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Elizabeth A. Brown
Clerk of Supreme Court

NOAS

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Home Loans Servicing, LP fka Countrywide Home
Loans Servicing, LP*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VALENCIA MANAGEMENT LLC, SERIES 9,
a Nevada Limited Liability Company,

Plaintiff,

vs.

ROBERT STILLWAGON, an individual; LENY
STILLWAGON, an individual; BAC HOME
LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING
LP; BANK OF AMERICA NA; DOES 1 through
X; and ROE CORPORATIONS 1 through 10,

Defendants.

Case No.: A-15-723600-C

Dept. No: 29

**BANK OF AMERICA, N.A.'S NOTICE OF
APPEAL**

Notice is hereby given that defendant Bank of America, N.A., successor by July 1, 2011 *de jure* merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP (**BANA**) hereby files a notice of appeal of (1) the findings of fact, conclusions of law and judgment, for which a notice of entry was entered on October 13, 2020; (2) the order denying Bank of America, N.A.'s motion to alter or amend findings of fact and conclusions of law, for which a notice of entry was entered on January 19, 2021; and (3) and all interlocutory orders incorporated therein. Each of the orders listed herein became final on January 19, 2021, when the Court entered the order denying

1 BANA's motion to alter or amend the judgment pursuant to NRCP 59. The Court found in favor of
2 plaintiff Valencia Management LLC, Series 9, ruling that plaintiff purchased the subject property at
3 the HOA foreclosure sale subject to no prior interest.

4 DATED this 17th day of February, 2021.

5 **AKERMAN LLP**

6 /s/ Nicholas E. Belay, Esq.

7 ARIEL E. STERN, ESQ.

8 Nevada Bar No. 8276

9 MELANIE D. MORGAN, ESQ.

10 Nevada Bar No. 8215

11 NICHOLAS E. BELAY, ESQ.

12 Nevada Bar No. 15175

13 1635 Village Center Circle, Suite 200

14 Las Vegas, Nevada 89134

15 *Attorneys for Bank of America, N.A., S/B/M to BAC*
16 *Home Loans Servicing, LPfka Countrywide Home Loans*
17 *Servicing, LP*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 17th day of February, 2021 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **BANK OF AMERICA N.A.'S NOTICE OF APPEAL**, in the following manner:

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

CLARK NEWBERRY LAW FIRM

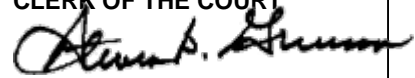
Aimee L Clark Newberry	aclarknewberry@cnlawlv.com
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Renee Rittenhouse	rrittenhouse@lipsonneilson.com
Amber Williams	awilliams@lipsonneilson.com

I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Patricia Larsen
An employee of AKERMAN LLP



ASTA

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Home Loans Servicing, LP fka Countrywide Home
Loans Servicing, LP*

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VALENCIA MANAGEMENT LLC, SERIES 9,
a Nevada Limited Liability Company,

Plaintiff,

vs.

ROBERT STILLWAGON, an individual; LENY
STILLWAGON, an individual; BAC HOME
LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING
LP; BANK OF AMERICA NA; DOES 1 through
X; and ROE CORPORATIONS 1 through 10,

Defendants.

Case No.: A-15-723600-C
Dept. No: 29

**BANK OF AMERICA N.A.'S CASE
APPEAL STATEMENT**

Defendant Bank of America, N.A. successor by July 1, 2011 *de jure* merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP (**BANA**), by and through its attorneys of record Akerman LLP, submits its case appeal statement pursuant to NRAP 3(f)(3).

1. The appellant filing this case appeal statement is Bank of America, N.A.

2. BANA is appealing the orders entered on (1) October 13, 2020; and (2) January 19, 2021.

3. Counsel for BANA are Ariel E. Stern, Melanie D. Morgan, and Nicholas E. Belay of Akerman LLP, 1635 Village Center Circle, Suite 200, Las Vegas, Nevada 89134.

1 4. Trial counsel for respondent Valencia Management LLC, Series 9 is Tara D. Clark
2 Newberry of Clark Newberry Law Firm, 810 S Durango Dr #102, Las Vegas, NV 89145. Ms. Clark
3 Newberry is no longer with Clark Newberry Law Firm, and BANA is unaware whether Clark
4 Newberry Law Firm will also act as appellate counsel for Valencia Management.

5 5. Counsel for BANA are licensed to practice law in Nevada. Trial counsel for Valencia
6 Management is licensed to practice law in Nevada.

7 6. BANA is represented by retained counsel in the district court.

8 7. BANA is represented by retained counsel on appeal.

9 8. BANA was not granted leave to proceed *in forma pauperis* by the district court.

10 9. The date proceedings commenced in the district court was August 25, 2015.

11 10. In this action, Valencia Management alleges that it owns the real property located at
12 2176 Hearts Club Drive, Henderson, Nevada 89074 free and clear of all liens, including the first deed
13 of trust recorded on March 14, 2008, as a result of an HOA foreclosure sale. The property was acquired
14 by Valencia Management through a foreclosure deed recorded on February 18, 2014. Valencia
15 Management asserted a claim for quiet title/declaratory relief and unjust enrichment against BANA,
16 the record beneficiary of the deed of trust. BANA answered and asserted counterclaims against
17 Valencia Management for quiet title and declaratory relief, and crossclaims against Sandstone
18 Recreation Association, Inc. (the **HOA**) and Nevada Association Services, Inc. (**NAS**) for unjust
19 enrichment, tortious interference with contractual relations, breach of the duty of good faith, and
20 wrongful foreclosure.

21 11. On August 6, 2018, BANA and the HOA entered a stipulation and order dismissing
22 BANA's crossclaims against the HOA with prejudice.

23 12. With respect to the quiet title and declaratory relief claims between Valencia
24 Management and BANA, the Court entered findings of fact, conclusions of law, and judgment in favor
25 of Valencia Management on October 13, 2020 following a bench trial. The findings of fact and
26 conclusions of law also certified the judgment as final pursuant to NRCP 54(b). On October 13, 2020,
27 BANA filed a motion to alter or amend the findings of fact and conclusions of law, and the Court
28 entered an order denying BANA's motion to alter or amend on January 19, 2021.

13. This case has not previously been the subject of an appeal to or original writ proceeding in the Supreme Court.

14. This appeal does not involve child custody or visitation.

15. BANA is willing to discuss settlement with Valencia Management and the NAS.

DATED this 17th day of February, 2021

AKERMAN LLP

/s/ Nicholas E. Belay, Esq.

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

MELANIE D. MORGAN, ESQ.

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*Attorneys for Bank of America, N.A., S/B/M to BAC
Home Loans Servicing, LPfka Countrywide Home Loans
Servicing, LP*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 17th day of February, 2021, and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **BANK OF AMERICA, N.A.'S CASE APPEAL STATEMENT**, in the following manner:

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

CLARK NEWBERRY LAW FIRM

Aimee L Clark Newberry	aclarknewberry@cnlawlv.com
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Susana Nutt	snutt@lipsonneilson.com
Renee Rittenhouse	rrittenhouse@lipsonneilson.com
Amber Williams	awilliams@lipsonneilson.com

I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Patricia Larsen
An employee of AKERMAN LLP

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY**CASE NO. A-15-723600-C**

Valencia Management LLC Series 9, Plaintiff(s)
 vs.
 Robert Stillwagon, Defendant(s)

§
 §
 §
 §
 §

Location: **Department 29**
 Judicial Officer: **Jones, David M**
 Filed on: **08/25/2015**
 Case Number History:
 Cross-Reference Case Number: **A723600**

CASE INFORMATION**Statistical Closures**

07/20/2020 Judgment Reached (bench trial)

Case Type: **Other Title to Property**

Case Status: **07/20/2020 Closed**

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

Case Number A-15-723600-C
 Court Department 29
 Date Assigned 01/04/2021
 Judicial Officer Jones, David M















PARTY INFORMATION

Plaintiff	Valencia Management LLC Series 9	<i>Lead Attorneys</i> Clark Newberry, Tara D. <i>Retained</i> 702-608-4232(W)
Defendant	BAC Home Loans Servicing LP	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
	Bank of America NA	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
	Stillwagon, Leny	
	Stillwagon, Robert	
Counter Claimant	BAC Home Loans Servicing LP	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
Counter Defendant	Valencia Management LLC Series 9	Clark Newberry, Tara D. <i>Retained</i> 702-608-4232(W)
Cross Claimant	BAC Home Loans Servicing LP	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
Cross Defendant	Nevada Association Services INC	
	Sandstone Recreation Association INC Removed: 08/06/2018 Dismissed	Williams, Amber M <i>Retained</i> 702-382-1500(W)

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

CASE SUMMARY

CASE NO. A-15-723600-C

08/25/2015	 Complaint Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Complaint Arbitration Exemptions: 1. Action for Declaratory Relief 2. Action Concerning Title to Real Property</i>
08/26/2015	 Notice of Pendency of Action Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of Pendency of Action</i>
10/23/2015	 Affidavit of Service Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Affidavit of Service-Bank of America</i>
10/28/2015	 Affidavit of Service Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Affidavit of Service</i>
11/03/2015	 Affidavit of Service Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Affidavit of Service - Robert Stillwagon</i>
11/03/2015	 Affidavit of Service Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Affidavit of Service -Leny Stillwagon</i>
11/09/2015	 Initial Appearance Fee Disclosure Filed By: Cross Claimant BAC Home Loans Servicing LP <i>Initial Appearance Fee Disclosure</i>
11/09/2015	 Answer and Counterclaim Filed By: Defendant Bank of America NA <i>Bank Of America, N.A., S/B/M To BAC Home Loans Servicing, LP F/K/A Countrywide Home Loans Servicing's Answer To Plaintiff's Complaint And Counterclaim Against Plaintiff</i>
12/15/2015	 Answer to Counterclaim Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Valencia Management LLC, Series 9's Reply in Answer to Counterclaims of Bank of America, N.A.</i>
12/23/2015	 Notice of Early Case Conference Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of Early Case Conference</i>
02/09/2016	 Joint Case Conference Report Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Joint Case Conference Report</i>
03/04/2016	 Scheduling Order <i>Scheduling Order</i>
03/09/2016	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call</i>
03/11/2016	 Order Setting Civil Non-Jury Trial

CASE SUMMARY

CASE NO. A-15-723600-C

Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call

03/18/2016



Affidavit of Service

Filed By: Counter Defendant Valencia Management LLC Series 9

Affidavit of Service of the Subpoena Duces Tecum to NAS

07/15/2016



Motion for Leave to File

Party: Defendant Bank of America NA

Defendant Bank of America, N.A., s/b/m to Bac Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing's Motion to Amend Answer to Add Affirmative Defense and to Join as Parties to Assert Crossclaims against Sandstone Recreation Association, Inc. and Nevada Association Services, Inc.

07/19/2016



Default

Filed By: Counter Defendant Valencia Management LLC Series 9

Default of Robert Stillwagon

07/19/2016



Default

Filed By: Counter Defendant Valencia Management LLC Series 9

Default of Leny Stillwagon

07/20/2016



Notice of Entry of Default

Party: Counter Defendant Valencia Management LLC Series 9

Notice of Entry of Default

07/20/2016



Notice of Entry of Default

Party: Counter Defendant Valencia Management LLC Series 9

Notice of Entry of Default

09/08/2016



Order Granting Motion

Filed By: Defendant Bank of America NA

Order Granting Defendant Bank of America N.A.'s Motion for Leave to Amend Answer to Add Affirmative Defense and to Join as Parties to Assert Cross-claims Against Sandstone Recreation Association, Inc. and Nevada Association Services, Inc.

09/12/2016



Notice of Entry of Order

Filed By: Defendant Bank of America NA

Notice Of Entry Of Order Granting Defendant Bank Of America N.A.'S Motion For Leave To Amend Answer To Add Affirmative Defense And To Join As Parties To Assert Crossclaims Against Sandstone Recreation Association, Inc. And Nevada Association Service, Inc.

09/27/2016



Stipulation and Order

Filed by: Defendant Bank of America NA

Stipulation And Order To Extend Discovery Deadlines By 90 Days And Continue Trial (First Request)

09/28/2016



Notice of Entry

Filed By: Defendant Bank of America NA

Notice Of Entry Of Stipulation And Order To Extend Discovery Deadlines By 90 Days And Continue Trial (First Request)

10/04/2016



Order Setting Civil Non-Jury Trial

Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call


11/21/2016



Motion for Protective Order

CASE SUMMARY

CASE NO. A-15-723600-C

	Filed By: Defendant Bank of America NA <i>Bank Of America, N.A.'s Motion On Protective Order And For Order On Shortened Time</i>
11/28/2016	 Opposition to Motion For Protective Order Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Valencia Management LLC Series 9's Opposition in Response to Bank of America, N.A.'s Motion for Protective Order</i>
11/30/2016	 Affidavit of Service Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Affidavit Of Service</i>
01/05/2017	 Stipulation and Order Filed by: Counter Defendant Valencia Management LLC Series 9 <i>Stipulation and Order to Extend Discovery Deadlines (Second Request)</i>
01/09/2017	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Second Request)</i>
01/09/2017	 Amended Answer Filed By: Defendant Bank of America NA <i>Bank Of America, N.A., S/B/M To Bac Home Loans Servicing, Lp F/K/A Countrywide Home Loans Servicing's First Amended Answer To Plaintiff's Complaint, Counterclaim Against Plaintiff, And Crossclaims Against Sandstone Recreation Association, Inc. And Nevada Association Services, Inc.</i>
01/10/2017	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call</i>
01/23/2017	 Reply Filed by: Counter Defendant Valencia Management LLC Series 9 <i>Valencia Management LLC Series 9's Reply in Answer to Amended Counterclaims of Bank of America, N.A.</i>
03/16/2017	 Discovery Commissioners Report and Recommendations Filed By: Defendant Bank of America NA <i>Discovery Commissioner's Report and Recommendations</i>
03/20/2017	 Notice of Entry of Order Filed By: Defendant Bank of America NA <i>Notice Of Entry Of Discovery Commissioner's Report And Recommendations</i>
04/10/2017	 Motion for Summary Judgment Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Plaintiff's Motion for Summary Judgment</i>
04/10/2017	 Motion for Summary Judgment Filed By: Defendant Bank of America NA <i>Bank Of America, N.A.'S Motion For Summary Judgment Against Plaintiff Valencia Management LLC, Series 9</i>
04/13/2017	 Application for Default Judgment Party: Counter Defendant Valencia Management LLC Series 9 <i>Valencia Management LLC Series 9's Application for Entry of Default Judgment (Leny</i>

CASE SUMMARY

CASE NO. A-15-723600-C

Stillwagon)

04/13/2017



Affidavit in Support of Default Judgment

Filed By: Counter Defendant Valencia Management LLC Series 9

Affidavit of Paul R. Connaghan in Support of Default Judgment (Leny Stillwagon)

04/13/2017



Notice of Hearing

Filed By: Counter Defendant Valencia Management LLC Series 9

Notice of Hearing on Default Judgment (Leny Stillwagon)

04/13/2017



Application for Default Judgment

Party: Counter Defendant Valencia Management LLC Series 9

Valencia Management LLC Series 9's Application for Entry of Default Judgment (Robert Stillwagon)

04/13/2017



Affidavit in Support of Default Judgment

Filed By: Counter Defendant Valencia Management LLC Series 9

Affidavit of Paul R. Connaghan in Support of Default Judgment (Robert Stillwagon)

04/13/2017



Notice of Hearing

Filed By: Counter Defendant Valencia Management LLC Series 9

Notice of Hearing on Default Judgment (Robert Stillwagon)

04/26/2017



Opposition to Motion For Summary Judgment

Filed By: Counter Defendant Valencia Management LLC Series 9

Valencia Management LLC, Series 9's Opposition to Bank of America, N.A.'s Motion for Summary Judgment

04/27/2017



Opposition to Motion For Summary Judgment

Filed By: Defendant Bank of America NA

Defendant Bank Of America, N.A.'s Opposition To Plaintiff Valencia Management LLC, Series 9's Motion For Summary Judgment

05/05/2017



Order

Order Rescheduling Calendar Call

05/12/2017



Affidavit of Service

Filed By: Counter Defendant Valencia Management LLC Series 9

Party Served: Cross Defendant Nevada Association Services INC

Affidavit Of Service - Nevada Association Services Inc

05/12/2017



Affidavit of Service

Filed By: Counter Defendant Valencia Management LLC Series 9

Party Served: Cross Defendant Sandstone Recreation Association

Affidavit Of Service - Sandstone Recreation Associated Inc

05/19/2017



Notice

Filed By: Counter Defendant Valencia Management LLC Series 9

Notice of Disassociation

05/22/2017



Answer

Filed By: Cross Defendant Sandstone Recreation Association INC

Cross-Defendant Sandstone Recreation Association, Inc.'s Answer to Defendant Bank of America, N.A.'s Crossclaims

CASE SUMMARY

CASE NO. A-15-723600-C

05/22/2017	 Initial Appearance Fee Disclosure Filed By: Cross Defendant Sandstone Recreation Association INC <i>Cross-Defendant Sandstone Recreation Association, Inc's Initial Appearance Fee Disclosure</i>
05/23/2017	 Notice of Firm Name Change Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of Change of Firm Name</i>
05/26/2017	 Notice Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of EDCR 2.67 Conference</i>
06/01/2017	 Notice Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of Vacating EDCR 2.67 Conference</i>
06/08/2017	 Application for Default Judgment Party: Counter Defendant Valencia Management LLC Series 9 <i>Valencia Management LLC Series 9's Amended Application for Entry of Default Judgment (Robert Stillwagon and Leny Stillwagon)</i>
06/08/2017	 Affidavit in Support of Default Judgment Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Amended Affidavit of Tara Clark Newberry in Support of Default Judgment (Robert Stillwagon and Leny Stillwagon)</i>
06/08/2017	 Affidavit in Support of Default Judgment Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Affidavit of Brandy White Elk in Support of Default Judgment (Robert Stillwagon and Leny Stillwagon)</i>
06/20/2017	 Stipulation and Order Filed by: Counter Defendant Valencia Management LLC Series 9 <i>Stipulation and Order to Re-Open Discovery and Continue Trial (Third Request)</i>
06/20/2017	 Notice of Entry of Stipulation and Order Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of Entry of Stipulation and Order to Re-Open Discovery and Continue Trial (Third Request)</i>
06/22/2017	 Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call <i>Order Setting Civil Jury Trial, Pre-Trial/Calendar Call</i>
07/18/2017	 Notice Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Amended Notice of Hearing on Default Judgment (Robert Stillwagon and Leny Stillwagon)</i>
07/25/2017	 Default Judgment Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Default Judgment (Robert Stillwagon and Leny Stillwagon)</i>
07/25/2017	 Notice of Entry of Default Judgment Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of Entry of Default Judgment</i>

CASE SUMMARY

CASE NO. A-15-723600-C

08/14/2017	 Notice Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of Vacating Hearing on Application for Default Judgment (Robert Stillwagon and Leny Stillwagon)</i>
09/29/2017	 Motion for Summary Judgment Filed By: Cross Defendant Sandstone Recreation Association INC <i>Cross-Defendant Sandstone Recreation Association, inc's Motion for Summary Judgment</i>
10/04/2017	 Notice Filed By: Cross Claimant BAC Home Loans Servicing LP; Defendant Bank of America NA <i>Notice of Completion of NRED Mediation</i>
10/27/2017	 Opposition to Motion For Summary Judgment Filed By: Cross Claimant BAC Home Loans Servicing LP <i>Bank Of America, N.A. S Opposition To Sandstone Recreation Association, Inc s Motion For Summary Judgment</i>
11/22/2017	 Reply in Support Filed By: Cross Defendant Sandstone Recreation Association INC <i>Cross-Defendant Sandstone Recreation Association, Inc's Reply In Support of Motion for Summary Judgment</i>
01/08/2018	 Amended Notice Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Amended Notice of EDCR 2.67 Conference</i>
01/22/2018	 Affidavit of Service <i>Affidavit of Service of Trial Subpoena to PMK for Nevada Association Services, Inc.</i>
01/22/2018	 Affidavit of Service <i>Affidavit of Service of Trial Subpoena to Bank of America, N.A.</i>
01/22/2018	 Affidavit of Service <i>Affidavit of Service of Trial Subpoena to Rock K Jung, Esq.</i>
02/01/2018	 Order Setting Civil Non-Jury Trial and Calendar Call <i>Order Setting Civil Non-Jury Trial, Pre-Trial/ Calendar Call</i>
02/07/2018	 Order Denying Motion Filed By: Defendant Bank of America NA <i>Order Denying Sandstone Recreation Association's Motion for Summary Judgment</i>
02/09/2018	 Notice of Entry of Order Filed By: Defendant Bank of America NA <i>Notice of Entry of Order Denying Sandstone Recreation Association's Motion for Summary Judgment</i>
06/15/2018	 Order Setting Civil Jury Trial and Calendar Call Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Order Setting Civil Non-Jury Trial,Pre-Trial/Calendar Call</i>
07/24/2018	 Notice of Change of Address

CASE SUMMARY

CASE NO. A-15-723600-C

Filed By: Counter Defendant Valencia Management LLC Series 9
Notice of Change of Address

08/06/2018



Stipulation and Order

Filed by: Cross Defendant Sandstone Recreation Association INC
Stipulation and Order to Dismiss Cross-Claims Against Sandstone Recreation Association, Inc. With Prejudice

08/16/2018



Notice of Entry of Stipulation and Order

Filed By: Cross Defendant Sandstone Recreation Association
Notice of Entry of Stipulation and Order to Dismiss Cross-Claims Against Sandstone Recreation Association, Inc. with Prejudice

08/20/2018



Pre-trial Memorandum

Filed by: Defendant Bank of America NA
Bank of America's Individual Pretrial Memorandum

08/21/2018



Pre-trial Memorandum

Filed by: Counter Defendant Valencia Management LLC Series 9
Valencia Management LLC Series 9's Pretrial Memorandum

08/30/2018



Order Setting Civil Non-Jury Trial and Calendar Call

Order Setting Civil Non Jury Trial, Pretrial/ Calendar Call

10/24/2018



Affidavit of Service

Affidavit of Service of Trial Subpoena to Heather N. Jary and or Other Corporate Representative for Bank of America, N.A.

11/06/2018



Order Setting Civil Non-Jury Trial and Calendar Call

Order Setting Non-Civil Jury Trial, Pre-Trial/Calendar Call

02/01/2019



Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call

Order Setting Civil Jury Trial, Pre-Trial/Calendar Call

04/11/2019



Order

Order Rescheduling Calendar Call

06/27/2019



Motion to Reconsider

Filed By: Defendant Bank of America NA
Bank of America, N.A.'s Motion to Reconsider Order Denying Bank of America's Motion for Summary Judgment

06/28/2019



Clerk's Notice of Hearing

Notice of Hearing

07/11/2019



Opposition to Motion

Filed By: Counter Defendant Valencia Management LLC Series 9
Opposition to Motion to Reconsider Order Denying Bank of America's Motion for Summary Judgment

08/01/2019



Reply in Support

Filed By: Defendant Bank of America NA
Bank of America, N.A.'s Reply in Support of its Motion to Reconsider Order Denying Bank of America's Motion for Summary Judgment



CASE SUMMARY

CASE NO. A-15-723600-C

08/20/2019	 Order Setting Civil Non-Jury Trial and Calendar Call <i>Order Setting Civil Non-Jury Trial Pre-Trial / Calendar Call</i>
09/03/2019	 Order Denying Motion Filed By: Defendant Bank of America NA <i>Order Denying Bank of America's Motion to Reconsider Order Denying Bank of America's Motion for Summary Judgment</i>
09/05/2019	 Notice of Entry <i>Notice of Entry of Order Denying Bank of America's Motion to Reconsider Order Denying Bank of America's Motion for Summary Judgment</i>
10/30/2019	 Pre-trial Memorandum Filed by: Defendant Bank of America NA <i>Bank of America's Amended Individual Pretrial Memorandum</i>
11/14/2019	 Motion in Limine Filed By: Defendant Bank of America NA <i>Bank of America, N.A.'s Motion in Limine to Admit Business Records by Custodian of Records' Affidavit on Order Shortening Time</i>
11/25/2019	 Opposition to Motion in Limine Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Opposition to Bank of America's Motion in Limine to Admit Business Records by Custodian of Records Affidavit</i>
11/26/2019	 Reply in Support Filed By: Defendant Bank of America NA <i>Bank of America, N.A.'s Reply Supporting Motion in Limine to Admit Business Records</i>
12/03/2019	 Stipulation Filed by: Defendant Bank of America NA <i>Stipulated Facts for Trial Starting December 4, 2019</i>
12/03/2019	 Affidavit of Service Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Affidavit of Service Trial Subpoena</i>
12/05/2019	 Application for Entry of Default Filed By: Defendant Bank of America NA <i>Application for Entry of Default Against Nevada Association Services, Inc.</i>
12/05/2019	 Default Filed By: Defendant Bank of America NA <i>Default Against Nevada Association Services, Inc.</i>
12/05/2019	 Trial Brief Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Trial Memorandum Burden and Standard of Proof for the Affirmative Defense of Tender</i>
12/05/2019	 Trial Brief Filed By: Defendant Bank of America NA <i>Bank of America, N.A.'s Trial Brief</i>

CASE SUMMARY

CASE NO. A-15-723600-C

12/17/2019	 Order Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Order Denying Bank of America, N.A.'s Motion in Limine to Admit Business Records by Custodian of Records' Affidavit</i>
12/17/2019	 Notice of Entry of Order Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of Entry of Order</i>
01/07/2020	 Recorders Transcript of Hearing <i>Recorders Transcript of Hearing Re: Bench Trial Day 1, December 4, 2019</i>
01/07/2020	 Recorders Transcript of Hearing <i>Recorder's Transcript of Hearing RE: Bench Trial Day 2, December 5, 2019</i>
07/20/2020	 Order to Statistically Close Case <i>Order to Statistically Close Case</i>
10/13/2020	 Findings of Fact, Conclusions of Law and Judgment <i>Findings of Fact, Conclusions of Law, and Judgment</i>
10/13/2020	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Notice of Entry of Findings of Fact, Conclusions of Law and Judgment</i>
11/10/2020	 Motion to Amend Filed By: Defendant Bank of America NA <i>Bank of America, N.A.'s Motion to Alter or Amend Findings of Fact and Conclusions of Law</i>
11/12/2020	 Clerk's Notice of Nonconforming Document <i>Clerk's Notice of Nonconforming Document</i>
11/13/2020	 Clerk's Notice of Nonconforming Document and Curative Action <i>Clerk's Notice of Curative Action</i>
11/13/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
12/01/2020	 Opposition to Motion Filed By: Counter Defendant Valencia Management LLC Series 9 <i>Opposition to Bank of America, N.A. s Motion to Alter or Amend Findings of Fact and Conclusions of Law</i>
12/08/2020	 Reply in Support Filed By: Defendant Bank of America NA <i>Bank of America, N.A.'s Reply in Support of its Motion to Alter or Amend Findings of Fact and Conclusions of Law</i>
01/04/2021	Case Reassigned to Department 29 <i>Judicial Reassignment to Judge David M. Jones</i>
01/18/2021	 Findings of Fact, Conclusions of Law and Judgment Filed by: Cross Claimant BAC Home Loans Servicing LP

CASE SUMMARY

CASE NO. A-15-723600-C

Order Denying Motion to Alter or Amend Findings of Fact and Conclusions of Law

01/19/2021



Notice of Entry of Order

Filed By: Defendant Bank of America NA

Notice of Entry of Order Denying Bank of America, N.A.'s Motion to Alter or Amend Findings of Fact and Conclusions of Law

02/17/2021



Notice of Appeal

Filed By: Defendant Bank of America NA

Bank of America, N.A.'s Notice of Appeal

02/17/2021



Case Appeal Statement

Filed By: Defendant Bank of America NA

Bank of America, N.A.'s Case Appeal Statement

DISPOSITIONS

07/25/2017

Default Judgment (Judicial Officer: Bare, Rob)

Debtors: Robert Stillwagon (Defendant), Leny Stillwagon (Defendant)

Creditors: Valencia Management LLC Series 9 (Plaintiff)

Judgment: 07/25/2017, Docketed: 07/25/2017

08/06/2018

Order of Dismissal With Prejudice (Judicial Officer: Bare, Rob)

Debtors: BAC Home Loans Servicing LP (Cross Claimant)

Creditors: Sandstone Recreation Association INC (Cross Defendant)

Judgment: 08/06/2018, Docketed: 08/07/2018

10/13/2020

Judgment (Judicial Officer: Bare, Rob)

Debtors: Bank of America NA (Defendant)

Creditors: Valencia Management LLC Series 9 (Plaintiff)

Judgment: 10/13/2020, Docketed: 10/14/2020

Comment: Quiet Title

HEARINGS

08/15/2016



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held;

Journal Entry Details:

Having examined the Motion to Amend Answer, noting no Opposition filed, and good cause appearing, the Motion to Amend Answer is GRANTED. Pursuant to EDCR 2.23, the hearing on this matter set for August 16, 2016, is advanced and VACATED. Moving party to prepare and submit proposed order to chambers within 10 days. CLERK'S NOTE: Counsel is to ensure a copy of the foregoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the following parties via Wiznet E-Service: Akerman Las Vegas Office akermanlas@akerman.com, Christine M. Parvan, Esq. christine.parvan@akerman.com, Darren T. Brenner, Esq. darren.brenner@akerman.com, Elizabeth Streible elizabeth.streible@akerman.com, Kathleen Seckinger kseckinger@cnlawlv.com, Nura S. Khoury nkhoury@cnlawlv.com, Paul R. Connaghan, Esq. pconnaghan@cnlawlv.com, Richard Hopkins hopkinslegalcounsel@gmail.com, Tara D. Newberry, Esq. mewberry@cnlawlv.com (8/15/16 amn). ;

08/16/2016

CANCELED Motion to Amend Answer (9:00 AM) (Judicial Officer: Bare, Rob)

Vacated - per Law Clerk

Defendant Bank of America, N.A., s/b/m to Bac Home Loans Servicing, LP f/k/a Countrywide Home Loans Servicing's Motion to Amend Answer to Add Affirmative Defense and to Join as Parties to Assert Crossclaims against Sandstone Recreation Association, Inc. and Nevada Association Services, Inc.

11/30/2016



Motion for Protective Order (9:25 AM) (Judicial Officer: Bulla, Bonnie)

Bank Of America, N.A.'s Motion On Protective Order And For Order on OST

Granted in Part; Bank Of America, N.A.'s Motion On Protective Order And For Order on OST

CASE SUMMARY

CASE NO. A-15-723600-C

Journal Entry Details:

Minutes taken In Part from Green Tree Servicing LLC vs Eldorado Neighborhood (A711270 on 11-30-16). Commissioner read the updated cases. COMMISSIONER RECOMMENDED, motion is GRANTED IN PART; Topic 1 - limited to policies and procedures in effect at time of this sale, and ask specific questions re: this sale; from Notice of Delinquent Assessment Lien recorded through HOA sale in this lawsuit. Arguments by counsel. COMMISSIONER RECOMMENDED, ruling is RESCINDED; limited to policies and procedures in effect from Notice date of Default through HOA sale; Topic 2 - already addressed; Topic 3 - same limitations; Topic 4 - 30(b)(6) Deponent will confirm, and policies and procedures in place type of questions are ALLOWED, same time constraints; Topic 5 PROTECTED; include a Topic discussing tender of HOA dues; Topic 6 - limited to the Bank, and Bank's knowledge of what the Servicer did or didn't do, and policies and procedures in place for real property during the timeframe and whether it was done in this case. Arguments by counsel on Topic 12. COMMISSIONER RECOMMENDED, confirm FHA loan and whether there was any mortgage insurance to pay for anything. COMMISSIONER RECOMMENDED, Topic 12 is MODIFIED, and the 30(b)(6) Deponent will confirm it was a FHA loan for this property at issue, what the Bank did or did not do from Notice date of Default through HOA sale; everything else is PROTECTED; 2.34 relief is provided. COMMISSIONER RECOMMENDED, Topic 14 ask about Title insurance as discussed in Open Court; Topic 14 is MODIFIED including but not limited to tender issues from Notice date of Default through HOA sale. Ms. Morgan to prepare the Report and Recommendations, and Mr. Connaghan to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Ms. Morgan to appear at status check hearing to report on the Report and Recommendations. 1/6/17 11:00 a.m. Status Check: Compliance;

01/06/2017



Status Check: Compliance (11:00 AM) (Judicial Officer: Bulla, Bonnie)

Set Status Check;

Journal Entry Details:

Mr. Connaghan requested more time and Commissioner requested the report and recommendation be submitted within TEN days. Matter set for further status. 2/10/17 11:00 AM STATUS CHECK: COMPLIANCE;

01/19/2017

CANCELED Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bare, Rob)

Vacated - per Stipulation and Order

02/06/2017

CANCELED Bench Trial (9:00 AM) (Judicial Officer: Bare, Rob)

Vacated - per Stipulation and Order

02/10/2017



Status Check: Compliance (11:00 AM) (Judicial Officer: Bulla, Bonnie)

Matter Continued;

Complied

Journal Entry Details:

Report and Recommendation from the 11-30-16 hearing was submitted, but hasn't been reviewed yet. COMMISSIONER RECOMMENDED, matter CONTINUED; Mr. Connaghan / Ms. Morgan to prepare the Report and Recommendations from the 11-30-16 hearing. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Connaghan / Ms. Morgan to appear at status check hearing to report on the Report and Recommendations from the 11-30-16 hearing. 3/17/17 11:00 a.m. Status Check: Compliance CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Melanie Morgan - Akerman LLP Paul Connaghan - Connaghan Newberry Law Firm;

05/04/2017

CANCELED Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bare, Rob)

Vacated - Superseding Order

05/10/2017



Minute Order (1:09 PM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held;


Journal Entry Details:

The two (2) Motions for Default Judgment currently scheduled for May 25, 2017, are VACATED. Parties need not appear. Plaintiff to file proper documentation for Application for Default Judgment and provide chambers with a proposed Default Judgment order for the Judge's review. Upon review of the documentation, the Judge will then determine whether a prove up hearing is necessary. CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Paul Connaghan, Esq. (Connaghan Newberry Law Firm) and Darren T.

CASE SUMMARY




CASE NO. A-15-723600-C

Brenner, Esq. (Akerman Senterfitt). ///ac;

05/22/2017	CANCELED Bench Trial (10:00 AM) (Judicial Officer: Bare, Rob) <i>Vacated - Superseding Order</i>
05/25/2017	CANCELED Motion for Default Judgment (9:30 AM) (Judicial Officer: Bare, Rob) <i>Vacated</i> <i>Notice of Hearing on Default Judgment (Leny Stillwagon)</i>
05/25/2017	CANCELED Motion for Default Judgment (9:30 AM) (Judicial Officer: Bare, Rob) <i>Vacated</i> <i>Notice of Hearing on Default Judgment (Robert Stillwagon)</i>
06/06/2017	 Minute Order (11:30 AM) (Judicial Officer: Bare, Rob) <i>Motions for Summary Judgment</i> Minute Order - No Hearing Held; Motions for Summary Judgment Journal Entry Details: <i>This matter came before this Court for Plaintiff Valencia Management LLC Series 9's Motion for Summary Judgment and Defendant Bank of America N.A.'s Motion for Summary Judgment. The Court has reviewed the submitted motions, oppositions, and replies. After carefully considering the arguments and evidence, Court issued its Decision this 6th day of June, 2017. COURT ORDERED, both Motions for Summary Judgment are DENIED WITHOUT PREJUDICE. Also, Defendant Bank of America N.A.'s Request for Judicial Notice is GRANTED. As such, the hearings set for June 13, 2017 and June 15, 2017 are ADVANCED and VACATED. NRCP 56(c) governs a motion for summary judgment, which is appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1030 (2005). A factual dispute is genuine, and therefore summary judgment is inappropriate, when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. Id. In this case, there remains a genuine issue of material facts as to the commercial reasonableness of the sale, specifically as to whether the price was grossly inadequate, and whether there was the existence of fraud, oppression or malice. The Nevada Supreme Court has held that demonstrating that an association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016). Here, Plaintiff argues that the sale was commercially reasonable and that there is no evidence of fraud, oppression, or unfairness. Defendant asserts that the sale was commercially unreasonable because the purchase price of \$13,000 only presents 7% of the fair market value, which indicates a grossly inadequate purchase price. Further, Defendant asserts that there is evidence of oppression because they assert that the notices were inadequate and that the HOA acted in violation of their own governing documents. This factual issue precludes summary judgment at this time. Additionally, there remains a genuine issue of material fact as to whether Plaintiff is a bona-fide purchaser. [S]ubsequent purchaser is bona fide if it takes the property for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry. Shadow Wood HOA v. N.Y. Cmty. Bancorp., 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1115 (2016) (citing Bailey v. Butner, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)). This factual issue also precludes summary judgment at this time. Furthermore, there remains a genuine issue of material fact as to whether there was an attempt to tender the superpriority amount pursuant to SFR Investments Pool 1 v. U.S. Bank, 130 Nev. Adv. Op. 75, 334 P.3d 408, 414 (2014). In this case, Defendant attempted to tender a check in the amount of \$495.00 to the HOA Trustee on in December 2011, which was rejected by the HOA Trustee. Defendant contends that this attempted tender discharged the super-priority lien. Plaintiff asserts that this tender was improper because they believed it was a conditional tender. This issue precludes summary judgment. The parties may submit separate orders for each side's Motions, or they may submit one order reflecting this decision. The Order is to be consistent with this Minute Order, the submitted briefing, and oral argument. Counsel may add language to or further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. A Status Check: Order is set for July 26, 2017 in chambers for the order. Parties need not appear. ***CLERK'S NOTE: The above minute order has been distributed to: Paul Connaghan, Esq., pconnaghan@cmlawlv.com and Darren T. Brenner, Esq., darren.brenner@akerman.com. /lg 6-6-17;</i>





CASE SUMMARY

CASE NO. A-15-723600-C

06/13/2017	CANCELED Motion for Summary Judgment (9:30 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Law Clerk</i> <i>Plaintiff's Motion for Summary Judgment</i>
06/15/2017	CANCELED Motion for Summary Judgment (9:30 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Law Clerk</i> <i>Bank Of America, N.A.'S Motion For Summary Judgment Against Plaintiff Valencia Management LLC, Series 9</i>
06/15/2017	CANCELED Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Stipulation and Order</i>
06/26/2017	CANCELED Jury Trial (9:00 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Stipulation and Order</i>
08/31/2017	CANCELED Motion for Default Judgment (9:30 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Law Clerk</i> <i>Amended Notice of Hearing on Default Judgment (Robert Stillwagon and Leny Stillwagon)</i>
11/28/2017	 Minute Order (8:00 AM) (Judicial Officer: Bare, Rob) Minute Order - No Hearing Held; Journal Entry Details: <i>At the request of Court, for judicial economy, the Motion for Summary Judgment currently scheduled for November 30, 2017, is RESCHEDULED to December 12, 2017 at 9:30 a.m. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Denise Duron, to all registered parties for Odyssey File & Serve. (dd-11/28/17) ;</i>
12/07/2017	 Minute Order (8:00 AM) (Judicial Officer: Bare, Rob) Minute Order - No Hearing Held; Journal Entry Details: <i>At the request of Court, for judicial economy, the Motion for Summary Judgment currently scheduled for December 12, 2017, is RESCHEDULED to December 27, 2017 IN CHAMBERS. Parties need not appear. The Court will issue a decision from chambers. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Denise Duron, to all registered parties for Odyssey File & Serve. (dd-12/7/17);</i>
12/27/2017	 Motion for Summary Judgment (3:00 AM) (Judicial Officer: Bare, Rob) 12/27/2017, 01/10/2018 <i>Cross-Defendant Sandstone Recreation Association, inc's Motion for Summary Judgment</i> Continued; Denied; Journal Entry Details: <i>This matter came before this Court for Cross-Defendant Sandstone Recreation Association's Motion for Summary Judgment. After carefully considering the submitted motion and evidence, Court issued its Decision this 16th day of January, 2018. COURT ORDERED the Motion for Summary Judgment is DENIED. NRCP 56(c) provides, in pertinent part, The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A factual dispute is genuine, and therefore summary judgment is inappropriate, when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). All pleadings and proof must be construed in a light most favorable to the non-moving party, however, the non-moving party must do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. Id. The nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him. Id. The Motion for Summary Judgment is denied based, in part, upon this Court's June 6, 2017 decision on Plaintiff's Motion for Summary Judgment and Defendant Bank of America's Motion for Summary Judgment. There are additional issues raised in this current Motion for Summary Judgment which are separate and distinct from the issues within the prior Motions for</i>

CASE SUMMARY

CASE NO. A-15-723600-C

	<p><i>Summary Judgment, which have not been ruled upon by this Court, including but not limited to, unjust enrichment and tortious interference. Pursuant to the arguments set forth in Bank of America's Opposition, the Motion is denied as to those issues, as well. This case contains numerous factual issues which preclude summary judgment, and the claims of all the various parties rely upon those factual issues, as laid out in the Opposition. Counsel for Bank of America is directed to submit to the Court a proposed Order. That Order is to be consistent with this Minute Order, the submitted briefing, and oral argument. Counsel is directed to add language to or further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. A Status Check: Order is set for March 21, 2018 in chambers for the order. Parties need not appear. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Denise Duron, to all registered parties for Odyssey File & Serve. (dd-1/17/18);</i></p> <p>Continued; Denied; Journal Entry Details: <i>As the Court's Decision on the Motion for Summary Judgment has not yet been issued, COURT ORDERED matter Motion for Summary Judgment currently set for December 27, 2017, shall be CONTINUED to January 10, 2018, in Chambers. Parties need not appear at the next Court date. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Denise Duron, to all registered parties for Odyssey File & Serve. (dd-1/2/18);</i></p>
01/16/2018	<p>CANCELED Decision (8:00 AM) (Judicial Officer: Bare, Rob) <i>Vacated</i></p>
01/25/2018	<p> Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bare, Rob) Matter Heard; Journal Entry Details: <i>Counsel advised they will need four (4) days for trial and requested another stack. COURT ORDERED, trial date VACATED and RESET. 6/7/18 11:00 AM PRETRIAL / CALENDAR CALL 6/25/18 9:00 AM JURY TRIAL;</i></p>
02/05/2018	<p>CANCELED Jury Trial (9:00 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Judge</i></p>
03/21/2018	<p>CANCELED Status Check (3:00 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Law Clerk</i> STATUS CHECK: ORDER</p>
06/07/2018	<p> Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bare, Rob) Trial Date Set; Journal Entry Details: <i>Parties announced not ready for trial. COURT ORDERED, TRIAL VACATED & RESET. Court staff will issue an Order. 8-23-18 11:00 AM CALENDAR CALL (DEPT. XXXII) 9-04-18 1:30 PM JURY TRIAL (DEPT. XXXII);</i></p>
06/25/2018	<p>CANCELED Jury Trial (9:00 AM) (Judicial Officer: Bare, Rob) <i>Vacated - per Judge</i></p>
08/23/2018	<p> Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bare, Rob) Vacated and Reset; Journal Entry Details: <i>Ms. Clark Newberry requested the trial be moved to the next stack. Colloquy regarding availability. COURT ORDERED, trial date VACATED and RESET. 10/25/18 11:00 AM CALENDAR CALL 11/13/18 1:30 PM NON-JURY TRIAL;</i></p>
09/04/2018	<p>CANCELED Bench Trial (1:30 PM) (Judicial Officer: Bare, Rob) <i>Vacated</i></p>
10/25/2018	<p> Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bare, Rob)</p>
	<p>MINUTES</p>

CASE SUMMARY

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Vacated and Reset;

Journal Entry Details:

Colloquy regarding trial schedules. COURT ORDERED, trial dates VACATED and RESET. Court to issue a new trial order. 1/24/19 11:00 AM PRETRIAL / CALENDAR CALL 2/11/19 9:00 AM BENCH TRIAL;

SCHEDULED HEARINGS

CANCELED Bench Trial (11/13/2018 at 1:30 PM) (Judicial Officer: Bare, Rob)

Vacated - per Judge



Pretrial/Calendar Call (01/24/2019 at 11:00 AM) (Judicial Officer: Bare, Rob)

CANCELED Bench Trial (02/11/2019 at 9:00 AM) (Judicial Officer: Bare, Rob)

Vacated

11/13/2018

CANCELED Bench Trial (1:30 PM) (Judicial Officer: Bare, Rob)

Vacated - per Judge

01/24/2019



Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bare, Rob)

Matter Heard;

Journal Entry Details:

Counsel anticipated 3 days to try. Ms. Newberry advised the 5 year rule ran in 2020 and requested the trial be reset for September. COURT ORDERED, Trial dates VACATED and RESET. Court to issue a new Scheduling Order. 8/22/19 11:00 AM PRETRIAL/CALENDAR CALL 9/9/19 9:00 AM BENCH TRIAL;

02/11/2019

CANCELED Bench Trial (9:00 AM) (Judicial Officer: Bare, Rob)

Vacated

08/01/2019



Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)

Minute Order Re: Motion to Reconsider reset to chambers

Minute Order - No Hearing Held; Minute Order Re: Motion to Reconsider Reset to Chambers

Journal Entry Details:

Pursuant to EDCR 2.24(a), the Motion for Reconsideration currently scheduled for August 6, 2019, is CONTINUED to Chambers. Parties need not appear. The Court is to decide the matter in chambers and issue a decision; Set for August 14, 2019. 08/14/19 (CHAMBERS) DECISION: MOTION FOR RECONSIDERATION CLERK'S NOTE: A copy of this minute order was e-served to parties. kt 08/01/19.;

08/07/2019



Minute Order (8:00 AM) (Judicial Officer: Bare, Rob)

Minute Order - No Hearing Held;






Journal Entry Details:

This matter came before the Court for Defendant Bank of America N.A.'s Motion for Reconsideration. After considering the submitted pleadings and the applicable standard of law, COURT ORDERED, Defendants' Motion to Reconsider is DENIED. EDCR 2.24 (a) states, "No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." A district court may reconsider a previously decided issue if substantially different evidence is subsequently introduced or the decision is clearly erroneous. Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd., 113 Nev. 737, 941 P.2d 486 (1997). "Only in very rare instances in which new issues of fact or law are raised supporting a ruling contrary to the ruling already reached should a motion for rehearing be granted." Moore v. City of Las Vegas, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). "[P]oints or contentions not raised, or passed over in silence on the original hearing, cannot be maintained or considered on petition rehearing." Belanger v. Leonard, 68 Nev. 258, 262, 229 P.2d 153, 155 (1951). "[O]ur established practice does not allow a litigant to raise new legal points for the first time on rehearing." Cannon v. Taylor, 88 Nev. 89, 92, 493 P.2d 1313, 1314 (1972). The basis for Defendant Bank of America, N.A.'s Motion for Reconsideration is that new controlling authority exists which is on point with the facts of this case. However, this Court finds that Defendant Bank of America has failed to establish that this Court's Decision was clearly erroneous, or that any subsequent change in law has mandated reconsideration of this Court's findings. Therefore, the Motion to Reconsider is DENIED. As such, the chambers hearing currently scheduled for August 14, 2019 is hereby vacated. Counsel for Plaintiff is directed to

CASE SUMMARY

CASE NO. A-15-723600-C

submit a proposed Order consistent with this Minute Order, the submitted briefing, and oral argument. Counsel may add language to or further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Counsel is directed to have the proposed Order submitted to chambers within 10 days. CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt;

08/14/2019	<p>CANCELED Motion For Reconsideration (3:00 AM) (Judicial Officer: Bare, Rob)</p> <p><i>Vacated - per Judge</i></p> <p><i>Bank of America, NA's Motion to Reconsider Order Denying Bank of America's Motion for Summary Judgment</i></p>
08/15/2019	<p> Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bare, Rob)</p> <p>4/11/2019 Order Rescheduling Calendar Call</p> <p>Trial Date Set;</p> <p>Journal Entry Details:</p> <p><i>Due to the Court's schedule. COURT ORDERED, trial dates RESET. 10/31/19 11:00AM CALENDAR CALL 11/18/19 9:00AM BENCH TRIAL;</i></p>
09/09/2019	<p>CANCELED Bench Trial (9:00 AM) (Judicial Officer: Bare, Rob)</p> <p><i>Vacated - Superseding Order</i></p>
10/31/2019	<p> Pretrial/Calendar Call (11:00 AM) (Judicial Officer: Bare, Rob)</p> <p>Trial Date Set;</p> <p>Journal Entry Details:</p> <p><i>Court noted two to three days for trial and advised December 2, 2019, through December 6, 2019, is available. Mr. Gardner requested the 4th, 5th and 6th of December. Ms. Clark Newberry stated she was also okay with those dates. COURT ORDERED, trial date VACATED and RESET. Per this Court's Judicial Executive Assistant, exhibit guidelines will be e-mailed to counsel. 12/4/19 9:00 AM BENCH TRIAL;</i></p>
11/18/2019	<p>CANCELED Bench Trial (9:00 AM) (Judicial Officer: Bare, Rob)</p> <p><i>Vacated - per Judge</i></p>
12/03/2019	<p> Motion in Limine (10:30 AM) (Judicial Officer: Bare, Rob)</p> <p><i>Bank of America, N.A.'s Motion in Limine to Admit Business Records by Custodian of Records' Affidavit on Order Shortening Time</i></p> <p>Motion Denied;</p> <p>Journal Entry Details:</p> <p><i>Following arguments by counsel, COURT ORDERED, motion DENIED.;</i></p>
12/04/2019	<p> Bench Trial (9:00 AM) (Judicial Officer: Bare, Rob)</p> <p>12/04/2019-12/05/2019</p> <p>MINUTES</p> <p>Trial Continues;</p> <p>Verdict for Plaintiff;</p> <p>Journal Entry Details:</p> <p><i>Further testimony and exhibits presented. (See worksheets) Closing submitted on briefs. Court stated Findings in favor of Plaintiff. Ms. Clark Newberry to prepare the Findings of Fact, Conclusions of Law and have opposing counsel review as to form and content.;</i></p> <p>MINUTES</p> <p>Trial Continues;</p> <p>Verdict for Plaintiff;</p> <p>Journal Entry Details:</p> <p><i>Opening statements by counsel. Testimony and exhibits presented. (See worksheets) Trial continues.;</i></p>
12/11/2020	<p> Minute Order (3:00 AM) (Judicial Officer: Bare, Rob)</p> <p>Minute Order - No Hearing Held;</p>

CASE SUMMARY

CASE NO. A-15-723600-C

Journal Entry Details:

Department 32 Formal Request to Appear REMOTELY for the December 15th hearing calendar Please be advised that due to the COVID-19 pandemic, Department 32 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video. Dial the following number: 1-408-419-1715 Meeting ID: 434 564 533 Meeting URL: <https://bluejeans.com/434564533> To connect by phone dial the number provided and enter the meeting ID followed by # To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans. You may also download the Blue Jeans app and join the meeting by entering the meeting ID PLEASE NOTE the following protocol each participant will be required to follow: Place your phone on MUTE while waiting for your matter to be called. Do NOT place the call on hold since some phones may play wait/hold music. Please do NOT use speaker phone as it causes a loud echo/ringing noise. Please state your name each time you speak so that the court recorder can capture a clear record. Please be mindful of rustling papers, background noise, and coughing or loud breathing. Please be mindful of where your camera is pointing. We encourage you to visit the Bluejeans.com website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing. If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing. Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 12/11/20 ;

12/15/2020

**Motion** (9:30 AM) (Judicial Officer: Bare, Rob)

Bank of America, N.A.'s Motion to Alter or Amend Findings of Fact and Conclusions of Law Matter Heard;

Journal Entry Details:

Court provided an overview of the matter. Arguments by counsel regarding the relevance of evidence that was mistakenly redacted and submitted at trial and whether it was newly discovered evidence. Further arguments by counsel regarding whether a post-trial decision by the Nevada Supreme Court clarifying existing law effects the decision made in this matter during the bench trial. Following arguments, Court stated its FINDINGS and ORDERED, matter DENIED; Ms. Clark Newberry to prepare and submit the Order.;

DATE

FINANCIAL INFORMATION

Cross Defendant Sandstone Recreation Association INC

Total Charges	423.00
Total Payments and Credits	423.00
Balance Due as of 2/18/2021	0.00

Defendant Bank of America NA

Total Charges	447.00
Total Payments and Credits	447.00
Balance Due as of 2/18/2021	0.00

Counter Defendant Valencia Management LLC Series 9

Total Charges	470.00
Total Payments and Credits	470.00
Balance Due as of 2/18/2021	0.00

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)

XXXII

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

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Valencia Management LLC Series 9	Robert Stillwagon, an individual
C/o Connaghan Newberry Law Firm	
7854 W. Sahara Avenue	
Las Vegas, NV 89117	
Attorney (name/address/phone):	Attorney (name/address/phone):
Connaghan Newberry Law Firm	
7854 W. Sahara Avenue	
Las Vegas, NV 89117	
(702) 608-4232	

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

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

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

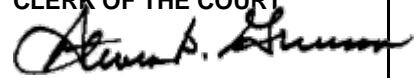
August 25, 2015

Date

/s/ Tara D. Newberry

Signature of initiating party or representative

See other side for family-related case filings.



1 **FFCL**
2 **CLARK NEWBERRY LAW FIRM**
3 Tara Clark Newberry, Esq. (SBN: 10696)
4 tnewberry@cnlawlv.com
5 810 S. Durango Drive, Suite 102
6 Las Vegas, Nevada 89145
7 (702) 608-4232
8 *Attorney for Valencia #9*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 VALENCIA MANAGEMENT LLC,)
10 SERIES 9, a Nevada Limited Liability)
11 Company,)

11 Plaintiff,)

12 vs.)

13 ROBERT STILLWAGON, an individual;)
14 LENY STILLWAGON, an individual; BAC)
15 HOME LOANS SERVICING, LP FKA)
16 COUNTRYWIDE HOME LOANS)
17 SERVICING LP; BANK OF AMERICA)
18 NA; DOES I through X; and ROE)
19 CORPORATIONS 1 through 10,)

18 Defendants.)

19 BANK OF AMERICA, N.A., S/B/M TO)
20 BAC HOME LOANS SERVICING, LP)
21 F/K/A COUNTRYWIDE HOME LOANS)
22 SERVICING LP)

22 Counter-Claimant,)

23 vs.)
24)

25 VALENCIA MANAGEMENT LLC,)
26 SERIES 9, a Nevada Limited Liability)
27 Company,)

27 Counter-Defendant,)

28 BANK OF AMERICA, N.A., S/B/M TO)

CASE NO.: A-15-723600-C
DEPT. NO.: XXXII

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT

CLARK NEWBERRY LAW FIRM
810 S. Durango Drive, Suite 102
Las Vegas, Nevada 89145
Telephone (702) 608-4232

1 BAC HOME LOANS SERVICING, LP)
2 F/K/A COUNTRYWIDE HOME LOANS)
3 SERVICING LP)
4 Cross-Claimant,)
5 v.)
6 SANDSTONE RECREATION)
7 ASSOCIATION, INC.; NEVADA)
8 ASSOCIATION SERVICES, INC.,)
9 Cross-Defendants.)
_____)

10 This matter came before Department XXII of the Eighth Judicial District Court, in and for
11 Clark County, Nevada, on December 4 and December 5, 2019, for a bench trial to resolve issues of
12 title to real estate in a matter based on a HOA lien foreclosure, with JUDGE ROB BARE presiding.

13 VALENCIA MANAGEMENT LLC SERIES 9 appeared by and through its attorney, TARA
14 CLARK NEWBERRY, ESQ.; of the CLARK NEWBERRY LAW FIRM; and Defendant, BANK OF
15 AMERICA, N.A., appeared by and through its attorney REX GARNER, ESQ. of the AKERMAN LLP
16 law firm.

17 **Stipulated Facts of the Case**

18 1. On or about March 4, 2008, Robert and Leny Stillwagon (the “Borrowers” or
19 “Homeowners”) entered into a deed of trust with Neighbor’s Financial Corporation (the “Deed of
20 Trust”) for the property located at 2176 Hearts Club Drive, Henderson, Nevada 89074 (the
21 “Property”).

22 2. The Deed of Trust was recorded on March 14, 2008 with the Clark County Recorder as
23 Instrument No. 20080314-0002767.

24 3. The Deed of Trust was assigned to BAC Home Loans Servicing, LP fka Countrywide
25 Home Loans Servicing LP and the assignment as recorded with the Clark County Recorder on August
26
27
28

1 31, 2009 as Instrument No. 20090831-0001060. Bank of America, N.A. (the “Bank” or “BANA”) is
2 the successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing
3 LP.

4
5 4. The Property is located in a common interest community called Sandstone Recreations
6 Association, Inc. (“Sandstone”), which is governed by Declarations of Community Covenants and
7 Restrictions (aka “CC&Rs” or “Declarations”) recorded with the Clark County Recorder on March 30,
8 1993, in Book Number 930330, as Instrument No. 00841.

9
10 5. The Homeowners became delinquent on their assessments to Sandstone. On May 9,
11 2011, through Taylor Association Management, Inc., Sandstone recorded a Notice of Delinquent
12 Assessment Lien against the Property with the Clark County Recorder as Instrument No. 20110509-
13 0000507.

14 6. On September 8, 2011, Nevada Association Services, Inc. (“NAS”), as agent for
15 Sandstone, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien
16 against the Property, Instrument No. 20110908-0001384.

17 7. On or about October 5, 2011, Bank of America, through counsel at Miles, Bauer,
18 Bergstrom & Winters, LLP (“Miles Bauer”), contacted NAS seeking a payoff ledger in relation to the
19 Sandstone’s lien.

20
21 8. On October 10, 2012, NAS, as agent for Sandstone, recorded a Notice of Foreclosure
22 Sale against the Property, Instrument No. 20121010-0001041. The notice stated the total amount due
23 was \$4,069.97 and set a sale for November 9, 2012.

24
25 9. On December 2, 2013, NAS, as agent for Sandstone, recorded a second Notice of
26 Foreclosure Sale against the Property as Instrument No. 20131202-0002018. The notice stated the
27 total amount due was \$5,738.28 and set a sale for January 3, 2014.

10. NAS auctioned the Property on behalf of Sandstone, and recorded a Foreclosure Deed on February 18, 2014, Instrument No. 20140218-0002844. The Foreclosure Deed stated NAS sold Sandstone's interest in the Property to Plaintiff for \$13,000.00 at the foreclosure sale held February 14, 2014.

11. BANA retained an appraiser, Matthew Lubawy, to render an opinion concerning value.

12. Mr. Lubawy's opinion of market value (as defined by the FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D) of the Property is that it was worth \$185,000.00 at the time of the HOA sale.

Admitted Evidence

The following exhibits were admitted by stipulation on the first day of trial:

1	Covenants, Conditions, and Restrictions of Sandstone Community Recreation Area, Instrument No. 199303300000841 BANA000663-BANA000705
2	Grant, Bargain and Sale Deed, Instrument No. 200803140002766 BANA000081-BANA000085
3	Deed of Trust, Instrument No. 20080314-0002767 BANA000065-BANA000080
4	Assignment of Deed of Trust from MERS to BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing, LP, Instrument No. 2009083100001060 BANA000041
5	Notice of Delinquent Assessment Lien, Instrument No. 201105090000507 BANA000020-BANA000021
6	Notice of Substitution of Agent, Instrument No. 2011090800001383 BANA000018
7	Notice of Default and Election to Sell Under Homeowners Association Lien, Instrument No. 201109080001384 BANA000016-BANA000017
8	Notice of Foreclosure Sale, Instrument No. 201210100001041 BANA000006-BANA000007
9	Notice of Foreclosure Sale, Instrument No. 201312020002018 BANA000001-BANA000002
10	Foreclosure Deed, Instrument No. 201402180002844

	BANA000181-BANA000183
11	Release of Delinquent Assessment Lien, Instrument No. 20140325000029 BANA000180
12	Notice of Pendency of Action, Instrument No. 201508260001157 BANA000169-BANA000171
13	Documents produced by NAS in response to subpoena BANA000247-BANA000604
27	Plaintiff's Rebuttal Expert Disclosure Pursuant to NRCP 16.1
28	BANA's Response to Plaintiff's Interrogatories, Requests for Production, and Requests for Admission
35	Notice of Federal Tax Lien, recorded on December 3, 2010, as Book and Instrument #20102030-0003492
36	ADR Property Services, Landscaping Invoices and Documents, PL00050, PL00061
37	NAS Auction Receipt PL00062
38-65	Miscellaneous Valencia #9 Expense Receipts and Notices PL00063-000629
66	Treasurer's Property Account Inquiry – Summary Screen PL000632-000633

The following exhibits were admitted into evidence during the course of trial:

14	Corrected Miles Bauer Tender Affidavits BANA000605-BANA000624
18	Sandstone Recreation Association, Inc.'s Disclosures (Property File) SRA000001-SRA000494

Witnesses Called to Testify

1. **Susan Moses**, Corporate Witness for Nevada Association Services, Inc. ("Ms. Moses")
Trial Transcript Day One: Pages 18-67
2. **Brandy White Elk**, Corporate Witness for Valencia #9 ("Ms. White Elk") Trial
Transcript Day One: Pages 67-85
3. **Angela Shawn Look**, Corporate Witness for Bank of America, N.A. ("Ms. Look") Trial
Transcript Day One: Pages 85-97
4. **Douglas Miles** ("Mr. Miles") Trial Transcript Day One: Pages 97-236

5. **Mireille Marois**, Corporate Witness for Taylor Management Association, Inc. (“Ms. Marois”) Trial Transcript Day Two: Pages 5-46

FINDINGS OF FACT

Background

1. The subject of this lawsuit is residential real property with the address of 2176 Hearts Club Drive, Henderson, Nevada 89074 (the “Property”). Robert and Leny Stillwagon (the “Borrowers” or “Homeowners”) previously owned the property. **Stipulated Facts ¶1; Trial Ex. 2.**

2. The Property is part of the Sandstone Recreation Association, Inc. (“Sandstone”) common-interest community. As such, NRS Chapter 116 and the Declaration of Covenants, Conditions and Restrictions (“CC&Rs”), govern the Property. **Stipulated Facts ¶4; Trial Ex. 1.** Those CC&Rs include the requirement that homeowners or members of the association pay periodic assessments to benefit the common-interest community. Sandstone operates with a budget adopted pursuant to NRS 116.3115. *Id.*

3. The Property also is part of the Strawberry Fields Homeowners Association (“Strawberry Fields”) and Legacy Village Property Owners Association (“Legacy Village”) common-interest communities. **Testimony of Ms. Moses at p. 39; Testimony of Ms. Marois at p. 6.**

4. The CC&Rs for each of the associations required the Homeowners to pay the particular HOA periodic assessments. *Id.*

5. Neighbor’s Financial Corporation lent the Borrowers funds to purchase the Property, and took a First Deed of Trust. **Stipulated Facts ¶1; Trial Ex. 3.** That Deed of Trust was recorded March 14, 2008 with the Clark County Recorder as Instrument No. 20080314-0002767. **Stipulated Facts ¶2; Trial Ex. 3.**

6. The Deed of Trust was assigned to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP, and the assignment was recorded with the Clark County Recorder on

1 August 31, 2009 as Instrument No. 20090831-0001060. Bank of America, N.A. (the “Bank” or
2 “BANA”) is the successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home
3 Loans Servicing LP. **Stipulated Facts ¶3; Trial Ex. 4.**

4
5 7. The Borrowers failed to pay the monthly assessments to Sandstone. **Stipulated Facts**
6 **¶6; Trial Ex. 13, at BANA332, Testimony of Ms. Moses, at p. 20.** The Borrowers also failed to pay
7 the monthly assessments to the Strawberry Fields and Legacy Village. **Trial Ex. 13, at BANA325**
8 **and 382, Testimony of Ms. Moses, at pp. 37-39.**

9
10 8. Taylor Association Management, Inc. (the “Property Manager” or “Taylor
11 Management”) manages the association property for Sandstone. **Testimony of Ms. Marois, at p. 6.**

12
13 9. On May 9, 2011, the HOA, through Taylor Management recorded a Notice of
14 Delinquent Assessment Lien against the Property with the Clark County Recorder as Instrument No.
15 20110509-0000507. **Stipulated Facts ¶6; Trial Ex. 5; Testimony of Ms. Moses, at p. 20.**

16
17 10. Sandstone retained Nevada Association Services, Inc. (the “HOA Trustee” or “NAS”),
18 as its authorized agent for collection of, and if necessary foreclosure on, delinquent assessments.
19 **Testimony of Ms. Moses, at p. 20.**

20
21 11. The outstanding assessments, late charges and costs of collection and interest remain
22 unpaid. **Trial Ex. 13, at BANA556-558; Testimony of Ms. Moses, at pp. 26-28.** On September 8,
23 2011, NAS, as agent for the HOA, recorded a Notice of Default and Election to Sell Under
24 Homeowners Association Lien against the Property, Instrument No. 201109080001384. **Stipulated**
25 **Facts ¶7; Trial Ex. 7; Testimony of Ms. Moses, at p. 24.**

26
27 12. NAS mailed the NOD to the holders of recorded security interests encumbering the
28 Property. **Testimony of Ms. Moses, at pp. 51, 53, 56; Trial Ex. 13. BANA000475-485.**

The Miles Bauer Tender Attempt¹

13. After receiving the NOD, BANA hired Miles, Bauer, Bergstrom & Winters, LLP (“Miles Bauer”). **Testimony of Ms. Look, at pp. 88-89; Testimony of Mr. Miles, at p. 100-101.** Miles Bauer contacted NAS on or about October 5, 2011, seeking a payoff ledger in relation to the HOA’s lien. **Stipulated Facts ¶8; Testimony of Mr. Miles, at p. 170; Trial Ex. 14.**

14. Mr. Miles testified about the standard procedures used when BANA engaged Miles Bauer to attempt to protect a first deed of trust in an HOA lien foreclosure. **Testimony of Mr. Miles, at p. 99.** Mr. Miles said they followed their standard practice in this instance. **Testimony of Mr. Miles, at pp. 218-219.** This Court considered the testimony of Ms. Look concerning BANA following its ordinary course of business, as well. **Testimony of Ms. Look, at pp. 88-89.**

15. BANA argued that one must presume Miles Bauer followed its standard operating procedures. Any such presumption, if one exists, was overcome by stronger evidence that standard procedures were not followed. **See, e.g., Testimony of Mr. Miles, at pp. 177-183; 197-199; 201-202; 209-213.** This Court finds that BANA has not established by a preponderance of the evidence that Miles Bauer actually sent the second Miles Bauer letter and check in question to NAS.

16. A letter dated December 1, 2011, along with a copy of the check, provide the only evidence of a tender. **Trial Ex. 14, BANA000614-618.** Ostensibly, that letter on its face is an indication that Miles Bauer attempted to make a tender. The relevant question at hand is whether the letter and check were delivered.

17. In relevant part the letter to Nevada Association Services states: “Dear sir or madam, NAS is unwilling to provide our office with a payoff ledger.” The letter goes on to indicate the basis upon which Miles Bauer calculated the super-priority amount to be \$495. In the next to the last

¹ The parties disputed the applicable standard of proof in Nevada for establishing whether a tender occurred. *See* Conclusions of Law, ¶¶12-13.

1 paragraph the letter says, “Thus enclosed you will find a cashier’s check made out to Nevada
2 Association Services in the sum of \$495.” On the next page, one finds a copy of a \$495 check dated
3 November 28, 2011. *Id.*

4
5 18. The Court finds that the letter dated December 1, 2011, is authentic – it existed and the
6 check was attached to it at some point, but what happened with the letter thereafter is unclear. Mr.
7 Miles testified that there was no acknowledgment of receipt of the tender by NAS. **Testimony of Mr.**
8 **Miles, at p. 207.** The evidence offered to this Court by the Bank failed to show that Miles Bauer
9 delivered the letter and check to NAS.

10
11 19. Mr. Miles testified about the operations in the Henderson, Nevada office of Miles
12 Bauer; and in particular about deliveries of tender checks through the runner-service, Legal Wings.
13 Mr. Miles testified regarding the use of a box at the Henderson office for Legal Wings deliveries, and
14 the standard course of practice regarding the deliveries. *See, e.g., Testimony of Mr. Miles, at pp.*
15 **153-159; 177-180; 207-209.** He testified that the Henderson Legal Wings box was used for all 7,000
16 cases or so cases handled by Miles Bauer. **Testimony of Mr. Miles, at p. 201.**

17
18 20. From his testimony, however, this Court concludes that Mr. Miles did not really know
19 what was going on with Legal Wings deliveries at the Henderson office. *See, e.g., Testimony of Mr.*
20 **Miles, at pp. 153-156.** While Mr. Miles might have been generally aware of the standard operating
21 procedure in that office, this Court does not accept that Mr. Miles knew what was really happening on
22 a day-to-day basis.

23
24 21. Mr. Miles was in the Henderson office only twice a month. **Testimony of Mr. Miles,**
25 **at p. 153.** As a managing partner of the firm, in the office only twice a month, this Court believes Mr.
26 Miles would not have specific knowledge as to what was happening with the Legal Wings deliveries.
27 In fact, Mr. Miles was asked specifically if he had anything to do with the Legal Wings deliveries.
28

1 **Testimony of Mr. Miles, at pp. 155-157.** He seemed to take offense to that suggestion, implying that
2 deliveries were a runner's job, and not the job of the managing partner. *Id.*

3 1. Mr. Miles based his conclusions that the letter and check were delivered on a record
4 keeping system used by the Miles Bauer law firm ("ProLaw"). **Trial Ex. 14; Testimony of Mr.**
5 **Miles at pp. 106-107, 159, 162, 166, 197-199, 210, 232-234.** Mr. Miles testified that ProLaw is a
6 summary of events and potential activities – with reminders and automated entries. **Testimony of**
7 **Mr. Miles, at pp. 160-162, 197-199.** One would need to verify the entries by looking at the
8 underlying documents referenced in the system. *Id.*

9
10 22. Mr. Miles indicated that the ProLaw system was exceptionally accurate. **Testimony of**
11 **Mr. Miles, at p. 234-235.** This Court finds, however, that the evidence presented in trial established
12 that the ProLaw system is not exceptionally accurate; in fact, at times is not so accurate at all. *See,*
13 *e.g., Testimony of Mr. Miles, at pp. 162-201.* In some instances in this case, the ProLaw entries
14 contradicted the testimony of Mr. Miles. **Testimony of Mr. Miles, at pp. 169-171.**

15
16 23. Mr. Miles explained that the ProLaw system generates an automatic checkmark next to
17 an activity as a computer-generated reminder – and the checkmark does not indicate a human event of
18 activity. **Testimony of Mr. Miles, at pp. 145-146; 160-161.** The ProLaw printout shows the
19 reminder for December 2, 2011, to send a check to the HOA. **Trial Ex. 14, BANA000618.**

20
21 24. In contrast, in ProLaw an icon of a little pile of paper next to an activity means a human
22 being actually did something. **Testimony of Mr. Miles, at pp. 160-161.** The ProLaw printout shows
23 that on December 2, 2011, an email was sent from Rock Jung regarding payoff funds. **Trial Ex. 14,**
24 **BANA000618.**

25
26 25. Mr. Miles testified that one could verify the ProLaw entries by confirming the ProLaw
27 activity with a corresponding document in the file. **Testimony of Mr. Miles, at pp. 162, 167, 197,**
28

1 **199.** In this case, BANA could not produce the email from Rock Jung regarding payoff funds in the
2 case. That piece of evidence is missing, and it constitutes a material piece of evidence in this case.

3 26. Similarly, a ProLaw entry purportedly showed a December 15, 2011, email from Rock
4 Jung to the bank on the subject of the HOA's rejection of tender. **Trial Ex. 14, BANA000618.**
5 BANA was unable to produce a copy of that email. Again, another material piece of evidence was
6 missing. The ProLaw printout, in conjunction with Mr. Miles' testimony that one could confirm the
7 ProLaw entries by checking the contents of the emails, weighs against the tender occurring.
8

9 27. Additionally, as a finder of fact, the Court notes that Mr. Miles was provided with a
10 payment of \$4,000 as a fact witness. **Testimony of Mr. Miles, at pp. 226-227.** That payment for a
11 few hours in court weighs against his credibility. It suggests that Mr. Miles was paid for his
12 appearance and testimony. The Court takes no position on the ultimate propriety or ethics of the Bank
13 paying a fee, or regarding Mr. Miles accepting such payment. This Court, however, finds it weighs
14 against the full force and effect of his testimony and indicates bias.
15

16 28. The Court also observed through the evidence an anomaly in the procedures at the
17 Miles Bauer office. Three HOAs – Sandstone, Strawberry Fields, and Legacy Village – initiated
18 foreclosure proceedings against the Hearts Club property, and all three HOAs retained NAS for that
19 purpose. **E.g., Testimony of Moses, at pp. 38-39.** The evidence showed an acknowledgement form
20 of \$180 for the Strawberry Fields HOA lien tender. **Testimony of Mr. Miles, at pp. 201-207; Trial**
21 **Ex. 14, BANA000210.** Another acknowledgement form for a little over \$800 was offered in evidence
22 for the Legacy Village delinquency. **Testimony of Mr. Miles, at pp. 185-187; Testimony of Ms.**
23 **Moses, at pp. 39-45; Trial Ex. 14, BANA000201.** But, no evidence was produced for alleged
24 payment to Sandstone of \$495.
25

26 29. Additional evidence weighed against the claims made by the Miles Bauer law firm and
27 their involvement – specifically, the Adam Kendis affidavit. **Trial Ex. 14, BANA000184-234.**
28

Paragraph 8 of the affidavit says, “Based upon Miles Bauer’s business records, Nevada Association Services, Inc. returned the \$495 check to Miles Bauer.” **Trial Ex. 14, BANA000205.** The rest of paragraph 8 says: “A copy of the confirmation of receipt from Miles Bauer’s business records showing the check as not accepted is attached as Exhibit 3.” *Id.* No Exhibit 3 was attached to that affidavit. A supplement to the Kendis affidavit (BANA000214 – designated as 214A) shows that the confirmation receipt still was not attached. *Id.* Instead, the confirmation receipt for the Strawberry Fields \$180 was attached, not the confirmation receipt for \$495. *Id.*

30. The next sentence in paragraph 8 of Mr. Kendis’ sworn affidavit states: “A copy of the voided check from Miles Bauer’s business records is attached as Exhibit 4.” The check attached as Exhibit 4 is not the \$495 Sandstone check – it is \$180 check for Strawberry Fields. **Trial Ex. 14, BANA000216.** The Kendis affidavit is inaccurate in a material sense because he produced the wrong check. This Court finds the evidence weighs against the conclusion that Miles Bauer actually sent the check for the Sandstone delinquency, and the evidence weighs against the conclusion the Sandstone check was returned – in part because the Bank failed to produce the voided check.

31. The Court found the testimony of Ms. Moses credible. Ms. Moses testified that there was no indication in the Sandstone file that the Bank sent a check to NAS. **Testimony of Ms. Moses, at p. 46.** No receipt having to do with sending the Sandstone check appears in the NAS records or in the evidence produced by the Bank.

32. Thus, the testimony given, the various entries and items mentioned in ProLaw, and the contradictory affidavits, all lead this Court to believe that it is more likely than not that the letter was not sent. Again, as the finder of fact, this Court determines that those material pieces of evidence on the ultimate issue in the case – whether the Bank tendered the \$495 – indicate that check was not sent to NAS.

The Foreclosure Sale

33. On October 10, 2012, NAS, as agent for the HOA, recorded a Notice of Foreclosure Sale against the Property, Instrument No. 20121010-0001041. The notice stated the total amount due was \$4069.97 and set a sale for November 9, 2012. **Stipulated Facts ¶9; Trial Ex. 8.**

34. On December 2, 2013, NAS, as agent for Sandstone, recorded a second Notice of Foreclosure Sale against the Property as Instrument No. 20131202-0002018. The notice stated the total amount due was \$5,738.28 and set a sale for January 3, 2014. **Stipulated Facts ¶10; Trial Ex. 9.**

35. The NAS file and witness testimony show that it sent the Sandstone NOD and the NOS to BANA regarding the Hearts Club foreclosure. **Trial Ex. 13, pp. 477-498; Testimony of Moses, at pp. 51-56.** The evidence shows, that in July of 2013, the Sandstone NOS was served, posted and published, and mailed to those persons entitled to notice. *Id.*

36. NAS auctioned the Property on behalf of Sandstone and recorded a Foreclosure Deed on February 18, 2014, Instrument No. 20140218-0002844, which stated NAS sold the HOA's interest in the Property to Plaintiff at the February 14, 2014, foreclosure sale. **Stipulated Facts ¶11; Trial Ex. 10.** Twenty-one potential bidders attended the sale. **Testimony of Moses, at p. 50; Trial Ex. 37.**

37. Valencia #9 paid \$13,000.00 for the Property, which was the highest bid at the public action. **Stipulated Facts ¶11; Trial Ex. 10.** Valencia #9 took title via a Trustee's Deed Upon Sale ("Trustee's Deed"). The recitals in the Trustee's Deed state that:

Nevada Association Services, Inc., has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notices of Delinquent Assessment and Notice of default and the posting and publication of the Notice of Sale.

Trial Ex. 10.

38. The evidence presented at trial indicates that the sale was proper as to time, location, and manner. **Testimony of Moses, at pp. 20-21, 50-56.**

39. The Bank’s expert, Mr. Lubawy, gave an opinion of market value (as defined by the FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D). He determined that at the time of the HOA sale the Property was worth \$185,000.00. **Stipulated Facts ¶¶12-13.**

CONCLUSIONS OF LAW

1. After hearing the evidence presented at trial, considering the applicable law, weighing the credibility of the witnesses, and balancing the equities in this case as required by *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*, 366 P.3d 1105 (Nev. 2016)(“*Shadow Wood*”), this Court determines that BANA failed to present sufficient evidence to preclude Valencia #9’s clear title. Valencia #9 is entitled to judgment in its favor – the Sandstone HOA lien foreclosure sale extinguished the First Deed of Trust.

2. NRS Chapter 116 sets forth requirements for a valid HOA lien foreclosure. An HOA must follow specific steps and include detailed information in the notices. *See* NRS 116.31162-116.31168. “NRS 116.3116(2) gives an HOA a true super-priority lien, proper foreclosure of which will extinguish a first deed of trust.” *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 419 (2014) (“*SFR*”). “The sale of a unit pursuant to NRS 116.31162, “116.31163 and 116.31164 vests in the purchaser the title of the unit’s owner without equity or right of redemption.” *Id.* BANA had the burden to prove each of its claims, and each of its affirmative defenses against the counterclaims of Valencia #9. *Schwartz v. Schwartz*, 95 Nev. 202, 206, 591 P.2d 1137 (1979). BANA also had the burden to rebut all statutory and common-law presumptions given to foreclosure sales.

3. There is a common-law presumption that a foreclosure sale was conducted validly. *E.g., Moeller v. Lien*, 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994). A duly recorded Trustee’s Deed is presumed valid. *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314,

319 (1996). In other words, the “conclusive recitals” state the homeowners’ association’s agent, complied with the statutory default, notice and timing requirements. “A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof . . . “ *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995). “[P]resumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.” *Id.* (citing NRS 47.180).

4. At trial, the Bank did not meet its burden to prove its claims and affirmative defenses. In this case, all requirements of the HOA lien foreclosure statute were met. All parties entitled to notice of the HOA lien foreclosure sale were properly notified by the HOA Trustee.

5. The super-priority portion of the Sandstone assessment lien extinguished BANA’s First Deed of Trust. *SFR*, 334 P.3d at 412. Therefore, as a matter of law, Valencia #9 acquired the Property free and clear of all encumbrances; and BANA’s Deed of Trust and all junior liens were extinguished.

Tender as an Affirmative Defense

6. BANA asserts that Miles Bauer made a valid tender of the super-priority lien amount on its behalf prior to the HOA lien foreclosure sale. This Court disagrees for several reasons.

7. As noted above, BANA had the burden to prove a valid tender occurred. “The rules which govern tenders are strict and are strictly applied.” *Nguyen v. Calhoun*, 105 Cal. App. 4th 428, 439 (2003). There is an “invariable tendency of courts to limit the doctrine of release by tender . . . Such relief is most drastic, and, to obtain the same in an equitable action, the right thereto must clearly appear.” *Hilmes v. Moon*, 11 P.2d 253, 238-239 (Wash. 1932).

8. This Court has considered the holding in *U.S. Bank, National Association, v. Resources Group, LLC*, 135 Nev. Adv. Op. 26, 444 P.3d 442 (Nev. 2019); and determines that the standard to establish a tender is by a preponderance of the evidence.

1 9. But even under the preponderance of the evidence standard, BANA did not meet the
2 evidentiary requirements to establish the affirmative defense of tender. Too many questions arose
3 whether Miles Bauer followed the standard procedures that it claimed were in place. And, a lack of
4 material pieces of evidence – that should have been available to the Bank – were missing.
5

6 **Commercial Reasonableness of the Sale**

7 10. BANA bore the burden to establish that the HOA sale should be set aside on the basis
8 of commercial reasonableness.

9 11. The Court disagrees with the Bank’s conclusion that the sale was commercially
10 unreasonable, even in light of the \$13,000 paid by the plaintiffs compared to Mr. Lubawy’s valuation
11 of \$185,000 for the property.
12


13 12. The law in the area of commercial reasonableness has been well defined in Nevada over
14 the last few years. The Nevada Supreme Court’s guidance has been specific. As dictated by the
15 holding of *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*, 366
16 P.3d 1105 (Nev. 2016), this Court must apply a two-part test when considering the commercial
17 reasonableness of the sale. This Court cannot void a foreclosure sale based on price alone.
18

19 13. Simply demonstrating that an association sold a property at its foreclosure sale for a low
20 or “inadequate” price is not enough to set aside the sale. In addition to a disparity of price and value,
21 long established precedent in Nevada holds that “inadequacy of price, however gross, is not in itself a
22 sufficient ground for setting aside a trustee’s sale legally made; there must be in addition proof of some
23 element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price.”
24 *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 645, 648
25 (Nev. 2017) (emphasis added); *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963) (quoting *Oller*
26 *v. Sonoma Cty., Land Title Co.*, 290 P.2d 880, 882 (Cal.Ct.App. 1955); *see also Long v. Towne*, 98
27 Nev. 11, 13 639 P.2d 528, 530 (1982); *Brunzell v. Woodbury*, 85 Nev. 29, 449 P.2d 158 (1969).
28

MANAGEMENT LLC SERIES 9 for unjust enrichment against BANA is deemed moot;

THIS JUDGMENT IS MADE FINAL as to ALL PARTIES. This Court determines that there is no just reason for delay and enters final judgment pursuant to NRCP 54(b).²

DATED: 13th of October, 2020.



DISTRICT COURT JUDGE ROB BARE

HL

Submitted by:

Approved as to form and content:

Dated this 12th day of October, 2020.

Dated this 12th day of October, 2020.

CLARK NEWBERRY LAW FIRM

AKERMAN LLP

/s/ Tara Clark Newberry
TARA CLARK NEWBERRY, ESQ.
Nevada Bar No. 10696
810 S. Durango Drive, Suite 102
Las Vegas, Nevada 89145

Attorneys for Valencia #9

/s/ Nicholas E. Belay
NICHOLAS E. BELAY, ESQ.
Nevada Bar No. 15175
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134

Attorneys for Bank of America, N.A.

² The former Homeowners did not file an answer or meaningfully participate in this litigation, and a default judgment was entered against them earlier in this case.

From: nicholas.belay@akerman.com
To: [Kathy Seckinger](#)
Cc: [Tara Clark Newberry](#)
Subject: RE: Case A-15-723600-C Valencia #9 v. Stillwagon
Date: Monday, October 12, 2020 1:39:25 PM

Hi Kathy,

You may submit with my e-signature.

Thanks,

Nicholas Belay

Associate

Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5029

nicholas.belay@akerman.com

Profile



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From: Kathy Seckinger <KSeckinger@cnlawlv.com>
Sent: Monday, October 12, 2020 1:26 PM
To: Belay, Nicholas (Assoc-Las) <nicholas.belay@akerman.com>
Cc: Tara Clark Newberry <tnewberry@cnlawlv.com>
Subject: Case A-15-723600-C Valencia #9 v. Stillwagon

Good afternoon Nicholas,

In accordance with the District Court Administrative Order 20-17, please respond to this email with permission to use your e-signature for submitting the attached to the court.

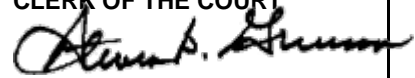
Thank you.

Kathleen Seckinger
Litigation Manager

Clark Newberry Law Firm
810 S. Durango Drive, Suite 102
Las Vegas, Nevada 89145

(702) 608-4232
[**kseckinger@cnlawlv.com**](mailto:kseckinger@cnlawlv.com)
[**www.cnlawlv.com**](http://www.cnlawlv.com)

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1 **NOE**
2 CLARK NEWBERRY LAW FIRM
3 Tara Clark Newberry, Esq. (SBN: 10696)
4 tnewberry@cnlawlv.com
5 810 S. Durango Drive, Suite 102
6 Las Vegas, Nevada 89145
7 (702) 608-4232
8 *Attorney for Valencia #9*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 VALENCIA MANAGEMENT LLC,)
12 SERIES 9, a Nevada Limited Liability)
13 Company,)

14 Plaintiff,)

15 vs.)

16 ROBERT STILLWAGON, an individual;)
17 LENY STILLWAGON, an individual; BAC)
18 HOME LOANS SERVICING, LP FKA)
19 COUNTRYWIDE HOME LOANS)
20 SERVICING LP; BANK OF AMERICA)
21 NA; DOES I through X; and ROE)
22 CORPORATIONS 1 through 10,)

23 Defendants.)

24

BANK OF AMERICA, N.A., S/B/M TO)
25 BAC HOME LOANS SERVICING, LP)
26 F/K/A COUNTRYWIDE HOME LOANS)
27 SERVICING LP)

28 Counter-Claimant,)

29 vs.)

30 VALENCIA MANAGEMENT LLC,)
31 SERIES 9, a Nevada Limited Liability)
32 Company,)

33 Counter-Defendant,)

34

BANK OF AMERICA, N.A., S/B/M TO)

CASE NO.: A-15-723600-C
DEPT. NO.: XXXII

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

CLARK NEWBERRY LAW FIRM
810 S. Durango Drive, Suite 102
Las Vegas, Nevada 89145
Telephone (702) 608-4232

1 BAC HOME LOANS SERVICING, LP)
2 F/K/A COUNTRYWIDE HOME LOANS)
3 SERVICING LP)

4 Cross-Claimant,)

5 v.)

6 SANDSTONE RECREATION)
7 ASSOCIATION, INC.; NEVADA)
8 ASSOCIATION SERVICES, INC.,)

9 Cross-Defendants.)
10 _____)

11 **NOTICE OF ENTRY OF FINDINGS OF FACT,**
12 **CONCLUSIONS OF LAW AND JUDGMENT**

13 Please take notice that the attached **FINDINGS OF FACT, CONCLUSIONS OF LAW AND**
14 **JUDGMENT** was entered on October 13, 2020.

15 DATED this 13th day of October 2020.

16
17 /s/ Tara Clark Newberry
18 TARA CLARK NEWBERRY, ESQ.
19 Nevada Bar No. 10696
20 810 S. Durango Drive, Suite 102
21 Las Vegas, NV 89145
22 *Attorney for Valencia #9*
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October 2020, I served, via the Court's electronic filing system, a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**, to the following:

Akerman LLP

Contact

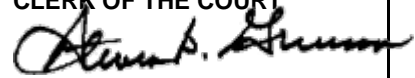
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/s/ Kathleen Seckinger

Kathleen Seckinger, an Employee of
Clark Newberry Law Firm



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6 Las Vegas, Nevada 89145
7 (702) 608-4232
8 *Attorney for Valencia #9*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 VALENCIA MANAGEMENT LLC,)
10 SERIES 9, a Nevada Limited Liability)
11 Company,)

11 Plaintiff,)

12 vs.)

13 ROBERT STILLWAGON, an individual;)
14 LENY STILLWAGON, an individual; BAC)
15 HOME LOANS SERVICING, LP FKA)
16 COUNTRYWIDE HOME LOANS)
17 SERVICING LP; BANK OF AMERICA)
18 NA; DOES I through X; and ROE)
19 CORPORATIONS 1 through 10,)

18 Defendants.)

19 BANK OF AMERICA, N.A., S/B/M TO)
20 BAC HOME LOANS SERVICING, LP)
21 F/K/A COUNTRYWIDE HOME LOANS)
22 SERVICING LP)

22 Counter-Claimant,)

23 vs.)
24)

25 VALENCIA MANAGEMENT LLC,)
26 SERIES 9, a Nevada Limited Liability)
27 Company,)

27 Counter-Defendant,)

28 BANK OF AMERICA, N.A., S/B/M TO)

CASE NO.: A-15-723600-C
DEPT. NO.: XXXII

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT

CLARK NEWBERRY LAW FIRM
810 S. Durango Drive, Suite 102
Las Vegas, Nevada 89145
Telephone (702) 608-4232

1 BAC HOME LOANS SERVICING, LP)
2 F/K/A COUNTRYWIDE HOME LOANS)
3 SERVICING LP)
4 Cross-Claimant,)
5 v.)
6 SANDSTONE RECREATION)
7 ASSOCIATION, INC.; NEVADA)
8 ASSOCIATION SERVICES, INC.,)
9 Cross-Defendants.)
_____)

10 This matter came before Department XXII of the Eighth Judicial District Court, in and for
11 Clark County, Nevada, on December 4 and December 5, 2019, for a bench trial to resolve issues of
12 title to real estate in a matter based on a HOA lien foreclosure, with JUDGE ROB BARE presiding.

13 VALENCIA MANAGEMENT LLC SERIES 9 appeared by and through its attorney, TARA
14 CLARK NEWBERRY, ESQ.; of the CLARK NEWBERRY LAW FIRM; and Defendant, BANK OF
15 AMERICA, N.A., appeared by and through its attorney REX GARNER, ESQ. of the AKERMAN LLP
16 law firm.

17
18 **Stipulated Facts of the Case**

19 1. On or about March 4, 2008, Robert and Leny Stillwagon (the “Borrowers” or
20 “Homeowners”) entered into a deed of trust with Neighbor’s Financial Corporation (the “Deed of
21 Trust”) for the property located at 2176 Hearts Club Drive, Henderson, Nevada 89074 (the
22 “Property”).

23
24 2. The Deed of Trust was recorded on March 14, 2008 with the Clark County Recorder as
25 Instrument No. 20080314-0002767.

26 3. The Deed of Trust was assigned to BAC Home Loans Servicing, LP fka Countrywide
27 Home Loans Servicing LP and the assignment as recorded with the Clark County Recorder on August
28

1 31, 2009 as Instrument No. 20090831-0001060. Bank of America, N.A. (the “Bank” or “BANA”) is
2 the successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing
3 LP.

4
5 4. The Property is located in a common interest community called Sandstone Recreations
6 Association, Inc. (“Sandstone”), which is governed by Declarations of Community Covenants and
7 Restrictions (aka “CC&Rs” or “Declarations”) recorded with the Clark County Recorder on March 30,
8 1993, in Book Number 930330, as Instrument No. 00841.

9
10 5. The Homeowners became delinquent on their assessments to Sandstone. On May 9,
11 2011, through Taylor Association Management, Inc., Sandstone recorded a Notice of Delinquent
12 Assessment Lien against the Property with the Clark County Recorder as Instrument No. 20110509-
13 0000507.

14 6. On September 8, 2011, Nevada Association Services, Inc. (“NAS”), as agent for
15 Sandstone, recorded a Notice of Default and Election to Sell Under Homeowners Association Lien
16 against the Property, Instrument No. 20110908-0001384.

17 7. On or about October 5, 2011, Bank of America, through counsel at Miles, Bauer,
18 Bergstrom & Winters, LLP (“Miles Bauer”), contacted NAS seeking a payoff ledger in relation to the
19 Sandstone’s lien.

20
21 8. On October 10, 2012, NAS, as agent for Sandstone, recorded a Notice of Foreclosure
22 Sale against the Property, Instrument No. 20121010-0001041. The notice stated the total amount due
23 was \$4,069.97 and set a sale for November 9, 2012.

24
25 9. On December 2, 2013, NAS, as agent for Sandstone, recorded a second Notice of
26 Foreclosure Sale against the Property as Instrument No. 20131202-0002018. The notice stated the
27 total amount due was \$5,738.28 and set a sale for January 3, 2014.

10. NAS auctioned the Property on behalf of Sandstone, and recorded a Foreclosure Deed on February 18, 2014, Instrument No. 20140218-0002844. The Foreclosure Deed stated NAS sold Sandstone's interest in the Property to Plaintiff for \$13,000.00 at the foreclosure sale held February 14, 2014.

11. BANA retained an appraiser, Matthew Lubawy, to render an opinion concerning value.

12. Mr. Lubawy's opinion of market value (as defined by the FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D) of the Property is that it was worth \$185,000.00 at the time of the HOA sale.

Admitted Evidence

The following exhibits were admitted by stipulation on the first day of trial:

1	Covenants, Conditions, and Restrictions of Sandstone Community Recreation Area, Instrument No. 199303300000841 BANA000663-BANA000705
2	Grant, Bargain and Sale Deed, Instrument No. 200803140002766 BANA000081-BANA000085
3	Deed of Trust, Instrument No. 20080314-0002767 BANA000065-BANA000080
4	Assignment of Deed of Trust from MERS to BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing, LP, Instrument No. 2009083100001060 BANA000041
5	Notice of Delinquent Assessment Lien, Instrument No. 201105090000507 BANA000020-BANA000021
6	Notice of Substitution of Agent, Instrument No. 2011090800001383 BANA000018
7	Notice of Default and Election to Sell Under Homeowners Association Lien, Instrument No. 2011090800001384 BANA000016-BANA000017
8	Notice of Foreclosure Sale, Instrument No. 201210100001041 BANA000006-BANA000007
9	Notice of Foreclosure Sale, Instrument No. 201312020002018 BANA000001-BANA000002
10	Foreclosure Deed, Instrument No. 201402180002844

	BANA000181-BANA000183
11	Release of Delinquent Assessment Lien, Instrument No. 20140325000029 BANA000180
12	Notice of Pendency of Action, Instrument No. 201508260001157 BANA000169-BANA000171
13	Documents produced by NAS in response to subpoena BANA000247-BANA000604
27	Plaintiff's Rebuttal Expert Disclosure Pursuant to NRCP 16.1
28	BANA's Response to Plaintiff's Interrogatories, Requests for Production, and Requests for Admission
35	Notice of Federal Tax Lien, recorded on December 3, 2010, as Book and Instrument #20102030-0003492
36	ADR Property Services, Landscaping Invoices and Documents, PL00050, PL00061
37	NAS Auction Receipt PL00062
38-65	Miscellaneous Valencia #9 Expense Receipts and Notices PL00063-000629
66	Treasurer's Property Account Inquiry – Summary Screen PL000632-000633

The following exhibits were admitted into evidence during the course of trial:

14	Corrected Miles Bauer Tender Affidavits BANA000605-BANA000624
18	Sandstone Recreation Association, Inc.'s Disclosures (Property File) SRA000001-SRA000494

Witnesses Called to Testify

1. **Susan Moses**, Corporate Witness for Nevada Association Services, Inc. ("Ms. Moses")
Trial Transcript Day One: Pages 18-67
2. **Brandy White Elk**, Corporate Witness for Valencia #9 ("Ms. White Elk") Trial
Transcript Day One: Pages 67-85
3. **Angela Shawn Look**, Corporate Witness for Bank of America, N.A. ("Ms. Look") Trial
Transcript Day One: Pages 85-97
4. **Douglas Miles** ("Mr. Miles") Trial Transcript Day One: Pages 97-236

5. **Mireille Marois**, Corporate Witness for Taylor Management Association, Inc. (“Ms. Marois”) Trial Transcript Day Two: Pages 5-46

FINDINGS OF FACT

Background

1. The subject of this lawsuit is residential real property with the address of 2176 Hearts Club Drive, Henderson, Nevada 89074 (the “Property”). Robert and Leny Stillwagon (the “Borrowers” or “Homeowners”) previously owned the property. **Stipulated Facts ¶1; Trial Ex. 2.**

2. The Property is part of the Sandstone Recreation Association, Inc. (“Sandstone”) common-interest community. As such, NRS Chapter 116 and the Declaration of Covenants, Conditions and Restrictions (“CC&Rs”), govern the Property. **Stipulated Facts ¶4; Trial Ex. 1.** Those CC&Rs include the requirement that homeowners or members of the association pay periodic assessments to benefit the common-interest community. Sandstone operates with a budget adopted pursuant to NRS 116.3115. *Id.*

3. The Property also is part of the Strawberry Fields Homeowners Association (“Strawberry Fields”) and Legacy Village Property Owners Association (“Legacy Village”) common-interest communities. **Testimony of Ms. Moses at p. 39; Testimony of Ms. Marois at p. 6.**

4. The CC&Rs for each of the associations required the Homeowners to pay the particular HOA periodic assessments. *Id.*

5. Neighbor’s Financial Corporation lent the Borrowers funds to purchase the Property, and took a First Deed of Trust. **Stipulated Facts ¶1; Trial Ex. 3.** That Deed of Trust was recorded March 14, 2008 with the Clark County Recorder as Instrument No. 20080314-0002767. **Stipulated Facts ¶2; Trial Ex. 3.**

6. The Deed of Trust was assigned to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP, and the assignment was recorded with the Clark County Recorder on

1 August 31, 2009 as Instrument No. 20090831-0001060. Bank of America, N.A. (the “Bank” or
2 “BANA”) is the successor by merger to BAC Home Loans Servicing, LP fka Countrywide Home
3 Loans Servicing LP. **Stipulated Facts ¶3; Trial Ex. 4.**

4
5 7. The Borrowers failed to pay the monthly assessments to Sandstone. **Stipulated Facts**
6 **¶6; Trial Ex. 13, at BANA332, Testimony of Ms. Moses, at p. 20.** The Borrowers also failed to pay
7 the monthly assessments to the Strawberry Fields and Legacy Village. **Trial Ex. 13, at BANA325**
8 **and 382, Testimony of Ms. Moses, at pp. 37-39.**

9
10 8. Taylor Association Management, Inc. (the “Property Manager” or “Taylor
11 Management”) manages the association property for Sandstone. **Testimony of Ms. Marois, at p. 6.**

12
13 9. On May 9, 2011, the HOA, through Taylor Management recorded a Notice of
14 Delinquent Assessment Lien against the Property with the Clark County Recorder as Instrument No.
15 20110509-0000507. **Stipulated Facts ¶6; Trial Ex. 5; Testimony of Ms. Moses, at p. 20.**

16
17 10. Sandstone retained Nevada Association Services, Inc. (the “HOA Trustee” or “NAS”),
18 as its authorized agent for collection of, and if necessary foreclosure on, delinquent assessments.
19 **Testimony of Ms. Moses, at p. 20.**

20
21 11. The outstanding assessments, late charges and costs of collection and interest remain
22 unpaid. **Trial Ex. 13, at BANA556-558; Testimony of Ms. Moses, at pp. 26-28.** On September 8,
23 2011, NAS, as agent for the HOA, recorded a Notice of Default and Election to Sell Under
24 Homeowners Association Lien against the Property, Instrument No. 201109080001384. **Stipulated**
25 **Facts ¶7; Trial Ex. 7; Testimony of Ms. Moses, at p. 24.**

26
27 12. NAS mailed the NOD to the holders of recorded security interests encumbering the
28 Property. **Testimony of Ms. Moses, at pp. 51, 53, 56; Trial Ex. 13. BANA000475-485.**

The Miles Bauer Tender Attempt¹

13. After receiving the NOD, BANA hired Miles, Bauer, Bergstrom & Winters, LLP (“Miles Bauer”). **Testimony of Ms. Look, at pp. 88-89; Testimony of Mr. Miles, at p. 100-101.** Miles Bauer contacted NAS on or about October 5, 2011, seeking a payoff ledger in relation to the HOA’s lien. **Stipulated Facts ¶8; Testimony of Mr. Miles, at p. 170; Trial Ex. 14.**

14. Mr. Miles testified about the standard procedures used when BANA engaged Miles Bauer to attempt to protect a first deed of trust in an HOA lien foreclosure. **Testimony of Mr. Miles, at p. 99.** Mr. Miles said they followed their standard practice in this instance. **Testimony of Mr. Miles, at pp. 218-219.** This Court considered the testimony of Ms. Look concerning BANA following its ordinary course of business, as well. **Testimony of Ms. Look, at pp. 88-89.**

15. BANA argued that one must presume Miles Bauer followed its standard operating procedures. Any such presumption, if one exists, was overcome by stronger evidence that standard procedures were not followed. **See, e.g., Testimony of Mr. Miles, at pp. 177-183; 197-199; 201-202; 209-213.** This Court finds that BANA has not established by a preponderance of the evidence that Miles Bauer actually sent the second Miles Bauer letter and check in question to NAS.

16. A letter dated December 1, 2011, along with a copy of the check, provide the only evidence of a tender. **Trial Ex. 14, BANA000614-618.** Ostensibly, that letter on its face is an indication that Miles Bauer attempted to make a tender. The relevant question at hand is whether the letter and check were delivered.

17. In relevant part the letter to Nevada Association Services states: “Dear sir or madam, NAS is unwilling to provide our office with a payoff ledger.” The letter goes on to indicate the basis upon which Miles Bauer calculated the super-priority amount to be \$495. In the next to the last

¹ The parties disputed the applicable standard of proof in Nevada for establishing whether a tender occurred. *See* Conclusions of Law, ¶¶12-13.

1 paragraph the letter says, “Thus enclosed you will find a cashier’s check made out to Nevada
2 Association Services in the sum of \$495.” On the next page, one finds a copy of a \$495 check dated
3 November 28, 2011. *Id.*

4
5 18. The Court finds that the letter dated December 1, 2011, is authentic – it existed and the
6 check was attached to it at some point, but what happened with the letter thereafter is unclear. Mr.
7 Miles testified that there was no acknowledgment of receipt of the tender by NAS. **Testimony of Mr.**
8 **Miles, at p. 207.** The evidence offered to this Court by the Bank failed to show that Miles Bauer
9 delivered the letter and check to NAS.

10
11 19. Mr. Miles testified about the operations in the Henderson, Nevada office of Miles
12 Bauer; and in particular about deliveries of tender checks through the runner-service, Legal Wings.
13 Mr. Miles testified regarding the use of a box at the Henderson office for Legal Wings deliveries, and
14 the standard course of practice regarding the deliveries. *See, e.g., Testimony of Mr. Miles, at pp.*
15 **153-159; 177-180; 207-209.** He testified that the Henderson Legal Wings box was used for all 7,000
16 cases or so cases handled by Miles Bauer. **Testimony of Mr. Miles, at p. 201.**

17
18 20. From his testimony, however, this Court concludes that Mr. Miles did not really know
19 what was going on with Legal Wings deliveries at the Henderson office. *See, e.g., Testimony of Mr.*
20 **Miles, at pp. 153-156.** While Mr. Miles might have been generally aware of the standard operating
21 procedure in that office, this Court does not accept that Mr. Miles knew what was really happening on
22 a day-to-day basis.

23
24 21. Mr. Miles was in the Henderson office only twice a month. **Testimony of Mr. Miles,**
25 **at p. 153.** As a managing partner of the firm, in the office only twice a month, this Court believes Mr.
26 Miles would not have specific knowledge as to what was happening with the Legal Wings deliveries.
27 In fact, Mr. Miles was asked specifically if he had anything to do with the Legal Wings deliveries.
28

1 **Testimony of Mr. Miles, at pp. 155-157.** He seemed to take offense to that suggestion, implying that
2 deliveries were a runner's job, and not the job of the managing partner. *Id.*

3 1. Mr. Miles based his conclusions that the letter and check were delivered on a record
4 keeping system used by the Miles Bauer law firm ("ProLaw"). **Trial Ex. 14; Testimony of Mr.**
5 **Miles at pp. 106-107, 159, 162, 166, 197-199, 210, 232-234.** Mr. Miles testified that ProLaw is a
6 summary of events and potential activities – with reminders and automated entries. **Testimony of**
7 **Mr. Miles, at pp. 160-162, 197-199.** One would need to verify the entries by looking at the
8 underlying documents referenced in the system. *Id.*

9
10 22. Mr. Miles indicated that the ProLaw system was exceptionally accurate. **Testimony of**
11 **Mr. Miles, at p. 234-235.** This Court finds, however, that the evidence presented in trial established
12 that the ProLaw system is not exceptionally accurate; in fact, at times is not so accurate at all. *See,*
13 *e.g., Testimony of Mr. Miles, at pp. 162-201.* In some instances in this case, the ProLaw entries
14 contradicted the testimony of Mr. Miles. **Testimony of Mr. Miles, at pp. 169-171.**

15
16 23. Mr. Miles explained that the ProLaw system generates an automatic checkmark next to
17 an activity as a computer-generated reminder – and the checkmark does not indicate a human event of
18 activity. **Testimony of Mr. Miles, at pp. 145-146; 160-161.** The ProLaw printout shows the
19 reminder for December 2, 2011, to send a check to the HOA. **Trial Ex. 14, BANA000618.**

20
21 24. In contrast, in ProLaw an icon of a little pile of paper next to an activity means a human
22 being actually did something. **Testimony of Mr. Miles, at pp. 160-161.** The ProLaw printout shows
23 that on December 2, 2011, an email was sent from Rock Jung regarding payoff funds. **Trial Ex. 14,**
24 **BANA000618.**

25
26 25. Mr. Miles testified that one could verify the ProLaw entries by confirming the ProLaw
27 activity with a corresponding document in the file. **Testimony of Mr. Miles, at pp. 162, 167, 197,**
28

1 **199.** In this case, BANA could not produce the email from Rock Jung regarding payoff funds in the
2 case. That piece of evidence is missing, and it constitutes a material piece of evidence in this case.

3 26. Similarly, a ProLaw entry purportedly showed a December 15, 2011, email from Rock
4 Jung to the bank on the subject of the HOA's rejection of tender. **Trial Ex. 14, BANA000618.**
5 BANA was unable to produce a copy of that email. Again, another material piece of evidence was
6 missing. The ProLaw printout, in conjunction with Mr. Miles' testimony that one could confirm the
7 ProLaw entries by checking the contents of the emails, weighs against the tender occurring.
8

9 27. Additionally, as a finder of fact, the Court notes that Mr. Miles was provided with a
10 payment of \$4,000 as a fact witness. **Testimony of Mr. Miles, at pp. 226-227.** That payment for a
11 few hours in court weighs against his credibility. It suggests that Mr. Miles was paid for his
12 appearance and testimony. The Court takes no position on the ultimate propriety or ethics of the Bank
13 paying a fee, or regarding Mr. Miles accepting such payment. This Court, however, finds it weighs
14 against the full force and effect of his testimony and indicates bias.
15

16 28. The Court also observed through the evidence an anomaly in the procedures at the
17 Miles Bauer office. Three HOAs – Sandstone, Strawberry Fields, and Legacy Village – initiated
18 foreclosure proceedings against the Hearts Club property, and all three HOAs retained NAS for that
19 purpose. **E.g., Testimony of Moses, at pp. 38-39.** The evidence showed an acknowledgement form
20 of \$180 for the Strawberry Fields HOA lien tender. **Testimony of Mr. Miles, at pp. 201-207; Trial**
21 **Ex. 14, BANA000210.** Another acknowledgement form for a little over \$800 was offered in evidence
22 for the Legacy Village delinquency. **Testimony of Mr. Miles, at pp. 185-187; Testimony of Ms.**
23 **Moses, at pp. 39-45; Trial Ex. 14, BANA000201.** But, no evidence was produced for alleged
24 payment to Sandstone of \$495.
25

26 29. Additional evidence weighed against the claims made by the Miles Bauer law firm and
27 their involvement – specifically, the Adam Kendis affidavit. **Trial Ex. 14, BANA000184-234.**
28

Paragraph 8 of the affidavit says, “Based upon Miles Bauer’s business records, Nevada Association Services, Inc. returned the \$495 check to Miles Bauer.” **Trial Ex. 14, BANA000205.** The rest of paragraph 8 says: “A copy of the confirmation of receipt from Miles Bauer’s business records showing the check as not accepted is attached as Exhibit 3.” *Id.* No Exhibit 3 was attached to that affidavit. A supplement to the Kendis affidavit (BANA000214 – designated as 214A) shows that the confirmation receipt still was not attached. *Id.* Instead, the confirmation receipt for the Strawberry Fields \$180 was attached, not the confirmation receipt for \$495. *Id.*

30. The next sentence in paragraph 8 of Mr. Kendis’ sworn affidavit states: “A copy of the voided check from Miles Bauer’s business records is attached as Exhibit 4.” The check attached as Exhibit 4 is not the \$495 Sandstone check – it is \$180 check for Strawberry Fields. **Trial Ex. 14, BANA000216.** The Kendis affidavit is inaccurate in a material sense because he produced the wrong check. This Court finds the evidence weighs against the conclusion that Miles Bauer actually sent the check for the Sandstone delinquency, and the evidence weighs against the conclusion the Sandstone check was returned – in part because the Bank failed to produce the voided check.

31. The Court found the testimony of Ms. Moses credible. Ms. Moses testified that there was no indication in the Sandstone file that the Bank sent a check to NAS. **Testimony of Ms. Moses, at p. 46.** No receipt having to do with sending the Sandstone check appears in the NAS records or in the evidence produced by the Bank.

32. Thus, the testimony given, the various entries and items mentioned in ProLaw, and the contradictory affidavits, all lead this Court to believe that it is more likely than not that the letter was not sent. Again, as the finder of fact, this Court determines that those material pieces of evidence on the ultimate issue in the case – whether the Bank tendered the \$495 – indicate that check was not sent to NAS.

The Foreclosure Sale

33. On October 10, 2012, NAS, as agent for the HOA, recorded a Notice of Foreclosure Sale against the Property, Instrument No. 20121010-0001041. The notice stated the total amount due was \$4069.97 and set a sale for November 9, 2012. **Stipulated Facts ¶9; Trial Ex. 8.**

34. On December 2, 2013, NAS, as agent for Sandstone, recorded a second Notice of Foreclosure Sale against the Property as Instrument No. 20131202-0002018. The notice stated the total amount due was \$5,738.28 and set a sale for January 3, 2014. **Stipulated Facts ¶10; Trial Ex. 9.**

35. The NAS file and witness testimony show that it sent the Sandstone NOD and the NOS to BANA regarding the Hearts Club foreclosure. **Trial Ex. 13, pp. 477-498; Testimony of Moses, at pp. 51-56.** The evidence shows, that in July of 2013, the Sandstone NOS was served, posted and published, and mailed to those persons entitled to notice. *Id.*

36. NAS auctioned the Property on behalf of Sandstone and recorded a Foreclosure Deed on February 18, 2014, Instrument No. 20140218-0002844, which stated NAS sold the HOA's interest in the Property to Plaintiff at the February 14, 2014, foreclosure sale. **Stipulated Facts ¶11; Trial Ex. 10.** Twenty-one potential bidders attended the sale. **Testimony of Moses, at p. 50; Trial Ex. 37.**

37. Valencia #9 paid \$13,000.00 for the Property, which was the highest bid at the public action. **Stipulated Facts ¶11; Trial Ex. 10.** Valencia #9 took title via a Trustee's Deed Upon Sale ("Trustee's Deed"). The recitals in the Trustee's Deed state that:

Nevada Association Services, Inc., has complied with all requirements of law including, but not limited to, the elapsing of 90 days, mailing of copies of Notices of Delinquent Assessment and Notice of default and the posting and publication of the Notice of Sale.

Trial Ex. 10.

38. The evidence presented at trial indicates that the sale was proper as to time, location, and manner. **Testimony of Moses, at pp. 20-21, 50-56.**

39. The Bank’s expert, Mr. Lubawy, gave an opinion of market value (as defined by the FDIC Interagency Appraisal and Evaluation Guidelines (December 2, 2010) Appendix D). He determined that at the time of the HOA sale the Property was worth \$185,000.00. **Stipulated Facts ¶¶12-13.**

CONCLUSIONS OF LAW

1. After hearing the evidence presented at trial, considering the applicable law, weighing the credibility of the witnesses, and balancing the equities in this case as required by *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*, 366 P.3d 1105 (Nev. 2016)(“*Shadow Wood*”), this Court determines that BANA failed to present sufficient evidence to preclude Valencia #9’s clear title. Valencia #9 is entitled to judgment in its favor – the Sandstone HOA lien foreclosure sale extinguished the First Deed of Trust.

2. NRS Chapter 116 sets forth requirements for a valid HOA lien foreclosure. An HOA must follow specific steps and include detailed information in the notices. *See* NRS 116.31162-116.31168. “NRS 116.3116(2) gives an HOA a true super-priority lien, proper foreclosure of which will extinguish a first deed of trust.” *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 419 (2014) (“*SFR*”). “The sale of a unit pursuant to NRS 116.31162, “116.31163 and 116.31164 vests in the purchaser the title of the unit’s owner without equity or right of redemption.” *Id.* BANA had the burden to prove each of its claims, and each of its affirmative defenses against the counterclaims of Valencia #9. *Schwartz v. Schwartz*, 95 Nev. 202, 206, 591 P.2d 1137 (1979). BANA also had the burden to rebut all statutory and common-law presumptions given to foreclosure sales.

3. There is a common-law presumption that a foreclosure sale was conducted validly. *E.g., Moeller v. Lien*, 25 Cal. App. 4th 822, 30 Cal. Rptr. 2d 777 (1994). A duly recorded Trustee’s Deed is presumed valid. *See Breliant v. Preferred Equities Corp.*, 112 Nev. 663, 669, 918 P.2d 314,

319 (1996). In other words, the “conclusive recitals” state the homeowners’ association’s agent, complied with the statutory default, notice and timing requirements. “A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof . . . “ *Yeager v. Harrah’s Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995). “[P]resumptions impose on the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence.” *Id.* (citing NRS 47.180).

4. At trial, the Bank did not meet its burden to prove its claims and affirmative defenses. In this case, all requirements of the HOA lien foreclosure statute were met. All parties entitled to notice of the HOA lien foreclosure sale were properly notified by the HOA Trustee.

5. The super-priority portion of the Sandstone assessment lien extinguished BANA’s First Deed of Trust. *SFR*, 334 P.3d at 412. Therefore, as a matter of law, Valencia #9 acquired the Property free and clear of all encumbrances; and BANA’s Deed of Trust and all junior liens were extinguished.

Tender as an Affirmative Defense

6. BANA asserts that Miles Bauer made a valid tender of the super-priority lien amount on its behalf prior to the HOA lien foreclosure sale. This Court disagrees for several reasons.

7. As noted above, BANA had the burden to prove a valid tender occurred. “The rules which govern tenders are strict and are strictly applied.” *Nguyen v. Calhoun*, 105 Cal. App. 4th 428, 439 (2003). There is an “invariable tendency of courts to limit the doctrine of release by tender . . . Such relief is most drastic, and, to obtain the same in an equitable action, the right thereto must clearly appear.” *Hilmes v. Moon*, 11 P.2d 253, 238-239 (Wash. 1932).

8. This Court has considered the holding in *U.S. Bank, National Association, v. Resources Group, LLC*, 135 Nev. Adv. Op. 26, 444 P.3d 442 (Nev. 2019); and determines that the standard to establish a tender is by a preponderance of the evidence.

1 9. But even under the preponderance of the evidence standard, BANA did not meet the
2 evidentiary requirements to establish the affirmative defense of tender. Too many questions arose
3 whether Miles Bauer followed the standard procedures that it claimed were in place. And, a lack of
4 material pieces of evidence – that should have been available to the Bank – were missing.

5
6 **Commercial Reasonableness of the Sale**

7 10. BANA bore the burden to establish that the HOA sale should be set aside on the basis
8 of commercial reasonableness.

9 11. The Court disagrees with the Bank’s conclusion that the sale was commercially
10 unreasonable, even in light of the \$13,000 paid by the plaintiffs compared to Mr. Lubawy’s valuation
11 of \$185,000 for the property.

12 12. The law in the area of commercial reasonableness has been well defined in Nevada over
13 the last few years. The Nevada Supreme Court’s guidance has been specific. As dictated by the
14 holding of *Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc.*, 366
15 P.3d 1105 (Nev. 2016), this Court must apply a two-part test when considering the commercial
16 reasonableness of the sale. This Court cannot void a foreclosure sale based on price alone.

17 13. Simply demonstrating that an association sold a property at its foreclosure sale for a low
18 or “inadequate” price is not enough to set aside the sale. In addition to a disparity of price and value,
19 long established precedent in Nevada holds that “inadequacy of price, however gross, is not in itself a
20 sufficient ground for setting aside a trustee’s sale legally made; there must be in addition proof of some
21 element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy of price.”
22 *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641, 645, 648
23 (Nev. 2017) (emphasis added); *Golden v. Tomiyasu*, 79 Nev. 503, 387 P.2d 989 (1963) (quoting *Oller*
24 *v. Sonoma Cty., Land Title Co.*, 290 P.2d 880, 882 (Cal.Ct.App. 1955); *see also Long v. Towne*, 98
25 Nev. 11, 13 639 P.2d 528, 530 (1982); *Brunzell v. Woodbury*, 85 Nev. 29, 449 P.2d 158 (1969).

14. A court must determine whether the sale was affected by alleged irregularities in the sales process that constitute fraud, unfairness or oppression, or whether there is evidence of some other irregularity. In this case, BANA provided no evidence of fraud, oppression or unfairness, or any irregularity in the foreclosure sale, to establish that the sale was commercially unreasonable or conducted in bad faith. In other words, the price paid at the HOA foreclosure did not come about as the result of fraud, oppression or unfairness. *Tomiyasu* 79 Nev. at 515-516, 387 P.2d at 995 (emphasis in *original*) (quoting *Odell v. Cox*, 90 P. 194 (Cal. 1907)).

15. BANA did not present, and this Court does not find, any evidence of irregularity, fraud, unfairness or oppression. This Court has found nothing to indicate irregularities, fraud, oppression or unfairness occurred in this case. Thus, this Court cannot conclude that the sale was commercially unreasonable.

16. Because Valencia #9 retains the Property free and clear of the Bank's encumbrance, Valencia #9's claim for unjust enrichment against BANA is deemed moot.

JUDGMENT

Accordingly, based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is rendered in favor of VALENCIA MANAGEMENT LLC SERIES 9 on its claims for quiet title and declaratory relief;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that VALENCIA MANAGEMENT LLC SERIES 9 purchased the subject property, to wit: 2176 Hearts Club Drive, Henderson, Nevada 89074, by way of homeowners' association foreclosure sale, which was appropriately conducted without any irregularities, and thus, it takes title to the Property free and clear of the first security interest;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the claim of VALENCIA

MANAGEMENT LLC SERIES 9 for unjust enrichment against BANA is deemed moot;

THIS JUDGMENT IS MADE FINAL as to ALL PARTIES. This Court determines that there is no just reason for delay and enters final judgment pursuant to NRCP 54(b).²

DATED: 13th of October, 2020.



DISTRICT COURT JUDGE ROB BARE

HL

Submitted by:

Approved as to form and content:

Dated this 12th day of October, 2020.

Dated this 12th day of October, 2020.

CLARK NEWBERRY LAW FIRM

AKERMAN LLP

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Attorneys for Bank of America, N.A.

² The former Homeowners did not file an answer or meaningfully participate in this litigation, and a default judgment was entered against them earlier in this case.

From: nicholas.belay@akerman.com
To: [Kathy Seckinger](#)
Cc: [Tara Clark Newberry](#)
Subject: RE: Case A-15-723600-C Valencia #9 v. Stillwagon
Date: Monday, October 12, 2020 1:39:25 PM

Hi Kathy,

You may submit with my e-signature.

Thanks,

Nicholas Belay

Associate

Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134

D: 702 634 5029

nicholas.belay@akerman.com

Profile



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From: Kathy Seckinger <KSeckinger@cnlawlv.com>
Sent: Monday, October 12, 2020 1:26 PM
To: Belay, Nicholas (Assoc-Las) <nicholas.belay@akerman.com>
Cc: Tara Clark Newberry <tnewberry@cnlawlv.com>
Subject: Case A-15-723600-C Valencia #9 v. Stillwagon

Good afternoon Nicholas,

In accordance with the District Court Administrative Order 20-17, please respond to this email with permission to use your e-signature for submitting the attached to the court.

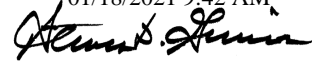
Thank you.

Kathleen Seckinger
Litigation Manager

Clark Newberry Law Firm
810 S. Durango Drive, Suite 102
Las Vegas, Nevada 89145

(702) 608-4232
[**kseckinger@cnlawlv.com**](mailto:kseckinger@cnlawlv.com)
[**www.cnlawlv.com**](http://www.cnlawlv.com)

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CLERK OF THE COURT

ODM

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S/B/M to BAC Home Loans Servicing, LP

fka Countrywide Home Loans Servicing, LP

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VALENCIA MANAGEMENT LLC, SERIES 9, a
Nevada Limited Liability Company,

Plaintiff,

vs.

ROBERT STILLWAGON, an individual; LENY
STILLWAGON, an individual; BAC HOME
LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING
LP; BANK OF AMERICA NA; DOES 1 through
X; and ROE CORPORATIONS 1 through 10,

Defendants.

Case No.: A-15-723600-C

Dept. No: XXXII

**ORDER DENYING BANK OF
AMERICA, N.A.'S MOTION TO ALTER
OR AMEND FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter came before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, on December 15, 2020, to hear argument regarding Bank of America, N.A.'s Motion to Alter or Amend Findings of Fact and Conclusions of Law ("Motion to Amend"), with JUDGE ROB BARE presiding.

TARA CLARK NEWBERRY, ESQ., of the CLARK NEWBERRY LAW FIRM appeared on behalf of VALENCIA MANAGEMENT, LLC, SERIES 9; NICHOLAS BELAY, ESQ., of the AKERMAN LLP law firm, appeared on behalf of BANK OF AMERICA, N.A.

///

///

FINDINGS OF FACT

PROCEDURAL HISTORY

1. Based on the briefs, evidence, and arguments presented to this Court on summary judgment, in April, May, and June of 2017, it determined that genuine issues of material fact made trial necessary.

2. BANA moved for reconsideration of this Court’s summary judgment decision, on June 27, 2019, based on *Bank of America, N.A., v. SFR Investments Pool 1, LLC*, 134 Nev.Adv. Op. 72, 427 P.3d 113 (2018) (“*Diamond Spur*”). That motion was denied on August 3, 2019.

3. This Court held a 2-day bench trial on December 4, 2019 and December 5, 2019.

4. On February 27, 2020, the Nevada Supreme Court issued *7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 458 P.3d 348 (Nev. 2020) (“*Perla Trust*”).

5. After preparation and review of the trial transcript, the parties exchanged drafts of the Findings of Fact, Conclusions of Law and Judgment (“FFCL”) – which was ultimately presented to this Court for signing.

6. The FFCL, and Notice of Entry of the FFCL, took place on October 13, 2020.

7. BANA filed a Motion to Alter or Amend Findings of Fact and Conclusions of Law on November 10, 2020.

OVERVIEW OF THE EVIDENCE PRESENTED AT TRIAL

8. Prior to the hearing on the Motion to Amend, this Court took the opportunity to review the trial transcript carefully.

9. As the finder of fact, this Court believed that Miles Bauer prepared the tender letter and check. (See Trial Transcript, Day 2, at 107.)

10. But, the evidence presented at trial did not support a finding that the tender letter and check were delivered to the HOA, the HOA management company, or the HOA Trustee. Arguments made by BANA, and further review of the trial transcript and evidence in this case, did not change the conclusion this Court reached immediately after trial.

11. This Court found “that in this situation the bank in its affirmative defense efforts has a letter and after that they have a mystery. And that’s why the plaintiffs win” (See Trial Transcript, Day 2, at 109-110.)

THE UN-REDACTED DOCUMENTS PRESENTED IN BANK OF AMERICA’S MOTION TO AMEND ARE NOT “NEWLY DISCOVERED EVIDENCE”

12. In its Motion to Amend, BANA claimed it “discovered” additional evidence of delivery of tender.

13. Redaction of the contents of the document admitted as an exhibit at trial concealed what BANA now contends is “newly discovered” evidence.

14. Miles Bauer provided the un-redacted document to BANA’s counsel many years ago; and this fact was established through evidence presented, and the admission of the Akerman law firm.

15. The content of the exhibit does not constitute “newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial.” NRCP 59(a)(1)(D); *see also* NRCP 59(a)(2).

16. BANA could have produced the purportedly determinative evidence during discovery and at trial.

17. BANA claims that it discovered the “inadvertent” redaction after trial. (*See* Motion to Amend, at 8.)

18. When the attorneys at Akerman prepared the documents for the affidavit signed by Mr. Kendis and Mr. Miles, they had access to the un-redacted version of the delivery/acknowledgement sheet. (*See* Trial Transcript, Day 1, at 111; 208-209.)

19. The attorneys for BANA selected and prepared the documents for the Adam Kendis affidavit and the Douglas Miles affidavit – which they used in disclosure, discovery and dispositive motion work – and which this Court considered at trial. (*See* Trial Transcript, Day 1, at 111; 208-209.)

20. The Akerman attorneys also prepared their exhibits for use at trial.

21. During discovery, BANA could have corrected the “inadvertent” error – instead, counsel only disclosed the Strawberry Fields tender.

22. At some point in this litigation, BANA’s counsel reviewed the Legal Wings delivery sheet and should have recognized or “discovered” the purported \$495 entry on that document.

23. But it appears that BANA did not review the underlying, non-redacted evidence until after trial; the altered redaction is not “new” evidence.

///

EVIDENCE AT TRIAL DID NOT ESTABLISH AN “ORDINARY COURSE OF BUSINESS” OR THAT STANDARD PROCEDURES HAD BEEN FOLLOWED

24. In its Motion to Amend, BANA relies on the rebuttable presumption of NRS 47.250 as to Miles Bauer’s ordinary course of business.

25. BANA’s representative, Shawn Look, testified about the way BANA’s tender attempts were supposed to take place. (*See* Trial Transcript, Day 1, at 88-89.)

26. Yet, Mr. Miles and the BANA witness failed to show that funds were delivered to NAS or the HOA, or returned to BANA after the putative rejection.

27. This Court maintains that too many questions arose whether Miles Bauer followed the standard procedures it claimed were in place, and that “a lack of material pieces of evidence – that should have been available to the Bank” – were missing. (*See* FFCL, at 16).

BANK OF AMERICA DID NOT PRESENT EVIDENCE TO SUPPORT EXCUSING A VALID TENDER ATTEMPT UNDER THE FUTILITY DOCTRINE

28. A review of the documents and testimony presented at trial in this case do not show that BANA presented sufficient evidence to support its argument related to the doctrine of futility as set forth in *7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 136 Nev.Adv.Op. 6, 458 P.3d 348 (2020) (“*Perla Trust*”).

29. The testimony of Susan Moses proved inconclusive as to whether – *at the time* of the Sandstone notice and purported tender - NAS¹ had the blanket policy to reject tender offers.

30. Susan Moses could not identify when NAS started “rejecting” Miles Bauer’s offers with conditions. (*See* Trial Transcript, Day 1, at 26-27 (emphasis added).)

31. In this case, BANA did not elicit evidence of the NAS practices or policies in place in December of 2011.

///

///

¹ NAS had “evolving” practices and policies. *Perla Trust*, 458 P.3d at 349.

32. Thus, from the evidence presented it was not apparent when NAS adopted a policy or procedure to reject tender offers – or whether such a policy existed in December of 2011.²

33. The evidence BANA presented at trial, and the references in its Motion to Amend, was not the same or as extensive as the evidence presented by the bank in *Perla Trust*.

34. As in *Poshbaby LLC v. Elsinore III, LLC*, 73700 (July 1, 2020) (unpublished deposition), BANA presented no evidence that it “chose not to make a superpriority tender because it was aware that the HOA’s agent might have rejected that payment.”

THE TESTIMONY OF DOUG MILES WAS NOT CREDIBLE

35. Additionally, this Court found the testimony of Mr. Miles to be unreliable. (*See* Trial Transcript, Day 2, at 103-104.)

36. The fact that he was paid to be a fact witness “weighed against his credibility . . . [and] the full force and effect of his testimony” – it suggested bias and was not credible. *Id.*

37. Similarly, Mr. Miles was impeached in other portions of his testimony.

38. Therefore, nothing in the Motion to Amend changes this Court’s decision about Mr. Miles credibility and testimony.

CONCLUSIONS OF LAW

STANDARDS FOR ALTERING OR AMENDING A JUDGMENT

1. The purpose and function of Rule 59(e) is limited.

2. A “decision to grant or deny a motion [to alter or amend] rests within the sound discretion of the trial court . . .” *Southern Pac Transp. Co. v. Fitzgerald*, 94 Nev. 241, 244, 577 P.2d 1234, 1236 (1978).

3. Reconsideration of prior orders “is extraordinary in nature and . . . motions invoking [the] rule should be granted sparingly.” *Lal v. California*, 610 F.3d 518, 524 (9th Cir. 2010) (citing *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993)); *Gonzalez-Pina v. Rodriguez*, 407 F.3d 425 (1st Cir. 2005).

///

² Nor is it clear what the basis for rejecting tender offers might have been; i.e., whether they were conditional or simply not of a sufficient amount.

1 4. The grounds for altering or amending a judgment are to: (i) correct manifest errors or law or
2 fact, (ii) if previously unavailable or newly discovered evidence arises, (iii) to prevent manifest injustice,
3 or (iv) if a change in controlling law has occurred. *AA Primo Builders, LLC v. Washington*, 126 Nev.
4 578, 582, 245 P.3d 1190, 1193 (2010).

5 **BANK OF AMERICA DID NOT MEET ITS BURDEN TO PROVE THE AFFIRMATIVE DEFENSE OF**
6 **TENDER AT TRIAL**

7 5. BANA had the burden to present evidence to support its affirmative defense of tender – by a
8 preponderance of the evidence. *Resources Group, LLC v. Nev. Ass’n Servs., Inc.*, 135 Nev. 48, 52, 437
9 P.3d 154, 158 (2019) (“payment of a debt is an affirmative defense, which the party asserting has the
10 burden of proving”); *Schwartz v. Schwartz*, 95 Nev. 202, 206 n.2, 591 P.2d 1137, 1140 n.2 (1979).

11 6. This Court made the determination that BANA did not carry its burden to present a
12 preponderance of evidence on the issue of delivery of a tender, and that critical testimony was not
13 credible or was the result of bias – and it stands by that decision. (*See* FFCL, generally.)

14 7. There were no irregularities in the trial, no misconduct of Valencia #9, no accident or surprise,
15 and no error in law that was preserved by BANA at a trial. *See* NRCP Rule 59(a)(1-7).

16 8. This case was decided upon the evidence presented at trial – and it is bound by the evidence
17 presented at trial.

18 9. Based on the evidence presented to it, this Court did not err in reaching the conclusion that no
19 delivery of a tender for the super-priority portion of the Sandstone HOA lien took place.

20 10. This Court properly determined that the evidence presented by BANA did not establish that
21 Miles Bauer delivered its offer of tender.

22 11. This Court based its decision on the evidence presented, the evidence lacking, and the testimony
23 of Mr. Miles (versus that of Ms. Moses).³

24 12. Contrary to BANA’s arguments in its Motion to Amend, the evidence presented was not
25 conclusive, and it showed BANA did not have adequate proof of delivery.

26 _____
27
28 ³ BANA “got up to about 40 percent on the burden that they have to show tender, but they didn’t make a preponderance . .
.” (*See* Trial Transcript, Day 2, at 95-96.)

1 **THE EVIDENCE BANK OF AMERICA PRESENTS IN ITS MOTION WAS NOT “NEWLY**
2 **DISCOVERED”**

3 13. BANA claims the “inadvertent disclosure was a mistake that could not have been avoided in the
4 exercise of due diligence.” (*See* Motion to Amend, at 8.)

5 14. This Court does not agree – the “redaction error” could have been avoided, and is not “newly
6 discovered evidence” as contemplated by Rule 59. *Watlis*, 26 F.3d at 892 n.6.

7 15. BANA’s counsel could have attempted to rectify its failure to timely disclose the document in
8 question through disclosure, during discovery, or at trial.⁴

9 16. BANA’s claimed redaction “error” does not provide an adequate excuse allowing the belated
10 disclosure and use of the document in question.

11 17. In sum, BANA and counsel did not make a timely effort to clarify the issue – which is a
12 requirement of Rule 59: “evidence . . . the party could not, with reasonable diligence, have discovered
13 and produced at the trial.” (Emphasis added.)

14 **BANK OF AMERICA HAS NOT SHOWN THIS COURT’S DECISION PRESENTS A “MANIFEST**
15 **INJUSTICE”**

16 18. BANA also argues that this Court must find in favor of the survival of the first deed of trust to
17 “prevent manifest injustice.” (*See* Motion to Amend, at 9.)

18 19. It claims that the evidence it purportedly had, but failed to provide, would not have materially
19 changed the parties’ strategy or course of trial. *Id.*

20 20. Since BANA had access to the putative evidence on the issue of tender delivery, BANA should
21 have presented that evidence in discovery, in its pre-trial disclosures, and then at trial for consideration
22 by the finder of fact.

23 **SANCTIONS UNDER NEVADA RULE OF CIVIL PROCEDURE 37 SHOULD APPLY IN THIS**
24 **INSTANCE**

25 21. As noted above, the unredacted information does not constitute “newly discovered evidence.”
26 (*See* Findings of Fact, *supra*.)

27 ⁴ As explained in the Conclusions of Law below, counsel would have had to convince this Court that it should not be subject
28 to the sanctions of NRCP 37. The facts do not show that this Court should excuse BANA from the preclusion of evidence
that it failed to produce in disclosure or discovery.

22. “Evidence is not newly discovered if it was in the party’s possession at the time of summary judgment [or trial] or could have been discovered with reasonable diligence. *Watlis v. J.R. Simplot Co.*, 26 F.3d 885, 892 n.6 (9th Cir. 1994).

23. Therefore, pursuant to NRCP 37, this Court must bar the use of the un-redacted Legal Wings delivery sheet. Specifically, NRCP 37 (c)(1) precludes the use of evidence not disclosed or provided in discovery.⁵

24. Sanctions for discovery violations under NRCP 37 contemplate preclusion of evidence – even evidence that might be case determinative. “Rule 37(c)(1) gives teeth to these requirements by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed . . . even when a litigant’s entire cause of action or defense has been precluded . . .” *Yeti by Molly, Ltd. V. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001) (applying the federal counterpart of NRCP 37) (internal quotations omitted).

25. A party is required to disclose, without awaiting a discovery request, information that the party may use to support its defenses, including a copy of all documents it may use to support its claims or defenses. NRCP 26(a)(1)(A).

26. In addition to the obligation for initial disclosure, Rule 26(e) “imposes a broad requirement on parties to update their earlier disclosures and discovery responses.” *See, e.g., Klonoski v. Mahlab*, 156 F.3d 255, 268 (1st Cir. 1998).

27. Excluding evidence as a sanction is “automatic and mandatory” unless BANA can show the violation was either justified or harmless. *See* NRCP 37(c)(1); *Hoffman v. Construction Protective Services, Inc.*, 541 F.3d 1175, 1179 (9th Cir. 2008) (applying the federal counterpart of NRCP 37).

28. The exception to “ameliorate the harshness of Rule 37(c)(1),” and allow the introduction of non-disclosed evidence, may arise if a party’s “failure to disclose the required information is substantially justified . . .” or harmless. *Self-Insurance Institute of America, Inc. v. Software and Information Industry Ass’n*, 208 F.Supp.2d 1058, 1066 (C.D.Cal.2000).

⁵ “A party’s production of documents that is not in compliance with Rule 34(b)(2)(E)(i) may also be treated as a failure to produce documents.” NRCP 37(a)(4).

1 29. The burden of showing substantial justification or harmlessness rests squarely on the offending
2 party. *Goodman v. Staples the Office Superstore, LLC*, 644 F.3d 817, 827 (9th Cir. 2011); *see also See*
3 *Yeti by Molly*, 259 F.3d at 1107.

4 30. BANA has not satisfied this Court that BANA and its counsel were justified in not discovering
5 the information in the redacted portion of the document in question. BANA's counsel had full access
6 to the unredacted version of the Legal Wings delivery sheet for several years.

7 31. This Court concludes that allowing BANA to use the now un-redacted document would be an
8 unfair surprise. *Cambridge Electronics Corp. v. MGA Electronics, Inc.*, 227 F.R.D. 313, 325 (C.D.Cal.
9 2004); *see also Orjias v. Stevenson*, 31 F.3d 995, 1005 (10th Cir. 1994) (inaccurate interrogatory
10 response warranted exclusion of testimony).

11 32. A showing of prejudice or unfair surprise due to an opponent's failure to disclose information
12 pursuant to NRCP 26(e)(1) justifies barring its use. *See Pfingston v. Ronan Engineering Co.*, 284 F.3d
13 999, 1005 (9th Cir. 2002).

14 33. "Disruption to the schedule of the court and other parties . . . is not harmless." *Wong v. Regents*
15 *of Univ. of California*, 410 F.3d 1052, 1062 (9th Cir. 2005).

16 34. The sanctions in Rule 37 were intended to provide a "strong inducement for disclosure of
17 material that the disclosing party would expect to use as evidence . . ." Fed.R.Civ.P. 37(c), Advisory
18 Committee Notes to 1993 Amendments.

19 35. BANA failed to provide the relevant information as required by the disclosure and discovery
20 rules, therefore it is not allowed to use that information or witness to supply evidence on a motion, at a
21 hearing, or at a trial [or post-trial]. The failure was not substantially justified nor was it harmless.

22 **THE DOCTRINE OF FUTILITY DOES NOT APPLY IN THIS CASE**

23 36. This Court has considered the holding in *7510 Perla Del Mar Ave. Trust v. Bank of America,*
24 *N.A.*, 458 P.3d 348 (Nev. 2020); and concludes the evidence presented by BANA at trial is insufficient
25 to support its theory of "futility."

26 37. Contrary to BANA's claim, this case was not "virtually identical" to *Perla Trust* – in terms of
27 facts or evidence. The evidence presented and arguments made in *Perla Trust* and in the trial of this
28 case were different.

1 38. Timing as to when the foreclosure notices were sent, and knowledge of Miles Bauer and the
2 Bank were critical components in the *Perla Trust* case. 458 P.3d at 351.

3 39. Here, this Court cannot apply the futility doctrine due to the lack of substantial evidence that
4 would support a finding that NAS would have summarily rejected a tender attempt as to the Hearts Club
5 property.

6 40. “[S]ubstantial . . . clearly implies that such evidence must be of ponderable legal significance . .
7 . It must be reasonable . . . credible, and of solid value . . .” *Villafuerte v. Inter-Con Security Systems,*
8 *Inc.*, 117 Cal.Rptr.2d 916, 96 Cal.App.4th Supp. 45, 50 (2002) (quoting *Kuhn v. Department of General*
9 *Services*, 29 Cal.Rptr.2d 191 (1994); and *Howard v. Owens Corning*, 85 Cal.Rptr.2d 386 (1999)
10 (internal quotation marks omitted)).

11 41. No evidence of the kind presented in *Perla Trust* exists in this case.

12 42. This Court finds the footnote referencing the futility doctrine in *Poshbaby LLC v. Elsinore III,*
13 *LLC*, 73700 (July 1, 2020) (unpublished disposition), persuasive. Specifically, as in *Poshbaby*, BANA
14 presented no evidence that it “chose not to make a superpriority tender because it was aware that the
15 HOA’s agent might have rejected that payment.”

16 CONCLUSION

17 1. BANA failed to present sufficient evidence concerning the delivery and receipt of the letter and
18 check from Miles Bauer to NAS or Sandstone.

19 2. BANA’s Motion to Amend does not change the fact that “[t]oo many questions arose whether
20 Miles Bauer followed the standard procedures that it claimed were in place” and that “a lack of material
21 pieces of evidence – that should have been available to the Bank – were missing.” (*See* FFCL, at 16
22 (emphasis added).)

23 3. The Miles Bauer business records and testimony did not definitely establish a consistent course
24 of business – much less delivery of a tender.

25 4. BANA had possession of the unredacted documents since at least February of 2015, when Mr.
26 Kendis signed his affidavit.

27 5. The testimony of Mr. Miles and Ms. Moses failed to show knowledge and reliance to prove that
28 in December of 2011 a valid tender would have been futile.

6. BANA also did not present sufficient evidence at trial to support a futility argument – thus, this Court lacked the basis to find a valid tender would have been futile.

7. Because BANA failed to establish delivery of a tender offer, and it did not cogently present sufficient evidence at trial that a tender attempt would have been futile, the HOA lien foreclosure sale extinguished all junior liens, including the first deed of trust.

8. This Court will not alter or amend its findings of fact and conclusions of law.

ORDER

Bank of America, N.A.’s Motion to Alter or Amend Findings of Fact and Conclusions of Law is **DENIED**

Dated this 18th day of January, 2021



AA8 744 14A6 16E3
David M Jones
District Court Judge

Respectfully Submitted by:

AKERMAN LLP

/s/ Nicholas E. Belay

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*Attorneys for Defendant Bank of America, N.A.,
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fka Countrywide Home Loans Servicing, LP*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Valencia Management LLC
7 Series 9, Plaintiff(s)

CASE NO: A-15-723600-C

8 vs.

DEPT. NO. Department 29

9 Robert Stillwagon, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
case as listed below:

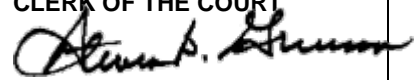
15 Service Date: 1/18/2021

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VALENCIA MANAGEMENT LLC, SERIES 9, a
Nevada Limited Liability Company,

Plaintiff,

vs.

ROBERT STILLWAGON, an individual; LENY
STILLWAGON, an individual; BAC HOME
LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING
LP; BANK OF AMERICA NA; DOES 1 through
X; and ROE CORPORATIONS 1 through 10,

Defendants.

Case No.: A-15-723600-C

Dept. No.: XXIX

**NOTICE OF ENTRY OF ORDER
DENYING BANK OF AMERICA, N.A.'S
MOTION TO ALTER OR AMEND
FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that an **ORDER DENYING BANK OF AMERICA, N.A.'S
MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** has
been entered by this Court on the 18th day of January, 2021, in the above-captioned matter. A copy of
said Order is attached hereto as **Exhibit A**.

Dated this 19th day of January, 20201.

AKERMAN LLP

/s/ Nicholas E. Belay

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Loans Servicing, LP fka Countrywide Home Loans
Servicing, LP*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 19th day of January, 2021, and pursuant to NRCP 5.1, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING BANK OF AMERICA, N.A.'S MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW**, in the following manner:

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

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I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

ODM

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S/B/M to BAC Home Loans Servicing, LP

fka Countrywide Home Loans Servicing, LP

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VALENCIA MANAGEMENT LLC, SERIES 9, a
Nevada Limited Liability Company,

Plaintiff,

vs.

ROBERT STILLWAGON, an individual; LENY
STILLWAGON, an individual; BAC HOME
LOANS SERVICING, LP FKA
COUNTRYWIDE HOME LOANS SERVICING
LP; BANK OF AMERICA NA; DOES 1 through
X; and ROE CORPORATIONS 1 through 10,

Defendants.

Case No.: A-15-723600-C

Dept. No: XXXII

**ORDER DENYING BANK OF
AMERICA, N.A.'S MOTION TO ALTER
OR AMEND FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

This matter came before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada, on December 15, 2020, to hear argument regarding Bank of America, N.A.'s Motion to Alter or Amend Findings of Fact and Conclusions of Law ("Motion to Amend"), with JUDGE ROB BARE presiding.

TARA CLARK NEWBERRY, ESQ., of the CLARK NEWBERRY LAW FIRM appeared on behalf of VALENCIA MANAGEMENT, LLC, SERIES 9; NICHOLAS BELAY, ESQ., of the AKERMAN LLP law firm, appeared on behalf of BANK OF AMERICA, N.A.

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FINDINGS OF FACT

PROCEDURAL HISTORY

1. Based on the briefs, evidence, and arguments presented to this Court on summary judgment, in April, May, and June of 2017, it determined that genuine issues of material fact made trial necessary.

2. BANA moved for reconsideration of this Court’s summary judgment decision, on June 27, 2019, based on *Bank of America, N.A., v. SFR Investments Pool 1, LLC*, 134 Nev.Adv. Op. 72, 427 P.3d 113 (2018) (“*Diamond Spur*”). That motion was denied on August 3, 2019.

3. This Court held a 2-day bench trial on December 4, 2019 and December 5, 2019.

4. On February 27, 2020, the Nevada Supreme Court issued *7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 458 P.3d 348 (Nev. 2020) (“*Perla Trust*”).

5. After preparation and review of the trial transcript, the parties exchanged drafts of the Findings of Fact, Conclusions of Law and Judgment (“FFCL”) – which was ultimately presented to this Court for signing.

6. The FFCL, and Notice of Entry of the FFCL, took place on October 13, 2020.

7. BANA filed a Motion to Alter or Amend Findings of Fact and Conclusions of Law on November 10, 2020.

OVERVIEW OF THE EVIDENCE PRESENTED AT TRIAL

8. Prior to the hearing on the Motion to Amend, this Court took the opportunity to review the trial transcript carefully.

9. As the finder of fact, this Court believed that Miles Bauer prepared the tender letter and check. (See Trial Transcript, Day 2, at 107.)

10. But, the evidence presented at trial did not support a finding that the tender letter and check were delivered to the HOA, the HOA management company, or the HOA Trustee. Arguments made by BANA, and further review of the trial transcript and evidence in this case, did not change the conclusion this Court reached immediately after trial.

11. This Court found “that in this situation the bank in its affirmative defense efforts has a letter and after that they have a mystery. And that’s why the plaintiffs win” (See Trial Transcript, Day 2, at 109-110.)

THE UN-REDACTED DOCUMENTS PRESENTED IN BANK OF AMERICA’S MOTION TO AMEND ARE NOT “NEWLY DISCOVERED EVIDENCE”

12. In its Motion to Amend, BANA claimed it “discovered” additional evidence of delivery of tender.

13. Redaction of the contents of the document admitted as an exhibit at trial concealed what BANA now contends is “newly discovered” evidence.

14. Miles Bauer provided the un-redacted document to BANA’s counsel many years ago; and this fact was established through evidence presented, and the admission of the Akerman law firm.

15. The content of the exhibit does not constitute “newly discovered evidence material for the party making the motion that the party could not, with reasonable diligence, have discovered and produced at the trial.” NRCP 59(a)(1)(D); *see also* NRCP 59(a)(2).

16. BANA could have produced the purportedly determinative evidence during discovery and at trial.

17. BANA claims that it discovered the “inadvertent” redaction after trial. (*See* Motion to Amend, at 8.)

18. When the attorneys at Akerman prepared the documents for the affidavit signed by Mr. Kendis and Mr. Miles, they had access to the un-redacted version of the delivery/acknowledgement sheet. (*See* Trial Transcript, Day 1, at 111; 208-209.)

19. The attorneys for BANA selected and prepared the documents for the Adam Kendis affidavit and the Douglas Miles affidavit – which they used in disclosure, discovery and dispositive motion work – and which this Court considered at trial. (*See* Trial Transcript, Day 1, at 111; 208-209.)

20. The Akerman attorneys also prepared their exhibits for use at trial.

21. During discovery, BANA could have corrected the “inadvertent” error – instead, counsel only disclosed the Strawberry Fields tender.

22. At some point in this litigation, BANA’s counsel reviewed the Legal Wings delivery sheet and should have recognized or “discovered” the purported \$495 entry on that document.

23. But it appears that BANA did not review the underlying, non-redacted evidence until after trial; the altered redaction is not “new” evidence.

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EVIDENCE AT TRIAL DID NOT ESTABLISH AN “ORDINARY COURSE OF BUSINESS” OR THAT STANDARD PROCEDURES HAD BEEN FOLLOWED

24. In its Motion to Amend, BANA relies on the rebuttable presumption of NRS 47.250 as to Miles Bauer’s ordinary course of business.

25. BANA’s representative, Shawn Look, testified about the way BANA’s tender attempts were supposed to take place. (*See* Trial Transcript, Day 1, at 88-89.)

26. Yet, Mr. Miles and the BANA witness failed to show that funds were delivered to NAS or the HOA, or returned to BANA after the putative rejection.

27. This Court maintains that too many questions arose whether Miles Bauer followed the standard procedures it claimed were in place, and that “a lack of material pieces of evidence – that should have been available to the Bank” – were missing. (*See* FFCL, at 16).

BANK OF AMERICA DID NOT PRESENT EVIDENCE TO SUPPORT EXCUSING A VALID TENDER ATTEMPT UNDER THE FUTILITY DOCTRINE

28. A review of the documents and testimony presented at trial in this case do not show that BANA presented sufficient evidence to support its argument related to the doctrine of futility as set forth in *7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 136 Nev.Adv.Op. 6, 458 P.3d 348 (2020) (“*Perla Trust*”).

29. The testimony of Susan Moses proved inconclusive as to whether – *at the time* of the Sandstone notice and purported tender - NAS¹ had the blanket policy to reject tender offers.

30. Susan Moses could not identify when NAS started “rejecting” Miles Bauer’s offers with conditions. (*See* Trial Transcript, Day 1, at 26-27 (emphasis added).)

31. In this case, BANA did not elicit evidence of the NAS practices or policies in place in December of 2011.

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¹ NAS had “evolving” practices and policies. *Perla Trust*, 458 P.3d at 349.

32. Thus, from the evidence presented it was not apparent when NAS adopted a policy or procedure to reject tender offers – or whether such a policy existed in December of 2011.²

33. The evidence BANA presented at trial, and the references in its Motion to Amend, was not the same or as extensive as the evidence presented by the bank in *Perla Trust*.

34. As in *Poshbaby LLC v. Elsinore III, LLC*, 73700 (July 1, 2020) (unpublished deposition), BANA presented no evidence that it “chose not to make a superpriority tender because it was aware that the HOA’s agent might have rejected that payment.”

THE TESTIMONY OF DOUG MILES WAS NOT CREDIBLE

35. Additionally, this Court found the testimony of Mr. Miles to be unreliable. (*See* Trial Transcript, Day 2, at 103-104.)

36. The fact that he was paid to be a fact witness “weighed against his credibility . . . [and] the full force and effect of his testimony” – it suggested bias and was not credible. *Id.*

37. Similarly, Mr. Miles was impeached in other portions of his testimony.

38. Therefore, nothing in the Motion to Amend changes this Court’s decision about Mr. Miles credibility and testimony.

CONCLUSIONS OF LAW

STANDARDS FOR ALTERING OR AMENDING A JUDGMENT

1. The purpose and function of Rule 59(e) is limited.

2. A “decision to grant or deny a motion [to alter or amend] rests within the sound discretion of the trial court . . .” *Southern Pac Transp. Co. v. Fitzgerald*, 94 Nev. 241, 244, 577 P.2d 1234, 1236 (1978).

3. Reconsideration of prior orders “is extraordinary in nature and . . . motions invoking [the] rule should be granted sparingly.” *Lal v. California*, 610 F.3d 518, 524 (9th Cir. 2010) (citing *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993)); *Gonzalez-Pina v. Rodriguez*, 407 F.3d 425 (1st Cir. 2005).

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3 or (iv) if a change in controlling law has occurred. *AA Primo Builders, LLC v. Washington*, 126 Nev.
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6 **TENDER AT TRIAL**

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8 preponderance of the evidence. *Resources Group, LLC v. Nev. Ass’n Servs., Inc.*, 135 Nev. 48, 52, 437
9 P.3d 154, 158 (2019) (“payment of a debt is an affirmative defense, which the party asserting has the
10 burden of proving”); *Schwartz v. Schwartz*, 95 Nev. 202, 206 n.2, 591 P.2d 1137, 1140 n.2 (1979).

11 6. This Court made the determination that BANA did not carry its burden to present a
12 preponderance of evidence on the issue of delivery of a tender, and that critical testimony was not
13 credible or was the result of bias – and it stands by that decision. (*See* FFCL, generally.)

14 7. There were no irregularities in the trial, no misconduct of Valencia #9, no accident or surprise,
15 and no error in law that was preserved by BANA at a trial. *See* NRCP Rule 59(a)(1-7).

16 8. This case was decided upon the evidence presented at trial – and it is bound by the evidence
17 presented at trial.

18 9. Based on the evidence presented to it, this Court did not err in reaching the conclusion that no
19 delivery of a tender for the super-priority portion of the Sandstone HOA lien took place.

20 10. This Court properly determined that the evidence presented by BANA did not establish that
21 Miles Bauer delivered its offer of tender.

22 11. This Court based its decision on the evidence presented, the evidence lacking, and the testimony
23 of Mr. Miles (versus that of Ms. Moses).³

24 12. Contrary to BANA’s arguments in its Motion to Amend, the evidence presented was not
25 conclusive, and it showed BANA did not have adequate proof of delivery.

26 _____
27
28 ³ BANA “got up to about 40 percent on the burden that they have to show tender, but they didn’t make a preponderance . .
.” (*See* Trial Transcript, Day 2, at 95-96.)

1 **THE EVIDENCE BANK OF AMERICA PRESENTS IN ITS MOTION WAS NOT “NEWLY**
2 **DISCOVERED”**

3 13. BANA claims the “inadvertent disclosure was a mistake that could not have been avoided in the
4 exercise of due diligence.” (*See* Motion to Amend, at 8.)

5 14. This Court does not agree – the “redaction error” could have been avoided, and is not “newly
6 discovered evidence” as contemplated by Rule 59. *Watlis*, 26 F.3d at 892 n.6.

7 15. BANA’s counsel could have attempted to rectify its failure to timely disclose the document in
8 question through disclosure, during discovery, or at trial.⁴

9 16. BANA’s claimed redaction “error” does not provide an adequate excuse allowing the belated
10 disclosure and use of the document in question.

11 17. In sum, BANA and counsel did not make a timely effort to clarify the issue – which is a
12 requirement of Rule 59: “evidence . . . the party could not, with reasonable diligence, have discovered
13 and produced at the trial.” (Emphasis added.)

14 **BANK OF AMERICA HAS NOT SHOWN THIS COURT’S DECISION PRESENTS A “MANIFEST**
15 **INJUSTICE”**

16 18. BANA also argues that this Court must find in favor of the survival of the first deed of trust to
17 “prevent manifest injustice.” (*See* Motion to Amend, at 9.)

18 19. It claims that the evidence it purportedly had, but failed to provide, would not have materially
19 changed the parties’ strategy or course of trial. *Id.*

20 20. Since BANA had access to the putative evidence on the issue of tender delivery, BANA should
21 have presented that evidence in discovery, in its pre-trial disclosures, and then at trial for consideration
22 by the finder of fact.

23 **SANCTIONS UNDER NEVADA RULE OF CIVIL PROCEDURE 37 SHOULD APPLY IN THIS**
24 **INSTANCE**

25 21. As noted above, the unredacted information does not constitute “newly discovered evidence.”
26 (*See* Findings of Fact, *supra*.)

27 ⁴ As explained in the Conclusions of Law below, counsel would have had to convince this Court that it should not be subject
28 to the sanctions of NRCP 37. The facts do not show that this Court should excuse BANA from the preclusion of evidence
that it failed to produce in disclosure or discovery.

22. “Evidence is not newly discovered if it was in the party’s possession at the time of summary judgment [or trial] or could have been discovered with reasonable diligence. *Watlis v. J.R. Simplot Co.*, 26 F.3d 885, 892 n.6 (9th Cir. 1994).

23. Therefore, pursuant to NRCP 37, this Court must bar the use of the un-redacted Legal Wings delivery sheet. Specifically, NRCP 37 (c)(1) precludes the use of evidence not disclosed or provided in discovery.⁵

24. Sanctions for discovery violations under NRCP 37 contemplate preclusion of evidence – even evidence that might be case determinative. “Rule 37(c)(1) gives teeth to these requirements by forbidding the use at trial of any information required to be disclosed by Rule 26(a) that is not properly disclosed . . . even when a litigant’s entire cause of action or defense has been precluded . . .” *Yeti by Molly, Ltd. V. Deckers Outdoor Corp.*, 259 F.3d 1101, 1106 (9th Cir. 2001) (applying the federal counterpart of NRCP 37) (internal quotations omitted).

25. A party is required to disclose, without awaiting a discovery request, information that the party may use to support its defenses, including a copy of all documents it may use to support its claims or defenses. NRCP 26(a)(1)(A).

26. In addition to the obligation for initial disclosure, Rule 26(e) “imposes a broad requirement on parties to update their earlier disclosures and discovery responses.” *See, e.g., Klonoski v. Mahlab*, 156 F.3d 255, 268 (1st Cir. 1998).

27. Excluding evidence as a sanction is “automatic and mandatory” unless BANA can show the violation was either justified or harmless. *See* NRCP 37(c)(1); *Hoffman v. Construction Protective Services, Inc.*, 541 F.3d 1175, 1179 (9th Cir. 2008) (applying the federal counterpart of NRCP 37).

28. The exception to “ameliorate the harshness of Rule 37(c)(1),” and allow the introduction of non-disclosed evidence, may arise if a party’s “failure to disclose the required information is substantially justified . . .” or harmless. *Self-Insurance Institute of America, Inc. v. Software and Information Industry Ass’n*, 208 F.Supp.2d 1058, 1066 (C.D.Cal.2000).

⁵ “A party’s production of documents that is not in compliance with Rule 34(b)(2)(E)(i) may also be treated as a failure to produce documents.” NRCP 37(a)(4).

1 29. The burden of showing substantial justification or harmlessness rests squarely on the offending
2 party. *Goodman v. Staples the Office Superstore, LLC*, 644 F.3d 817, 827 (9th Cir. 2011); *see also See*
3 *Yeti by Molly*, 259 F.3d at 1107.

4 30. BANA has not satisfied this Court that BANA and its counsel were justified in not discovering
5 the information in the redacted portion of the document in question. BANA's counsel had full access
6 to the unredacted version of the Legal Wings delivery sheet for several years.

7 31. This Court concludes that allowing BANA to use the now un-redacted document would be an
8 unfair surprise. *Cambridge Electronics Corp. v. MGA Electronics, Inc.*, 227 F.R.D. 313, 325 (C.D.Cal.
9 2004); *see also Orjias v. Stevenson*, 31 F.3d 995, 1005 (10th Cir. 1994) (inaccurate interrogatory
10 response warranted exclusion of testimony).

11 32. A showing of prejudice or unfair surprise due to an opponent's failure to disclose information
12 pursuant to NRCP 26(e)(1) justifies barring its use. *See Pfingston v. Ronan Engineering Co.*, 284 F.3d
13 999, 1005 (9th Cir. 2002).

14 33. "Disruption to the schedule of the court and other parties . . . is not harmless." *Wong v. Regents*
15 *of Univ. of California*, 410 F.3d 1052, 1062 (9th Cir. 2005).

16 34. The sanctions in Rule 37 were intended to provide a "strong inducement for disclosure of
17 material that the disclosing party would expect to use as evidence . . ." Fed.R.Civ.P. 37(c), Advisory
18 Committee Notes to 1993 Amendments.

19 35. BANA failed to provide the relevant information as required by the disclosure and discovery
20 rules, therefore it is not allowed to use that information or witness to supply evidence on a motion, at a
21 hearing, or at a trial [or post-trial]. The failure was not substantially justified nor was it harmless.

22 **THE DOCTRINE OF FUTILITY DOES NOT APPLY IN THIS CASE**

23 36. This Court has considered the holding in *7510 Perla Del Mar Ave. Trust v. Bank of America,*
24 *N.A.*, 458 P.3d 348 (Nev. 2020); and concludes the evidence presented by BANA at trial is insufficient
25 to support its theory of "futility."

26 37. Contrary to BANA's claim, this case was not "virtually identical" to *Perla Trust* – in terms of
27 facts or evidence. The evidence presented and arguments made in *Perla Trust* and in the trial of this
28 case were different.

1 38. Timing as to when the foreclosure notices were sent, and knowledge of Miles Bauer and the
2 Bank were critical components in the *Perla Trust* case. 458 P.3d at 351.

3 39. Here, this Court cannot apply the futility doctrine due to the lack of substantial evidence that
4 would support a finding that NAS would have summarily rejected a tender attempt as to the Hearts Club
5 property.

6 40. “[S]ubstantial . . . clearly implies that such evidence must be of ponderable legal significance . .
7 . It must be reasonable . . . credible, and of solid value . . .” *Villafuerte v. Inter-Con Security Systems,*
8 *Inc.*, 117 Cal.Rptr.2d 916, 96 Cal.App.4th Supp. 45, 50 (2002) (quoting *Kuhn v. Department of General*
9 *Services*, 29 Cal.Rptr.2d 191 (1994); and *Howard v. Owens Corning*, 85 Cal.Rptr.2d 386 (1999)
10 (internal quotation marks omitted)).

11 41. No evidence of the kind presented in *Perla Trust* exists in this case.

12 42. This Court finds the footnote referencing the futility doctrine in *Poshbaby LLC v. Elsinore III,*
13 *LLC*, 73700 (July 1, 2020) (unpublished disposition), persuasive. Specifically, as in *Poshbaby*, BANA
14 presented no evidence that it “chose not to make a superpriority tender because it was aware that the
15 HOA’s agent might have rejected that payment.”

16 CONCLUSION

17 1. BANA failed to present sufficient evidence concerning the delivery and receipt of the letter and
18 check from Miles Bauer to NAS or Sandstone.

19 2. BANA’s Motion to Amend does not change the fact that “[t]oo many questions arose whether
20 Miles Bauer followed the standard procedures that it claimed were in place” and that “a lack of material
21 pieces of evidence – that should have been available to the Bank – were missing.” (*See* FFCL, at 16
22 (emphasis added).)

23 3. The Miles Bauer business records and testimony did not definitely establish a consistent course
24 of business – much less delivery of a tender.

25 4. BANA had possession of the unredacted documents since at least February of 2015, when Mr.
26 Kendis signed his affidavit.

27 5. The testimony of Mr. Miles and Ms. Moses failed to show knowledge and reliance to prove that
28 in December of 2011 a valid tender would have been futile.

6. BANA also did not present sufficient evidence at trial to support a futility argument – thus, this Court lacked the basis to find a valid tender would have been futile.

7. Because BANA failed to establish delivery of a tender offer, and it did not cogently present sufficient evidence at trial that a tender attempt would have been futile, the HOA lien foreclosure sale extinguished all junior liens, including the first deed of trust.

8. This Court will not alter or amend its findings of fact and conclusions of law.

ORDER

Bank of America, N.A.’s Motion to Alter or Amend Findings of Fact and Conclusions of Law is **DENIED**

Dated this 18th day of January, 2021



AA8 744 14A6 16E3
David M Jones
District Court Judge

Respectfully Submitted by:

AKERMAN LLP

/s/ Nicholas E. Belay

ARIEL E. STERN, ESQ.
Nevada Bar No. 8276
NICHOLAS E. BELAY, ESQ.
Nevada Bar No. 15175
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*Attorneys for Defendant Bank of America, N.A.,
S/B/M to BAC Home Loans Servicing, LP
fka Countrywide Home Loans Servicing, LP*

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Valencia Management LLC
7 Series 9, Plaintiff(s)

CASE NO: A-15-723600-C

8 vs.

DEPT. NO. Department 29

9 Robert Stillwagon, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the
14 court's electronic eFile system to all recipients registered for e-Service on the above entitled
15 case as listed below:

Service Date: 1/18/2021

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 15, 2016

A-15-723600-C	Valencia Management LLC Series 9, Plaintiff(s) vs. Robert Stillwagon, Defendant(s)
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August 15, 2016

3:00 AM

Minute Order

HEARD BY: Bare, Rob

COURTROOM: No Location

COURT CLERK: Andrea Natali

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Having examined the Motion to Amend Answer, noting no Opposition filed, and good cause appearing, the Motion to Amend Answer is GRANTED. Pursuant to EDCR 2.23, the hearing on this matter set for August 16, 2016, is advanced and VACATED. Moving party to prepare and submit proposed order to chambers within 10 days.

CLERK'S NOTE: Counsel is to ensure a copy of the forgoing minute order is distributed to all interested parties; additionally, a copy of the foregoing minute order was distributed to the following parties via Wiznet E-Service: Akerman Las Vegas Office akermanlas@akerman.com, Christine M. Parvan, Esq. christine.parvan@akerman.com, Darren T. Brenner, Esq. darren.brenner@akerman.com, Elizabeth Streible elizabeth.streible@akerman.com, Kathleen Seckinger kseckinger@cnlawlv.com, Nura S. Khoury nkhoury@cnlawlv.com, Paul R. Connaghan, Esq. pconnaghan@cnlawlv.com, Richard Hopkins hopkinslegalcounsel@gmail.com, Tara D. Newberry, Esq. tnewberry@cnlawlv.com (8/15/16 amn).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property**COURT MINUTES****November 30, 2016**

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
 vs.
 Robert Stillwagon, Defendant(s)

November 30, 2016	9:25 AM	Motion for Protective Order	Bank Of America, N.A.'s Motion On Protective Order And For Order on OST
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HEARD BY: Bulla, Bonnie**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Jennifer Lott**RECORDER:** Debbie Winn**REPORTER:****PARTIES**

PRESENT:	Connaghan, Paul R.	Attorney
	Morgan, Melanie D.	Attorney

JOURNAL ENTRIES

- Minutes taken In Part from Green Tree Servicing LLC vs Eldorado Neighborhood (A711270 on 11-30-16).

Commissioner read the updated cases. COMMISSIONER RECOMMENDED, motion is GRANTED IN PART; Topic 1 - limited to policies and procedures in effect at time of this sale, and ask specific questions re: this sale; from Notice of Delinquent Assessment Lien recorded through HOA sale in this lawsuit. Arguments by counsel. COMMISSIONER RECOMMENDED, ruling is RESCINDED; limited to policies and procedures in effect from Notice date of Default through HOA sale; Topic 2 - already addressed; Topic 3 - same limitations; Topic 4 - 30(b)(6) Deponent will confirm, and policies and procedures in place type of questions are ALLOWED, same time constraints; Topic 5 PROTECTED; include a Topic discussing tinder of HOA dues; Topic 6 - limited to the Bank, and Bank's knowledge of what the Servicer did or didn't do, and policies and procedures in place for real property during the timeframe and whether it was done in this case.

Arguments by counsel on Topic 12. COMMISSIONER RECOMMENDED, confirm FHA loan and whether there was any mortgage insurance to pay for anything. COMMISSIONER RECOMMENDED, Topic 12 is MODIFIED, and the 30(b)(6) Deponent will confirm it was a FHA loan for this property at issue, what the Bank did or did not do from Notice date of Default through HOA sale; everything else is PROTECTED; 2.34 relief is provided. COMMISSIONER RECOMMENDED, Topic 14 ask about Title insurance as discussed in Open Court; Topic 14 is MODIFIED including but not limited to tinder issues from Notice date of Default through HOA sale.

Ms. Morgan to prepare the Report and Recommendations, and Mr. Connaghan to approve as to form and content. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Ms. Morgan to appear at status check hearing to report on the Report and Recommendations.

1/6/17 11:00 a.m. Status Check: Compliance

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

January 06, 2017

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

January 06, 2017 11:00 AM Status Check: Compliance

HEARD BY: Bulla, Bonnie

COURTROOM: RJC Level 5 Hearing Room

COURT CLERK: Katrina Hernandez

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT: Connaghan, Paul R. Attorney

JOURNAL ENTRIES

- Mr. Connaghan requested more time and Commissioner requested the report and recommendation be submitted within TEN days. Matter set for further status.

2/10/17 11:00 AM STATUS CHECK: COMPLIANCE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

February 10, 2017

A-15-723600-C	Valencia Management LLC Series 9, Plaintiff(s) vs. Robert Stillwagon, Defendant(s)
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February 10, 2017 11:00 AM Status Check: Compliance

HEARD BY: Bulla, Bonnie

COURTROOM: RJC Level 5 Hearing Room

COURT CLERK: Jennifer Lott

RECORDER: Francesca Haak

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Report and Recommendation from the 11-30-16 hearing was submitted, but hasn't been reviewed yet. COMMISSIONER RECOMMENDED, matter CONTINUED; Mr. Connaghan / Ms. Morgan to prepare the Report and Recommendations from the 11-30-16 hearing. A proper report must be timely submitted within 10 days of the hearing. Otherwise, counsel will pay a contribution. Mr. Connaghan / Ms. Morgan to appear at status check hearing to report on the Report and Recommendations from the 11-30-16 hearing.

3/17/17 11:00 a.m. Status Check: Compliance

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of:

Melanie Morgan - Akerman LLP

Paul Connaghan - Connaghan Newberry Law Firm

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

May 10, 2017

A-15-723600-C	Valencia Management LLC Series 9, Plaintiff(s) vs. Robert Stillwagon, Defendant(s)
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May 10, 2017

1:09 PM

Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Amy Calderwood

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The two (2) Motions for Default Judgment currently scheduled for May 25, 2017, are VACATED. Parties need not appear. Plaintiff to file proper documentation for Application for Default Judgment and provide chambers with a proposed Default Judgment order for the Judge s review. Upon review of the documentation, the Judge will then determine whether a prove up hearing is necessary.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Paul Connaghan, Esq. (Connaghan Newberry Law Firm) and Darren T. Brenner, Esq. (Akerman Senterfitt). // /ac

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property**COURT MINUTES****June 06, 2017**

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
 vs.
 Robert Stillwagon, Defendant(s)

June 06, 2017**11:30 AM****Minute Order****Motions for
Summary Judgment****HEARD BY:** Bare, Rob**COURTROOM:** Chambers**COURT CLERK:** Louisa Garcia**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- This matter came before this Court for Plaintiff Valencia Management LLC Series 9's Motion for Summary Judgment and Defendant Bank of America N.A.'s Motion for Summary Judgment. The Court has reviewed the submitted motions, oppositions, and replies. After carefully considering the arguments and evidence, Court issued its Decision this 6th day of June, 2017. COURT ORDERED, both Motions for Summary Judgment are DENIED WITHOUT PREJUDICE. Also, Defendant Bank of America N.A.'s Request for Judicial Notice is GRANTED. As such, the hearings set for June 13, 2017 and June 15, 2017 are ADVANCED and VACATED. NRCP 56(c) governs a motion for summary judgment, which is appropriate when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1030 (2005). A factual dispute is genuine, and therefore summary judgment is inappropriate, when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. Id.

In this case, there remains a genuine issue of material facts as to the commercial reasonableness of the sale, specifically as to whether the price was grossly inadequate, and whether there was the existence of fraud, oppression or malice. The Nevada Supreme Court has held that demonstrating that an

association sold a property at its foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a showing of fraud, unfairness, or oppression. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1112 (2016). Here, Plaintiff argues that the sale was commercially reasonable and that there is no evidence of fraud, oppression, or unfairness. Defendant asserts that the sale was commercially unreasonable because the purchase price of \$13,000 only presents 7% of the fair market value, which indicates a grossly inadequate purchase price. Further, Defendant asserts that there is evidence of oppression because they assert that the notices were inadequate and that the HOA acted in violation of their own governing documents. This factual issue precludes summary judgment at this time.

Additionally, there remains a genuine issue of material fact as to whether Plaintiff is a bona-fide purchaser. [S]ubsequent purchaser is bona fide if it takes the property for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry. *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 132 Nev. Adv. Op. 5, 366 P.3d 1105, 1115 (2016) (citing *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)). This factual issue also precludes summary judgment at this time.

Furthermore, there remains a genuine issue of material fact as to whether there was an attempt to tender the superpriority amount pursuant to *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 414 (2014). In this case, Defendant attempted to tender a check in the amount of \$495.00 to the HOA Trustee on in December 2011, which was rejected by the HOA Trustee. Defendant contends that this attempted tender discharged the super-priority lien. Plaintiff asserts that this tender was improper because they believed it was a conditional tender. This issue precludes summary judgment.

The parties may submit separate orders for each side's Motions, or they may submit one order reflecting this decision. The Order is to be consistent with this Minute Order, the submitted briefing, and oral argument. Counsel may add language to or further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. A Status Check: Order is set for July 26, 2017 in chambers for the order. Parties need not appear.

***CLERK'S NOTE: The above minute order has been distributed to: Paul Connaghan, Esq., pconnaghan@cnlawlv.com and Darren T. Brenner, Esq., darren.brenner@akerman.com. /lg 6-6-17

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

November 28, 2017

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

November 28, 2017 8:00 AM Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Denise Duron

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- At the request of Court, for judicial economy, the Motion for Summary Judgment currently scheduled for November 30, 2017, is RESCHEDULED to December 12, 2017 at 9:30 a.m.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Denise Duron, to all registered parties for Odyssey File & Serve. (dd-11/28/17)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

December 07, 2017

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

December 07, 2017 8:00 AM Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Denise Duron

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- At the request of Court, for judicial economy, the Motion for Summary Judgment currently scheduled for December 12, 2017, is RESCHEDULED to December 27, 2017 IN CHAMBERS. Parties need not appear. The Court will issue a decision from chambers.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Denise Duron, to all registered parties for Odyssey File & Serve. (dd-12/7/17)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

December 27, 2017

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

**December 27, 2017 3:00 AM Motion for Summary
Judgment**

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Denise Duron

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- As the Court's Decision on the Motion for Summary Judgment has not yet been issued, COURT ORDERED matter Motion for Summary Judgment currently set for December 27, 2017, shall be CONTINUED to January 10, 2018, in Chambers. Parties need not appear at the next Court date.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Denise Duron, to all registered parties for Odyssey File & Serve. (dd-1/2/18)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property**COURT MINUTES****January 10, 2018**

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
 vs.
 Robert Stillwagon, Defendant(s)

**January 10, 2018 3:00 AM Motion for Summary
 Judgment**

HEARD BY: Bare, Rob**COURTROOM:** No Location**COURT CLERK:** Denise Duron**RECORDER:****REPORTER:**

**PARTIES
 PRESENT:**

JOURNAL ENTRIES

- This matter came before this Court for Cross-Defendant Sandstone Recreation Association's Motion for Summary Judgment. After carefully considering the submitted motion and evidence, Court issued its Decision this 16th day of January, 2018. COURT ORDERED the Motion for Summary Judgment is DENIED.

NRCP 56(c) provides, in pertinent part, The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A factual dispute is genuine, and therefore summary judgment is inappropriate, when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). All pleadings and proof must be construed in a light most favorable to the non-moving party, however, the non-moving party must do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. Id. The nonmoving party must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him. Id.

The Motion for Summary Judgment is denied based, in part, upon this Court's June 6, 2017 decision on Plaintiff's Motion for Summary Judgment and Defendant Bank of America's Motion for Summary Judgment. There are additional issues raised in this current Motion for Summary Judgment which are separate and distinct from the issues within the prior Motions for Summary Judgment, which have not been ruled upon by this Court, including but not limited to, unjust enrichment and tortious interference. Pursuant to the arguments set forth in Bank of America's Opposition, the Motion is denied as to those issues, as well. This case contains numerous factual issues which preclude summary judgment, and the claims of all the various parties rely upon those factual issues, as laid out in the Opposition.

Counsel for Bank of America is directed to submit to the Court a proposed Order. That Order is to be consistent with this Minute Order, the submitted briefing, and oral argument. Counsel is directed to add language to or further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. A Status Check: Order is set for March 21, 2018 in chambers for the order. Parties need not appear.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Denise Duron, to all registered parties for Odyssey File & Serve. (dd-1/17/18)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

January 25, 2018

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

January 25, 2018 11:00 AM Pretrial/Calendar Call

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Denise Duron

RECORDER: Carrie Hansen

REPORTER:

PARTIES

PRESENT: Brenner, Darren T. Attorney
Clark Newberry, Tara D. Attorney
Williams, Amber M, ESQ Attorney

JOURNAL ENTRIES

- Counsel advised they will need four (4) days for trial and requested another stack. COURT ORDERED, trial date VACATED and RESET.

6/7/18 11:00 AM PRETRIAL / CALENDAR CALL

6/25/18 9:00 AM JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

June 07, 2018

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

June 07, 2018

11:00 AM

Pretrial/Calendar Call

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Phyllis Irby

RECORDER: Carrie Hansen

REPORTER:

PARTIES

PRESENT: Clark Newberry, Tara D. Attorney

JOURNAL ENTRIES

- Parties announced not ready for trial. COURT ORDERED, TRIAL VACATED & RESET. Court staff will issue an Order.

8-23-18 11:00 AM CALENDAR CALL (DEPT. XXXII)

9-04-18 1:30 PM JURY TRIAL (DEPT. XXXII)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 23, 2018

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

August 23, 2018 11:00 AM Pretrial/Calendar Call

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Elizabeth Vargas

RECORDER: Carrie Hansen

REPORTER:

PARTIES

PRESENT: Brenner, Darren T. Attorney
Clark Newberry, Tara D. Attorney

JOURNAL ENTRIES

- Ms. Clark Newberry requested the trial be moved to the next stack. Colloquy regarding availability.
COURT ORDERED, trial date VACATED and RESET.

10/25/18 11:00 AM CALENDAR CALL

11/13/18 1:30 PM NON-JURY TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

October 25, 2018

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

October 25, 2018 11:00 AM Pretrial/Calendar Call

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK:

Michaela Tapia

RECORDER: Carrie Hansen

REPORTER:

PARTIES

PRESENT: Clark Newberry, Tara D. Attorney
 Morgan, Melanie D. Attorney

JOURNAL ENTRIES

- Colloquy regarding trial schedules. COURT ORDERED, trial dates VACATED and RESET. Court to issue a new trial order.

1/24/19 11:00 AM PRETRIAL / CALENDAR CALL

2/11/19 9:00 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

January 24, 2019

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

January 24, 2019 11:00 AM Pretrial/Calendar Call

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Lauren Kidd

RECORDER: Carrie Hansen

REPORTER:

PARTIES

PRESENT: Brenner, Darren T. Attorney
Clark Newberry, Tara D. Attorney

JOURNAL ENTRIES

- Counsel anticipated 3 days to try. Ms. Newberry advised the 5 year rule ran in 2020 and requested the trial be reset for September. COURT ORDERED, Trial dates VACATED and RESET. Court to issue a new Scheduling Order.

8/22/19 11:00 AM PRETRIAL/CALENDAR CALL

9/9/19 9:00 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 01, 2019

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

August 01, 2019

3:00 AM

Minute Order

**Minute Order Re:
Motion to Reconsider
Reset to Chambers**

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Kathy Thomas

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Pursuant to EDCR 2.24(a), the Motion for Reconsideration currently scheduled for August 6, 2019, is CONTINUED to Chambers. Parties need not appear. The Court is to decide the matter in chambers and issue a decision; Set for August 14, 2019.

08/14/19 (CHAMBERS) DECISION: MOTION FOR RECONSIDERATION

CLERK'S NOTE: A copy of this minute order was e-served to parties. kt 08/01/19.

authority exists which is on point with the facts of this case. However, this Court finds that Defendant Bank of America has failed to establish that this Court's Decision was clearly erroneous, or that any subsequent change in law has mandated reconsideration of this Court's findings. Therefore, the Motion to Reconsider is DENIED. As such, the chambers hearing currently scheduled for August 14, 2019 is hereby vacated.

Counsel for Plaintiff is directed to submit a proposed Order consistent with this Minute Order, the submitted briefing, and oral argument. Counsel may add language to or further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Counsel is directed to have the proposed Order submitted to chambers within 10 days.

CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

August 15, 2019

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

August 15, 2019 11:00 AM Pretrial/Calendar Call

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Alice Jacobson

RECORDER: Patti Slattery

REPORTER:

PARTIES

PRESENT: Clark Newberry, Tara D. Attorney
 Winslow, Natalie L Attorney

JOURNAL ENTRIES

- Due to the Court's schedule. COURT ORDERED, trial dates RESET.

10/31/19 11:00AM CALENDAR CALL

11/18/19 9:00AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

October 31, 2019

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

October 31, 2019 11:00 AM Pretrial/Calendar Call

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: April Watkins

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: Clark Newberry, Tara D. Attorney
Garner, Rex D. Attorney

JOURNAL ENTRIES

- Court noted two to three days for trial and advised December 2, 2019, through December 6, 2019, is available. Mr. Gardner requested the 4th, 5th and 6th of December. Ms. Clark Newberry stated she was also okay with those dates. COURT ORDERED, trial date VACATED and RESET. Per this Court's Judicial Executive Assistant, exhibit guidelines will be e-mailed to counsel.

12/4/19 9:00 AM BENCH TRIAL

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

December 03, 2019

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

December 03, 2019 10:30 AM Motion in Limine

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Michaela Tapia

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

PRESENT: Clark Newberry, Tara D. Attorney
Garner, Rex D. Attorney

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, motion DENIED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

December 04, 2019

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

December 04, 2019 9:00 AM Bench Trial

HEARD BY: Bare, Rob **COURTROOM:** RJC Courtroom 03C

COURT CLERK: Alan Castle

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: Bank of America NA Defendant
Clark Newberry, Tara D. Attorney
Garner, Rex D. Attorney
Valencia Management LLC Series 9 Plaintiff
Counter Defendant

JOURNAL ENTRIES

- Opening statements by counsel. Testimony and exhibits presented. (See worksheets) Trial continues.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

December 05, 2019

A-15-723600-C Valencia Management LLC Series 9, Plaintiff(s)
vs.
Robert Stillwagon, Defendant(s)

December 05, 2019 1:00 PM Bench Trial

HEARD BY: Bare, Rob **COURTROOM:** RJC Courtroom 03C

COURT CLERK: Alan Castle

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT: Clark Newberry, Tara D. Attorney
Garner, Rex D. Attorney

JOURNAL ENTRIES

- Further testimony and exhibits presented. (See worksheets) Closing submitted on briefs. Court stated Findings in favor of Plaintiff. Ms. Clark Newberry to prepare the Findings of Fact, Conclusions of Law and have opposing counsel review as to form and content.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

December 11, 2020

A-15-723600-C	Valencia Management LLC Series 9, Plaintiff(s)
	vs.
	Robert Stillwagon, Defendant(s)

December 11, 2020 3:00 AM Minute Order

HEARD BY: Bare, Rob

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Department 32 Formal Request to Appear REMOTELY for the December 15th hearing calendar

Please be advised that due to the COVID-19 pandemic, Department 32 will continue to conduct Court hearings REMOTELY using the Blue Jeans Video Conferencing system. You have the choice to appear either by phone or computer/video.

Dial the following number: 1-408-419-1715

Meeting ID: 434 564 533

Meeting URL: <https://bluejeans.com/434564533>

To connect by phone dial the number provided and enter the meeting ID followed by #

To connect by computer if you do NOT have the app, copy the URL link into a web browser. Google Chrome is preferred but not required. Once you are on the BlueJeans website click on Join with Browser which is located on the bottom of the page. Follow the instructions and prompts given by BlueJeans.

You may also download the Blue Jeans app and join the meeting by entering the meeting ID

PLEASE NOTE the following protocol each participant will be required to follow:

Place your phone on MUTE while waiting for your matter to be called.

Do NOT place the call on hold since some phones may play wait/hold music.

Please do NOT use speaker phone as it causes a loud echo/ringing noise.

Please state your name each time you speak so that the court recorder can capture a clear record.

Please be mindful of rustling papers, background noise, and coughing or loud breathing.

Please be mindful of where your camera is pointing.

We encourage you to visit the [Bluejeans.com](https://bluejeans.com) website to get familiar with the Blue Jeans phone/videoconferencing system before your hearing.

If your hearing gets continued to a different date after you have already received this minute order please note a new minute order will issue with a different meeting ID since the ID number changes with each meeting/hearing.

Please be patient if you call in and we are in the middle of oral argument from a previous case. Your case should be called shortly. Again, please keep your phone or computer mic on MUTE until your case is called.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 12/11/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

December 15, 2020

A-15-723600-C	Valencia Management LLC Series 9, Plaintiff(s)
	vs.
	Robert Stillwagon, Defendant(s)

December 15, 2020 9:30 AM Motion

HEARD BY: Bare, Rob

COURTROOM: RJC Courtroom 03C

COURT CLERK: Carolyn Jackson

RECORDER: Kaihla Berndt

REPORTER:

PARTIES

PRESENT:	BAC Home Loans Servicing LP	Defendant
		Counter Claimant
		Cross Claimant
	Bank of America NA	Defendant
	Belay, Nicholas Ethan	Attorney
	Clark Newberry, Tara D.	Attorney

JOURNAL ENTRIES

- Court provided an overview of the matter. Arguments by counsel regarding the relevance of evidence that was mistakenly redacted and submitted at trial and whether it was newly discovered evidence. Further arguments by counsel regarding whether a post-trial decision by the Nevada Supreme Court clarifying existing law effects the decision made in this matter during the bench trial. Following arguments, Court stated its FINDINGS and ORDERED, matter DENIED; Ms. Clark Newberry to prepare and submit the Order.

Case No.: **A-15-723600-C**
Dept. No.: **XXXII**

Civil Trial Date: **December 4, 1019**

Judge: **Rob Bare**

Court Clerk: **ALAN PAUL CASTLE, SR.**

Recorder: **KATHA BERNDT**

Counsel for Plaintiff: **Valencia Management LLC**

Tara Clark Newberry, Esq.

Plaintiff:

VALENCIA MANAGEMENT LLC SERIES 9

vs.

Defendant:

ROBERT STILLWAGON et al

Counsel for Defendant: **Bank of America, N.A.**

Rex Garner, Esq.

CIVIL TRIAL BEFORE THE COURT

EXHIBIT(S) LIST

JOINT EXHIBITS

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
1	Covenants, Conditions, and Restrictions for Sandstone Community Recreation Area , Instrument No. 199303300000841 BANA000663-BANA000705	12-4-19	STIP	12-4-19
2	Grant, Bargain and Sale Deed, Instrument No. 200803140002766 BANA000081-BANA000085		STIP	
3	Deed of Trust, Instrument No. 20080314-0002767 BANA000065-BANA000080		STIP	
4	Assignment of Deed of Trust from MERS to BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing, LP, Instrument No. 200908310001060 BANA000041		STIP	
5	Notice of Delinquent Assessment Lien, Instrument No. 201105090000507 BANA000020-BANA000021		STIP	
6	Notice of Substitution of Agent, Instrument No. 201109080001383 BANA000018		STIP	
7	Notice of Default & Election to Sell Under Homeowners Association Lien, Instrument No. 201109080001384 BANA000016-BANA000017		STIP	
8	Notice of Foreclosure Sale, Instrument No. 201210100001041 BANA000006-BANA000007		STIP	
9	Notice of Foreclosure Sale, Instrument No. 201312020002018 BANA000001-BANA000002	12-4-19	STIP	12-4-19

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
10	Foreclosure Deed, Instrument No. 201402180002844 BANA000181-BANA000183	12-4-19	STIP	12-4-19
11	Release of Delinquent Assessment Lien, Instrument No. 201403250000029 BANA000180	12-4-19	STIP	12-4-19
12	Notice of Pendency of Action, Instrument No. 201508260001157 BANA000169-BANA000171	12-4-19	STIP	12-4-19
13	Documents produced by NAS in response to subpoena BANA000247-BANA000604	12-4-19	STIP	12-4-19
14	Miles Bauer Tender Affidavit BANA 000184 - 000246 BANA000605-BANA000624 BANA 000214A, 000229A	12-4-19	OBJ	12-4-19
15	Miles Bauer Borrower Affidavit BANA000625- BANA000660	12-4-19	OBJ	12-4-19
16	Nevada Association Services 2010 Press Release BANA000661-BANA000662			
17	Bank Records Regarding Tender BANA000724-BANA000729			
18	Sandstone Recreation Association, Inc.'s Disclosures, filed July 27, 2017, and any supplements filed thereto SRA000001-SRA00040400084 - SRA 000136	12-5-19	AS REDACTED	12-5-19
19	Residential Appraisal Summary Report of Matthew J. Lubawy LUBAWY000001-000015			
20	Plaintiff's Responses to BANA's Interrogatories, Requests for Production, and Requests for Admission WD 01 - WD 52			
21 Reserved	<u>Payoff amount for underlying loan (to be provided under seal at trial)</u>	NOT PROVIDED		
22	Trial Transcript of Proceeding from Case No. A-14-695770-C, <i>TRP Fund IV, LLC v. Bank of America, N.A.</i> , Bench Trial, Testimony of Chris Yergensen (May 24, 2017) TRP 001 - TRP 146			
23	Trial Transcript of Proceeding from Case No. A-14-707392-C, <i>Paradise Harbor Trust Place v. U.S. Bank National Association</i> , Bench Trial, Testimony of Chris Yergensen (November 15, 2017) PH 001 - PH 238			
24 Reserved	Nevada Association Services 2008 Letter to HOA Clients	NOT PROVIDED		
25 Reserved	Reporter's Transcription of Proceedings from 7510 <i>Perla Del Mar Ave Trust v. Bank of America, N.A. et al.</i> , case number A-13-686277-C Perla 001 - Perla 278			
26 Reserved	Deposition transcript of David Stone from <i>Bank of America, N.A. v. One Queensridge Place Homeowner's Association</i> , case number 2:13-cv-01221-GMN-NJK DS 01 - DS 55			
27	Plaintiff's Rebuttal Expert Disclosure Pursuant to NRCP 16.1			
28	BANA's Responses to Plaintiff's Interrogatories, Requests for Production, and Requests for Admission			

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
29	BANA's Responses to Sandstone's Interrogatories, Requests for Production, and Requests for Admission			
30 Reserved	Sandstone's Responses to BANA's Interrogatories, Requests for Production, and Requests for Admission	NOT PROVIDED		
31	Clark County Recorder Search and Order Page PL0004-PL0007			
32	Clark County Assessor's Records Page(s) PL0008			
33	Real Property Parcel Details PL0009			
34	Rezults Realty Invoice PL00010			
35	Notice of Federal Tax Lien, recorded on December 3, 2010, as Book and Instrument #20102030-0003492 PL00049			
36	ADR Property Services, Landscaping Invoices and Documents PL00050, PL00061			
37	NAS Auction Receipt PL00062			
38	CCHS Home Warranty Document PL00063			
39	Dembois Landscape Invoices PL00064-PL00067			
40	Farmers Insurance Documents PL00068-PL00070			
41	HOA Account Pay-off PL00071			
42	HOA Violation Notices and Resolutions PL00072-PL00080			
43	HSA Warranty Document PL00081			
44	Legacy Village Ledger PL00082			
45	NV Energy Bill PL00083			
46	Residential Property Management Agreement PL00084-PL00093			
47	CIC Owner Information Form PL00094			
48	Management Owner Information Form PL00095			
49	Sandstone Recreation Area Documents PL00096-PL000106			

Exhibit Number	Exhibit Description	Date Offered	Objection	Date Admitted
50	Strawberry Fields CC&R's PL000107-PL000171			
51	SW Maintenance Invoice PL000172-PL000177			
52	Total Protect Home Warranty Invoice PL000181			
53	Strawberry Fields Ledger 02/17/16, 02/25/16 PL000583-PL000584			
54	ADR Property Services Invoice PL000585-PL000590			
55	Allstate Electric Invoice PL000591			
56	Appliance Repair/Replace Invoice PL000592-PL000599			
57	Crispy Critters Pest Control Invoice PL000600			
58	Dembois Landscape Invoices PL000601-PL000602			
59	Old Republic Protection Company PL000603-PL000604			
60	ProServ Invoices PL000605-PL000606, PL000630-PL00063			
61	Sandstone Recreation HOA Dues, and Statements PL000607, PL000623-PL000625			
62	Farmers Insurance, Evidence of Insurance for Mortgage/Other Interests PL000608-PL000609			
63	Residential Property Management Agreement PL000610-PL000622			
64	TD Services Rekey Invoice PL000626-PL000628			
65	HSA Home Warranty Invoice PL000629			
66	Treasurer's Property Account Inquiry - Summary Screen PL000632-PL000633			
67	HUD Mortgagee Letters PL000635-PL000665			



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

ARIEL E. STERN, ESQ.
1635 VILLAGE CENTER CIR., SUITE 200
LAS VEGAS, NV 89134

DATE: February 18, 2021
CASE: A-15-723600-C

RE CASE: VALENCIA MANAGEMENT LLC, SERIES 9 vs. ROBERT STILLWAGON; LENY STILLWAGON;
BAC HOME LOANS SERVICING, LP fka COUNTRYWIDE HOME LOANS SERVICING LP; BANK OF AMERICA, NA

NOTICE OF APPEAL FILED: February 17, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☐ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☐ Notice of Entry of Order

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

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

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

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

Certification of Copy

State of Nevada }
County of Clark } SS:

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

BANK OF AMERICA, N.A.'S NOTICE OF APPEAL; BANK OF AMERICA N.A.'S CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT; ORDER DENYING BANK OF AMERICA, N.A.'S MOTION TO ALTER OR AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW; NOTICE OF ENTRY OF ORDER DENYING BANK OF AMERICA, N.A.'S MOTION TO LATER OT AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW; DISTRICT COURT MINUTES; EXHIBITS LIST; NOTICE OF DEFICIENCY

VALENCIA MANAGEMENT LLC, SERIES 9,

Plaintiff(s),

vs.

ROBERT STILLWAGON; LENY
STILLWAGON; BAC HOME LOANS
SERVICINC, LP fka COUNTRYWIDE HOME
LOANS SERVICING LP; BANK OF
AMERICA, NA,

Defendant(s),

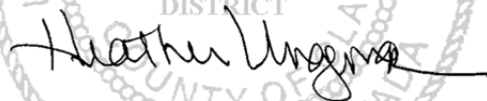
Case No: A-15-723600-C

Dept No: XXIX

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 18 day of February 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

