

Electronically Filed
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Elizabeth A. Brown
Clerk of Supreme Court

1 **NOAS**
2 MICHAEL F. BOHN, ESQ.
3 Nevada Bar No.: 1641
4 mbohn@bohnlawfirm.com
5 NIKOLL NIKCI, ESQ.
6 Nevada Bar No. 10699
7 nnikci@bohnlawfirm.com
8 LAW OFFICES OF
9 MICHAEL F. BOHN, ESQ., LTD.
10 2260 Corporate Circe, Ste. 480
11 Henderson, Nevada 89074
12 (702) 642-3113/ (702) 642-9766 FAX
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14 Attorneys for plaintiff/counterdefendant

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DISTRICT COURT
CLARK COUNTY, NEVADA

11 SATICOY BAY LLC SERIES 4641
12 VIAREGGIO CT,

13 Plaintiff,

14 vs.

15 NATIONSTAR MORTGAGE, LLC; COOPER
16 CASTLE LAW FIRM, LLP; and MONIQUE
17 GUILLORY,

18 Defendants.

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NATIONSTAR MORTGAGE, LLC

Counterclaimant,

vs.

20 SATICOY BAY LLC SERIES 4641
21 VIAREGGIO CT; NAPLES COMMUNITY
22 HOMEOWNERS ASSOCIATION; DOES 1
23 through X; and ROE CORPORATIONS I
24 Through X, inclusive,

Counter-defendants.

CASE NO.: A-13-689240-C
DEPT NO.: XIV

NOTICE OF APPEAL

Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct., by and through its attorneys, The Law
Offices of Michael F. Bohn, Esq. Ltd., appeals to the Supreme Court of Nevada from the judgment

1 granting summary upon motion for summary judgment on January 4, 2021.

2 DATED this 3rd day of February, 2021

3 LAW OFFICES OF
4 MICHAEL F. BOHN, ESQ., LTD.

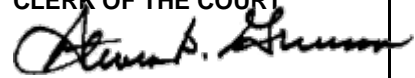
5 By: /s/ Michael F. Bohn, Esq./
6 MICHAEL F. BOHN, ESQ.
7 NIKOLL NIKCI, ESQ.
8 2260 Corporate Circle, Ste. 480
9 Henderson, Nevada 89074
10 Attorneys for Plaintiff
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law
3 Offices of Michael F. Bohn, Esq., Ltd., and on the 3rd day of February, 2021, an electronic copy of the
4 NOTICE OF APPEAL was served on opposing counsel via the Court's electronic service system to the
5 following counsel of record:

6 Melanie D. Morgan, Esq.
7 Donna M. Wittig, Esq.
8 AKERMAN LLP
9 1635 Village Center Circle, Suite 200
10 Las Vegas, Nevada 89134

11 /s/ Michael F. Bohn, Esq. /
12 An Employee of the LAW OFFICES OF
13 MICHAEL F. BOHN, ESQ., LTD.
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1 ASTA
MICHAEL F. BOHN, ESQ.
2 Nevada Bar No.: 1641
mbohn@bohnlawfirm.com
3 NIKOLL NIKCI, ESQ.
Nevada Bar No. 10699
4 nnikci@bohnlawfirm.com
LAW OFFICES OF
5 MICHAEL F. BOHN, ESQ., LTD.
2260 Corporate Circe, Ste. 480
6 Henderson, Nevada 89074
(702) 642-3113/ (702) 642-9766 FAX
7 Attorneys for plaintiff/counterdefendant

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA
10

11 SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

12 Plaintiff,

13 vs.

14 NATIONSTAR MORTGAGE, LLC; COOPER
15 CASTLE LAW FIRM, LLP; and MONIQUE
GUILLORY,

16 Defendants.

17 NATIONSTAR MORTGAGE, LLC

18 Counterclaimant,

19 vs.

20 SATICOY BAY LLC SERIES 4641
21 VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; DOES 1
22 through X; and ROE CORPORATIONS I
Through X, inclusive,

23 Counter-defendants.
24

CASE NO.: A-13-689240-C
DEPT NO.: XIV

CASE APPEAL STATEMENT

- 25 1. The appellant filing this case appeal statement is Saticoy Bay LLC Series 4641 Viareggio Ct.
26 2. The judge issuing the judgment appealed from is the honorable Adriana Escobar.
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1 3. The parties to the proceedings in District Court are Saticoy Bay LLC Series 4641 Viareggio
2 Ct., plaintiff; Nationstar Mortgage, LLC; Cooper Castle Law Firm, LLP; and Monique Guillory,
3 defendants;

4 4. The parties to this appeal are the appellant Saticoy Bay LLC Series 4641 Viareggio Ct.,
5 plaintiff, and respondents Nationstar Mortgage, LLC.

6 5. Counsel for appellant Saticoy Bay LLC Series 4641 Viareggio Ct., plaintiff is Michael F.
7 Bohn, Esq.; 2260 Corporate Circle, Suite 480, Henderson, NV 89074; (702) 642-3113. Counsel for
8 respondents Nationstar Mortgage, LLC, is Melanie D. Morgan, Esq., 1635 Village Center Circle, Suite
9 200, Las Vegas, Nevada, 89134 (702) 634-5000.

10 6. The attorneys for both the plaintiff/appellant and defendants/respondents are licensed in the
11 state of Nevada.

12 7. The appellant was represented by retained counsel in the District Court;

13 8. The appellant is represented by retained counsel on appeal;

14 9. There were no orders granting leave to proceed in forma pauperis;

15 10. The complaint was filed in District Court on September 25, 2013;

16 11. The plaintiff filed this action seeking title to the real property as a result of a foreclosure sale.
17 The district court ruled in favor of defendants after summary judgment.

18 12. The case has previously been the subject of an appeal, No. 77874-COA.

19 13. The case does not involve child custody or visitation; and,

20 14. It is likely that this case can be settled.

21 DATED this 3rd day of February, 2021

22 LAW OFFICES OF
23 MICHAEL F. BOHN, ESQ., LTD.

24 By: /s/ /Michael F. Bohn, Esq./
25 MICHAEL F. BOHN, ESQ.
26 NIKOLL NIKCI, ESQ.
27 2260 Corporate Circle, Ste. 480
28 Henderson, Nevada 89074
 Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5, NEFCR 9 and EDCR 8.05, I hereby certify that I am an employee of the Law
3 Offices of Michael F. Bohn, Esq., Ltd., and on the 3rd day of February, 2021, an electronic copy of the
4 CASE APPEAL STATEMENT was served on opposing counsel via the Court's electronic service
5 system to the following counsel of record:

6 Melanie D. Morgan, Esq.
7 Donna M. Wittig, Esq.
8 AKERMAN LLP
9 1635 Village Center Circle, Suite 200
10 Las Vegas, Nevada 89134

11 /s/ Michael F. Bohn, Esq. /
12 An Employee of the LAW OFFICES OF
13 MICHAEL F. BOHN, ESQ., LTD.
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CASE SUMMARY**CASE NO. A-13-689240-C**

Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
 vs.
 Nationstar Mortgage LLC, Defendant(s)

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Location: **Department 14**
 Judicial Officer: **Escobar, Adriana**
 Filed on: **09/25/2013**
 Case Number History:
 Cross-Reference Case Number: **A689240**
 Supreme Court No.: **77874**

CASE INFORMATION**Statistical Closures**

01/04/2021 Summary Judgment
 12/11/2018 Summary Judgment

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

Case Status: **01/04/2021 Closed**


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

Case Number A-13-689240-C
 Court Department 14
 Date Assigned 02/15/2016
 Judicial Officer Escobar, Adriana

PARTY INFORMATION

		<i>Lead Attorneys</i>
Plaintiff	Saticoy Bay LLC Series 4641 Viareggio Ct.	Bohn, Michael F <i>Retained</i> 702-642-3113(W)
Defendant	Cooper Castle Law Firm LLP	Peck, Jason M, ESQ <i>Retained</i> 702-228-3176(W)
	Guillory, Monique	
	Nationstar Mortgage LLC	Morgan, Melanie D. <i>Retained</i> 702-634-5000(W)
Counter Claimant	Nationstar Mortgage LLC	Morgan, Melanie D. <i>Retained</i> 702-634-5000(W)
Counter Defendant	Naples Community Homeowners Association Removed: 08/12/2015 Dismissed	McGrath, Thomas E. <i>Retained</i> 702-724-2648(W)
	Saticoy Bay LLC Series 4641 Viareggio Ct.	Bohn, Michael F <i>Retained</i> 702-642-3113(W)














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

09/25/2013  Complaint
 Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct.
Complaint

09/25/2013 Case Opened


CASE SUMMARY

CASE NO. A-13-689240-C

10/16/2013	 Affidavit of Service Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Affidavit of Service - Monique Guillory</i>
10/16/2013	 Affidavit of Service Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Affidavit of Service - The Cooper Castle Law Firm LLP</i>
10/29/2013	 Affidavit of Service Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Affidavit of Service - Nationstar Mortgage LLC</i>
11/19/2013	 Default Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Default - Monique Guillory</i>
12/02/2013	 Initial Appearance Fee Disclosure Filed By: Counter Claimant Nationstar Mortgage LLC <i>Initial Appearance Fee Disclosure</i>
12/02/2013	 Motion to Dismiss Filed By: Counter Claimant Nationstar Mortgage LLC <i>Defendant Nationstar Mortgage, LLC and The Cooper Castle Law Firm, LLP's Motion to Dismiss</i>
12/03/2013	 Amended Certificate of Mailing Filed By: Counter Claimant Nationstar Mortgage LLC <i>Amended Certificate of Mailing</i>
12/05/2013	 Opposition to Motion to Dismiss Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Opposition to Motion to Dismiss and Countermotion to Stay Case</i>
01/16/2014	 Reply in Support Filed By: Counter Claimant Nationstar Mortgage LLC <i>Reply in Support of Motion to Dismiss</i>
04/15/2014	 Order Denying Motion Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Order</i>
04/18/2014	 Notice of Entry of Order Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Entry of Order</i>
08/25/2014	 Notice of Association of Counsel Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Association of Counsel</i>
09/25/2014	 Substitution of Attorney Filed by: Counter Claimant Nationstar Mortgage LLC <i>Substitution of Attorneys</i>

CASE SUMMARY

CASE NO. A-13-689240-C

12/01/2014	 Motion for Order Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Motion to Lift Stay</i>
01/08/2015	 Notice of Association of Counsel Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Association of Counsel</i>
01/20/2015	 Substitution of Attorney Filed by: Counter Claimant Nationstar Mortgage LLC <i>Substitution of Attorney</i>
02/12/2015	 Notice of Entry of Order Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Entry of Order</i>
02/12/2015	 Order Granting Motion Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Order Granting Motion to Lift Stay</i>
03/13/2015	 Answer and Counterclaim Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar's Answer to the Complaint and Counterclaim</i>
03/19/2015	 Motion to Dismiss Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Motion to Dismiss Counterclaim</i>
04/09/2015	 Affidavit of Service Filed By: Counter Claimant Nationstar Mortgage LLC <i>Affidavit of Service - Naples Community Homeowners Association</i>
04/15/2015	 Stipulation and Order Filed by: Counter Claimant Nationstar Mortgage LLC <i>Stipulation and Order</i>
04/16/2015	 Notice of Entry of Stipulation and Order Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Entry of Stipulation and Order</i>
04/20/2015	 Opposition to Motion Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar's Opposition to Plaintiff's Motion to Dismiss Counterclaim and, in the Alternative, Motion for Continuance, and its Countermotion for Summary Judgment</i>
04/21/2015	 Initial Appearance Fee Disclosure Filed By: Counter Claimant Nationstar Mortgage LLC <i>Initial Appearance Fee Disclosure</i>
04/29/2015	 Motion to Dismiss Filed By: Counter Defendant Naples Community Homeowners Association <i>Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community</i>

CASE SUMMARY

CASE NO. A-13-689240-C

04/29/2015	 Initial Appearance Fee Disclosure Filed By: Counter Defendant Naples Community Homeowners Association <i>Initial Appearance Fee Disclosure</i>
05/04/2015	 Reply in Support Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Reply in Support of Plaintiff's Motion to Dismiss Counterclaim and Opposition to Countermotion for Summary Judgment</i>
05/05/2015	 Affidavit of Service Filed By: Counter Claimant Nationstar Mortgage LLC <i>Affidavit of Service - Office of the Attorney General</i>
05/08/2015	 Declaration Filed By: Counter Claimant Nationstar Mortgage LLC <i>Declaration of Counsel in Support of Nationstar's Opposition to Plaintiff's Motion to Dismiss Counterclaim and, in the Alternative, Motion for Continuance, and its Countermotion for Summary Judgment</i>
05/13/2015	 Joint Case Conference Report Filed By: Counter Claimant Nationstar Mortgage LLC <i>Joint Case Conference Report</i>
05/15/2015	 Supplemental Filed by: Counter Claimant Nationstar Mortgage LLC <i>Supplemental Exhibit in Support of Nationstar's Opposition to Plaintiff's Motion to Dismiss Counterclaim and, in the Alternative, Motion for Continuance, and its Countermotion for Summary Judgment</i>
05/18/2015	 Opposition to Motion Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar's Opposition to Naples Community Homeowners Association's Motion to Dismiss Counterclaim</i>
06/11/2015	 Reply in Support Filed By: Counter Defendant Naples Community Homeowners Association <i>Reply Brief in Support of Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/ Third-Party Defendant Naples Community Homeowners Association Only</i>
06/12/2015	 Scheduling Order <i>Scheduling Order</i>
07/07/2015	 Order Setting Civil Non-Jury Trial <i>Order Setting Civil Non-Jury Trial and Calendar Call</i>
07/28/2015	 Order <i>Order Granting Plaintiff's Motion to Dismiss and Denying Nationstar Mortgage, LLC's Countermotion for Summary Judgment</i>
08/12/2015	 Order For Dismissal Without Prejudice Filed By: Counter Defendant Naples Community Homeowners Association <i>Order to Dismiss Without Prejudice Counterclaimant Nationstar Mortgage LLC Counterclaims as to Counter Defendant/Third Party Defendant Naples Community Homeowners Association Only</i>

CASE SUMMARY

CASE NO. A-13-689240-C

09/09/2015	 Notice of Lis Pendens Filed by: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Lis Pendens</i>
02/15/2016	Case Reassigned to Department 14 <i>Reassigned From Judge Ellsworth - Dept 5</i>
07/26/2016	 Notice Filed By: Counter Claimant Nationstar Mortgage LLC <i>Defendant/Counterclaimant Nationstar Mortgage LLC's Notice of Completion of Mediation Pursuant to NRS 38.310</i>
09/09/2016	 Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial</i>
01/18/2017	 Order Setting Civil Non-Jury Trial <i>Amended Order Setting Civil Non-Jury Trial</i>
01/18/2017	 Stipulation and Order Filed by: Counter Claimant Nationstar Mortgage LLC <i>Stipulation and Order to Extend Discovery and Dispositive Motion Deadlines and Continue Trial Date (First Request)</i>
01/19/2017	 Motion to Amend Answer Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC's Motion for Leave to Amend its Answer and Assert Counterclaims on Order Shortening Time</i>
01/31/2017	 Opposition to Motion Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Plaintiff's Opposition to Nationstar Mortgage, LLC's Motion for Leave to Amend Answer and Assert Counterclaims</i>
05/15/2017	 Motion for Summary Judgment Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Motion for Summary Judgment</i>
06/09/2017	 Order Denying Motion Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Order Denying Defendant Nationstar Mortgage, LLC's Motion for Leave to Amend its Answer and Assert Counterclaims</i>
07/28/2017	 Pre-Trial Disclosure Party: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Plaintiff's NRCP 16.1(a)(3) Pretrial Disclosures</i>
07/31/2017	 Motion for Default Judgment Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Motion for Default Judgment Against Defendant Monique Guillory</i>
08/01/2017	 Certificate of Mailing Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Certificate of Mailing</i>

CASE SUMMARY









CASE NO. A-13-689240-C

08/04/2017	 Pre-trial Memorandum Filed by: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Joint EDCR 2.67 Pre-Trial Memorandum</i>
08/10/2017	 Opposition Filed By: Counter Claimant Nationstar Mortgage LLC <i>Defendant/Counterclaimant Nationstar Mortgage, LLC's Opposition to Plaintiff's Motion for Summary Judgment</i>
08/10/2017	 Request for Judicial Notice Filed By: Counter Claimant Nationstar Mortgage LLC <i>Request for Judicial Notice in Support of Defendant/Counterclaimant Nationstar Mortgage, LLC's Opposition to Plaintiff's Motion for Summary Judgment</i>
08/29/2017	 Motion Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Motion for Voluntary Dismissal Against Defendant Cooper Castle Law Firm, Llp</i>
09/12/2017	 Findings of Fact, Conclusions of Law and Judgment Filed by: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Findings of Fact, Conclusions of Law, and Judgment</i>
09/13/2017	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Entry of Judgment</i>
09/25/2017	 Default Judgment Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Default Judgment Against Defendant Monique Guillory</i>
09/26/2017	 Notice of Entry of Default Judgment Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Entry of Default Judgment</i>
10/02/2017	 Motion to Reconsider Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar Mortgage, LLC's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment</i>
10/05/2017	 Order Granting Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Order Granting Motion for Voluntary Dismissal</i>
10/05/2017	 Notice of Entry Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Entry of Order</i>
10/17/2017	 Opposition Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Plaintiff's Opposition to Nationstar Mortgage, LLC's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment</i>
12/19/2017	 Request for Judicial Notice Filed By: Counter Claimant Nationstar Mortgage LLC

CASE SUMMARY

CASE NO. A-13-689240-C

Request for Judicial Notice in Support of Defendant/Counterclaimant Nationstar Mortgage, LLC's Amended Opposition to Plaintiff's Motion for Summary Judgment

12/19/2017	 Opposition Filed By: Counter Claimant Nationstar Mortgage LLC <i>Defendant/Counterclaimant Nationsatr Mortgage LLC's Amended Opposition to Plaintiff's Motion for Summary Judgment</i>
01/11/2018	 Reply to Opposition Filed by: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Reply to Opposition to motion for Summary Judgment</i>
01/24/2018	 Substitution of Attorney Filed by: Counter Claimant Nationstar Mortgage LLC <i>Substitution Of Counsel For Nationstar Mortgage LLC</i>
12/11/2018	 Findings of Fact, Conclusions of Law and Judgment Filed by: Counter Claimant Nationstar Mortgage LLC <i>Nationstar Mortgage LLC's Findings of Fact, Conclusions of Law, and Judgment</i>
12/14/2018	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Entry of Nationstar Mortgage, LLC's Findings of Fact, Conclusions of Law, and Judgment</i>
01/07/2019	 Notice of Appeal Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Appeal</i>
01/07/2019	 Case Appeal Statement Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar Mortgage LLC's Case Appeal Statement</i>
01/15/2019	 Notice of Posting Bond Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Posting of Appeal Bond</i>
06/17/2020	 NV Supreme Court Clerks Certificate/Judgment -Remanded <i>Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Vacated and Remand; Petition Denied</i>
09/28/2020	 Order <i>Order Setting Futher Proceedings RE: Nevada Court of Appeals Order Vacating and Remanding</i>
11/09/2020	 Motion for Summary Judgment Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar Mortgage LLC's Summary Judgment Motion</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>



CASE SUMMARY

CASE NO. A-13-689240-C

11/13/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
11/23/2020	 Opposition to Motion For Summary Judgment <i>Plaintiffs Opposition to Nationstar Mortgage, LLC s Motion for Summary Judgment</i>
12/08/2020	 Reply in Support Filed By: Counter Claimant Nationstar Mortgage LLC <i>Nationstar Mortgage LLC's Reply Supporting its Motion for Summary Judgment</i>
12/28/2020	 Order Denying Motion Filed By: Counter Claimant Nationstar Mortgage LLC <i>Order Denying Saticoy Bay LLC Series 4641 Viareggio Ct's Summary Judgment Motion</i>
12/28/2020	 Notice of Entry of Order Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Entry of Order Denying Saticoy Bay LLC Series 4641 Viareggio Ct's Summary Judgment Motion</i>
01/04/2021	 Order Granting <i>Order Granting Summary Judgment</i>
01/05/2021	 Notice of Entry of Order Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Entry of Order Granting Nationstar Mortgage LLC's Motion for Summary Judgment</i>
01/06/2021	 Notice of Release of Lis Pendens Filed By: Counter Claimant Nationstar Mortgage LLC <i>Notice of Release of Lis Pendens</i>
02/03/2021	 Notice of Appeal Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Notice of Appeal</i>
02/03/2021	 Case Appeal Statement Filed By: Counter Defendant Saticoy Bay LLC Series 4641 Viareggio Ct. <i>Case Appeal Statement</i>
<u>DISPOSITIONS</u>	
07/28/2015	Order of Dismissal (Judicial Officer: Ellsworth, Carolyn) Debtors: Nationstar Mortgage LLC (Counter Claimant) Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Counter Defendant) Judgment: 07/28/2015, Docketed: 08/04/2015
08/12/2015	Order of Dismissal Without Prejudice (Judicial Officer: Ellsworth, Carolyn) Debtors: Nationstar Mortgage LLC (Counter Claimant) Creditors: Naples Community Homeowners Association (Counter Defendant) Judgment: 08/12/2015, Docketed: 08/19/2015
09/12/2017	Summary Judgment (Judicial Officer: Escobar, Adriana) Debtors: Nationstar Mortgage LLC (Defendant) Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff) Judgment: 09/12/2017, Docketed: 09/13/2017

CASE SUMMARY

CASE NO. A-13-689240-C

09/25/2017	<p>Default Judgment (Judicial Officer: Escobar, Adriana) Debtors: Monique Guillory (Defendant) Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff) Judgment: 09/25/2017, Docketed: 10/02/2017</p>
10/05/2017	<p>Order of Dismissal (Judicial Officer: Escobar, Adriana) Debtors: Cooper Castle Law Firm LLP (Defendant) Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff) Judgment: 10/05/2017, Docketed: 10/05/2017</p>
12/11/2018	<p>Summary Judgment (Judicial Officer: Escobar, Adriana) Debtors: Nationstar Mortgage LLC (Defendant) Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff) Judgment: 12/11/2018, Docketed: 12/12/2018 Comment: Certain Claim</p>
06/17/2020	<p>Clerk's Certificate (Judicial Officer: Escobar, Adriana) Debtors: Nationstar Mortgage LLC (Counter Claimant) Creditors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Counter Defendant) Judgment: 06/17/2020, Docketed: 06/18/2020 Comment: Supreme Court No 77874 - "APPEAL REMANDED/VACATED"</p>
01/04/2021	<p>Summary Judgment (Judicial Officer: Escobar, Adriana) Debtors: Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff) Creditors: Nationstar Mortgage LLC (Defendant) Judgment: 01/04/2021, Docketed: 01/05/2021</p>
	<p><u>HEARINGS</u></p>
01/24/2014	<p>Motion to Dismiss (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) Events: 12/02/2013 Motion to Dismiss <i>Defendant Nationstar Mortgage, LLC and The Cooper Castle Law Firm, LLP's Motion to Dismiss</i> Motion Denied;</p>
01/24/2014	<p>Opposition and Countermotion (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Opposition to Motion to Dismiss and Countermotion to Stay Case</i> Motion Granted;</p>
01/24/2014	<p> All Pending Motions (9:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Defendant Nationstar Mortgage, LLC and The Cooper Castle Law Firm, LLP's Motion to Dismiss; Opposition to Motion to Dismiss and Countermotion to Stay Case</i> Stayed; Defendant Nationstar Mortgage, LLC and The Cooper Castle Law Firm, LLP's Motion to Dismiss; Opposition to Motion to Dismiss and Countermotion to Stay Case Journal Entry Details: <i>Kelly Perry present with Mr. Bohn. Court advised it had been staying most of these types of cases as there is a decision pending from the Supreme Court. Mr. Bohn advised there has not been a date set for hearing at this time. Mr. Peck stated the defense did not want any unnecessary work, however, believes the Plaintiff should post bond. Mr. Bohn advised if the Motion to Dismiss was granted, they would be requesting 54b Certification and noted the Supreme Court has not required a bond be posted in these cases. Statement by Mr. Peck. Mr. Bohn advised his client is paying insurance and fees and will continue to do so. Court believes a stay is appropriate and ORDERED, Countermotion to Stay Case is GRANTED and Defendants' Motion to Dismiss is DENIED. Mr. Bohn to prepare the order and provide to opposing counsel for review prior to submitting to the Court for signature.;</i></p>
01/06/2015	<p> Motion (3:00 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Plaintiff's Motion to Lift Stay</i> Granted; Journal Entry Details: <i>MOTION TO LIFT STAY No opposition having been filed, COURT ORDERED, Motion</i></p>

CASE SUMMARY

CASE NO. A-13-689240-C

GRANTED, prevailing party to prepare order. ;

05/15/2015

Motion to Dismiss (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Plaintiff's Motion to Dismiss Counterclaim

Under Advisement;

05/15/2015

Opposition and Countermotion (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Nationstar's Opposition to Plaintiff's Motion to Dismiss Counterclaim and, in the Alternative, Motion for Continuance, and its Countermotion for Summary Judgment

MINUTES

Under Advisement;

SCHEDULED HEARINGS



All Pending Motions (05/15/2015 at 9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

05/15/2015



All Pending Motions (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Matter Heard;

Journal Entry Details:

PLAINTIFF S MOTION TO DISMISS COUNTERCLAIM NATIONSTAR S OPPOSITION TO DISMISS COUNTERCLAIM AND, IN THE ALTERNATIVE, MOTION FOR CONTINUANCE, AND ITS COUNTERMOTION FOR SUMMARY JUDGMENT Court NOTED its tentative ruling which was distributed to counsel as follows: I. **FACTUAL BACKGROUND** Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff) is the record title holder of the property located at 4641 Viareggio Court, Las Vegas, Nevada (the Property). The Property is subject to the covenants, codes, and restrictions of Counter defendant Naples Community Homeowners Association (the HOA). Plaintiff acquired title to the Property via a foreclosure sale held by the HOA on delinquent assessment liens it held on the Property.

Defendant/Counterclaimant Nationstar Mortgage, LLC (Nationstar) held a first priority deed of trust on the Property. Following the foreclosure sale on August 22, 2013 at which Saticoy Bay acquired title to the Property, Nationstar filed a Notice of Default and Election to Sell. Saticoy Bay then filed suit against, inter alia, Nationstar, alleging claims for: (1) injunctive relief; (2) declaratory relief/quiet title; and (3) unlawful detainer (against the former property owner). Nationstar filed an Answer and Counterclaim on March 13, 2015, alleging claims for: (1) quiet title/declaratory relief, against Saticoy Bay and the HOA; (2) injunctive relief against Saticoy Bay and the HOA; and (3) wrongful foreclosure (against the HOA only). Saticoy Bay moved to dismiss the Counterclaim on March 19, 2015. Nationstar filed an Opposition thereto and a Countermotion for Summary Judgment on April 20, 2015, pursuant to an extended deadline by stipulation. II. **ANALYSIS** A. **Legal Standards** Motion to Dismiss Saticoy Bay moves for dismissal under NRCP 12(b)(5), which mandates dismissal when it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle it to relief. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). This standard requires this Court to examine the content of Nationstar s Counterclaim. See *McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 12 9 Nev. Adv. Op. 64, 310 P.3d 555, 558 (2013) (analyzing a complaint s claims in deciding a 12(b)(5) motion to dismiss). However, [i] f, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. NRCP 12(b) Here, as noted by Nationstar, Saticoy Bay has included documents outside the pleading itself with its Motion to Dismiss a copy of the foreclosure deed and a copy of decision by the U.S. District Court for the District of Nevada. Nationstar argues that Saticoy s Motion should therefore be construed as a motion for summary judgment. However, there are exceptions to when a court should consider a Rule 12(b)(5) motion as a motion for summary judgment. One exception is where the complaint/counterclaim attaches the documents referenced by the Motion to Dismiss. *Brelant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). Another is that the court may take judicial notice of matters of public record. *Id. The Foreclosure Deed* is attached as Exhibit 7 to Nationstar s Counterclaim and the District Court decision will not be considered by the Court. Thus, this Court need not construe Saticoy Bay s Motion as one for summary judgment. Motions for Summary Judgment Summary judgment is appropriate when 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. NRCP 56. (emphasis added) The party moving for summary judgment bears the initial burden of production to show the

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absence of a genuine issue of material fact. If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial. If the moving party will bear the burden of persuasion, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. But if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim or (2) pointing out that there is an absence of evidence to support the nonmoving party's case. *Cuzze v. Univ. and Community College System of Nevada*, 123 Nev. 598, 172 P.2d 131 (2007). Here, it is important to note that Nationstar may have been hoist by its own petard with regard to its entitlement to summary judgment. Curiously, Nationstar has included a list of approximately seven disputed facts in its *Opposition/Motion*. Opp. at 6. It lists these facts in refuting Saticoy Bay's entitlement to dismissal of the Counterclaim but, to the extent that these facts are material (which they appear to be, as they directly underlie the claims in the Counterclaim), Nationstar would likewise not be entitled to summary judgment. On this basis alone, the Court could arguably deny Nationstar's Motion. B. Analysis The Counterclaim asserts only two claims against Saticoy Bay: (1) quiet title; and (2) injunctive relief. Relative to the first, Nationstar has no title interest to the Property, but rather holds or held only a lien and, therefore, has no standing to assert a quiet title claim. As this was not a ground asserted by Saticoy Bay, it will not be discussed further here. Relative to the second claim, Nationstar seeks injunctions prohibiting Saticoy Bay from selling the Property, and requiring it to pay all taxes, insurance, and HOA dues until the matter is resolved. However, injunctions are to prevent future damage from occurring and generally will not redress wrongs already committed. See *Sherman v. Clark*, 4 Nev. 139, 141 (1868). Since the foreclosure has already occurred, and has extinguished Nationstar's interest pursuant to the Supreme Court's decision in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014), *reh'g denied* (Oct. 16, 2014), their injunctive relief claim is problematic. Again, since Saticoy Bay did not assert this as a ground for dismissal, it will not be discussed further here. Nationstar presents several grounds to oppose to Motion to Dismiss. I believe each of these grounds, presented below, are likewise insufficient but they are presented for full consideration. 1. Whether the foreclosure sale was properly noticed Saticoy Bay argues that its foreclosure deed provides conclusive proof that the foreclosure process was properly conducted under NRS 116. In response, Nationstar asserts that the notice of default was deficient because it does not describe the deficiency in payment or alert third parties as to what is being foreclosed assessments, fines, nuisance abatements, or something else. It also generally avers that the foreclosure deed does not provide conclusive proof because, otherwise, every foreclosure sale under NRS Chapter 116 is presumed to be a valid sale on a super-priority lien. Opp. at 21:4-5. Saticoy Bay appears to be correct in its assertion that NRS 116 provides a conclusive presumption as to the validity of a HOA lien foreclosure sale under certain circumstances. NRS 116.31166(1) provides: The recitals in a deed made pursuant to [the foreclosure of a HOA lien under this Chapter] of: (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell; (b) The elapsing of the 90 days; and (c) The giving of notice of sale, are conclusive proof of the matters recited. Saticoy Bay attached a filed copy of the Foreclosure Deed as Exhibit 1 to its Motion. That deed provides that the Notice of Mailing of Delinquent Assessment was recorded and then mailed to the owners and that, subsequently, a Notice of Default and Election to Sell was recorded on January 24, 2012. Thus, subsection (a) is satisfied. The Foreclosure Deed further states that more than ninety (90) days elapsed from mailing the Notice of Default and Election to Sell to interested parties. Thus, subsection (b) is satisfied. Lastly, the Foreclosure Deed states that a Notice of Sale was published for three weeks in the Nevada Legal News, was recorded, and posted in three of the most public places in Clark County as well as on the Property. Thus, subsection (c) is satisfied. Saticoy Bay has therefore sufficiently demonstrated that the Foreclosure Deed provides conclusive proof that proper notice was given. Nationstar argues that Saticoy Bay's position would mean that every foreclosure sale under NRS Chapter 116 is presumed to be a valid sale on a super-priority lien. Opp. at 21:4-5. This, however, ascribes an overly broad interpretation to the argument. Where a statute is unambiguous, a court is not permitted to look beyond the statute itself when determining its meaning. *Westpark Owners' Ass'n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007). A statute is ambiguous when it is capable of more than one reasonable interpretation. *Orion Portfolio Servs. 2, L.L.C. v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. ___, ___, 245 P.3d 527, 531 (2010). As outlined above, NRS 116.31166(1) does establish conclusive proof as to matters of notice of the sale - this is apparent from the face of the statute itself. Those provisions are not susceptible to more than one reasonable interpretation. Thus, the Foreclosure Deed appears to provide conclusive proof as to matters of notice of delinquency and the foreclosure sale. Moreover, those matters cannot be genuinely disputed factual issues, as they are conclusively established pursuant to NRS 116.31166(1). Hence,

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Nationstar's claims for wrongful foreclosure should be dismissed. Its motion for summary judgment on that point should also be denied because, even if there are not disputed issues of material fact, it is not entitled to judgment as a matter of law.

2. Whether the notice provisions in NRS 116 for HOA lien foreclosures violate due process Nationstar contends that NRS 116.31163 and NRS 116.31168 facially violate due process rights because, rather than requiring mandatory notice to lenders, they require notice only to those that have opted in to receive notice from the HOA. NRS 116.31163 provides: The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by first-class mail to: 1. Each person who has requested notice pursuant to NRS 107.090 or 116.31168; 2. Any holder of a recorded security interest encumbering the unit's owner's interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest. NRS 116.31168(1) provides that [t]he provisions of NRS 107.090 apply to the foreclosure of an association's lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit's owner and the common-interest community. Saticoy Bay argues that these provisions do not violate due process because they do not limit lenders notice to those to which it has opted to receive. Saticoy Bay points to the fact that NRS 116.31168(1) incorporates the provisions of NRS 107.090 relative to notice. NRS 107.090(3) provides that [t]he trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to: (a) [e]ach person who has recorded a request for a copy of the notice; and (b) [e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust. It is not entirely clear that NRS 116.31168(1) incorporates all the provisions of NRS 107.090(3), however. NRS 107.090 primarily addresses those who have recorded requests for notices. Although subsection (3)(b) also requires notice to be sent to subordinate interest holders, it seems more logical that NRS 116.31168(1), which similarly addresses giving notice to those who have requested it, incorporates only those portions of NRS 107.090 that address the same topic. Therefore, Saticoy Bay's position is less clear cut than it would have one believe. At the same time, SFR did note that the requirements of law include compliance with NRS 116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, see NRS 116.31168(1). SFR, 334 P.3d at 418. Additionally, the Foreclosure Deed conclusively proves that a notice of default and election to sell was actually provided to all parties of interest, which would include Nationstar. The Notice of Sale was thereafter published and posted in conspicuous public places, including upon the Property.

3. Whether Nationstar's deed of trust was preserved by the HOA's CC&Rs Saticoy Bay argues that, while the CC&Rs at issue here do contain a mortgage savings clause, that clause is pre-empted by NRS 116.1104. Nationstar responds by contending that the mortgage savings clause is valid and that its interest was therefore not extinguished by the foreclosure. This issue appears to have been directly addressed and decided by the Supreme Court in SFR. The Court there held that: [NRS 116.1104] states Chapter 116's provisions may not be varied by agreement, and rights conferred by it may not be waived ... [e]xcept as expressly provided in Chapter 116. (Emphasis added.) Nothing in [NRS] 116.3116 expressly provides for a waiver of the HOA's right to a priority position for the HOA's super priority lien [even by including a mortgage savings clause in the CC&Rs]. SFR, 334 P.3d at 419 (citations omitted). Thus, Nationstar's position is directly at odds with the SFR decision. Indeed, its Opposition seems to acknowledge this conflict and states that to the extent SFR conflicts with the premise that the HOA could choose to subordinate its interests to the first mortgagee for the greater good of the association it should be overturned. Opp. at 18:11-14. Of course, this Court is in no position to overturn a decision of the Supreme Court. In any event, Nationstar's mortgage was not preserved by the mortgage savings clause in the CC&Rs under existing law. Therefore, Nationstar's Complaint should be dismissed because it cannot pursue the claims contained therein where its interest in the Property has been extinguished. Furthermore, regardless of the existence of disputed material facts, Nationstar would not be entitled to judgment as a matter of law for these same reasons and its Motion for Summary Judgment should be denied.

4. Whether the nonjudicial foreclosure process in NRS 116 violates Takings Clauses Nationstar also argues that the SFR decision and nonjudicial foreclosure under NRS 116 and the SFR interpretation thereof violates the Takings Clauses of the United States and Nevada Constitutions. In order for there to be a violation of the Takings Clauses, the use for which real property is appropriated must be a public use that is, it must serve a public purpose. See *Kelo v. City of New London, Conn.*, 545 U.S. 469, 480 (2005); *Dayton Gold & Silver Mining Co. v. Seawell*, 11 Nev. 394, 410 (1876). At the outset, it is highly doubtful that Nationstar has any real property interest in the Property that could have been taken as that word is meant in the context of the Takings Clauses. Nationstar held only a security interest in the Property via a deed of trust. This is akin to a lien on the Property and liens are a monetary encumbrance on property, which cloud[] title, not a vested right in title. *Hamm v. Arrowcreek Homeowners Ass'n*, 124 Nev. 290, 298, 183 P.3d 895, 901 (2008). Even if Nationstar had a compensable interest in the Property, its

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takings claim must still fail. It is difficult to see how the foreclosure of a HOA lien could constitute public use. Moreover, there is also no real government action here that would constitute a taking under the Takings Clauses. Typically, such actions are in the nature of a physical intrusion onto one's property or regulating one's property such that the property loses economic value. See generally *City of Las Vegas v. Cliff Shadows Prof'l Plaza*, 293 P.3d 860 (Nev. 2013); *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645 (2006). Thus, its motion for summary judgment on this point should be denied. 5. Whether the HOA Lien here Violates NRS 116.3116 Nationstar also argues that the HOA lien that was foreclosed upon violated NRS 116 and that, because it was statutorily improper, this invalidates the resulting foreclosure. The essence of Nationstar's argument on this point is that NRS 116.3116(1) limits what may be included in a HOA's super-priority lien and that this does not include collection costs and attorney's fees. This precise issue is currently before the Supreme Court in the case of *Horizons at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, Case No. 63178, and is pending final disposition. But the Court need not decide that issue because the argument is made too late in the case, as to Saticoy Bay. Here, the foreclosure sale has already occurred. Although the argument is preserved as to the HOA, the ship has sailed on Saticoy Bay. Mr. Tan argued under the SFR decision the Nevada Supreme Court held that proper foreclosure of HOA lien extinguishes first deed of trust. The recital in the foreclosure deed here is proper before the Court, it's a public document, all requirements were followed; therefore, the foreclosure is presumed to be proper and first deed of trust held by the defendants is extinguished and there is no interest in the property. Mr. Nitz stated plaintiff's argument is flawed. Plaintiff is reading SFR in that the foreclosure deed extinguishes the deed of trust and that is not what SFR said. SFR says that a properly conducted HOA lien foreclosure sale can extinguish the deed of trust. Mr. Nitz stated the circumstances that were presented to the NVSC on that decision, have to be considered. The NVSC was considering a motion to dismiss that was granted in the district court. At the motion to dismiss stage, because the complaint alleged that all of the notices were given and because the complaint alleged the foreclosure deed had those recitations, that they met the burden of demonstrating a viable claim for relief. The NVSC did not say those conclusively establish for all cases that the foreclosure deed extinguishes the deed of trust; it's just at that stage of the pleadings. Court inquired if the statute itself make these things self-executed so that there is a presumption. Mr. Nitz stated the problem with that analysis is an affront to due process. Mr. Tan argued noticed is required and stated, although there are several provisions, as far as lenders are concerned as beneficiaries of deed of trust they are required to receive notice. If Defendant Nationstar Mortgage had no interest, then they wouldn't have been necessary to be named in the complaint. Mr. Nitz stated a lien interest is sufficient. SFR left open challenges to the validity of the sale. Further arguments by Mr. Nitz regarding foreclosure notices, fair market value of the property and commercial reasonable sales. As to the ability to cure, MR. Tan argued SFR addressed that. The banks as holders of deeds of trust can go in and asking what is the super priority lien amount and paying for it. Further arguments. COURT ORDERED, matter UNDER ADVISEMENT. ;

06/19/2015



Motion to Dismiss (9:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Motion to Dismiss Counterclaimant Nationstar Mortgage, LLC's Counterclaim as to Counter-Defendant/Third Party Defendant Naples Community

Dismissed Without Prejudice;

Journal Entry Details:

Counsel advised they read the Court's tentative ruling and submitted matter. COURT ORDERED, matter DISMISSED WITHOUT PREJUDICE. Mr. McGrath to prepare the Order.;

09/29/2016

CANCELED Calendar Call (10:00 AM) (Judicial Officer: Ellsworth, Carolyn)

Vacated - Superseding Order

02/09/2017



Motion for Leave (9:30 AM) (Judicial Officer: Escobar, Adriana)

Nationstar Mortgage, LLC's Motion for Leave to Amend its Answer and Assert Counterclaims on OST

Denied;

Journal Entry Details:

Ms. Habermas stated as she demonstrated in the motion, leave should be granted to allow her to assert new affirmative defenses as well as counterclaims for quiet title and declaratory relief against the Plaintiff. Further arguments in support of her motions. Mr. Trippiedi stated that as to affirmative defenses, we have moved to keep it out because due process. Constitutionality was decided two weeks ago by the NSC. NRS116 finds there is no State

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action, therefore there is no due process violation. The order has been issued, published and is now law in Nevada. Further arguments in support of his position. Arguments by Ms. Habermas regarding failure to give proper notice and to act in good faith. Failure to act in good faith is a form of oppression, fraud or unfairness. Statements regarding the CC&Rs and unjust enrichment claim. Following further arguments of counsel, The Court noted it read the decision issued by Judge Ellsworth. The 2015 order GRANTS Plaintiff's Motion to Dismiss and DENIES Nationstar Mortgage's countermotion for Summary Judgment and in this Court's view, that ruling STANDS. It is a final order and this Court is not willing to disregard. Ms. Habermas stated there have been a number of cases cited since that order was entered, including Shadow Wood, Horizon Seven Hills vs. ICON Holdings and these cases have given further guidance. The Court stated that we are at the point where the NRED negotiations are complete. COURT FINDS, 1) We have claims against Plaintiff and this Court decides they had nothing to do with the NRED mediations; they were previously dismissed via the 12(b)(5) motion. In this Court's view they are futile as they are treated as a final judgment thus they DENIED. If counsel disagrees with that, they may move for reconsideration or brief the issue. This Court does not see a change of law under Rule 60 and doesn't believe that SFR changed the law at all; it just interpreted it. All claims against the Plaintiff purchaser were dismissed and that stands. 2) Claims against the HOA for the most part were different and they were allowed except for a couple of them. Those remain. The order filed on 8/12/15 by Judge Ellsworth is without prejudice, so this comes in except for the cause of action for quiet title, cause of action for injunctive relief. It has already been dismissed as against the Plaintiff and the cause of action for unjust enrichment as to Plaintiff is barred by the voluntary payment document. COURT ORDERED, it is GRANTING the motion except for the causes of action One, Two and Eight and any other portion will be allowed in. FURTHER, Plaintiff's claims against Defendant are denied because the previous order still stands. Mr. Trippiedi to prepare the order in Word and provide to Chambers. Also, a copy is to be provided to Ms. Habermas for review as to content and form.;

06/15/2017



Motion for Summary Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana)

06/15/2017, 07/27/2017, 08/10/2017

Plaintiff's Motion for Summary Judgment

Off Calendar; Plaintiff's Motion for Summary Judgment

Continued;

Granted;

Off Calendar; Plaintiff's Motion for Summary Judgment

Continued;

Granted;

Journal Entry Details:

Ms. Habermas stated she was unaware this matter was on calendar and thought it was continued which is why an opposition has not been filed. She requested a two week continuance. Mr. Trippiedi advised that his client has not given him the authority to continue this matter. Additionally, this motion was filed in May and no opposition has been filed. COURT ORDERED, continuance is GRANTED; opposition is due on 8/3/17 and reply is due on 8/10/17. CONTINUED TO: 8/10/17 9:30 AM;

Off Calendar; Plaintiff's Motion for Summary Judgment

Continued;

Granted;

Journal Entry Details:

Plaintiff's Motion for Summary Judgment No parties present. COURT ORDERED, OFF CALENDAR.;

08/10/2017

Calendar Call (9:30 AM) (Judicial Officer: Escobar, Adriana)

Vacate;

08/10/2017



All Pending Motions (9:30 AM) (Judicial Officer: Escobar, Adriana)





Matter Heard;

Journal Entry Details:

CALENDAR CALL...PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT Mr. Bohn requested that his motion be granted as Ms. Habermas failed to file an opposition despite being granted two extensions. Statement by Ms. Habermas; she stated she had trouble filing her opposition over the weekend. Mr. Bohn stated the opposition was dated today. COURT ORDERED, Plaintiff's Motion for Summary Judgment is GRANTED as there is no good cause to put the rules aside. FURTHER, trial date is VACATED. Mr. Bohn to prepare the order to include findings of fact and conclusions of law.;

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08/22/2017	CANCELED Bench Trial (9:30 AM) (Judicial Officer: Ellsworth, Carolyn) <i>Vacated</i>
09/07/2017	CANCELED Motion for Default Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Vacated</i> <i>Motion for Default Judgment Against Defendant Monique Guillory</i>
09/21/2017	 Motion for Default Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Plaintiff's Motion for Default Judgment Against Defendant Monique Guillory</i> Granted; Motion for Default Judgment Journal Entry Details: <i>Mr. Trippiedi stated Ms. Gilroy has been served and defaulted and that he is seeking quiet title against her. He further stated she has not appeared in this matter and has not filed an opposition to this motion. Upon Court's inquiry, he advised that Cooper Castle no longer exists and a Motion for Voluntary Dismissal has been filed; he is not necessary for a default in this case. COURT ORDERED, motion is GRANTED. Order provided to the Court for its review and signature.;</i>
09/27/2017	 Minute Order (4:55 PM) (Judicial Officer: Escobar, Adriana) <i>Re: Motion for Voluntary Dismissal</i> Minute Order - No Hearing Held; Journal Entry Details: <i>Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct filed a motion for voluntary dismissal of Defendant Cooper Castle Law Firm LP on August 29, 2017. The matter was subsequently scheduled for hearing on September 28. No opposition having been filed and good cause showing, pursuant to EDCR 2.20 and EDCR 2.23(c) the Court hereby GRANTS the Motion for voluntary dismissal. The Court hereby VACATES the September 28, 2017 hearing. Plaintiff is directed to prepare a proposed order and to submit it to chambers for signature. CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Michael Bohn, Esq. (Law Offices of Michael F. Bohn) Jason Peck, Esq. (THE CASTLE LAW GROUP), Richard Ehlers, Esq. (WRIGHT FINLAY & ZAK).;</i>
09/28/2017	CANCELED Motion (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Vacated</i> <i>Plaintiff's Motion for Voluntary Dismissal Against Defendant Cooper Castle Law Firm LP</i>
11/02/2017	 Motion For Reconsideration (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Nationstar Mortgage, LLC's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment</i> Granted; Nationstar Mortgage, LLC's Motion for Reconsideration, Motion for Relief, and Motion to Alter or Amend Judgment Journal Entry Details: <i>Ms. Habermas stated there was no intentional misconduct; the failure to timely file an opposition was due to a series of mistakes made in her office. She requested that the judgment be set aside and matter set for oral judgment. COURT ORDERED, Motion to Alter or Amend Judgment is GRANTED. Mr. Bohn stated that the matter had been continued more than one time for counsel to file an opposition. Following CONFERENCE AT BENCH, COURT ORDERED, matter set for hearing. Mr. Bohn is to file a reply to the opposition and the matter will be heard on the merits. FURTHER, sanctions will be determined against the defense at that time. Mr. Bohn to prepare the order. 12/5/17 9:30 AM PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;</i>
12/05/2017	 Motion for Summary Judgment (9:30 AM) (Judicial Officer: Escobar, Adriana) 12/05/2017, 01/18/2018 <i>Plaintiff's Motion for Summary Judgment</i> Continued; Granted; Plaintiff's Motion for Summary Judgment Journal Entry Details: <i>Dana Nitz and Regina Habermas appearing for Defendant Nationstar Mortgage LLC. Following arguments by counsel, COURT ORDERED, an order will be issued.;</i>

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Continued;

Granted; Plaintiff's Motion for Summary Judgment

Journal Entry Details:

Ms. Habermas informed the Court that Mr. Bohn could not be in Court today, but they discussed continuing the matter. COURT ORDERED, CONTINUED; Ms. Habermas to contact Mr. Bohn with the continuance date. CONTINUED TO: 1/18/18 9:30 AM;

02/26/2018



Decision (11:30 AM) (Judicial Officer: Escobar, Adriana)

Plaintiff's Motion for Summary Judgment

Granted;

Journal Entry Details:

*Plaintiff's motion for summary judgment came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on January 18, 2018. After considering the pleadings and argument of counsel, the Court GRANTS Plaintiff's motion. The Court finds Plaintiff has sufficiently established that, absent flaws in the HOA foreclosure sale or potential equitable reasons for setting aside the sale, Plaintiff is entitled to judgment as a matter of law on its quiet title claim. In opposition, Defendant argues that Plaintiff's claim is preempted by the federal foreclosure bar, or 12 U.S.C. 4617(j)(3); that Plaintiff is not a BFP; that the HOA sale was commercially unreasonable; and that NRS 116's superpriority lien scheme violates due process. As to the first argument, the Court finds that Defendant has not met its burden of establishing a genuine issue of material fact. The Court agrees that, if the federal foreclosure bar applies, the HOA's foreclosure could not affect FHFA's interest in the deed of trust, and thus that the property would still be encumbered by the deed of trust. However, this requires a finding that FHFA in fact owned a legally cognizable interest in the deed of trust. In Nevada, a security interest is only effective against a third party once it is recorded. See *In re Montierth*, 354 P.3d 648, 650 (Nev. 2015). Defendant has not disputed the fact that no recorded document reflects any FHFA interest in the deed of trust, much less that any recorded document makes any mention of Freddie Mac having an interest in the deed of trust. The only evidence that Defendant has provided in an effort to prove Freddie Mac's ownership is alleged business records of Freddie Mac, coupled with an affidavit stating that Freddie Mac's business records reflect ownership of the subject loan at the time of the HOA sale. However, even if this information is sufficient to show that Freddie Mac believed it had ownership of the loan, this evidence would conflict with the judicially noticeable public record. Because no interest of Freddie Mac or FHFA was recorded, there is no such interest that would be effective as against the HOA or Plaintiff. Thus, the federal foreclosure bar does not apply here. Next, a sale cannot be held commercially unreasonable based on price alone, as this conclusion requires a finding of fraud, unfairness, or oppression that brings about and causes a low sale price. *Nationstar Mortgage v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641 (Nev. 2017). In support of its argument, Defendant suggests that fraud, unfairness, or oppression are shown by the existence of a mortgage protection clause in the HOA's CC&Rs, by the HOA's failure to try to get the best price possible at foreclosure, and by the HOA's inclusion of fees and costs in its calculation of its lien. The Court finds that none of these issues presents evidence of fraud, unfairness, or oppression. A clause such as the one in the relevant CC&Rs here, which states that the HOA's foreclosure cannot extinguish a mortgage deed of trust, is void under NRS 116.1104, as held in *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014), and thus the HOA's act of foreclosing is not rendered fraudulent, unfair, or oppressive due to the clause's presence in the CC&Rs. Additionally, the Court notes that NRS Chapter 116 imposes no duty on an HOA to get the best price possible at foreclosure, as affirmed in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017), where the Nevada Supreme Court rejected the argument that an HOA has the burden of establishing that it took all steps possible to obtain the highest sales price it could. Finally, an HOA lien is not invalid for including fines, as addressed in the recent *Shadow Canyon* case, where *Nationstar* made the very same argument. The Nevada Supreme Court rejected this argument, finding that such an interpretation is untenable, and that the legislature apparently intended to prevent foreclosure on a lien that is comprised solely of fines, but not a lien that includes both delinquent assessments and fines. In sum, Defendant has identified no evidence of fraud, unfairness, or oppression, so the sale cannot be held commercially unreasonable. Finally, the remaining arguments by Defendant do not impact the Court's decision. The Nevada Supreme Court has conclusively held that NRS 116 does not violate due process, in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 388 P.3d 970 (Nev. 2017). Moreover, because Defendant has not presented any meritorious reason for setting aside the sale, Plaintiff's potential status as a bona fide purchaser is not a necessary determination. Therefore, Defendant has not met its burden in resisting summary judgment, and the Court finds judgment as a matter of law in Plaintiff's favor is appropriate. Plaintiff's motion is therefore GRANTED. Counsel for Plaintiff is directed to prepare a proposed order including detailed findings of fact*

CASE SUMMARY

CASE NO. A-13-689240-C

and conclusions of law, which is to be approved by Defendant's counsel as to form and content prior to submitting the order to chambers in Microsoft word format, by email to dept14lc@clarkcountycourts.us CLERK'S NOTE: Michael Bohn (mbohn@bohnlawfirm.com) notified via e-mail.;

10/22/2020



Hearing (9:30 AM) (Judicial Officer: Escobar, Adriana)

On Nevada Court of Appeals Order Vacating & Remanding filed April 10, 2020

Matter Heard; Reversal: Plaintiff's Motion for Summary Judgment

Journal Entry Details:

Court stated case history, noting this decision was reversed and sent back. Court advised before new case law came out the Court granted Plaintiff's Motion for Summary Judgment. Given new law that occurred afterwards, COURT ORDERED, Motion for Plaintiff's Motion for Summary Judgment DENIED. Ms. Morgan to prepare Order, as well as Countermotion for Summary Judgment; Motion DUE 11/9/20. Court will issue a detailed Minute Order.;

11/02/2020



Minute Order (3:00 AM) (Judicial Officer: Escobar, Adriana)

Minute Order - No Hearing Held; Plaintiff's Motion for Summary Judgment

Journal Entry Details:

Plaintiff's Motion for Summary Judgment (Motion) came on for hearing before Department 14 of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on October 22, 2020. Based on the pleadings and arguments of counsel, the Court issues the following order: Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. NRCP 56(c). Wood v. Safeway, Inc. explains the following: While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to 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. 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. 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (emphasis added) (citations omitted). Nevada's recording statutes do not require that Freddie Mac be identified as the beneficiary on the publicly recorded deed of trust to establish its ownership interest in the subject loan. Daisy Tr. v. Wells Fargo Bank, N.A., 135 Nev. 230, 230, 445 P.3d 846, 847 (2019). Freddie Mac's loan servicer is not required to produce the actual loan servicing agreement or the original promissory note to establish Freddie Mac's ownership interest in a loan where properly authenticated business records establish that interest. Id. at 233, 445 P.3d at 847. NRS 51.135, the business records exception to the hearsay rule, provides: A memorandum, report, record or compilation of data, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony or affidavit of the custodian or other qualified person, is not inadmissible under the hearsay rule unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. (emphasis added). Under Daisy Tr. v. Wells Fargo Bank, N.A., 135 Nev. 230, 445 P.3d 846, 847 (2019), there is a genuine issue of material fact as to whether Plaintiff's claim is preempted by the Federal Foreclosure Bar. Freddie Mac did not record the conveyance of the Deed of Trust from First Magnus Financial Corporation. However, the deed of trust did not have to be assigned or conveyed to Freddie Mac in order for Freddie Mac to own the secured loan, meaning that Nevada's recording statutes are not implicated. Id. at 234, 445 P.3d at 849. Thus, Freddie Mac was not required to publicly record its ownership interest as a prerequisite for establishing that interest. Id. In Defendant's opposition to Plaintiff's Motion, Defendant provided a declaration by Dean Meyer, a Freddie Mac employee, attesting that (1) Freddie Mac acquired the loan in March 2007, (2) Freddie Mac owned the loan at the time of the HOA foreclosure sale, and (3) that Defendant had been servicing the loan since June 2012. Meyer's declaration was accompanied by printouts from Freddie Mac's databases. These printouts reflected a Funding Date of March 29, 2007, Seller NBR of 623509, and Part. Pct. of 1.00. Meyer attested, amongst other things, that the funding date referred to the date Freddie Mac purchased the loan, the seller NBR referred to the party that sold the loan to Freddie Mac, and the Part. Pct., which also means participation percentage, reflects that Freddie Mac owns 100% of the loan. Meyer also attested that the Servicer Number in Freddie Mac's printouts referred to Defendant, the loan servicer. Meyer's respective declarations, which confirm or at least strongly indicate Defendant is Freddie Mac's loan servicer, combined with relevant provisions in the Guide that govern the contractual relationship between Freddie Mac and its servicers nationwide, is sufficient to create a genuine issue of material fact that Freddie Mac owned the loan and Defendant was the servicer of the loan, such that Defendant can assert the Federal Foreclosure Bar. Plaintiff's argument that Meyer is not competent to testify lacks merit. The

CASE SUMMARY**CASE NO. A-13-689240-C**

Daisy Trust Court addressed an almost identical argument as to the admissibility of the business records attested to in Meyer's declaration under NRS 51.135. Here, Meyer attested that the database entries contained in the printouts were made (1) at or near the time of the event being recorded, (2) by a person with knowledge of the event, and (3) in the course of the business's regularly conducted activity. Thus, the Freddie Mac database printouts are admissible. Based on the foregoing, the Court DENIES Plaintiff's Motion. Defendant is directed to prepare a detailed order that incorporates the substance of this Minute Order and the undisputed factual and procedural history of this case. Defendant is further directed provide the proposed order to Plaintiff for approval as to form and content. All parties must submit their orders electronically, in both PDF version and Word version, until further notice. You may do so by emailing DC14Inbox@clarkcountycourts.us. All orders must have either original signatures from all parties or an email appended as the last page of the proposed order confirming that all parties approved use of their electronic signatures. The subject line of the e-mail should identify the full case number, filing code and case caption. CLERK'S NOTE: The above minute order has been distributed to: Michael F. Bohn Esq., at mbohn@bohnlawfirm.com, Nikoll Nikci Esq., at mnikci@bohnlawfirm.com, Jason M. Peck Esq., at lasvegaslegal@libertymutual.com, Melanie Morgan Esq., melanie.morgan@akerman.com, Donna Wittig Esq., at donna.wittig@akerman.com. 11/2/20

12/15/2020

**Motion for Summary Judgment (9:30 AM)** (Judicial Officer: Escobar, Adriana)

Nationstar Mortgage LLC's Summary Judgment Motion

Granted;

Journal Entry Details:

Following arguments by counsel, COURT ORDERED, Motion GRANTED. Court DIRECTED Mr. Lachman to prepare the order with the findings of fact, conclusions of law and to provide the order to Mr. Trippiedi to review as to form and content.;

DATE**FINANCIAL INFORMATION****Counter Defendant** Naples Community Homeowners Association

Total Charges 223.00

Total Payments and Credits 223.00

Balance Due as of 2/5/2021 0.00**Defendant** Cooper Castle Law Firm LLP

Total Charges 30.00

Total Payments and Credits 30.00

Balance Due as of 2/5/2021 0.00**Counter Claimant** Nationstar Mortgage LLC

Total Charges 647.00

Total Payments and Credits 647.00

Balance Due as of 2/5/2021 0.00**Counter Defendant** Saticoy Bay LLC Series 4641 Viareggio Ct.

Total Charges 509.00

Total Payments and Credits 509.00

Balance Due as of 2/5/2021 0.00**Counter Claimant** Nationstar Mortgage LLC

Appeal Bond Balance as of 2/5/2021 500.00

CIVIL COVER SHEET A - 1 3 - 6 8 9 2 4 0 - C

CLARK

County, Nevada

Case No.

(Assigned by Clerk's Office)

V

I. Party Information

Plaintiff(s) (name/address/phone): SATICOY BAY LLC SERIES 4641 VIAREGGIO CT	Defendant(s) (name/address/phone): NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; AND MONIQUE GUILLORY
Attorney (name/address/phone): MICHAEL F. BOHN, Esq. 376 E. Warm Springs Road Suite 125 Las Vegas, NV 89119 (702) 642-3113	Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases


Real Property	Negligence	Torts
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input checked="" type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence -- Auto <input type="checkbox"/> Negligence -- Medical/Dental <input type="checkbox"/> Negligence -- Premises Liability (Slip/Fall) <input type="checkbox"/> Negligence -- Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair competition
Probate <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	Other Civil Filing Types <div style="display: flex; justify-content: space-between;"> <div style="width: 33%;"> <input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal </div> <div style="width: 33%;"> <input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment - Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recover of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters </div> </div>	

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

<input type="checkbox"/> NRS Chapters 78-88 <input type="checkbox"/> Commodities (NRS 90) <input type="checkbox"/> Securities (NRS 90)	<input type="checkbox"/> Investments (NRS 104 Art. 8) <input type="checkbox"/> Deceptive Trade Practices (NRS 598) <input type="checkbox"/> Trademarks (NRS 600A)	<input type="checkbox"/> Enhanced Case Mgmt/Business <input type="checkbox"/> Other Business Court Matters
----------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------

September 25, 2013

Date



Signature of initiating party or representative

See other side for family-related case filings.

OGSJ
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
DONNA M. WITTIG
Nevada Bar No. 11015
SCOTT R. LACHMAN, ESQ.
Nevada Bar No. 12016
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: melanie.morgan@akerman.com
Email: donna.wittig@akerman.com
Email: scott.lachman@akerman.com

Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**ORDER GRANTING NATIONSTAR
MORTGAGE LLC'S MOTION FOR
SUMMARY JUDGMENT**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

On December 15, 2020, Nationstar Mortgage LLC's (**Nationstar**) motion for summary judgment came for hearing before the Court. Scott R. Lachman, Esq. of Akerman LLP appeared on behalf of Nationstar and Adam R. Trippiedi, Esq. of the Law Offices of Michael F. Bohn, Esq. appeared on behalf of Saticoy Bay LLC Series 4641 Viareggio Ct's (**Saticoy Bay**). The court having reviewed the pleadings and heard arguments hereby makes the findings of facts, conclusions of law, and orders as follows:

FINDINGS OF FACT

1. A deed of trust listing Monique Guillory as the borrower ("Borrower"), First Magnus Financial Corporation as the lender ("Lender"), and MERS, as beneficiary solely as nominee for Lender and Lender's successors and assigns, was executed on January 19, 2007, and recorded on January 25, 2007 (the "Deed of Trust"). The Deed of Trust granted Lender a security interest in real property known as 4641 Viareggio Court, in Las Vegas (the "Property") to secure the repayment of a loan in the original amount of \$258,400.00 to the Borrower (the promissory note and Deed of Trust together are the "Loan").

2. In March 2007, Freddie Mac purchased the Loan, thereby acquiring ownership of the Deed of Trust. Freddie Mac maintained its ownership interest in the Deed of Trust at the time of the HOA Sale on August 22, 2013.

3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which established the Federal Housing Finance Agency ("FHFA") to regulate Freddie Mac, the Federal National Mortgage Association, and the Federal Home Loan Banks.

4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

5. On February 11, 2011, MERS, as nominee for Lender and Lender's successors and assigns, recorded an assignment of the Deed of Trust to Aurora Loan Services LLC ("Aurora").

6. On October 18, 2012, Aurora recorded an assignment of the Deed of Trust to Nationstar.

7. At the time of the HOA Sale on August 22, 2013, Nationstar was the record beneficiary of the Deed of Trust and servicer of the Loan for Freddie Mac.

1 8. The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as
2 owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the **Guide**),
3 a document central to Freddie Mac's relationship with servicers nationwide. Among other things, the
4 Guide provides that Freddie Mac's servicers may act as record beneficiaries for the deeds of trust
5 Freddie Mac owns and requires that servicers assign these deeds of trust to Freddie Mac upon Freddie
6 Mac's demand.

7 9. The Guide provides:

8
9 For each Mortgage purchased by Freddie Mac, the Seller and the Servicer
10 agree that Freddie Mac may, at any time and without limitation, require the
11 Seller or the Servicer, at the Seller's or the Servicer's expense, to make such
12 endorsements to and assignments and recordings of any of the Mortgage
13 documents so as to reflect the interests of Freddie Mac.

14 Guide at 1301.10.

15 10. The Guide also provides that:

16 The Seller/Servicer is not required to prepare an assignment of the Security
17 Instrument to Freddie Mac. However, *Freddie Mac may, at its sole discretion and*
18 *at any time, require a Seller/Servicer, at the Seller/Servicer's expense, to prepare,*
19 *execute and/or record assignments of the Security Instrument to Freddie Mac.*

20 *Id.* at its Ex. 7 (Guide at 6301.6) (emphasis added) and Ex. 6 (Guide at 22.14).

21 11. The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie Mac.
22 *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1

23 12. The Guide also provides for a temporary transfer of possession of the note when
24 necessary for servicing, including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11. However, when
25 in "physical or constructive possession of a Note," the Servicer must "follow prudent business
26 practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at 8107.1(b).
27 Furthermore, when transferring documents in a mortgage file, including a note, the servicer must
28 ensure the receiver acknowledges that the note is "Freddie Mac's property." Guide at 3302.5

 13. The Guide also includes chapters regarding how and when servicers should appear as
parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine
litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default
Legal Matters.")

14. The Guide provides:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Guide at 1201.9.

15. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See* Guide at 7101.15(c).

16. Finally, the Guide provides:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Guide at 7101.6

17. On July 30, 2007, Naples Community Homeowners Association (the "HOA"), by its foreclosure agent, Red Rock Financial Services ("Red Rock") initiated the non-judicial foreclosure by recording a Lien for Delinquent Assessments.

18. On November 9, 2007, a Release of Lien for Delinquent Assessments was recorded, which stated the Lien for Delinquent Assessments recorded on July 30, 2007, was released and satisfied.

19. On August 18, 2011, the HOA, by its foreclosure agent, Leach Johnson Song & Gruchow (the "HOA Trustee") initiated a second non-judicial foreclosure by recording a Notice of Delinquent Assessment Lien.

20. On January 24, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of Default and Election to Sell against the Property.

21. On July 30, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of Foreclosure Sale against the Property.

22. On August 22, 2013, the HOA sold the property to Saticoy Bay for \$5,563.00. A foreclosure deed was recorded against the property on September 6, 2013.

23. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

24. Saticoy Bay filed a motion for summary judgment which was previously granted by Judge Escobar by order entered December 11, 2018, ruling that the Federal Foreclosure Bar did not protect Freddie Mac's interest in the Deed of Trust because it was not the record beneficiary at the time of sale. Nationstar appealed that decision, and in the interim, the Nevada Supreme Court held in *Daisy Trust v. Wells Fargo Bank* that a deed of trust need not be assigned to its owner, such as Freddie Mac in this case, in order for the owner to own the secured loan. 135 Nev. 230, 233-34, 445 P.3d 846, 849 (2019). This Court did not have the benefit of the *Daisy Trust* decision when it entered its prior summary judgment order. The Nevada Court of Appeals remanded this matter by order dated April 10, 2020. Remittitur issued on June 16, 2020.

25. The court denied Saticoy Bay's motion for summary judgment on remand by minute order issued November 2, 2020. Nationstar filed its summary judgment motion on November 9, 2020. Saticoy Bay filed an opposition on November 23, 2020.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. *See Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To successfully oppose a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

2. "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Wood*, 121

1 Nev. at 732, 121 P.3d at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586
2 (1986)). The governing law determines which "factual disputes are material and will preclude
3 summary judgment; other factual disputes are irrelevant." *Id.* at 731, 121 P.3d at 1031.

4 3. The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments Pool*
5 *I, LLC*, that in order "to have standing, the party seeking relief must have a sufficient interest in the
6 litigation," so as to ensure the litigant will vigorously and effectively present his or her case against an
7 adverse party." 133 Nev. 247, 250, 396 P.3d 754, 756 (2017) (internal quotations and marks omitted).
8 The Nevada Supreme Court also held that mortgage loan servicers for Freddie Mac or Fannie Mae
9 may assert the Federal Foreclosure Bar in litigation like this one, and that none of FHFA, Fannie Mae,
10 or Freddie Mac need be joined as a party. *Id.* at 251, 396 P.3d at 758.

11 4. With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**
12 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for
13 Freddie Mac, has an interest in the Property through its contractual servicing relationship with Freddie
14 Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of the loan
15 for Freddie Mac is evidenced by Nationstar's business records as well as Freddie Mac's business
16 records from Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of
17 business to manage the millions of loans it owns nationwide, as well as the testimony of Freddie Mac's
18 employee. Thus, Nationstar may assert the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law
19 in order to defend its interests and Freddie Mac's interests in the Deed of Trust.

20 5. Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a homeowner
21 association's foreclosure of its super-priority lien cannot extinguish a property interest of Freddie Mac
22 while it is under FHFA's conservatorship unless FHFA consents to that extinguishment. *Berezovsky*
23 *v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

24 6. Unless FHFA provides its consent, the federal protection shall be given full effect,
25 which includes preemption of state law. Saticoy Bay bears the burden of proof to establish that FHFA
26 expressly consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has
27 a policy against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v.*
28 *Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff

bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered.")

7. FHFA's April 21, 2015 Statement confirms that there was no such consent here. In the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-CWH, 2017 WL 773872, *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which FHFA's statement was sufficient to show FHFA's lack of consent).

8. At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's interest in the Property was established by admissible evidence, namely Freddie Mac's business records and the testimony of one of its employees. Under Nevada law, Freddie Mac had a secured property interest at the time of the HOA Sale. *See In re Montierth*, 131 Nev. 543, 547-48, 354 P.3d 648, 651 (2015); Restatement (Third) of Property: Mortgages § 5.4 cmt. c. In citing *Montierth* and the Nevada Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest under the security instrument, because the note owner can direct the beneficiary to foreclose on its behalf." *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a secured property interest. *Id.*

9. The statute of frauds does not impugn Freddie Mac's ownership interest. The statute of frauds applies only "where there is a definite possibility of fraud." *Azevedo v. Minister*, 86 Nev. 576, 580, 471 P.2d 661, 663 (1970). There is none in this case; no one besides Freddie Mac claims to own the Loan, and Saticoy Bay has presented no evidence that another entity claims to own the Loan. Further, Saticoy Bay lacks standing to raise a statute of frauds defense because it was not party to the purchase of the Loan. *Harmon v. Tanner Motor Tours of Nev., Ltd.*, 79 Nev. 4, 16, 377 P.2d 622, 628 (1963).

10. Freddie Mac's interest in Property secured by the Deed of Trust was a property interest protected by 12 U.S.C. § 4617(j)(3). Saticoy Bay failed to provide proof that the FHFA consented to

the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. Accordingly, the HOA Sale did not extinguish the Deed of Trust.

11. Insofar as Saticoy Bay raised arguments not addressed in this order, this Court has considered the arguments and determined they do not present a basis to support denial of Nationstar's motion for summary judgment.

12. All claims asserted in this case are now resolved. The Cooper Castle Law Firm LLP was voluntarily dismissed on October 5, 2017. Default judgment was entered against Monique Guillory on September 25, 2017. Naples Community Homeowners Association was dismissed prejudice August 12, 2015.

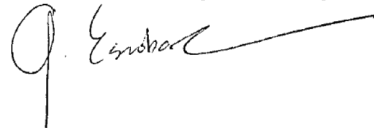
ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Nationstar's motion for summary judgment is granted.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Deed of Trust, recorded on January 25, 2007 with the Clark County, Nevada Recorder's Office as Instrument no. 20070125-0003583, was not extinguished by the HOA's foreclosure sale and continues to be a valid, secured, and enforceable lien on the Property.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Saticoy Bay's interest in the Property is subject to the Deed of Trust.

Dated this 4th day of January, 2021



2F8 578 3EDD E9DD

Adriana Escobar

~~District Court Judge~~

Submitted by:

/s/ Scott R. Lachman

Melanie D. Morgan, Esq.

Nevada Bar No. 8215

Donna M. Wittig, Esq.

Nevada Bar No. 11015

Scott R. Lachman, Esq.

Nevada Bar No. 12016

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

Approved as to form and content by:

/s/Adam R. Trippiedi

Michael F. Bohn, Esq.

Nevada Bar No. 1641

Adam R. Trippiedi, Esq.

Nevada Bar No. 12294

Law Offices of Michael F. Bohn, Esq., Ltd.

2260 Corporate Circle, Suite 480

Henderson, NV 89074

Attorneys for Saticoy Bay LLC Series 4641

Viareggio Ct

Llarena, Carla (LAA-Las)

From: Adam Trippiedi <atrippiedi@bohnlawfirm.com>
Sent: Monday, January 4, 2021 10:19 AM
To: Lachman, Scott (Assoc-Las); Michael Bohn
Cc: Morgan, Melanie (Ptnr-Las); Wittig, Donna (Assoc-Las); Streible, Elizabeth (Den)
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Hi Scott,

The only change I have is to our signature block. Please add my name and update our address. With that change, you have my approval to submit for filing.

Thanks.

Adam R. Trippiedi, ESQ.
Law Offices of
Michael F. Bohn, Esq., Ltd.
2260 Corporate Circle, Suite 480
Henderson, NV 89074
(702) 642-3113
(702) 642-9766 FAX
atrippiedi@bohnlawfirm.com

Confidentiality Notice

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From: scott.lachman@akerman.com [mailto:scott.lachman@akerman.com]
Sent: Monday, January 04, 2021 9:07 AM
To: Adam Trippiedi; Michael Bohn
Cc: melanie.morgan@akerman.com; donna.wittig@akerman.com; elizabeth.streible@akerman.com
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Adam,

Attached please find the order granting Nationstar summary judgment. Please let us know if we have approval to use your e-signature. We aim to submit it by mid-week. Thanks and happy new year!

Regards,
Scott Lachman

Scott Lachman

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Saticoy Bay LLC Series 4641
Viareggio Ct., Plaintiff(s)

CASE NO: A-13-689240-C

7 vs.

DEPT. NO. Department 14

8
9 Nationstar Mortgage LLC,
Defendant(s)

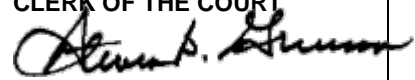
10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 1/4/2021

16 Brandon Lopipero .	blopipero@wrightlegal.net
17 Eserve Contact .	office@bohnlawfirm.com
18 Michael F Bohn Esq .	mbohn@bohnlawfirm.com
19 NVEfile .	nvefile@wrightlegal.net
20 Regina A. Habermas .	rhabermas@wrightlegal.net
21 Melanie Morgan	melanie.morgan@akerman.com
22 Akerman LLP	AkermanLAS@akerman.com
23 Donna Wittig	donna.wittig@akerman.com
24 Scott Lachman	scott.lachman@akerman.com

25
26
27
28



NEOJ
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
DONNA M. WITTIG
Nevada Bar No. 11015
SCOTT R. LACHMAN, ESQ.
Nevada Bar No. 12016
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: melanie.morgan@akerman.com
Email: donna.wittig@akerman.com
Email: scott.lachman@akerman.com

Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**NOTICE OF ENTRY OF ORDER
GRANTING NATIONSTAR MORTGAGE
LLC'S MOTION FOR SUMMARY
JUDGMENT**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

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

2 PLEASE TAKE NOTICE that an **ORDER GRANTING NATIONSTAR MORTGAGE**
3 **LLC'S MOTION FOR SUMMARY JUDGMENT** has been entered by this Court on the 4th day of
4 January, 2021, in the above-captioned matter. A copy of said Order is attached hereto as **Exhibit A.**

5 Dated this 5th day of January, 2021.

6 **AKERMAN LLP**

7 /s/ Scott R. Lachman

8 Melanie D. Morgan, Esq.

9 Nevada Bar No. 8215

Donna M. Wittig, Esq.

10 Nevada Bar No. 11015

Scott R. Lachman, Esq.

11 Nevada Bar No. 12016

12 1635 Village Center Circle, Suite 200

13 Las Vegas, Nevada 89134

14 *Attorneys for Nationstar Mortgage LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 5th day of January, 2021, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT**, 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:

LAW OFFICES OF MICHAEL F. BOHN, ESQ., LTD.

Eserve Contact office@bohnlawfirm.com
Michael F Bohn Esq mbohn@bohnlawfirm.com

WRIGHT FINLAY & ZAK

Brandon Lopipero blopipero@wrightlegal.net
NVEfile nvefile@wrightlegal.net
Regina A. Habermas rhabermas@wrightlegal.net

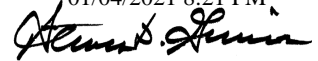
I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena

An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



CLERK OF THE COURT

OGSJ
MELANIE D. MORGAN, ESQ.
Nevada Bar No. 8215
DONNA M. WITTIG
Nevada Bar No. 11015
SCOTT R. LACHMAN, ESQ.
Nevada Bar No. 12016
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, Nevada 89134
Telephone: (702) 634-5000
Facsimile: (702) 380-8572
Email: melanie.morgan@akerman.com
Email: donna.wittig@akerman.com
Email: scott.lachman@akerman.com

Attorneys for Defendant/Counterclaimant Nationstar Mortgage LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT,

Plaintiffs,

v.

NATIONSTAR MORTGAGE LLC, COOPER
CASTLE LAW FIRM, LLP; and MONIQUE
CUILLORY,

Defendants.

Case No.: A-13-689240-C

Dept.: XIV

**ORDER GRANTING NATIONSTAR
MORTGAGE LLC'S MOTION FOR
SUMMARY JUDGMENT**

NATIONSTAR MORTGAGE LLC,

Counterclaimant,

v.

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT; NAPLES COMMUNITY
HOMEOWNERS ASSOCIATION; LEACH
JOHNSON SONG & GRUCHOW; DOES I
through X; and ROE CORPORATIONS I
through X, inclusive,

Counter-Defendants.

AKERMAN LLP

1635 VILLAGE CENTER CIRCLE, SUITE 200
LAS VEGAS, NEVADA 89134
TEL.: (702) 634-5000 – FAX: (702) 380-8572

1 On December 15, 2020, Nationstar Mortgage LLC's (**Nationstar**) motion for summary
2 judgment came for hearing before the Court. Scott R. Lachman, Esq. of Akerman LLP appeared on
3 behalf of Nationstar and Adam R. Trippiedi, Esq. of the Law Offices of Michael F. Bohn, Esq.
4 appeared on behalf of Saticoy Bay LLC Series 4641 Viareggio Ct's (**Saticoy Bay**). The court having
5 reviewed the pleadings and heard arguments hereby makes the findings of facts, conclusions of law,
6 and orders as follows:

7 **FINDINGS OF FACT**

8 1. A deed of trust listing Monique Guillory as the borrower ("Borrower"), First Magnus
9 Financial Corporation as the lender ("Lender"), and MERS, as beneficiary solely as nominee for
10 Lender and Lender's successors and assigns, was executed on January 19, 2007, and recorded on
11 January 25, 2007 (the "Deed of Trust"). The Deed of Trust granted Lender a security interest in real
12 property known as 4641 Viareggio Court, in Las Vegas (the "Property") to secure the repayment of a
13 loan in the original amount of \$258,400.00 to the Borrower (the promissory note and Deed of Trust
14 together are the "Loan").

15 2. In March 2007, Freddie Mac purchased the Loan, thereby acquiring ownership of the
16 Deed of Trust. Freddie Mac maintained its ownership interest in the Deed of Trust at the time of the
17 HOA Sale on August 22, 2013.

18 3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008
19 ("HERA"), Pub. L. No. 110-289, 122 Stat. 2654, codified at 12 U.S.C. § 4511 *et seq.*, which
20 established the Federal Housing Finance Agency ("FHFA") to regulate Freddie Mac, the Federal
21 National Mortgage Association, and the Federal Home Loan Banks.

22 4. On September 6, 2008, FHFA's Director placed Freddie Mac into conservatorship.

23 5. On February 11, 2011, MERS, as nominee for Lender and Lender's successors and
24 assigns, recorded an assignment of the Deed of Trust to Aurora Loan Services LLC ("Aurora").

25 6. On October 18, 2012, Aurora recorded an assignment of the Deed of Trust to
26 Nationstar.

27 7. At the time of the HOA Sale on August 22, 2013, Nationstar was the record beneficiary
28 of the Deed of Trust and servicer of the Loan for Freddie Mac.

1 8. The relationship between Nationstar, as the servicer of the Loan, and Freddie Mac, as
2 owner of the Loan, is governed by the Freddie Mac Single-Family Seller/Servicer Guide (the **Guide**),
3 a document central to Freddie Mac's relationship with servicers nationwide. Among other things, the
4 Guide provides that Freddie Mac's servicers may act as record beneficiaries for the deeds of trust
5 Freddie Mac owns and requires that servicers assign these deeds of trust to Freddie Mac upon Freddie
6 Mac's demand.

7 9. The Guide provides:

8
9 For each Mortgage purchased by Freddie Mac, the Seller and the Servicer
10 agree that Freddie Mac may, at any time and without limitation, require the
11 Seller or the Servicer, at the Seller's or the Servicer's expense, to make such
12 endorsements to and assignments and recordings of any of the Mortgage
13 documents so as to reflect the interests of Freddie Mac.

14 Guide at 1301.10.

15 10. The Guide also provides that:

16 The Seller/Servicer is not required to prepare an assignment of the Security
17 Instrument to Freddie Mac. However, *Freddie Mac may, at its sole discretion and*
18 *at any time, require a Seller/Servicer, at the Seller/Servicer's expense, to prepare,*
19 *execute and/or record assignments of the Security Instrument to Freddie Mac.*

20 *Id.* at its Ex. 7 (Guide at 6301.6) (emphasis added) and Ex. 6 (Guide at 22.14).

21 11. The Guide authorizes servicers to foreclose on deeds of trust on behalf of Freddie Mac.
22 *See, e.g.,* Guide at 8105.3, 9301.1, 9301.12, 9401.1

23 12. The Guide also provides for a temporary transfer of possession of the note when
24 necessary for servicing, including foreclosure. *See* Guide at 8107.1, 8107.2, 9301.11. However, when
25 in "physical or constructive possession of a Note," the Servicer must "follow prudent business
26 practices" to ensure that the note is "identif[ied] as a Freddie Mac asset." *Id.* at 8107.1(b).
27 Furthermore, when transferring documents in a mortgage file, including a note, the servicer must
28 ensure the receiver acknowledges that the note is "Freddie Mac's property." Guide at 3302.5

 13. The Guide also includes chapters regarding how and when servicers should appear as
parties to litigation involving Freddie Mac loans. *See* Guide at 9402.2 ("Routine and non-routine
litigation"), 9501 ("Selection, Retention and Management of Law Firms for Freddie Mac Default
Legal Matters.")

14. The Guide provides:

All documents in the Mortgage file, . . . and all other documents and records related to the Mortgage of whatever kind or description . . . will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only.

Guide at 1201.9.

15. The Guide provides that a transferee servicer undertakes all responsibilities under the Guide. *See* Guide at 7101.15(c).

16. Finally, the Guide provides:

When a Transfer of Servicing occurs, the Transferor Servicer may not . . . further endorse the Note, but must prepare and complete assignments

To prepare and complete an assignment of a Security Instrument for a Subsequent Transfer of Servicing for a Mortgage not registered with MERS, the Transferor Servicer must . . . [a]ssign the Security Instrument to the Transferee Servicer and record the assignment.

Guide at 7101.6

17. On July 30, 2007, Naples Community Homeowners Association (the "HOA"), by its foreclosure agent, Red Rock Financial Services ("Red Rock") initiated the non-judicial foreclosure by recording a Lien for Delinquent Assessments.

18. On November 9, 2007, a Release of Lien for Delinquent Assessments was recorded, which stated the Lien for Delinquent Assessments recorded on July 30, 2007, was released and satisfied.

19. On August 18, 2011, the HOA, by its foreclosure agent, Leach Johnson Song & Gruchow (the "HOA Trustee") initiated a second non-judicial foreclosure by recording a Notice of Delinquent Assessment Lien.

20. On January 24, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of Default and Election to Sell against the Property.

21. On July 30, 2012, the HOA Trustee, on behalf of the HOA, recorded a Notice of Foreclosure Sale against the Property.

22. On August 22, 2013, the HOA sold the property to Saticoy Bay for \$5,563.00. A foreclosure deed was recorded against the property on September 6, 2013.

23. At no time did the FHFA consent to the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

24. Saticoy Bay filed a motion for summary judgment which was previously granted by Judge Escobar by order entered December 11, 2018, ruling that the Federal Foreclosure Bar did not protect Freddie Mac's interest in the Deed of Trust because it was not the record beneficiary at the time of sale. Nationstar appealed that decision, and in the interim, the Nevada Supreme Court held in *Daisy Trust v. Wells Fargo Bank* that a deed of trust need not be assigned to its owner, such as Freddie Mac in this case, in order for the owner to own the secured loan. 135 Nev. 230, 233-34, 445 P.3d 846, 849 (2019). This Court did not have the benefit of the *Daisy Trust* decision when it entered its prior summary judgment order. The Nevada Court of Appeals remanded this matter by order dated April 10, 2020. Remittitur issued on June 16, 2020.

25. The court denied Saticoy Bay's motion for summary judgment on remand by minute order issued November 2, 2020. Nationstar filed its summary judgment motion on November 9, 2020. Saticoy Bay filed an opposition on November 23, 2020.

CONCLUSIONS OF LAW

1. Summary judgment is appropriate when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). In ruling upon a motion for summary judgment, the Court must view all evidence and inferences in the light most favorable to the non-moving party. *See Torrealba v. Kesmetis*, 124 Nev. 95, 178 P.3d 716 (2008). To successfully oppose a motion for summary judgment, the nonmoving party must present some specific facts to demonstrate that a genuine issue of material fact exists. *Forouzan, Inc. v. Bank of George*, 128 Nev. 896, 381 P.3d 612 (2012).

2. "While the pleadings and other evidence must be construed in the light most favorable to the nonmoving party, that party has the burden to 'do more than simply show that there is some metaphysical doubt' as to the operative facts to defeat a motion for summary judgment." *Wood*, 121

1 Nev. at 732, 121 P.3d at 1031 (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 586
2 (1986)). The governing law determines which "factual disputes are material and will preclude
3 summary judgment; other factual disputes are irrelevant." *Id.* at 731, 121 P.3d at 1031.

4 3. The Nevada Supreme Court held in *Nationstar Mortgage, LLC v. SFR Investments Pool*
5 *I, LLC*, that in order "to have standing, the party seeking relief must have a sufficient interest in the
6 litigation,' so as to ensure the litigant will vigorously and effectively present his or her case against an
7 adverse party." 133 Nev. 247, 250, 396 P.3d 754, 756 (2017) (internal quotations and marks omitted).
8 The Nevada Supreme Court also held that mortgage loan servicers for Freddie Mac or Fannie Mae
9 may assert the Federal Foreclosure Bar in litigation like this one, and that none of FHFA, Fannie Mae,
10 or Freddie Mac need be joined as a party. *Id.* at 251, 396 P.3d at 758.

11 4. With regard to Nationstar's argument that NRS 116, *et seq.* (**State Foreclosure**
12 **Statute**) is preempted by 12 U.S.C. § 4617(j)(3), this Court finds that Nationstar, as servicer for
13 Freddie Mac, has an interest in the Property through its contractual servicing relationship with Freddie
14 Mac and as the beneficiary of record of the Deed of Trust. Nationstar's status as servicer of the loan
15 for Freddie Mac is evidenced by Nationstar's business records as well as Freddie Mac's business
16 records from Freddie Mac's MIDAS database, which Freddie Mac uses in its ordinary course of
17 business to manage the millions of loans it owns nationwide, as well as the testimony of Freddie Mac's
18 employee. Thus, Nationstar may assert the preemptive effect of 12 U.S.C. § 4617(j)(3) on state law
19 in order to defend its interests and Freddie Mac's interests in the Deed of Trust.

20 5. Section 4617(j)(3) preempts the State Foreclosure Statute and, therefore, a homeowner
21 association's foreclosure of its super-priority lien cannot extinguish a property interest of Freddie Mac
22 while it is under FHFA's conservatorship unless FHFA consents to that extinguishment. *Berezovsky*
23 *v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

24 6. Unless FHFA provides its consent, the federal protection shall be given full effect,
25 which includes preemption of state law. Saticoy Bay bears the burden of proof to establish that FHFA
26 expressly consented to extinguish Freddie Mac's ownership interest in the Deed of Trust. Nevada has
27 a policy against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v.*
28 *Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096-97 (1990) (even where a plaintiff

1 bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer
2 to prove a negative, i.e., that the product was not altered.")

3 7. FHFA's April 21, 2015 Statement confirms that there was no such consent here. In the
4 absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore the
5 plain text of the Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent
6 can only be manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-
7 00805-JCM-CWH, 2017 WL 773872, *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which
8 FHFA's statement was sufficient to show FHFA's lack of consent).

9 8. At the time of the HOA Sale, Freddie Mac was the owner of the Deed of Trust and
10 Note, and its servicer, Nationstar, was the record beneficiary of the Deed of Trust. Freddie Mac's
11 interest in the Property was established by admissible evidence, namely Freddie Mac's business
12 records and the testimony of one of its employees. Under Nevada law, Freddie Mac had a secured
13 property interest at the time of the HOA Sale. *See In re Montierth*, 131 Nev. 543, 547-48, 354 P.3d
14 648, 651 (2015); Restatement (Third) of Property: Mortgages § 5.4 cmt. c. In citing *Montierth* and
15 the Nevada Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth
16 Circuit held that a loan-owner servicer relationship "preserves the note owner's power to enforce its
17 interest under the security instrument, because the note owner can direct the beneficiary to foreclose
18 on its behalf." *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a
19 secured property interest. *Id.*

20 9. The statute of frauds does not impugn Freddie Mac's ownership interest. The statute
21 of frauds applies only "where there is a definite possibility of fraud." *Azevedo v. Minister*, 86 Nev.
22 576, 580, 471 P.2d 661, 663 (1970). There is none in this case; no one besides Freddie Mac claims to
23 own the Loan, and Saticoy Bay has presented no evidence that another entity claims to own the Loan.
24 Further, Saticoy Bay lacks standing to raise a statute of frauds defense because it was not party to the
25 purchase of the Loan. *Harmon v. Tanner Motor Tours of Nev., Ltd.*, 79 Nev. 4, 16, 377 P.2d 622, 628
26 (1963).

27 10. Freddie Mac's interest in Property secured by the Deed of Trust was a property interest
28 protected by 12 U.S.C. § 4617(j)(3). Saticoy Bay failed to provide proof that the FHFA consented to

the HOA Sale extinguishing or foreclosing Freddie Mac's interest in the Property. Accordingly, the HOA Sale did not extinguish the Deed of Trust.

11. Insofar as Saticoy Bay raised arguments not addressed in this order, this Court has considered the arguments and determined they do not present a basis to support denial of Nationstar's motion for summary judgment.

12. All claims asserted in this case are now resolved. The Cooper Castle Law Firm LLP was voluntarily dismissed on October 5, 2017. Default judgment was entered against Monique Guillory on September 25, 2017. Naples Community Homeowners Association was dismissed prejudice August 12, 2015.

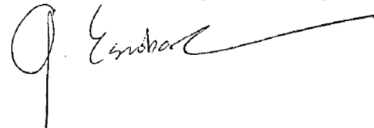
ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Nationstar's motion for summary judgment is granted.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Deed of Trust, recorded on January 25, 2007 with the Clark County, Nevada Recorder's Office as Instrument no. 20070125-0003583, was not extinguished by the HOA's foreclosure sale and continues to be a valid, secured, and enforceable lien on the Property.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Saticoy Bay's interest in the Property is subject to the Deed of Trust.

Dated this 4th day of January, 2021



2F8 578 3EDD E9DD

Adriana Escobar

District Court Judge

Submitted by:

/s/ Scott R. Lachman

Melanie D. Morgan, Esq.

Nevada Bar No. 8215

Donna M. Wittig, Esq.

Nevada Bar No. 11015

Scott R. Lachman, Esq.

Nevada Bar No. 12016

AKERMAN LLP

1635 Village Center Circle, Suite 200

Las Vegas, Nevada 89134

Attorneys for Nationstar Mortgage LLC

Approved as to form and content by:

/s/Adam R. Trippiedi

Michael F. Bohn, Esq.

Nevada Bar No. 1641

Adam R. Trippiedi, Esq.

Nevada Bar No. 12294

Law Offices of Michael F. Bohn, Esq., Ltd.

2260 Corporate Circle, Suite 480

Henderson, NV 89074

Attorneys for Saticoy Bay LLC Series 4641

Viareggio Ct

Llarena, Carla (LAA-Las)

From: Adam Trippiedi <atrippiedi@bohnlawfirm.com>
Sent: Monday, January 4, 2021 10:19 AM
To: Lachman, Scott (Assoc-Las); Michael Bohn
Cc: Morgan, Melanie (Ptnr-Las); Wittig, Donna (Assoc-Las); Streible, Elizabeth (Den)
Subject: RE: Saticoy 4641 Viareggio v. Nationstar (Guillory, A-13-689240-C) - Order Denying MSJ

Hi Scott,

The only change I have is to our signature block. Please add my name and update our address. With that change, you have my approval to submit for filing.

Thanks.

Adam R. Trippiedi, ESQ.
Law Offices of
Michael F. Bohn, Esq., Ltd.
2260 Corporate Circle, Suite 480
Henderson, NV 89074
(702) 642-3113
(702) 642-9766 FAX
atrippiedi@bohnlawfirm.com

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Adam,

Attached please find the order granting Nationstar summary judgment. Please let us know if we have approval to use your e-signature. We aim to submit it by mid-week. Thanks and happy new year!

Regards,
Scott Lachman

Scott Lachman

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Saticoy Bay LLC Series 4641
Viareggio Ct., Plaintiff(s)

CASE NO: A-13-689240-C

7 vs.

DEPT. NO. Department 14

8
9 Nationstar Mortgage LLC,
Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

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13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting was served via the court's electronic eFile system to all
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19 NVEfile .	nvefile@wrightlegal.net
20 Regina A. Habermas .	rhabermas@wrightlegal.net
21 Melanie Morgan	melanie.morgan@akerman.com
22 Akerman LLP	AkermanLAS@akerman.com
23 Donna Wittig	donna.wittig@akerman.com
24 Scott Lachman	scott.lachman@akerman.com

25
26
27
28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****January 24, 2014**

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

January 24, 2014	9:00 AM	All Pending Motions	Defendant Nationstar Mortgage, LLC and The Cooper Castle Law Firm, LLP's Motion to Dismiss; Opposition to Motion to Dismiss and Countermotion to Stay Case
-------------------------	----------------	----------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

HEARD BY: Ellsworth, Carolyn**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Katherine Streuber**RECORDER:** Lara Corcoran**REPORTER:****PARTIES**

PRESENT:	Bohn, Michael F	Attorney
	Peck, Jason M, ESQ	Attorney

JOURNAL ENTRIES

- Kelly Perry present with Mr. Bohn. Court advised it had been staying most of these types of cases as there is a decision pending from the Supreme Court. Mr. Bohn advised there has not been a date set for hearing at this time. Mr. Peck stated the defense did not want any unnecessary work, however, believes the Plaintiff should post bond. Mr. Bohn advised if the Motion to Dismiss was granted, they would be requesting 54b Certification and noted the Supreme Court has not required a bond be posted in these cases. Statement by Mr. Peck. Mr. Bohn advised his client is paying insurance and fees and will continue to do so. Court believes a stay is appropriate and ORDERED, Countermotion to Stay Case is GRANTED and Defendants' Motion to Dismiss is DENIED. Mr. Bohn to prepare the order and provide to opposing counsel for review prior to submitting to the Court for

PRINT DATE: 02/05/2021

Page 1 of 30

Minutes Date: January 24, 2014

signature.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 06, 2015

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

January 06, 2015

3:00 AM

Motion

HEARD BY: Ellsworth, Carolyn

COURTROOM: No Location

COURT CLERK: Denise Trujillo

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- MOTION TO LIFT STAY

No opposition having been filed, COURT ORDERED, Motion GRANTED, prevailing party to prepare order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property	COURT MINUTES	May 15, 2015
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A-13-689240-C	Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)
---------------	---------------------------------------------------------------------------------------------------------

May 15, 2015 9:00 AM All Pending Motions

HEARD BY: Ellsworth, Carolyn **COURTROOM:** RJC Courtroom 16D

COURT CLERK: Shelly Landwehr

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT:	Nitz, Dana Jonathon	Attorney
	Tan, Gerald L.	Attorney

JOURNAL ENTRIES

- PLAINTIFF S MOTION TO DISMISS COUNTERCLAIM NATIONSTAR S OPPOSITION TO DISMISS COUNTERCLAIM AND, IN THE ALTERNATIVE, MOTION FOR CONTINUANCE, AND ITS COUNTERMOTION FOR SUMMARY JUDGMENT

Court NOTED its tentative ruling which was distributed to counsel as follows:

I. FACTUAL BACKGROUND

Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct. (Plaintiff) is the record title holder of the property located at 4641 Viareggio Court, Las Vegas, Nevada (the Property). The Property is subject to the covenants, codes, and restrictions of Counter defendant Naples Community Homeowners Association (the HOA). Plaintiff acquired title to the Property via a foreclosure sale held by the HOA on delinquent assessment liens it held on the Property.

Defendant/Counterclaimant Nationstar Mortgage, LLC (Nationstar) held a first priority deed of trust on the Property. Following the foreclosure sale on August 22, 2013 at which Saticoy Bay acquired title to the Property, Nationstar filed a Notice of Default and Election to Sell. Saticoy Bay

then filed suit against, inter alia, Nationstar, alleging claims for: (1) injunctive relief; (2) declaratory relief/quiet title; and (3) unlawful detainer (against the former property owner). Nationstar filed an Answer and Counterclaim on March 13, 2015, alleging claims for: (1) quiet title/declaratory relief, against Saticoy Bay and the HOA; (2) injunctive relief against Saticoy Bay and the HOA; and (3) wrongful foreclosure (against the HOA only).

Saticoy Bay moved to dismiss the Counterclaim on March 19, 2015. Nationstar filed an Opposition thereto and a Countermotion for Summary Judgment on April 20, 2015, pursuant to an extended deadline by stipulation.

II. ANALYSIS

A. Legal Standards

Motion to Dismiss

Saticoy Bay moves for dismissal under NRCP 12(b)(5), which mandates dismissal when it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle it to relief. *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008). This standard requires this Court to examine the content of Nationstar's Counterclaim. See *McKnight Family, LLP v. Adept Mgmt. Servs., Inc.*, 129 Nev. Adv. Op. 64, 310 P.3d 555, 558 (2013) (analyzing a complaint's claims in deciding a 12(b)(5) motion to dismiss).

However, [i]f, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. NRCP 12(b)

Here, as noted by Nationstar, Saticoy Bay has included documents outside the pleading itself with its Motion to Dismiss—a copy of the foreclosure deed and a copy of decision by the U.S. District Court for the District of Nevada. Nationstar argues that Saticoy's Motion should therefore be construed as a motion for summary judgment.

However, there are exceptions to when a court should consider a Rule 12(b)(5) motion as a motion for summary judgment. One exception is where the complaint/counterclaim attaches the documents referenced by the Motion to Dismiss. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). Another is that the court may take judicial notice of matters of public record. *Id.* The Foreclosure Deed is attached as Exhibit 7 to Nationstar's Counterclaim and the District Court decision will not be considered by the Court. Thus, this Court need not construe Saticoy Bay's Motion as one for summary judgment.

Motions for Summary Judgment

Summary judgment is appropriate when 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. NRCP 56. (emphasis added) The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial. If the moving party will bear the burden of persuasion, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. But if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim or (2) pointing out that there is an absence of evidence to support the nonmoving party's case. *Cuzze v. Univ. and Community College System of Nevada*, 123 Nev. 598, 172 P.2d 131 (2007).

Here, it is important to note that Nationstar may have been hoist by its own petard with regard to its entitlement to summary judgment. Curiously, Nationstar has included a list of approximately seven disputed facts in its Opposition/Motion. Opp. at 6. It lists these facts in refuting Saticoy Bay's entitlement to dismissal of the Counterclaim but, to the extent that these facts are material (which they appear to be, as they directly underlie the claims in the Counterclaim), Nationstar would likewise not be entitled to summary judgment. On this basis alone, the Court could arguably deny Nationstar's Motion.

B. Analysis

The Counterclaim asserts only two claims against Saticoy Bay: (1) quiet title; and (2) injunctive relief. Relative to the first, Nationstar has no title interest to the Property, but rather holds—or held—only a lien and, therefore, has no standing to assert a quiet title claim. As this was not a ground asserted by Saticoy Bay, it will not be discussed further here. Relative to the second claim, Nationstar seeks injunctions prohibiting Saticoy Bay from selling the Property, and requiring it to pay all taxes, insurance, and HOA dues until the matter is resolved. However, injunctions are to prevent future damage from occurring and generally will not redress wrongs already committed. See *Sherman v. Clark*, 4 Nev. 139, 141 (1868). Since the foreclosure has already occurred, and has extinguished Nationstar's interest pursuant to the Supreme Court's decision in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408, 418 (2014), reh'g denied (Oct. 16, 2014), their injunctive relief claim is problematic. Again, since Saticoy Bay did not assert this as a ground for dismissal, it will not be discussed further here.

Nationstar presents several grounds to oppose to Motion to Dismiss. I believe each of these grounds, presented below, are likewise insufficient but they are presented for full consideration.

1. Whether the foreclosure sale was properly noticed

Saticoy Bay argues that its foreclosure deed provides conclusive proof that the foreclosure process was properly conducted under NRS 116. In response, Nationstar asserts that the notice of default was deficient because it does not describe the deficiency in payment or alert third parties as to what is being foreclosed assessments, fines, nuisance abatements, or something else. It also generally avers that the foreclosure deed does not provide conclusive proof because, otherwise, every foreclosure sale under NRS Chapter 116 is presumed to be a valid sale on a super-priority lien. Opp. at 21:4-5.

Saticoy Bay appears to be correct in its assertion that NRS 116 provides a conclusive presumption as to the validity of a HOA lien foreclosure sale under certain circumstances. NRS 116.31166(1) provides:

The recitals in a deed made pursuant to [the foreclosure of a HOA lien under this Chapter] of:

- (a) Default, the mailing of the notice of delinquent assessment, and the recording of the notice of default and election to sell;
 - (b) The elapsing of the 90 days; and
 - (c) The giving of notice of sale,
- are conclusive proof of the matters recited.

Saticoy Bay attached a filed copy of the Foreclosure Deed as Exhibit 1 to its Motion. That deed provides that the Notice of Mailing of Delinquent Assessment was recorded and then mailed to the owners and that, subsequently, a Notice of Default and Election to Sell was recorded on January 24, 2012. Thus, subsection (a) is satisfied. The Foreclosure Deed further states that more than ninety (90) days elapsed from mailing the Notice of Default and Election to Sell to interested parties. Thus, subsection (b) is satisfied. Lastly, the Foreclosure Deed states that a Notice of Sale was published for three weeks in the Nevada Legal News, was recorded, and posted in three of the most public places in Clark County as well as on the Property. Thus, subsection (c) is satisfied. Saticoy Bay has therefore sufficiently demonstrated that the Foreclosure Deed provides conclusive proof that proper notice was given.

Nationstar argues that Saticoy Bay's position would mean that every foreclosure sale under NRS Chapter 116 is presumed to be a valid sale on a super-priority lien. Opp. at 21:4-5. This, however, ascribes an overly broad interpretation to the argument. Where a statute is unambiguous, a court is not permitted to look beyond the statute itself when determining its meaning. *Westpark Owners' Ass'n v. Eighth Judicial Dist. Court*, 123 Nev. 349, 357, 167 P.3d 421, 427 (2007). A statute is ambiguous when it is capable of more than one reasonable interpretation. *Orion Portfolio Servs. 2, L.L.C. v. Cnty. of Clark ex rel. Univ. Med. Ctr. of S. Nev.*, 126 Nev. ___, ___, 245 P.3d 527, 531 (2010). As outlined above, NRS 116.31166(1) does establish conclusive proof as to matters of notice of the sale - this is apparent from the face of the statute itself. Those provisions are not susceptible to more than one reasonable interpretation. Thus, the Foreclosure Deed appears to provide conclusive proof as to matters of notice of delinquency and the foreclosure sale. Moreover, those matters cannot be genuinely disputed factual issues, as they are conclusively established pursuant to NRS 116.31166(1). Hence, Nationstar's claims for wrongful foreclosure should be dismissed. Its motion for

summary judgment on that point should also be denied because, even if there are not disputed issues of material fact, it is not entitled to judgment as a matter of law.

2. Whether the notice provisions in NRS 116 for HOA lien foreclosures violate due process

Nationstar contends that NRS 116.31163 and NRS 116.31168 facially violate due process rights because, rather than requiring mandatory notice to lenders, they require notice only to those that have opted in to receive notice from the HOA.

NRS 116.31163 provides:

The association or other person conducting the sale shall also mail, within 10 days after the notice of default and election to sell is recorded, a copy of the notice by first-class mail to:

1. Each person who has requested notice pursuant to NRS 107.090 or 116.31168;
2. Any holder of a recorded security interest encumbering the unit s owner s interest who has notified the association, 30 days before the recordation of the notice of default, of the existence of the security interest.

NRS 116.31168(1) provides that [t]he provisions of NRS 107.090 apply to the foreclosure of an association s lien as if a deed of trust were being foreclosed. The request must identify the lien by stating the names of the unit s owner and the common-interest community. Saticoy Bay argues that these provisions do not violate due process because they do not limit lenders notice to those to which it has opted to receive. Saticoy Bay points to the fact that NRS 116.31168(1) incorporates the provisions of NRS 107.090 relative to notice.

NRS 107.090(3) provides that [t]he trustee or person authorized to record the notice of default shall, within 10 days after the notice of default is recorded and mailed pursuant to NRS 107.080, cause to be deposited in the United States mail an envelope, registered or certified, return receipt requested and with postage prepaid, containing a copy of the notice, addressed to: (a) [e]ach person who has recorded a request for a copy of the notice; and (b) [e]ach other person with an interest whose interest or claimed interest is subordinate to the deed of trust.

It is not entirely clear that NRS 116.31168(1) incorporates all the provisions of NRS 107.090(3), however. NRS 107.090 primarily addresses those who have recorded requests for notices. Although subsection (3)(b) also requires notice to be sent to subordinate interest holders, it seems more logical that NRS 116.31168(1), which similarly addresses giving notice to those who have requested it, incorporates only those portions of NRS 107.090 that address the same topic. Therefore, Saticoy Bay s position is less clear cut than it would have one believe.

At the same time, SFR did note that the requirements of law include compliance with NRS 116.31162 through NRS 116.31168 and by incorporation, NRS 107.090, see NRS 116.31168(1). SFR, 334 P.3d at 418. Additionally, the Foreclosure Deed conclusively proves that a notice of default and

election to sell was actually provided to all parties of interest, which would include Nationstar. The Notice of Sale was thereafter published and posted in conspicuous public places, including upon the Property.

3. Whether Nationstar's deed of trust was preserved by the HOA's CC&Rs

Saticoy Bay argues that, while the CC&Rs at issue here do contain a mortgage savings clause, that clause is pre-empted by NRS 116.1104. Nationstar responds by contending that the mortgage savings clause is valid and that its interest was therefore not extinguished by the foreclosure.

This issue appears to have been directly addressed and decided by the Supreme Court in SFR. The Court there held that:

[NRS 116.1104] states Chapter 116's provisions may not be varied by agreement, and rights conferred by it may not be waived ... [e]xcept as expressly provided in Chapter 116. (Emphasis added.) Nothing in [NRS] 116.3116 expressly provides for a waiver of the HOA's right to a priority position for the HOA's super priority lien [even by including a mortgage savings clause in the CC&Rs].

SFR, 334 P.3d at 419 (citations omitted). Thus, Nationstar's position is directly at odds with the SFR decision. Indeed, its Opposition seems to acknowledge this conflict and states that to the extent SFR conflicts with the premise that the HOA could choose to subordinate its interests to the first mortgagee for the greater good of the association it should be overturned. Opp. at 18:11-14. Of course, this Court is in no position to overturn a decision of the Supreme Court. In any event, Nationstar's mortgage was not preserved by the mortgage savings clause in the CC&Rs under existing law. Therefore, Nationstar's Complaint should be dismissed because it cannot pursue the claims contained therein where its interest in the Property has been extinguished. Furthermore, regardless of the existence of disputed material facts, Nationstar would not be entitled to judgment as a matter of law for these same reasons and its Motion for Summary Judgment should be denied.

4. Whether the nonjudicial foreclosure process in NRS 116 violates Takings Clauses

Nationstar also argues that the SFR decision and nonjudicial foreclosure under NRS 116 and the SFR interpretation thereof violates the Takings Clauses of the United States and Nevada Constitutions. In order for there to be a violation of the Takings Clauses, the use for which real property is appropriated must be a public use—that is, it must serve a public purpose. See *Kelo v. City of New London, Conn.*, 545 U.S. 469, 480 (2005); *Dayton Gold & Silver Mining Co. v. Seawell*, 11 Nev. 394, 410 (1876). At the outset, it is highly doubtful that Nationstar has any real property interest in the Property that could have been taken as that word is meant in the context of the Takings Clauses. Nationstar held only a security interest in the Property via a deed of trust. This is akin to a lien on the Property and liens are a monetary encumbrance on property, which cloud[] title, not a vested right in title. *Hamm v. Arrowcreek Homeowners Ass'n*, 124 Nev. 290, 298, 183 P.3d 895, 901 (2008). Even if Nationstar had a compensable interest in the Property, its takings claim must still fail. It is difficult to see how the foreclosure of a HOA lien could constitute public use.

Moreover, there is also no real government action here that would constitute a taking under the Takings Clauses. Typically, such actions are in the nature of a physical intrusion onto one's property or regulating one's property such that the property loses economic value. See generally *City of Las Vegas v. Cliff Shadows Prof'l Plaza*, 293 P.3d 860 (Nev. 2013); *McCarran Int'l Airport v. Sisolak*, 122 Nev. 645 (2006). Thus, its motion for summary judgment on this point should be denied.

5. Whether the HOA Lien here Violates NRS 116.3116

Nationstar also argues that the HOA lien that was foreclosed upon violated NRS 116 and that, because it was statutorily improper, this invalidates the resulting foreclosure. The essence of Nationstar's argument on this point is that NRS 116.3116(1) limits what may be included in a HOA's super-priority lien and that this does not include collection costs and attorney's fees. This precise issue is currently before the Supreme Court in the case of *Horizons at Seven Hills Homeowners Association v. Ikon Holdings, LLC*, Case No. 63178, and is pending final disposition. But the Court need not decide that issue because the argument is made too late in the case, as to *Saticoy Bay*. Here, the foreclosure sale has already occurred. Although the argument is preserved as to the HOA, the ship has sailed on *Saticoy Bay*.

Mr. Tan argued under the SFR decision the Nevada Supreme Court held that proper foreclosure of HOA lien extinguishes first deed of trust. The recital in the foreclosure deed here is proper before the Court, it's a public document, all requirements were followed; therefore, the foreclosure is presumed to be proper and first deed of trust held by the defendants is extinguished and there is no interest in the property.

Mr. Nitz stated plaintiff's argument is flawed. Plaintiff is reading SFR in that the foreclosure deed extinguishes the deed of trust and that is not what SFR said. SFR says that a properly conducted HOA lien foreclosure sale can extinguish the deed of trust. Mr. Nitz stated the circumstances that were presented to the NVSC on that decision, have to be considered. The NVSC was considering a motion to dismiss that was granted in the district court. At the motion to dismiss stage, because the complaint alleged that all of the notices were given and because the complaint alleged the foreclosure deed had those recitations, that they met the burden of demonstrating a viable claim for relief. The NVSC did not say those conclusively establish for all cases that the foreclosure deed extinguishes the deed of trust; it's just at that stage of the pleadings. Court inquired if the statute itself make these things self-executed so that there is a presumption. Mr. Nitz stated the problem with that analysis is an affront to due process.

Mr. Tan argued noticed is required and stated, although there are several provisions, as far as lenders are concerned as beneficiaries of deed of trust they are required to receive notice. If Defendant Nationstar Mortgage had no interest, then they wouldn't have been necessary to be named in the complaint. Mr. Nitz stated a lien interest is sufficient. SFR left open challenges to the validity of the sale. Further arguments by Mr. Nitz regarding foreclosure notices, fair market value of the property

and commercial reasonable sales. As to the ability to cure, MR. Tan argued SFR addressed that. The banks as holders of deeds of trust can go in and asking what is the super priority lien amount and paying for it. Further arguments.

COURT ORDERED, matter UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

June 19, 2015

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

June 19, 2015

9:00 AM

Motion to Dismiss

HEARD BY: Ellsworth, Carolyn

COURTROOM: RJC Courtroom 16D

COURT CLERK: Billie Jo Craig

RECORDER: Lara Corcoran

REPORTER:

PARTIES

PRESENT: Crowton, Chelsea A., ESQ Attorney
 McGrath, Thomas E. Attorney

JOURNAL ENTRIES

- Counsel advised they read the Court's tentative ruling and submitted matter. COURT ORDERED, matter DISMISSED WITHOUT PREJUDICE. Mr. McGrath to prepare the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 09, 2017

A-13-689240-C	Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)
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February 09, 2017 9:30 AM Motion for Leave

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Habermas, Regina A. Attorney
 Trippiedi, Adam R. Attorney

JOURNAL ENTRIES

- Ms. Habermas stated as she demonstrated in the motion, leave should be granted to allow her to assert new affirmative defenses as well as counterclaims for quiet title and declaratory relief against the Plaintiff. Further arguments in support of her motions. Mr. Trippiedi stated that as to affirmative defenses, we have moved to keep it out because due process. Constitutionality was decided two weeks ago by the NSC. NRS116 finds there is no State action, therefore there is no due process violation. The order has been issued, published and is now law in Nevada. Further arguments in support of his position. Arguments by Ms. Habermas regarding failure to give proper notice and to act in good faith. Failure to act in good faith is a form of oppression, fraud or unfairness. Statements regarding the CC&Rs and unjust enrichment claim. Following further arguments of counsel, The Court noted it read the decision issued by Judge Ellsworth. The 2015 order GRANTS Plaintiff's Motion to Dismiss and DENIES Nationstar Mortgage's countermotion for Summary Judgment and in this Court's view, that ruling STANDS. It is a final order and this Court is not willing to disregard. Ms. Habermas stated there have been a number of cases cited since that order was entered, including Shadow Wood, Horizon Seven Hills vs. ICON Holdings and these cases have given further guidance. The Court stated that we are at the point where the NRED negotiations are complete.

COURT FINDS, 1) We have claims against Plaintiff and this Court decides they had nothing to do

PRINT DATE: 02/05/2021

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Minutes Date: January 24, 2014

with the NRED mediations; they were previously dismissed via the 12(b)(5) motion. In this Court's view they are futile as they are treated as a final judgment thus they DENIED. If counsel disagrees with that, they may move for reconsideration or brief the issue. This Court does not see a change of law under Rule 60 and doesn't believe that SFR changed the law at all; it just interpreted it. All claims against the Plaintiff purchaser were dismissed and that stands. 2) Claims against the HOA for the most part were different and they were allowed except for a couple of them. Those remain. The order filed on 8/12/15 by Judge Ellsworth is without prejudice, so this comes in except for the cause of action for quiet title, cause of action for injunctive relief. It has already been dismissed as against the Plaintiff and the cause of action for unjust enrichment as to Plaintiff is barred by the voluntary payment document. COURT ORDERED, it is GRANTING the motion except for the causes of action One, Two and Eight and any other portion will be allowed in. FURTHER, Plaintiff's claims against Defendant are denied because the previous order still stands. Mr. Trippiedi to prepare the order in Word and provide to Chambers. Also, a copy is to be provided to Ms. Habernas for review as to content and form.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

June 15, 2017

A-13-689240-C	Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)
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June 15, 2017

9:30 AM

**Motion for Summary
Judgment**

**Plaintiff's Motion for
Summary Judgment**

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Sharon Chun

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Plaintiff's Motion for Summary Judgment

No parties present. COURT ORDERED, OFF CALENDAR.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

July 27, 2017

A-13-689240-C	Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)
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July 27, 2017	9:30 AM	Motion for Summary Judgment
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HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT:	Habermas, Regina A.	Attorney
	Trippiedi, Adam R.	Attorney

JOURNAL ENTRIES

- Ms. Habermas stated she was unaware this matter was on calendar and thought it was continued which is why an opposition has not been filed. She requested a two week continuance. Mr. Trippiedi advised that his client has not given him the authority to continue this matter. Additionally, this motion was filed in May and no opposition has been filed. COURT ORDERED, continuance is GRANTED; opposition is due on 8/3/17 and reply is due on 8/10/17.

CONTINUED TO: 8/10/17 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 10, 2017

A-13-689240-C	Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)
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August 10, 2017 9:30 AM All Pending Motions

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT:	Bohn, Michael F	Attorney
	Habermas, Regina A.	Attorney

JOURNAL ENTRIES

- CALENDAR CALL...PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Mr. Bohn requested that his motion be granted as Ms. Habermas failed to file an opposition despite being granted two extensions. Statement by Ms. Habermas; she stated she had trouble filing her opposition over the weekend. Mr. Bohn stated the opposition was dated today. COURT ORDERED, Plaintiff's Motion for Summary Judgment is GRANTED as there is no good cause to put the rules aside. FURTHER, trial date is VACATED. Mr. Bohn to prepare the order to include findings of fact and conclusions of law.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****September 21, 2017**

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

September 21, 2017 9:30 AM**Motion for Default
Judgment****Motion for Default
Judgment****HEARD BY:** Escobar, Adriana**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Haly Pannullo
Denise Husted**RECORDER:** Sandra Anderson**REPORTER:****PARTIES****PRESENT:** Trippiedi, Adam R. Attorney**JOURNAL ENTRIES**

- Mr. Trippiedi stated Ms. Gilroy has been served and defaulted and that he is seeking quiet title against her. He further stated she has not appeared in this matter and has not filed an opposition to this motion. Upon Court's inquiry, he advised that Cooper Castle no longer exists and a Motion for Voluntary Dismissal has been filed; he is not necessary for a default in this case. COURT ORDERED, motion is GRANTED. Order provided to the Court for its review and signature.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 27, 2017

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

September 27, 2017 4:55 PM Minute Order

HEARD BY: Escobar, Adriana

COURTROOM: Chambers

COURT CLERK: Michelle Jones

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Plaintiff Saticoy Bay LLC Series 4641 Viareggio Ct filed a motion for voluntary dismissal of Defendant Cooper Castle Law Firm LP on August 29, 2017. The matter was subsequently scheduled for hearing on September 28. No opposition having been filed and good cause showing, pursuant to EDCR 2.20 and EDCR 2.23(c) the Court hereby GRANTS the Motion for voluntary dismissal.

The Court hereby VACATES the September 28, 2017 hearing. Plaintiff is directed to prepare a proposed order and to submit it to chambers for signature.

CLERK'S NOTE: A copy of this minute order was placed in the attorney folder(s) of: Michael Bohn, Esq. (Law Offices of Michael F. Bohn) Jason Peck, Esq. (THE CASTLE LAW GROUP), Richard Ehlers, Esq. (WRIGHT FINLAY & ZAK).

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 05, 2017

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

**December 05, 2017 9:30 AM Motion for Summary
Judgment**

HEARD BY: Escobar, Adriana

COURTROOM: RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Habermas, Regina A. Attorney

JOURNAL ENTRIES

- Ms. Habermas informed the Court that Mr. Bohn could not be in Court today, but they discussed continuing the matter. COURT ORDERED, CONTINUED; Ms. Habermas to contact Mr. Bohn with the continuance date.

CONTINUED TO: 1/18/18 9:30 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property	COURT MINUTES	January 18, 2018
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A-13-689240-C	Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)
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January 18, 2018	9:30 AM	Motion for Summary Judgment	Plaintiff's Motion for Summary Judgment
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HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES

PRESENT: Bohn, Michael F Attorney

JOURNAL ENTRIES

- Dana Nitz and Regina Habermas appearing for Defendant Nationstar Mortgage LLC. Following arguments by counsel, COURT ORDERED, an order will be issued.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****February 26, 2018**

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

February 26, 2018**11:30 AM****Decision****HEARD BY:** Escobar, Adriana**COURTROOM:** RJC Courtroom 14C**COURT CLERK:** Denise Husted**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Plaintiff's motion for summary judgment came on for a hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on January 18, 2018.

After considering the pleadings and argument of counsel, the Court GRANTS Plaintiff's motion. The Court finds Plaintiff has sufficiently established that, absent flaws in the HOA foreclosure sale or potential equitable reasons for setting aside the sale, Plaintiff is entitled to judgment as a matter of law on its quiet title claim. In opposition, Defendant argues that Plaintiff's claim is preempted by the federal foreclosure bar, or 12 U.S.C. 4617(j)(3); that Plaintiff is not a BFP; that the HOA sale was commercially unreasonable; and that NRS 116's superpriority lien scheme violates due process.

As to the first argument, the Court finds that Defendant has not met its burden of establishing a genuine issue of material fact. The Court agrees that, if the federal foreclosure bar applies, the HOA's foreclosure could not affect FHFA's interest in the deed of trust, and thus that the property would still be encumbered by the deed of trust. However, this requires a finding that FHFA in fact owned a legally cognizable interest in the deed of trust. In Nevada, a security interest is only effective against a third party once it is recorded. See *In re Montierth*, 354 P.3d 648, 650 (Nev. 2015). Defendant has not disputed the fact that no recorded document reflects any FHFA interest in the deed of trust, much less that any recorded document makes any mention of Freddie Mac having an interest in the deed of

trust. The only evidence that Defendant has provided in an effort to prove Freddie Mac's ownership is alleged business records of Freddie Mac, coupled with an affidavit stating that Freddie Mac's business records reflect ownership of the subject loan at the time of the HOA sale. However, even if this information is sufficient to show that Freddie Mac believed it had ownership of the loan, this evidence would conflict with the judicially noticeable public record. Because no interest of Freddie Mac or FHFA was recorded, there is no such interest that would be effective as against the HOA or Plaintiff. Thus, the federal foreclosure bar does not apply here.

Next, a sale cannot be held commercially unreasonable based on price alone, as this conclusion requires a finding of fraud, unfairness, or oppression that brings about and causes a low sale price. *Nationstar Mortgage v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 405 P.3d 641 (Nev. 2017). In support of its argument, Defendant suggests that fraud, unfairness, or oppression are shown by the existence of a mortgage protection clause in the HOA's CC&Rs, by the HOA's failure to try to get the best price possible at foreclosure, and by the HOA's inclusion of fees and costs in its calculation of its lien. The Court finds that none of these issues presents evidence of fraud, unfairness, or oppression. A clause such as the one in the relevant CC&Rs here, which states that the HOA's foreclosure cannot extinguish a mortgage deed of trust, is void under NRS 116.1104, as held in *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408 (Nev. 2014), and thus the HOA's act of foreclosing is not rendered fraudulent, unfair, or oppressive due to the clause's presence in the CC&Rs. Additionally, the Court notes that NRS Chapter 116 imposes no duty on an HOA to get the best price possible at foreclosure, as affirmed in *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017), where the Nevada Supreme Court rejected the argument that an HOA has the burden of establishing that it took all steps possible to obtain the highest sales price it could. Finally, an HOA lien is not invalid for including fines, as addressed in the recent *Shadow Canyon* case, where *Nationstar* made the very same argument. The Nevada Supreme Court rejected this argument, finding that such an interpretation is untenable, and that the legislature apparently intended to prevent foreclosure on a lien that is comprised solely of fines, but not a lien that includes both delinquent assessments and fines. In sum, Defendant has identified no evidence of fraud, unfairness, or oppression, so the sale cannot be held commercially unreasonable.

Finally, the remaining arguments by Defendant do not impact the Court's decision. The Nevada Supreme Court has conclusively held that NRS 116 does not violate due process, in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortgage*, 388 P.3d 970 (Nev. 2017). Moreover, because Defendant has not presented any meritorious reason for setting aside the sale, Plaintiff's potential status as a bona fide purchaser is not a necessary determination.

Therefore, Defendant has not met its burden in resisting summary judgment, and the Court finds judgment as a matter of law in Plaintiff's favor is appropriate. Plaintiff's motion is therefore GRANTED.

Counsel for Plaintiff is directed to prepare a proposed order including detailed findings of fact and conclusions of law, which is to be approved by Defendant's counsel as to form and content prior to submitting the order to chambers in Microsoft word format, by email to

A-13-689240-C

dept14lc@clarkcountycourts.us

CLERK'S NOTE: Michael Bohn (mbohn@bohnlawfirm.com) notified via e-mail.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 22, 2020

A-13-689240-C	Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s) vs. Nationstar Mortgage LLC, Defendant(s)
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October 22, 2020	9:30 AM	Hearing	Reversal: Plaintiff's Motion for Summary Judgment
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HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Louisa Garcia

RECORDER:

REPORTER:

PARTIES

PRESENT: Morgan, Melanie D. Attorney
Nikci, Nikoll Attorney

JOURNAL ENTRIES

- Court stated case history, noting this decision was reversed and sent back. Court advised before new case law came out the Court granted Plaintiff's Motion for Summary Judgment. Given new law that occurred afterwards, COURT ORDERED, Motion for Plaintiff's Motion for Summary Judgment DENIED. Ms. Morgan to prepare Order, as well as Countermotion for Summary Judgment; Motion DUE 11/9/20. Court will issue a detailed Minute Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****November 02, 2020**

A-13-689240-C

Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)

vs.

Nationstar Mortgage LLC, Defendant(s)

November 02, 2020**3:00 AM****Minute Order****Plaintiff's Motion for
Summary Judgment****HEARD BY:** Escobar, Adriana**COURTROOM:** Chambers**COURT CLERK:** Grecia Snow**RECORDER:****REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Plaintiff's Motion for Summary Judgment (Motion) came on for hearing before Department 14 of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on October 22, 2020. Based on the pleadings and arguments of counsel, the Court issues the following order:

Summary judgment is proper when there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law. NRCP 56(c). Wood v. Safeway, Inc. explains the following:

While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to 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. 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.

121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005) (emphasis added) (citations omitted).

Nevada's recording statutes do not require that Freddie Mac be identified as the beneficiary on the

publicly recorded deed of trust to establish its ownership interest in the subject loan. *Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 230, 445 P.3d 846, 847 (2019).

Freddie Mac's loan servicer is not required to produce the actual loan servicing agreement or the original promissory note to establish Freddie Mac's ownership interest in a loan where properly authenticated business records establish that interest. *Id.* at 233, 445 P.3d at 847.

NRS 51.135, the business records exception to the hearsay rule, provides:

A memorandum, report, record or compilation of data, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, all in the course of a regularly conducted activity, as shown by the testimony or affidavit of the custodian or other qualified person, is not inadmissible under the hearsay rule unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

(emphasis added).

Under *Daisy Tr. v. Wells Fargo Bank, N.A.*, 135 Nev. 230, 445 P.3d 846, 847 (2019), there is a genuine issue of material fact as to whether Plaintiff's claim is preempted by the Federal Foreclosure Bar. Freddie Mac did not record the conveyance of the Deed of Trust from First Magnus Financial Corporation. However, the deed of trust did not have to be assigned or conveyed to Freddie Mac in order for Freddie Mac to own the secured loan, meaning that Nevada's recording statutes are not implicated. *Id.* at 234, 445 P.3d at 849. Thus, Freddie Mac was not required to publicly record its ownership interest as a prerequisite for establishing that interest. *Id.*

In Defendant's opposition to Plaintiff's Motion, Defendant provided a declaration by Dean Meyer, a Freddie Mac employee, attesting that (1) Freddie Mac acquired the loan in March 2007, (2) Freddie Mac owned the loan at the time of the HOA foreclosure sale, and (3) that Defendant had been servicing the loan since June 2012. Meyer's declaration was accompanied by printouts from Freddie Mac's databases. These printouts reflected a Funding Date of March 29, 2007, Seller NBR of 623509, and Part. Pct. of 1.00. Meyer attested, amongst other things, that the funding date referred to the date Freddie Mac purchased the loan, the seller NBR referred to the party that sold the loan to Freddie Mac, and the Part. Pct., which also means participation percentage, reflects that Freddie Mac owns 100% of the loan. Meyer also attested that the Servicer Number in Freddie Mac's printouts referred to Defendant, the loan servicer.

Meyer's respective declarations, which confirm or at least strongly indicate Defendant is Freddie Mac's loan servicer, combined with relevant provisions in the Guide that govern the contractual relationship between Freddie Mac and its servicers nationwide, is sufficient to create a genuine issue of material fact that Freddie Mac owned the loan and Defendant was the servicer of the loan, such that Defendant can assert the Federal Foreclosure Bar.

Plaintiff's argument that Meyer is not competent to testify lacks merit. The Daisy Trust Court addressed an almost identical argument as to the admissibility of the business records attested to in Meyer's declaration under NRS 51.135. Here, Meyer attested that the database entries contained in the printouts were made (1) at or near the time of the event being recorded, (2) by a person with knowledge of the event, and (3) in the course of the business's regularly conducted activity. Thus, the Freddie Mac database printouts are admissible.

Based on the foregoing, the Court DENIES Plaintiff's Motion.

Defendant is directed to prepare a detailed order that incorporates the substance of this Minute Order and the undisputed factual and procedural history of this case. Defendant is further directed provide the proposed order to Plaintiff for approval as to form and content.

All parties must submit their orders electronically, in both PDF version and Word version, until further notice. You may do so by emailing DC14Inbox@clarkcountycourts.us. All orders must have either original signatures from all parties or an email appended as the last page of the proposed order confirming that all parties approved use of their electronic signatures. The subject line of the e-mail should identify the full case number, filing code and case caption.

CLERK'S NOTE: The above minute order has been distributed to: Michael F. Bohn Esq., at mbohn@bohnlawfirm.com, Nikoll Nikci Esq., at mnikci@bohnlawfirm.com, Jason M. Peck Esq., at lasvegaslegal@libertymutual.com, Melanie Morgan Esq., melanie.morgan@akerman.com, Donna Wittig Esq., at donna.wittig@akerman.com. 11/2/20 gs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 15, 2020

A-13-689240-C Saticoy Bay LLC Series 4641 Viareggio Ct., Plaintiff(s)
vs.
Nationstar Mortgage LLC, Defendant(s)

**December 15, 2020 9:30 AM Motion for Summary
Judgment**

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Kristen Brown

RECORDER:

REPORTER:

PARTIES

PRESENT: Lachman, Scott Attorney
 Trippiedi, Adam R. Attorney

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, Motion GRANTED. Court DIRECTED Mr. Lachman to prepare the order with the findings of fact, conclusions of law and to provide the order to Mr. Trippiedi to review as to form and content.



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

MICHAEL F. BOHN, ESQ.
2260 CORPORATE CIR., STE 480
HENDERSON, NV 89074

DATE: February 5, 2021
CASE: A-13-689240-C

RE CASE: SATICOY BAY LLC SERIES 4641 VIAREGGIO CT. vs. NATIONSTAR MORTGAGE, LLC; COOPER CASTLE LAW FIRM, LLP; MONIQUE GUILLORY

NOTICE OF APPEAL FILED: February 3, 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):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT; NOTICE OF ENTRY OF ORDER GRANTING NATIONSTAR MORTGAGE LLC'S MOTION FOR SUMMARY JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

SATICOY BAY LLC SERIES 4641
VIAREGGIO CT.,

Plaintiff(s),

vs.

NATIONSTAR MORTGAGE, LLC; COOPER
CASTLE LAW FIRM, LLP; MONIQUE
GUILLORY,

Defendant(s),

Case No: A-13-689240-C

Dept No: XIV

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 5 day of February 2021.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

