

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

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THOMAS L. CORNWELL, A NEVADA RESIDENT, Appellant,

Electronically Filed  
Jul 16 2021 02:11 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

v.

NEIL E. SCHULTZ, A NEVADA RESIDENT, A/K/A THE NEIL E. SCHULTZ  
TRUST DATED JANUARY 29, 2016, Respondent.

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Supreme Court No. 82106

First Judicial District Court  
Case No. 18 RP 00018 1B

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**APPELLANT'S APPENDIX**

**VOLUME 2 OF 3**

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*Pro Bono Counsel for Appellant THOMAS J. CORNWELL*

THOMAS L. CORNWELL, A NEVADA RESIDENT, Appellant, v. NEIL E.  
SCHULTZ, A NEVADA RESIDENT, A/K/A THE NEIL E. SCHULTZ TRUST  
DATED JANUARY 29, 2016, Respondent.

Supreme Court No. 82106  
First Judicial District Court  
Case No. 18 RP 00018 1B

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**INDEX**

<b>PLEADING</b>	<b>DATE</b>	<b>PAGE NUMBER</b>	<b>VOL</b>
<b>AFFIRMATION PURSUANT TO NRS 2396.030</b>	<b>11/05/2018</b>	<b>AA12</b>	<b>1</b>
<b>AMENDED ORDER TO SET PRETRIAL CONFERENCE</b>	<b>01/24/2020</b>	<b>AA175A- AA176</b>	<b>2</b>
<b>AMENDED TRIAL DATE MEMO</b>	<b>06/06/2020</b>	<b>AA148</b>	<b>1</b>
<b>ANSWER TO COMPLAINT AND COUNTERCLAIM WITH REQUEST FOR RELIEF</b>	<b>03/04/2019</b>	<b>AA32-AA128</b>	<b>1</b>
<b>APPLICATION FOR ENTRY OF DEFAULT</b>	<b>02/25/2019</b>	<b>AA21</b>	<b>1</b>
<b>APPLICATION FOR ENTRY OF DEFAULT</b>	<b>03/05/2019</b>	<b>AA129- AA130</b>	<b>1</b>
<b>APPLICATION TO PROCEED INFORMA PAUPERIS</b>	<b>09/25/2019</b>	<b>AA171</b>	<b>1</b>
<b>APPLICATION TO WAIVE FILING FEES/SERVICE ONLY</b>	<b>02/19/2019</b>	<b>AA13-AA15</b>	<b>1</b>
<b>APPLICATION TO WAIVE FILING FEES/SERVICE ONLY</b>	<b>02/28/2019</b>	<b>AA24-AA27</b>	<b>1</b>
<b>CASE APPEAL STATEMENT</b>	<b>11/12/2020</b>	<b>AA275- AA277</b>	<b>2</b>
<b>CASE APPEAL STATEMENT</b>	<b>11/17/2020</b>	<b>AA281- AA283</b>	<b>2</b>
<b>CLOSING ARGUMENT (Defendants)</b>	<b>09/21/2020</b>	<b>AA216- AA226</b>	<b>2</b>

<b>CLOSING ARGUMENT/PROPOSED ORDER FINAL</b>	<b>10/16/2020</b>	<b>AA232-AA248</b>	<b>2</b>
<b>COMPLAINT TO QUIET TITLE TP REAL PROPERTY</b>	<b>11/05/2018</b>	<b>AA1-AA11</b>	<b>1</b>
<b>DEFAULT</b>	<b>03/05/2019</b>	<b>AA133</b>	<b>1</b>
<b>EARLY CASE CONFERENCE REPORT</b>	<b>07/03/2019</b>	<b>AA144-AA147</b>	<b>1</b>
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT</b>	<b>11/05/2020</b>	<b>AA251-AA259</b>	<b>1</b>
<b>HEARING ORDER</b>	<b>02/13/2020</b>	<b>AA178-AA179</b>	<b>2</b>
<b>MOTION FOR CONTINUANCE</b>	<b>07/28/2020</b>	<b>AA180-AA183</b>	<b>2</b>
<b>MOTION FOR SUMMARY JUDGMENT WITH DECLARATORY RELIEF</b>	<b>08/08/2019</b>	<b>AA149-AA152</b>	<b>1</b>
<b>MOTION TO REQUEST A RECONSIDERATION OF WAIVER OF FEES</b>	<b>02/25/2019</b>	<b>AA16-AA19</b>	<b>1</b>
<b>NOTICE OF APPEAL AND STAY OF ENTRY OF ORDER</b>	<b>11/10/2020</b>	<b>AA260-AA261</b>	<b>2</b>
<b>NOTICE OF APPEAL AND STAY OF ENTRY OF ORDER</b>	<b>11/16/2020</b>	<b>AA278-AA280</b>	<b>2</b>
<b>NOTICE OF DEFICIENCY IN NOTICE OF APPEAL</b>	<b>11/12/2020</b>	<b>AA274-AA275</b>	<b>2</b>
<b>NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT</b>	<b>11/10/2020</b>	<b>AA262-AA273</b>	<b>2</b>
<b>NOTICE OF INTENT TO TAKE DEFAULT</b>	<b>03/01/2019</b>	<b>AA30-AA31</b>	<b>1</b>
<b>NOTICE OF INTENT TO TAKE DEFAULT</b>	<b>02/25/2019</b>	<b>AA131-AA132</b>	<b>1</b>
<b>NOTICE TO SET</b>	<b>05/10/2019</b>	<b>AA142-AA143</b>	<b>1</b>
<b>OPPOSITION TO MOTION FOR TRIAL CONTINUANCE</b>	<b>07/31/2019</b>	<b>AA195-AA197</b>	<b>2</b>
<b>ORDER DIRECTING TRANSMISSION OF THE RECORD</b>	<b>12/02/2020</b>	<b>AA284</b>	<b>2</b>

<b>ORDER FOR PROPOSED ORDERS</b>	<b>10/20/2020</b>	<b>AA249-AA250</b>	<b>2</b>
<b>ORDER RE: MOTION TO REQUEST A RECONSIDERATION OF WAIVER OF FEES</b>	<b>02/26/2019</b>	<b>AA22-AA23</b>	<b>1</b>
<b>ORDER REGARDING WAIVER OF FEES AND COSTS</b>	<b>03/01/2019</b>	<b>AA28-AA29</b>	<b>1</b>
<b>ORDER (Answer Counterclaim and Reply do not need to be submitted to the Court)</b>	<b>05/02/2019</b>	<b>AA140-AA141</b>	<b>1</b>
<b>ORDER DENYING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS</b>	<b>09/30/2019</b>	<b>AA172-AA173</b>	<b>1</b>
<b>ORDER DENYING MOTION FOR SUMMARY JUDGMENT</b>	<b>09/11/2019</b>	<b>AA169-AA170</b>	<b>1</b>
<b>ORDER DENYING MOTION TO CONTINUE</b>	<b>08/03/2020</b>	<b>AA199-AA200</b>	<b>2</b>
<b>ORDER DENYING REQUEST FOR EX PARTE HEARING</b>	<b>08/04/2020</b>	<b>AA201-AA202</b>	<b>2</b>
<b>ORDER DENYING REQUEST TO SUBMIT</b>	<b>08/13/2019</b>	<b>AA154-AA155</b>	<b>1</b>
<b>ORDER FOR CLOSING ARGUMENTS</b>	<b>08/06/2020</b>	<b>AA203-AA205</b>	<b>2</b>
<b>ORDER FOR PROPOSED ORDER</b>	<b>08/28/2019</b>	<b>AA167-AA168</b>	<b>1</b>
<b>ORDER TO SET PRETRIAL CONFERENCE</b>	<b>12/18/2019</b>	<b>AA174-AA175</b>	<b>1</b>
<b>PLAINTIFF'S BRIEF IN REPLY TO DEFENDANT'S CLOSING ARGUMENT</b>	<b>10/02/2020</b>	<b>AA227-AA231</b>	<b>2</b>
<b>PLAINTIFF'S CLOSING ARGUMENT</b>	<b>09/02/2020</b>	<b>AA206-AA215</b>	<b>2</b>
<b>PLAINTIFF'S MOTION IN LIMINE</b>	<b>07/31/2020</b>	<b>AA192-AA194</b>	<b>2</b>
<b>PLAINTIFF'S TRIAL STATEMENT</b>	<b>07/31/2020</b>	<b>AA184-AA191</b>	<b>2</b>
<b>PROOF OF SERVICE OF SUMMONS AND COMPLAINT</b>	<b>02/25/2019</b>	<b>AA20</b>	<b>1</b>
<b>REPLY TO COUNTERCLAIM</b>	<b>03/22/2019</b>	<b>AA134-AA137</b>	<b>1</b>
<b>REQUEST FOR EX PARTE HEARING</b>	<b>07/31/2020</b>	<b>AA198</b>	<b>2</b>

<b>REQUEST FOR SUBMISSION</b>	<b>04/25/2019</b>	<b>AA138- AA139</b>	<b>1</b>
<b>REQUEST FOR SUBMISSION (Summary Judgment)</b>	<b>08/08/2019</b>	<b>AA153</b>	<b>1</b>
<b>REQUEST FOR SUBMISSION (Summary Judgment)</b>	<b>08/27/2019</b>	<b>AA165- AA166</b>	<b>1</b>
<b>RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT</b>	<b>08/26/2019</b>	<b>AA156- AA164</b>	<b>1</b>
<b>TRIAL DATE MEMO</b>	<b>01/27/2020</b>	<b>AA177</b>	<b>2</b>
<b>TRANSCRIPT</b>	<b>01/27/2020</b>	<b>AA285- AA301</b>	<b>3</b>
<b>TRANSCRIPT</b>	<b>08/06/2020</b>	<b>AA302- AA395</b>	<b>3</b>

DATED this 15<sup>th</sup> day of July, 2021.

GARMAN TURNER GORDON LLP

/s/ Eric R. Olsen  
ERIC R. OLSEN  
Nevada Bar No. 3127  
7251 Amigo St., Suite 210  
Las Vegas Nevada 89119  
*Pro Bono Counsel for Appellant*

## CERTIFICATE OF SERVICE

I certify that on the 15<sup>th</sup> day of July, 2021, I served a copy of this completed **APPELLANT'S APPENDIX** upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By E-Service through Nevada Supreme Court; email and by first class mail with sufficient postage prepaid to the following address(es):  
(NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

John Bartlett, Esq.  
755 N. Roop St.  
Carson City, NV 89701  
Attorneys for Respondent

/s/ CM Wrangham  
An employee of  
GARMAN TURNER GORDON LLP

REC'D & FILED  
2020 JAN 24 PM 2:22  
AUDREY ROWATT  
CLERK  
BY *[Signature]* DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

-oOo-

NEIL SCHULTZ,

Petitioner,

vs.

THOMAS CORNWELL,

Respondent.

CASE NO. 18 RP 00018 1B

DEPT. 2

AMENDED ORDER TO SET PRETRIAL CONFERENCE  
(CHANGE IN HEARING DATE)

Under NRCP 16, the Court may, in its discretion,

Order the attorneys and any unrepresented parties to appear for one or more pretrial conferences for such purposes as: (1) Expediting disposition of the action; (2) Establishing early and continuing control so that the case will not be protracted because of lack of management; (3) Discouraging wasteful pretrial activities; (4) Improving the quality of the trial through more thorough preparation; and (5) Facilitating settlement.

**THE COURT ORDERS** the parties appear for an NRCP 16(a) Pretrial conference on **January 27, 2020 at 10:00 a.m.** Mr. Cornwell will appear telephonically.

January 24, 2020.

*[Signature]*  
JAMES E. WILSON  
District Judge

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John S. Bartlett, Esq.  
755 N. Roop ST., # 108  
Carson City, NV 89701

Thomas Cornwell,  
C/O Carson City Jail  
897 E. Musser ST.  
Carson City, NV 89701

  
Susan Greenburg  
Judicial Assistant



**In The First Juuicial District Court of the State of Nevada  
In and for Carson City**

\* \* \*

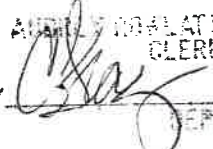
REC'D & FILED

**TRIAL DATE MEMO**

2020 JAN 27 AM 11:32

Case No. 18 RP 00018 1B

Dept. II

AUBREY ROWLATT  
CLERK  
BY:   
DEPUTY

NEIL E. SCHULTZ,

Plaintiff,

JOHN BARTLETT

vs.

THOMAS LEHMAN CORNWELL,

Defendant.

PRO PER

\* \* \* \*



Trial



Jury



Non-Jury



Hearing on Motion \_\_\_\_\_



Other \_\_\_\_\_


**TO COMMENCE** on the 5<sup>th</sup> day of August, 2020 at 9:00 o'clock, a.m.

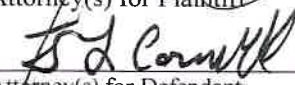
**Time Allowed** 1 Day(s) \_\_\_\_\_ Hour(s)

No. 1 Firm Setting

☐ Yes ☐ No Court Reporter Requested By: ☐ Plaintiff ☐ Defendant

DATED: January 27, 2020

  
\_\_\_\_\_  
Attorney(s) for Plaintiff

  
\_\_\_\_\_  
Attorney(s) for Defendant

  
\_\_\_\_\_  
DISTRICT JUDGE

**CERTIFICATE OF SERVICE BY MAIL**

The undersigned, an employee of the Carson City Clerk/District Judge, hereby certifies that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served the foregoing TRIAL DATE MEMO on the Attorneys for Plaintiff and Defendant, by depositing a copy thereof in the U.S. Mail at Carson City, Nevada, postage paid, addressed as follows:

SUBSCRIBED and SWORN to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
AUBREY ROWLATT, Clerk

BY: \_\_\_\_\_ Deputy

REC'D & FILED ✓

2020 FEB 13 PM 1:36

AUBREY HOWLATT  
CLERK

BY Sefy DEPUTY

**FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY**

**NEIL E. SCHULTZ,**

**CASE NO. 18 RP 00018 1B**

**Petitioner,**

**DEPT. 2**

**vs.**

**THOMAS LEHMAN CORNWELL,**

**Co-petitioner.**

**HEARING ORDER**

**THE COURT ORDERS:**

A one day trial has been set for **August 5, 2020 at 9:00 a.m.**

Each party will file and serve (mail a copy to the other party's attorney or the other party if not represented by an attorney and include a certificate of service – proof it was mailed to the other attorney or party) by **July 31, 2020** a hearing statement that includes:

- (1) A statement of undisputed facts;
- (2) A statement of disputed facts and identify the witness(es) and exhibit(s) that support the facts claimed by the party,
- (3) A list of witnesses with a specific description of the witnesses' expected testimony;
- (4) A copy of all exhibits the party intends to use at the hearing.

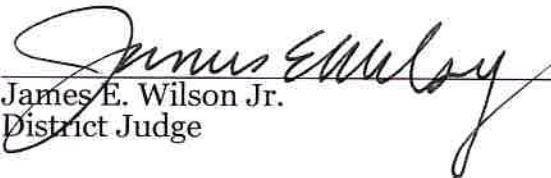
1 Failure to comply with this order will result in sanctions that may include the  
2 exclusion of witnesses, undisclosed testimony, and/or exclusion of exhibits.

3 SELF-REPRESENTED PARTIES:

4 Generally, the rules of evidence do not allow a witness to say what someone  
5 else has said. So, it is important to have the person who saw or heard something  
6 you want the court to know about present at the hearing. A party's own  
7 statement(s) can be stated by a witness if the statements are offered against the  
8 party who made the statement(s).

9 A party may have the clerk of the court issue subpoenas for witnesses.

10 February 13, 2020.

11  
12   
13 James E. Wilson Jr.  
14 District Judge

15  
16  
17 **CERTIFICATE OF SERVICE**

18 I certify that I am an employee of the First Judicial District Court of Nevada;  
19 that on February 13, 2020 I served a copy of this document by placing a true  
20 copy in an envelope addressed to

21  
22 John S. Barlett, Esq.  
23 755 N. Roop St., #108  
24 Carson City, NV 89701

25 Thomas Cornwell, #1229161  
26 NNCC  
27 P.O. Box 7000  
28 Carson City, NV 89702

25 the envelope sealed and then deposited in the Court's central mailing basket in  
26 the Court Clerk's Office for delivery to the United States Post Office at 1111  
27 South Roop Street, Carson City, Nevada for mailing.

28   
Susan Greenburg  
Judicial Assistant

1 CONT  
2 THOMAS CORNWELL  
3 2355 COLUMBIA WAY  
4 CARSON CITY, NV. 89701  
5 (775)461-0377  
6 TLCNV@YAHOO.COM  
7 IN PROPER PERSON

REC'D & FILED

2020 JUL 28 PM 12:27

AUDREY ROUNLATT  
CLERK

BY  DEPUTY

8 IN THE FIRST JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF CARSON  
9 CITY, STATE OF NEVADA

8 NEIL SCHULTZ TRUST  
9 NEIL SCHULTZ

CASE NO.:18 RP 00018 1B

PLAINTIFF,

VS.

DEPT. NO: II

THOMAS CORNWELL

MOTION FOR CONTINUANCE

DEFENDANT(S).

14 COMES NOW DEFENDANT, THOMAS CORNWELL, IN PROPER PERSON. TO  
15 REQUEST A CONTINUANCE FOR THIRTY DAYS IN THE ACTION TO QUIET  
16 TITLE.

17 DATED THIS 28 DAY OF July, 2020

18 PURSUANT TO NRS 53.045, I DECLARE UNDER PENALTY OF  
19 PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

20  
21 (SIGNATURE)

THOMAS CORNWELL IN PROPER PERSON

22 2355 COLUMBIA WAY  
23 CARSON CITY, NV. 89701  
24 (775)461-0377  
25 TLCNV@YAHOO.COM

1 **THIS MOTION IS MADE FOR THE FOLLOWING REASONS:**

- 2 1. DEFENDANT IS NOT REPRESENTED BY AN ATTORNEY AND IS CURRENTLY  
3 LOOKING INTO OBTAINING LEGAL COUNSEL; HOWEVER FINANCIAL  
4 BARRIERS ARE MAKING IT DIFFICULT.
- 5 2. DEFENDANT IS STILL WAITING ON CRITICAL DOCUMENTARY EVIDENCE  
6 REGARDING MORTGAGE PAYMENTS PAID TO PRIOR BENEFICIARY OF THE  
7 DEED OF TRUST AS WELL AS BANKING DOCUMENTS.
- 8 3. DEFENDANT REQUIRES MORE TIME TO RESEARCH THE LAW APPLICABLE  
9 TO THIS CASE.
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1 THIS DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
2 PERSON.

3 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAW OF THE STATE OF  
4 NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.

5 DATED THIS 08 DAY OF July 2020

  
A handwritten signature in black ink, appearing to read "S. J. Connel", is written over a horizontal line.

6  
7 SIGNATURE

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY THAT ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, I PLACED A TRUE AND CORRECT COPY OF THE FOREGOING IN THE UNITED STATES MAIL, WITH FIRST-CLASS POSTAGE PREPAID, ADDRESSED TO THE FOLLOWING:

JOHN S. BARTLETT, ESQ.

NV BAR 143

775 N. ROOP ST. SUITE 108

(775)841-6444

JOHNSBARTLETT@ATT.COM

DATED THIS 28 DAY OF July, 2020

PURSUANT TO NRS 53.045, I DECLARE  
UNDER PENALTY OF PERJURY THAT THE  
FOREGOING IS TRUE AND CORRECT.

  
(SIGNATURE)

THOMAS CORNWELL  
2355 COLUMBIA WAY  
CARSON CITY, NV. 89701  
(775)461-0377  
TLCNV@YAHOO.COM  
IN PROPER PERSON

John S. Bartlett, Esq.  
SBN 143  
755 N. Roop St.  
Suite 108  
Carson City, NV 89701  
(775) 841-6444  
johnsbartlett@att.net

Attorneys for Plaintiff

REC'D & FILED ✓

2020 JUL 31 PM 12:47

AUDREY MCCLART  
CLERK

BY

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
IN AND FOR CARSON CITY, NEVADA

NEIL E. SCHULTZ, a Nevada resident, aka  
The Neil E. Schultz Trust dated January 29,  
2016,

Plaintiff,

vs.

THOMAS L. CORNWELL, a Nevada  
resident, DOES 1 through 5, inclusive.,

Defendant.

Case No. 18 RP 00018

Dept. 2

PLAINTIFF'S TRIAL STATEMENT

Plaintiff Neil Schultz, by and through his attorney John S. Bartlett, hereby submits his  
Trial Statement pursuant to the Hearing Order issued in this case on February 13, 2020.

I. STATEMENT OF UNDISPUTED FACTS

Plaintiff submits the following as undisputed facts in this case.

1. Plaintiff Neil E. Schultz is currently the record title holder to the real property located  
at 2355 Columbia Way, Carson City, Nevada. Schultz became the record title holder of the  
property by virtue of a Trustee's Deed recorded in the Carson City Recorder's Office on  
September 26, 2018 after Schultz foreclosed a deed of trust he held secured by the property. A  
true and correct copy of the Trustee's Deed is attached hereto as Exhibit 21.

2. Plaintiff Schultz directed Automatic Funds Transfer Services, dba Allied Trustee  
Services, the company that conducted the foreclosure sale, to convey title to the property to the



1 Neil E. Schultz Trust dated January 29, 2016, which is a revocable inter vivos trust. Plaintiff  
2 Schultz is the trustee of the trust, and so is the real party in interest.

3 3. The recitals in the Trustee's Deed accurately describe the transactions that took place  
4 leading to the foreclosure and recording of the Trustee's Deed. To summarize, on or about May  
5 2, 2003, one Karen Lynn Clarke executed a promissory note in the principal sum of \$32,000.00  
6 in favor of George Soetje. See Exhibit 4, attached. This note was secured by a deed of trust  
7 executed by Ms. Clarke and recorded on May 8, 2003. See Exhibit 5, attached. This note was  
8 modified by Ms. Clarke and Mr. Soetje on a couple of subsequent occasions, as described in the  
9 Trustee's Deed.

10 4. On or about June 5, 2010 Ms. Clarke defaulted on the promissory note.

11 5. On January 29, 2016, Mr. Soetje assigned the beneficial interest in Clarke's note and  
12 deed of trust to plaintiff Schultz. Exhibit 12, attached. The assignment of the deed of trust was  
13 recorded on March 30, 2018. Exhibit 21, attached. Mr. Soetje made Mr. Schultz aware of the  
14 fact that the note executed by Ms. Clarke was in default.

15 7. On February 9, 2017, Ms. Clarke executed a Quitclaim Deed in favor of defendant  
16 Thomas L. Cornwell whereby she deeded the property to him. This deed was recorded on  
17 February 14, 2017. See Exhibit 6, attached.

18 8. After plaintiff Schultz obtained the assignment of the Clarke note and deed of trust  
19 from Mr. Soetje, he retained Automatic Funds Transfer Services, dba Allied Trustee Services to  
20 commence foreclosure proceedings against the property under the deed of trust. Defendant  
21 Cornwell was duly served with the Notice of Default and Election to Sell, and later with the  
22 Notice of Sale. Exhibit 15, attached.

23 9. At the foreclosure sale on August 23, 2018, plaintiff Schultz made the highest bid for  
24 the property, and so received the Trustee's Deed to the property. Exhibit 21, attached.

25 10. According to the Nevada Department of Business & Industry, Manufactured Housing  
26 Division, as of March 29, 2018 title to the 1975 Far West mobile home located on the property at  
27 2355 Columbia Way, Carson City, Nevada, was held by Clarence James Childers or Rose Joanne  
28 Childers, trustees of the Childers Family Trust dated January 24, 1997. Exhibit 19.

1           11. The mobile home located on the property is not listed as security for payment of the  
2 promissory note.

3                               II.       STATEMENT OF DISPUTED FACTS

4           1. Defendant Cornwell has alleged that at the time the Notice of Default and Election to  
5 Sell was recorded and served, the payments under the promissory note, as modified, were  
6 current. Despite a request to produce evidence of these payments at the Early Case Conference,  
7 and in formal discovery, defendant Cornwell has essentially admitted (most recently in his  
8 motion to continue the trial) he does not have any evidence of the payments allegedly made.

9                               III.       LIST OF WITNESSES

- 10           1. Neil E. Schultz, plaintiff.  
11           2. Thomas Cornwell, defendant.

12                               IV.       LIST OF EXHIBITS

13           Plaintiff's list of exhibits is as follows:

- 14           1. Grant, Bargain and Sale Deed to property at 2355 Columbia Way, Carson City,  
15           Nevada dated October 11, 2001 executed by Clarence J. Childers, trustee of the  
16           Childers Family Trust dated January 14, 1997, in favor of MaryLynn L. Cavender.  
17           2. Affidavit re Conversion of Manufactured Home/Mobile Home to Real Property  
18           executed by Clarence J. Childers on October 4, 2001 and recorded on October 24,  
19           2001.  
20           3. Grant, Bargain and Sale Deed to property executed by MaryLynn L. Cavender on  
21           May 6, 2003 in favor of Karen Lynn Clarke, recorded on May 8, 2003,  
22           4. Promissory note dated May 6, 2003 and executed by Karen Lynn Clarke in the  
23           amount of \$32,000.00, payable to George Soetje.  
24           5. Deed of Trust with Assignment of Rents dated May 2, 2003 and executed by Karen  
25           Lynn Clarke, with First Centennial Trust Deed Services, Inc. as trustee, and George  
26           Soetje as beneficiary.  
27           6. Loan Escrow Instructions dated May 2, 2003 and executed by Karen Lynn Clarke and  
28           George Soetje.

- 1 7. Note Modification dated June 13, 2006 executed by Karen Lynn Clarke and George  
2 Soetje.
- 3 8. Note Modification dated December 22, 2009 executed by Karen Lynn Clarke.
- 4 9. Note Modification unsigned and undated (but believed to have been negotiated in  
5 May 2010) modifying the promissory note dated May 6, 2003.
- 6 10. Amortization schedule dated May 21, 2010 showing new principal balance due and  
7 payment schedule as a result of negotiations between George Soetje and Karen Lynn  
8 Clarke to modify the promissory note dated May 6, 2003.
- 9 11. Quitclaim Deed dated February 9, 2017 and recorded on February 14, 2017 whereby  
10 Karen Lynn Clarke conveyed her interest in the property to Thomas Cornwell, with  
11 Declaration of Value.
- 12 12. Notice dated March 16, 2018 executed by George Soetje to First Centennial Title  
13 Company confirming sale of the promissory note to Neil Schultz and the current  
14 principal balance owed, plus accrued interest and penalties.
- 15 13. Substitution of Trustee dated April 12, 2018, and recorded on April 23, 2018.
- 16 14. Letter dated April 23, 2018 from Allied Foreclosure Services to Thomas Lehman  
17 Cornwell mailed with the Notice of Default and Election to Sell.
- 18 15. Notice of Default and Election to Sell, dated April 17, 2018, and recorded on April  
19 23, 2018, together with Affidavit of Authority to Exercise the Power of Sale.
- 20 16. Trustee's Sale Guarantee dated April 23, 2018 issued to plaintiff Neil Schultz.
- 21 17. Undated letter from Thomas Cornwell to Samantha Moore, Allied Foreclosure  
22 Services, challenging foreclosure process.
- 23 18. Letter dated August 6, 2018 from Geneva Martinkus to Thomas Cornwell responding  
24 to the Thomas Cornwell's letter to Samantha Moore, with attachment.
- 25 19. Manufactured Home Title Information on mobile home located on the property,  
26 showing the record title as of March 29, 2018.
- 27 20. Notice of Trustee's Sale, dated July 30, 2018 and recorded on August 1, 2018.
- 28

1 21. Declaration of Value and Trustee's Deed dated September 18, 2018 and recorded on  
2 September 26, 2018.

3 22. Request For Production of Documents directed to defendant Thomas Cornwell, dated  
4 September 30, 2019.

5 23. Response to Plaintiff's First Request For Production of Documents, dated October 30,  
6 2019.

7 24. Examples of utility bills and property taxes paid by Neil E. Schultz.

8 25. Affidavit of George Soetje.

9 V. ISSUES OF LAW

10 In this action plaintiff Neil E. Schultz is seeking a judgment that establishes he has full legal  
11 and equitable title to the real property located at 2355 Columbia Way, Carson City, Nevada. As  
12 the documents in the record show, Mr. Schultz purchased a promissory note from George Soetje  
13 in March 2018 that was secured by a deed of trust recorded on the real property located at 2355  
14 Columbia Way, Carson City, Nevada. The obligor of the note was Karen Lynn Clarke.

15 At the time he purchased the promissory note Mr. Schultz was informed by Mr. Soetje that  
16 payments on the promissory note had been delinquent since June 2010. Mr. Schultz was also  
17 informed that Ms. Clarke had recently sold or transferred her interest in the property to Thomas  
18 Cornwell. Under the terms of the deed of trust, both the delinquency in the payments and the  
19 fact that Ms. Clarke had sold or transferred her interest in the property to Mr. Cornwell  
20 constituted grounds to call the entire principal amount of the note immediately due and payable,  
21 together with accrued interest and fees. Consequently, shortly after purchasing the note and  
22 receiving an assignment of the deed of trust, Mr. Schultz contracted with Automatic Funds  
23 Transfer Services, dba Allied Trustee Services, to commence a non-judicial foreclosure of the  
24 deed of trust. The Notice of Default and Election to Sell and Notice of Sale were both served  
25 appropriately on defendant Cornwell. At the foreclosure sale held on August 23, 2018, Mr.  
26 Schultz was the only bidder. In its capacity as trustee of the deed of trust being foreclosed,  
27 Allied Trustee Services issued a Trustee's Deed to Mr. Schultz.

1 The primary legal issue in this case is whether the trustee, Automatic Funds Transfer  
2 Services, Inc., dba Allied Trustee Services, properly noticed and conducted the foreclosure sale.  
3 As the documentation to be presented shows, Allied Trustee Services followed the prescriptions  
4 of NRS 107.080 in providing the statutorily required notices to Mr. Cornwell, in duly recording  
5 the notice of default and election to sell and the notice of sale, and in holding the foreclosure  
6 sale.

7 Mr. Cornwell asserts that because he resides in a mobile home on the property at 2355  
8 Columbia Way, Carson City, Nevada, he should have been given notice that he had the right to  
9 pursue a modification of the loan as prescribed for an owner occupied residence. See, e.g. NRS  
10 107.086. However, there is no evidence that Mr. Cornwell assumed or otherwise became legally  
11 obligated to pay the promissory note executed by Karen Lynn Clarke in favor of George Soetje,  
12 so he would have no right to request a modification of that note. Thus, the provisions of NRS  
13 107.086 are not applicable to him.

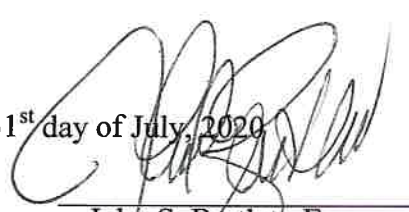
14 The documentation in the record to be presented shows he received ample notice of the  
15 reason for the foreclosure and how to obtain information on how much was needed to pay off the  
16 loan if he wished to retain the property. He did not make any attempt to do so, either before the  
17 foreclosure sale or at the foreclosure sale.

18 NRS 107.080(5) and (6) limits the time within which a person with standing can bring an  
19 action to set aside a foreclosure sale if the trustee does not substantially comply with the noticing  
20 requirements of NRS 107.080. Mr. Cornwell clearly had full notice of the commencement of the  
21 foreclosure process, as he admits he timely received the Notice of Default and Election to Sell,  
22 and the Notice of Sale. However, he did not commence an action to set aside the foreclosure sale  
23 until he filed a counterclaim in this action on March 4, 2019, well outside the time limits for  
24 bringing such an action set forth in NRS 107.080(5) or (6).

25 Plaintiff asserts that Mr. Cornwell's objections to the foreclosure notices he received are  
26 without merit. However, even if there is an arguable claim that the Notice of Default and  
27 Election to Sell was incomplete in the information provided to Mr. Cornwell, he did not bring a  
28 timely action to set aside the foreclosure sale. Therefore, Mr. Cornwell's counterclaim should be

1 dismissed as a matter of law. Plaintiff is entitled to a judgment that by virtue of the foreclosure  
2 sale, he is entitled to full legal and equitable title to the real property located at 2355 Columbia  
3 Way, Carson City, Nevada.

4  
5 Dated this 31<sup>st</sup> day of July, 2020

6   
7 John S. Bartlett, Esq.  
8 Attorney for Neil E. Schultz,  
9 plaintiff  
10  
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CERTIFICATE OF SERVICE

The undersigned, counsel of record for plaintiff Neil E. Schultz, hereby certifies pursuant to NRCP 5(b) that on July 31, 2020 he caused the foregoing Plaintiff's Trial Statement to be served on defendant Thomas Cornwell by depositing a true and correct copy in the United States Mail, postage prepaid, and addressed as follows:

Thomas Cornwell  
2355 Columbia Way  
Carson City, NV 89701



---

John S. Bartlett

1 John S. Bartlett, Esq.  
2 SBN 143  
3 755 N. Roop St.  
4 Suite 108  
5 Carson City, NV 89701  
6 (775) 841-6444  
7 johnsbartlett@att.net

8 Attorneys for Neil E. Schultz, Plaintiff

REC'D & FILED

2023 JUL 31 PM 12:50

AUDREY ROWLAND  
CLERK  
DEPUTY

9  
10 IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
11  
12 IN AND FOR CARSON CITY, NEVADA

13 NEIL E. SCHULTZ, a Nevada resident, aka  
14 the Neil E. Schultz Trust dated January 29,  
15 2016,

16 Plaintiff,

17 vs.

18 THOMAS L. CORNWELL, a Nevada  
19 resident, DOES 1 through 5, inclusive.,

20 Defendants.

Case No. 18RP00018

Dept. 2

21 PLAINTIFF'S MOTION IN LIMINE

22 Plaintiff Neil E. Schultz, by and through his attorney John S. Bartlett, pursuant to NRC  
23 37(c)(1), hereby submits his motion in limine for the purpose of obtaining an order prohibiting  
24 the defendant from introducing documentary evidence at trial of payments allegedly made either  
25 by Thomas Cornwell or Karen Lynn Clarke to George Soetje on the promissory note executed by  
26 Karen Lynn Clarke dated May 6, 2003, on or after June 5, 2010.

27 The basis for this motion is that in his verified Answer and Counterclaim to the plaintiff's  
28 complaint in this case, defendant Cornwell alleged that a number of payments had been made by  
Karen Lynn Clarke or Thomas Cornwell to George Soetje between May 4, 2011 and May 17,  
2016 that had not been acknowledged or reflected in the principal balance of the promissory note  
due at the commencement of plaintiff Schultz's foreclosure proceeding against the real property  
located as 2355 Columbia Way, Carson City, Nevada. In an exhibit to defendant Cornwell's  
verified Answer and Counterclaim, he attached a schedule listing these payments.



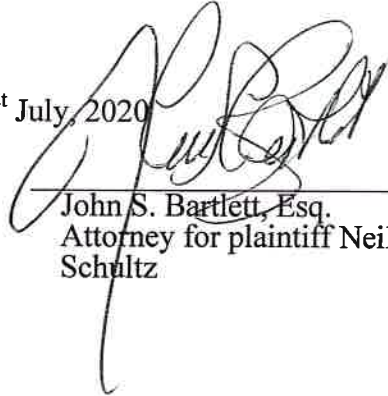
1 At the Early Case Conference, plaintiff's counsel requested production of documentary  
2 evidence of these payments. The defendant did not produce this evidence. Later, in plaintiff's  
3 Request For Production of Documents served on defendant Cornwell plaintiff again requested  
4 documentation of these alleged payments. See Exhibit 22, Request For Production #1 and 2. In  
5 response, defendant Cornwell indicated he did not have any documentation proving these  
6 payments had been made, that this documentation was in the possession of Karen Lynn Clarke,  
7 and she had promised to provide it to him. See Exhibit 23, response to Request For Production  
8 #1, dated October 30, 2019. Defendant Cornwell has still to date not produced any  
9 documentation of any of the payments alleged to have been made to Mr. Soetje after June 5,  
10 2010. Mr. Soetje has stated in a sworn Affidavit that he did not receive any payments from Ms.  
11 Clarke or Mr. Cornwell after June 5, 2010. See Exhibit 25.

12 In his motion for a continuance of the trial, Mr. Cornwell states as his primary reason the  
13 fact that he still has not received any documentation from Ms. Clarke of the payments allegedly  
14 made to Mr. Soetje as listed in the exhibit to his verified Answer and Counterclaim. Because  
15 Mr. Cornwell has had more than ample time to produce documentation of any payments made to  
16 Mr. Soetje on the promissory note executed by Ms. Clarke after June 5, 2010, he should be  
17 prohibited at trial from offering any proof challenging the principal amount of the obligation due  
18 at the time the foreclosure process at issue in this case commenced.

#### 19 CONCLUSION

20 Plaintiff Schultz respectfully requests an Order prohibiting defendant Cornwell from  
21 introducing any evidence of any payments allegedly made by Karen Lynn Clarke or defendant  
22 Thomas Cornwell to George Soetje after June 5, 2010.

23 Dated this 31<sup>st</sup> July, 2020

24  
25   
26 John S. Bartlett, Esq.  
27 Attorney for plaintiff Neil E.  
28 Schultz

CERTIFICATE OF SERVICE

The undersigned, counsel of record for plaintiff Neil E. Schultz, hereby certifies pursuant to NRCP 5(b) that on July 31, 2020 he caused the foregoing Motion in Limine to be served on defendant Thomas Cornwell by depositing a true and correct copy in the United States Mail, postage prepaid, and addressed as follows:

Thomas Cornwell  
2355 Columbia Way  
Carson City, NV 89701



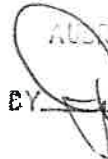
John S. Bartlett

1 John S. Bartlett, Esq.  
2 SBN 143  
3 755 N. Roop St.  
4 Suite 108  
5 Carson City, NV 89701  
6 (775) 841-6444  
7 johnsbartlett@att.net

8 Attorneys for Neil E. Schultz, plaintiff

REC'D & FILED ✓

2020 JUL 31 PM 12:50

AUDREY A. SCHLEIF  
CLERK  
BY  DEPUTY

9  
10 IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
11  
12 IN AND FOR CARSON CITY, NEVADA

13 NEIL E. SCHULTZ, a Nevada resident, aka  
14 the Neil E. Schultz Trust dated January 29,  
15 2016,

16 Plaintiff,

17 vs.

18 THOMAS L. CORNWELL, a Nevada  
19 resident, DOES 1 through 5, inclusive.,

20 Defendants.

Case No. 18RP00018

Dept. No. 2

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OPPOSITION TO MOTION FOR TRIAL CONTINUANCE

Plaintiff Neil E. Schultz, by and through his counsel John S. Bartlett, hereby submits his opposition to the defendant's motion for a continuance of the trial currently set for August 5, 2020. Based on a review of defendant's motion, he is seeking a continuance of the trial because (1) he is representing himself pro se; (2) he has not received documentation from his ex-common law wife/girlfriend, Karen Lynn Clarke, showing payments were made by Ms. Clarke to George Soetje as shown on a schedule of alleged payments attached to Mr. Cornwell's Answer and Counterclaim; and (3) he needs more time to research the applicable law.

Plaintiff submits these reasons are insufficient to warrant a continuance of the trial date. Mr. Cornwell's Answer and Counterclaim reveal an understanding of the claims he is presenting to have the foreclosure sale pursuant to which plaintiff Schultz was the successful bidder and pursuant to which he received the Trustee's Deed to the property at 2355 Columbia Way, Carson City, Nevada, set aside. He clearly has had ample time since this action was filed on November

1 5, 2018 to research the applicable law relevant to his claim the foreclosure sale should be set  
2 aside.

3 Mr. Cornwell has also had ample time to obtain and provide documentation that proves  
4 the payments alleged to have been made in the schedule attached as Exhibit 9 to his Answer and  
5 Counterclaim. He promised to provide these documents at the Early Case Conference. See Early  
6 Case Conference Report filed herein on July 3, 2019. He indicated in his response to plaintiff's  
7 request for production that he was attempting to obtain these documents. See plaintiff's Exhibit  
8 23. It is apparent at this point he cannot produce proof of the payments alleged.

9 Plaintiff is prepared to go forward with the trial of this matter on August 5, 2020. Mr.  
10 Cornwell's motion for a continuance should be denied.

11 Dated this 31<sup>st</sup> day of July, 2020

12   
13 John S. Bartlett, Esq.  
14 SBN 143  
15 755 N. Roop St.  
16 Suite 108  
17 Carson City, NV 89701  
18 (775) 841-6444  
19 johnsbartlett@att.net  
20  
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CERTIFICATE OF SERVICE

The undersigned, counsel of record for plaintiff Neil E. Schultz, hereby certifies pursuant to NRCP 5(b) that on July 31, 2020 he caused the foregoing Opposition to Motion For Trial Continuance to be served on defendant Thomas Cornwell by depositing a true and correct copy in the United States Mail, postage prepaid, and addressed as follows:

Thomas Cornwell  
2355 Columbia Way  
Carson City, NV 89701



John S. Bartlett

1 THOMAS CORNWELL  
2 2355 COLUMBIA WAY  
3 CARSON CITY, NV. 89701  
4 (775)461-0377  
5 TLCNV@YAHOO.COM  
6 IN PROPER PERSON



7  
8 IN THE FIRST JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF CARSON  
9 CITY, STATE OF NEVADA

10 NEIL SCHULTZ TRUST  
11 NEIL SCHULTZ

CASE NO.: 18 RP 00018 1B

12 PLAINTIFF,

13 VS.

DEPT. NO: II

14 THOMAS CORNWELL

REQUEST FOR EX PARTE  
HEARING

15 DEFENDANT(S).

16 COMES NOW DEFENDANT, THOMAS CORNWELL, IN PROPER PERSON. TO

17 REQUEST AN EX PARTE HEARING IN THE ACTION TO QUIET TITLE.

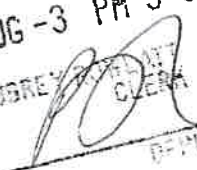
18 DATED THIS 31 DAY OF July, 2020

19 PURSUANT TO NRS 53.045, I DECLARE UNDER PENALTY OF  
20 PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

21   
(SIGNATURE)

22 THOMAS CORNWELL IN PROPER PERSON

23 2355 COLUMBIA WAY  
24 CARSON CITY, NV. 89701  
25 (775)461-0377  
TLCNV@YAHOO.COM

REC'D & FILED  
2020 AUG -3 PM 3:52  
AUGREY DEWITT  
CLERK  
BY  DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

NEIL E. SCHULTZ, a Nevada resident,  
aka The Neil E. Schultz Trust dated  
January 29, 2016,

CASE NO. 18 RP 00018 1B  
DEPT. 2

Plaintiff,

vs.

ORDER DENYING MOTION TO  
CONTINUE

THOMAS L. CORNWELL, a Nevada  
resident; DOES 1 through 5,

Defendants.

On January 27, 2020 the parties set this matter for trial for August 5, 2020. On July 28, 2020 Defendant filed a Motion for Continuance on grounds he is trying to get an attorney, he is still waiting for critical documentary evidence, and he needs more time to do legal research.

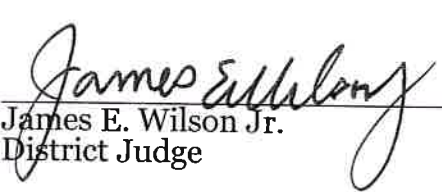
Defendant was served with the complaint and summons on February 25, 2020 - more than 17 months ago. Defendant agreed on January 27, 2020 to the August 5, 2020 trial date.

Defendant has not shown good cause as required by FJDCR 3.16(a).

**THE COURT ORDERS:**

Defendant's Motion for Continuance is DENIED.

August 3, 2020.

  
James E. Wilson Jr.  
District Judge

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the First Judicial District Court of Nevada; that  
3 on ~~February~~ <sup>August</sup> 3, 2019, I served a copy of this document by placing a true copy in an  
4 envelope addressed to:

5 Thomas Cornwell  
6 2355 Columbia Way  
7 Carson City, NV 89706  
8 tlcnv@yahoo.com

John S. Bartlett, Esquire  
755 N. Roop Street  
Suite 108  
Carson City, NV 89701  
johnsbartlett@att.net

9 the envelope sealed and then deposited in the Court's central mailing basket in the Court  
10 Clerk's Office for delivery to the United States Post Office at 1111 South Roop Street,  
11 Carson City, Nevada for mailing.

12   
13 Billie Shadron  
14 Judicial Assistant



REC'D & FILED

2020 AUG -4 AM 8:20

AUBREY BODLAKI

BY

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

NEIL E. SCHULTZ, a Nevada resident,  
aka The Neil E. Schultz Trust dated  
January 29, 2016,

CASE NO. 18 RP 00018 1B

DEPT. 2

Plaintiff,

vs.

ORDER DENYING REQUEST FOR  
EX PARTE HEARING

THOMAS L. CORNWELL, a Nevada  
resident; DOES 1 through 5,

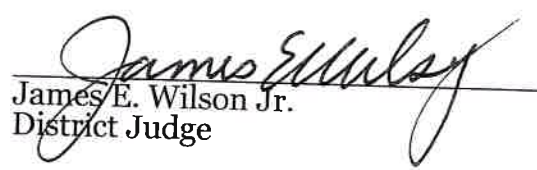
Defendants.

On July 31, 2020 the Defendant filed a Request For Ex Parte Hearing.

**THE COURT ORDERS:**

Defendant's Request for Ex Parte Hearing is DENIED.

August 3, 2020.

  
James E. Wilson Jr.  
District Judge

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the First Judicial District Court of Nevada; that  
3 on August 4, 2020, I served a copy of this document by placing a true copy in an  
4 envelope addressed to:

5 Thomas Cornwell  
6 2355 Columbia Way  
7 Carson City, NV 89706  
8 tlcnv@yahoo.com

John S. Bartlett, Esquire  
755 N. Roop Street  
Suite 108  
Carson City, NV 89701  
johnsbartlett@att.net

9 the envelope sealed and then deposited in the Court's central mailing basket in the Court  
10 Clerk's Office for delivery to the United States Post Office at 1111 South Roop Street,  
11 Carson City, Nevada for mailing.

12   
13 Billie Shadron  
14 Judicial Assistant

REC'D & FILED ✓

2020 AUG -6 PM 2:34

AUDREY ROHLATT  
CLERK

BY \_\_\_\_\_

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

-oOo-

NEIL E. SCHULTZ, a Nevada Resident  
aka The Neil E. Schultz Trust dated  
January 29, 2016

Plaintiff,

v.

THOMAS L. CORNWELL, a Nevada  
resident; DOES 1 through 5

Defendant.

CASE NO. 18 RP 00018 1B

DEPT. 2

ORDER FOR CLOSING ARGUMENTS  
AND PROPOSED ORDERS

On August 6, 2020, a hearing was held. Neil Schultz appeared in person,  
represented by John Bartlett, Esq. Thomas Cornwell appeared in person, represented by  
himself.

Good cause appearing,

**THE COURT ORDERS,**

The parties shall comply with the following deadlines:

Plaintiff shall file written closing arguments by **September 4, 2020.**

Defendant shall file his written response to Plaintiff's closing arguments by  
**September 21, 2020.**

Plaintiff shall file his written reply to Defendant's response by **October 2,**  
**2020.**

Defendant shall file his written response to Defendant's reply by **October**  
**16, 2020.**

1 Each party shall submit a proposed order pursuant to FJDC 3.10. Included in the  
2 proposed order are the following:

3 **Finding of Facts** – The facts that have been submitted to the Court.


4 **Legal Principle** – The laws that apply, including the equitable principles  
5 and if personal property can be converted to real property.

6 **Analysis** – An analysis of how the laws apply in this case

7 **Conclusions of law** – Conclusions the Court should draw from the laws.

8 **Final order** – The order the Court should enter.

9  
10 August 6, 2020.

11  
12   
13 James E. Wilson Jr.  
14 District Court Judge  
15  
16  
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Thomas Cornwell 2355 Columbia Way Carson City, NV 89706 <a href="mailto:tlcnv@yahoo.com">tlcnv@yahoo.com</a>	John S. Bartlett, Esquire 755 N. Roop Street Suite 108 Carson City, NV 89701 <a href="mailto:johnsbartlett@att.net">johnsbartlett@att.net</a>
---	---

the envelope sealed and then deposited in the Court's central mailing basket in the court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for mailing.

**John S. Bartlett, Esquire**  
755 N. Roop Street  
Suite 108  
Carson City, NV 89701  
[johnsbartlett@att.net](mailto:johnsbartlett@att.net)

  
Billie Shadron  
Judicial Assistant

REC'D & FILED  
SEP 02 2020

John S. Bartlett, Esq.  
SBN 143  
755 N. Roop St.  
Suite 108  
Carson City, NV 89701  
(775) 841-6444  
johnsbartlett@att.net

Date

AUBREY ROWLATT  
CLERK

By  Deputy

Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
IN AND FOR CARSON CITY, NEVADA

NEIL E. SCHULTZ, a Nevada resident, aka  
The Neil E. Schultz Trust dated January 29,  
2016,

Plaintiff,

vs.

THOMAS L. CORNWELL, a Nevada  
resident, DOES 1 through 5, inclusive.,

Defendant.

Case No. 18 RP 00018

Dept. 2

PLAINTIFF'S CLOSING ARGUMENT

Plaintiff Neil Schultz, by and through his attorney John S. Bartlett, hereby submits his closing argument pursuant to the scheduling Order issued on August 6, 2020.

In this action plaintiff Neil Schultz is seeking a judgment quieting title to the land parcel located at 2355 Columbia Way, Carson City Nevada. This action became necessary due to a claim made by defendant Thomas Cornwell challenging the validity of the foreclosure sale held on August 23, 2018 at which Mr. Schultz was the successful bidder.

I. MATERIAL FACTS SUPPORT PLAINTIFF'S CLAIM TO QUIET TITLE

Most of the material facts in this case are not in dispute. Documents introduced into evidence and the testimony at the trial establish that plaintiff Neil E. Schultz is currently the record title holder to the real property located at 2355

1 Columbia Way, Carson City, Nevada. Mr. Schultz became the record title holder  
2 of the property by virtue of a Trustee's Deed recorded in the Carson City  
3 Recorder's Office on September 26, 2018 after Mr. Schultz foreclosed on a deed of  
4 trust securing a promissory note he had previously purchased. The Trust Deed was  
5 admitted into evidence as Exhibit 21A.

6 Mr. Schultz directed Automatic Funds Transfer Services, dba Allied Trustee  
7 Services, the company that conducted the foreclosure sale, to convey title to the  
8 Neil E. Schultz Trust dated January 29, 2016. This trust is Mr. Schultz's revocable  
9 inter vivos trust, so Mr. Schultz is the real party in interest.

10 The recitals in the Trustee's Deed accurately describe the transactions that  
11 took place from the date Karen Lynn Clarke, the person who executed the  
12 promissory note purchased by Mr. Schultz, purchased the property until the date  
13 the foreclosure sale took place. To summarize, on or about May 2, 2003, Karen  
14 Lynn Clarke executed a promissory note in the principal sum of \$32,000.00 in  
15 favor of George Soetje. See Exhibit 4. Under the terms of this note, the loan was  
16 scheduled to be paid in monthly installments of \$306.82 for five years, although  
17 the payments were set based on a 17 year amortization. This note was secured by a  
18 deed of trust executed by Ms. Clarke and recorded on May 8, 2003. See Exhibit 5.  
19 This note was modified by Ms. Clarke and Mr. Soetje on a couple of subsequent  
20 occasions, as described in the Trustee's Deed. See Exhibits 7-8. Mr. Cornwell  
21 admitted these facts in his Counterclaim and in his testimony at trial.

22 In May 2010 there was a final modification of the promissory note. See  
23 Exhibit 10. At the time of this modification, the principal balance due was  
24 \$37,651.45, and monthly payments were set at \$410.00 for 175 months. Mr.  
25 Cornwell admitted his familiarity with the documentation of this final modification  
26 at trial. As per the recitals in the Trustee's Deed, and in testimony at trial, plaintiff  
27 asserted that on or about June 5, 2010 Ms. Clarke defaulted on the promissory  
28 note. While Mr. Cornwell refused to admit the payments on the note were in

1 default, his only evidence that payments were made after June 5, 2010 is a written  
2 list of purported payments he attached to his Counterclaim. During discovery Mr.  
3 Cornwell was asked to produce proof of any of these purported payments, which  
4 he failed to do.

5 On February 9, 2017, Ms. Clarke executed a Quitclaim Deed in favor of  
6 defendant Thomas L. Cornwell whereby she deeded the property to him. This  
7 deed was recorded on February 14, 2017. See Exhibit 11. Under the express terms  
8 of the deed of trust executed by Ms. Clarke:

9 IN THE EVENT THE HEREIN DESCRIBED PROPERTY, OR ANY  
10 PORTION THEREOF, OR ANY INTEREST THEREIN, IS SOLD,  
11 AGREED TO BE SOLD, CONVEYED OR ALIENATED, BY THE  
12 TRUSTOR, OR BY THE OPERATION OF LAW OR OTHERWISE, ALL  
13 OBLIGATIONS SECURED BY THIS INSTRUMENT, IRRESPECTIVE  
14 OF THE MATURITY DATES EXPRESSED THEREIN, AT THE OPTION  
15 OF THE HOLDER THEREOF AND WITHOUT DEMAND OR NOTICE  
16 SHALL IMMEDIATELY BECOME DUE AND PAYABLE.

17 See Exhibit 5. The same language appears in the promissory note. See Exhibit 4.

18 On or about March 26, 2018 Mr. Soetje sold his beneficial interest in the  
19 Clarke promissory note to plaintiff Neil Schultz. See Exhibits 26 and 27. As per  
20 the recitals in the Trustee's Deed, on March 30, 2018 the beneficial interest of Mr.  
21 Soetje in Clarke's promissory note and deed of trust was assigned to plaintiff  
22 Schultz. Exhibit 21A. Mr. Schultz testified that Mr. Soetje made him aware of the  
23 fact that the note executed by Ms. Clarke was in default.

24 After plaintiff Schultz obtained the assignment of the Clarke note and deed  
25 of trust from Mr. Soetje, he retained Automatic Funds Transfer Services, dba  
26 Allied Trustee Services to commence foreclosure proceedings against the property  
27 under the deed of trust. Defendant Cornwell was duly served with the Notice of  
28 Default and Election to Sell, and later with the Notice of Sale. Exhibits 15, 20A.



1 At the foreclosure sale on August 23, 2018, Mr. Schultz made the highest bid for  
2 the property, and so received the Trustee's Deed to the property. Exhibit 21A.

3 II. THE CONTENTIONS OF DEFENDANT CORNWELL ARE WITHOUT  
4 MERIT

5 Mr. Cornwell's main contention with regard to the foreclosure sale is that he  
6 was not provided with any of the information required to be provided by the trustee  
7 of a deed of trust related to owner occupied housing set forth in NRS 107.0805,  
8 107.086 and 107.0865. As a result Mr. Cornwell asserts that the foreclosure sale  
9 should be set aside.

10 1. The mobile home on the property is personal property. There is a double  
11 wide mobile home situated on the parcel of land at 2355 Columbia Way in which  
12 Mr. Cornwell lives. The status of this mobile home as personal property is the key  
13 fact in this case. Mr. Cornwell is of the opinion that the mobile home was  
14 converted to real property by virtue of an Affidavit of Conversion of Manufactured  
15 Home/Mobile Home to Real Property executed by Clarence Childers, a former  
16 owner of the land at 2355 Columbia Way on October 4, 2001 and recorded on  
17 October 24, 2001. See Exhibit 2A. As it happens, however, the execution and  
18 recording of this Affidavit was but the first step in the process of converting a  
19 mobile home from personal property to a permanent fixture of the real property on  
20 which it sits.

21 NRS 361.244 describes the process by which a mobile home may be  
22 converted to real property. First, NRS 361.244(1) states that a mobile home is  
23 eligible to become real property if it becomes permanently affixed to the land  
24 which is owned by the owner of the mobile home. As noted in the record, Mr.  
25 Childers owned the mobile home and the land on which it was situated on October  
26 4, 2001, the date he executed the Affidavit. However, he sold the property to  
27 MaryLynn Cavender on or about October 22, 2001 as evidenced by the Grant,  
28 Bargain and Sale deed of that date, recorded on October 23, 2001. See Exhibit 1.

1 The Affidavit was then recorded by Mr. Childers on October 24, 2001, the day  
2 after he transferred title to the real property out of his name. Accordingly, Mr.  
3 Childers no longer owned the land before the process for conversion described in  
4 NRS 361.244(2) began.

5 The remaining steps outlined in NRS 361.244(2) to complete the conversion  
6 were never completed. This includes sending the recorded Affidavit and all other  
7 documents relating to the mobile home in its former condition as personal property  
8 to the Manufactured Housing Division of the Department of Business and Industry,  
9 with a check, and thereafter a written verification from the Division sent to the  
10 county assessor that the mobile home has been converted to real property. NRS  
11 361.244(1)(4). Accordingly, the mobile home has remained on the tax rolls of  
12 Carson City as personal property, and in the records of the Manufactured Housing  
13 division of the Dept of Business and Industry, since 2001 to date. Title to the  
14 mobile home has never been transferred out of Mr. Childers' name. See Exhibit  
15 19.

16 2. The deed of trust executed by Ms. Clarke does not concern owner  
17 occupied housing, nor define the foreclosure sale as a residential foreclosure. The  
18 legal effect of the mobile home remaining personal property and the title remaining  
19 in the name of Clarence James Childers or Rose Joanne Childers, trustees of the  
20 Childers Family Trust dated 1/24/1997, is that the deed of trust securing the  
21 promissory note executed by Karen Lynn Clarke is not a deed of trust or trust  
22 agreement "which concerns owner-occupied housing." The deed of trust executed  
23 by Karen Lynn Clarke does not list the mobile home as collateral for the loan Ms.  
24 Clarke obtained from George Soetje. The deed of trust only served as a lien on the  
25 parcel of land described in the deed of trust, not the mobile home.

26 Furthermore, Karen Lynn Clarke never held record title to the mobile home  
27 that sits on the land. The mobile home is not described on any of the deeds to the  
28 parcel of land located at 2355 Columbia Way, Carson City, Nevada. As Ms.

1 Clarke simply executed a quitclaim deed to defendant Thomas Cornwell, he took  
2 whatever rights she had in the land subject to the deed of trust in favor of Mr.  
3 Soetje. There is no evidence of any written contract or agreement by which the  
4 mobile home owned by the Childers Family Trust was conveyed to anyone, which  
5 is why the Manufactured Housing Division shows record title of the mobile home  
6 still resides with the trustees of the Childers Family Trust.

7 3. Mr. Cornwell received the type and content of notice he was legally  
8 entitled to receive. As the promissory note and deed of trust executed by Ms.  
9 Clarke only pertains to the parcel of land at 2355 Columbia Way, Carson City, this  
10 fact affects the type of notice Mr. Cornwell was entitled to receive during the  
11 foreclosure process. It is true that Mr. Cornwell was not provided with information  
12 pertaining to the right to seek a loan modification as described in NRS 107.086 and  
13 NRS 107.0865, nor was he provided with the information listed in NRS  
14 107.0805(3) pertaining to the precise amount in default, the principal amount of  
15 the obligation, the amount of accrued interest and late charges, or a good faith  
16 estimate of the fees imposed in connection with the power of sale. This was not an  
17 oversight. The reason Mr. Cornwell was not provided the information listed in  
18 NRS 107.0805(3), NRS 107.086, or NRS 107.0865 is because he was not entitled  
19 to that information.

20 The provisions of NRS 107.0805 by its terms only apply in the case of a  
21 residential foreclosure. See NRS 107.0805(1). The foreclosure in this case was  
22 not a residential foreclosure, it was a foreclosure of a parcel of land only. The  
23 mobile home on the property was not part of the foreclosure proceeding.  
24 Furthermore, NRS 107.0805(3) states that the specific information on the amount  
25 in default, the principal amount of the obligation, etc., need only be set to the  
26 obligor or borrower of the obligation or debt secured by the deed of trust being  
27 foreclosed. Mr. Cornwell was not an obligor of the promissory note executed by  
28 Ms. Clarke, nor the borrower of the existing obligation.

1       The fact that the foreclosure at issue was only of the land, not the mobile  
2 home, also made the provisions of NRS 107.086 and NRS 107.0865 inapplicable  
3 to Mr. Cornwell. The deed of trust does not pertain to “owner occupied housing”  
4 even though Mr. Cornwell was living in the mobile home on the property. Allied  
5 Foreclosure Services determined that Mr. Cornwell was not entitled to the  
6 additional notices set forth in NRS 107.086 and NRS 107.0865 because he was not  
7 eligible for loan mediation when the mobile home he resided in was not part of the  
8 real property being foreclosed. See Exhibit 18. Clearly, an additional reason why  
9 these provisions are inapplicable to Mr. Cornwell is, again, he is neither the obligor  
10 under the promissory note secured by the deed of trust, nor the borrower of the  
11 funds represented by the promissory note. Mr. Cornwell has not basis in law to  
12 demand Mr. Soetje or Mr. Schultz to modify a loan he is not the obligor of.

13       An examination of the Notice of Default and Election to Sell served on Mr.  
14 Cornwell shows it meets the requirements of NRS 107.080. Compare Exhibit 15  
15 with the language in NRS 107.080(3). The Notice of Default describes the  
16 deficiency in performance or payment, and contains a notice of intent to declare  
17 the entire unpaid balance due as required by NRS 107.080(3). In addition, Allied  
18 Foreclosure Services, the trustee of the deed of trust hired to handle the foreclosure  
19 sale, sent Mr. Cornwell a letter with the Notice of Default explaining that the entire  
20 principal balance was due, together with any fees, late charges and advances, and  
21 provided him with a telephone number to call to get the specific amount due. See  
22 Exhibit 14. Mr. Cornwell was also served with a written Affidavit of Authority to  
23 Exercise the Power of Sale, which was recorded, and which contained the  
24 information required by NRS 107.0805(1)(b), even though this was not technically  
25 required by NRS 107.080. See Exhibit 14.

26       The documentation in the record shows Mr. Cornwell received the type of  
27 notice he was entitled to receive under the provisions of NRS 107.080.  
28 Consequently, the foreclosure sale was lawful and binding on Mr. Cornwell.

1 NRS 107.080(5) and (6) limits the time within which a person with standing  
2 can bring an action to set aside a foreclosure sale if the trustee does not  
3 substantially comply with the noticing requirements of NRS 107.080. Mr.  
4 Cornwell clearly had full notice of the commencement of the foreclosure process,  
5 as he admits he timely received the Notice of Default and Election to Sell, and the  
6 Notice of Sale. However, he did not commence an action to set aside the  
7 foreclosure sale until he filed a counterclaim in this action on March 4, 2019, well  
8 outside the time limits for bringing such an action set forth in NRS 107.080(5) or  
9 (6).

### 10 CONCLUSION

11 Plaintiff asserts that Mr. Cornwell's objections to the foreclosure notices he  
12 received are without merit. Because the promissory note and deed of trust  
13 pertained only to a loan used by Ms. Clarke to purchase the land located at 2355  
14 Columbia Way, Carson City, Nevada, the deed of trust (mortgage) did not pertain  
15 to owner occupied housing. Thus, the foreclosure process was not a residential  
16 foreclosure. Therefore, the content of the Notice of Default and Election to Sell  
17 served on Mr. Cornwell was governed by NRS 107.080, and the content meets the  
18 requirements of that statute. Mr. Cornwell was simply not entitled to notices with  
19 the content described in NRS 107.0805, NRS 107.085 and NRS 107.0865.

20 Even if there is an arguable claim that the Notice of Default and Election to  
21 Sell was incomplete in the information provided to Mr. Cornwell, he did not bring  
22 a timely action to set aside the foreclosure sale. Therefore, Mr. Cornwell's  
23 counterclaim should be dismissed as a matter of law. Plaintiff is entitled to a

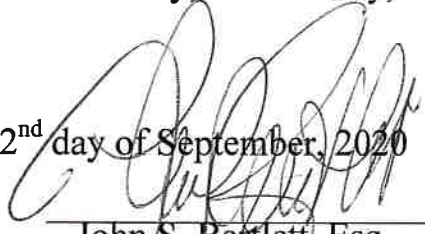
24 ///

25 ///

26 ///

1 judgment that by virtue of the foreclosure sale, he is entitled to full legal and  
2 equitable title to the real property located at 2355 Columbia Way, Carson City,  
3 Nevada.

4  
5 Dated this 2<sup>nd</sup> day of September, 2020

6   
7 John S. Bartlett, Esq.  
8 Attorney for Neil E.  
9 Schultz, plaintiff  
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CERTIFICATE OF SERVICE

The undersigned, counsel of record for plaintiff Neil E. Schultz, hereby certifies pursuant to NRCP 5(b) that on September 2, 2020 he caused the foregoing Plaintiff's Closing Argument to be served on defendant Thomas Cornwell by depositing a true and correct copy in the United States Mail, postage prepaid, and addressed as follows:

Thomas Cornwell  
2355 Columbia Way  
Carson City, NV 89701

  
\_\_\_\_\_  
John S. Bartlett

1 THOMAS CORNWELL  
2 2355 COLUMBIA WAY  
3 CARSON CITY, NV. 89701  
4 TLCNV@YAHOO.COM  
5 (775)461-0377  
6 IN PROPER PERSON

REC'D & FILED ✓

2020 SEP 21 AM 9:47

BY  DEPUTY CLERK

THE FIRST JUDICIAL DISTRICT COURT STATE OF NEVADA

IN AND FOR CARSON CITY, NEVADA

7 NEIL SCHULTZ

8 PLAINTIFF,

9 VS.

10 THOMAS CORNWELL,

11 DEFENDANT

CASE NO.: 18 RP 00018 1B

DEPT; II

CLOSING ARGUMENT

15 1.  
STATEMENT OF FACTS

16 THOMAS CORNWELL IS DEFENDING THE ACTION TO QUIET TITLE BROUGHT BY  
17 NEIL SCHULTZ AND FILED A COUNTERCLAIM THAT SCHULTZ USED DECEPTIVE  
18 PRACTICE, DID NOT COMPLY WITH NRS 107.080 AND MISREPRESENTED HIS  
19 AUTHORITY TO FORECLOSE ON CORNWELLS PROPERTY KNOWN AS 2355  
20 COLUMBIA WAY IN CARSON CITY.

19 2.  
LEGAL PRINCIPLE

20 MR. SCHULTZ CLAIMS THAT HIS RECITALS OF THE DEED ARE ACCURATE  
21 HOWEVER NRS 107.080 WAS CONSTRUCTED FOR STRICT COMPLIANCE DUE TO THE  
22 FACT THAT ESSENTIALLY A PERSONS HOME IS BEING TAKEN AWAY AND THAT  
23 CAN INVOLVE HUNDREDS OF THOUSANDS OF DOLLARS IN SOME CASES.

22 SCHULTZ DID NOT COMPLY WITH NRS 107.080 SPECIFICALLY THE AMOUNT IN  
23 DEFAULT THE NUMBER OF PAYMENTS TO MAKE GOOD ON THE LOAN AND A GOOD  
FAITH ESTIMATE OF PENALTIES AND INTEREST.

page 1.



1 NEVADA REVISED STATUTE SECTION 205.330 STIPULATES THAT ANY  
2 DEFENDANT WHO IS PARTY TO A FRAUDULENT CONVEYANCE COULD  
3 POTENTIALLY BE CHARGED WITH A CRIME. IN ITS SIMPLEST TERMS, A  
4 FRAUDULENT CONVEYANCE IS AN IMPROPER OR UNFAIR TRANSFER OF  
5 SOMETHING OF VALUE IN ORDER TO AVOID REPAYING DEBT THAT IS LAWFULLY  
6 OWED OR TO AVOID FULFILLING SOME OTHER LEGAL OBLIGATION.  
7 THIS FRAUDULENT CONVEYANCE COULD INCLUDE THE IMPROPER AND  
8 FRAUDULENT TRANSFER OF LAND, HEREDITAMENTS, TENEMENTS, CHATTEL,  
9 GOODS, OR ANY RIGHT OF INTEREST THAT HAS BEEN ISSUED OUT OF LAND,  
10 TENEMENTS, GOODS, CHATTEL OR HEREDITAMENTS OR TENEMENTS.  
11 DEFENDANTS CAN BE FOUND GUILTY FOR A FRAUDULENT CONVEYANCE OF  
12 ANY OF THESE THINGS WHEN THE CONVEYANCE WAS MADE OR CONTRIVED  
13 WITH THE INTENT TO DECEIVE OR TO FRAUD OTHERS. THEY CAN ALSO BE  
14 FOUND GUILTY OF THE CONVEYANCES WAS MEANT TO PREVENT CREDITORS  
15 OR OTHERS FROM COLLECTING DEBTS, DAMAGES, OR DEMANDS THAT THE  
16 CREDITORS OR OTHERS WERE LAWFULLY ENTITLED TO COLLECT.  
17 THE STATUTE ALSO CRIMINALIZES WILLFULLY AVOVING, MAINTAINING,  
18 JUSTIFYING, OR DEFENDING FRAUDULENT CONVEYANCES AS BEING  
19 CONVEYANCES MADE IN GOOD FAITH OR UPON GOOD CONSIDERATION. AND,  
20 IT CRIMINALIZES SELLING THE LANDS OR ASSIGNING OR SELLING THE GOODS  
21 OR OTHER ITEMS.  
22 A DEFENDANT WHO VIOLATES THESE LAWS BY PARTICIPATING IN A  
23 FRAUDULENT CONVEYANCE COULD BE FOUND GUILTY OF A GROSS  
24 MISDEMEANOR OFFENSE, ACCORDING TO THE TERMS OF N.R.S. 205.330.

14 SCHULTZ CONTENDS THAT CORNWELL WAS NOT ENTITLED TO SUCH  
15 INFORMATION SINCE HE WAS NOT THE OBLIGOR ON THE PROMISSARY NOTE  
16 HOWEVER HIS COMMON-LAW RELATIONSHIP WITH KAREN CLARKE EXISTED AT  
17 THE TIME THE PROPERTY WAS PURCHASED IN 2003 CORNWELL HAS RESIDED  
18 THERE THE ENTIRE TIME.

19 KAREN CLARKE SIGNED A QUITCLAIM WHEN THEIR RELATIONSHIP ENDED IN  
20 2017.

21 CORNWELL HAS REQUESTED A PROPER ACCOUNTING OF PAYMENTS AND  
22 AMOUNTS DUE SINCE THE PROPERTY WAS SIGNED OVER TO HIM AND STILL HAS  
23 NOT BEEN GIVEN THE INFORMATION. SINCE SAID INFORMATION IS A  
24 REQUIREMENT OF THE STATUTE IT SHOULD BE PART OF THE COURTS RECORD  
UNFORTUNATELY SCHULTZ HAS MISREPRESENTED THESE FACTS MAKING HIS  
NOTICE OF DEFAULT AND ELECTION TO SELL STATUTORILY INSUFFICIENT.

21 **NRS 111.175** Conveyances made to defraud prior or subsequent purchasers are void. Every conveyance of  
22 any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and  
23 profits thereof, made and created with the intent to defraud prior or subsequent purchasers for a valuable consideration  
24 of the same lands, rents or profits, as against such purchasers, shall be void.

[50:9:1861; B § 278; BH § 2619; C § 2689; RL § 1064; NCL § 1522] — (NRS R 1959, 418; reenacted 1960, 324)

1  
2 IN THIS CASE THE ABSENCE OF EVIDENCE IS THE EVIDENCE. PLAINTIFF SCHULTZ  
3 SUBMITTED SEVERAL DOCUMENTS INTO EVIDENCE WITH THE CLAIM HE IS  
4 ENTITLED TO DEFENDANT CORNWELLS REAL PROPERTY LOCATED AT 2355  
5 COLUMBIA WAY CARSON CITY NEVADA. SCHULTZ CONTENDS THAT CORNWELLS  
6 CLAIMS ARE WITHOUT MERIT HOWEVER HIS PROOF IS WITHOUT CRUCIAL  
7 INFORMATION THAT CORNWELL HAS BEEN TRYING TO OBTAIN SINCE KAREN  
8 CLARKE QUITCLAIMED THE DEED TO HIM AFTER THEIR SEPERATION IN 2016. THE  
9 SAME INFORMATION IS A REQUIREMENT FOR THE PROCESS KNOWN AS NON-  
JUDICIAL FORECLOSURE NRS 107.080 AS A REQUIREMENT A STATEMENT OF THE  
NUMBER OF PAYMENTS IN DEFAULT THE PRINCIPAL BALANCE AND A GOOD  
FAITH ESTIMATE OF ALL PENALTIES AND INTREST DUE TO MAKE GOOD ON THE  
DEFICIENCY SHOULD BE PROVIDED TO THE DEBTOR. NOWHERE IN ANY OF THE  
DOCUMENTS SUBMITTED AS EVIDENCE IS THIS INFORMATION AVAILABLE.  
THE OBVIOUS MISREPRESENTATION OF FACTS SPEAKS VOLUMES AS TO WHO  
DOES AND DOES NOT HAVE MERIT.

10 NRS 107.087 3 ALSO PROPOSES NOTIFICATION TO ANY TENANTS OCCUPYING THE  
11 RESIDENCE WHICH WAS NEVER GIVEN AND IN AN ATTEMPT TO REMOVE  
12 CORNWELL FROM THE PROPERTY AN EVICTION ORDER WAS FILED IN JUSTICE  
13 COURT AND DENIED DUE TO CORNWELLS AFFIRMATIVE DEFENSE OF OWNER.  
SCHULTZ THEN PROCEEDED TO SHUT OFF ALL ESSENTIAL SERVICES AFTER  
SWITCHING THEM INTO HIS OWN NAME AND ONCE AGAIN WAS ORDERED BY  
JUDGE TATRO TO RECONNECT ALL ESSENTIAL SERVICES.

14 **NRS 205.0832 Actions which constitute theft.**

15 1. Except as otherwise provided in subsection 2, a person commits theft if, without lawful authority, the person  
16 knowingly:

17 (a) Controls any property of another person with the intent to deprive that person of the property.

18 (b) Converts, makes an unauthorized transfer of an interest in, or without authorization controls any property of  
19 another person, or uses the services or property of another person entrusted to him or her or placed in his or her  
possession for a limited, authorized period of determined or prescribed duration or for a limited use.

20 © Obtains real, personal or intangible property or the services of another person by a material misrepresentation  
21 with intent to deprive that person of the property or services. As used in this paragraph, "material misrepresentation"  
22 means the use of any pretense, or the making of any promise, representation or statement of present, past or future fact  
23 which is fraudulent and which, when used or made, is instrumental in causing the wrongful control or transfer of  
property or services. The pretense may be verbal or it may be a physical act.

(d) Comes into control of lost, mislaid or misdelivered property of another person under circumstances providing  
means of inquiry as to the true owner and appropriates that property to his or her own use or that of another person  
without reasonable efforts to notify the true owner.

© Controls property of another person knowing or having reason to know that the property was stolen.

(f) Obtains services, including, without limitation, audio or visual services, or parts, products or other items related  
to such services which the person knows or, in the case of audio or visual services, should have known are available  
only for compensation without paying or agreeing to pay compensation or diverts the services of another person to his  
or her own benefit or that of another person without lawful authority to do so.

(g) Takes, destroys, conceals or disposes of property in which another person has a security interest, with intent  
to defraud that person.

(h) Commits any act that is declared to be theft by a specific statute.

1 (i) Draws or passes a check, and in exchange obtains property or services, if the person knows that the check will not be paid when presented.

2 (j) Obtains gasoline or other fuel or automotive products which are available only for compensation without paying or agreeing to pay compensation.

3 2. A person who commits an act that is prohibited by subsection 1 which involves the repair of a vehicle has not committed theft unless, before the repair was made, the person received a written estimate of the cost of the repair.

(Added to NRS by 1989, 1204; A 1999, 2706; 2001, 3024; 2013, 823)

4 **NRS 205.120 False certificate to certain instruments punishable as forgery.** A person who is authorized to take a proof or acknowledgment of an instrument which by law may be recorded, who willfully certifies falsely that the execution of the instrument was acknowledged by any party thereto, or that the execution thereof was proved, is guilty of a category D felony, and shall be punished as provided in NRS 193.130.

[1911 C&P § 404; RL § 6669; NCL § 10356] — (NRS A 1995, 1217)

7 **NRS 205.2195 "Property" defined. [Effective July 1, 2020.]** "Property" means:

1. Personal goods, personal property and motor vehicles;
2. Money, negotiable instruments and other items listed in NRS 205.260;
3. Livestock, domesticated animals and domesticated birds; and
4. Any other item of value, whether or not the item is listed in NRS 205.2175 to 205.2705, inclusive.

(Added to NRS by 1997, 339; A 2009, 1243; 2019, 4429, effective July 1, 2020)

10 **NRS 205.220 Grand larceny: Definition. [Effective July 1, 2020.]** Except as otherwise provided in NRS 205.226 and 205.228, a person commits grand larceny if the person:

1. Intentionally steals, takes and carries away, leads away or drives away:
  - (a) Personal goods or property, with a value of \$1,200 or more, owned by another person;
  - (b) Bedding, furniture or other property, with a value of \$1,200 or more, which the person, as a lodger, is to use in or with his or her lodging and which is owned by another person; or
2. Uses a card or other device for automatically withdrawing or transferring money in a financial institution to obtain intentionally money to which the person knows he or she is not entitled.
3. Intentionally steals, takes and carries away, leads away, drives away or entices away:
  - (a) One or more head of livestock owned by another person; or
  - (b) One or more domesticated animals or domesticated birds, with an aggregate value of \$1,200 or more, owned by another person.
4. With the intent to defraud, steal, appropriate or prevent identification:
  - (a) Marks or brands, causes to be marked or branded, alters or defaces a mark or brand, or causes to be altered or defaced a mark or brand upon one or more head of livestock owned by another person;
  - (b) Sells or purchases the hide or carcass of one or more head of livestock owned by another person that has had a mark or brand cut out or obliterated;

© Kills one or more head of livestock owned by another person but running at large, whether or not the livestock is marked or branded; or

(d) Kills one or more domesticated animals or domesticated birds, with an aggregate value of \$1,200 or more, owned by another person but running at large, whether or not the animals or birds are marked or branded.

[1911 C&P § 373; A 1915, 119; 1947, 85; 1949, 127; 1943 NCL § 10323] — (NRS A 1965, 1007; 1967, 499; 1969, 531; 1979, 155, 1444; 1983, 546; 1989, 71, 1433; 1995, 13, 1221, 1323; 1997, 341; 2011, 163; 2019, 4429, effective July 1, 2020)

21 **NRS 205.222 Grand larceny: Penalties. [Effective July 1, 2020.]**

1. Unless a greater penalty is imposed by a specific statute, a person who commits grand larceny in violation of NRS 205.220 shall be punished pursuant to the provisions of this section.

2. If the value of the property involved in the grand larceny:

(a) Is less than \$5,000, the person who committed the grand larceny is guilty of a category D felony and shall be punished as provided in NRS 193.130.



1 (b) Is \$5,000 or more but less than \$25,000, the person who committed the grand larceny is guilty of a category C felony and shall be punished as provided in NRS 193.130.

2 © Is \$25,000 or more but less than \$100,000, the person who committed the grand larceny is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and by a fine of not more than \$10,000.

3 (d) Is \$100,000 or more, the person who committed the grand larceny is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years, and by a fine of not more than \$15,000.

4 3. In addition to any other penalty, the court shall order the person who committed the grand larceny to pay restitution.

5 4. If the grand larceny involved a sale in violation of subsection 3 or 4 of NRS 205.220, all proceeds from the sale are subject to forfeiture.

6 (Added to NRS by 1997, 339; A 2011, 164; 2019, 4430, effective July 1, 2020)

7 **NRS 205.260 Negotiable and other instruments subjects of larceny.** Bonds, promissory notes, banknotes, bills of exchange, or other bills, orders, drafts, checks, travelers' checks, money orders, receipts or certificates, or warrants for or concerning money, goods or property, due, or to become due, or to be delivered, or any public security issued by the United States or by this state, and any deed or writing containing a conveyance of land or valuable contract, in force, or any release or defeasance, or any other instrument whatever, shall be considered personal goods, of which larceny may be committed; and the money due thereon, or secured thereby and remaining unsatisfied, or which, in any event or contingency, might be due or collectible thereon, or the value of the property transferred or affected thereby, as the case may be, shall be deemed the value of the article stolen.

10 [1911 C&P § 380; RL § 6645; NCL § 10332] — (NRS A 1973, 175)

11 **NRS 205.330 Fraudulent conveyances.** Every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance, had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts, damages or demands; or who, being a party as aforesaid, at any time shall wittingly and willingly put in use, avow, maintain, justify or defend the same, or any of them, as true and done, had, or made in good faith, or upon good consideration, or shall alien, assign or sell any of the lands, tenements, hereditaments, goods, chattels or other things before mentioned, conveyed to him or her as aforesaid, or any part thereof, is guilty of a gross misdemeanor.

15 **NRS 205.340 Sale or creation of security interest in personal property subject to security interest or lien without informing purchaser or secured party.** Every person who shall sell or create a security interest in any personal property which is at the time subject to a security interest or upon which any lien has been or may lawfully be filed, without informing the purchaser or secured party before the payment of the purchase price or money loaned of the several amounts of all such security interests and liens known to the seller or debtor, shall be deemed to have made a false representation and shall, where no other punishment is prescribed, be punished as for a gross misdemeanor.

18 [1911 C&P § 434; RL § 6699; NCL § 10386] — (NRS A 1965, 928)

19 **NRS 205.375 False written statements to obtain property or credit.** Any person:

20 1. Who shall knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any false statement in writing, with intent that it shall be relied upon, respecting the financial condition or means or ability to pay, of himself or herself, or of any other person, firm or corporation, in which he or she is interested, or for whom or which he or she is acting, for the purpose of procuring in any form whatsoever, either the delivery of personal property, the payment of cash, the making of a loan or credit, the extension of a credit, the discount of an account receivable, or the making, acceptance, discount, sale or endorsement of a bill of exchange, or promissory note, for the benefit of either himself or herself or of such person, firm or corporation;

22 2. Who, knowing that a false statement in writing has been made, respecting the financial condition or means or ability to pay, of himself or herself, or of such person, firm or corporation, in which he or she is interested, or for whom he or she is acting, procures, upon the faith thereof, for the benefit either of himself or herself, or of such person, firm or corporation, either or any of the things of benefit mentioned in subsection 1; or

3. Who, knowing that a statement in writing has been made respecting the financial condition or means or ability to pay, of himself or herself or of such person, firm or corporation, in which he or she is interested, or for whom he or she is acting, represents on a later day, either orally or in writing, that such statement theretofore made, if then again made on that day, would be then true, when, in fact, the statement if then made would be false, and procures upon the faith thereof, for the benefit either of himself or herself or such person, firm or corporation, either or any of the things of benefit mentioned in subsection 1,

→ shall be guilty of a misdemeanor.

[1:193:1923; NCL § 10599] — (NRS A 1967, 503)

**NRS 205.380 Obtaining money, property, rent or labor by false pretenses. [Effective July 1, 2020.]**

1. A person who knowingly and designedly by any false pretense obtains from any other person any chose in action, money, goods, wares, chattels, effects or other valuable thing, including rent or the labor of another person not his or her employee, with the intent to cheat or defraud the other person, is a cheat, and, unless otherwise prescribed by law, shall be punished:

(a) If the value of the thing or labor fraudulently obtained was less than \$1,200, for a misdemeanor, and must be sentenced to restore the property fraudulently obtained if it can be done, or tender payment for rent or labor.

(b) If the value of the thing or labor fraudulently obtained was \$1,200 or more but less than \$5,000, for a category D felony as provided in NRS 193.130.

© If the value of the thing or labor fraudulently obtained was \$5,000 or more but less than \$25,000, for a category C felony as provided in NRS 193.130.

(d) If the value of the thing or labor fraudulently obtained was \$25,000 or more but less than \$100,000, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and by a fine of not more than \$10,000.

© If the value of the thing or labor fraudulently obtained was \$100,000 or more, for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years, and by a fine of not more than \$15,000.

2. In addition to any other penalty set forth in paragraph (b), (c), (d) or © of subsection 1, the court shall order the person to pay restitution.

3. For the purposes of this section, it is prima facie evidence of an intent to defraud if the drawer of a check or other instrument given in payment for:

(a) Property which can be returned in the same condition in which it was originally received;

(b) Rent; or

© Labor performed in a workmanlike manner whenever a written estimate was furnished before the labor was performed and the actual cost of the labor does not exceed the estimate,

→ stops payment on that instrument and fails to return or offer to return the property in that condition, or to specify in what way the labor was deficient within 5 days after receiving notice from the payee that the instrument has not been paid by the drawee.

4. The notice must be sent to the drawer by certified mail, return receipt requested, at the address shown on the instrument. The notice must include a statement of the penalties set forth in this section. Return of the notice because of nondelivery to the drawer raises a rebuttable presumption of the intent to defraud.

5. A notice in boldface type clearly legible and in substantially the following form must be posted in a conspicuous place in every principal and branch office of every bank and in every place of business in which retail selling is conducted or labor is performed for the public and must be furnished in written form by a landlord to a tenant:

The stopping of payment on a check or other instrument given in payment for property which can be returned in the same condition in which it was originally received, rent or labor which was completed in a workmanlike manner, and the failure to return or offer to return the property in that condition or to specify in what way the labor was deficient within 5 days after receiving notice of nonpayment is punishable:

1. If the value of the property, rent or labor fraudulently obtained was less than \$1,200, as a misdemeanor by imprisonment in the county jail for not more than 6 months, or by a fine of not more than \$1,000, or by both fine and imprisonment.

2. If the value of the property, rent or labor fraudulently obtained was \$1,200 or more but less than \$5,000, as a category D felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years, or by a fine of not more than \$5,000, or by both fine and imprisonment.

3. If the value of the property, rent or labor fraudulently obtained was \$5,000 or more but less than \$25,000, as a category C felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 5 years, or by a fine of not more than \$10,000, or by both fine and imprisonment.

4. If the value of the property, rent or labor fraudulently obtained was \$25,000 or more but less than \$100,000, as a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and by a fine of not more than \$10,000.

5. If the value of the property, rent or labor fraudulently obtained was \$100,000 or more, as a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years, and by a fine of not more than \$15,000.

[1911 C&P § 439; A 1951, 29] — (NRS A 1967, 504; 1977, 1416; 1979, 1072, 1446, 1713; 1981, 2017; 1985, 251, 456; 1989, 1436; 1993, 1518; 1995, 1224; 1997, 9; 1999, 397; 2005, 1082; 2011, 168; 2019, 4435, effective July 1, 2020)

**NRS 205.395 False representation concerning title; penalties; civil action.**

1. Every person who:

(a) Claims an interest in, or a lien or encumbrance against, real property in a document that is recorded in the office of the county recorder in which the real property is located and who knows or has reason to know that the document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid;

(b) Executes or notarizes a document purporting to create an interest in, or a lien or encumbrance against, real property, that is recorded in the office of the county recorder in which the real property is located and who knows or has reason to know that the document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid; or

© Causes a document described in paragraph (a) or (b) to be recorded in the office of the county recorder in which the real property is located and who knows or has reason to know that the document is forged or groundless, contains a material misstatement or false claim or is otherwise invalid,

↳ has made a false representation concerning title.

2. A person who makes a false representation concerning title in violation of subsection 1 is guilty of a category C felony and shall be punished as provided in NRS 193.130.

3. A person who engages in a pattern of making false representations concerning title is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 20 years, or by a fine of not more than \$50,000, or by both fine and imprisonment.

4. In addition to the criminal penalties imposed for a violation of this section, any person who violates this section is subject to a civil penalty of not more than \$5,000 for each violation. This penalty must be recovered in a civil action, brought in the name of the State of Nevada by the Attorney General. In such an action, the Attorney General may recover reasonable attorney's fees and costs.

5. Except as otherwise provided in this subsection, the owner or holder of the beneficial interest in real property which is the subject of a false representation concerning title may bring a civil action in the district court in and for the county in which the real property is located to recover any damages suffered by the owner or holder of the beneficial interest plus reasonable attorney's fees and costs. The owner or holder of the beneficial interest in the real property must, before bringing a civil action pursuant to this subsection, send a written request to the person who made the false representation to record a document which corrects the false representation. If the person records such a document not later than 20 days after the date of the written request, the owner or holder of the beneficial interest may not bring a civil action pursuant to this subsection.

6. As used in this section:

(a) "Encumbrance" includes, without limitation, a lis pendens or other notice of the pendency of an action.

(b) "Pattern of making false representations concerning title" means one or more violations of a provision of subsection 1 committed in two or more transactions:

(1) Which have the same or similar pattern, purposes, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics;

(2) Which are not isolated incidents within the preceding 4 years; and

(3) In which the aggregate loss or intended loss is more than \$250.

[1911 C&P § 441; RL § 6706; NCL § 10394] — (NRS A 2011, 338, 1748; 2015, 1358)



**NRS 111.175 Conveyances made to defraud prior or subsequent purchasers are void.** Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made and created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void.

[50:9:1861; B § 278; BH § 2619; C § 2689; RL § 1064; NCL § 1522] — (NRS R 1959. 418; reenacted 1960. 324)

**NRS 104.1206 PRESUMPTIONS.** WHENEVER THE UNIFORM COMMERCIAL CODE CREATES A "PRESUMPTION" WITH RESPECT TO A FACT, OR PROVIDES THAT A FACT IS "PRESUMED," THE TRIER OF FACT MUST FIND THE EXISTENCE OF THE FACT UNLESS AND UNTIL EVIDENCE IS INTRODUCED THAT SUPPORTS A FINDING OF ITS NONEXISTENCE.

(ADDED TO NRS BY 2005. 830)

**NRS 104.9614 Contents and form of notification before disposition of collateral: Consumer-goods transaction.** In a consumer-goods transaction, the following rules apply:

1. A notification of disposition must provide the following information:
  - (a) The information specified in subsection 1 of NRS 104.9613;
  - (b) A description of any liability for a deficiency of the person to which the notification is sent;
  - (c) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under NRS 104.9623 is available; and
  - (d) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
2. A particular phrasing of the notification is not required.
3. The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

#### NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: .....

Time: .....

Place: .....

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

1 You can get the property back at any time before we sell it by paying us the full amount you owe (not just  
2 the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone  
number].

3 If you want us to explain to you in writing how we have figured the amount that you owe us, you may call  
4 us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will  
charge you \$..... for the explanation if we sent you another written explanation of the amount you owe us  
within the last 6 months.]

5 If you need more information about the sale call us at [telephone number] [or write us at [secured party's  
address]].

6 We are sending this notice to the following other people who have an interest in [describe collateral] or  
who owe money under your agreement:

7 [Names of all other debtors and obligors, if any]

8 4. A notification in the form of subsection 3 is sufficient, even if additional information appears at the end of the  
form.

9 5. A notification in the form of subsection 3 is sufficient, even if it includes errors in information not required  
by subsection 1, unless the error is misleading with respect to rights arising under this article.

10 6. If a notification under this section is not in the form of subsection 3, law other than this article determines the  
effect of including information not required by subsection 1.

11 (Added to NRS by 1999, 352)

### 12 3.

13 SCHULTZ ALSO CONTENDS THAT CORNWELL COULD NOT PROVE PAYMENTS  
14 WERE MADE BUT LOGIC MUST BE APPLIED IN THE FACT THAT THE CLAIM OF A  
15 PRINCIPAL BALANCE DUE REMAINS IN AN AMOUNT EXCEEDING THE ORIGINAL  
16 BALANCE SINCE 2003. TO INFER THAT NO PAYMENT WAS EVER MADE TOWARDS  
17 THE ORIGINAL DEBT WOULD SHOCK THE CONSCIENCE CONSIDERING THE  
18 AMOUNT OF TIME ELAPSED SINCE THE INCEPTION.

### 19 CONCLUSION

20 THE COURT SHOULD RULE IN FAVOR OF DEFENDANT CORNWELL  
21 AND VOID THE SALE OF THE PROPERTY LOCATED AT 2355 COLUMBIA WAY  
22 CARSON CITY NEVADA. DAMAGES SHOULD BE AWARDED AS THIS COURT  
23 DETERMINES WHAT IS FAIR AND JUST FOR HARDSHIP AND DISTRESS THAT  
24 DEFENDANT HAS ENDURED.

page 9



1 DATED THIS 01 DAY OF Sat, 2020

2 PURSUANT TO NRS 53.045, I DECLARE UNDER  
3 PENALTY OF  
4 PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

5   
(SIGNATURE)

6 THOMAS CORNWELL IN  
7 PROPER PERSON  
8 2355 COLUMBIA WAY  
9 CARSON CITY, NV. 89701  
10 (775)461-0377  
11 TLCNV@YAHOO.COM  
12  
13  
14  
15  
16  
17  
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19  
20  
21  
22  
23  
24

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY THAT ON THE 21 DAY OF  
Sep, 2020, I PLACED A TRUE AND CORRECT COPY OF THE  
FOREGOING IN THE UNITED STATES MAIL, WITH FIRST-CLASS POSTAGE  
PREPAID, ADDRESSED TO THE FOLLOWING:

JOHN S. BARTLETT, ESQ.

NV BAR 143

775 N. ROOP ST. SUITE 108

(775)841-6444

JOHNSBARTLETT@ATT.COM

DATED THIS 21 DAY OF Sep, 2020

PURSUANT TO NRS 53.045, I DECLARE  
UNDER PENALTY OF PERJURY THAT THE  
FOREGOING IS TRUE AND CORRECT.

  
(SIGNATURE)

THOMAS CORNWELL  
2355 COLUMBIA WAY  
CARSON CITY, NV. 89701  
(775)461-0377  
TLCNV@YAHOO.COM  
IN PROPER PERSON

original

John S. Bartlett, Esq.  
SBN 143  
755 N. Roop St.  
Suite 108  
Carson City, NV 89701  
(775) 841-6444  
johnsbartlett@att.net

Attorney for Plaintiff

REC'D & FILED

OCT 2 - 2020

Date

AUBREY ROWLATT  
CLERK

By

Deputy

IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
IN AND FOR CARSON CITY, NEVADA

NEIL E. SCHULTZ, a Nevada resident,  
aka The Neil E. Schultz Trust dated  
January 29, 2016,

Plaintiff,

vs.

THOMAS L. CORNWELL, a Nevada  
resident, DOES 1 through 5, inclusive.,

Defendant.

Case No.: 18 RP 00018

Dept. 2

PLAINTIFF'S BRIEF IN REPLY TO DEFENDANT'S CLOSING ARGUMENT

Plaintiff Neil E. Schultz, by and through his attorney John S. Bartlett, hereby submits his brief in reply to defendant Thomas L. Cornwell's closing statement on plaintiff's case in chief.

Mr. Cornwell's brief does not specifically address the substantive arguments made by Mr. Schultz in support of the process and procedure utilized to conduct the non-judicial foreclosure sale of the land Mr. Cornwell received by quitclaim deed from Karen Lynn Clarke. Rather, Mr. Cornwell simply repeats his claim that because he was living in a mobile home on the land in question, he should have received the quality of notice described in NRS 107.0805, 107.086, and 107.0865. He has not provided any case authority or statutory analysis to support his claim.

1 Mr. Cornwell suggests that he was the common law husband of Karen Lynn  
2 Clarke, which gives him rights under the promissory note executed by Ms. Clarke  
3 to Mr. Soetje. However, this can not be because Nevada does not recognize  
4 common law marriages. *Watson v. Watson*, 95 Nev. 495, 496, 596 P.2d 507  
5 (1979); NRS 122.010. Accordingly, Mr. Cornwell's assertion that he should be  
6 considered an obligor of the promissory note executed by Ms. Clarke in 2003 is  
7 factually and legally erroneous.

8 As noted in Plaintiff's Closing Argument filed previously, while Mr.  
9 Cornwell was the title holder of the land on which the mobile home sits, the mobile  
10 home is personal property, not real property. Therefore, he is not entitled to  
11 engage in the loan modification procedure outlined in NRS 107.086.

12 Finally, Mr. Cornwell questions how the principal balance of the loan  
13 increased over time. The answer to that is simple. The original loan was for  
14 \$32,000.00. Exhibit 4. The note was modified on June 13, 2006 by increasing the  
15 principal balance by \$1,500.00. Exhibit 7. The note was modified again on  
16 December 22, 2009 by increasing the principal balance by another \$4,000.00, or to  
17 \$34,000.00. Exhibit 8. This modification obviously takes into account payments  
18 that had been made on the note to that point. Then, a final modification was made  
19 in May 2010 that increased the principal balance to \$37,651.45. Exhibit 10. This  
20 final modification also extended the loan term by 175 months (the original note  
21 was supposed to be paid off in five years). According to what Mr. Soetje told Mr.  
22 Schultz, Ms. Clarke immediately defaulted on the payment schedule and no further  
23 payments were made.

24 During discovery, plaintiff requested the defendant to produce  
25 documentation of the payments claimed to have been made between May 11, 2011  
26 and May 17, 2016 in Exhibit 9 to the defendant's Answer and Counterclaim. No  
27 documentation was produced in discovery or at trial.

1 Mr. Cornwell testified that Allied Foreclosure Services informed him that  
2 the entire principal balance of the note was due, plus accrued interest, penalties,  
3 and costs. As of May 31, 2010 the principal balance of the note was \$37,651.45,  
4 with interest accruing at the rate of 10% per annum. Exhibit 10. Absent evidence  
5 of any payments being made on the note after May 31, 2010, as of April 2018,  
6 when the foreclosure commenced, interest of at least \$29,807.20 had accrued on  
7 the principal balance. As of the date of the foreclosure sale in August 2018, the  
8 total amount due was \$77,642.53. Exhibit 21. This was the amount of Mr.  
9 Schultz's credit bit. *Id.*

10 The balance of Mr. Cornwell's brief consists of citations of various statutes  
11 in support of his claim that Mr. Schultz engaged in fraud by filing fraudulent  
12 documents in the foreclosure process with the Carson City Recorder. There is no  
13 evidence in the record of any fraud or deception in the foreclosure process. In fact,  
14 Mr. Schultz engaged the services of Allied Foreclosure Services, a company in the  
15 business of conducting non-judicial foreclosure services, to initiate the foreclosure  
16 of the land located at 2355 Columbia Way, Carson City, Nevada, to record and  
17 provide the requisite notices and publication of the Notice of Default and Election  
18 to Sell and Notice of Sale, to conduct the foreclosure sale, and the execute the  
19 Trustee's Deed in favor of Mr. Schultz. It was to Allied Foreclosure Services that  
20 Mr. Cornwell corresponded in questioning the notices he received, and in  
21 requesting the amount due. Allied Foreclosure responded to his concerns  
22 appropriately. Mr. Cornwell's allegations of fraud in the process lack any  
23 evidence in support, and should be dismissed.


### 24 CONCLUSION

25 In his Responding Closing Argument, Mr. Cornwell has not provided the  
26 Court with either factual or legal grounds to persuasively rebut plaintiff Neil  
27 Schultz's arguments that the foreclosure sale by which he acquired the land located  
28 at 2355 Columbia Way, Carson City, Nevada was properly noticed and carried out.

1 Likewise, Mr. Cornwell's counterclaim in which he asserts Mr. Schultz engaged in  
2 fraudulently filed documents with the Carson City Recorder is also without factual  
3 support in the record, or based on applicable law, and should be dismissed.

4 Accordingly, plaintiff Neil E. Schultz requests that judgment be entered in  
5 his favor on his claim to quiet title to the land located at 2355 Columbia Way,  
6 Carson City, Nevada and to a judicial declaration that he is the lawful owner of this  
7 land.

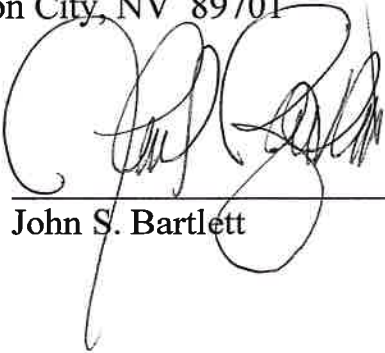
8 Dated this 2<sup>nd</sup> day of October, 2020

9   
10 John S. Bartlett, Esq.  
11 Attorney for plaintiff  
12 Neil E. Schultz  
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CERTIFICATE OF SERVICE

The undersigned, counsel of record for plaintiff Neil E. Schultz, hereby certifies pursuant to NRCP 5(b) that on October 2, 2020 he caused the foregoing Plaintiff's Brief in Reply to Defendant's Closing Argument to be served on defendant Thomas Cornwell by depositing a true and correct copy in the United States Mail, postage prepaid, and addressed as follows:

Thomas Cornwell  
2355 Columbia Way  
Carson City, NV 89701

A handwritten signature in dark ink, appearing to read 'John S. Bartlett', is written over a horizontal line. The signature is stylized and cursive.

John S. Bartlett

1 **THOMAS CORNWELL**  
2 **2355 COLUMBIA WAY**  
3 **CARSON CITY, NV. 89706**  
4 tlcnv@yahoo.com  
5 (775)461-0377  
6 in proper person

REC'D & FILED  
2010 OCT 16 AM 10:52

CARSON CITY CLERK  
BY [Signature] DEPUTY

THE FIRST JUDICIAL DISTRICT COURT STATE OF NEVADA

IN AND FOR CARSON CITY, NEVADA

7 NEIL SCHULTZ

8 Plaintiff,

9 vs.

10 THOMAS CORNWELL,

11 Defendant

Case No.: 18 RP 00018 1B

DEPT; II

CLOSING ARGUMENT/  
PROPOSED ORDER FINAL

12  
13  
14 **DEFENDANT, THOMAS CORNWELL, HEREBY SUBMITS THIS REPLY TO**  
15 **PLAINTIFFS' BRIEF IN REPLY TO CLOSING ARGUMENTS.**

16 **I.**

17 **THE CASE BEFORE THE COURT IS AN ACTION TO QUIET TITLE INITIATED**  
18 **BY MR. NEIL SCHULTZ THROUGH HIS ATTORNEY JOHN BARTLETT.**

19 **THE DEFENDANT, THOMAS CORNWELL ASSERTS THAT MR. SCHULTZ**  
20 **OBTAINED THE PROMISSORY NOTE WITH THE INTENT OF ESSENTIALLY**  
21 **ROBBING MR. CORNWELL OF ANY AND ALL EQUITY RIGHT AND TITLE OF**  
22 **THE REAL PROPERTY KNOWN AS 2355 COLUMBIA WAY CARSON CITY, NV.**  
23 **89706**

24 **II.**

**THE FOLLOWING ARE FACTS IN SUPPORT OF DEFENDANTS CLAIM;**

25 **• FACT 1.**

26 **DEFENDANT CORNWELL OBTAINED PROPERTY BY QUITCLAIM THEREBY**  
27 **ACKNOWLEDGING HIM AS OWNER OF 2355 COLUMBIA WAY CARSON CITY NV**  
28 **89706**



- 
- 

- **FACT 2.**

CORNWELL HAS LIVED AT 2355 COLUMBIA WAY CARSON CITY NV 89706 SINCE MAY OF 2003. THIS HAS REMAINED CORNWELLS PRIMARY AND ONLY RESIDENCE IN THE STATE OF NEVADA. US CENSUS RECORDS CAN PROVE THIS FACT REGARDLESS OF WHETHER THE STATE OF NEVADA RECOGNIZES COMMON LAW MARRIAGE OR NOT.

- **FACT 3.**

THE PROPERTY KNOWN AS 2355 COLUMBIA WAY CARSON CITY NV 89706 WAS SOLD TO KAREN CLARKE IN 2003 (SEE COURT RECORDS FILED WITH ORIGINAL COUNTERCLAIM) *AS REAL PROPERTY, THE SALE AD FROM MCCALL REALTY DESCRIBES; A MANUFACTURED HOME SITTING ON A SIX POINT FOUNDATION. OFFICIALLY LISTED BY THE COUNTY ASSESSOR CODE 260-SINGLE FAMILY RESIDENCE.*

- **FACT 4.**

THE PROPERTY REMAINED A CODE 260-SINGLE FAMILY RESIDENCE UP UNTIL PLAINTIFF SCHULTZ TOOK AN INTEREST IN PURCHASING THE NOTE AFTER WHICH IT WAS CHANGED TO A CODE 230-MANUFACTURED HOME WITH LAND. THIS FACT WAS UNKNOWN TO DEFENDANT CORNWELL UNTIL THE ASSESSORS TAX CAME DUE.

- **FACT 5.**

SCHULTZ ATTEMPTED AN ILLEGAL LOCK-OUT AND SHUT-OFF OF ESSENTIAL SERVICES BY TAKING THE UTILITIES OUT OF DEFENDANT CORNWELLS NAME WITHOUT HIS KNOWLEDGE AS WELL AS ATTEMPTING TO REMOVE WATER AND SEWER SERVICE. THIS DEVIOS PATTERN OF BEHAVIOR CONTINUED WITH SCHULTZ ATTEMPTING EVICTION PROCEEDINGS IN JUSTICE COURT WHEREBY JUDGE TATRO ORDERED HIM TO RESTORE SERVICES AND GAVE EXPLICIT INSTRUCTION TO MR. SCHULTZ TO "QUIT MAKING THESE BACK ROOM DEALS ON HAND SHAKES BEFORE HE GETS HIMSELF INTO TROUBLE" THEN RULED IN FAVOR OF CORNWELL STATING AN AFFIRMATIVE DEFENSE AS OWNER.

- **FACT 6.**

THE NOTICE OF DEFAULT AND ELECTION TO SELL IS DEFECTIVE ON ITS FACE; THE PROPERTY IS LISTED AS BEING SITUATED IN WASHOE COUNTY, THE PROPERTY IS PHYSICALLY LOCATED IN CARSON CITY CARSON CITY COUNTY.

- **FACT 7.**

ALLIED TRUSTEE SERVICES WAS NOTIFIED BY MR. CORNWELL THAT THE NOTICE WAS DEFICIENT AND THEY CHANGED THE TYPE OF NOTICE TO CLAIM THE LAND ONLY.

- **FACT 8.**

AUTOMATIC FUNDS TRANSFER SERVICE IS NOT LICENSED TO DO BUSINESS IN THE STATE OF NEVADA AND ITS DBA ALLIED TRUSTEE SERVICE IS WITHDRAWN PER THE SECRETARY OF STATE. FIRST CENTENNIAL TITLE HAS BEEN PERMANENTLY

1 REVOKED MEANING NO LEGITIMATE BUSINESS ENTITY IS ASSOCIATED WITH THE  
2 FORECLOSURE PROCESS INVOLVING MR. CORNWELLS PROPERTY.

3 • **FACT 9.**

4 MR. SCHULTZ BID TWICE THE AMOUNT OF INITIAL BIDS AT AUCTION TO ENSURE  
5 THE WINNING BID AND INFLATING THE SALE. NO MONEY WAS EXCHANGED  
6 BECAUSE HE ESSENTIALLY BOUGHT THE PROPERTY FROM HIMSELF.

7 • **FACT 10.**

8 THE ACTION TO QUIET TITLE WOULD NOT BE NECESSARY IF MR. SCHULTZ HAD  
9 FOLLOWED THE STRICT REQUIREMENTS SET FORTH IN NRS 107.080

10 **III.**

11 **DEFENDANTS STATEMENT REGARDING THE LEGAL PRINCIPLE AND LAWS**  
12 **APPLIED TO THIS CASE**

13 DEFENDANT ASSERTS THAT THE LEGAL PRINCIPLE IS NON-  
14 COMPLIANCE WITH NEVADA REVISED STATUTE 107.080 WHICH CONTROLS  
15 THE SALE OF REAL PROPERTY BY NON-JUDICIAL FORECLOSURE PROCESSES.  
16 THIS REQUIRES A STRICT COMPLIANCE TO STEPS OUTLINED WITHIN THE  
17 STATUTE DUE TO THE FACT A PERSONS HOME AND RIGHT TO TITLE CAN  
18 INVOLVE TENS OF THOUSANDS AND UP TO HUNDREDS OF THOUSANDS OF  
19 DOLLARS OF WHICH THEY MIGHT BE DEPRIVED..

20 SEVERAL OF THESE REQUIREMENTS WERE NOT MET BY THE PLAINTIFF AS  
21 NOTED BELOW.

22 SEVERAL VIOLATIONS OF THE UNIFORM COMMERCIAL CODE UNDER NRS  
23 104.2201 FORMAL REQUIREMENTS; STATUTE OF FRAUDS AND VIOLATIONS OF  
24 RIGHTS AS A HOLDER IN DUE COURSE *ATTENTION TO HIGHLIGHTED ITEMS*  
FRAUD AND DECEPTIVE BUSINESS PRACTICE ARE ALSO ASSERTIONS OF  
DEFENDANT.

**NRS 104.2201 Formal requirements; statute of frauds.**

1. Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his or her authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this subsection beyond the quantity of goods shown in such writing.

2. Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection 1 against such party unless written notice of objection to its contents is given within 10 days after it is received.

**NRS 104.2202 Final written expression: Parol or extrinsic evidence.** Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in writing intended by the parties as a final expression of their agreement with respect to such

terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

1. By course of performance, course of dealing or usage of trade (NRS 104.1303); and
2. By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

**NRS 104.2210 Delegation of performance; assignment of rights.**

1. A party may perform his or her duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his or her original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

2. Except as otherwise provided in NRS 104.9406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on the seller or buyer by his or her contract, or impair materially his or her chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his or her entire obligation can be assigned despite agreement otherwise.

3. Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

4. An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

**NRS 104.2312 Warranty of title and against infringement; buyer's obligation against infringement.**

1. Subject to subsection 2 there is in a contract for sale a warranty by the seller that:

- (a) The title conveyed shall be good, and its transfer rightful; and
- (b) The goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

**NRS 104.2612 "Installment contract"; breach.**

1. An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

2. The buyer may reject any installment which is nonconforming if the nonconformity substantially impairs the value of that installment and cannot be cured or if the nonconformity is a defect in the required documents; but if the nonconformity does not fall within subsection 3 and the seller gives adequate assurance of its cure the buyer must accept that installment.

3. Whenever nonconformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if the aggrieved party accepts a nonconforming installment without

1 seasonably notifying of cancellation or if the aggrieved party brings an action with respect only to  
2 past installments or demands performance as to future installments.

3 **NRS 104.3117 Other agreements affecting instrument.** Subject to applicable law  
4 regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party  
5 to an instrument to pay the instrument may be modified, supplemented or nullified by a separate  
6 agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued  
7 or the obligation is incurred in reliance on the agreement or as part of the same transaction giving  
8 rise to the agreement. To the extent an obligation is modified, supplemented or nullified by an  
9 agreement under this section, the agreement is a defense to the obligation.

(Added to NRS by 1965, 822; A 1993, 1267)

6 **NRS 104.3203 Transfer of instrument; rights acquired by transfer.**

7 1. An instrument is transferred when it is delivered by a person other than its issuer for the  
8 purpose of giving to the person receiving delivery the right to enforce the instrument.

9 2. Transfer of an instrument, whether or not the transfer is a negotiation, vests in the  
10 transferee any right of the transferor to enforce the instrument, including any right as a holder in  
11 due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly  
12 or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting  
13 the instrument.

14 3. Unless otherwise agreed, if an instrument is transferred for value and the transferee does  
15 not become a holder because of lack of endorsement by the transferor, the transferee has a  
16 specifically enforceable right to the unqualified endorsement of the transferor, but negotiation of  
17 the instrument does not occur until the endorsement is made.

18 4. If a transferor purports to transfer less than the entire instrument, negotiation of the  
19 instrument does not occur. The transferee obtains no rights under this article and has only the rights  
20 of a partial assignee.

14 **NRS 104.3302 Holder in due course.**

15 1. Except as otherwise provided in subsection 3 of this section and subsection 4 of NRS  
16 104.3106, "holder in due course" means the holder of an instrument if:

17 (a) The instrument when issued or negotiated to the holder does not bear such apparent  
18 evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into  
19 question its authenticity; and

20 (b) The holder took the instrument:

21 (1) For value;

22 (2) In good faith;

23 (3) Without notice that the instrument is overdue or has been dishonored or that there is  
24 an uncured default with respect to payment of another instrument issued as part of the same series;

(4) Without notice that the instrument contains an unauthorized signature or has been  
altered;

(5) Without notice of any claim to the instrument described in NRS 104.3306; and

(6) Without notice that any party has a defense or claim in recoupment described in  
subsection 1 of NRS 104.3305.



2. Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection 1, but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment or claim to the instrument.

3. Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken:

(a) By legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding;

(b) By purchase as part of a bulk transaction not in ordinary course of business of the transferor; or

(c) As the successor in interest to an estate or other organization.

4. If, under paragraph (a) of subsection 1 of NRS 104.3303, the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

5. If the person entitled to enforce an instrument has only a security interest in the instrument and the person obliged to pay the instrument has a defense, claim in recoupment or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

6. To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

7. This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

(Added to NRS by 1965, 825; A 1993, 1272)

**NRS 104.3306 Claims to an instrument.** A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.

(Added to NRS by 1965, 826; A 1993, 1276)

**NRS 104.3602 Payment.**

1. Subject to subsection 5, an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.

2. Subject to subsection 5, a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person who formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it:

(a) Is signed by the transferor or the transferee;

(b) Reasonably identifies the transferred note; and

(c) Provides an address at which payments subsequently are to be made.

➔ Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly

1 was entitled to enforce the note is effective for purposes of subsection 3 even if the party obliged  
2 to pay the note has received a notification under this subsection.

3 3. Subject to subsection 5, to the extent of a payment under subsections 1 and 2, the obligation  
4 of the party obliged to pay the instrument is discharged even though payment is made with  
5 knowledge of a claim to the instrument under NRS 104.3306 by another person.

6 4. Subject to subsection 5, a transferee, or any party that has acquired rights in the instrument  
7 directly or indirectly from a transferee, including any such party that has rights as a holder in due  
8 course, is deemed to have notice of any payment that is made under subsection 2 after the date that  
9 the note is transferred to the transferee but before the party obliged to pay the note receives  
10 adequate notification of the transfer.

11 5. The obligation of a party to pay the instrument is not discharged under subsections 1 to 4,  
12 inclusive, if:

13 (a) A claim to the instrument under NRS 104.3306 is enforceable against the party receiving  
14 payment and:

15 (1) Payment is made with knowledge by the payor that payment is prohibited by  
16 injunction or similar process of a court of competent jurisdiction; or

17 (2) In the case of an instrument other than a cashier's check, teller's check or certified  
18 check, the party making payment accepted, from the person having a claim to the instrument,  
19 indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument;  
20 or

21 (b) The person making payment knows that the instrument is a stolen instrument and pays a  
22 person he or she knows is in wrongful possession of the instrument.

23 6. As used in this section, "signed," with respect to a record that is not a writing, includes the  
attachment to or logical association with the record of an electronic symbol, sound, or process with  
the present intent to adopt or accept the record.

(Added to NRS by 1965, 837; A 1993, 1297; 2005, 2003)

**NRS 104.8113 Statute of frauds inapplicable.** A contract or modification of a contract for  
the sale or purchase of a security is enforceable whether or not there is a writing signed or record  
authenticated by a party against whom enforcement is sought, even if the contract or modification  
is not capable of performance within 1 year after its making.

(Added to NRS by 1965, 885; A 1985, 107; 1997, 399)

**NRS 107.0805 Trustee's power of sale: Requirements and conditions; contents of  
notarized affidavits; circumstances in which sale must be declared void. [Effective through  
June 30, 2021.]**

1. *In addition to the requirements set forth in NRS 107.080, 107.085 and 107.086, the power  
of sale for a residential foreclosure is subject to the following requirements and conditions and  
must not be executed until*

(b) *The beneficiary, the successor in interest of the beneficiary or the trustee first executes and  
causes to be recorded in the office of the recorder of the county wherein the trust property, or some  
part thereof, is situated a notice of the breach and of the election to sell or cause to be sold the  
property pursuant to subsection 2 of NRS 107.080, together with a notarized affidavit of authority  
to exercise the power of sale. The affidavit required by this paragraph must state under penalty of  
perjury the following information, which must be based on the direct, personal knowledge of the*

1 affiant or the personal knowledge which the affiant acquired by a review of the business records  
2 of the beneficiary, the successor in interest of the beneficiary or the servicer of the obligation or  
debt secured by the deed of trust, which business records must meet the standards set forth in NRS  
3 51.135:

4 (1) The full name and business address of the current trustee or the current trustee's  
personal representative or assignee, the current holder of the note secured by the deed of trust,  
5 the current beneficiary of record and the current servicer of the obligation or debt secured by the  
deed of trust.

6 (2) That the beneficiary under the deed of trust, the successor in interest of the beneficiary or  
the trustee is in actual or constructive possession of the note secured by the deed of trust or that  
7 the beneficiary or its successor in interest or the trustee is entitled to enforce the obligation or  
debt secured by the deed of trust. For the purposes of this subparagraph, if the obligation or debt  
8 is an instrument, as defined in subsection 2 of NRS 104.3103, a beneficiary or its successor in  
interest or the trustee is entitled to enforce the instrument if the beneficiary or its successor in  
interest or the trustee is:

9 (I) the holder of the instrument;

10 (II) A nonholder in possession of the instrument who has the rights of a holder; or

(III) A person not in possession of the instrument who is entitled to enforce the  
instrument pursuant to a court order issued under NRS 104.3309.

11 (3) That the beneficiary or its successor in interest, the servicer of the obligation or debt  
secured by the deed of trust or the trustee, or an attorney representing any of those persons, has  
12 sent to the obligor or borrower of the obligation or debt secured by the deed of trust a written  
statement of:

13 (I) That amount of payment required to make good the deficiency in performance or  
payment, avoid the exercise of the power of sale and reinstate the terms and conditions of the  
14 underlying obligation or debt existing before the deficiency in performance or payment, as of the  
date of the statement;

15 (II) The amount in default;

16 (III) The principal amount of the obligation or debt secured by the deed of trust;

(IV) The amount of accrued interest and late charges;

17 (V) A good faith estimate of all fees imposed in connection with the exercise of the  
power of sale; and

18 (VI) Contact information for obtaining the most current amounts due and the local or  
toll-free telephone number described in subparagraph (4).

19 (4) A local or toll-free telephone number that the obligor or borrower of the obligation  
or debt may call to receive the most current amounts due and a recitation of the information  
contained in the affidavit.

20 (5) The date and the recordation number or other unique designation of, and the name of  
each assignee under, each recorded assignment of the deed of trust. The information required to  
21 be stated in the affidavit pursuant to this subparagraph may be based on:

(I) The direct, personal knowledge of the affiant;

22 (II) The personal knowledge which the affiant acquired by a review of the business  
records of the beneficiary, the successor in interest of the beneficiary or the servicer of the  
23



obligation or debt secured by the deed of trust, which business records must meet the standards set forth in NRS 51.135;

(III) Information contained in the records of the recorder of the county in which the property is located; or

(IV) The title guaranty or title insurance issued by a title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS.

#### IV.

#### SEVERAL OTHER STATUTES WERE VIOLATED IN PLAINTIFFS ATTEMPT TO CIRCUMVENT THE JUDICIAL PROCESS AS NOTED BELOW:

**NRS 97B.140 Consumer form contracts: Void if entered into with unlicensed person required to be licensed.** Any consumer form contract entered into by a consumer with a person who is required to be licensed pursuant to any provision of NRS or NAC in order to enter into the consumer transaction, but is not so licensed, is void. Neither the obligee nor any assignee of the obligation may collect, receive or retain any principal, finance charge or other fees in connection with the transaction.

(Added to NRS by 2019, 2310)

**NRS 111.175 Conveyances made to defraud prior or subsequent purchasers are void.** Every conveyance of any estate, or interest in lands, or the rents and profits of lands, and every charge upon lands, or upon the rents and profits thereof, made and created with the intent to defraud prior or subsequent purchasers for a valuable consideration of the same lands, rents or profits, as against such purchasers, shall be void.

[50:9:1861; B § 278; BH § 2619; C § 2689; RL § 1064; NCL § 1522] — (NRS R 1959, 418; reenacted 1960, 324)

**NRS 104.1206 PRESUMPTIONS.** WHENEVER THE UNIFORM COMMERCIAL CODE CREATES A "PRESUMPTION" WITH RESPECT TO A FACT, OR PROVIDES THAT A FACT IS "PRESUMED," THE TRIER OF FACT MUST FIND THE EXISTENCE OF THE FACT UNLESS AND UNTIL EVIDENCE IS INTRODUCED THAT SUPPORTS A FINDING OF ITS NONEXISTENCE. (ADDED TO NRS BY 2005, 830)

#### **NRS 104.9614 Contents and form of notification before disposition of collateral:**

**Consumer-goods transaction.** In a consumer-goods transaction, the following rules apply:

1. A notification of disposition must provide the following information:

(a) The information specified in subsection 1 of NRS 104.9613;

(b) A description of any liability for a deficiency of the person to which the notification is sent;

(c) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under NRS 104.9623 is available; and



1 (d) A telephone number or mailing address from which additional information concerning the  
disposition and the obligation secured is available.

2 2. A particular phrasing of the notification is not required.

3 3. The following form of notification, when completed, provides sufficient information:

4 [Name and address of secured party]

[Date]

5 **NOTICE OF OUR PLAN TO SELL PROPERTY**

6 [Name and address of any obligor who is also a debtor]

7 Subject: [Identification of Transaction]

8 We have your [describe collateral], because you broke promises in our agreement.

9 [For a public disposition:]

10 We will sell [describe collateral] at public sale. A sale could include a lease or license.  
The sale will be held as follows:

11 Date: .....

12 Time: .....

Place: .....

13 You may attend the sale and bring bidders if you want.

14 [For a private disposition:]

15 We will sell [describe collateral] at private sale sometime after [date]. A sale could  
include a lease or license.

16 The money that we get from the sale (after paying our costs) will reduce the amount you  
owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the  
17 difference. If we get more money than you owe, you will get the extra money, unless we must  
pay it to someone else.

18 You can get the property back at any time before we sell it by paying us the full amount  
19 you owe (not just the past due payments), including our expenses. To learn the exact amount  
you must pay, call us at [telephone number].

20 If you want us to explain to you in writing how we have figured the amount that you owe  
21 us, you may call us at [telephone number] [or write us at [secured party's address]] and  
request a written explanation. [We will charge you \$...... for the explanation if we sent  
22 you another written explanation of the amount you owe us within the last 6 months.]

*If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].*

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:  
[Names of all other debtors and obligors, if any]

4. A notification in the form of subsection 3 is sufficient, even if additional information appears at the end of the form.

5. A notification in the form of subsection 3 is sufficient, even if it includes errors in information not required by subsection 1, unless the error is misleading with respect to rights arising under this article.

6. If a notification under this section is not in the form of subsection 3, law other than this article determines the effect of including information not required by subsection 1.

(Added to NRS by 1999, 352)

**NRS 107.028 Trustees: Qualifications; limitations on powers; appointment of new trustee; duties; immunity from liability for certain good faith errors; damages in certain civil actions.**

1. Except as otherwise provided in subsection 4, the trustee under a deed of trust must be:

(a) *An attorney licensed to practice law in this State;*

(b) A title insurer or title agent authorized to do business in this State pursuant to chapter 692A of NRS;

(c) *A person licensed pursuant to chapter 669 of NRS;*

(d) A domestic or foreign entity which holds a current state business license issued by the Secretary of State pursuant to chapter 76 of NRS;

(e) *A person who does business under the laws of this State, the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies;*

(f) *A person who is appointed as a fiduciary pursuant to NRS 662.245;*

(g) A person who acts as a registered agent for a domestic or foreign corporation, limited-liability company, limited partnership or limited-liability partnership;

(h) A person who acts as a trustee of a trust holding real property for the primary purpose of facilitating any transaction with respect to real estate if he or she is not regularly engaged in the business of acting as a trustee for such trusts;

(i) A person who engages in the business of a collection agency pursuant to chapter 649 of NRS; or

(j) A person who engages in the business of an escrow agency, escrow agent or escrow officer pursuant to the provisions of chapter 645A or 692A of NRS.

2. A trustee under a deed of trust must not be the beneficiary of the deed of trust for the purposes of exercising the power of sale pursuant to NRS 107.080.

3. *A trustee under a deed of trust must not:*

(a) Lend its name or its corporate capacity to any person who is not qualified to be the trustee under a deed of trust pursuant to subsection 1.

(b) Act individually or in concert with any other person to circumvent the requirements of subsection 1.

1       4. A beneficiary of record may:  
2       (a) Replace its trustee with another trustee; or  
3       (b) Substitute as trustee only for the purposes of executing a substitution of trustee and a full  
4       or partial reconveyance of a deed of trust.

5       5. The appointment of a new trustee is not effective until the substitution of trustee is recorded  
6       in the office of the recorder of the county in which the real property is located.

7       6. The trustee does not have a fiduciary obligation to the grantor or any other person having  
8       an interest in the property which is subject to the deed of trust. The trustee shall act impartially  
9       and in good faith with respect to the deed of trust and shall act in accordance with the laws of this  
10      State. A rebuttable presumption that a trustee has acted impartially and in good faith exists if the  
11      trustee acts in compliance with the provisions of NRS 107.080. In performing acts required by  
12      NRS 107.080, the trustee incurs no liability for any good faith error resulting from reliance on  
13      information provided by the beneficiary regarding the nature and the amount of the default under  
14      the obligation secured by the deed of trust if the trustee corrects the good faith error not later than  
15      20 days after discovering the error.

16      7. If, in an action brought by a grantor, a person who holds title of record or a beneficiary  
17      in the district court in and for the county in which the real property is located, the court finds that  
18      the trustee did not comply with this section, any other provision of this chapter or any applicable  
19      provision of chapter 106 or 205 of NRS, the court must award to the grantor, the person who holds  
20      title of record or the beneficiary:

- 21      (a) Damages of \$5,000 or treble the amount of actual damages, whichever is greater;  
22      (b) An injunction enjoining the exercise of the power of sale until the beneficiary, the successor  
23      in interest of the beneficiary or the trustee complies with the requirements of subsections 2, 3 and  
24      4; and  
25      (c) Reasonable attorney's fees and costs,  
26      ↳ unless the court finds good cause for a different award.

**NRS 107.081 Time and place of sale; agent holding sale not to be purchaser.**

1       1. All sales of property pursuant to NRS 107.080 must be made at auction to the highest  
2       bidder and must be made between the hours of 9 a.m. and 5 p.m. The agent holding the sale must  
3       not become a purchaser at the sale or be interested in any purchase at such a sale.

V.

**PLAINTIFF SCHULTZS' UNSCROUPULOUS BUSINESS PRACTICES HAVE SEVERELY AFFECTED THE HEALTH AND WELL BEING OF THE DEFENDANT AN ELDERLY CITIZEN WITH LIMITED FINANCES RELYING SOLELY ON AN EXTREMELY SMALL SOCIAL SECURITY BENEFIT PAYMENT THAT BARELY COVERS THE COST OF LIVING. THOSE ACTIONS DIRECTLY VIOLATE THE STATUTE LISTED BELOW:**

**NRS 598.0973 Civil penalty for engaging in deceptive trade practice directed toward elderly person or person with disability.**

1. Except as otherwise provided in NRS 598.0974, in any action brought pursuant to NRS 598.0979 to 598.099, inclusive, if the court finds that a person has engaged in a deceptive trade practice directed toward an elderly person or a person with a disability, the court may, in addition to any other civil or criminal penalty, impose a civil penalty of not more than \$12,500 for each violation.

2. In determining whether to impose a civil penalty pursuant to subsection 1, the court shall consider whether:

(a) The conduct of the person was in disregard of the rights of the elderly person or person with a disability;

(b) The person knew or should have known that his or her conduct was directed toward an elderly person or a person with a disability;

(c) The elderly person or person with a disability was more vulnerable to the conduct of the person because of the age, health, infirmity, impaired understanding, restricted mobility or disability of the elderly person or person with a disability;

(d) The conduct of the person caused the elderly person or person with a disability to suffer actual and substantial physical, emotional or economic damage;

(e) The conduct of the person caused the elderly person or person with a disability to suffer:

(1) Mental or emotional anguish;

(2) The loss of the primary residence of the elderly person or person with a disability;

(3) The loss of the principal employment or source of income of the elderly person or person with a disability;

(4) The loss of money received from a pension, retirement plan or governmental program;

(5) The loss of property that had been set aside for retirement or for personal or family care and maintenance;

(6) The loss of assets which are essential to the health and welfare of the elderly person or person with a disability; or

(7) Any other interference with the economic well-being of the elderly person or person with a disability, including the encumbrance of his or her primary residence or principal source of income; or

(f) Any other factors that the court deems to be appropriate.

(Added to NRS by 1993, 1978; A 2005, 1251, 1428; 2009, 1190)



**VI.**

**SUMMARY**

DEFENDANT TOM CORNWELL MOVED TO NEVADA IN 2003 WITH KAREN CLARKE AND PURCHASED THE PROPERTY AT 2355 COLUMBIA WAY CARSON CITY NV. CARSON CITY COUNTY THROUGH MCCALL REALTY WHO ADVERTISED THE PROPERTY AS A MANUFACTURED HOME SITTING ON A SIX POINT FOUNDATION CONVERTED TO REAL PROPERTY.

DEFENDANT HAS RESIDED AT THIS ADDRESS CONTINUALLY AND THE LOCATION IS HIS PRIMARY RESIDENCE.

A DEED OF TRUST WAS EXECUTED FOR THE PRINCIPAL SUM OF \$32,000.00 WITH ANNUAL PERCENTAGE RATE OF 9% INTEREST OWED TO MR. GEORGE SOETJE. MODIFICATIONS TO THE NOTE ARE INCLUDED IN THE RECORD.

PLAINTIFF SCHULTZ WOULD LIKE THE COURT TO BELIEVE THAT IN 17 YEARS NO PAYMENT HAS EVER BEEN MADE TOWARDS THIS DEBT OF THE PROMISSORY NOTE HELD BY SOETJE AND CLARKE. PROPER NOTIFICATION OF THE TRANSFER IN INTEREST WAS NEVER GIVEN BUT SHOULD HAVE BEEN INCLUDED AS PART OF THE RECORD.

TO DATE SOETJE, SCHULTZ AND THE MORTGAGE SERVICER HAVE NOT PROVIDED A STATEMENT OF THE ACCOUNT. CORNWELL REPEATEDLY REQUESTED A COPY OF THE PAYMENT HISTORY TO SHOW THE NUMBER OF PAYMENTS, TIMES LATE AND REMAINING PRINCIPLE BALANCE WITH INTENT

1 OF PAYING IN FULL. EACH REQUEST FOR INFORMATION WAS MET WITH  
2 ANOTHER REASON WHY THE FORECLOSURE WOULD NOT BE STOPPED.

3 UPON SUBMITTING A LIST OF PAYMENT AMOUNTS, DATES AND  
4 CORRESPONDING MONEY ORDER & CHECK NUMBERS HE WAS TOLD THAT  
5 THE INFORMATION WAS INSUFFICIENT PROOF OF PAYMENT. BASED ON  
6 PLAINTIFFS ACTIONS ONE CAN REASONABLY INFER THAT HE VIEWED MR.  
7 CORNWELL AS A TENANT NOT AN OWNER. ALL OF SCHULTZS' ATTEMPTS AT  
8 EVICTION WERE DENIED AND CLEARLY SUPPORT SUCH INFERRANCES.

9 SCHULTZ INTENDED TO TAKE CORNWELLS PROPERTY FROM HIM AND THEN  
10 THROW HIM OUT ON THE STREET. SCHULTZ CLAIMS TO HAVE PAID MR.  
11 SOETJE \$50,000.00 FOR THE NOTE BUT DID NOT PROVIDE ANY PROOF OF SUCH  
12 A TRANSACTION BEING FINALIZED OR A COPY OF A CANCELLED CHECK.

13 THE CLAIM OF BEING *A BONA FIDE PURCHASER* AT AUCTION DOES'NT HOLD  
14 SINCE HE DIRECTED THE TRUSTEE TO SELL THE PROPERTY AND  
15 SUBSEQUENTLY PLACED THE WINNING BID. BEING THE BENEFICIARY HE  
16 ESSENTIALLY PAID HIMSELF ALL IN AN EFFORT TO REMOVE MR. CORNWELLS  
17 NAME FROM THE DEED.

18 VII.

19 CONCLUSION

20 DEFENDANT, THOMAS CORNWELL, HEREBY PROPOSES THAT THIS  
21 COURT HOLD PLAINTIFF NEIL SCHULTZ ACCOUNTABLE FOR HIS CRIMINAL  
22 ACTIONS AND VOID THE SALE OF THE REAL PROPERTY KNOWN AS 2355  
23 COLUMBIA WAY CARSON CITY, NV. CARSON CITY COUNTY.



1 A RULING IN FAVOR OF DEFENDANT WOULD NOT HARM THE  
2 PLAINTIFF AS TO HIS RIGHTS IT ONLY ENSURES THE RIGHTS OF CORNWELL  
3 AS HOLDER IN DUE COURSE. THE EMOTIONAL AND ECONOMIC HARM THAT  
4 PLAINTIFF INFLICTED IS WHY DEFENDANT ALSO PRAYS FOR RELIEF IN THE  
5 MANNER PRESCRIBED BY STATUTE OR WHATEVER THIS COURT DEEMS TO  
6 BE AN APPROPRIATE AWARD OR JUDGMENT.  
7  
8  
9  
10  
11

12 DATED THIS 16 DAY OF OCT, 2020

13 Pursuant to NRS 53.045, I declare  
14 under penalty of  
15 Perjury that the foregoing is true and  
16 correct.

17   
18 (signature)

19 THOMAS CORNWELL  
20 2355 COLUMBIA WAY  
21 CARSON CITY, NV. 89701  
22 (775)461-0377  
23 TLCNV@YAHOO.COM  
24 IN PROPER PERSON

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16 day of Oct, 2020

I placed a true and correct copy of the foregoing PROPOSED ORDER AND CLOSING ARGUMENT in the United States Mail, with first-class postage prepaid, addressed to the following:

JOHN S. BARTLETT, ESQ.

NV BAR 143

775 N. ROOP ST. SUITE 108

(775)841-6444

johnsbartlett@att.com

DATED this 16 day of Oct, 2020

Pursuant to NRS 53.045, I declare  
under penalty of perjury that the foregoing is true  
and correct.



(signature)

THOMAS CORNWELL  
2355 COLUMBIA WAY  
CARSON CITY, NV. 89701  
(775)461-0377  
TLCNV@YAHOO.COM  
IN PROPER PERSON

REC'D & FILED ✓

2020 OCT 20 PM 3: 38

AUSKEY NOWELL  
CLERK

BY  DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

NEIL SCHULTZ,

Plaintiff,

v.

THOMAS CORNWELL,

Defendant.

-oOo-

CASE NO. 18 RP 00018 1B

DEPT. 2

ORDER FOR PROPOSED ORDERS

FJDCR 3.10 states: A party filing a motion will attach to the motion an original proposed order and a copy of the proposed order. A party filing an opposition to a motion will attach to the opposition an original proposed order and a copy of the proposed order. The parties have failed to provide a proposed order as required in the Order for Closing Arguments and Proposed Orders dated August 6, 2020.

**IT IS ORDERED:**

John S. Bartlett, Esq. and Thomas Cornwell file and serve a proposed order consistent with the Order for Closing Arguments and Proposed Orders filed on August 6, 2020 **by October 27, 2020.**

Parties email a copy of their proposed order in WordPerfect or Word format to the judicial assistant at [bshadron@carson.org](mailto:bshadron@carson.org).

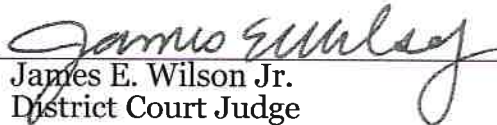
///

///

///

1 Failure in the future to file a proposed order with a motion or opposition will  
2 result in the imposition of a sanction after notice and an opportunity to be heard.

3 October 20, 2020.

4   
James E. Wilson Jr.  
District Court Judge

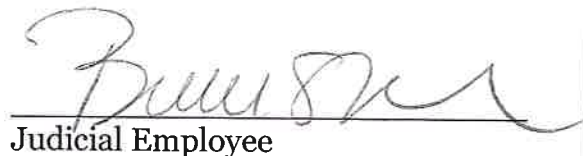
5  
6  
7  
8  
9  
10  
11 **CERTIFICATE OF SERVICE**

12 I certify that I am an employee of the First Judicial District Court of Nevada; that  
13 on the \_\_\_\_ day of July 2020, I served a copy of this document by placing a true copy in  
14 an envelope addressed to:

15 John S. Bartlett, Esquire  
16 755 N. Roop Street  
Suite 108  
17 Carson City, NV 89701  
[johnsbartlett@att.net](mailto:johnsbartlett@att.net)

Thomas Cornwell  
2355 Columbia Way  
Carson City, NV 89706  
[tlcnv@yahoo.com](mailto:tlcnv@yahoo.com)

18 the envelope sealed and then deposited in the Court's central mailing basket in the court  
19 clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City, Nevada, for  
20 mailing.  
21

22   
23 Judicial Employee  
24  
25  
26  
27

REC'D & FILED

2020 NOV -5 AM 10:47

BY  DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

NEIL E. SCHULTZ, a Nevada resident, aka  
The Neil E. Schultz Trust dated January 29,  
2016,

Plaintiff,

vs.

THOMAS L. CORNWELL, a Nevada  
resident, DOES 1 through 5, inclusive.,  
Defendant.

Case No.: 18 RP 00018 1B

Dept. 2

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND JUDGMENT

In this action plaintiff Neil Schultz is seeking a judgment quieting title to a parcel of land located at 2355 Columbia Way, Carson City, Nevada (herein referred to as the Columbia Way parcel). Mr. Schultz obtained record title to Columbia Way parcel as the successful bidder at a foreclosure sale held on August 23, 2018. Defendant Thomas L. Cornwell, who previously held title to this parcel pursuant to a quitclaim deed, challenged the validity of the foreclosure sale. The trial of this matter was held on August 5, 2020, at which time testimony and documents were submitted into the record. The Court ordered the parties to file written closing arguments, the last of which was filed on October 20, 2020. The Court having reviewed the evidence in the record and the arguments of the parties makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

Mr. Schultz became the record title holder of the Columbia Way parcel by virtue of a Trustee's Deed recorded in the Carson City Recorder's Office on September 26, 2018 after Mr.

1 Schultz foreclosed on a deed of trust securing a promissory note he had previously purchased.  
2 The Trustee's Deed was admitted into evidence as Exhibit 21A.

3 Mr. Schultz directed Automatic Funds Transfer Services, dba Allied Trustee Services, the  
4 company that conducted the foreclosure sale, to convey title to the Columbia Way parcel to the  
5 Neil E. Schultz Trust dated January 29, 2016. This trust is Mr. Schultz's revocable inter vivos  
6 trust, so Mr. Schultz is the real party in interest.

7 The recitals in the Trustee's Deed accurately describe the transactions that took place  
8 from the date Karen Lynn Clarke, the person who executed the promissory note purchased by  
9 Mr. Schultz, purchased the Columbia Way parcel until the date the foreclosure sale took place.  
10 To summarize, on or about May 2, 2003, Karen Lynn Clarke executed a promissory note in the  
11 principal sum of \$32,000.00 in favor of George Soetje. This note was admitted into evidence as  
12 Exhibit 4. Under the terms of this note, the loan was scheduled to be paid in monthly  
13 installments of \$306.82 for five years, although the payments were set based on a 17 year  
14 amortization. This note was secured by a deed of trust executed by Ms. Clarke and recorded on  
15 May 8, 2003. The deed of trust was admitted into evidence as Exhibit 5. The promissory note  
16 was modified by Ms. Clarke and Mr. Soetje on a couple of subsequent occasions, as described in  
17 the Trustee's Deed. These written modifications were admitted into evidence as Exhibits 7 and  
18 8. Mr. Cornwell admitted these facts in his Counterclaim and in his testimony at trial.

19 In May 2010 there was a final modification of the promissory note. The terms of this  
20 modification and an amortization table of payments was admitted into evidence as Exhibit 10.  
21 At the time of this modification, the principal balance due was \$37,651.45, and monthly  
22 payments were set at \$410.00 for 175 months. Mr. Cornwell admitted his familiarity with  
23 Exhibit 10 and of this final modification at trial.

24 As per the recitals in the Trustee's Deed, and in testimony at trial, Mr. Schultz asserted  
25 that on or about June 5, 2010 Ms. Clarke defaulted on the promissory note. While Mr. Cornwell  
26 refused to admit the payments on the note were in default, his only evidence that payments were  
27 made after June 5, 2010 is a written list of purported payments he attached to his Counterclaim.  
28 During discovery Mr. Cornwell was asked to produce proof of any of these purported payments,



1 which he failed to do. Mr. Cornwell did not provide any evidence of these purported payments  
2 at trial either. In the absence of such proof the Court finds the promissory note, as modified in  
3 May 2010, was in default when Ms. Clarke failed to make her June 5, 2010 payment, and no  
4 additional payments were made on the promissory note.

5 Ms. Clarke conveyed title to the Columbia Way parcel to Mr. Cornwell by Quitclaim  
6 Deed dated February 9, 2017. This deed was entered into evidence as Exhibit 11.

7 Under the express terms of the deed of trust executed by Ms. Clarke:

8 IN THE EVENT THE HEREIN DESCRIBED PROPERTY, OR ANY PORTION  
9 THEREOF, OR ANY INTEREST THEREIN, IS SOLD, AGREED TO BE SOLD,  
10 CONVEYED OR ALIENATED, BY THE TRUSTOR, OR BY THE OPERATION OF  
11 LAW OR OTHERWISE, ALL OBLIGATIONS SECURED BY THIS INSTRUMENT,  
12 IRRESPECTIVE OF THE MATURITY DATES EXPRESSED THEREIN, AT THE  
13 OPTION OF THE HOLDER THEREOF AND WITHOUT DEMAND OR NOTICE  
14 SHALL IMMEDIATELY BECOME DUE AND PAYABLE.

15 The same language appears in the promissory note.

16 On or about March 26, 2018 Mr. Soetje sold his beneficial interest in the Clarke  
17 promissory note to plaintiff Neil Schultz. This sale is evidenced by Exhibits 26 and 27, admitted  
18 into evidence, as well as the testimony of Mr. Schultz. On March 30, 2018 the beneficial interest  
19 of Mr. Soetje in Ms. Clarke's promissory note and deed of trust was assigned to Mr. Schultz.  
20 Exhibit 21A. Mr. Schultz testified that Mr. Soetje made him aware of the fact that the  
21 promissory note executed by Ms. Clarke had been in default since June 2010.

22 After plaintiff Schultz obtained the assignment of the Clarke note and deed of trust from  
23 Mr. Soetje, he retained Automatic Funds Transfer Services, dba Allied Trustee Services to  
24 commence foreclosure proceedings against the Columbia Way parcel under the deed of trust.  
25 Defendant Cornwell was duly served with the Notice of Default and Election to Sell, and later  
26 with the Notice of Sale. These documents are in evidence as Exhibits 15 and 20A.

27 At the foreclosure sale on August 23, 2018, Mr. Schultz made the highest bid for the  
28 property, and so received the Trustee's Deed to the property. Exhibit 21A.

1 Mr. Cornwell resides in a mobile home on the Columbia Way parcel. According to the  
2 Manufactured Housing Division of the Department of Business and Industry, title to the mobile  
3 home remains in the name of Clarence Childers. Exhibit 19.

#### 4 LEGAL ANALYSIS

5 Defendant Thomas Cornwell challenged the validity of the foreclosure process and sale  
6 on two grounds. First, in his Counterclaim he alleged that payments were made on the  
7 promissory note after it was modified in May 2010, between May 4, 2011 and May 17, 2016  
8 were never credited to the principal balance due on the note. As a result Cornwell alleged, the  
9 amount due on the promissory note quoted to him by Allied Foreclosure Services during the  
10 foreclosure process was overstated.

11 Mr. Cornwell's claim that payments made on the promissory note had not been credited  
12 to the principal balance due as of the date the foreclosure commenced fails because he did not  
13 provide proof of these payments either in response to plaintiff's discovery requests to produce  
14 such proof, or at trial, despite ample time to produce this proof. Absent any evidence that the  
15 amount of the principal balance set forth in Exhibit 10 should have been reduced through  
16 payments made after May 2010, Mr. Cornwell was provided an accurate accounting of the  
17 amount owed when he inquired during the foreclosure sale process.

18 In addition, by the express terms of the promissory note and the deed of trust executed by  
19 Ms. Clarke, a sale or transfer of title to the Columbia Way parcel caused the entire balance owed  
20 on the note to become due and payable. Mr. Cornwell's challenge to the foreclosure sale on the  
21 ground that he was not provided with an accurate statement of the amount owed is without merit.

22 Mr. Cornwell's second ground for challenging the foreclosure sale is his claim that at the  
23 time the Notice of Default and Election to Sell was served and recorded at the commencement of  
24 the foreclosure process, he was not provided with the legally required notices and information  
25 required to be given to homeowners whose property is being foreclosed, as set forth in NRS  
26 107.0805, NRS 107.086 and NRS 107.0865. Mr. Cornwell's argument rests on the fact that he  
27 resides in the mobile home situated on the Columbia Way parcel and that it was converted to real  
28 property.

1 Mr. Cornwell is of the opinion that the mobile home was converted to real property by  
2 virtue of an Affidavit of Conversion of Manufactured Home/Mobile Home to Real Property  
3 executed by Clarence Childers, a former owner of the land at 2355 Columbia Way on October 4,  
4 2001 and recorded on October 24, 2001. See Exhibit 2A. As it happens, however, the execution  
5 and recording of this Affidavit was but the first step in the process of converting a mobile home  
6 from personal property to a permanent fixture of the real property on which it sits.

7 NRS 361.244 describes the process by which a mobile home may be converted to real  
8 property. First, NRS 361.244(1) states that a mobile home is eligible to become real property if  
9 it becomes permanently affixed to the land which is owned by the owner of the mobile home.  
10 As noted in the record, Mr. Childers owned the mobile home and the land on which it was  
11 situated on October 4, 2001, the date he executed the Affidavit. However, he sold the property  
12 to MaryLynn Cavender on or about October 22, 2001 as evidenced by the Grant, Bargain and  
13 Sale deed of that date, recorded on October 23, 2001. See Exhibit 1. The Affidavit was then  
14 recorded by Mr. Childers on October 24, 2001, the day after he transferred title to the real  
15 property out of his name. Accordingly, Mr. Childers no longer owned the land before the  
16 process for conversion described in NRS 361.244(2) began.

17 The remaining steps outlined in NRS 361.244(2) to complete the conversion were never  
18 completed. This includes sending the recorded Affidavit and all other documents relating to the  
19 mobile home in its former condition as personal property to the Manufactured Housing Division  
20 of the Department of Business and Industry, with a check, and thereafter a written verification  
21 from the Division sent to the county assessor that the mobile home has been converted to real  
22 property. NRS 361.244(1)(4). Accordingly, the mobile home has remained on the tax rolls of  
23 Carson City as personal property, and in the records of the Manufactured Housing division of the  
24 Dept of Business and Industry, since 2001 to date. Title to the mobile home has never been  
25 transferred out of Mr. Childers' name. See Exhibit 19.

26 . The legal effect of the mobile home remaining personal property and the title remaining  
27 in the name of Clarence James Childers or Rose Joanne Childers, trustees of the Childers Family  
28 Trust dated 1/24/1997, is that the deed of trust securing the promissory note executed by Karen

1 Lynn Clarke is not a deed of trust or trust agreement “which concerns owner-occupied housing.”  
2 The deed of trust executed by Karen Lynn Clarke does not list the mobile home as collateral for  
3 the loan Ms. Clarke obtained from George Soetje. The deed of trust only served as a lien on the  
4 parcel of land described in the deed of trust, not the mobile home.

5 Furthermore, Karen Lynn Clarke never held record title to the mobile home that sits on  
6 the land. The mobile home is not described on any of the deeds to the parcel of land located at  
7 2355 Columbia Way, Carson City, Nevada. As Ms. Clarke simply executed a quitclaim deed to  
8 defendant Thomas Cornwell, he took whatever rights she had in the land subject to the deed of  
9 trust in favor of Mr. Soetje. There is no evidence of any written contract or agreement by which  
10 the mobile home owned by the Childers Family Trust was conveyed to anyone, which is why the  
11 Manufactured Housing Division shows record title of the mobile home still resides with the  
12 trustees of the Childers Family Trust.

13 As the promissory note and deed of trust executed by Ms. Clarke only pertains to the  
14 parcel of land at 2355 Columbia Way, Carson City, this fact affects the type of notice Mr.  
15 Cornwell was entitled to receive during the foreclosure process. It is true that Mr. Cornwell was  
16 not provided with information pertaining to the right to seek a loan modification as described in  
17 NRS 107.086 and NRS 107.0865, nor was he provided with the information listed in NRS  
18 107.0805(3) pertaining to the precise amount in default, the principal amount of the obligation,  
19 the amount of accrued interest and late charges, or a good faith estimate of the fees imposed in  
20 connection with the power of sale. The reason Mr. Cornwell was not provided with this  
21 information is because he was not legally entitled to that information.

22 The provisions of NRS 107.0805 by its terms only apply in the case of a residential  
23 foreclosure. See NRS 107.0805(1). The foreclosure in this case was not a residential  
24 foreclosure, it was a foreclosure of a parcel of land only. This is reflected in the Declaration of  
25 Value recorded at the same time as the Trustee’s Deed. Exhibit 21A. The mobile home on the  
26 property was not part of the foreclosure proceeding. Furthermore, NRS 107.0805(3) states that  
27 the specific information on the amount in default, the principal amount of the obligation, etc.,  
28 need only be sent to the obligor or borrower of the obligation or debt secured by the deed of trust

1 being foreclosed. Mr. Cornwell was not an obligor of the promissory note executed by Ms.  
2 Clarke, nor the borrower of the existing obligation.

3       The fact that the foreclosure at issue was only of the land, not the mobile home, also  
4 made the provisions of NRS 107.086 and NRS 107.0865 inapplicable to Mr. Cornwell. The  
5 deed of trust does not pertain to "owner occupied housing" even though Mr. Cornwell was living  
6 in the mobile home on the property. Allied Foreclosure Services informed Mr. Cornwell that he  
7 was not entitled to the additional notices set forth in NRS 107.086 and NRS 107.0865 because he  
8 was not eligible for loan mediation when the mobile home he resided in was not part of the real  
9 property being foreclosed. See Exhibit 18. Clearly, an additional reason why these provisions  
10 are inapplicable to Mr. Cornwell is, again, he is neither the obligor under the promissory note  
11 secured by the deed of trust, nor the borrower of the funds represented by the promissory note.  
12 Mr. Cornwell has not basis in law to demand Mr. Soetje or Mr. Schultz to modify a loan he is  
13 not the obligor of.

14       An examination of the Notice of Default and Election to Sell served on Mr. Cornwell  
15 shows it meets the requirements of NRS 107.080. Compare Exhibit 15 with the language in  
16 NRS 107.080(3). The Notice of Default describes the deficiency in performance or payment,  
17 and contains a notice of intent to declare the entire unpaid balance due as required by NRS  
18 107.080(3). In addition, Allied Foreclosure Services, the trustee of the deed of trust hired to  
19 handle the foreclosure sale, sent Mr. Cornwell a letter with the Notice of Default, introduced into  
20 evidence as Exhibit 14, explaining that the entire principal balance was due, together with any  
21 fees, late charges and advances, and provided him with a telephone number to call to get the  
22 specific amount due. Mr. Cornwell was also served with a written Affidavit of Authority to  
23 Exercise the Power of Sale, which was recorded, and which contained the information required  
24 by NRS 107.0805(1)(b), even though this was not technically required by NRS 107.080. This  
25 document was admitted into evidence as part of Exhibit 14.

26       The documentation in the record shows Mr. Cornwell received the type of notice he was  
27 entitled to receive under the provisions of NRS 107.080. Consequently, the foreclosure sale was  
28 lawful and binding on Mr. Cornwell.



## CONCLUSIONS OF LAW

1. The promissory note dated May 2, 2003 executed by Karen Lynn Clarke payable to George Soetje was secured by a deed of trust on a parcel of land located at 2355 Columbia Way, Carson City, Nevada.

2. A mobile home was located on the parcel of land at the time the land was conveyed to Ms. Clarke that had not been legally converted to real property.

3. As the mobile home had not been legally converted to real property, it remained personal property. The mobile home was not included as collateral securing the promissory note.

4. Title to the mobile home was never formally conveyed to Ms. Clarke or her successor in interest, defendant Thomas Cornwell.

5. The loan made by George Soetje to Karen Lynn Clarke was not a loan that concerned owner occupied housing as that term is used in NRS 107.085, NRS 107.086 or NRS 107.0865 because the mobile home had not been converted to real property at the time the loan was made, and was not collateral securing payment of the loan.

6. As the loan made by George Soetje to Karen Lynn Clarke was not a loan that concerned owner occupied housing, defendant Cornwell was not entitled to the additional notices and remedies available to homeowners set forth in NRS 107.085, NRS 107.086 or NRS 107.0865.

7. The Notice of Default and Election to Sell and Notice of Sale served on defendant Cornwell met the notice requirements of NRS 107.080. The foreclosure process and foreclosure sale conducted by Allied Foreclosure Services was appropriate and met the requirements of the law.

8. Plaintiff Neil E. Schultz was the successful bidder at the foreclosure sale and was entitled to receive the Trustee's Deed to the Columbia Way parcel.

## JUDGMENT

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby enters judgment in favor of plaintiff Neil E. Schultz and declares that he is the lawful owner of



1 the land located at 2355 Columbia Way, Carson City, Nevada, and is entitled to full possession  
2 and enjoyment of the premises to the exclusion of all others. The Court does not make a  
3 determination as to who is the owner of the mobile home currently situated on the land, but title  
4 is not merged with the title of the land at this time.

5 Plaintiff shall file and serve a Notice of Entry of Judgment on the Defendant within 7  
6 days from the date this judgment is entered.

7  
8 DATED: November<sup>5</sup>, 2020

9  
10   
JAMES E. WILSON, JR.  
DISTRICT COURT JUDGE

11  
12 Submitted by:

13 /s/ John S. Bartlett  
14 John S. Bartlett, Esq.  
15 SBN 143  
16 755 N. Roop St.  
17 Suite 108  
18 Carson City, NV 89701  
19 (775) 841-6444  
20 johnsbartlett@att.net

21 Attorney for Plaintiff Neil E. Schultz  
22  
23  
24  
25  
26  
27  
28

1 **THOMAS CORNWELL**  
2 **2355 COLUMBIA WAY**  
3 **CARSON CITY, NV. 89706**  
4 tlcnv@yahoo.com  
5 (775)461-0377  
6 in proper person

REC'D & FILED

2020 NOV 10 PM 12:50

AUDREY ROWLATT  
CLERK

BY  DEPUTY

THE FIRST JUDICIAL DISTRICT COURT STATE OF NEVADA  
IN AND FOR CARSON CITY, NEVADA

7 NEIL SCHULTZ

8 Plaintiff,

9 vs.

10 THOMAS CORNWELL,

11 Defendant

Case No.: 18 RP 00018 1B

DEPT; II

NOTICE OF APPEAL AND STAY OF  
ENTRY OF ORDER

12  
13  
14 COMES NOW, THOMAS CORNWELL DEFENDANT AND APPEALS TO  
15 THE FIRST JUDICIAL DISTRICT COURT CARSON CITY, CARSON CITY COUNTY,  
16 NEVADA FROM THE JUDGMENT/ORDER ENTERED ON  
17 THE 5<sup>TH</sup> DAY OF NOVEMBER 2020 IN THE ABOVE ENTITLED COURT.  
18  
19  
20  
21  
22  
23

1  
2 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
3 NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.  
4

5  
6 **X**   
7 \_\_\_\_\_  
8

9  
10  
11 **THOMAS CORNWELL**  
12 **2355 COLUMBIA WAY**  
13 **CARSON CITY, NV. 89706**  
14 tlcnv@yahoo.com  
15 (775)461-0377  
16 in proper person  
17  
18  
19  
20  
21  
22  
23  
24

1 John S. Bartlett, Esq.  
2 SBN 143  
3 755 N. Roop St.  
4 Suite 108  
5 Carson City, NV 89701  
6 (775) 841-6444  
7 johnsbartlett@att.net

8 Attorney for Neil E. Schultz, Plaintiff

REC'D & FILED  
2020 NOV 10 PM 2:56

AUDREY ROWLAND  
CLERK

BY

DEPUTY

9 IN THE FIRST JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA  
10 IN AND FOR CARSON CITY, NEVADA

11 NEIL E. SCHULTZ, a Nevada resident, aka  
12 The Neil E. Schultz Trust dated January 29,  
13 2016,

14 Plaintiff,

15 vs.

16 THOMAS L. CORNWELL, a Nevada  
17 resident, DOES 1 through 5, inclusive.,

18 Defendant.

Case No.: 18 RP 00018 1B

Dept. 2

19 NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
20 JUDGMENT

21 To defendant Thomas L. Cornwell: PLEASE TAKE NOTICE that on November 5, 2020  
22 the District Court entered its Findings of Fact, Conclusions of Law and Judgment in the above  
23 entitled case. A true and correct copy of the Findings of Fact, Conclusions of Law and Judgment  
24 is attached as Exhibit 1.

25 Dated this 6<sup>th</sup> day of November, 2020

26 John S. Bartlett, Esq.  
27 Attorney for Neil E. Schultz,  
28 plaintiff

CERTIFICATE OF SERVICE


The undersigned, counsel of record for plaintiff Neil E. Schultz, hereby certifies pursuant to NRCP 5(b) that on November 6, 2020 he caused the foregoing Notice of Entry of Findings of Fact, Conclusions of Law and Judgment to be served on Thomas L. Cornwell, the defendant (who is not represented by counsel), by depositing a true and correct copy in the United States Mail, postage prepaid, and addressed as follows:

Thomas L. Cornwell  
2355 Columbia Way  
Carson City, NV 89706

  
\_\_\_\_\_  
John S. Bartlett, Esq.

# EXHIBIT 1



RECORDED  
2020 NOV -5 AM 10:47  
BY   
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

NEIL E. SCHULTZ, a Nevada resident, aka  
The Neil E. Schultz Trust dated January 29,  
2016,

Plaintiff,

vs.

THOMAS L. CORNWELL, a Nevada  
resident, DOES 1 through 5, inclusive.,  
Defendant.

Case No.: 18 RP 00018 1B

Dept. 2

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND JUDGMENT

In this action plaintiff Neil Schultz is seeking a judgment quieting title to a parcel of land located at 2355 Columbia Way, Carson City, Nevada (herein referred to as the Columbia Way parcel). Mr. Schultz obtained record title to Columbia Way parcel as the successful bidder at a foreclosure sale held on August 23, 2018. Defendant Thomas L. Cornwell, who previously held title to this parcel pursuant to a quitclaim deed, challenged the validity of the foreclosure sale. The trial of this matter was held on August 5, 2020, at which time testimony and documents were submitted into the record. The Court ordered the parties to file written closing arguments, the last of which was filed on October 20, 2020. The Court having reviewed the evidence in the record and the arguments of the parties makes the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

Mr. Schultz became the record title holder of the Columbia Way parcel by virtue of a Trustee's Deed recorded in the Carson City Recorder's Office on September 26, 2018 after Mr.

1 Schultz foreclosed on a deed of trust securing a promissory note he had previously purchased.  
2 The Trustee's Deed was admitted into evidence as Exhibit 21A.

3 Mr. Schultz directed Automatic Funds Transfer Services, dba Allied Trustee Services, the  
4 company that conducted the foreclosure sale, to convey title to the Columbia Way parcel to the  
5 Neil E. Schultz Trust dated January 29, 2016. This trust is Mr. Schultz's revocable inter vivos  
6 trust, so Mr. Schultz is the real party in interest.

7 The recitals in the Trustee's Deed accurately describe the transactions that took place  
8 from the date Karen Lynn Clarke, the person who executed the promissory note purchased by  
9 Mr. Schultz, purchased the Columbia Way parcel until the date the foreclosure sale took place.  
10 To summarize, on or about May 2, 2003, Karen Lynn Clarke executed a promissory note in the  
11 principal sum of \$32,000.00 in favor of George Soetje. This note was admitted into evidence as  
12 Exhibit 4. Under the terms of this note, the loan was scheduled to be paid in monthly  
13 installments of \$306.82 for five years, although the payments were set based on a 17 year  
14 amortization. This note was secured by a deed of trust executed by Ms. Clarke and recorded on  
15 May 8, 2003. The deed of trust was admitted into evidence as Exhibit 5. The promissory note  
16 was modified by Ms. Clarke and Mr. Soetje on a couple of subsequent occasions, as described in  
17 the Trustee's Deed. These written modifications were admitted into evidence as Exhibits 7 and  
18 8. Mr. Cornwell admitted these facts in his Counterclaim and in his testimony at trial.

19 In May 2010 there was a final modification of the promissory note. The terms of this  
20 modification and an amortization table of payments was admitted into evidence as Exhibit 10.  
21 At the time of this modification, the principal balance due was \$37,651.45, and monthly  
22 payments were set at \$410.00 for 175 months. Mr. Cornwell admitted his familiarity with  
23 Exhibit 10 and of this final modification at trial.

24 As per the recitals in the Trustee's Deed, and in testimony at trial, Mr. Schultz asserted  
25 that on or about June 5, 2010 Ms. Clarke defaulted on the promissory note. While Mr. Cornwell  
26 refused to admit the payments on the note were in default, his only evidence that payments were  
27 made after June 5, 2010 is a written list of purported payments he attached to his Counterclaim.  
28 During discovery Mr. Cornwell was asked to produce proof of any of these purported payments,

1 which he failed to do. Mr. Cornwell did not provide any evidence of these purported payments  
2 at trial either. In the absence of such proof the Court finds the promissory note, as modified in  
3 May 2010, was in default when Ms. Clarke failed to make her June 5, 2010 payment, and no  
4 additional payments were made on the promissory note.

5 Ms. Clarke conveyed title to the Columbia Way parcel to Mr. Cornwell by Quitclaim  
6 Deed dated February 9, 2017. This deed was entered into evidence as Exhibit 11.

7 Under the express terms of the deed of trust executed by Ms. Clarke:

8 IN THE EVENT THE HEREIN DESCRIBED PROPERTY, OR ANY PORTION  
9 THEREOF, OR ANY INTEREST THEREIN, IS SOLD, AGREED TO BE SOLD,  
10 CONVEYED OR ALIENATED, BY THE TRUSTOR, OR BY THE OPERATION OF  
11 LAW OR OTHERWISE, ALL OBLIGATIONS SECURED BY THIS INSTRUMENT,  
12 IRRESPECTIVE OF THE MATURITY DATES EXPRESSED THEREIN, AT THE  
13 OPTION OF THE HOLDER THEREOF AND WITHOUT DEMAND OR NOTICE  
14 SHALL IMMEDIATELY BECOME DUE AND PAYABLE.

15 The same language appears in the promissory note.

16 On or about March 26, 2018 Mr. Soetje sold his beneficial interest in the Clarke  
17 promissory note to plaintiff Neil Schultz. This sale is evidenced by Exhibits 26 and 27, admitted  
18 into evidence, as well as the testimony of Mr. Schultz. On March 30, 2018 the beneficial interest  
19 of Mr. Soetje in Ms. Clarke's promissory note and deed of trust was assigned to Mr. Schultz.  
20 Exhibit 21A. Mr. Schultz testified that Mr. Soetje made him aware of the fact that the  
21 promissory note executed by Ms. Clarke had been in default since June 2010.

22 After plaintiff Schultz obtained the assignment of the Clarke note and deed of trust from  
23 Mr. Soetje, he retained Automatic Funds Transfer Services, dba Allied Trustee Services to  
24 commence foreclosure proceedings against the Columbia Way parcel under the deed of trust.  
25 Defendant Cornwell was duly served with the Notice of Default and Election to Sell, and later  
26 with the Notice of Sale. These documents are in evidence as Exhibits 15 and 20A.

27 At the foreclosure sale on August 23, 2018, Mr. Schultz made the highest bid for the  
28 property, and so received the Trustee's Deed to the property. Exhibit 21A.

1 Mr. Cornwell resides in a mobile home on the Columbia Way parcel. According to the  
2 Manufactured Housing Division of the Department of Business and Industry, title to the mobile  
3 home remains in the name of Clarence Childers. Exhibit 19.

#### 4 LEGAL ANALYSIS

5 Defendant Thomas Cornwell challenged the validity of the foreclosure process and sale  
6 on two grounds. First, in his Counterclaim he alleged that payments were made on the  
7 promissory note after it was modified in May 2010, between May 4, 2011 and May 17, 2016  
8 were never credited to the principal balance due on the note. As a result Cornwell alleged, the  
9 amount due on the promissory note quoted to him by Allied Foreclosure Services during the  
10 foreclosure process was overstated.

11 Mr. Cornwell's claim that payments made on the promissory note had not been credited  
12 to the principal balance due as of the date the foreclosure commenced fails because he did not  
13 provide proof of these payments either in response to plaintiff's discovery requests to produce  
14 such proof, or at trial, despite ample time to produce this proof. Absent any evidence that the  
15 amount of the principal balance set forth in Exhibit 10 should have been reduced through  
16 payments made after May 2010, Mr. Cornwell was provided an accurate accounting of the  
17 amount owed when he inquired during the foreclosure sale process.

18 In addition, by the express terms of the promissory note and the deed of trust executed by  
19 Ms. Clarke, a sale or transfer of title to the Columbia Way parcel caused the entire balance owed  
20 on the note to become due and payable. Mr. Cornwell's challenge to the foreclosure sale on the  
21 ground that he was not provided with an accurate statement of the amount owed is without merit.

22 Mr. Cornwell's second ground for challenging the foreclosure sale is his claim that at the  
23 time the Notice of Default and Election to Sell was served and recorded at the commencement of  
24 the foreclosure process, he was not provided with the legally required notices and information  
25 required to be given to homeowners whose property is being foreclosed, as set forth in NRS  
26 107.0805, NRS 107.086 and NRS 107.0865. Mr. Cornwell's argument rests on the fact that he  
27 resides in the mobile home situated on the Columbia Way parcel and that it was converted to real  
28 property.

1 Mr. Cornwell is of the opinion that the mobile home was converted to real property by  
2 virtue of an Affidavit of Conversion of Manufactured Home/Mobile Home to Real Property  
3 executed by Clarence Childers, a former owner of the land at 2355 Columbia Way on October 4,  
4 2001 and recorded on October 24, 2001. See Exhibit 2A. As it happens, however, the execution  
5 and recording of this Affidavit was but the first step in the process of converting a mobile home  
6 from personal property to a permanent fixture of the real property on which it sits.

7 NRS 361.244 describes the process by which a mobile home may be converted to real  
8 property. First, NRS 361.244(1) states that a mobile home is eligible to become real property if  
9 it becomes permanently affixed to the land which is owned by the owner of the mobile home.  
10 As noted in the record, Mr. Childers owned the mobile home and the land on which it was  
11 situated on October 4, 2001, the date he executed the Affidavit. However, he sold the property  
12 to MaryLynn Cavender on or about October 22, 2001 as evidenced by the Grant, Bargain and  
13 Sale deed of that date, recorded on October 23, 2001. See Exhibit 1. The Affidavit was then  
14 recorded by Mr. Childers on October 24, 2001, the day after he transferred title to the real  
15 property out of his name. Accordingly, Mr. Childers no longer owned the land before the  
16 process for conversion described in NRS 361.244(2) began.

17 The remaining steps outlined in NRS 361.244(2) to complete the conversion were never  
18 completed. This includes sending the recorded Affidavit and all other documents relating to the  
19 mobile home in its former condition as personal property to the Manufactured Housing Division  
20 of the Department of Business and Industry, with a check, and thereafter a written verification  
21 from the Division sent to the county assessor that the mobile home has been converted to real  
22 property. NRS 361.244(1)(4). Accordingly, the mobile home has remained on the tax rolls of  
23 Carson City as personal property, and in the records of the Manufactured Housing division of the  
24 Dept of Business and Industry, since 2001 to date. Title to the mobile home has never been  
25 transferred out of Mr. Childers' name. See Exhibit 19.

26 The legal effect of the mobile home remaining personal property and the title remaining  
27 in the name of Clarence James Childers or Rose Joanne Childers, trustees of the Childers Family  
28 Trust dated 1/24/1997, is that the deed of trust securing the promissory note executed by Karen



1 Lynn Clarke is not a deed of trust or trust agreement "which concerns owner-occupied housing."  
2 The deed of trust executed by Karen Lynn Clarke does not list the mobile home as collateral for  
3 the loan Ms. Clarke obtained from George Soetje. The deed of trust only served as a lien on the  
4 parcel of land described in the deed of trust, not the mobile home.

5 Furthermore, Karen Lynn Clarke never held record title to the mobile home that sits on  
6 the land. The mobile home is not described on any of the deeds to the parcel of land located at  
7 2355 Columbia Way, Carson City, Nevada. As Ms. Clarke simply executed a quitclaim deed to  
8 defendant Thomas Cornwell, he took whatever rights she had in the land subject to the deed of  
9 trust in favor of Mr. Soetje. There is no evidence of any written contract or agreement by which  
10 the mobile home owned by the Childers Family Trust was conveyed to anyone, which is why the  
11 Manufactured Housing Division shows record title of the mobile home still resides with the  
12 trustees of the Childers Family Trust.

13 As the promissory note and deed of trust executed by Ms. Clarke only pertains to the  
14 parcel of land at 2355 Columbia Way, Carson City, this fact affects the type of notice Mr.  
15 Cornwell was entitled to receive during the foreclosure process. It is true that Mr. Cornwell was  
16 not provided with information pertaining to the right to seek a loan modification as described in  
17 NRS 107.086 and NRS 107.0865, nor was he provided with the information listed in NRS  
18 107.0805(3) pertaining to the precise amount in default, the principal amount of the obligation,  
19 the amount of accrued interest and late charges, or a good faith estimate of the fees imposed in  
20 connection with the power of sale. The reason Mr. Cornwell was not provided with this  
21 information is because he was not legally entitled to that information.

22 The provisions of NRS 107.0805 by its terms only apply in the case of a residential  
23 foreclosure. See NRS 107.0805(1). The foreclosure in this case was not a residential  
24 foreclosure, it was a foreclosure of a parcel of land only. This is reflected in the Declaration of  
25 Value recorded at the same time as the Trustee's Deed. Exhibit 21A. The mobile home on the  
26 property was not part of the foreclosure proceeding. Furthermore, NRS 107.0805(3) states that  
27 the specific information on the amount in default, the principal amount of the obligation, etc.,  
28 need only be sent to the obligor or borrower of the obligation or debt secured by the deed of trust



1 being foreclosed. Mr. Cornwell was not an obligor of the promissory note executed by Ms.  
2 Clarke, nor the borrower of the existing obligation.

3       The fact that the foreclosure at issue was only of the land, not the mobile home, also  
4 made the provisions of NRS 107.086 and NRS 107.0865 inapplicable to Mr. Cornwell. The  
5 deed of trust does not pertain to "owner occupied housing" even though Mr. Cornwell was living  
6 in the mobile home on the property. Allied Foreclosure Services informed Mr. Cornwell that he  
7 was not entitled to the additional notices set forth in NRS 107.086 and NRS 107.0865 because he  
8 was not eligible for loan mediation when the mobile home he resided in was not part of the real  
9 property being foreclosed. See Exhibit 18. Clearly, an additional reason why these provisions  
10 are inapplicable to Mr. Cornwell is, again, he is neither the obligor under the promissory note  
11 secured by the deed of trust, nor the borrower of the funds represented by the promissory note.  
12 Mr. Cornwell has not basis in law to demand Mr. Soetje or Mr. Schultz to modify a loan he is  
13 not the obligor of.

14       An examination of the Notice of Default and Election to Sell served on Mr. Cornwell  
15 shows it meets the requirements of NRS 107.080. Compare Exhibit 15 with the language in  
16 NRS 107.080(3). The Notice of Default describes the deficiency in performance or payment,  
17 and contains a notice of intent to declare the entire unpaid balance due as required by NRS  
18 107.080(3). In addition, Allied Foreclosure Services, the trustee of the deed of trust hired to  
19 handle the foreclosure sale, sent Mr. Cornwell a letter with the Notice of Default, introduced into  
20 evidence as Exhibit 14, explaining that the entire principal balance was due, together with any  
21 fees, late charges and advances, and provided him with a telephone number to call to get the  
22 specific amount due. Mr. Cornwell was also served with a written Affidavit of Authority to  
23 Exercise the Power of Sale, which was recorded, and which contained the information required  
24 by NRS 107.0805(1)(b), even though this was not technically required by NRS 107.080. This  
25 document was admitted into evidence as part of Exhibit 14.

26       The documentation in the record shows Mr. Cornwell received the type of notice he was  
27 entitled to receive under the provisions of NRS 107.080. Consequently, the foreclosure sale was  
28 lawful and binding on Mr. Cornwell.

1 **CONCLUSIONS OF LAW**

2 1. The promissory note dated May 2, 2003 executed by Karen Lynn Clarke payable to  
3 George Soetje was secured by a deed of trust on a parcel of land located at 2355 Columbia Way,  
4 Carson City, Nevada.

5 2. A mobile home was located on the parcel of land at the time the land was conveyed to  
6 Ms. Clarke that had not been legally converted to real property.

7 3. As the mobile home had not been legally converted to real property, it remained  
8 personal property. The mobile home was not included as collateral securing the promissory  
9 note.

10 4. Title to the mobile home was never formally conveyed to Ms. Clarke or her successor  
11 in interest, defendant Thomas Cornwell.

12 5. The loan made by George Soetje to Karen Lynn Clarke was not a loan that concerned  
13 owner occupied housing as that term is used in NRS 107.085, NRS 107.086 or NRS 107.0865  
14 because the mobile home had not been converted to real property at the time the loan was made,  
15 and was not collateral securing payment of the loan.

16 6. As the loan made by George Soetje to Karen Lynn Clarke was not a loan that  
17 concerned owner occupied housing, defendant Cornwell was not entitled to the additional  
18 notices and remedies available to homeowners set forth in NRS 107.085, NRS 107.086 or NRS  
19 107.0865.

20 7. The Notice of Default and Election to Sell and Notice of Sale served on defendant  
21 Cornwell met the notice requirements of NRS 107.080. The foreclosure process and foreclosure  
22 sale conducted by Allied Foreclosure Services was appropriate and met the requirements of the  
23 law.

24 8. Plaintiff Neil E. Schultz was the successful bidder at the foreclosure sale and was  
25 entitled to receive the Trustee's Deed to the Columbia Way parcel.

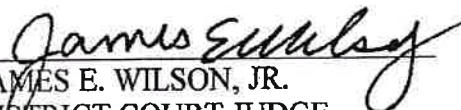
26 **JUDGMENT**

27 Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby  
28 enters judgment in favor of plaintiff Neil E. Schultz and declares that he is the lawful owner of

1 the land located at 2355 Columbia Way, Carson City, Nevada, and is entitled to full possession  
2 and enjoyment of the premises to the exclusion of all others. The Court does not make a  
3 determination as to who is the owner of the mobile home currently situated on the land, but title  
4 is not merged with the title of the land at this time.

5 Plaintiff shall file and serve a Notice of Entry of Judgment on the Defendant within 7  
6 days from the date this judgment is entered.

7  
8 DATED: November 5, 2020

9   
10 JAMES E. WILSON, JR.  
11 DISTRICT COURT JUDGE

12 Submitted by:

13 /s/ John S. Bartlett  
14 John S. Bartlett, Esq.  
15 SBN 143  
16 755 N. Roop St.  
17 Suite 108  
18 Carson City, NV 89701  
19 (775) 841-6444  
20 johnsbartlett@att.net

21 Attorney for Plaintiff Neil E. Schultz  
22  
23  
24  
25  
26  
27  
28

REC'D & FILED

2020 NOV 12 AM 9:36

AUBREY ROWLATT  
CLERK

DEPUTY

**In The First Judicial District Court of the State of Nevada  
In and for Carson City**

NEIL SCHULTZ,,

Plaintiff,

vs.

THOMAS CORNWELL,

Defendant.

Case No.: 18 RP 00018 1B

Dept. No.: II

**NOTICE OF DEFICIENCY IN NOTICE  
OF APPEAL**

PLEASE TAKE NOTICE that a Notice of Appeal was filed NOVEMBER 10, 2020, in the above-entitled action despite the fact that there appears to be the following deficiency(ies) noted by the Clerk at the time of filing:

- ☐ \$24.00 District Court filing fee not paid.
- ☐ \$250.00 filing fee for the Clerk of the Supreme Court not paid.
- ☐ Document not signed.
- ☐ Document presented was not an original.
- ☐ Case Appeal Statement not filed.
- ☒ No proof of service upon opposing counsel/litigant.
- ☐ Other

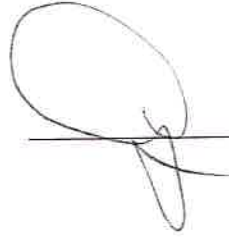
DATED this 12TH day of NOVEMBER, 2020.

AUBREY ROWLATT, CLERK

By \_\_\_\_\_, Deputy

CERTIFICATE OF SERVICE

I hereby certify that I am employed by the Office of the Carson City District Court Clerk, Carson City, Nevada, and that on the 12TH day of NOVEMBER, 2020, I served the foregoing NOTICE OF DEFICIENCY IN NOTICE OF APPEAL by e-filing with appeal documents to Elizabeth A. Brown, Clerk of the Supreme Court, 201 S. Carson Street, Ste. 250, Carson City, NV 89701-4702 and by depositing for mailing a true copy thereof to JOHN S. BARTLETT, ESQ., 755 N. ROOP STREET, STE. 108, CARSON CITY, NV 89701; and THOMAS CORNWELL, 2355 COLUMBIA WAY, CARSON CITY, NV 89706.

A handwritten signature in blue ink, consisting of a large, stylized 'Q' followed by a horizontal line and a small flourish.

REC'D & FILED

2020 NOV 12 PM 2:35

AUDREY ROWLATT  
CLERK  
BY *[Signature]*  
DEPUTY

**In The First Judicial District Court of the State of Nevada  
In and for Carson City**

NEIL E. SCHULTZ, a Nevada resident, aka  
The Neil E. Schultz Trust dated January 29  
2016,

Case No.: 18 RP 00018 1B

Dept. No.: II

Petitioner(s),

vs.

**CASE APPEAL STATEMENT**

THOMAS L. CORNWELL, Nevada resident,  
DOES 1 through 5, inclusive,  
Respondent(s).

1. Name of appellant filing this case appeal statement:

- THOMAS CORNWELL

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

- HONORABLE JAMES E. WILSON, JR.

3. Identify each appellant and the name and address of counsel for each appellant:

- THOMAS CORNWELL  
2355 COLUMBIA WAY  
CARSON CITY, NV 89706

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

- JOHN S. BARTLETT, ESQ.  
755 N ROOP ST., STE. 108  
CARSON CITY, NV 89701

COUNSEL FOR RESPONDENT



1  
2 5. Indicate whether any attorney identified above in response to question 3 or 4 is not  
3 licensed to practice law in Nevada and, if so, whether the district court granted that  
4 attorney permission to appear under SCR 42 (attach a copy of any district court order  
5 granting such permission):

6 - NOT APPLICABLE

7 6. Indicate whether appellant was represented by appointed or retained counsel in the  
8 district court:

9 - APPELLANT WAS IN PROPER PERSON IN DISTRICT COURT

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

11 - APPELLANT IS IN PROPER PERSON ON APPEAL

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

14 - LEAVE WAS GRANTED MARCH 1, 2019

15 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,  
16 indictment, information, or petition was filed):

17 - COMPLAINT TO QUIET TITLE TO REAL PROPERTY FILED  
18 NOVEMBER 5, 2018

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

22 - OTHER TITLE TO PROPERTY; FINDINGS OF FACT, CONCLUSIONS OF  
23 LAW AND JUDGMENT FILED NOVEMBER 5, 2020

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

27 - NOT APPLICABLE

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

1 - NOT APPLICABLE

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

3 - NOT APPLICABLE.

4 Dated this 12<sup>th</sup> day of November, 2020.

5 AUBREY ROWLATT, Carson City Clerk  
6 885 E. Musser St., #3031  
7 Carson City, NV 89701

8 By , Deputy  
9

1 **THOMAS CORNWELL**  
2 **2355 COLUMBIA WAY**  
3 **CARSON CITY, NV. 89706**  
4 tlcnv@yahoo.com  
5 (775)461-0377  
6 in proper person

REC'D & FILED ✓  
2020 NOV 16 PM 12:18

AUDREY ROWLAND  
CLERK  
BY \_\_\_\_\_ DEPUTY

7 THE FIRST JUDICIAL DISTRICT COURT STATE OF NEVADA  
8  
9 IN AND FOR CARSON CITY, NEVADA

10 NEIL SCHULTZ

Case No.: 18 RP 00018 1B

11 Plaintiff,

12 vs.

DEPT; II

13 THOMAS CORNWELL,

NOTICE OF APPEAL AND STAY OF  
ENTRY OF ORDER

14 Defendant

15 COMES NOW, THOMAS CORNWELL DEFENDANT AND APPEALS TO  
16 THE FIRST JUDICIAL DISTRICT COURT CARSON CITY, CARSON CITY COUNTY,  
17 NEVADA FROM THE JUDGMENT/ORDER ENTERED ON  
18 THE 5<sup>TH</sup> DAY OF NOVEMBER 2020 IN THE ABOVE ENTITLED COURT.  
19  
20  
21  
22  
23

1  
2 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
3 NEVADA THAT THE FOREGOING IS TRUE AND CORRECT.

4  
5  
6 X   
7

8  
9  
10  
11 **THOMAS CORNWELL**  
12 **2355 COLUMBIA WAY**  
13 **CARSON CITY, NV. 89706**  
14 tlcnv@yahoo.com  
15 (775)461-0377  
16 in proper person  
17  
18  
19  
20  
21  
22  
23

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16 day of Nov., 2020

I placed a true and correct copy of the foregoing notice of appeal in the United States Mail, with first-class postage prepaid, addressed to the following:

JOHN S. BARTLETT, ESQ.

NV BAR 143


775 N. ROOP ST. SUITE 108

(775)841-6444

johnsbartlett@att.com

DATED this 16 day of Nov., 2020

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

  
(signature)

THOMAS CORNWELL  
2355 COLUMBIA WAY  
CARSON CITY, NV. 89701  
(775)461-0377  
TLCNV@YAHOO.COM  
IN PROPER PERSON

REC'D & FILED

2020 NOV 17 AM 9:52

AUBREY ROWLATT  
CLERK

BY

**In The First Judicial District Court of the State of Nevada  
In and for Carson City**

NEIL E. SCHULTZ, a Nevada resident, aka  
The Neil E. Schultz Trust dated January 29,  
2016,

Case No.: 18 RP 00018 1B

Dept. No.: II

Petitioner(s),

vs.

**CASE APPEAL STATEMENT**

THOMAS L. CORNWELL, a Nevada  
resident,

Respondent(s).

1. Name of appellant filing this case appeal statement:  
- THOMAS CORNWELL
2. Identify the judge issuing the decision, judgment, or order appealed from:  
- HONORABLE JAMES E. WILSON, JR.
3. Identify each appellant and the name and address of counsel for each appellant:  
- THOMAS CORNWELL (PROPER PERSON)  
2355 COLUMBIA WAY  
CARSON CITY, NV 89706
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):  
- NEIL E. SCHULTZ (RESPONDENT)  
JOHN S. BARTLETT (COUNSEL)  
755 N. ROOP STREET, SUITE 108  
CARSON CITY, NV 89701



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

5 - NOT APPLICABLE

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

8 - APPELLANT IN PROPER PERSON IN DISTRICT COURT

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

10 - APPELLANT IN PROPER PERSON ON APPEAL

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

13 - ORDER REGARDING WAIVER OF FEES AND COSTS (GRANTED)  
14 FILED MARCH 1, 2019

15 9. Indicate the date the proceedings commenced in the district court (e.g., date complaint,  
16 indictment, information, or petition was filed):

17 - COMPLAINT TO QUIET TITLE TO REAL PROPERTY FILED  
18 NOVEMBER 5, 2018

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

22 - FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT FILED  
23 NOVEMBER 5, 2020

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

27 - PENDING APPEAL TO SUPREME COURT SENT ON NOVEMBER 12,  
28 2020

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

2 - NOT APPLICABLE

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

4 - NOT APPLICABLE.

5 Dated this 17th day of November, 2020.

6 AUBREY ROWLATT, Carson City Clerk  
7 885 E. Musser St., #3031  
8 Carson City, NV 89701

9 By  Deputy

## IN THE SUPREME COURT OF THE STATE OF NEVADA

RECEIVED &amp; FILED

2020 DEC 2 AM 10:35

AUGREY ROBERTS  
CLERK

No. 82106

DEPUTY

**FILED**

NOV 30 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERKTHOMAS L. CORNWELL, A NEVADA  
RESIDENT,

Appellant,

vs.

NEIL E. SCHULTZ, A NEVADA  
RESIDENT, A/K/A THE NEIL E.  
SCHULTZ TRUST DATED JANUARY  
29, 2016,

Respondent.

*ORDER DIRECTING TRANSMISSION OF RECORD*

Having reviewed the documents on file in this pro se appeal, this court concludes that review of the complete record is warranted. NRAP 10(a)(1). Accordingly, within 30 days from the date of this order, the clerk of the district court shall transmit to the clerk of this court a certified copy of the trial court record in District Court Case No. 18 RP 00018 1B. See NRAP 11(a)(2) (providing that the complete "record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court," as well as "any previously prepared transcripts of the proceedings in the district court"). The record shall not include any exhibits filed in the district court. NRAP 11(a)(1).

It is so ORDERED.

Pickering, C.J.

cc: Thomas L. Cornwell  
John Bartlett, Attorney at Law  
Carson City Clerk