

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

2 NONA TOBIN, AS TRUSTEE OF
3 THE GORDON B. HANSEN TRUST,
4 DATED 8/22/08,

5 Appellant,

6 vs.

7 JOEL A. STOKES AND SANDRA F.
8 STOKES, AS TRUSTEE OF THE
9 JIMI JACK IRREVOCABLE TRUST;
10 YUEN K. LEE, AN INDIVIDUAL,
11 D/B/A MANAGER F. BONDURANT,
12 LLC; SUN CITY ANTHEM
13 COMMUNITY ASSOCIATION,
14 INC.; AND NATIONSTAR
15 MORTGAGE, LLC,

16 Respondents.

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Supreme Court Case No.: 79295

District Court Case No A-15-720032-C
Consolidated with A-16-730078-C

17 An Appeal from The Eighth Judicial District Court
18 The Honorable Joanna Kishner, Presiding

19 **APPELLANTS' OPENING BRIEF**

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1 **NRAP 26.1 DISCLOSURE STATEMENT**

2 The undersigned counsel of record certifies that the following are persons
3 and entities as described in NRAP 26.1(a) and must be disclosed. These
4 representations are made in order that the judges of this court may evaluate
5 possible disqualification or recusal.

6 Michael R. Mushkin & Associates d/b/a Mushkin & Coppedge states that
7 it has no parent corporation and that no publicly held corporation owns 10% or
8 more of its stock.

9 Michael R. Mushkin and L. Joe Coppedge are the attorneys who have
10 appeared for Appellant in this case.

11 Appellant, Nona Tobin, as Trustee of the Gordon B. Hansen Trust dated
12 8/22/08 states that the Gordon B. Hansen Trust dated 8/22/08 has no parent
13 corporation and that no publicly held corporation owns 10% or more of its
14 stock.

15 DATED this 19 day of December, 2019.

16 MUSHKIN & COPPEDGE


17 
18 _____
19 MICHAEL R. MUSHKIN, ESQ.
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1 **I. Jurisdictional Statement**

2 The order granting Sun City Anthem Community Association’s motion
3 for summary judgment was entered on April 18, 2019. It became a final
4 judgment under NRAP 3A(b)(1) upon the entry of the Order on Findings of
5 Fact, Conclusions of Law filed on June 24, 2019 (the “June 24 Order and
6 Findings”). Nona Tobin (“Tobin”), as Trustee of the Gordon B. Hansen Trust
7 dated 8/22/08 appeals from the district court’s order granting Sun City Anthem
8 Community Association’s motion for summary judgment entered on April 18,
9 2019 (the “April 18 Order and Findings”); the Order Denying Motion for
10 Reconsideration filed on May 31, 2019 and the June 24 Order and Findings
11 quieting title in favor of Joel A. Stokes and Sandra F. Stokes, as Trustees of the
12 JimiJack Irrevocable Trust (“JimiJack”), Notice of Entry of which was also filed
13 on June 24, 2019.

14 **II. Routing Statement**

15 This matter is presumptively assigned to the Court of Appeals pursuant to
16 NRAP 17(b)(15).

17 **III. Statement of Issues Presented for Review**

18 1. Whether the district court erred by granting summary judgment in
19 favor Sun City Anthem Community Association (“SCA”) against Tobin, as
20 Trustee of the Gordon B. Hansen Trust dated 8/22/08 on her claims for relief for
21 quiet title and equitable relief in seeking to void SCA’s foreclosure sale.

22 2. Whether the district court erred by finding that SCA properly

1 followed the process and procedures in foreclosing upon the Property.

2 3. Whether the district court erred by failing to quiet title in favor of
3 Tobin, as Trustee of the Gordon B. Hansen Trust dated 8/22/08.

4 4. Whether the district court erred by quieting title in favor of Joel A.
5 Stokes and Sandra F. Stokes, as Trustees of the JimiJack Irrevocable Trust
6 ("JimiJack").

7 5. Whether the district court erred by entering judgment in favor of
8 Joel A. Stokes and Sandra F. Stokes, as Trustees of the JimiJack Irrevocable
9 Trust and Yuen Lee and F. Bondurant, LLC as to all claims for relief asserted by
10 Tobin, as Trustee of the Gordon B. Hansen Trust dated 08/22/08.

11 **IV. Statement of the Case**

12 This is an action for Quiet Title and Wrongful Foreclosure, among other
13 claims, resulting from the purchase and sale of real property at a homeowner's
14 association foreclosure sale. Cross-Defendant, Sun City Anthem Community
15 Association ("SCA") filed Cross-Defendant Sun City Anthem Community
16 Associations' Motion for Summary Judgment on February 5, 2019, which was
17 joined by Nationstar Mortgage, LLC, but not JimiJack. Following a hearing on
18 March 5, 2019, the district court granted SCA's motion for summary judgment.
19 Notice of Entry of Findings of Fact, Conclusion of Law and Order on Cross-
20 Defendant Sun City Anthem Community Association's Motion for Summary
21 Judgment was filed on April 18, 2019. Tobin, as Trustee of the Gordon B.
22 Hansen Trust dated 8/22/08, filed Cross-Claimant Nona Tobin's Motion for

1 Reconsideration on April 29, 2019. The motion for reconsideration was denied
2 following a hearing on May 29, 2019. Notice of Entry of the Order Denying
3 Motion for Reconsideration was filed on May 31, 2019.

4 Tobin's remaining Counterclaim against Plaintiffs, Joel A. Stokes and
5 Sandra F. Stokes, as Trustees of the JimiJack Irrevocable Trust, Yuen K. Lee
6 and F. Bondurant, LLC proceeded to trial commencing June 5, 2019. The Order
7 on Findings of Fact, Conclusions of Law quieting title in favor of Joel A. Stokes
8 and Sandra F. Stokes, as Trustees of the JimiJack Irrevocable Trust was filed on
9 June 24, 2019. Notice of Entry of the Order on Findings of Fact, Conclusions of
10 Law was also filed on June 24, 2019.

11 **V. Statement of Facts**

12 1. Tobin has lived in Sun City Anthem at 2664 Olivia Heights
13 Avenue since February 20, 2004 and has been an owner in good standing the
14 entire time.¹

15 2. On or about July 31, 2003, Gordon B. Hansen, together with his
16 then wife Marilyn, purchased the property located at 2763 White Sage Drive,
17 Henderson, Nevada 89052, APN 191-13-811-052 (the "Property").²

18 3. Gordon and Marilyn divorced, and on or about June 10, 2004,
19 Marilyn Hansen quit claimed the Property to Gordon Hansen as a part of the
20 divorce settlement.³

21
22 ¹ AA Vol. VI 001122 Declaration of Nona Tobin ("Tobin Decl.") at ¶ 1

² AA Vol. VI 001122, 001133 – 001137 Deed, Ex. 1 to Tobin Decl.

³ AA Vol. VI 001122, 001138 – 001142 Quitclaim Deed, Ex, 2 to Tobin Decl.

1 4. On or August 22, 2008, the Gordon B. Hansen Trust (the "Trust")
2 was formed pursuant to NRS chapter 163, and Nona Tobin was identified as a
3 successor trustee in the event of Gordon Hansen's death.⁴

4 5. On August 27, 2008, title to the Property was transferred to the
5 Gordon B. Hansen Trust.⁵

6 6. Gordon B. Hansen died on January 14, 2012, and Tobin became a
7 trustee of the Trust.⁶

8 7. Pursuant to the amendment to the Trust dated August 10, 2011,
9 there were two equal co-beneficiaries of the Trust's assets, Tobin, the
10 deceased's fiancé, and his son, Steve Hansen.

11 8. In July 2016, on behalf of the beneficiaries of the Trust, Tobin
12 attempted to intervene into *Nationstar Mortgage vs. Opportunity Homes, LLC*,
13 A-16-730078 which was consolidated into A-15-720032-C in mid-August,
14 2016 but was denied for procedural defects.⁷

15 9. On March 27, 2017, Steve Hansen executed a declaration made
16 under penalty of perjury disclaiming all interest in the Property and the Gordon
17 B. Hansen Trust leaving Tobin as the sole beneficiary of the Trust.⁸

18 10. Tobin paid the HOA dues and late fees for three quarters after
19 Gordon Hansen's death that covered the period from January 1, 2012 through
20

21 ⁴ AA Vol. VI 001122, 001143 – 001173 Trust, Ex. 3 to Tobin Decl.

⁵ AA Vol. VI 001122, 001174 – 001178 Deed, Ex. 4 to Tobin Decl.

22 ⁶ AA Vol VI 001111, 001179 – 001180 Certificate of Death, Ex. 5 Tobin Decl.

⁷ AA Vol. VI 001122, 001181 – 001194 Exhibit 6 to Tobin Decl.

⁸ AA Vol. VI 001122 Tobin Decl., ¶ 9

1 September 30, 2012.⁹

2 11. Tobin accepted a purchase offer on the Property on August 8, 2012
3 from the Sparkmans and authorized them to move into the Property pending the
4 close of escrow.¹⁰

5 12. Tobin prepared two (2) checks 142 and 143, each in the amount of
6 \$300 for HOA dues, and both were dated August 17, 2012. However, only
7 check 142 has a date received stamped on the check.¹¹

8 13. Check 142 paid the assessments for Tobin's own house on August
9 17, 2012.

10 14. Tobin did not accurately recall the timing and method of
11 submitting the last dues payment (check 143 dated August 17, 2012 in the
12 amount of \$300 - \$275 for assessments for the quarter ending September 30,
13 2012 plus a \$25 late fee).¹²

14 15. It was not until December 26, 2018, when Tobin received copies
15 of documents SCA0001-SCA000643 that she discovered SCA000631 was a
16 letter signed by Tobin to SCA dated October 3, 2012.

17 16. After seeing SCA000631, Tobin's memory was refreshed that
18 check 143 was sent to SCA with other specific notices and instructions.

19 17. The Death Certificate was enclosed, providing notice that the
20

21 ⁹ AA Vol. VI Tobin Decl., ¶ 11

22 ¹⁰ AA Vol. VI 001123 Tobin Decl., ¶ 12

¹¹ AA Vol. VI 001123, 001195 – 001197 Cancelled checks, Ex. 7 to Tobin Decl.

¹² AA Vol. VI 001123 Tobin Decl., ¶ 13

1 homeowner had died.¹³

2 18. Notice was also provided that Tobin had accepted an offer for a
3 short sale on the Property and that the new owners were expected to move in
4 within the month.¹⁴

5 19. Tobin requested that SCA collect future assessments out of escrow
6 and to direct questions to Real Estate Broker Doug Proudfit, a well-known and
7 long-time SCA owner in good standing, or from the new owners, or by
8 whatever normal procedures the SCA used when an owner dies.¹⁵

9 20. The subject of the October 3, 2012 letter was "Delinquent HOA
10 dues for 2763 White Sage" and the enclosed check was identified as "Check for
11 \$300 HOA dues" which covered the \$275 assessment that was late for the
12 quarter ending September 30, 2012 and the \$25 late fee which was authorized
13 for the installment being sent after July 30, 2012.¹⁶

14 21. Nothing in this letter indicates in any way that Tobin refused to
15 pay assessments as alleged by SCA.¹⁷

16 22. Given that the Property was in escrow as of August 8, 2012, Tobin
17 reasonably expected that the assessments due on October 1, 2012 would be paid
18 out of escrow in the same way a pending tax payment is paid out of escrow
19 according to the terms of the escrow instructions.¹⁸

20 ¹³ AA Vol. VI 001123Tobin Decl., ¶ 19

21 ¹⁴ AA Vol. VI 001123 Tobin Decl., ¶ 20

¹⁵ AA Vol. VI 001123 Tobin Decl., ¶ 21

22 ¹⁶ AA Vol. VI 001124 Tobin Decl., ¶ 21

¹⁷ AA Vol. VI 001124 Tobin Decl., ¶ 23

¹⁸ AA Vol. VI 001124 Tobin Decl., ¶ 24

1 23. Exhibit 8 to the Tobin Declaration is the SCA Resident
2 Transaction Report for 2763 White Sage, pages 1334 through 1337, covering
3 the period from January 1, 2006 through that Tobin received from SCA on May
4 9, 2016.¹⁹

5 24. SCA agents, RMI community manager, and its affiliate, "RRFS"
6 ignored the October 3, 2012 notice that the property had been sold and did not
7 follow, or even acknowledge, the explicit instructions that the \$300 check was
8 for "HOA dues".²⁰

9 25. SCA's records conflict with SCA000176-SCA000643, Red Rock
10 Financial Services ("RRFS") foreclosure file, which was SCA's sole source of
11 alleged facts in support of its motion for summary judgment.²¹

12 26. The Resident Transaction report shows that the \$300 Tobin paid
13 for the quarter ending September 30, 2012 was credited in the SCA's records
14 on November 9, 2012 as "Collection Payment Part(ial)", and it was not
15 properly credited refuting Fact 13 of the April 18 Order and Findings.²²

16 27. Tobin's payment for "HOA dues" was applied on October 18,
17 2012 in the RRFS ledger (SCA000623-625) to unauthorized and unnecessary
18 collection fees despite the NRS 116A.640(8) explicit prohibition against
19 "Intentionally apply(ing) a payment of an assessment from a unit's owner
20

21 ¹⁹ AA Vol. VI 001124 Tobin Decl., ¶ 25

22 ²⁰ AA Vol. VI 001124 Tobin Decl., ¶ 26

²¹ AA Vol. VI 001124 Tobin Decl., ¶ 27

²² AA Vol. VI 001125 Tobin Decl., ¶ 32

1 towards any fine, fee or other charge that is due.”²³

2 28. Tobin made no attempt to evaluate or reduce the RRFS demands
3 for fees as she had contracted with Proudfit Realty to complete a short sale and
4 expected the bank and the new owner to arrange to pay SCA the full amount
5 due.²⁴

6 29. SCA’s claim that Tobin enclosed a notice of sanction dated
7 September 20, 2012 to the October 3, 2012 letter is false.²⁵

8 30. The October 3, 2012 letter plainly states there are two enclosures –
9 the check for HOA dues and a death certificate.

10 31. There was no third enclosure listed of a September 20, 2012 notice
11 of hearing as falsely claimed by SCA and refuting Findings of Fact number 9.²⁶

12 32. The September 20, 2012 notice of hearing that RRFS claims was
13 enclosed with the October 3, 2012 letter could not have come from Tobin as she
14 would only have had the original.²⁷

15 33. SCA proceeded with unnecessary collections, adding unauthorized
16 fees despite two payoff demands from Ticor Title on or about December 20,
17 2012 and January 16, 2013.²⁸

18 34. SCA’s managing and collection agents ignored the fact that both
19 the real estate agent Doug Proudfit and Tobin, both long-term SCA

20 ²³ AA Vol. VI 001125 Tobin Decl., ¶ 33

21 ²⁴ AA Vol. VI 001125 Tobin Decl., ¶ 34

22 ²⁵ AA Vol. VI 001125 Tobin Decl., ¶ 35

²⁶ AA Vol. VI 001125 Tobin Decl., ¶ 37

²⁷ AA Vol. VI 001125 Tobin Decl., ¶ 38

²⁸ AA Vol. VI 001125 Tobin Decl., ¶ 39

1 homeowners in good standing, had no interest in SCA not receiving all
2 assessments that were due and were working diligently to sell the property after
3 the market had crashed.²⁹

4 35. Check no. 143 was for payment for the SCA quarterly dues for the
5 Property for the period commencing July 1, 2012 in the principal amount of
6 \$275.00, together with late fees in the amount of \$25.00. Check no. 143 did not
7 clear the bank until October 23, 2012.³⁰

8 36. Check No. 143 in the amount of \$300.00 was incorrectly credited
9 by SCA's debt collector, RRFS to the account for the Property on or about
10 October 18, 2012 as shown by the RRFS ledger sent on November 5, 2012 to
11 the Property (but not the owner's address of record).³¹

12 37. The Resident Transaction Report shows that the \$300 from check
13 no. 143 was credited as "Collection Payment Part(ial)" rather than as \$275 plus
14 \$25 late fee for the July 2012 quarter, which would have brought the account
15 current with a zero balance instead of the \$495.15 RRFS claimed was still
16 owing in the ledger.³²

17 38. NRS 116A.640(8) prohibits an HOA agent from applying
18 assessment payments to "any fine, fee or other charge that is due".³³

19 39. The legal framework established by SCA, as delineated in SCA
20

21 ²⁹ AA Vol. VI 001125 – 001126 Tobin Decl., ¶ 40

³⁰ AA Vol. VI 001126 Tobin Decl., ¶ 41

22 ³¹ AA Vol. VI 001126 Ledger, Ex. 8 to Tobin Decl., ¶ 42

³² AA Vol. VI 001126 Tobin Decl., ¶ 43

³³ AA Vol. VI 001126 Tobin Decl., ¶ 44

1 Board Resolution, dated November 17, 2011 “Establishing The Governing
2 Documents Enforcement Policy and Process” requires that prior to sanctioning
3 an owner for an alleged violation of the governing documents, such as
4 delinquent assessments, the Board must provide a specific notice of violation, a
5 notice of violation hearing, notice of sanction (hearing determination), notice of
6 appeal, and an appeal determination letter.³⁴

7 40. Specifically, the Third Amended and Restated Declaration of
8 Covenants, Conditions and Restrictions for Sun City Anthem expressly
9 provides in part that:

10 **7.4 Compliance and Enforcement**

11 **(a) Every Owner and Occupant of a Lot shall comply with the**
12 **Governing Documents. The Board may impose sanctions for**
13 **violation of the Governing Documents after notice and a hearing**
14 **in accordance with the procedures set forth in the By-Law. The**
15 **Board shall establish a range of penalties for such violations, with**
16 **violations of the Declaration, unsafe conduct, harassment, or**
17 **intentionally malicious conduct treated more severely than other**
18 **violations. Such sanctions may include, without limitation:**

19 **(i) imposing a graduated range of reasonable monetary**
20 **finances which shall, pursuant to the Act, constitute a lien upon the**
21 **violation's lot... The amount of each such fine must be**
22 **commensurate with the severity of the violation and shall in no**
event exceed the maximum permitted by the Act. The Rules may
be enforced by the assessment of a fine only if: (A) Not less than
thirty (30) days before the violation, the person against whom the
monetary penalty will be imposed has been provided with written
notice of the applicable provisions of the Governing Documents
that form the basis of the violation; (B) Within a reasonable time
after discovery of the violation, the person against whom the

³⁴ AA Vol. VI 001126 Tobin Decl., ¶ 45

1 monetary fine will be imposed has been provided with written
2 notice specifying the details of the violation, the amount of the
3 monetary penalty, and the date, time and location for a hearing
4 on the violation and a reasonable opportunity to contest the
5 violation at the hearing; (C) The Board must schedule the date,
6 time, and location for the hearing on the violation so that the
7 person against whom the monetary fine will be imposed is
8 provided with a reasonable opportunity to prepare for the
9 hearing to be present at the hearing; and (D) The Board must
10 hold a hearing before it may impose a monetary fine, ...

11 (emphasis added).³⁵

12 41. SCA did not provide Tobin any of the required notices, nor did it
13 hold a hearing prior to the imposition of fines misnamed as collection costs.³⁶

14 42. SCA imposed progressively more serious and disproportionate
15 sanctions for the alleged violation of delinquent assessments, up to and
16 including foreclosure, without providing any meaningful and compliant due
17 process.³⁷

18 43. SCA claims to have sent a September 17, 2012 notice of intent to
19 lien, that Tobin does not have any record or recollection of having received and
20 for which there is no proof of service for this notice in the 54 pages of proofs in
21 SCA000176-SCA000643.³⁸

22 44. Even if sent, that notice was defective and non-compliant:

 a. There was no preceding notice of violation,

³⁵ AA Vol. VI 001126 – 001127 Third Amended and Restated Declaration of
Covenants, Conditions and Restrictions for Sun City Anthem (“CC&Rs”),
Exhibit 10 at pp. 35-36 to Tobin Declaration, ¶ 46

³⁶ AA Vol. VI 001127 Tobin Decl., ¶ 47

³⁷ AA Vol. VI 001127 Tobin Decl., ¶ 48

³⁸ AA Vol. VI 001127 Tobin Decl., ¶ 49

1 b. RRFS's claiming \$617.94 on September 17, 2012 is
2 excessive and unauthorized when \$275 only came due on July 1, 2012.

3 c. Only \$25 late fee was authorized on July 31, 2012 when the
4 payment is 30 days late.

5 d. \$317.94 claimed by RRFS for collection costs for the next
6 35 days the payment was late was not authorized.

7 e. An excessive, non-negotiable fee of \$317.94, which SCA
8 collection agent claimed must be disputed within 30 days of a notice that
9 Tobin did not receive, is not a "collection cost", it is an impermissible
10 fine and a sanction.³⁹

11 45. On or about December 14, 2012, SCA caused a Notice of
12 Delinquent Assessments (the "Lien") to be recorded against the Property which
13 claimed the amount of \$925.76 was delinquent and owed as of December 5,
14 2012 when at that time, only \$275.00 was due and owing for the period
15 commencing October 1, 2012. The Lien included erroneous charges and did not
16 credit assessments paid when the amount was below the minimum past due
17 amount when collection can begin.⁴⁰

18 46. As of December 14, 2012, the maximum amount of the
19 delinquency for the Property's HOA account was \$300.00, consisting of then-
20 current quarterly dues in the amount of \$275.00, together with late fees in the
21

22 ³⁹ AA Vol. VI 001127 – 001128 Tobin Decl., ¶ 50

⁴⁰ AA Vol. VI 001128 Tobin Decl., ¶ 51

1 amount of \$25.00.⁴¹

2 47. On or about April 30, 2013, RRFS responded to a payoff demand
3 from “Miles Bauer”, agent for Bank of America (“BANA”) and claimed that
4 \$2,876.95 was due and payable as of April 30, 2013.⁴²

5 48. On or about May 9, 2013, Miles Bauer tendered \$825 for the nine
6 months of assessments which were at that point in time delinquent. However,
7 RRFS refused BANA’s tender without notifying the SCA Board.⁴³

8 49. Tobin never received any notice from RRFS or from SCA that
9 BANA’s tender had been rejected.⁴⁴

10 50. Tobin was never given an opportunity to pay the \$75 late fees
11 authorized as of April 30, 2013, so that the delinquency would have been cured
12 in total including all authorized late fees.⁴⁵

13 51. This unjustified refusal of BANA’s payment should have stopped
14 all unnecessary collection efforts as all delinquencies on the account had been
15 cured and the account was then current.⁴⁶

16 52. On or about February 12, 2014, a Notice of Foreclosure Sale
17 (“Notice of Sale”) was issued and served by RRFS, which claimed \$5,081.45
18 was due and owing, and scheduled the sale for March 7, 2014. See Notice of
19

20 ⁴¹ AA Vol. VI 001128 Tobin Decl., ¶ 52

21 ⁴² AA Vol. VI 001128 Ex. 12 to Tobin Decl.

22 ⁴³ AA Vol. VI 001128 Tobin Decl., ¶ 54

⁴⁴ AA Vol. VI 001128 Tobin Decl., ¶ 55

⁴⁵ AA Vol. VI 001128 Tobin Decl., ¶ 56

⁴⁶ AA Vol. VI 001128 – 001129 Tobin Decl., ¶ 57

1 Foreclosure Sale.⁴⁷

2 53. On or about February 20, 2014, Tobin signed a new listing
3 agreement with Craig Leidy (“Leidy”), also a long time SCA owner in good
4 standing.⁴⁸

5 54. On March 28, 2014, RRFS sent an Accounting ledger to Chicago
6 Title in response to a payoff demand related to a contingent sale to Red Rock
7 Region Investments LLC in which the amount before fees claimed as due and
8 owing on February 11, 2014 was \$4,240.10, and that the amount due on March
9 28, 2014 was \$4,687.64.⁴⁹

10 55. Tobin gave Leidy verbal authority to handle all notices and contact
11 with the SCA’s agents, RRFS, and written authority to arrange a short sale with
12 Nationstar Mortgage, the new loan servicer as of December 1, 2013.⁵⁰

13 56. NRS 116.3116 was violated when RRFS refused two tenders of
14 the super-priority amount, one on May 9, 2013 from BANA and the second
15 from Nationstar on June 5, 2014.⁵¹

16 57. The Notice of Sale was sent to the Ombudsman on February 13,
17 2014 as required by NRS 116.311635(2)(b)(3). However, on or about May 15,
18 2014, RRFS notified the Ombudsman that the Notice of Sale was cancelled, the
19

20
21 ⁴⁷ AA Vol. VI 001128, 001133 – 001134 Exhibit 13 to the Tobin Decl.

22 ⁴⁸ AA Vol. VI 001129 Tobin Decl., ¶ 59

⁴⁹ AA Vol. VI 001129 Tobin Decl., ¶ 60

⁵⁰ AA Vol. VI 001129 Tobin Decl., ¶ 61

⁵¹ AA Vol. VI 001129 Tobin Decl., ¶ 62

1 Trustee sale was cancelled, and the Owner was retained.⁵²

2 58. The compliance screen is the Ombudsman's contemporaneous log
3 of letters, notices and deed submitted to the State of Nevada Real Estate
4 Division for HOA foreclosures and provides the only record available to the
5 public documenting the notice of sale process and foreclosure of the Property.⁵³

6 59. The compliance screen was obtained pursuant to a public records
7 request and was produced pursuant to NRCP 16. No party has challenged the
8 authenticity of the Compliance Screen.⁵⁴

9 60. The Property was sold on August 15, 2014 although no valid
10 notice of sale was in effect as the Notice of Sale was cancelled on or about May
11 15, 2014 and not replaced.⁵⁵

12 61. The August 22, 2014 Foreclosure Deed, the recording of which
13 was requested by Opportunity Homes, LLC, claims the Property was sold for
14 \$63,100 based upon the First Notice of Default, dated March 12, 2013, which
15 was rescinded on April 3, 2013.⁵⁶

16 62. There is no entry in the Resident Transaction Report that the
17 Property was sold or that RRFS, as SCA's agent, collected \$63,100 (disputes

18 ⁵² AA Vol. VI 001129, Vol. VII 001336 Compliance View Screen, authenticated
19 on April 15, 2019 by Terralyn Lewis, Administration Section Manager,
Nevada Real Estate Division, Ex. 14 to Tobin Decl.

20 ⁵³ AA Vol. VI 001130 Tobin Decl., ¶ 66

21 ⁵⁴ AA Vol. VI 001130, Vol. VII 001337 – 001338, 001343 – 001347 Tobin's
public record request, Ex. 15 and Tobin's Initial List of Witnesses and
Production of Documents, Ex. 16 to Tobin Decl.

22 ⁵⁵ AA Vol. VI 001138 Tobin Decl., ¶ 66

⁵⁶ AA Vol. VI 00130, AA Vol. VII 001350 Recorded Rescission of Notice of
Default, Ex. 17 to Tobin Decl.

1 SCA fact #31).⁵⁷

2 63. The only entry in the Resident Transaction Report (page 1336) is
3 the August 27, 2014 entry that a “Collection Payment PIF \$2,701.04” was
4 payment in full of the Gordon Hansen account.⁵⁸

5 64. The Resident Transaction Report (page 1337) listed the second
6 owner (RESID 0480 02) of 2763 White Sage as Jimijack Irrevocable Trust,
7 effective September 25, 2014 with the credit of \$225 “Account Setup Fee
8 Resal(e)”.⁵⁹

9 65. There is no SCA record that Thomas Lucas or Opportunity Homes,
10 alleged purchaser at the August 15, 2014 sale, was ever an owner of 2763
11 White Sage Drive (disputes SCA Fact #32).⁶⁰

12 66. The August 22, 2014 Foreclosure Deed contains the false recitals
13 that 1) default had occurred as described in the rescinded Notice of Default and
14 Election to Sell; 2) there had been no payments made after July 1, 2012; 3) that
15 as of February 11, 2014, \$5,081.45 was due and owing and that 4) RRFS
16 “complied with all the requirements of law”.⁶¹

17 67. SCA did not provide the notices required by NRS 116.31162(4),
18 including:

19 (a) A schedule of the fees that may be charged if the unit owner
20

21 ⁵⁷ AA Vol. VI 001124 Tobin Decl., ¶ 28

⁵⁸ AA Vol. VI 001124 Tobin Decl., ¶ 29

22 ⁵⁹ AA Vol. VI 001124 Tobin Decl., ¶ 30

⁶⁰ AA Vol. VI 001124 – 00125 Tobin Decl., ¶ 31

⁶¹ AA Vol. VI 001130, AA Vol. VII 0011352 – 001353 Ex. 18 to Tobin Decl.

1 fails to pay the past due obligation;

2 (b) A proposed repayment plan; and

3 (c) A notice of the right to contest the past due obligation at a
4 hearing before the executive board and the procedures for requesting
5 such a hearing.⁶²

6 68. NRS 116.31164(3)(b) (2013) requires that “the person conducting
7 the sale...deliver a copy of the deed to the Ombudsman within 30 days after the
8 deed is delivered to the purchaser...”, but no foreclosure deed has ever been
9 delivered to the Ombudsman.⁶³

10 69. NRS 116.31164 (3)(c) 1-5 requires the order in which the proceeds
11 of the sale are to be paid out. No distribution was made to any claimant out of
12 the reported \$63,100 collected for the sale except for the \$2,701.04 that paid
13 SCA in full.⁶⁴

14 70. Tobin attempted to make a claim for the proceeds in September
15 2014 but was rebuffed by RRFS, which falsely claimed that the proceeds had
16 been deposited with the court for interpleader.⁶⁵

17 71. SCA agents did not conduct the collection process leading up to
18 the foreclosure in compliance with the legal framework empowering and
19 limiting the SCA Board’s authority to sanction or fine an owner for ANY
20

21 ⁶² AA Vol. VI 001130 Tobin Decl., ¶ 69

22 ⁶³ AA Vol. VI 001130 Tobin Decl., ¶ 71

⁶⁴ AA Vol. VI 001130 Tobin Decl., ¶ 71

⁶⁵ AA Vol. VI 001130 Tobin Decl., ¶ 74

1 alleged violation of the governing documents.⁶⁶

2 72. On September 16, 2016, SCA refused Tobin's request for SCA
3 records of its compliance actions against the owner of the Property without a
4 court order.⁶⁷

5 73. Tobin signed to approve purchase offers for four sales which did
6 not come out of escrow due to the actions of BANA and Nationstar.⁶⁸

7 74. Initially, Tobin accepted an offer for \$310,000 on or about August
8 8, 2012, but BANA refused to close, and the prospective buyers who had
9 moved in, on or about October 23, 2012 withdrew and moved out in April,
10 2013.⁶⁹

11 75. A second offer to purchase the Property was made on May 10,
12 2013 for \$395,000.00.⁷⁰

13 76. A third escrow opened on March 4, 2014 for a \$340,000 cash offer
14 which Nationstar, as the new servicing bank, held in abeyance while Nationstar
15 required that it be placed up for public auction on www.auction.com.⁷¹

16 77. The auction.com sale period was from May 4, 2014 to May 8,
17 2014 when it was sold to the high bidder for \$367,500, pending approval by the
18 beneficiary.⁷²

19
20 ⁶⁶ AA Vol. VI 001130 – 001131 Tobin Decl., ¶ 73

21 ⁶⁷ AA Vol. VI 001131 Tobin Decl., ¶ 74

22 ⁶⁸ AA Vol. VI 001131 Tobin Decl., ¶ 75

⁶⁹ AA Vol. VI 001131 Tobin Decl., ¶ 76

⁷⁰ AA Vol. VI 001131 Tobin Decl., ¶ 77

⁷¹ AA Vol. VI 001131 Tobin Decl., ¶ 79

⁷² AA Vol. VI 001131 Tobin Decl., ¶ 80

1 78. Nationstar's negotiator would not accept either the \$340,000 offer
2 held in abeyance nor would it accept the \$367,000 from the auction.com sale.⁷³

3 79. Listing agent Leidy put a notice on the MLS on July 25, 2014 that
4 the Property was back on the market.⁷⁴

5 80. A buyer who had bid several times on it in March, 2014, re-
6 expressed interest by making a new offer on July 26, 2014.⁷⁵

7 81. Tobin signed a counter-offer on August 1, 2014 for \$375,000.⁷⁶

8 82. At the same time, Nationstar required that the asking price on the
9 listing be raised to \$390,000.⁷⁷

10 83. The buyer countered on August 4, 2014 with an offer of \$358,800
11 which was on the table when SCA foreclosed on the Property without notice to
12 Tobin, the listing agent, the servicing bank, or any of these bona fide purchasers
13 who were interested in purchasing the property in arms-length transactions.⁷⁸

14 84. At the time of the foreclosure sale, based upon the various offers to
15 purchase the Property, Tobin formed the opinion that the value of the Property
16 was not less than \$358,800.00.⁷⁹

17 85. SCA disclosures claim that Thomas Lucas purchased the property
18 for \$63,100 and took title in the name of Opportunity Homes LLC.⁸⁰

19 ⁷³ AA Vol. VI 001131 Tobin Decl., ¶ 81

20 ⁷⁴ AA Vol. VI 001131 Tobin Decl., ¶ 82

21 ⁷⁵ AA Vol. VI 001131 Tobin Decl., ¶ 83

22 ⁷⁶ AA Vol. VI 001131 Tobin Decl., ¶ 84

⁷⁷ AA Vol. VI 001131 Tobin Decl., ¶ 85

⁷⁸ AA Vol. VI 001132 Tobin Decl., ¶ 86

⁷⁹ AA Vol. VI 001132 Tobin Decl., ¶ 88

⁸⁰ AA Vol. VI 001132 Tobin Decl., ¶ 89

1 86. SCA official ownership records, however, do not have any entry
2 that shows SCA foreclosed on this property nor that either Thomas Lucas nor
3 Opportunity Homes LLC ever owned the property.⁸¹

4 87. Nationstar's limited joinder to declare the sale valid must be
5 denied as it offered no sworn affidavits nor any evidence whatsoever to support
6 its claims.⁸²

7 **VI. Summary of Argument**

8 This is an action to quiet title following an HOA foreclosure sale. The
9 district court erred by granting summary judgment in favor of SCA and quieting
10 title in favor of JimiJack, especially when JimiJack presented no evidence at the
11 time of trial, and instead relied exclusively on the erroneous April 18 Order and
12 Findings. The errors below, include but are not limited to the following:

13 • Check 143 paid the \$275 delinquent assessment plus \$25
14 authorized late fee for the period July 1, 2012 through September 30, 2012,
15 which cured the deficiency through September 30, 2012.

16 • The December 14, 2012 lien in the amount \$925.76 was premature
17 and contained unauthorized charges as at that time, only \$275 plus a \$25 late fee
18 was all that was delinquent for period October 1, 2012 through December 31,
19 2012.

20 • Miles Bauer tendered \$825 on or about May 9, 2013, which RRFS
21 rejected without authority and without notice to the owner or SCA, which would

22 ⁸¹ AA Vol. VI 001132 Tobin Decl., ¶ 90

⁸² AA Vol. VI 001132 Tobin Decl., ¶ 91

1 have paid the assessments then delinquent.

2 • RRFS rejected a second super-priority offer of \$1100 made on or
3 about May 28, 2014, again without notice to the owner or to SCA.

4 • The sale was unfair in that the owner received no notice RRFS was
5 going to proceed with the sale after the March 7, 2014 sale on the recorded
6 February 14, 2012 Notice of Sale was cancelled.

7 • SCA did not ensure that its agent, RRFS complied with the
8 applicable statutes and CC&Rs.

9 • There is no record that the foreclosure sale was authorized by a
10 valid vote of the SCA board.

11 • Specific notices were not provided as required by NRS
12 116.31162(4).

13 • NRS 116.311635 requires that the notice of sale be sent to the
14 Ombudsman, and the Ombudsman maintain a database of the notices received.

15 • The record shows that the February 12, 2014, the Notice of Sale
16 was cancelled on or about May 5, 2014, and thus, there was no Notice of Sale in
17 effect prior to the August 15, 2014 foreclosure sale.

18 • The foreclosure sale involved fraud, unfairness and oppression in
19 that that the sale price was disproportionately low in comparison to the
20 undisputed value of the Property.

21 Based on the numerous issues of material fact, it is clear the district court
22 erred by granting summary judgment in favor of SCA. Therefore, the district

1 court's June 24 Order and Findings, based solely on her previous order and
2 findings, is equally erroneous. As a result, the orders granting summary
3 judgment in favor of SCA and quieting title in favor of JimiJack must be
4 reversed.

5 **VII. Argument**

6 **A. Standard of Review.**

7 This Court applies a de novo standard of review for summary judgment
8 order. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P. 3d 1026, 1029 (Nev.
9 2005). Because JimiJack presented no evidence at trial and relied exclusively on
10 the district court's Order and Findings, the de novo standard of review should be
11 applied to all aspects of this matter.

12 Pursuant to NRCP 56(c), summary judgment may only be entered when
13 "there is no genuine issue as to any material fact and that the moving party is
14 entitled to judgment as a matter of law." "The purpose of summary judgment is
15 to avoid unnecessary trials when there is no dispute as to the facts before the
16 court." *Northwest. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471
17 (9th Cir. 1994). Summary judgment is only appropriate when the pleadings, the
18 discovery and disclosure materials on file, and any affidavits "show that there is
19 no genuine issue as to any material fact and that the moving party is entitled to a
20 judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106
21 S. Ct. 2548, 91 L. Ed. 2d 265 (1986). An issue is "genuine" if there is a
22 sufficient evidentiary basis on which a reasonable fact-finder could find for the

1 nonmoving party and a dispute is “material” if it could affect the outcome of the
2 suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
3 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

4 Further, the moving party bears the burden of showing that there are no
5 genuine issues of material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870,
6 883 (9th Cir. 1982). Once the moving party satisfies Rule 56’s requirements, the
7 burden shifts to the party resisting the motion to “set forth specific facts showing
8 that there is a genuine issue for trial.” *Anderson*, 477 U.S. at 256. The
9 nonmoving party “may not rely on denials in the pleadings but must produce
10 specific evidence, through affidavits or admissible discovery material, to show
11 that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th
12 Cir. 1991), and “must do more than simply show that there is some metaphysical
13 doubt as to the material facts.” *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 783
14 (9th Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
15 U.S. 574, 586, 106 S. Ct. 1348, 89 L. Ed. 2d 538 (1986)). “The mere existence
16 of a scintilla of evidence in support of the plaintiff’s position will be
17 insufficient.” *Anderson*, 477 U.S. at 252. Moreover, a court views all facts and
18 draws all inferences in the light most favorable to the nonmoving party. *Kaiser*
19 *Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

20 **B. Jimijack Failed to Prove Superior Title.**

21 Each party in a quiet title action has the burden of demonstrating superior
22 title in himself or herself. *Resources Group, LLC v. Nevada Association*

1 *Services, Inc.*, 135 Nev. Adv. Rep. 8, 437 P.3d 154 (2019). While the burden of
2 proof rests with the plaintiff to prove good title in himself, *Breliant v. Preferred*
3 *Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314, 318 (1996), abrogated on
4 other grounds by *Delgado v. Am. Family Ins. Grp.*, 125 Nev. 564, 570, 217 P.3d
5 563, 567 (2009), “a plaintiff’s right to relief [ultimately] . . . depends on
6 superiority of title,” *W. Sunset 2050 Tr. v. Nationstar Mortg., LLC*, 134 Nev.,
7 Adv. Op. 47, 420 P.3d 1032, 1034 (2018). And because “[a] plea to quiet title
8 does not require any particular elements, . . . each party must plead and prove his
9 or her own claim to the property in question.” *Chapman v. Deutsche Bank Nat’l*
10 *Tr. Co.*, 129 Nev. 314, 318, 302 P.3d 1103, 1106 (2013).

11 In the instant matter, Jimijack did not meet the burden of proving
12 superiority of title. Jimijack introduced no evidence at the trial.⁸³ Instead, it
13 apparently relied exclusively on the district court’s flawed April 18 Order and
14 Findings granting summary judgment in favor of SCA. Such a failure to
15 demonstrate superior title in its name is fatal to its quiet title claim.

16 To the contrary, Tobin met this burden as it is undisputed that the Gordon
17 B. Hansen Trust, dated 8/22/08, held a valid deed, recorded on August 27, 2008,
18 which remained effect until the invalid foreclosure sale was held on August 15,
19 2014.

20
21
22

⁸³ AA Vol. XIV 0002956 – 002957

1 **C. SCA's Motion Should Have Been Denied as Genuine Issues of**
2 **Material Fact Remain.**

3 There are numerous issues of material fact which should have precluded
4 the entry of summary judgment by the district court. There is a legitimate
5 dispute whether the October 3, 2012 letter that Tobin sent to Sun City Anthem
6 included a copy of the Notice of Hearing as claimed by SCA. (See April 18
7 Order and Findings, ¶¶ 6-8, and compare to Tobin Declaration, ¶¶ 18-23 and
8 36-38).⁸⁴ Further, there are genuine issues whether HOA complied with its own
9 CC&Rs regarding required notices. See Tobin Declaration, ¶¶ 45-47).⁸⁵
10 Notably, although SCA's failure to comply with its CC&Rs regarding required
11 notices and a right to hearing was raised by Tobin below, but largely ignored as
12 this issue was not addressed by the Court, nor was it included in the Court's
13 order.

14 As set above, SCA, by and through its agent, RRFS, did not follow its
15 own CC&R requirements regarding notice and a right to a hearing, nor did it
16 conduct a valid foreclosure sale in compliance with the statutory requirements.
17 SCA and RRFS made numerous mistakes in attempting to foreclose upon the
18 Property, including: (i) failing to provide Tobin with a notice and right to a
19 hearing as required by the CC&Rs; (ii) failing to properly credit payments; (iii)
20 failing to accurately calculate the amount due; (iv) failing to provide proper
21 notice of the foreclosure sale; and (v) conducting a foreclosure sale on a

22 ⁸⁴ AA Vol. VI 001122 – 001125

⁸⁵ AA Vol. VI 001126 – 001127

1 cancelled Notice of Sale. Any of these errors, standing alone, should be
2 sufficient to set aside the foreclosure. Taken together, the combined errors,
3 together with the meager purchase price at the foreclosure sale mandates that
4 the district court's decision be set aside, and title quieted in the name of the
5 Trust.

6 SCA relied upon the often-cited *Shadow Wood HOA v. N.Y. Cmty.*
7 *Bancorp.*, 132 Nev. Adv. Op. 5, 366, P.3d 1105 (2016) in support of its motion
8 for summary judgment. *Shadow Wood* was recently interpreted by the Nevada
9 Supreme Court in *Nationstar Mort., LLC v. Saticoy Bay LLC Series 2227*
10 *Shadow Canyon*, 133 Nev Adv. Rep. 91, 405 P.3d 641 (2017). In *Nationstar*,
11 this Court succinctly summarized *Shadow Wood* as follows: the bank
12 foreclosed on its deed of trust and obtained the property via credit bid at the
13 foreclosure sale for roughly \$46,000. Because the bank never paid off the
14 unextinguished 9-month super priority lien and failed to pay the continuing
15 assessments after it obtained title, the HOA foreclosed on its lien. At that sale,
16 the purchaser bought the property for roughly \$11,000. The bank sued to set
17 aside the sale, and the district court granted the bank's request.

18 On appeal, this Court considered whether the bank had established
19 equitable grounds to set aside the sale. This court started with the premise that
20 "demonstrating that an association sold a property at its foreclosure sale for an
21 inadequate price is not enough to set aside that sale; there must also be a
22 showing of fraud, unfairness, or oppression." *Nationstar*, 133 Nev. Adv. Rep.

1 91, 405 P. 3d at 647, quoting *Shadow Wood*, 132 Nev. Adv. Op. 5, 366 P. 3d at
2 1112 (citing *Long v. Towne*, 98 Nev. 11, 13, 639 P.2d 528, 530 (1982)). The
3 Court in *Nationstar* then stated that the bank in *Shadow Wood* “failed to
4 establish that the foreclosure sale price was grossly inadequate as a matter of
5 law,” and observed that the \$11,000 purchase price was 23 percent of the
6 property’s fair market value and therefore the sales price was “not obviously
7 inadequate.” *Id.*

8 In support, the *Nationstar* Court acknowledged the decision in *Golden v.*
9 *Tomiyasu*, 79 Nev. 503, 514, 387 P.2d 989, 995 (1963), wherein the Supreme
10 Court upheld a sale with a purchase price that was 29 percent of fair market
11 value. The Court relied upon the Restatement’s suggestion that a sale for less
12 than 20 percent of the property’s fair market value may “[g]enerally” be
13 invalidated by a court. *Nationstar*, 133 Nev. Adv. Rep. 91, 405 P. 3d at 647,
14 quoting *Shadow Wood*, 132 Nev. Adv. Op. 5, 366 P. 3d at 1112-13 (quoting
15 *Restatement (Third) of Prop.: Mortgages* § 8.3 (1997)). The analysis then
16 turned to whether the sale was affected by fraud, unfairness, or oppression. *Id.*

17 Although the Court in *Nationstar* declined to adopt the Restatement’s 20-
18 percent standard or any other hard-and-fast dividing line based solely on price,
19 this Court did not find that price is wholly irrelevant. In fact, *Golden* recognized
20 that the price/fair-market-value disparity is a relevant consideration because a
21 wide disparity may require less evidence of fraud, unfairness, or oppression to
22 justify setting aside the sale:

1 [I]t is universally recognized that inadequacy of price
2 is a circumstance of greater or less weight to be
3 considered in connection with other circumstances
4 impeaching the fairness of the transaction as a cause of
5 vacating it, and that, where the inadequacy is palpable
and great, **very slight additional evidence of
unfairness or irregularity is sufficient to authorize
the granting of the relief sought.**

6 *Nationstar*, 133 Nev. Adv. Rep. 91, 405 P. 3d at 648, quoting *Golden*, 79 Nev.
7 at 515-16, 387 P.2d at 995 (quoting *Odell v. Cox*, 151 Cal. 70, 90 P. 194, 196
8 (Cal. 1907) (emphasis added)). “While mere inadequacy of price has rarely
9 been held sufficient in itself to justify setting aside a judicial sale of property,
10 courts are not slow to seize upon other circumstances impeaching the fairness
11 of the transaction as a cause for vacating it, especially if the inadequacy be so
12 gross as to shock the conscience.” *Id.* (quoting *Schroeder v. Young*, 161 U.S.
13 334, 337-38, 16 S. Ct. 512, 40 L. Ed. 721 (1896)).

14 Thus, while the *Nationstar* Court continued to endorse *Golden’s*
15 approach to evaluating the validity of foreclosure sales: mere inadequacy of
16 price is not in itself sufficient to set aside the foreclosure sale, in adequacy of
17 price must be considered together with any alleged irregularities in the sales
18 process to determine whether the sale was affected by fraud, unfairness, or
19 oppression. *See Id.* Although the *Nationstar* Court declined to adopt the
20 Restatements suggestion that a foreclosure sale for less than 20 percent of fair
21 market value necessarily invalidates the sale, it is a factor that must be
22 considered. Here, SCA has not disputed that the foreclosure sale price was less

1 than 20 percent of the fair market value.⁸⁶ The evidence presented below was
2 undisputed that the sale price was less than twenty (20) percent of the fair
3 market value.

4 Thus, we must now look to the irregularities in the foreclosure sale.
5 Irregularities that may rise to the level of fraud, unfairness, or oppression
6 include an HOA's failure to mail a deed of trust beneficiary the statutorily
7 required notices, *see SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 130 Nev., Adv.
8 Op. 75, 334 P.3d 408, 418 (2014). Also *see Nationstar Mortg., LLC v. Sahara*
9 *Sunrise Homeowners Ass'n*, Lexis 42231 (D. Nev. Mar. 14, 2019). "HOA Sale
10 is void for failure to mail the statutory required notice of default to the then
11 existing deed of trust beneficiary."

12 The irregularities in the foreclosure process were set forth in great detail
13 in Tobin's Declaration and demonstrate material issues of disputed fact.
14 Generally, SCA did not comply with its own CC&R's by failing to provide the
15 requisite notices and a right to hearing required by the CC&Rs (Tobin
16 Declaration, ¶¶ 45-47);⁸⁷ SCA did not properly credit payments (Tobin
17 Declaration, ¶¶ 41-43 and 50-52),⁸⁸ the HOA failed to accurately calculate the
18 amount due (Tobin Declaration, ¶¶ 41-43 and 50-52),⁸⁹ SCA failed to give
19 proper notice of the foreclosure sale (Tobin Declaration, ¶¶ 49 and 58),⁹⁰ and
20

21 ⁸⁶ AA Vol. VI 001131 – 001132 Tobin Decl., ¶¶ 75-89

⁸⁷ AA Vol. VI 001126 – 001127

⁸⁸ AA Vol. VI 001126 – 001127

22 ⁸⁹ AA Vol. VI 001126 – 001128

⁹⁰ AA Vol. VI 001127, 001129

1 the Notice of Sale was cancelled and not replaced (Tobin Declaration, ¶¶ 63-
2 66).⁹¹

3 Having presented evidence of the HOA's failure to provide proper
4 notices, SCA cannot rely on deed recitals to validate an otherwise invalid
5 foreclosure sale. NRS 116.31166(3) requires that a foreclosure sale be
6 conducted pursuant to NRS 116.31162, 116.31163 and 116.31164 to vest a
7 purchaser at the HOA foreclosure sale with title to the Property. By using the
8 phrase "pursuant to" in NRS 116.31166(3) with reference to NRS 116.31162,
9 116.31163 and 116.31164, the Nevada legislature mandated compliance with
10 those statutes. Consequently, a HOA foreclosure sale that does not vest title
11 unless the HOA actually complies with NRS 116.31162, 116.31163 and
12 116.31164. Here, there are genuine issues of material fact whether there was
13 such compliance. Certainly, SCA's failure to comply with the statutory notice
14 requirements, along with those mandated by the CC&Rs, violates Tobin's due
15 process rights to notice and a hearing. At the very least, there is at least slight
16 evidence of unfairness or irregularity sufficient to raise a genuine issue of
17 material fact that merits reversal of the district court's Order, and upon such
18 reversal, remand with instructions to quiet title in favor of Tobin.

19 **V. Conclusion**

20 Summary judgment is only appropriate when, after a review of the record
21 viewed in a light most favorable to the non-moving party, there remain no
22

⁹¹ AA Vol. VI 001128 – 001129

1 issues of material fact, and the moving party is entitled to judgment as a matter
2 of law. Here, there are numerous material issues of fact in dispute. Accordingly,
3 Tobin respectfully submits it was error to grant SCA's motion for summary
4 judgment and quiet title in favor of JimiJack.

5 For the foregoing reasons Cross-Claimant Nona Tobin respectfully
6 requests that this Court reverse the decisions of the district court and quiet title
7 to the Property in her favor.

8 DATED this 19 day of December, 2020.

9 MUSHKIN & COPPEDGE

10
11 
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1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
4 and the type style requirements of NRAP 32(a)(6) because:

5 2. ☒ This brief has been prepared in a proportionally spaced
6 typeface using Microsoft Word 2016 in Times New Roman 14-point font; or

7 3. ☐ This brief has been prepared in a monospaced typeface
8 using *[state name and version of word-processing program]* with *[state number*
9 *of characters per inch and name of type style]*.

10 4. I further certify that this brief complies with the page- or type-
11 volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief
12 exempted by NRAP 32(a)(7)(C), it is either:

13 ☒ Proportionately spaced, has a typeface of 14 points or more,
14 and contains 7591 words; or

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16 contains _____ words or _____ lines of text; or


17 ☐ Does not exceed _____ pages.

18 5. Finally, I hereby certify that I have read this appellate brief, and to
19 the best of my knowledge, information, and belief, it is not frivolous or
20 interposed for any improper purpose. I further certify that this brief complies
21 with all applicable Nevada Rules of Appellate Procedure, in particular NRAP
22 28(e)(1), which requires every assertion in the brief regarding matters in the

1 record to be supported by a reference to the page and volume number, if any, of
2 the transcript or appendix where the matter relied on is to be found. I
3 understand that I may be subject to sanctions in the event that the
4 accompanying brief is not in conformity with the requirements of the Nevada
5 Rules of Appellate Procedure.

6 DATED this 19 day of December, 2019.

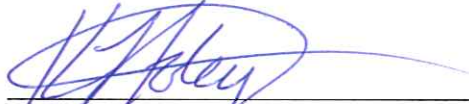
7 MUSHKIN & COPPEDGE

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10 MICHAEL R. MUSHKIN, ESQ.
11 Nevada State Bar No. 2421
12 L. JOE COPPEDGE, ESQ.
13 Nevada State Bar No. 4954
14 6070 S. Eastern Ave., Suite 270
15 Las Vegas, Nevada 89119
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25(d), I certify that on this 19th day of December,
3 2019, I served a true and correct copy of the foregoing **Appellant's Opening**
4 **Brief** as follows:

- 5 ☐ by placing same to be deposited for mailing in the United States
6 Mail, in a sealed envelope upon which first class postage was
7 prepaid in Las Vegas, Nevada;
- 8 ☒ via electronic means by operation of the Court's electronic filing
9 system, upon each party in this case who is registered as an
10 electronic case filing user with the Clerk;
- 11 ☐ via hand-delivery to the addressee listed below;
- 12 ☐ via facsimile;
- 13 ☐ by transmitting via email to the email address set forth below

14 
15 _____
16 An Employee of
17 Mushkin & Coppedge
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20
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