIII

(Assigned by Clerk's Office)

I. Party Information

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

LAS VEGAS DEVELOPMENT GROUP, LLC, a Nevada Corporation

Attorney (name/address/phone):

Nicholas A. Boylan
450 West A Street, Suite 400
San Diego, CA 92101
(619) 696-6344

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

BANK OF AMERICA; BAC HOME LOANS SERVICING L.P.; and DOES 1 through 10, inclusive

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

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

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

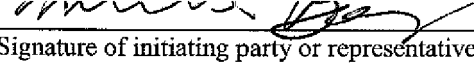
- ☐
- NRS Chapters 78-88
-
- ☐
- Commodities (NRS 90)
-
- ☐
- Securities (NRS 90)

- ☐
- Investments (NRS 104 Art. 8)
-
- ☐
- Deceptive Trade Practices (NRS 598)
-
- ☐
- Trademarks (NRS 600A)

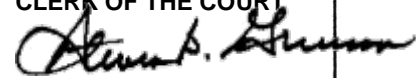
- ☐
- Enhanced Case Mgmt/Business
-
- ☐
- Other Business Court Matters

Date

1/17/12


Signature of initiating party or representative

See other side for family-related case filings.



DISTRICT COURT
CLARK COUNTY, NEVADA

AIRMOTIVE INVESTMENTS,
LLC, a Nevada limited liability
Company,

Plaintiff,

v.

BANK OF AMERICA,
GENEVIEVE UNIZA-ENRIQUEZ,
DOES 1 THROUGH 20, AND
ROE CORPORATIONS 1
THROUGH 20, INCLUSIVE,

Defendants.

CASE NO.: A-12-654840-C

DEPARTMENT XXIII

DECISION & ORDER

I. INTRODUCTION

This matter came before the Court on September 10, 2019 for defendant Bank of America's Motion for Summary Judgment against plaintiff Airmotive Investments, LLC's claims for quiet title and declaratory relief. Bank of America also requests Summary Judgment in favor of its own counterclaims for quiet title and declaratory relief against Airmotive Investments, LLC. Defendant Bank of America filed its Motion for Summary Judgment on April 5, 2019. Plaintiff Airmotive Investments, LLC filed its opposition on July 17, 2019. Defendant Bank of America filed its Reply on September 5, 2019.

Bank of America's Reply cites the Nevada Supreme Court's recent binding precedent in *Daisy Trust v. Wells Fargo* in support of its Motion for Summary Judgment. *See infra* p. 4. At the hearing, Plaintiff conceded that per the *Daisy Trust* holding, Fannie Mae does not need to be the beneficiary of record to establish its ownership interest. While it was undisputed the real property in question was owned by Fannie Mae, Plaintiff

STEFANY A. MILEY
DISTRICT JUDGE

DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

1
2 asserted that defendant Bank of America's Affirmative Defense of the Federal Foreclosure
3 Bar was nonetheless barred, based upon the Statute of Limitations. Furthermore, Plaintiff
4 asserted that Bank of America's counterclaims were also barred by the Statute of
5 Limitations.

6 Having considered the papers on file and the relevant law, the Court enters the
7 following Decision and Order on defendant Bank of America's Motion for Summary
8 Judgment against plaintiff Airmotive Investments, LLC's claims for quiet title and
9 declaratory relief, as well as Bank of America's counterclaims for quiet title and
10 declaratory relief against Airmotive Investments, LLC.
11

12 II. STATEMENT OF FACTS

13 At issue before the Court is real property known as 6279 Downpour Court, Las
14 Vegas, Nevada 89110 (Property). A Deed of Trust listing defendant Genevieve Uniza-
15 Enriquez as the borrower was executed on June 23, 2006, and was recorded on June 30,
16 2006. Fannie Mae became the successor to the Lender and acquired ownership of the Deed
17 of Trust in August 2006 by purchasing the Loan.
18

19 On April 12, 2011, the Property was purchased by Las Vegas Development Group,
20 LLC at a Home Owner's Association (HOA) Foreclosure Sale in accordance with N.R.S.
21 116.3116. Fannie Mae maintained its ownership at the time of the HOA Sale and Bank of
22 America was the servicer of the Loan for Fannie Mae. At no time did Fannie Mae consent
23 to the sale extinguishing or foreclosing its interest in the Property.
24

25 Las Vegas Development Group, LLC filed the instant Complaint on January 17,
26 2012, filed a Second Amended Complaint on August 1, 2013, and filed its Third Amended
27 Complaint on February 29, 2016. Defendant Bank of America first claimed the affirmative
28 defense of The Federal Foreclosure Bar in its Answer to the Second Amended Complaint

1
2 on March 26, 2015. Bank of America also asserted its counterclaims against Plaintiff at
3 that time.

4 Las Vegas Development Group, LLC conveyed its interest in the Property to
5 Plaintiff through a recorded Grant Deed on March 7, 2017.

6 III. DISCUSSION

7 A. Legal Standard

8 Rule 56(a) of the Nevada Rules of Civil Procedure governs Motions for Summary
9 Judgment. NRCp 56(a). The pleadings, depositions, answers to interrogatories,
10 admissions, and affidavits, if any, that are properly before the court must demonstrate that
11 no genuine issue of material fact exists, and the moving party is entitled to judgment as a
12 matter of law. *See Id.*; *Wood v. Safeway*, 121 P.3d 1026 (Nev. 2005). A court must accept
13 the nonmoving party's properly supported factual allegations as true, and it must draw all
14 reasonable inferences in the nonmoving party's favor. *Michaels v. Sudeck*, 810 P.2d 1212,
15 1213 (Nev. 1991).
16
17

18 In determining whether a fact is material, the court shall look to the substantive law
19 of the claims and only disputes over facts that might affect the outcome of the suit under
20 the governing law will properly preclude the entry of summary judgment. *Wood*, 121 P.3d
21 at 1030. Nevada courts no longer follow the "slightest doubt" standard that applied before
22 *Wood*; the courts follow the federal summary judgment standard. *Id.* at 1031, 1037.
23

24 B. Defendant Bank of America's Motion for Summary Judgment against 25 plaintiff Airmotive Investments, LLC's claims for quiet title and declaratory 26 relief

27 1. The Federal Foreclosure Bar Applies

28 HOAs are provided with a "superpriority" lien pursuant to NRS 116.3116(2) that,
when properly foreclosed, extinguishes a first deed of trust. *SFR Investments Pool 1, LLC*

1
2 v. *U.S. Bank, N.A.*, 130 Nev. 742 (Nev. 2014); NRS 116.3116(2). Commonly known as the
3 Federal Foreclosure Bar, 12 U.S.C. § 4617 (HERA) has a provision stating “No property
4 of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale
5 without the consent of the Agency, nor shall any involuntary lien attach to the property of
6 the Agency.” 12 U.S.C. § 4617(j)(3) (2012). This preempts NRS 116.3116(2) and
7 prevents an HOA foreclosure sale from extinguishing the first deed of trust in those
8 circumstances. *Saticoy Bay LLC Series 9641 Christine View v. Federal National Mortgage*
9 *Ass’n*, 417 P.3d 363, 367-68 (Nev. 2018).

10
11 After Bank of America filed its Motion for Summary Judgment, but before the
12 present hearing before the Court, the Nevada Supreme Court provided further guidance to
13 the District Courts on claims involving Fannie Mae or Freddie Mac. In *Daisy Trust v.*
14 *Wells Fargo Bank, N.A.* the Nevada Supreme Court held that Fannie Mae and Freddie Mac
15 need not be the beneficiary of record to establish their ownership interests. *Daisy Tr. V.*
16 *Wells Fargo Bank, N.A.*, 445 P.3d 846, 849 (Nev. 2019). Furthermore, the deed of trust
17 beneficiary is not required to produce the loan servicing agreement or original promissory
18 note in order to establish that Fannie Mae or Freddie Mac owned the loan at the time of the
19 foreclosure sale, and that the Federal Foreclosure Bar prevents any sale from extinguishing
20 the deed of trust. *Id.* at 849-50. The Nevada Supreme Court has affirmed a recent summary
21 judgment decision from this Court based on the *Daisy Trust* holding. *RH Kids, LLC v.*
22 *Nationstar Mortg., LLC*, No. 76300, 2019 WL 4390764, at *1 (Nev. Sept. 12, 2019).

23
24
25 **2. Neither Bank of America’s Federal Foreclosure Bar Defense nor its**
26 **counterclaims are untimely.**

27 Any action brought by FHFA is governed by the statute of limitations set forth in
28 HERA. These timing requirements are stated as follows:

1
2 (12) Statute of limitations for actions brought by conservator or receiver

3 (A) In general

4 Notwithstanding any provision of any contract, the applicable statute of
5 limitations with regard to any action brought by the Agency as conservator
6 or receiver shall be—

7 (i) in the case of any contract claim, the longer of—

8 (I) the 6-year period beginning on the date on which the claim
9 accrues; or

10 (II) the period applicable under State law; and

11 (ii) in the case of any tort claim, the longer of—

12 (I) the 3-year period beginning on the date on which the claim
13 accrues; or

14 (II) the period applicable under State law.

15 12 U.S.C. §4617(b)(12). In the case of contract claims, FHFA must bring suit within six
16 years from the time the claim accrued. FHFA must bring claims within three years from
17 the time the claim accrued for any torts claims.

18 In Nevada, NRS 11.190 governs the statute of limitations for most claims arising
19 under Nevada law. Relevant here, NRS 11.190 defines the statute of limitations as three
20 years for “an action upon a liability created by statute, other than a penalty or forfeiture.”
21 NRS 11.190(3)(a). The Nevada Revised Statutes apply a four-year statute of limitation for
22 “an action for relief, not hereinbefore provided for.” NRS 11.220. This “catch-all” time
23 frame has been applied for equitable quiet-title claims brought by Freddie Mac, rather
24 than the three-year statute of limitation in NRS 11.190(3)(a). *See Fed. House. Fin. Agency*
25 *v. LN Mgmt. LLC, Series 2937 Barboursville*, 369 F. Supp. 3d 1101, 1111 (D. Nev. 2019).

26 A five-year period exists under NRS 11.070 and NRS 11.080, both statutes relating
27 to the possession of real property. NRS 11.070 states:

28 No cause of action or defense to an action, **founded upon the title to real
property**, or to rents or to services out of the same, shall be effectual,
unless it appears **that the person prosecuting the action or making the
defense**, or under whose title the action is prosecuted or the defense is
made, or the ancestor, predecessor, **or grantor of such person**, was seized
or possessed of the premises in question within 5 years before the

1
2 committing of the act in respect to which said action is prosecuted or
3 defense made.

4 NRS 11.070 (emphases added). NRS 1.080 states:

5 No action for the recovery of real property, or for the recovery of the
6 possession thereof other than mining claims, shall be maintained, unless it
7 appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor
8 was seized or possessed of the premises in question, within 5 years before
9 the commencement thereof.

10 NRS 11.080.

11 Plaintiff does not deny that the *Daisy Trust* holding applies to the present facts.

12 Plaintiff does, however, assert that defendant Bank of America's Federal Foreclosure Bar
13 defense is untimely. Bank of America filed its Federal Foreclosure Bar defense along with
14 its counterclaims in March 2015, just under four years after the HOA Sale in April 2011.
15 Plaintiff argues that Bank of America's raised defense is based upon neither contract nor
16 tort. Rather, being premised upon statute, the Federal Foreclosure Bar is subject to a three-
17 year statute of limitations pursuant to NRS 11.190. Because neither Bank of America nor
18 Fannie Mae asserted the Federal Foreclosure Bar as a defense until March 26, 2015, more
19 than three years after the HOA Foreclosure Sale, Plaintiff believes this defense is
20 untimely. Plaintiff asks the Court to deny Bank of America's Motion for Summary
21 Judgment against Plaintiff's claims for that reason.

22 Plaintiff next argues that because Bank of America's counterclaims are for
23 declaratory relief, and are premised upon HERA, they are also subject to a three-year
24 statute of limitations. Like the Federal Foreclosure Bar defense, the counterclaims were
25 not asserted until March 26, 2015, more than three years after the HOA Foreclosure Sale.
26 Because these claims are premised upon a statute they are subject to the three-year statute
27 of limitations allowed under NRS 11.190 and this Court should deny Bank of America's
28 Motion for Summary Judgment in regard to its counterclaims.

1
2 In response Bank of America claims that its invocation of the Federal Foreclosure
3 Bar as a defense to Plaintiff's claims is not subject to a statute of limitations period.
4 Raising the defense against a quiet title claim such as this one is not itself a stand-alone
5 claim. *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 757-58
6 (Nev. 2017) (Recognizing that arguing property owned by Freddie Mac is not subject to
7 foreclosure while it is in conservatorship under federal law based on the Supremacy
8 Clause is not akin to asserting a cause of action). Bank of America further asserts that if
9 any statute of limitations applies, it would be the six-year limitation found in HERA. 12
10 U.S.C. § 4617(b)(12)(A).
11

12 Bank of America points out that while a quiet-title claim does not fit neatly into the
13 "contract" or "tort" category provided by HERA, it is closer to the contract category
14 because it seeks to validate a contractually created interest in the Property. The
15 counterclaims and defenses arise from the contractual relationship between the borrower
16 and the lender when creating the loan, which was purchased by Fannie Mae in August
17 2006. "Because a mortgage lien is an interest in property created by contract, an action to
18 enforce that lien is clearly a contract action." *Smith v. FDIC*, 61 F.3d 1552, 1561 (11th Cir.
19 1995). This means that the invocation of the Federal Foreclosure Bar is subject to the six-
20 year statute of limitations prescribed by HERA and Bank of America's defense is timely.
21

22 Further, even if the Court cannot classify Bank of America's quiet-title
23 counterclaim as either a tort or contract claim, Bank of America points this Court to two
24 Ninth Circuit cases as support for its argument that the longer statute of limitations should
25 apply in the event of ambiguity. When there is a substantial question regarding which
26 statute of limitations should apply between two conflicting statutes, the court should apply
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2 (9th Cir. 1989). More recently in *Wise v. Verizon Communications*, the Ninth Circuit
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4 statute of limitations when presented with multiple potentially-applicable statutes. *Wise v.*
5 *Verizon Commc'ns, Inc.*, 600 F.3d 1180, 1187 n.2 (9th Cir. 2010). While neither of these
6 cases apply to HERA, the FDIC court evaluated very similar statute of limitations
7 provided to the FDIC in its capacity as a government agency where the FDIC's breach of
8 fiduciary duty claims were being characterized as either tort or contract.
9

10 Bank of America lastly asserts that at minimum, the statute of limitations would be
11 five or four years. The counterclaim brought by Bank of America is for quiet title. The
12 claims here satisfy the elements of NRS 11.070. The present dispute is whether the HOA
13 conveyed clear title to the buyer, or whether the deed of trust owned by Fannie Mae
14 continued to encumber the buyer's title. Fannie Mae's "grantor" is the former borrower,
15 who was "seized or possessed of the premises" once the home was sold at the HOA
16 Foreclosure Sale. And because NRS 11.070 applies to either a quiet title plaintiff, or to the
17 "grantor", the five-year statute of limitations would apply.
18

19 Bank of America also points to the broad statutory language of NRS 11.080 and
20 says that the Nevada Supreme Court has applied its five-year limitations in a case
21 involving a dispute between a lienholder and a purchaser at an HOA Foreclosure Sale. *See*
22 *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d
23 226, 232 (Nev. 2017). Finally, the four-year "catch-all" statute of limitations from NRS
24 11.220 should apply at a bare minimum. Because Bank of America asserted its Federal
25 Foreclosure Bar defense and filed its counterclaims within four years of the HOA
26 Foreclosure Sale, its actions are timely and the Court should grant Bank of America's
27
28

1 motion for summary judgment and enter a declaration that Plaintiff's interest in the
2 Property is subject to the deed of trust.
3

4 Based on the foregoing, COURT FINDS, there is no genuine issue of material fact
5 the subject loan was owned by Fannie Mae at the time of the HOA sale. Further, COURT
6 FINDS, there is no genuine issue of material fact Fannie Mae did not consent to the HOA
7 sale per NRS Chapter 116.
8

9 COURT FINDS, Defendant Bank of America's Federal Foreclosure Bar defense is
10 not barred by the statute of limitations. Plaintiff has failed to convince the Court that the
11 defense should be barred at all, as it is not a stand-alone action. Even if a statute of
12 limitations attaches to the action, COURT FINDS, that at a minimum the statute of
13 limitations would be the four-year period prescribed in NRS 11.220. Pursuant to the
14 Nevada Supreme Court's holding in *Daisy Trust v. Wells Fargo*, COURT FINDS, that the
15 Federal Foreclosure Bar precluded Plaintiff from acquiring title to the Property free and
16 clear of Fannie Mae's property interest.
17

18 Based on Fannie Mae's ownership of the Deed of Trust in the Property and Bank
19 of America timely asserting the Federal Foreclosure Bar, COURT ORDERS, defendant
20 Bank of America's Motion for Summary Judgment on plaintiff Airmotive Investments,
21 LLC's claims for quiet title and declaratory relief is GRANTED.
22

23 COURT FINDS, that defendant Bank of America's counterclaims for quiet title
24 and declaratory relief against plaintiff are timely as they fall within NRS 11.220's four-
25 year limitation period and were brought within four years from the HOA Foreclosure Sale.
26 Further, there are no genuine issues of material fact related to defendant Bank of
27 America's Motion for Summary Judgment on its counterclaims for quiet title and
28 declaratory relief against Plaintiff Airmotive Investments, LLC.

1
2 Therefore, COURT ORDERS, defendant Bank of America's Motion for Summary
3 Judgment on its counterclaims for quiet title and declaratory relief against Plaintiff is
4 GRANTED.

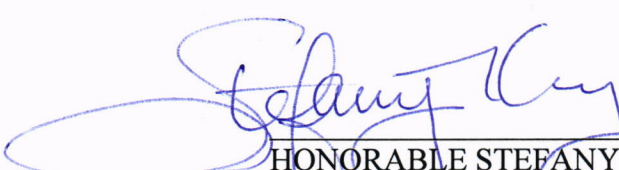
5 It is so ORDERED.

6
7 **IV. ORDER**

8 For the foregoing reasons, COURT HEREBY ORDERS, Defendant's Motion for
9 Summary Judgment as to Plaintiff's Claims for quiet title and declaratory relief is
10 GRANTED.

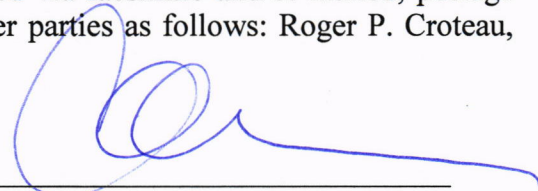
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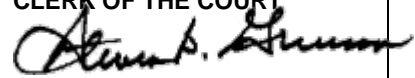
13
14 Dated this _____ day of September, 2018. 10-17-19

15
16
17 
18 HONORABLE STEFANY A. MILEY
19 DISTRICT COURT JUDGE
20 DEPARTMENT XXIII

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on or about the date signed, a copy of this Decision and
23 Order was electronically served and/or placed in the attorney's folders maintained
24 by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage
25 prepaid, by United States mail to the proper parties as follows: Roger P. Croteau,
26 Esq., and Darren T. Brenner, Esq.

27
28 By: 
Carmen Alper
Judicial Executive Assistant
Department XXIII



1 **NEO**
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13 *Attorneys for Bank of America, N.A.*

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

16 AIRMOTIVE INVESTMENTS, LLC, a Nevada
17 limited liability company,

18 Plaintiff,

19 v.

20 BANK OF AMERICA, N.A.; GENEVIEVE
21 UNIZA-ENRIQUEZ; DOES 1 through 20; and
22 ROE CORPORATIONS 1 through 20, inclusive

23 Defendants.

24 AND ALL RELATED CLAIMS.

Case No.: A-12-654840-C

Dept. No.: XXIII

**NOTICE OF ENTRY OF DECISION AND
ORDER**

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that a **DECISION AND ORDER** was entered on October 17,
2019, a copy of which is attached hereto as **Exhibit A**.

Dated: October 25, 2019.

AKERMAN LLP

/s/ Jared M. Sechrist

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

JARED M. SECHRIST, ESQ.

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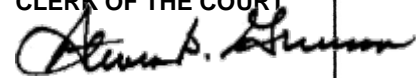
I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 25th day of October, 2019 and pursuant to NRC 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF DECISION & ORDER**, in the following manner:

Roger P. Croteau, Esq.
Timothy E. Rhoda, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd. #75
Las Vegas, NV 89102

/s/ Patricia Larsen

An employee of AKERMAN LLP

EXHIBIT A



DISTRICT COURT
CLARK COUNTY, NEVADA

AIRMOTIVE INVESTMENTS,
LLC, a Nevada limited liability
Company,

Plaintiff,

v.

BANK OF AMERICA,
GENEVIEVE UNIZA-ENRIQUEZ,
DOES 1 THROUGH 20, AND
ROE CORPORATIONS 1
THROUGH 20, INCLUSIVE,

Defendants.

CASE NO.: A-12-654840-C

DEPARTMENT XXIII

DECISION & ORDER

I. INTRODUCTION

This matter came before the Court on September 10, 2019 for defendant Bank of America's Motion for Summary Judgment against plaintiff Airmotive Investments, LLC's claims for quiet title and declaratory relief. Bank of America also requests Summary Judgment in favor of its own counterclaims for quiet title and declaratory relief against Airmotive Investments, LLC. Defendant Bank of America filed its Motion for Summary Judgment on April 5, 2019. Plaintiff Airmotive Investments, LLC filed its opposition on July 17, 2019. Defendant Bank of America filed its Reply on September 5, 2019.

Bank of America's Reply cites the Nevada Supreme Court's recent binding precedent in *Daisy Trust v. Wells Fargo* in support of its Motion for Summary Judgment. *See infra* p. 4. At the hearing, Plaintiff conceded that per the *Daisy Trust* holding, Fannie Mae does not need to be the beneficiary of record to establish its ownership interest. While it was undisputed the real property in question was owned by Fannie Mae, Plaintiff

STEFANY A. MILEY
DISTRICT JUDGE

DEPARTMENT TWENTY THREE
LAS VEGAS NV 89101-2408

1
2 asserted that defendant Bank of America's Affirmative Defense of the Federal Foreclosure
3 Bar was nonetheless barred, based upon the Statute of Limitations. Furthermore, Plaintiff
4 asserted that Bank of America's counterclaims were also barred by the Statute of
5 Limitations.

6 Having considered the papers on file and the relevant law, the Court enters the
7 following Decision and Order on defendant Bank of America's Motion for Summary
8 Judgment against plaintiff Airmotive Investments, LLC's claims for quiet title and
9 declaratory relief, as well as Bank of America's counterclaims for quiet title and
10 declaratory relief against Airmotive Investments, LLC.
11

12 II. STATEMENT OF FACTS

13 At issue before the Court is real property known as 6279 Downpour Court, Las
14 Vegas, Nevada 89110 (Property). A Deed of Trust listing defendant Genevieve Uniza-
15 Enriquez as the borrower was executed on June 23, 2006, and was recorded on June 30,
16 2006. Fannie Mae became the successor to the Lender and acquired ownership of the Deed
17 of Trust in August 2006 by purchasing the Loan.
18

19 On April 12, 2011, the Property was purchased by Las Vegas Development Group,
20 LLC at a Home Owner's Association (HOA) Foreclosure Sale in accordance with N.R.S.
21 116.3116. Fannie Mae maintained its ownership at the time of the HOA Sale and Bank of
22 America was the servicer of the Loan for Fannie Mae. At no time did Fannie Mae consent
23 to the sale extinguishing or foreclosing its interest in the Property.
24

25 Las Vegas Development Group, LLC filed the instant Complaint on January 17,
26 2012, filed a Second Amended Complaint on August 1, 2013, and filed its Third Amended
27 Complaint on February 29, 2016. Defendant Bank of America first claimed the affirmative
28 defense of The Federal Foreclosure Bar in its Answer to the Second Amended Complaint

1
2 on March 26, 2015. Bank of America also asserted its counterclaims against Plaintiff at
3 that time.

4 Las Vegas Development Group, LLC conveyed its interest in the Property to
5 Plaintiff through a recorded Grant Deed on March 7, 2017.

6 III. DISCUSSION

7 A. Legal Standard

8 Rule 56(a) of the Nevada Rules of Civil Procedure governs Motions for Summary
9 Judgment. NRCP 56(a). The pleadings, depositions, answers to interrogatories,
10 admissions, and affidavits, if any, that are properly before the court must demonstrate that
11 no genuine issue of material fact exists, and the moving party is entitled to judgment as a
12 matter of law. *See Id.*; *Wood v. Safeway*, 121 P.3d 1026 (Nev. 2005). A court must accept
13 the nonmoving party's properly supported factual allegations as true, and it must draw all
14 reasonable inferences in the nonmoving party's favor. *Michaels v. Sudeck*, 810 P.2d 1212,
15 1213 (Nev. 1991).
16
17

18 In determining whether a fact is material, the court shall look to the substantive law
19 of the claims and only disputes over facts that might affect the outcome of the suit under
20 the governing law will properly preclude the entry of summary judgment. *Wood*, 121 P.3d
21 at 1030. Nevada courts no longer follow the "slightest doubt" standard that applied before
22 *Wood*; the courts follow the federal summary judgment standard. *Id.* at 1031, 1037.
23

24 B. Defendant Bank of America's Motion for Summary Judgment against 25 plaintiff Airmotive Investments, LLC's claims for quiet title and declaratory 26 relief

27 1. The Federal Foreclosure Bar Applies

28 HOAs are provided with a "superpriority" lien pursuant to NRS 116.3116(2) that,
when properly foreclosed, extinguishes a first deed of trust. *SFR Investments Pool 1, LLC*

1
2 v. *U.S. Bank, N.A.*, 130 Nev. 742 (Nev. 2014); NRS 116.3116(2). Commonly known as the
3 Federal Foreclosure Bar, 12 U.S.C. § 4617 (HERA) has a provision stating “No property
4 of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale
5 without the consent of the Agency, nor shall any involuntary lien attach to the property of
6 the Agency.” 12 U.S.C. § 4617(j)(3) (2012). This preempts NRS 116.3116(2) and
7 prevents an HOA foreclosure sale from extinguishing the first deed of trust in those
8 circumstances. *Saticoy Bay LLC Series 9641 Christine View v. Federal National Mortgage*
9 *Ass’n*, 417 P.3d 363, 367-68 (Nev. 2018).

10
11 After Bank of America filed its Motion for Summary Judgment, but before the
12 present hearing before the Court, the Nevada Supreme Court provided further guidance to
13 the District Courts on claims involving Fannie Mae or Freddie Mac. In *Daisy Trust v.*
14 *Wells Fargo Bank, N.A.* the Nevada Supreme Court held that Fannie Mae and Freddie Mac
15 need not be the beneficiary of record to establish their ownership interests. *Daisy Tr. V.*
16 *Wells Fargo Bank, N.A.*, 445 P.3d 846, 849 (Nev. 2019). Furthermore, the deed of trust
17 beneficiary is not required to produce the loan servicing agreement or original promissory
18 note in order to establish that Fannie Mae or Freddie Mac owned the loan at the time of the
19 foreclosure sale, and that the Federal Foreclosure Bar prevents any sale from extinguishing
20 the deed of trust. *Id.* at 849-50. The Nevada Supreme Court has affirmed a recent summary
21 judgment decision from this Court based on the *Daisy Trust* holding. *RH Kids, LLC v.*
22 *Nationstar Mortg., LLC*, No. 76300, 2019 WL 4390764, at *1 (Nev. Sept. 12, 2019).

23
24
25 **2. Neither Bank of America’s Federal Foreclosure Bar Defense nor its**
26 **counterclaims are untimely.**

27 Any action brought by FHFA is governed by the statute of limitations set forth in
28 HERA. These timing requirements are stated as follows:

1
2 (12) Statute of limitations for actions brought by conservator or receiver

3 (A) In general

4 Notwithstanding any provision of any contract, the applicable statute of
5 limitations with regard to any action brought by the Agency as conservator
6 or receiver shall be—

7 (i) in the case of any contract claim, the longer of—

8 (I) the 6-year period beginning on the date on which the claim
9 accrues; or

10 (II) the period applicable under State law; and

11 (ii) in the case of any tort claim, the longer of—

12 (I) the 3-year period beginning on the date on which the claim
13 accrues; or

14 (II) the period applicable under State law.

15 12 U.S.C. §4617(b)(12). In the case of contract claims, FHFA must bring suit within six
16 years from the time the claim accrued. FHFA must bring claims within three years from
17 the time the claim accrued for any torts claims.

18 In Nevada, NRS 11.190 governs the statute of limitations for most claims arising
19 under Nevada law. Relevant here, NRS 11.190 defines the statute of limitations as three
20 years for “an action upon a liability created by statute, other than a penalty or forfeiture.”
21 NRS 11.190(3)(a). The Nevada Revised Statutes apply a four-year statute of limitation for
22 “an action for relief, not hereinbefore provided for.” NRS 11.220. This “catch-all” time
23 frame has been applied for equitable quiet-title claims brought by Freddie Mac, rather
24 than the three-year statute of limitation in NRS 11.190(3)(a). *See Fed. House. Fin. Agency*
25 *v. LN Mgmt. LLC, Series 2937 Barboursville*, 369 F. Supp. 3d 1101, 1111 (D. Nev. 2019).

26 A five-year period exists under NRS 11.070 and NRS 11.080, both statutes relating
27 to the possession of real property. NRS 11.070 states:

28 No cause of action or defense to an action, **founded upon the title to real
property**, or to rents or to services out of the same, shall be effectual,
unless it appears **that the person prosecuting the action or making the
defense**, or under whose title the action is prosecuted or the defense is
made, or the ancestor, predecessor, **or grantor of such person**, was seized
or possessed of the premises in question within 5 years before the

1
2 committing of the act in respect to which said action is prosecuted or
3 defense made.

4 NRS 11.070 (emphases added). NRS 1.080 states:

5 No action for the recovery of real property, or for the recovery of the
6 possession thereof other than mining claims, shall be maintained, unless it
7 appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor
8 was seized or possessed of the premises in question, within 5 years before
9 the commencement thereof.

10 NRS 11.080.

11 Plaintiff does not deny that the *Daisy Trust* holding applies to the present facts.

12 Plaintiff does, however, assert that defendant Bank of America's Federal Foreclosure Bar
13 defense is untimely. Bank of America filed its Federal Foreclosure Bar defense along with
14 its counterclaims in March 2015, just under four years after the HOA Sale in April 2011.
15 Plaintiff argues that Bank of America's raised defense is based upon neither contract nor
16 tort. Rather, being premised upon statute, the Federal Foreclosure Bar is subject to a three-
17 year statute of limitations pursuant to NRS 11.190. Because neither Bank of America nor
18 Fannie Mae asserted the Federal Foreclosure Bar as a defense until March 26, 2015, more
19 than three years after the HOA Foreclosure Sale, Plaintiff believes this defense is
20 untimely. Plaintiff asks the Court to deny Bank of America's Motion for Summary
21 Judgment against Plaintiff's claims for that reason.

22 Plaintiff next argues that because Bank of America's counterclaims are for
23 declaratory relief, and are premised upon HERA, they are also subject to a three-year
24 statute of limitations. Like the Federal Foreclosure Bar defense, the counterclaims were
25 not asserted until March 26, 2015, more than three years after the HOA Foreclosure Sale.
26 Because these claims are premised upon a statute they are subject to the three-year statute
27 of limitations allowed under NRS 11.190 and this Court should deny Bank of America's
28 Motion for Summary Judgment in regard to its counterclaims.

1
2 In response Bank of America claims that its invocation of the Federal Foreclosure
3 Bar as a defense to Plaintiff's claims is not subject to a statute of limitations period.
4 Raising the defense against a quiet title claim such as this one is not itself a stand-alone
5 claim. *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754, 757-58
6 (Nev. 2017) (Recognizing that arguing property owned by Freddie Mac is not subject to
7 foreclosure while it is in conservatorship under federal law based on the Supremacy
8 Clause is not akin to asserting a cause of action). Bank of America further asserts that if
9 any statute of limitations applies, it would be the six-year limitation found in HERA. 12
10 U.S.C. § 4617(b)(12)(A).
11

12 Bank of America points out that while a quiet-title claim does not fit neatly into the
13 "contract" or "tort" category provided by HERA, it is closer to the contract category
14 because it seeks to validate a contractually created interest in the Property. The
15 counterclaims and defenses arise from the contractual relationship between the borrower
16 and the lender when creating the loan, which was purchased by Fannie Mae in August
17 2006. "Because a mortgage lien is an interest in property created by contract, an action to
18 enforce that lien is clearly a contract action." *Smith v. FDIC*, 61 F.3d 1552, 1561 (11th Cir.
19 1995). This means that the invocation of the Federal Foreclosure Bar is subject to the six-
20 year statute of limitations prescribed by HERA and Bank of America's defense is timely.
21

22 Further, even if the Court cannot classify Bank of America's quiet-title
23 counterclaim as either a tort or contract claim, Bank of America points this Court to two
24 Ninth Circuit cases as support for its argument that the longer statute of limitations should
25 apply in the event of ambiguity. When there is a substantial question regarding which
26 statute of limitations should apply between two conflicting statutes, the court should apply
27 the longer. *FDIC v. Former Officers & Directors of Metro. Bank*, 884 F.2d 1304, 1307
28

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2 (9th Cir. 1989). More recently in *Wise v. Verizon Communications*, the Ninth Circuit
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10 Bank of America lastly asserts that at minimum, the statute of limitations would be
11 five or four years. The counterclaim brought by Bank of America is for quiet title. The
12 claims here satisfy the elements of NRS 11.070. The present dispute is whether the HOA
13 conveyed clear title to the buyer, or whether the deed of trust owned by Fannie Mae
14 continued to encumber the buyer's title. Fannie Mae's "grantor" is the former borrower,
15 who was "seized or possessed of the premises" once the home was sold at the HOA
16 Foreclosure Sale. And because NRS 11.070 applies to either a quiet title plaintiff, or to the
17 "grantor", the five-year statute of limitations would apply.
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19 Bank of America also points to the broad statutory language of NRS 11.080 and
20 says that the Nevada Supreme Court has applied its five-year limitations in a case
21 involving a dispute between a lienholder and a purchaser at an HOA Foreclosure Sale. *See*
22 *Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 388 P.3d
23 226, 232 (Nev. 2017). Finally, the four-year "catch-all" statute of limitations from NRS
24 11.220 should apply at a bare minimum. Because Bank of America asserted its Federal
25 Foreclosure Bar defense and filed its counterclaims within four years of the HOA
26 Foreclosure Sale, its actions are timely and the Court should grant Bank of America's
27
28

1 motion for summary judgment and enter a declaration that Plaintiff's interest in the
2 Property is subject to the deed of trust.
3

4 Based on the foregoing, COURT FINDS, there is no genuine issue of material fact
5 the subject loan was owned by Fannie Mae at the time of the HOA sale. Further, COURT
6 FINDS, there is no genuine issue of material fact Fannie Mae did not consent to the HOA
7 sale per NRS Chapter 116.
8

9 COURT FINDS, Defendant Bank of America's Federal Foreclosure Bar defense is
10 not barred by the statute of limitations. Plaintiff has failed to convince the Court that the
11 defense should be barred at all, as it is not a stand-alone action. Even if a statute of
12 limitations attaches to the action, COURT FINDS, that at a minimum the statute of
13 limitations would be the four-year period prescribed in NRS 11.220. Pursuant to the
14 Nevada Supreme Court's holding in *Daisy Trust v. Wells Fargo*, COURT FINDS, that the
15 Federal Foreclosure Bar precluded Plaintiff from acquiring title to the Property free and
16 clear of Fannie Mae's property interest.
17

18 Based on Fannie Mae's ownership of the Deed of Trust in the Property and Bank
19 of America timely asserting the Federal Foreclosure Bar, COURT ORDERS, defendant
20 Bank of America's Motion for Summary Judgment on plaintiff Airmotive Investments,
21 LLC's claims for quiet title and declaratory relief is GRANTED.
22

23 COURT FINDS, that defendant Bank of America's counterclaims for quiet title
24 and declaratory relief against plaintiff are timely as they fall within NRS 11.220's four-
25 year limitation period and were brought within four years from the HOA Foreclosure Sale.
26 Further, there are no genuine issues of material fact related to defendant Bank of
27 America's Motion for Summary Judgment on its counterclaims for quiet title and
28 declaratory relief against Plaintiff Airmotive Investments, LLC.

1
2 Therefore, COURT ORDERS, defendant Bank of America's Motion for Summary
3 Judgment on its counterclaims for quiet title and declaratory relief against Plaintiff is
4 GRANTED.

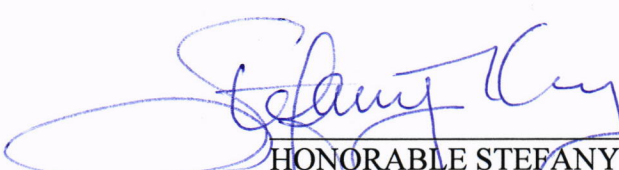
5 It is so ORDERED.

6
7 **IV. ORDER**

8 For the foregoing reasons, COURT HEREBY ORDERS, Defendant's Motion for
9 Summary Judgment as to Plaintiff's Claims for quiet title and declaratory relief is
10 GRANTED.

11 COURT FURTHER ORDERS, Defendant's Motion for Summary Judgment as to
12 Defendant's counterclaims for quiet title and declaratory relief is GRANTED.

13
14 Dated this ____ day of September, 2018. 10-17-19

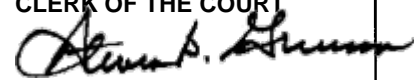
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18 HONORABLE STEFANY A. MILEY
19 DISTRICT COURT JUDGE
20 DEPARTMENT XXIII

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that on or about the date signed, a copy of this Decision and
23 Order was electronically served and/or placed in the attorney's folders maintained
24 by the Clerk of the Court and/or transmitted via facsimile and/or mailed, postage
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26 Esq., and Darren T. Brenner, Esq.

27
28 By: 

Carmen Alper
Judicial Executive Assistant
Department XXIII



ORDR

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Attorneys for Bank of America, N.A.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

AIRMOTIVE INVESTMENTS, LLC, a Nevada
limited liability company,

Plaintiff,

v.

BANK OF AMERICA, N.A.; GENEVIEVE
UNIZA-ENRIQUEZ; DOES 1 through 20, and
ROE CORPORATIONS 1 through 20, inclusive,

Defendants.

Case No.: A-12-654840-C

Dept. No.: XXIII

**ORDER AWARDING COSTS TO BANK
OF AMERICA, N.A.**

AND ALL RELATED CLAIMS.

Bank of America, N.A. (**BANA**) submitted a memorandum of costs on October 21, 2019. Airmotive Investments, LLC did not file a motion to retax or opposition to the memorandum of costs. This Court **FINDS** BANA's requested costs totaling \$2,761.34 were reasonable, necessary, and actually incurred. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049,


///

///

///

1 1054 (2015); *see* NRS 18.020(5). This Court **AWARDS** \$2,761.34 to BANA and **ORDERS**
2 Airmotive to pay the award to BANA through its counsel, Akerman LLP.


3
4 DATED 11-21-19, 2019.

5
6 
DISTRICT COURT JUDGE
Case Number: A-12-654840-C

7
8 **JUDGE STEFANY A. MILEY**

9 *Submitted by:*

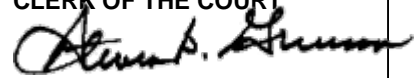
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14 *Attorneys for Bank of America, N.A.*

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



1 **NEO**
2 **DARREN T. BRENNER, ESQ.**
3 Nevada Bar No. 8386
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5 Nevada Bar No. 12016
6 **AKERMAN LLP**
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11 Email: darren.brenner@akerman.com
12 Email: scott.lachman@akerman.com

13 *Attorneys for Bank of America, N.A.*

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

AIRMOTIVE INVESTMENTS, LLC, a Nevada
limited liability company,

Plaintiff,

v.

BANK OF AMERICA, N.A.; GENEVIEVE
UNIZA-ENRIQUEZ; DOES 1 through 20, and
ROE CORPORATIONS 1 through 20, inclusive,

Defendants.

Case No.: A-12-654840-C

Dept. No.: XXIII

NOTICE OF ENTRY OF ORDER
AWARDING COSTS TO BANK OF
AMERICA, N.A.

AND ALL RELATED CLAIMS.

///

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1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that an **ORDER AWARDING COSTS TO BANK OF**
3 **AMERICA, N.A.** has been entered by this Court on the 25th day of November, 2019, in the above-
4 captioned matter. A copy of said Order is attached hereto as **Exhibit A.**

5
6 Dated: November 27, 2019

7
8 **AKERMAN LLP**

9 /s/ Scott R. Lachman, ESQ.
10 DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
11 SCOTT R. LACHMAN, ESQ.
Nevada Bar No. 12016
12 1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

13 *Attorneys for Bank of America, N.A.*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 27th day of November, 2019, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER AWARDING COSTS TO BANK OF AMERICA, N.A.**, in the following manner:

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

Roger P. Croteau, Esq.
Timothy E. Rhoda, Esq.
ROGER P. CROTEAU & ASSOCIATES, LTD.
2810 W. Charleston Blvd. #75
Las Vegas, NV 89102

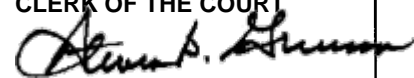
Attorneys for Airmotive Investments, LLC

/s/ Christine Weiss

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



ORDR

DARREN T. BRENNER, ESQ.

Nevada Bar No. 8386

SCOTT R. LACHMAN, ESQ.

Nevada Bar No. 12016

AKERMAN LLP

1635 Village Center Circle, Suite 200

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Email: darren.brenner@akerman.com

Email: scott.lachman@akerman.com

Attorneys for Bank of America, N.A.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

AIRMOTIVE INVESTMENTS, LLC, a Nevada
limited liability company,

Plaintiff,

v.

BANK OF AMERICA, N.A.; GENEVIEVE
UNIZA-ENRIQUEZ; DOES 1 through 20, and
ROE CORPORATIONS 1 through 20, inclusive,

Defendants.

Case No.: A-12-654840-C

Dept. No.: XXIII

**ORDER AWARDING COSTS TO BANK
OF AMERICA, N.A.**

AND ALL RELATED CLAIMS.

Bank of America, N.A. (**BANA**) submitted a memorandum of costs on October 21, 2019. Airmotive Investments, LLC did not file a motion to retax or opposition to the memorandum of costs. This Court **FINDS** BANA's requested costs totaling \$2,761.34 were reasonable, necessary, and actually incurred. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049,

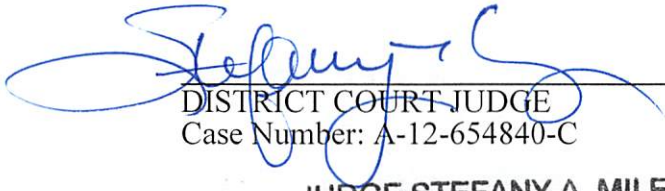

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1 1054 (2015); *see* NRS 18.020(5). This Court **AWARDS** \$2,761.34 to BANA and **ORDERS**
2 Airmotive to pay the award to BANA through its counsel, Akerman LLP.


3
4 DATED 11-21-19, 2019.

5
6 
7 DISTRICT COURT JUDGE
Case Number: A-12-654840-C 

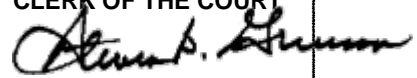
JUDGE STEFANY A. MILEY

8 *Submitted by:*

9 **AKERMAN LLP**

10 
11 DARREN T. BRENNER, ESQ.
12 Nevada Bar No. 8386
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14 Nevada Bar No. 12016
15 1635 Village Center Circle, Suite 200
16 Las Vegas, Nevada 89134

17 *Attorneys for Bank of America, N.A.*
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1 **SAO**
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4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
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8 Las Vegas, Nevada 89148
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10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 **Attorney for Plaintiff**
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 ***

13 AIRMOTIVE INVESTMENTS, LLC, a Nevada)
14 limited liability company,)

15 Plaintiff,)

Case No. A-12-654840-C
Dept. No. XXIII

16 vs.)

17 BANK OF AMERICA, GENEVIEVE UNIZA-)
18 ENRIQUEZ, DOES 1 THROUGH 20, AND)
19 ROE CORPORATIONS 1 THROUGH 20,)
20 INCLUSIVE,)

21 Defendants.)

22 BANK OF AMERICA, N.A.)

23 Counterclaimant,)

24 vs.)

25 AIRMOTIVE INVESTMENTS, LLC,)

26 Counter-Defendant.)

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

27 **STIPULATION AND ORDER TO DISMISS AND FOR FINAL JUDGMENT**

28 COMES NOW, Plaintiff/Counter-Defendant, AIRMOTIVE INVESTMENTS, LLC
("Airmotive"), and Defendant/Counterclaimant, BANK OF AMERICA, N.A. ("BANA"), by and

through their undersigned counsel of record, and hereby stipulate and agree as follows:

1. On October 17, 2019, this Court entered a Decision and Order granting BANA's Motion for Summary Judgment as to (1) Airmotive's claims for Quiet Title and Declaratory Relief and (2) BANA's counterclaims for Quiet Title and Declaratory Relief.
2. Remaining unresolved and pending are Airmotive's claims for unjust enrichment; equitable mortgage; temporary restraining order/injunctive relief; and slander of title, as well as BANA's counterclaim for unjust enrichment.
3. Airmotive's claims for unjust enrichment; equitable mortgage; temporary restraining order/injunctive relief; and slander of title, as well as BANA's counterclaim for unjust enrichment shall be dismissed with prejudice in their entirety.
4. Defendant, Genevieve Uniza-Enriquez, has neither answered nor appeared herein to date. Airmotive hereby dismisses its claims against said Defendant in their entirety without prejudice.
5. All claims herein having been fully adjudicated as to all parties, the instant action


may be closed.
DATED this 17 day of December, 2019.

ROGER P. CROTEAU &
ASSOCIATES, LTD.


TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
croteaulaw@croteaulaw.com
Attorney for Plaintiff/Counter-Defendant
**LAS VEGAS DEVELOPMENT GROUP,
LLC**

DATED this 4 day of December, 2019.

AKERMAN, LLP


SCOTT R. LACHMAN, ESQ.
Nevada Bar No. 12016
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
scott.lachman@akerman.com
Attorneys for Defendant/Counterclaimant
BANK OF AMERICA, N.A.

ORDER

Having reviewed the stipulation of the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED that Airmotive's claims for unjust enrichment; equitable mortgage; temporary restraining order/injunctive relief; and slander of title, as well as BANA's counterclaim for unjust enrichment shall be dismissed with prejudice in their entirety.

IT IS FURTHER ORDERED that Defendant, Genevieve Uniza-Enriquez, has neither answered nor appeared herein to date and that Airmotive's claims against said Defendant are hereby dismissed in their entirety without prejudice.

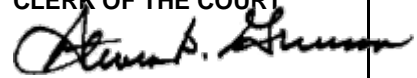
IT IS FURTHER ORDERED that, all claims at issue herein having been adjudicated, the instant action shall be closed.

Dated this _____ day of November, 2019.

12-10-19


DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY



NEOJ
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
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croteaulaw@croteaulaw.com
Attorney for Plaintiff
AIRMOTIVE INVESTMENTS, LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

AIRMOTIVE INVESTMENTS, LLC, a Nevada)
limited liability company,)

Plaintiff,)

Case No. A-12-654840-C
Dept. No. XXIII

vs.)

BANK OF AMERICA, GENEVIEVE UNIZA-)
ENRIQUEZ, DOES 1 THROUGH 20, AND)
ROE CORPORATIONS 1 THROUGH 20,)
INCLUSIVE,)

Defendants.)

BANK OF AMERICA, N.A.)

Counterclaimant,)

vs.)

AIRMOTIVE INVESTMENTS, LLC,)

Counter-Defendant.)

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that a **STIPULATION AND ORDER TO DISMISS AND**
FOR FINAL JUDGMENT was entered in the above-entitled matter on or about the 12th day of

//

1 December, 2019, a copy of which is attached hereto.

2 DATED this 18th day of December, 2019.

3 ROGER P. CROTEAU & ASSOCIATES, LTD.

4
5 /s/ Timothy E. Rhoda
6 ROGER P. CROTEAU, ESQ.
7 Nevada Bar No. 4958
8 TIMOTHY E. RHODA, ESQ.
9 Nevada Bar No. 7878
10 9120 West Post Road, Suite 100
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13 *Attorney for Plaintiff*
14 **AIRMOTIVE INVESTMENTS, LLC**
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 X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

 VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

 VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

 VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

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EXHIBIT 1

EXHIBIT 1



1 **SAO**
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11 croteaulaw@croteaulaw.com
12 **Attorney for Plaintiff**
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

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DISTRICT COURT
CLARK COUNTY, NEVADA

AIRMOTIVE INVESTMENTS, LLC, a Nevada)
limited liability company,)

Plaintiff,)

Case No. A-12-654840-C
Dept. No. XXIII

vs.)

BANK OF AMERICA, GENEVIEVE UNIZA-)
ENRIQUEZ, DOES 1 THROUGH 20, AND)
ROE CORPORATIONS 1 THROUGH 20,)
INCLUSIVE,)

Defendants.)

BANK OF AMERICA, N.A.)

Counterclaimant,)

vs.)

AIRMOTIVE INVESTMENTS, LLC,)

Counter-Defendant.)

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

STIPULATION AND ORDER TO DISMISS AND FOR FINAL JUDGMENT

COMES NOW, Plaintiff/Counter-Defendant, AIRMOTIVE INVESTMENTS, LLC
("Airmotive"), and Defendant/Counterclaimant, BANK OF AMERICA, N.A. ("BANA"), by and

1 through their undersigned counsel of record, and hereby stipulate and agree as follows:

- 2 1. On October 17, 2019, this Court entered a Decision and Order granting BANA's
- 3 Motion for Summary Judgment as to (1) Airmotive's claims for Quiet Title and
- 4 Declaratory Relief and (2) BANA's counterclaims for Quiet Title and Declaratory
- 5 Relief.
- 6 2. Remaining unresolved and pending are Airmotive's claims for unjust enrichment;
- 7 equitable mortgage; temporary restraining order/injunctive relief; and slander of
- 8 title, as well as BANA's counterclaim for unjust enrichment.
- 9 3. Airmotive's claims for unjust enrichment; equitable mortgage; temporary
- 10 restraining order/injunctive relief; and slander of title, as well as BANA's
- 11 counterclaim for unjust enrichment shall be dismissed with prejudice in their
- 12 entirety.
- 13 4. Defendant, Genevieve Uniza-Enriquez, has neither answered nor appeared herein
- 14 to date. Airmotive hereby dismisses its claims against said Defendant in their
- 15 entirety without prejudice.
- 16 5. All claims herein having been fully adjudicated as to all parties, the instant action

may be closed.

17 DATED this 17 day of December, 2019.

18 ROGER P. CROTEAU &
19 ASSOCIATES, LTD.

20
21
22 TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
23 Las Vegas, Nevada 89148
croteaulaw@croteaulaw.com
24 *Attorney for Plaintiff/Counter-Defendant*
25 **LAS VEGAS DEVELOPMENT GROUP,
LLC**

DATED this 4 day of December, 2019.

AKERMAN, LLP

26
27
28 SCOTT R. LACHMAN, ESQ.
Nevada Bar No. 12016
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
scott.lachman@akerman.com
Attorneys for Defendant/Counterclaimant
BANK OF AMERICA, N.A.

ORDER

Having reviewed the stipulation of the parties, and good cause appearing therefor,

IT IS HEREBY ORDERED that Airmotive's claims for unjust enrichment; equitable mortgage; temporary restraining order/injunctive relief; and slander of title, as well as BANA's counterclaim for unjust enrichment shall be dismissed with prejudice in their entirety.

IT IS FURTHER ORDERED that Defendant, Genevieve Uniza-Enriquez, has neither answered nor appeared herein to date and that Airmotive's claims against said Defendant are hereby dismissed in their entirety without prejudice.

IT IS FURTHER ORDERED that, all claims at issue herein having been adjudicated, the instant action shall be closed.

Dated this _____ day of November, 2019.

12-10-19


DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

April 10, 2012

A-12-654840-C	Airmotive Investments LLC, Plaintiff(s)
	vs.
	Bank of America, Defendant(s)

April 10, 2012

9:30 AM

Motion to Dismiss

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Anntoinette Naumec-Miller

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Nicholas Boylan, Esq., present on behalf of Plaintiff telephonically.
Savera Sandhu-Smith, Esq., present on behalf of Defendants.

Ms. Sandhu-Smith argued the standard here is set under Rule 8, and while the Opposition doesn't indicate that the elements are set forth, there is no legal basis to support the quiet title claim which is the only claim being brought forth. Ms. Sandhu-Smith further argued the Complaint is totally devoid of how Las Vegas Development acquired the property, when it acquired it and took possession of it and if there is any deed of trust. Ms. Sandhu-Smith additionally argued the Defense cannot provide an answer that properly responds to the Complaint as it stands. Further argument by Ms. Sandhu-Smith. Mr. Boylan argued it is a quiet title claim, not a fraud claim and so there shouldn't be a requirement of how, when, where and who. Mr. Boylan further argued he thinks this is a delay going on and indicated he has requested Counsel to provide documents showing they have the note and mortgage lien on this property which they have been unable to do. Mr. Boylan further argued he would submit the pleading is sufficient. Additional argument by counsel. COURT stated its findings and ORDERED, Motion DENIED advising the Complaint is sufficient for the Defense to answer. Upon Court's inquiry, Ms. Sandhu-Smith advised an answer can be filed by Friday. COURT FURTHER ORDERED, Deft's answer is due by 4/13/12.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 16, 2012

A-12-654840-C	Airmotive Investments LLC, Plaintiff(s)
	vs.
	Bank of America, Defendant(s)

October 16, 2012

9:30 AM

**Motion to Amend
Complaint**

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Anntoinette Naumec-Miller

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Nicholas Boylan, Esq., present telephonically on behalf of Plaintiff.
Christopher Henderson, Esq., and Laraine Burrell, Esq., present on behalf of Defendants.

Mr. Boylan advised he is seeking to add a second cause of action for violation of NRS 107.080. Colloquy regarding upcoming Deft's Motion for Summary Judgment. Mr. Henderson argued Plaintiff's lawsuit is to quiet title and essentially stall the foreclosure process; Defts have a valid, recorded assignment of first deed of trust and Defts initiated the foreclosure process even before the Home Owners Association sale. Further arguments by Mr. Henderson. Mr. Boylan argued Defts became aware Plaintiff became a recorded owner and attempted to start the process again; this cause of action indicates Defts can't proceed with the foreclosure action because they haven't done it properly. Additional arguments by Mr. Henderson and Mr. Boylan. COURT FINDS the Rules do indicate leave shall be freely given and there has been enough showing by the Plaintiff to amend the Complaint and ORDERED, Motion GRANTED. Further colloquy regarding Deft's Motion for Summary Judgment.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 23, 2012

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

October 23, 2012 9:00 AM Discovery Conference

HEARD BY: Bulla, Bonnie

COURTROOM: RJC Level 5 Hearing Room

COURT CLERK: Alan Castle

RECORDER: Richard Kangas

REPORTER:

PARTIES

PRESENT: Christopher, Shawn Attorney
Henderson, Christopher Attorney

JOURNAL ENTRIES

- Counsel indicated hopeful on settlement. Counsel anticipate 1 - 2 days for trial re: Quiet Title. No settlement conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 4/01/13; adding parties, amended pleadings, and initial expert disclosures DUE 12/31/12; rebuttal expert disclosures DUE 1/30/13; dispositive motions TO BE FILED BY 4/29/13. Scheduling Order will issue.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 17, 2013

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

September 17, 2013 9:30 AM Motion to Dismiss

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Anntoinette Naumec-Miller

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Marilyn Fine, Esq., present on behalf of Plaintiff.
Natalie Winslow, Esq., present on behalf of Defendant.

Upon Court's inquiry, Ms. Fine confirmed the binder the Court received this morning was the Motion, Opposition, and Reply and not a supplement. Arguments by counsel. COURT ADOPTED the Findings of Fact and Conclusions of Law as set forth in Deft's Brief, stated its FINDINGS and ORDERED, Motion GRANTED. COURT FURTHER ORDERED, this is a final decision with respect to Bank of America only. Defense to prepare the order with findings of fact and conclusions of law for review by Plaintiff.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 03, 2013

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

**December 03, 2013 9:30 AM Motion For
Reconsideration**

HEARD BY: Miley, Stefany **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Anntoinette Naumec-Miller

RECORDER: Maria Garibay

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Timothy Rhoda, Esq., present on behalf of Plaintiff.
Natalie Winslow, Esq., present on behalf of Defendant.

Mr. Rhoda advised the parties agreed to continue the matter; COURT SO ORDERED.

CONTINUED TO: 12/17/13 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 17, 2013

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

**December 17, 2013 9:30 AM Motion For
Reconsideration**

HEARD BY: Miley, Stefany **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Anntoinette Naumec-Miller

RECORDER: Debbie Winn

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Jacob Bundick, Esq., and Natalie Winslow, Esq., present on behalf of Defendant Bank of America.

Based on the papers and pleading therein, COURT stated its FINDINGS and ORDERED, Motion DENIED. Defense to prepare the order for review by Plaintiff.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****July 14, 2015**

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

July 14, 2015**9:30 AM****Motion to Dismiss**

**Plaintiff's Motion to
Dismiss
Counterclaim**

HEARD BY: Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

PRESENT: Croteau, Roger P, ESQ Attorney
 Schmidt, Allison Attorney

JOURNAL ENTRIES

- Court stated there seemed important parties were missing. Ms. Schmidt advised they have quiet title, noted they could not assert against them and stated they were attempting to determine title. Court noted the validity of the sale was being contested, whether they were able to cure and stated it was not sure the Plaintiff could give information in the Court Claim. Argument by Ms. Schmidt noting motion might be premature and requested case proceed with discovery. Counsel then stated if the Court believes there to be validity, they would move for leave to file amended counter claim. Mr. Croteau believes the defense needed to amend their counter claim, argued disclaimed interest and noted defense is stating their deed of trust was never extinguished. Counsel then argued the purchase had been done properly and noted the defense is wanting the Plaintiff to bring in the HOA. Ms. Schmidt advised her client does not have a claim with the HOA and argued deed of trust. COURT ORDERED, motion DENIED. FURTHER, the HOA which did the foreclosure sale will be brought in as a part. Mr. Croteau to prepare the order and provide to opposing counsel for review prior to submitting to the Court for signature.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 15, 2015

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

September 15, 2015	9:30 AM	Motion for Leave	Bank of America's Motion for Leave to Amend its Answer to Add an Affirmative Defense and Counterclaim and to Join Parties to Add Claims
---------------------------	----------------	-------------------------	--

HEARD BY: Bixler, James

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:	Brenner, Darren T.	Attorney
	Croteau, Roger P, ESQ	Attorney

JOURNAL ENTRIES

- Mr. Croteau advised this is the oldest HOA case, noted they would like to file an Amended Complaint and defense would file an Amended Answer along with Counter Claim. COURT ORDERED, motion GRANTED. Mr. Croteau to prepare the order and provide to opposing counsel for review prior to submitting to the Court for signature.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 10, 2017

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

January 10, 2017

9:30 AM

Status Check

**Status Check Re:
Case Status**

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Croteau, Roger P, ESQ Attorney
Garner, Rex D. Attorney

JOURNAL ENTRIES

- Court there had been no activity since May of 2016. Mr. Garner advised there would be a filing of an Amended Joint Case Conference and stated parties have had discussions. COURT ORDERED, matter SET for status check. Matter recalled. Mr. Croteau present. Court advised of setting and representations made by defense counsel. Argument by counsel.

02-07-17 9:30 AM STATUS CHECK: AMENDED JCCR

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 07, 2017

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

February 07, 2017

9:30 AM

Status Check

**Status Check:
Amended JCCR**

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Brenner, Darren T. Attorney

JOURNAL ENTRIES

- Court noted no further action was needed by this Court, however, it believed a Second Amended Joint Case Conference Report was needed. Court further noted it will look into whether there is a need for waiver of the Five Year Rule.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 26, 2017

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

September 26, 2017	9:30 AM	Status Check	Status Check Re: Case Status, Scheduling Order and Waiving the Five Year Rule
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HEARD BY: Miley, Stefany **COURTROOM:** RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Winslow, Natalie L Attorney

JOURNAL ENTRIES

- Ms. Winslow advised counsel handling this case is out on medical leave and stated they were going through the case file to what is happening. Court inquired of Second Amended Joint Case Conference Report. Counsel advised it had been filed months ago and noted they met with Discovery Commissioner. Court noted parties needed to provide a waiver of the 5 year rule and stated the stipulation was needed within 30 days. Colloquy regarding case status. Court advised it would speak with the Chief Judge and advise the parties of the outcome. Court also noted the case might be all right due to the appeal. Ms. Winslow agreed a stipulation would help.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****March 20, 2018**

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
 vs.
 Bank of America, Defendant(s)

March 20, 2018**9:30 AM****Status Check**

**Case Status - See Dec
 22, 2017 Notice
 Emailed to Parties**

HEARD BY: Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES**

PRESENT: Combs, Jamie Attorney
 Croteau, Roger P, ESQ Attorney

JOURNAL ENTRIES

- Order Waiving Five Year Rule SIGNED IN OPEN COURT and returned to counsel for filing. Court inquired whether discovery had been completed. Ms. Combs requested discovery be re-opened briefly. Court directed parties to contact Discovery Commissioner for updated trial schedule.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 11, 2018

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

September 11, 2018

9:30 AM

Status Check

**STATUS CHECK RE
CASE STATUS -
RESET TRIAL DATE**

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Katherine Streuber

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Rhoda, Timothy E. Attorney

JOURNAL ENTRIES

- Mr. Rhoda advised the bank had recently requested discovery be re-opened which they have agreed to waive the 5 Year Rule and noted they are preparing a stipulation. COURT SO NOTED. Court advised new schedule and trial date must be included in the trial order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 10, 2019

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

**September 10, 2019 9:00 AM Motion for Summary Judgment Bank of America,
N.A.'S Motion for
Summary Judgment**

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: April Watkins

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT: Brenner, Darren T. Attorney
Croteau, Roger P, ESQ Attorney

JOURNAL ENTRIES

- Court noted issue is the applicability of the Federal Foreclosure Bar and whether the property was in fact owned by Fannie at the time of the subject HOA sale and whether the Federal Foreclosure Bar would apply. Following arguments by counsel, COURT ORDERED, matter CONTINUED and decision will issue.

CONTINUED TO: 10/10/19 (CHAMBERS)

10/10/19 DECISION (CHAMBERS)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 10, 2019

A-12-654840-C Airmotive Investments LLC, Plaintiff(s)
vs.
Bank of America, Defendant(s)

**October 10, 2019 3:00 AM All Pending Motions Decision; Bank of
America, N.A.'S
Motion for Summary
Judgment**

HEARD BY: Miley, Stefany

COURTROOM: Chambers

COURT CLERK: Katherine Streuber

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Pursuant to Decision and Order filed on October 17, 2019, COURT ORDERED, motion GRANTED. FURTHER, Defendant's motion for Summary Judgment as to Defendant's Counter Claims for quiet title and declaratory relief is GRANTED.



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

ROGER P. CROTEAU, ESQ.
2810 W. CHARLESTON BLVD., #75
LAS VEGAS, NV 89102

DATE: January 6, 2020
CASE: A-12-654840-C

RE CASE: AIRMOTIVE INVESTMENTS, LLC vs. BANK OF AMERICA; GENEVIEVE UNIZA-ENRIQUEZ

NOTICE OF APPEAL FILED: January 2, 2020

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 (g) 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; DECISION & ORDER; NOTICE OF ENTRY OF DECISION AND ORDER; ORDER AWARDING COSTS TO BANK OF AMERICA, N.A.; NOTICE OF ENTRY OF ORDER AWARDING COSTS TO BANK OF AMERICA, N.A.; STIPULATION AND ORDER TO DISMISS AND FOR FINAL JUDGMENT; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

AIRMOTIVE INVESTMENTS, LLC,

Plaintiff(s),

vs.

BANK OF AMERICA; GENEVIEVE UNIZA-
ENRIQUEZ,

Defendant(s),

Case No: A-12-654840-C

Dept No: XXIII

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 6 day of January 2020.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk