

FILED

2022 FEB 11 AM 11:13

Case No: 18-CV-01332

Dept.: II

The undersigned affirms that this document does not  
contain personal information, pursuant to NRS 603A.040

TANYA SCHEIDT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT  
Electronically Filed  
Feb 15 2022 11:57 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR. and  
VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC, a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
2013-M4 LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; BANK  
OF AMERICA, N.A.; BRECKENRIDGE  
PROPERTY FUND 2016, a Utah limited  
liability company; NEWREZ, LLC, d/b/a  
SHELLPOINT MORTGAGE SERVICING,  
LLC, substituted in for DOE 1; 1900  
CAPITAL TRUST II, BY U.S. BANK TRUST  
NATIONAL ASSOCIATION, substituted in  
for DOE 2; MCM-2018-NPL2, substituted  
in for DOE 3; and DOES 4-10.

Defendants.

BRECKENRIDGE PROPERTY FUND 2016,  
LLC,

Counterclaimant,

vs.

ALBERT ELLIS LINCICOME, JR., an  
individual; VICENTA LINCICOME, an  
individual; and DOE OCCUPANTS 1-5.

Counterdefendants.

**NOTICE OF APPEAL**

NOTICE OF APPEAL

PAGE I

1 NOTICE IS HEREBY GIVEN that Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome  
2 appeal to the Supreme Court of Nevada from *the Permanent Writ of Restitution* entered  
3 November 17, 2021.

4 The *Permanent Writ of Restitution* concerns the *Intervenor's Counterclaim* filed by  
5 Breckenridge Property Fund 2016, LLC, on October 3, 2019.

6 NOTICE IS HEREBY GIVEN that Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome  
7 appeal to the Supreme Court of Nevada from the *Order on Breckenridge Motion for Summary*  
8 *Judgment*, entered June 23, 2021.

9 The *Order on Breckenridge Motion for Summary Judgment* concerns the *Motion for*  
10 *Summary Judgment* filed by Breckenridge Property Fund 2016, LLC, on March 18, 2021.

11 NOTICE IS HEREBY GIVEN that Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome  
12 appeal to the Supreme Court of Nevada from *the Order on Attorney's Fees and Costs* entered  
13 January 19, 2022.

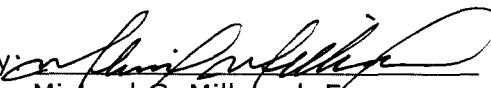
14 The *Order on Attorney's Fees and Costs* concerns the *Motion for Attorney's Fees and Cost*  
15 filed by Breckenridge Property Fund 2016, LLC, on July 20, 2021.

16 AFFIRMATION

17 The undersigned hereby affirms, pursuant to NRS 239B.030, that the foregoing does not  
18 contain the social security number of any person, or other personal information as defined by  
19 NRS 603A.040.

20 Respectfully submitted 9th day of February, 2022.

21 **MILLWARD LAW, LTD**

22  
23 By:   
24 Michael G. Millward, Esq.  
25 NSB# 11212  
26 1591 Mono Ave  
27 Minden, NV 89423  
28 (775) 600-2776  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

On the 10th day of February, 2022, pursuant NRCP 5(b) I, Rebekah Higginbotham, an employee of Millward Law, Ltd., caused to be deposited for delivery Plaintiffs' *Notice of Appeal* for service, prior to the filing of this Certificate by placing a true copy thereof in a sealed envelope for collection and mailing by first class mail, postage prepaid, in Minden, Nevada, on said date, following ordinary business practices to:

Shadd A. Wade, Esq.  
ZIEVE, BRODNAX & STEEL  
9435 W. Russel Rd., Suite 120  
Las Vegas, NV 89148  
*Attorney for Sables, LLC*

Scott R. Lachman, Esq.  
Darren T. Brenner, Esq.  
ACKERMAN, LLP  
1635 Village Center Circle, Suite 200  
Las Vegas, NV 89134  
*Attorney for Bank of America*

Matthew K. Schriever, Esq.  
HUTCHINSON & STEFFEN, PLLC  
Peccole Professional Park  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
*Attorney for Breckenridge Property Fund  
2016, LLC*

Casey J. Nelson, Esq.  
WEDGEWOOD, LLC  
Office of the General Counsel  
2320 Potosi Street, Suite 130  
Las Vegas, NV 89146  
*Attorney for Breckenridge Property Fund  
2016, LLC*

Christopher A. J. Swift, Esq.  
Ramir M. Hernandez, Esq.  
WRIGHT FINLAY & ZAK, LLP  
7785 W. Sahara Ave., Suite 200  
Las Vegas, NV 89117  
*Attorney for Fay Servicing, LLC and US  
Bank Prof-2013-M4 Legal Title Trust.*



Rebekah Higginbotham



## Case Summary

FAY SERVICING LLC, BRECKENRIDGE PROPERTY FUND 2016 LLC, BANK OF AMERICA, N.A., ALBERT ELLIS LINCICOME JR., VICENTA LINCICOME, SABLES, LLC, PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A., NEWREZ, LLC dba SHELLPOINT MORTGAGE SERVICING, LLC ~ COMPLAINT

Case Number: 18-CV-01332

Agency: Third Judicial District Court

Type: Other Title to Property Case

Received Date: 11/7/2018

Status: Closed

Status Date: 6/23/2021

### Involvements

#### Primary Involvements

NEWREZ, LLC dba SHELLPOINT MORTGAGE SERVICING, LLC

Defendant

BRECKENRIDGE PROPERTY FUND 2016 LLC Defendant

BANK OF AMERICA, N.A. Defendant

SABLES, LLC Defendant

FAY SERVICING LLC Defendant

PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A.

Defendant

LINCICOME, ALBERT ELLIS JR. Plaintiff

LINCICOME, VICENTA Plaintiff

#### Other Involvements

Wade, Shadd A. Esq. Defendant's Attorney

Clouser, Justin M. Esq. Plaintiff's Attorney

Schriever, Matthew K. Esq. Defendant's Attorney

Brenner, Darren T. Esq. Defendant's Attorney

Lachman, Scott Esq. Defendant's Attorney

Hernandez, Ramir Esq. Defendant's Attorney

Millward, Michael G. Esq. Plaintiff's Attorney

Third Judicial District Court (18-CV-01332)

Aberasturi, Leon A. - LAA Dept II - TJDC

### [5. NRCP 5 ~ ANSWER](#)

Lead/Active: False

### [7. NRCP 5 ~ ANSWER](#)

Notes: Newrez LLC dva Shellpoint Mortgage

Lead/Active: False

### [8. NRCP ~ RELATED PARTY](#)

Lead/Active: False

### Other Title to Property Case

#### [1. NRCP 3 ~ COMPLAINT](#)

Lead/Active: True

# Case Summary

## [2. NRCP 3 ~ COMPLAINT](#)

Lead/Active: False

## [3. NRCP 5 ~ ANSWER](#)

Lead/Active: False

## [4. NRCP 5 ~ ANSWER](#)

Lead/Active: False

## [6. NRCP 5 ~ ANSWER](#)

Notes: Sables, LLC First Appearance

Lead/Active: False

### Case Status History

11/7/2018 4:49:00 PM | Open

6/23/2021 3:25:00 PM | Closed

### Documents

11/7/2018 Complaint (Arbitration Exempt- Declaratory Relief).pdf - Filed  
11/7/2018 Civil Cover Sheet.pdf - Filed  
11/7/2018 Notice of Lis Pendens APN 29-401-17.pdf - Filed  
11/7/2018 Affidavit of Counsel.pdf - Filed  
11/7/2018 Application for Ex Parte Restraining Order, Preliminary Injunction & Permanent Injunction.pdf - Filed  
11/8/2018 Certificate of Service (Complaint, Application, & Notice).pdf - Filed  
11/8/2018 Certificate of Service.pdf - Filed  
11/8/2018 Summons- Issued.pdf - Issued  
Notes: 4 Originals Issued  
11/8/2018 Order.pdf - Filed  
11/14/2018 Certificate of Service (2).pdf - Filed  
11/14/2018 Request for Submission (Corrected Order).pdf - Filed  
11/14/2018 Corrected Order.pdf - Filed  
11/15/2018 Notice of Appearance.pdf - Filed  
11/15/2018 Response to Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction.pdf - Filed  
11/15/2018 Declaration of Fay Servicing, LLC in Response to Application for Ex Parte Restraining Order.pdf - Filed  
Notes: Preliminary Injunction and Permanent Injunction  
11/20/2018 Notice of Entry of Order.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit List.pdf - For Court Use Only  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 1.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 2.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 3.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 4.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 5.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 6.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 7.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 8.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 9.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 10.pdf - Filed

## Case Summary

---

11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 11.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 12.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 13.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 14.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 15.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 16.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 17.pdf - Filed  
11/20/2018 Exhibits and Exhibit List from 11-20-18 Hearing\Plaintiff's Exhibit 18.pdf - Filed  
11/29/2018 Answer to Complaint.pdf - Filed  
12/6/2018 SR. Judge Request 18-CV-01332.pdf - For Court Use Only  
12/10/2018 Summon on Return - Served 11-14-18.pdf - Filed on Return  
12/10/2018 Memorandum of Temporary Assignment.pdf - Filed  
Notes: Assignment of Judge McGee  
12/11/2018 Summons-On Return-Sables LLC's Agent Svd 11-19-18.pdf - Filed on Return  
12/14/2018 Three Day Notice of Intent to Take Default.pdf - Filed  
Notes: SABLES, LLC  
12/14/2018 Three Day Notice of Intent to Take Default .pdf - Filed  
Notes: Bank of America  
12/21/2018 Application for Entry of Default- Bank of America, N.A..pdf - Filed  
12/21/2018 Application for Entry of Default- Sables, LLC.pdf - Filed  
12/21/2018 Default- Sables, LLC.pdf - Filed  
12/21/2018 Default- Bank of America, N.A..pdf - Filed  
12/21/2018 Defendant Bank of America, N.A.'s Notice of Motion and Motion to Dismiss Plaintiffs' Complaint.pdf - Filed  
12/21/2018 Notice of Appearance - Darren Brenner, Esq. and Scott Lachman, Esq. for BoA.pdf - Filed  
12/24/2018 Declaration of Non-monetary Status.pdf - Filed  
12/24/2018 Initial Appearance Fee Disclosure - Sables, LLC.pdf - Filed  
12/31/2018 Order (2).pdf - Filed  
1/8/2019 Notice of Entry of Order (Order filed 12-31-18).pdf - Filed  
1/9/2019 Objection to Declaration of Non-Monetary Status.pdf - Filed  
1/22/2019 Application for Entry of Default Judgment.pdf - Filed  
1/23/2019 Default Judgment.pdf - Submitted  
1/28/2019 Sables, LLC's Response to Objection to Its Declaration of Non-Monetary Status.pdf - Filed  
1/28/2019 Sables, LLC's Motion to Set Aside Default.pdf - Filed  
2/5/2019 Letter from Judge McGee.pdf - For Court Use Only  
Notes: 2/5/19: Called Jackie Tucker - Ok to vacate settlement conference at this time.  
2/8/2019 Opposition to Defendant Sables, LLC's Motion to Set Aside Default.pdf - Filed  
2/8/2019 Response to Plaintiff's Application for Entry of Default Judgment Against Sables, LLC.pdf - Filed  
2/8/2019 Joinder to Sables, LLC's Motion to Set Aside Default.pdf - Filed  
2/11/2019 Order Setting Hearing (4-15-19).pdf - Filed  
2/13/2019 Order Granting Telephonic Appearance- Shad Wade (4-15-19).pdf - Filed  
2/21/2019 Sables, Joinder to Response Plntf's App Entry of Default Jdgmnt.pdf - Filed  
3/1/2019 Supplemental Declaration of Shadd A. Wade in Support of Motion to Set Aside Default.pdf - Filed  
3/4/2019 Ptf's MTN for Leave to File Amnd Complaint to Substitute Parties.pdf - Filed  
3/4/2019 Stipulation & Order to Set Aside & Vacate Default of Defendant Bank of America.pdf - Filed  
Notes: N.A. and to Permit Bank of America, N.A. to File a Response  
3/15/2019 Motion for Rule 11 Sanctions Against Plaintiffs.pdf - Filed  
3/15/2019 Declaration of Ramir M. Hernandez, Esq. in Support of.pdf - Filed  
Notes: Motion for Rule 11 Sanctions Against Plaintiffs  
3/15/2019 Notice of Entry of Stipulation & Order to Set Aside.pdf - Filed  
3/22/2019 Defendant Bank of America - Motion to Dismiss Complaint.pdf - Filed  
3/26/2019 Request for Submission (Order Granting Leave to File Amended Complaint).pdf - Filed  
3/27/2019 Order Granting Leave to File Amended Complaint.pdf - For Court Use Only  
Notes: Needs to file new order reflecting what ordered at 4/15/19 hearing--LA  
3/28/2019 Opposition to US Bank's Motion for Rule 11 Sanctions.pdf - Filed  
4/4/2019 Opposition to BofA Motion to Dismiss Complaint.pdf - Filed  
4/9/2019 Order Granting Telephonic Appearance- Scott Lachman (4-15-19).pdf - Filed  
4/9/2019 Telephonic Request - Scott Lachman - Ackerman.pdf - For Court Use Only  
4/11/2019 Response to Declaration of Shadd A. Wade.pdf - Filed  
4/12/2019 Deft Bank of America N.A.'s Reply to Ptf's Oppo to.pdf - Filed  
Notes: Deft's Motion to Dismiss Plaintiffs' Complaint  
4/12/2019 Request for Submission.pdf - Filed  
4/12/2019 Order Granting Bank of America's Mtn to Dismiss.pdf - For Court Use Only  
Notes: Set for 4-15-19  
4/12/2019 Reply in Support of Mtn for Rule 11 Sancations.pdf - Filed  
Notes: Against Plaintiffs

# Case Summary

---

5/24/2019 Motion to Intervene & Expunge Lis Pendens.pdf - Filed  
5/30/2019 Order .pdf - Filed  
6/7/2019 Plaintiffs' Amended Motion for Leave to File Amended Complaint to Substitute Parties and Add Additional Claims for Relief.pdf - Filed  
6/10/2019 Opposition to Motion to Intervene.pdf - Filed  
6/19/2019 Oppo to Plt's Amended Motion for Leave to file Amnd Complaint.pdf - Filed  
6/19/2019 Reply in Support of MTN to Intervene & Expunge Lis Pendens.pdf - Filed  
6/19/2019 Request to Submit MTN to Intervene .pdf - Filed  
6/20/2019 Sables, LLC's Opposition to Plaintiffs' Amended Motion to Amend.pdf - Filed  
6/20/2019 Notice of Entry of Order - 5-30-19.pdf - Filed  
6/21/2019 Application for Attorney's Fees and Costs.pdf - Filed  
7/5/2019 Obejction to Application for Attorney Fees.pdf - Filed  
7/9/2019 Reply to Breckenridge Property Fund 2016, LLC's Opposition to the Amended Motion.pdf - Filed  
7/15/2019 Receipt for Documents (S.C.).pdf - Filed  
7/22/2019 Documents From Millward Law Re Supreme Court Appendix to Writ of Mandamus.pdf - For Court Use Only  
**SEALED**  
7/22/2019 Reply to Obejction to Applcation for Attorney Fees.pdf - Filed  
7/22/2019 Request for Submission-Atty Fees.pdf - Filed  
8/5/2019 Notice of Transfer to Court of Appeals.pdf - Filed  
8/19/2019 Order on Application for Attorneys Fees and Costs.pdf - Filed  
8/22/2019 Email setting Telephone Conference 8 23 19.pdf - For Court Use Only  
8/26/2019 Notice of Entry of Order (2).pdf - Filed  
8/28/2019 Order Granting Plaintiffs' Leave to File Second Amended Complaint.pdf - Filed  
9/12/2019 Plaintiffs' Motion for Leave to File Second Amended Complaint to Substitute Parties & Add Additional Claims for Relief.pdf - Filed  
9/17/2019 Order Granting in Part and Denying in Part the Motion to Intervene and Expunge Lis Pendens.pdf - Filed  
9/23/2019 Notice of Entry of Order Granting in Part and Denying in Part the Motion to Intervene.pdf - Filed  
Notes: and Expunge Lis Pendens  
9/27/2019 Plaintiffs' Motion for Leave to File Motion for Reconsideration of the Court's August 23, 2019 Order.pdf - Filed  
Notes: Re Declaratory Relief  
10/3/2019 Ex Parte MTN for OSC Temp Writ of Restitution Should Not be granted.pdf - Filed  
10/3/2019 Intervenor's Counterclaim.pdf - Filed  
10/3/2019 Ord to Show Cause Why Temp Writ Should not be Granted.pdf - Submitted  
10/10/2019 Request to Submit.pdf - Filed  
10/16/2019 Order-File Amended Complaint.pdf - Filed  
10/18/2019 Plt's Oppo to MTN for OSC Re Writ of Restitution.pdf - Filed  
10/23/2019 Answer to Counterclaim and Counterclaim Against Intervenor.pdf - Filed  
10/24/2019 Order Denying ExParte Motion and Setting Hearing.pdf - Filed  
10/24/2019 Certificate of Service (Answer to Counterclaim and Counterclaim).pdf - Filed  
10/31/2019 Order Granting Telephonic Extension- Supreme Court.pdf - Filed  
11/12/2019 Motion for a Hearing on Pending Motions and for Rule 16.1(b) Conference.pdf - Filed  
11/12/2019 Notice of Entry of Order Denying Ex parte Motion & Setting Hearing.pdf - Filed  
11/18/2019 Breckenridge's Answer to the Counterclaim Filed by Albert Ellis Lincicome, Jr & Vicenta Lincicome.pdf - Filed  
11/21/2019 Request to Submit-.pdf - Filed  
11/21/2019 Oppo to Motion for Hearing on Pending Motions.pdf - Filed  
11/21/2019 Certificate of Mailing - Request to Submit.pdf - Filed  
11/21/2019 Certificate of Mailing - Ptf's Oppo to MTN.pdf - Filed  
11/22/2019 Order-Mtn for Leave to File Mtn for Reconsideration.pdf - Filed  
12/2/2019 Petitioners' Reply to Response to Petition for Writ of Mandamus (Court of Appeals).pdf - For Court Use Only  
**SEALED**  
12/3/2019 Order Granting Telephonic Appearance - S Lachman.pdf - Filed  
12/4/2019 Order Setting Hearing (2-4-20).pdf - Filed  
12/6/2019 Order (on Motion to File Second Amended Complaint).pdf - Filed  
12/13/2019 Motion for Reconsideration.pdf - Filed  
12/20/2019 Second Amended Complaint.pdf - Filed  
12/20/2019 Notice of Entry of Order - Reconsideration.pdf - Filed  
12/20/2019 Notice of Entry of Order - Second Amended Complaint.pdf - Filed  
1/7/2020 Answer to Second Amended Complaint (Prof-2013 M4-Legal Title Trust and Fay Servicing LLC).pdf - Filed  
1/8/2020 Breckenridges Answer to Second Amended Complaint.pdf - Filed  
1/17/2020 Summons for second Amended Complaint - Issued.pdf - Issued  
1/21/2020 Notice of Association of Counsel.pdf - Filed  
1/23/2020 Bank of America, N.A.'s Answer & Affirmative Defenses to Plaintiffs' Second Amended Complaint.pdf - Filed  
1/24/2020 Order Denying Hearing (S.C.).pdf - Filed

## Case Summary

---

2/4/2020 Demand for Jury Trial - Millward Law.pdf - Filed  
2/11/2020 Order Denying Without Prejudice Ex Parte Motion for Order to Show Cause Why A Temp Writ of Resti Should not be Granted.pdf - Filed  
2/12/2020 Certificate of Service (Demand for Jury Trial & Notice of Filing of Petition).pdf - Filed  
2/12/2020 Notice of Filing of Petition for Review By the Supreme Court.pdf - Filed  
3/6/2020 Notice of NRCP 16.1 Early Case Management Conference.pdf - Filed  
Notes: March 16, 2020  
3/19/2020 Answer to Second Amended Complaint - Newrez, LLC dba Shellpoint Mortgage Servicing LLC.pdf - Filed  
3/27/2020 Motion for Order Requiring Plaintiff to Deposit Rental &-or Mortgage Payments With Court.pdf - Filed  
4/3/2020 Joinder to Motion for Order -Deposit Rental Payments With Court.pdf - Filed  
4/7/2020 Transcript Hearing 4-15-19.pdf - Filed  
4/7/2020 proof of Service of summons & Complaint on Newrez.pdf - Filed  
4/13/2020 Plaintiff's Opposition to Motion for Deposit of Payments.pdf - Filed  
4/22/2020 Joint Case Conference Report.pdf - Filed  
4/24/2020 Order Denying Petition for Review (S.C.).pdf - Filed  
4/24/2020 Reply in Support of Motion for Order Requiring Plaintiff to Deposit Rental.pdf - Filed  
4/24/2020 Request for Submission of Motion for Order Requiring Plaintiff to Deposit Rental.pdf - Filed  
4/24/2020 Certificate of Mailing (JCCR).pdf - Filed  
4/28/2020 Letter to Attorneys requesting trial dates (2).pdf - For Court Use Only  
5/21/2020 Notice in Lieu of Remittitur- S.C..pdf - Filed  
5/26/2020 Preparation of Scheduling Order.pdf - For Court Use Only  
5/27/2020 Scheduling Order.pdf - Filed  
5/28/2020 Ord Denying MTN for Ord Requiring Pltf to Deposit Rental Pmnts.pdf - For Court Use Only  
6/24/2020 Returned Mail MCM.pdf - For Court Use Only  
7/10/2020 Motion for Leave to File Crossclaim Against Prof-2013-M4.pdf - Filed  
8/17/2020 Response to Breckenridge Property Fund 2016, LLC's Motion for Leave to File Crossclaim.pdf - Filed  
Notes: Against Prof-2013-M4 Legal Title Trust, By U.S. Bank National Association as Legal Title Trustee  
9/11/2020 Request for Submission of Motion for Leave to File Crossclaim.pdf - Filed  
Notes: Against Prof-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee  
9/11/2020 Breckenridge Property Fund 2016, LLC's Reply in Support of Motion.pdf - Filed  
Notes: for Leave to File Crossclaim Against Prof-2013-M4 Legal Title Trust, By U.S. Bank National Association as Legal Title Trustee  
9/21/2020 Order Granting Breckenridge's Motion for Leave to File Crossclaim Against Prof-2013-M4.pdf - Filed  
Notes: in Part and Denying in Part  
10/2/2020 Request for Admissions & Request for Admission of Genuineness of Documents.pdf - Filed  
10/2/2020 Breckenridge Property Fund 2016 Crossclaim Against Prof 2013 By US Bank as Legal Title Trustee.pdf - Filed  
11/2/2020 Answer to Breckenridge Property Fund Crossclaim Against Prof 2013-M4 Legal Title Trust by US Bank National.pdf - Filed  
Notes: Association, as Legal Title Trustee  
1/22/2021 2\_18 Zoom Information\_ Case No\_ 18-CV-01332 \_ Albert Ellis Lincicome, Jr. v. Sabes, LLC.pdf - For Court Use Only  
Notes: Attorneys for Bank of America:  
Melanie D. Morgan, Esq. & Jennifer Chatman  
  
Attorneys appearing for Prof-2013, Fay, and Shellpoint:  
Ramir M. Hernandez  
Darren Brenner  
  
Appearing for Fay and Prof-2013  
Todd Visser  
  
Appearing for Shellpoint:  
Ernest Wagner  
Amber Knight  
2/9/2021 Bank of America Confidential Settlement Conf. Statement BRF [Lincicome, Albert] BANA\_s.PDF - For Court Use Only  
2/9/2021 Exhibits to Bank of America's Confidential Settlement Conf. Statement BRF [Lincicome, Albert].PDF - For Court Use Only  
2/10/2021 Breckenridge Property Confidential Settlement Statement.pdf - For Court Use Only  
2/12/2021 U.S. Bank Trust, et al Confidential Settlement Statement.pdf - For Court Use Only  
2/12/2021 Plaintiffs (Lincicome) Settlement Conference Statement (2021-02-11).pdf - For Court Use Only  
2/23/2021 Prof-2013 M4-Legal Title Trust by US Bank and Fay Servicing LLC's Confidential Settlement Brief.pdf - Sealed  
**SEALED**  
Notes: Prof-2013 M4-Legal Title Trust by US Bank, National Association, as Legal Title Trustee;s, New Rez, LLC dba Shellpoint MORTgage Servicing, LLC and Fay Servicing LLC's Confidential Settlement Brief  
3/8/2021 Stipulation and Order Extending Dispositive Motion Deadlines and Continuing Trial Date and Related Deadlines.pdf - Filed



## Case Summary

3/17/2021 Motion for Summary Jdgmnt (Bank of America).pdf - Filed  
3/18/2021 Breckenridge Property Fund's Motion for Summary Judgment Against Plaintiff.pdf - Filed  
3/19/2021 Motion for Partial Summary Judgment (Final).pdf - Filed  
3/22/2021 Certificate of Service - Motion for Partial Summary Judgment.pdf - Filed  
3/25/2021 Shellpoint Mortgage Servicing LLC's Motion for Summary Judgment.pdf - Filed  
3/25/2021 Prof-2013 M4 Legal Title Trust, and Fay Servicing LLC's Motion for Summary Judgment.pdf - Filed  
3/25/2021 Notice of Entry of Order (Order filed 3-6-21).pdf - Filed  
3/25/2021 Request for Judicial Notice in Support of Defendant's Motions for Summary Judgment.pdf - Filed  
3/25/2021 Shellpoint Mortgage Servicing, LLC's Undisputed Statement of Fact in Support of Motion for Summary Judgment.pdf - Filed  
3/25/2021 Prof-2013 M4 Legal Title Trust, and Fay Servicing LLC's Undisputed Statement of Facts.pdf - Filed  
Notes: in Support of Motion for Summary Judgment  
3/29/2021 Breckenridge's Joinder to Other Defendant's Motion for Summary Judgment.pdf - Filed  
4/2/2021 Bank of America's Joinder to Prof 2013 Motion for Summary Judgment.pdf - Filed  
4/2/2021 Bank of America's Errata to Bank of America's Motion for Summary Judgment & Motion for Sanctions.pdf - Filed  
4/2/2021 Bank of America's Joinder to Newrez's Motion for Summary Judgment.pdf - Filed  
4/2/2021 Bank of America's Joinder to Breckenridge's Motion for Summary Judgment.pdf - Filed  
4/13/2021 Stip & Order Re Deadlines For Pending Motions.pdf - Filed  
4/14/2021 Bank of America's Opposition to Plaintiff's Partial Motion for Summary Judgment.pdf - Filed  
4/15/2021 Pltf's Oppo to Motions for Summary Judgment.pdf - Filed  
4/15/2021 Pltf's Oppo to Bana's Motion for Summary Jdgmnt.pdf - Filed  
4/15/2021 Pltf's Oppo to Breckenridge's MTN for Sum Jdgmnt.pdf - Filed  
4/15/2021 Pltf's Statement of Udisputed Material Facts.pdf - Filed  
4/19/2021 Joinder to BofA's Motion for Summary Judgment, Breck Motion for Summary Judgment Against.pdf - Filed  
Notes: Plaintiff, and Prof 2013 Motion for Summary Judgment  
4/19/2021 Prof 2013 Opposition to Plaintiff's Motion for Partial Summary Judgment.pdf - Filed  
4/19/2021 Joinder to BofA's Motion for Summary Judgment, Brek Motion for Summary Judgment, Shellpoin.pdf - Filed  
4/26/2021 Certificate of Service (3).pdf - Filed  
4/26/2021 Notice of Entry of Order - Stip and Order 4-13-21.pdf - Filed  
5/3/2021 Breckenridge Property Fund 2016 LLC's Joinder to Other Defendants' Opposition to Plaintiffs' Motion for Summary.pdf - Filed  
5/5/2021 Bank of America, N.A.'s Reply Supporting Motion for Summary Judgment.pdf - Filed  
5/6/2021 Certificate of Service (Supplement, Reply, & Reply Filed 5-6-21).pdf - Filed  
5/6/2021 Supplement to Plaintiffs' Statement of Undisputed Material Facts.pdf - Filed  
5/6/2021 Reply to Bank of America, NA's Opposition to Plaintiffs' Motion for Partial Summary Judgment.pdf - Filed  
5/6/2021 Reply to US Bank & Fay Servicing, LLC's Opposition to Plaintiffs' Motion for Partial Summary Judgment.pdf - Filed  
5/10/2021 Shellpoint Mortgage's Reply in Support of Motion for Summary Judgment.pdf - Filed  
5/10/2021 Prof-2013 M4-Legal Title Trust, By US Bank, National Association, As Legal Title Trustee's, & Fay.pdf - Filed  
Notes: Servicing LLC's Reply in Support of Motion for Summary Judgment  
5/10/2021 Breckenridge Property Fund 2016 LLC's Reply in Support of Motion for Summary Judgment.pdf - Filed  
Notes: Against Plaintiff  
6/23/2021 Order on Breckenridge Motion for Summary Judgment.pdf - Filed  
6/23/2021 Order Denying Plaintiff's Motion for Partial Summary Judgment-Granting Motions.pdf - Filed  
Notes: for Summary Judgment Filed by BANA, Prof-2013 M4 Legal Trust, US Bank and Fay Servicing LLC  
7/2/2021 Breckenridge's Memorandum of Costs.pdf - Filed  
7/6/2021 Notice of Entry of Order - Order on Motion for Summary Judgment.pdf - Filed  
7/6/2021 Notice of Entry of Order - Order Denying Plaintiff's Motion for partial Summary Judgment.pdf - Filed  
7/6/2021 Notice of Entry of Order(Summary Jdgmnt).pdf - Filed  
7/6/2021 Prof-2013 M4-Legal Title Trust and Fay Servicing LLC's Memorandum of Costs.pdf - Filed  
7/6/2021 Newrez LLC's Memorandum of Costs.pdf - Filed  
7/6/2021 Bank of America N.A.'s Memorandum of Costs.pdf - Filed  
7/19/2021 Notice of Appeal.pdf - Filed  
7/20/2021 Breckenridge Property Fund 2016's Motion for Attorney Fees and Costs.pdf - Filed  
7/20/2021 Breckenridge Property Fund 2016 LLC Supplement to Memorandum of Costs.pdf - Filed  
7/20/2021 Permanent Writ of Resitution.pdf - Submitted  
7/20/2021 Certificate of Service - Notice of Appeal.pdf - Filed  
7/21/2021 Letter to S.C. Re Check for Appeal.pdf - For Court Use Only  
7/21/2021 Copy of Check #1653 For Appeal Bond.pdf - For Court Use Only  
**SEALED**  
7/27/2021 Certified Mail Receipt (Ck for Appeal).pdf - For Court Use Only  
7/28/2021 Receipt for Documents (S.C).pdf - Filed  
7/30/2021 Case Appeal Statement.pdf - Filed  
Notes: E-filed with S.C. 7/30/21 @ 2:39 p.m.-lm

## Case Summary

---

8/5/2021 Plaintiff's Opposition to Breckenridge Property Fund's Motion for Attorney Fees and Costs.pdf - Filed  
8/5/2021 Transcript Motion Hearing 2-4-20.pdf - Filed  
8/5/2021 Certificate of Mailing.pdf - Filed  
8/20/2021 Order Regarding Permanent Writ of Restitution.pdf - Filed  
9/2/2021 Breckenridge's Reply in Support of Its Motion for Attorney Fees and Costs.pdf - Filed  
9/9/2021 Breckenridge Property Fund 2016's Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents.pdf - Filed  
9/9/2021 Ex Parte Application for Order Shortening Time for Hearing on Breckenridge Property Fund 2016.pdf - Filed  
Notes: Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents  
9/15/2021 Certificate of Service (Plaintiff's Motion for Stay).pdf - Filed  
9/15/2021 Plaintiffs' Motion for Stay Pending Appeal.pdf - Filed  
9/24/2021 Certificate of Service- Opposition.pdf - Filed  
9/24/2021 Opposition to Breckenridge Property Fund 2016s Motion for Entry of Order Granting Permanent Writ of Restitution.pdf - Filed  
Notes: and Payment of Everydue Rents  
9/27/2021 Order Reinstating Briefing (S.C.).pdf - Filed  
9/28/2021 Order Granting Ex Parte Application for Order Shortening Time for Hearing.pdf - Filed  
Notes: on Breckenridge Property Fund 2016s Motion for Entry of Order Granting Permanent Writ of Restitution and Payment of Overdue Rents  
10/1/2021 Defendant Breckinridge's Opposition to Plaintiff's Motion to Stay.pdf - Filed  
10/4/2021 Certificate of Service - Request for Transcripts.pdf - Filed  
10/4/2021 Request for Transcripts.pdf - Filed  
10/5/2021 Bank of Americas Limited Joinder to Breckenridge Property Fund 2016 Opposition to Plaintiffs Motion for Stay.pdf - Filed  
10/6/2021 Breckenridge's Reply in Support of Motion for Entry of Order Granting.pdf - Filed  
10/8/2021 Certificate of Service-Order Granting Ex Parte Application.pdf - Filed  
10/8/2021 Joinder to Breckenridge's Opposition to plaintiff's Motion to Stay Pending Trial.pdf - Filed  
10/12/2021 HutchLegal - 18-CV-01332 - Zoom invite - 10\_13\_21 - 1\_30 p.m\_.pdf - For Court Use Only  
11/5/2021 Order Concerning Breckenridge Property Fund Motion for Entry of Order Granting Permanent.pdf - Filed  
Notes: Writ of Restitution and Payment of Overdue Rents  
11/15/2021 Ex Parte Motion for Additional Time to Obtain Supersedeas Bond.pdf - Filed  
11/15/2021 Request to Submit .pdf - Filed  
11/16/2021 Order Upon Pltf's Ex Parte Motion for Additional Time .pdf - Submitted  
11/16/2021 Breckenridge's Opposition to Plaintiff's Improper Ex Parte Motion.pdf - Filed  
Notes: for Additional Time to Obtain Supersedeas Bond and Request for Sanctions  
11/17/2021 Notice of Entry of Order-Motion for Entry Order Granting Permanent Writ of Restitution and Payment of Overdue Rents.pdf - Filed  
11/17/2021 Order Denying Ex Parte Motion.pdf - Filed  
11/19/2021 Request to Submit Breckenridge's Motion for Attorney Fees and Costs.pdf - Filed  
11/22/2021 Permanent Writ of Restitution.pdf - Filed  
11/29/2021 Notice of Entry of Order - Permanent Writ of Restitution.pdf - Filed  
12/7/2021 Notice of Entry of Order- Order Denying Ex Parte Motion.pdf - Filed  
1/10/2022 Transcript Motion Hearing 11-20-18 -JAVS Recording.pdf - Filed  
1/10/2022 Transcript JAVS Recording 4-15-19.pdf - Filed  
1/10/2022 Transcript JAVS Recording Motion s Hearing 2-4-20.pdf - Filed  
1/19/2022 NEF - 1-19-22 Supreme Court.pdf - For Court Use Only  
1/19/2022 Order on Attorney's Fees and Costs.pdf - Filed  
1/21/2022 Order Partially Dismissing Appeal (S.C).pdf - Filed  
1/31/2022 Notice of Entry of Order - Attorney fees.pdf - Filed  
2/11/2022 Application for NRCP 54 (B) Certification.pdf - Filed  
2/11/2022 Notice of Appeal (Orders filed 11-17-21, 6-23-21, 3-18-21, 1-19-22 and 7-20-21).pdf - Filed  
2/11/2022 Order (Re Application for NRCP 54 (B) Certification).pdf - Submitted

ORIGINAL

FILED

2021 NOV 22 AM 9:51

TANYA SEEIRINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*baubaptist* DEPUTY

John T. Steffen, Esq. (4390)  
Brenoch R. Wirthlin, Esq. (10282)  
Alex R. Velto, Esq. (14961)  
HUTCHISON & STEFFEN, PLLC  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Tel (702) 385-2500  
Fax (702) 385-2086  
[bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)

Casey J. Nelson, Esq. (12259)  
Wedgewood, LLC  
Office of the General Counsel  
2320 Potosi Street, Suite 130  
Las Vegas, Nevada 89146  
Tel (702) 305-9157  
Fax (310) 730-5967  
[caseynelson@wedgewood-inc.com](mailto:caseynelson@wedgewood-inc.com)

*Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*  
*Breckenridge Property Fund 2016, LLC*

**THIRD JUDICIAL DISTRICT COURT  
LYON COUNTY, NEVADA**

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust given  
by Vicenta Lincicome and dated 5/23/2007; FAY  
SERVICING, LLC, a Delaware limited liability  
company and subsidiary of Fay Financial, LLC;  
PROF-2013-MF LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for BANK  
OF AMERICA, N.A.; BRECKENRIDGE  
PROPERTY FUND 2016; NEWREZ LLC dba  
SHELLPOINT MORTGAGE SERVICING,  
LLC; 1900 CAPITAL TRUST II, BY U.S.  
BANK TRUST NATIONAL ASSOCIATION;  
MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED MATTERS.

Case No.: 18-CV-01332  
Dept No.: II

**PERMANENT WRIT OF RESTITUTION**

1 THE STATE OF NEVADA TO THE SHERIFF OR CONSTABLE OF LYON COUNT, GREETING.

2 WHEREAS on October 3, 2019, Defendant in Intervention/Counterclaimant Breckenridge  
3 Property Fund 2016, LLC ("Counterclaimant") filed its Intervenor's Counterclaim ("Counterclaim")  
4 pursuant to which Counterclaimant asserted, among other things, claims for quiet title and writ of  
5 restitution regarding that certain real property at issue located at 70 Riverside Drive, Dayton, Nevada  
6 89403 ("Property");  
7

8 WHEREAS on March 18, 2021, Counterclaimant filed its Motion for Summary Judgment  
9 ("Counterclaimant's MSJ") seeking judgment on all counterclaims;

10 WHEREAS on June 23, 2021, this Court entered its Order on Breckenridge Motion for Summary  
11 Judgment ("Order") pursuant to which it granted the Counterclaimant's MSJ in its entirety;  
12

13 WHEREAS in the Order this Court made numerous findings of fact and conclusions of law,  
14 adopted herein by reference, including but not limited to the findings that Counterclaimant purchased the  
15 Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims  
16 to title of the Property as against plaintiffs Albert Ellis Lincicome, Jr. and Vicenta Lincicome;  
17

18 WHEREAS on September 9, 2021, Counterclaimant filed a Motion for Entry of Order Granting  
19 Permanent Restitution and Payment of Overdue Rents.

20 WHEREAS on September 14, 2021, Plaintiffs filed and served their Motion for Stay Pending  
21 Appeal.

22 WHEREAS on October 12, 2021, at 1:30 p.m., after further briefing had been filed on the motions  
23 filed on October 9, 2021 and September 14, 2021, the Court held a hearing on the two motions.  
24

25 WHEREAS based on the evidence presented, the Court granted Plaintiff's Motion for Stay  
26 Pending Appeal, but required Plaintiffs to post a supersedeas bond of \$140,000.00 to be paid by  
27 November 12, 2021, at 5:00 p.m. in order for the stay to be entered.  
28

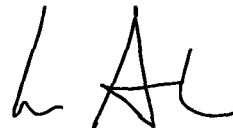
1 WHEREAS the court also granted Counterclaimant's request for a permanent writ of restitution  
2 and ordered that a permanent writ of restitution should be issued that states it is effective as of November  
3 15, 2021 if no supersedeas bond was posted by November 12, 2021.

4 WHEREAS pursuant to the Order Counterclaimant should have permanent restitution of the  
5 Property effective as of November 15, 2021.

6  
7 WHEREAS, so long as this writ is delivered to you on or after November 15, 2021 and there has  
8 been no supersedeas bond posted with the Court:

9 YOU ARE THEREFORE COMMANDED to take with you the force of the County, if necessary,  
10 and cause the said Albert Ellis Lincicome, Jr. and Vicenta Lincicome and any tenants or sub-tenants to  
11 be removed from the Property on November 16, 2021 at 9:00 a.m. or as soon as reasonably possible  
12 thereafter and allow the Counterclaimant to have permanent peaceable restitution of the same.  
13

14 GIVEN UNDER MY HAND this 17th day of November, 2021.

15  
16  
17  
18 


19  
20  
21  
22  
23  
24  
25  
26  
27  
28  

---

DISTRICT COURT JUDGE

1 Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document  
2 filed in this court does not contain the social security number of any person

3 Respectfully Submitted:  
4 HUTCHISON & STEFFEN, PLLC

5   
6 \_\_\_\_\_  
7 John T. Steffen (4390)  
8 Brenoch R. Wirthlin (10282)  
9 Alex R. Velto (14961)  
10 10080 West Alta Drive, Suite 200  
11 Las Vegas, NV 89145  
12 [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)

13 Wedgewood, LLC  
14 Office of the General Counsel  
15 Casey J. Nelson, Esq. (12259)  
16 2320 Potosi Street, Suite 130  
17 Las Vegas, Nevada 89146  
18 E-mail: [caseynelson@wedgewood-inc.com](mailto:caseynelson@wedgewood-inc.com)  
19 *Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*  
20 *Breckenridge Property Fund 2016, LLC*  
21  
22  
23  
24  
25  
26  
27  
28

FILED

2021 JUN 23 PM 4:12

TANYA SCHEINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Victoria Toran* DEPUTY

Case No.: 18-CV-01332

Dept. No.: II

**IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF LYON**

\* \* \*

ALBERT ELLIS LINCICOME, JR. and  
VICENTA LINCICOME,

Plaintiffs,

vs.

SABES, LLC, a Nevada limited liability company, as  
Trustee of the Deed of Trust given by Vicenta  
Lincicome and dated 5/23/2007; FAY SERVICING,  
LLC, a Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-2013 M4  
LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal  
Title Trustee; for BANK OF AMERICAN, N.A.;  
BRECKENRIDGE PROPERTY FUND 2016, A Utah  
limited liability company; NEWREZ, LLC, d/b/a  
SHELLPOINT MORTGAGE SERVICING, LLC  
substituted in for DOE 1; 1900 CAPITAL TRUST II,  
BY U.S. BANK TRUST NATIONAL ASSOCIATION,  
substituted in for DOE 2; MNCM-2018-NPL@,  
substituted in for DOE 3; and DOES 4-10.

Defendants.

**ORDER DENYING  
PLAINTIFFS MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT/ GRANTING  
MOTIONS FOR SUMMARY  
JUDGMENT FILED BY  
BANA, PROF-2013 M4  
LEGALL TRUST, US BANK  
AND FAY SERVICING LLC**

**I. STATEMENT OF THE CASE**

On March 19, 2021, the Plaintiffs filed a Motion for Partial Summary Judgment. On April 19, 2021, Defendants, Prof-2013M4-Legal Trust, by U.S. Bank, National Association, as Legal Title trustee ("U.S. Bank Trust") and Fay Servicing LLC filed an Opposition. On May 5, 2021,

1 Breckenridge Property Fund 2016, LLC joined the Opposition. On May 6, 2021, Plaintiffs filed a  
2 Reply.

3 On March 25, 2021, Shellpoint Mortgage Servicing filed a Motion for Summary Judgment. On  
4 the same date Prof-2013 M4 Legal trust, U.S. Bank, National Association as Legal Trustee ("U.S.  
5 Bank Trust") and Fay Servicing LLC, filed a Motion for Summary Judgment. On April 15, 2021, the  
6 Plaintiffs filed an Opposition. On May 6, 2021 Prof-2013 M4 Legal trust, U.S. Bank, National  
7 Association as Legal Trustee ("U.S. Bank Trust") and Fay Servicing LLC, filed a Reply. On May 10,  
8 2021 Shellpoint Mortgage filed a Reply.

9 On March 17, 2021, Bank of America, hereinafter "BANA," filed a Motion for Summary  
10 Judgment and request for discovery sanctions. On April 15, 2021, the Plaintiffs filed an Opposition.  
11 On May 5, 2021, BANA filed a Reply. Defendant Breckenridge Property Fund 2016, LLC  
12 ("Breckenridge") joined in the Motion on March 29, 2021. Defendants Prof-2013 M4-Legal Title  
13 Trust, by U.S. Bank, National Association, as legal Title Trustee (U.S. Bank Trust"), Defendant Fay  
14 Servicing LLC ("Fay") and Shellpoint Mortgage Servicing, LLC ("Shellpoint") joined the Motion on  
15 April 19, 2021.

## 16 II. ISSUE PRESENTED

17 Should the Court sanction the Plaintiffs for discovery violations?

18 Should the Court grant the Plaintiffs' Motion for Summary Judgment?

19 Should the Court grant the Defendants' Motions for Summary Judgment?

## 20 III. SUMMARY OF DECISION

21 The Court finds that the Plaintiffs violated NRCP Rule 16.1 and sanctions are appropriate.

22 The Court finds that no genuine material issues of fact exist and Plaintiffs are not entitled to  
23 summary judgment as a matter of law.

24 The Court finds that no genuine material issues of fact exist and the Defendants are entitled to  
25 summary judgment as a matter of law.

## 26 IV. PRINCIPLES OF LAW



1 A. Standard of Review

2 NRCp 56(c) requires a court to enter summary judgment in favor of a party when the  
3 “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if  
4 any, show that there is no genuine issue as to any material fact and that the moving party is entitled to  
5 a judgment as a matter of law. “ NRCp 56(c). A genuine issue of material fact exists where the  
6 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Posada v. City*  
7 *of Reno*, 109 Nev. 448 (1993).

9 When reviewing a motion for summary judgment, the evidence and all reasonable inferences  
10 drawn from the evidence, must be viewed in a light most favorable to the non-moving party. *Richards*  
11 *v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213 (2006). Summary judgment is appropriate and  
12 “shall be rendered forthwith” when the pleadings and other evidence on file demonstrate that no  
13 “genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a  
14 matter of law. *Wood v. Safeway, Inc.*, 106 Nev. 601, 603 (1990).

16 B. Statutes of Limitation

17 NRS 11.190 states in relevant part:

19 (1) Within 6 years:

20 (a) Except as otherwise provided in NRS 62B.420 and 176.275, an action upon a  
21 judgment or decree of any court of the United States, or of any state or territory within  
22 the United States, or the renewal thereof.

23 (b) An action upon a contract, obligation or liability founded upon an instrument in  
24 writing, except those mentioned in the preceding sections of this chapter.

24 C. Enforceability of FMA Agreement

25 The Supreme Court held in *Cain v Price*, 134 Nev. 193 195 (2018), that to be “legally  
26 enforceable, a contract “must be supported by consideration.” In *Jones v SunTrust Mtg., Inc.* 128 Nev.

1 188, 191 (2012) the Nevada Supreme Court held that “Consideration is the exchange of a promise or  
2 performance, bargained for by the parties.” The *Jones* Court held:

3 A party's affirmation of a preexisting duty is generally not adequate consideration to  
4 support a new agreement. *See Cty. of Clark v. Bonanza No. 1*, 96 Nev. 643, 650, 615  
5 P.2d 939, 943 (1980). However, where a party's promise, offered as consideration,  
6 differs from that which it already promised, there is sufficient consideration to support  
7 the subsequent agreement. 3 *Williston on Contracts* § 7:41 (4th ed. 2008).

8 In *Jones*, the Nevada Supreme Court had to determine the validity of a signed agreement  
9 resulting from Nevada’s Foreclosure Mediation Program. The *Jones* Court held that, “when an  
10 agreement is reached as a result of an FMO mediation, the parties sign the agreement, and it otherwise  
11 comports with contract principles, the agreement is enforceable under District Court Rule 16.”*id.*

12 District Court Rule 16 states:

13 No agreement or stipulation between the parties in a cause or their attorneys, in respect  
14 to proceedings therein, will be regarded unless the same shall, by consent, be entered in  
15 the minutes in the form of an order, or unless the same shall be in writing subscribed by  
16 the party against whom the same shall be alleged, or by the party's attorney.

17 NRS 40.453 states:

18 Except as otherwise provided in NRS 40.495:

19 1. It is hereby declared by the Legislature to be against public policy for any  
20 document relating to the sale of real property to contain any provision whereby a  
21 mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness  
22 secured thereby, waives any right secured to the person by the laws of this state.

23 2. A court shall not enforce any such provision.

24 In *Lowe Enterprise Residential Partners, L.P. v Eighth Judicial District Court ex rel. County*  
25 *of Clark*, 118 Nev. 92, 104 (2002) the Nevada Supreme Court delved into the legislative history of  
26 NRS 40.453. The Court held that a “review of the legislative history reveals that NRS 40.453 was  
27 enacted to protect the rights created by Nevada's anti-deficiency legislation, not to protect the right to a  
28 jury trial.” This statute does not prohibit parties from agreeing to provide a deed in lieu of foreclosure.

#### 29 D. Claim Preclusion

1 The Nevada Supreme Court has adopted a three-part test to determine the availability of claim  
2 preclusion: "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the  
3 subsequent action is based on the same claims or any part of them that were or could have been  
4 brought in the first case." *G.C. Wallace, Inc. v Eighth Judicial District Court*, 127 Nev. 701, 706  
5 (2011), citing to *Five Star*, 124 Nev. at 1054, 194 P.3d at 713 (footnote omitted).  
6

7 E. Repudiation/Renunciation/Anticipatory Breach

8 17B C.J.S. Contracts § 718, *Acts constituting renunciation or repudiation*, states:

9 In order that the rule permitting the immediate institution of a suit on the renunciation  
10 or repudiation of a contract may apply, the renunciation or repudiation must be a  
11 present one. It must also be entire, or total, covering the entire performance to which  
12 the contract binds the promisor, or the refusal to perform must be of a covenant going  
13 to the whole consideration. Furthermore, the renunciation or repudiation must be  
14 absolute or unequivocal. It has also been said that in order to be effective for this  
15 purpose, the renunciation or repudiation must be clear, strict, positive, definite, specific,  
16 distinct, final, unqualified, or unconditional.

17 In order to constitute an absolute and unequivocal repudiation, no precise form of  
18 words is necessary. Whether an anticipatory repudiation has occurred is determined on  
19 a case-by-case basis, depending on the particular language used.

20 The repudiation or renunciation may be by language or act making it futile for the other  
21 party to proceed. An intent to repudiate may be expressly asserted or circumstantially  
22 manifested by conduct. However, a party's words and acts communicated to the other  
23 party, not its intention, should control. Thus, a mere expression of intention not to  
24 perform, or not to be bound, is not enough, nor is a mere threat to abandon, or a mere  
25 assertion that the party will be unable, or will refuse, to perform the contract. At the  
26 same time, a refusal to perform may itself be a repudiation of the contract, in spite of a  
27 party's words seeking to reassure the other party of its intent to perform in the future.

28 17B C.J.S. Contracts § 722, *Elections of remedies upon renunciation of executory contract-*

*Acceptance or rejection of renunciation* states:

29 The party injured by an anticipatory breach has an election to accept or reject the  
30 refusal of performance. For the doctrine of breach by anticipatory repudiation to be  
31 applied, the nonrepudiating party must treat the repudiation as a breach. That is, it must  
32 accept and act on it. Moreover, it must also act promptly and within a reasonable  
33 time. However, the effect of an anticipatory repudiation is not nullified by the fact that  
34 the nonrepudiating party attempts to enforce performance.

1 The renunciation of a contract by the promisor before the time stipulated for  
2 performance is not effective unless such repudiation is unequivocally or affirmatively  
3 accepted by the promisee. If the promisee declines to accept the renunciation and  
4 continues to insist on the performance of the promise, as it may do, the contract remains  
5 in existence for the benefit, and at the risk, of both parties, and is binding on them, and,  
6 if anything occurs to discharge it from other causes, the promisor may take advantage  
7 of such discharge. Where the contract thus remains in existence, no actionable claim for  
8 damages arises until the time for performance expires. Furthermore, a repudiation not  
9 treated as an anticipatory breach is immaterial in an action thereafter brought to enforce  
10 the contract.

11 If, after the attempted renunciation by one party to the contract, the other party elects to  
12 treat the contract as still binding and to await the time for full performance, it is  
13 incumbent on the party making such election to perform such of the obligations as may,  
14 in the meantime, fall on it under the terms of the contract.

#### 15 F. Tender of Payments

16 § 47:1. Showing of readiness and willingness to perform, 15 Williston on Contracts § 47:1 (4th  
17 ed.) states:

18 A party to a contract who complains that the other party has breached the terms of the  
19 contract must prove performance of the contract on his or her own part or a valid and  
20 unconditional tender of performance rejected by the other party. Tender of performance  
21 in this regard combines readiness, willingness, and ability to perform. In order to be  
22 valid, tender of payment on a contract must be: (1) timely; (2) made to the person  
23 entitled to payment; (3) unconditional; (4) an offer to pay the amount of money due;  
24 and (5) coupled with an actual production of the money or its equivalent. The rules that  
25 govern tenders are strict and strictly applied; a tender must be one of full performance  
26 and unconditional to be valid; moreover, the party alleging an offer of tender must  
27 possess the ability to perform, and the tender must be made in good faith. Unlike the  
28 situation where performance by one party is a condition precedent to performance by  
the other, where conditions are concurrent, the allegation of tender need not be of  
absolute tender. A tender conditional on contemporaneous performance by the  
defendant is sufficient and necessary. It has sometimes been said that in such a case, an  
allegation of readiness and willingness on the part of the plaintiff is sufficient or even  
that this is not part of the plaintiff's case. However, while in suits for specific  
performance a different rule prevails in many jurisdictions to maintain an action for  
legal relief, the plaintiff must not only be ready and willing to perform but also must  
have manifested this before bringing the action, by some offer of performance to the  
defendant, for, otherwise, both parties might be ready and willing and each stay at  
home waiting for the other to come forward. While the situation is possible that each of  
two parties has a right to specific performance against the other, it is not possible that  
each shall have a right to damages for a total breach of the contract.

1 (Citations omitted).

2 In *Bank of America, N.A. v SFR Investment Pool 1*, LLC 134 Nev. 604, 610-11 (2018) the  
3 Nevada Supreme Court discussed the obligation of a tendering party. The Supreme Court stated:

4  
5 Whether a tendering party must pay the amount into court depends on the nature of the  
6 proceeding and the statutory and common law of the  
7 jurisdiction. See Annotation, *Necessity of Keeping Tender Good in Equity*, 12 A.L.R.  
8 938 (1921) (“Generally, there is no fixed rule in equity which requires a tender to be  
9 kept good in the sense in which that phrase is used at law.”); see  
10 also Restatement (Third) of Prop.: Mortgages § 6.4 (Am. Law Inst. 1997) (“The tender  
11 must be kept good in the sense that the person making the tender must continue at all  
12 times to be ready, willing, and able to make the payment.”). Where payment into court  
13 is not explicitly required, “avowment of a readiness and willingness to bring the money  
14 into court, and pay the same on the order of the court, is sufficient.”  
15 Annotation, *Necessity of Keeping Tender Good in Equity*, 12 A.L.R. 938 (1921). And,  
16 “the necessity of keeping a tender good and of paying the money into court has no  
17 application to a tender made for the purpose of discharging a mortgage lien.”  
18 Annotation, *Unaccepted Tender as Affecting Lien of Real Estate Mortgage*, 93 A.L.R.  
19 12 (1934) (explaining that such a tender would either immediately discharge the  
20 mortgage lien or the lien would remain unimpaired by the tender).

21 (Citations omitted).

22 If a party seeks to reinstate a loan having alleged a wrongful foreclosure occurred in that the  
23 party was not in default, then the party must still allege and prove the party performed and has the  
24 ability to tender any amounts in contention and to continue performing. *Turner v Seterus, Inc*, 27  
25 Cal.App 5<sup>th</sup> 516, 530-31 (Ct. App 3rd CA 2018).

26 G. Substantial Compliance and NRS 107.080

27 NRS 107.080 (5) through (8) states:

28  
29 5. Every sale made under the provisions of this section and other sections of this  
30 chapter vests in the purchaser the title of the grantor and any successors in interest  
31 without equity or right of redemption. Except as otherwise provided in subsection 7, a  
32 sale made pursuant to this section must be declared void by any court of competent  
33 jurisdiction in the county where the sale took place if:

34 (a) The trustee or other person authorized to make the sale does not substantially  
35 comply with the provisions of this section;

1 (b) Except as otherwise provided in subsection 6, an action is commenced in the  
2 county where the sale took place within 30 days after the date on which the trustee's  
3 deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder  
4 of the county in which the property is located; and

5 (c) A notice of lis pendens providing notice of the pendency of the action is  
6 recorded in the office of the county recorder of the county where the sale took place  
7 within 5 days after commencement of the action.

8 6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of  
9 subsection 4 to the grantor, to the person who holds the title of record on the date the  
10 notice of default and election to sell is recorded, to each trustor or to any other person  
11 entitled to such notice, the person who did not receive such proper notice may  
12 commence an action pursuant to subsection 5 within 90 days after the date of the sale.

13 7. Upon expiration of the time for commencing an action which is set forth in  
14 subsections 5 and 6, any failure to comply with the provisions of this section or any  
15 other provision of this chapter does not affect the rights of a bona fide purchaser as  
16 described in NRS 111.180.

17 8. If, in an action brought by the grantor or the person who holds title of record in  
18 the district court in and for the county in which the real property is located, the court  
19 finds that the beneficiary, the successor in interest of the beneficiary or the trustee did  
20 not comply with any requirement of subsection 2, 3 or 4, the court must award to the  
21 grantor or the person who holds title of record:

22 (a) Damages of \$5,000 or treble the amount of actual damages, whichever is  
23 greater;

24 (b) An injunction enjoining the exercise of the power of sale until the beneficiary,  
25 the successor in interest of the beneficiary or the trustee complies with the requirements  
26 of subsections 2, 3 and 4; and

27 (c) Reasonable attorney's fees and costs,  
28 unless the court finds good cause for a different award. The remedy provided in this  
subsection is in addition to the remedy provided in subsection 5.

In *Schleining v Cap One, Inc.*, 130 Nev. 323, 327 (2014), the Supreme Court held that NRS  
107.080 does not require strict adherence. The Court focused upon the "does not substantially comply  
with" language. In *Dayco Funding Corporation v Mona*, 134 Nev. 929 (2018) the Nevada Supreme  
Court held that substantial compliance is found when the title holder "had actual knowledge of the  
default and the pending foreclosure sale" and "was not prejudiced by the lack of statutory notice." Id.  
citations omitted.

1 This Court found one decision which stated that inaccurate numbers regarding a deficiency was  
2 not grounds to find that a notice of default was not in substantial compliance. *Kehoe v Aurora Loan*  
3 *Services LLC*, 2010 WL 4286331 (US Dst. Ct D. Nev 2010).

4 H. Computation of Damages-NRCP Rule 16.1

5 NRCP Rule 16.1 (a) (1) (iv) requires an initial disclosure regarding the Plaintiff's computation  
6 of damages:

8 (iv) a computation of each category of damages claimed by the disclosing party--who  
9 must make available for inspection and copying as under Rule 34 the documents or  
10 other evidentiary material, unless privileged or protected from disclosure, on which  
11 each computation is based, including materials bearing on the nature and extent of  
injuries suffered; ....

12 In *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 265 (2017), the Nevada Supreme Court  
13 held that NRCP Rule 37 (c) (1) "provides the appropriate analytical framework for district courts to  
14 employ in determining the consequence..." for a failure to comply with NRCP Rule 16.1. The party  
15 in violation must show a "substantial justification" or that the failure is harmless to avoid sanctions  
16 that include the exclusion of evidence. *Id.*

17 NRCP Rule 37 (b) (1) states:

18 (b) Sanctions for Failure to Comply With a Court Order.

19 (1) For Not Obeying a Discovery Order. If a party or a party's officer,  
20 director, or managing agent — or a witness designated under Rule 30(b)(6) or 31(a)(4)  
21 — fails to obey an order to provide or permit discovery, including an order under Rule  
22 35 or 37(a), the court may issue further just orders that may include the following:

23 (A) directing that the matters embraced in the order or other designated  
24 facts be taken as established for purposes of the action, as the prevailing party claims;

25 (B) prohibiting the disobedient party from supporting or opposing  
26 designated claims or defenses, or from introducing designated matters in evidence;

27 (C) striking pleadings in whole or in part;

28 (D) staying further proceedings until the order is obeyed;

(E) dismissing the action or proceeding in whole or in part;

(F) rendering a default judgment against the disobedient party; or

(G) treating as contempt of court the failure to obey any order except an  
order to submit to a physical or mental examination.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## V. FINDINGS OF FACT

1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive, Dayton Nevada 89403 with a loan in the amount of \$381,150.00 secured by a recorded deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of the lender. Vicenta Lincicome executed the documents that created the deed of trust and note and understood she had a 30-year maturity date.
2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25, 2015, BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was \$417,198.58. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.



- 1 8. The Plaintiffs made no other attempts to mail the payments. BANA then notified the  
2 Plaintiffs in October of 2009 stating that the loan had not been modified. However, then  
3 BANA signed the LMA and recorded it in March of 2011.
- 4 9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the  
5 property at \$381,000. The Plaintiffs made no payment at the time of bankruptcy filing or  
6 during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.
- 7 10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no  
8 payment on the offer. BANA offered another modification on April 2015 but the loan was  
9 service released to Fay Servicing prior to the final payment.
- 10 11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final  
11 decree was filed by the Bankruptcy Court in July of 2015.
- 12 12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of  
13 default.
- 14 13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation  
15 assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank  
16 and Fay Servicing as interested parties.
- 17 14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff  
18 Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All  
19 parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make  
20 three payments of \$2462.30 as an offered trial period plan. The payments had to be made  
21 on April 1, 2018, May 1, 2018 and June 1, 2018.
- 22 15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in  
23 lieu of foreclosure. A certificate for foreclosure was issued.
- 24
- 25
- 26
- 27
- 28

- 1 16. The Plaintiffs did not place the required monthly payments in a bank account or escrow  
2 account. Plaintiffs spent all of their income on either items. Plaintiffs do not have  
3 sufficient funds to pay off what is owed under any theory as to what instrument controls the  
4 computation of what is owed.
- 5 17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that  
6 they could not afford to make payments on the mortgage. The Plaintiffs have never averred  
7 to the Court that they are ready, willing, and able to perform on the original mortgage or  
8 subsequent modifications.
- 9 18. A Notice of Default and Notice of Sale was filed against the subject property.
- 10 19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual  
11 claims and declaratory relief regarding the foreclosure sale of the subject property.
- 12 20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and  
13 then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and  
14 Permanent Injunction with the Court.
- 15 21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the  
16 Plaintiffs posted a bond in the amount of \$172,610.67 and additional security in the amount  
17 of \$2,105.10 per month thereafter. The Plaintiffs did not file the bond.
- 18 22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the  
19 property for \$294,000.01.
- 20 23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of  
21 the subject property was recorded.
- 22
- 23
- 24
- 25
- 26
- 27
- 28

## ANALYSIS

The gravamen of the Plaintiffs' causes of action is the alleged breach of the 2009 Loan

1 Modification Agreement by Defendant BANA. The Plaintiffs allege that Vincenta Lincicome executed  
2 and mailed the application in July of 2009. The Court infers from these allegations that the Plaintiffs  
3 believe that the mailing of the application constituted an acceptance and the LMA was from that point  
4 on a binding contract between the parties.

5 After mailing the forms, BANA accepted a payment and informed the Plaintiffs that they  
6 would investigate whether the LMA was accepted. In October of 2009, the Plaintiffs received a  
7 mortgage statement indicating that BANA had not accepted the LMA and was using the terms of the  
8 original agreement. From these alleged facts, the Court cannot find an offer and acceptance of the  
9 LMA had occurred. BANA's conduct and statements clearly indicated the original agreement had not  
10 been modified.  
11

12  
13 If the original agreement was still in place, then the Plaintiffs were legally obligated to perform  
14 as promised. No one argued that BANA had invited the Plaintiffs to apply for the modification which  
15 could be rejected. The Plaintiffs never received any notice from BANA that BANA accepted the  
16 LMA until March of 2011. It is unclear to the Court that the two year delay could constitute an  
17 acceptance nunc pro tunc, but as explained herein, it makes no difference to the Court's analysis.  
18

19 No issues of fact exist as to whether the Plaintiffs would have failed to make the required  
20 payments under any of the purported offers and alleged agreements. The Plaintiffs, admittedly, had no  
21 ability to pay and made no attempt to put any payments aside once BANA or other Defendants made a  
22 demand for payment. The Plaintiffs also admitted that they entered into different modification plans  
23 after the LMA based upon their inability to pay.  
24

25 The Plaintiffs rely on a theory that their performance was permanently excused by the failure  
26 of BANA to accept a single payment under the terms of the LMA. The Plaintiffs also rely on a theory  
27 that their performance was excused by the failure of Fay to accept a payment under a modification on  
28

1 a subsequent modification. These theories fail under relevant law for several reasons.

2 If, as alleged, the LMA was effective upon mailing, then the breach occurred in 2009. If as  
3 alleged the LMA was effective in 2011, then the breach occurred in 2011. The Plaintiffs were told that  
4 BANA would not accept the modified payment in 2009. They understood BANA would not perform  
5 under the LMA in October of 2009. They failed to bring an action against BANA until November 7,  
6 2018. The six year statute of limitations in NRS 11.190 would apply. The date of the filing of the  
7 LMA had no impact on the date of the breach.  
8

9 Additionally, if the LMA or subsequent modification was effective, then the Plaintiffs' theory  
10 of excuse of performance also fails as contract law requires a non-breaching party to elect a remedy in  
11 a reasonable time. As stated in 17B C.J.S. Contracts § 722, the non-breaching party must accept the  
12 repudiation and elect a remedy. The non-breaching party must also act promptly and within a  
13 reasonable time. The Plaintiffs did nothing in either 2009 or 2011. Restitution to the lenders would  
14 also apply if the Plaintiffs had chosen to accept the repudiations and end the agreement.  
15

16 The theory of excuse put forth by the Plaintiffs also ignores the materiality and order of the  
17 performances under the agreement. A lender materially performs by providing the funds requested  
18 under the loan. A borrower must then materially perform by making the monthly payments. Further,  
19 the theory of excuse of performance may delay the need to perform but it does not discharge the duty  
20 to pay once the performance was demanded. Performance could be demanded as the Plaintiffs did not  
21 accept the repudiation.  
22

23 Contract and mortgage law would also require that the Plaintiffs remain ready, willing and able  
24 to perform each month. The deposition testimony clearly indicated that the Plaintiffs could not  
25 perform under any of the offers and modifications of the original agreement.  
26

27 The Plaintiffs entered into a bankruptcy after their incomes went down and they had an  
28

1 unanticipated tax bill. The bankruptcy filing indicates that the Plaintiffs believed they were under the  
2 original agreement and represented such to the bankruptcy court. The facts establish that the Plaintiffs  
3 did not have the ability to make the payments under any of the offers or alleged agreements. They  
4 have failed to pay for over a decade. The Plaintiffs had made no effort to tender the missed payments  
5 under any of the agreements.  
6

7 Additionally, as the Plaintiffs did not act upon the failure of BANA or its successors to accept  
8 the payment and repudiate the LMA or modification in a reasonable time, then subsequent agreements  
9 and the bankruptcy could act as an intervening event and excuse any breach of not accepting the  
10 original LMA payments. The subsequent modifications and agreement to provide a deed in lieu of  
11 foreclosure would have excused the original alleged breach.  
12

13 The failure of the Plaintiffs to repudiate the agreement also allowed BANA or its successors to  
14 demand at a later time that the Plaintiffs perform. Since their performance was merely delayed, the  
15 Plaintiffs became the breaching party once BANA and its successors made a demand for payment and  
16 payment did not occur. The Plaintiffs tendered very few payments over the course of a decade. The  
17 Plaintiffs should have offered the payments under the LMA if they believed it was in effect. They  
18 could have preserved any rights they believed they had under the LMA by making a tender after  
19 receiving the notice of default.  
20

21 Claim preclusion would also apply. The Plaintiffs are not entitled to switch theories depending  
22 upon what court they are in. BANA would be bound as well by any representations made in the  
23 bankruptcy proceedings.  
24

25 Disturbing to the Court, the Plaintiffs seem to believe that they can game the system to avoid  
26 repaying the money borrowed and to remain in a house rent free. Albert Ellis Lincicome, Jr.'s  
27 testimony clearly establishes that the Plaintiffs want more time to continue their free ride. If they have  
28

1 to abuse a mediation program to get more time then so be it. The Plaintiffs' signatures affirming that  
2 they would be bound by the agreement meant nothing. The Plaintiffs admit to engaging in bad faith.

3 Under *Jones*, the mediated agreement of deed in lieu of foreclosure is enforceable. The  
4 Plaintiffs admitted that they chose not to enter into the offered terms. The agreement settled all claims  
5 regarding the mortgage. The Plaintiffs have an obligation under the agreement to surrender the  
6 property. NRS 40.453 does not apply as argued in other motions.  
7

8 The foreclosing defendants substantially complied with NRS 107.080 notice requirements.  
9 The Plaintiffs were clearly noticed that they were in default and when the foreclosure sale would  
10 occur. The fact that they disputed the amount of the default did not create any prejudice to them as  
11 they never intended to make a tender of any amount. The notice provided them the opportunity to file  
12 an action to stop the foreclosure sale which they then did. They were given an opportunity to file a  
13 bond and then perform under the agreement they argued was in effect, but then failed to do so.  
14

15 Finally, the Court finds that the failure to provide a computation of damages as required by  
16 NRCP Rule 16 has not been justified. The Plaintiffs failure to provide the computation cannot be  
17 justified by their counsel's belief that to deal with damages at a later point in time is more economical.  
18 The epidemic and the Plaintiffs' hectic schedule has no impact on Counsel's determination of  
19 damages. The Plaintiffs had over two years to comply with the rule.  
20

21 The Court also notes that the Plaintiffs were supposed to negotiate in good faith during a  
22 settlement conference that was ordered. How they could do so without understanding their damages is  
23 perplexing. Is this just more bad faith? The Court believes that the appropriate sanction is to strike all  
24 allegations concerning monetary damages from the Complaint as the failure appears to be made in bad  
25 faith and in an effort to prolong this matter further.  
26

## 27 CONCLUSIONS OF LAW

28



**Certificate of Mailing**

I hereby certify that I, Quoc Thai, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.  
Millward Law, Ltd.  
1591 Mono Ave.  
Minden, NV 89423

Shadd A. Wade  
Zieve, Brodnax & Steele, LLP  
9435 W. Russel Rd., Ste. 120  
Las Vegas, NV 89148


Scott R. Lachman, Esq.  
Akerman LLP  
1635 Village Center Cir. Ste. 200  
Las Vegas, NV 89134

Matthew K. Schriever, Esq.  
Hutchison & Steffen, PLLC  
10080 W. Alta Dr., Ste. 200  
Las Vegas, NV 89145

Casey J. Nelson, Esq.  
Wedgewood, LLC  
2320 Potosi St., Ste. 130  
Las Vegas, NV 89146

Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Ste. 200  
Las Vegas, NV 89117

DATED: This 23<sup>rd</sup> day of June, 2021.

  
\_\_\_\_\_  
Employee of Hon. Leon Aberasturi



Case No.: 18-CV-01332

Dept. No.: II

FILED

2022 JAN 19 AM 8:24

TANYA SOLER  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Victoria Toran*

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

\* \* \* \* \*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
20130MF LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.;  
BRECKENRIDGE PROPERTY FUND 2016;  
NEWREZ LLC dba SHELLPOINT  
MORTGAGE SERVICING, LLC; 1900  
CAPITAL TRUST II, BY U.S. BANK TRUST  
NATIONAL ASSOCIATION; MCM-2018-  
NPL2 and DOES 1-50.,

Defendants.

**ORDER ON ATTORNEY'S FEES AND  
COSTS**

On July 20, 2021, Breckenridge Property Fund ("Breckenridge") filed a Motion for Attorney Fees and Cost. On August 5, 2021, Plaintiffs filed an Opposition to Breckenridge's Motion for Attorney Fees and Cost. On September 2, 2021, Breckenridge filed a Reply in Support of its Motion for Attorney Fees and Cost.

**I. FINDINGS OF LAW**

1 Nevada Law permits an award of attorneys' fees whenever authorized by statute, rule, or  
2 contract. *See U.S. Design & Const. Corp. v. Int'l Broth. Of Elec. Workers*, 118 Nev. 458, 462, 50  
3 P.3d 170, 173 (2002). NRS 18.010 states:

4 1. The compensation of an attorney and counselor for his or her services is  
5 governed by agreement, express or implied, which is not restrained by law.

6 2. In addition to the cases where an allowance is authorized by specific  
7 statute, the court may make an allowance of attorney's fees to a prevailing party:

8 (a) When the prevailing party has not recovered more than \$20,000; or

9 (b) Without regard to the recovery sought, when the court finds that the  
10 claim, counterclaim, cross-claim or third-party complaint or defense of the  
11 opposing party was brought or maintained without reasonable ground or to harass  
12 the prevailing party. The court shall liberally construe the provisions of this  
13 paragraph in favor of awarding attorney's fees in all appropriate situations. It is  
14 the intent of the Legislature that the court award attorney's fees pursuant to this  
15 paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil  
16 Procedure in all appropriate situations to punish for and deter frivolous or  
17 vexatious claims and defenses because such claims and defenses overburden  
18 limited judicial resources, hinder the timely resolution of meritorious claims and  
19 increase the costs of engaging in business and providing professional services to  
20 the public.

21 3. In awarding attorney's fees, the court may pronounce its decision on the  
22 fees at the conclusion of the trial or special proceeding without written motion  
23 and with or without presentation of additional evidence.

24 4. Subsections 2 and 3 do not apply to any action arising out of a written  
25 instrument or agreement which entitles the prevailing party to an award of  
26 reasonable attorney's fees.

27 NRS 18.010(2) sets forth situations whereby the court may properly award attorneys'  
28 fees: when the prevailing party has not recover more than \$20,000 or, without regard to the  
recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party  
complaint or defense of the opposing party was brought or maintained without reasonable  
ground or to harass the prevailing party. NRS 18.010(2).

In *Capanna v. Orth*, 134 Nev. 888, 895 (2018) the Nevada Supreme Court held:

NRS 18.010(2) (b) allows the district court to award attorney fees to a prevailing  
party "when the court finds that the claim, counterclaim ... or defense of the  
opposing party was brought or maintained without reasonable ground or to harass  
the prevailing party."

"The court shall liberally construe the provisions of [NRS 18.010(2)(b) ] in favor  
of awarding attorney's fees in all appropriate situations," and "[i]t is the intent of  
the Legislature that the court award attorney's fees pursuant to [NRS

1 18.010(2)(b) ] ... in all appropriate situations to punish for and deter frivolous or  
2 vexatious claims and defenses.” *Id.* “For purposes of NRS 18.010(2) (b), a claim  
3 is frivolous or groundless if there is no credible evidence to support it.” *Rodriguez*  
*v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009).

4 There must be evidence in the record supporting the proposition that the claim was  
5 brought or the defense maintained “without reasonable grounds or to harass the other party.”  
6 *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005). Further, the decision  
7 to award attorney fees is within the sound discretion of the district court and will not be  
8 overturned absent a manifest abuse of discretion. *Id.*

9 NRS 107.080 states:

10 1. Except as otherwise provided in NRS  
11 106.210, 107.0805, 107.085 and 107.086, if any transfer in trust of any estate in  
12 real property is made after March 29, 1927, to secure the performance of an  
13 obligation or the payment of any debt, a power of sale is hereby conferred upon  
the trustee to be exercised after a breach of the obligation for which the transfer is  
security.

14 2. The power of sale must not be exercised, however, until:

(a) In the case of any deed of trust coming into force:

15 (1) On or after July 1, 1949, and before July 1, 1957, the grantor, the  
16 person who holds the title of record, a beneficiary under a subordinate deed of  
17 trust or any other person who has a subordinate lien or encumbrance of record on  
the property has, for a period of 15 days, computed as prescribed in subsection 3,  
failed to make good the deficiency in performance or payment; or

18 (2) On or after July 1, 1957, the grantor, the person who holds the title of  
19 record, a beneficiary under a subordinate deed of trust or any other person who  
has a subordinate lien or encumbrance of record on the property has, for a period  
of 35 days, computed as prescribed in subsection 3, failed to make good the  
deficiency in performance or payment.

20 (b) The beneficiary, the successor in interest of the beneficiary or the trustee  
21 first executes and causes to be recorded in the office of the recorder of the county  
22 wherein the trust property, or some part thereof, is situated a notice of the breach  
and of the election to sell or cause to be sold the property to satisfy the obligation.

23 (c) The beneficiary or its successor in interest or the servicer of the obligation  
or debt secured by the deed of trust has instructed the trustee to exercise the  
power of sale with respect to the property.

24 (d) Not less than 3 months have elapsed after the recording of the notice or, if  
25 the notice includes an affidavit and a certification indicating that, pursuant to NRS  
26 107.130, an election has been made to use the expedited procedure for the  
exercise of the power of sale with respect to abandoned residential property, not  
less than 60 days have elapsed after the recording of the notice.

27 3. The 15- or 35-day period provided in paragraph (a) of subsection 2  
28 commences on the first day following the day upon which the notice of default

1 and election to sell is recorded in the office of the county recorder of the county in  
2 which the property is located and a copy of the notice of default and election to  
3 sell is mailed by registered or certified mail, return receipt requested and with  
4 postage prepaid to the grantor or, to the person who holds the title of record on the  
5 date the notice of default and election to sell is recorded, and, if the property is  
6 operated as a facility licensed under chapter 449 of NRS, to the State Board of  
7 Health, at their respective addresses, if known, otherwise to the address of the  
8 trust property or, if authorized by the parties, delivered by electronic transmission.  
9 The notice of default and election to sell must describe the deficiency in  
10 performance or payment and may contain a notice of intent to declare the entire  
11 unpaid balance due if acceleration is permitted by the obligation secured by the  
12 deed of trust, but acceleration must not occur if the deficiency in performance or  
13 payment is made good and any costs, fees and expenses incident to the  
14 preparation or recordation of the notice and incident to the making good of the  
15 deficiency in performance or payment are paid within the time specified in  
16 subsection 2.

17 4. The trustee, or other person authorized to make the sale under the terms  
18 of the deed of trust, shall, after expiration of the applicable period specified in  
19 paragraph (d) of subsection 2 following the recording of the notice of breach and  
20 election to sell, and before the making of the sale, give notice of the time and  
21 place thereof by recording the notice of sale and by:

22 (a) Providing the notice to each trustor, any other person entitled to notice  
23 pursuant to this section and, if the property is operated as a facility licensed  
24 under chapter 449 of NRS, the State Board of Health, by personal service, by  
25 electronic transmission if authorized by the parties or by mailing the notice by  
26 registered or certified mail to the last known address of the trustor and any other  
27 person entitled to such notice pursuant to this section;

28 (b) Posting a similar notice particularly describing the property, for 20 days  
successively, in a public place in the county where the property is situated; and

(c) Publishing a copy of the notice three times, once each week for 3  
consecutive weeks, in a newspaper of general circulation in the county where the  
property is situated or, if the property is a time share, by posting a copy of the  
notice on an Internet website and publishing a statement in a newspaper in the  
manner required by subsection 3 of NRS 119A.560.

5. Every sale made under the provisions of this section and other sections of  
this chapter vests in the purchaser the title of the grantor and any successors in  
interest without equity or right of redemption. Except as otherwise provided in  
subsection 7, a sale made pursuant to this section must be declared void by any  
court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not  
substantially comply with the provisions of this section;

(b) Except as otherwise provided in subsection 6, an action is commenced in  
the county where the sale took place within 30 days after the date on which the  
trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the  
county recorder of the county in which the property is located; and

(c) A notice of lis pendens providing notice of the pendency of the action is  
recorded in the office of the county recorder of the county where the sale took  
place within 5 days after commencement of the action.

1           6. If proper notice is not provided pursuant to subsection 3 or paragraph (a)  
2 of subsection 4 to the grantor, to the person who holds the title of record on the  
3 date the notice of default and election to sell is recorded, to each trustor or to any  
4 other person entitled to such notice, the person who did not receive such proper  
notice may commence an action pursuant to subsection 5 within 90 days after the  
date of the sale.

5           7. Upon expiration of the time for commencing an action which is set forth  
6 in subsections 5 and 6, any failure to comply with the provisions of this section or  
any other provision of this chapter does not affect the rights of a bona fide  
purchaser as described in NRS 111.180.

7           8. If, in an action brought by the grantor or the person who holds title of  
8 record in the district court in and for the county in which the real property is  
located, the court finds that the beneficiary, the successor in interest of the  
9 beneficiary or the trustee did not comply with any requirement of subsection 2, 3  
or 4, the court must award to the grantor or the person who holds title of record:

10           (a) Damages of \$5,000 or treble the amount of actual damages, whichever is  
greater;

11           (b) An injunction enjoining the exercise of the power of sale until the  
12 beneficiary, the successor in interest of the beneficiary or the trustee complies  
with the requirements of subsections 2, 3 and 4; and

13           (c) Reasonable attorney's fees and costs,  
14           Ê unless the court finds good cause for a different award. The remedy provided in  
this subsection is in addition to the remedy provided in subsection 5.

15           9. The sale or assignment of a proprietary lease in a cooperative vests in the  
16 purchaser or assignee title to the ownership interest and votes in the cooperative  
association which accompany the proprietary lease.

17           10. After a sale of property is conducted pursuant to this section, the trustee  
shall:

18           (a) Within 30 days after the date of the sale, record the trustee's deed upon  
sale in the office of the county recorder of the county in which the property is  
located; or

19           (b) Within 20 days after the date of the sale, deliver the trustee's deed upon  
20 sale to the successful bidder. Within 10 days after the date of delivery of the deed  
by the trustee, the successful bidder shall record the trustee's deed upon sale in  
the office of the county recorder of the county in which the property is located.

21           11. Within 5 days after recording the trustee's deed upon sale, the trustee or  
22 successful bidder, whoever recorded the trustee's deed upon sale pursuant to  
subsection 10, shall cause a copy of the trustee's deed upon sale to be posted  
23 conspicuously on the property. The failure of a trustee or successful bidder to  
effect the posting required by this subsection does not affect the validity of a sale  
24 of the property to a bona fide purchaser for value without knowledge of the  
failure.

25           12. If the successful bidder fails to record the trustee's deed upon sale  
26 pursuant to paragraph (b) of subsection 10, the successful bidder:

27           (a) Is liable in a civil action to any party that is a senior lienholder against the  
28 property that is the subject of the sale in a sum of up to \$500 and for reasonable  
attorney's fees and the costs of bringing the action; and

1 (b) Is liable in a civil action for any actual damages caused by the failure to  
2 comply with the provisions of subsection 10 and for reasonable attorney's fees  
and the costs of bringing the action.

3 13. The county recorder shall, in addition to any other fee, at the time of  
recording a notice of default and election to sell collect:

4 (a) A fee of \$150 for deposit in the State General Fund.

5 (b) A fee of \$95 for deposit in the Account for Foreclosure Mediation  
Assistance, which is hereby created in the State General Fund. The Account must  
6 be administered by the Interim Finance Committee and the money in the Account  
may be expended only for the purpose of:

7 (1) Supporting a program of foreclosure mediation; and

8 (2) The development and maintenance of an Internet portal for a program  
of foreclosure mediation pursuant to subsection 16 of NRS 107.086.

9 (c) A fee of \$5 to be paid over to the county treasurer on or before the fifth  
day of each month for the preceding calendar month. The county recorder may  
10 direct that 1.5 percent of the fees collected by the county recorder pursuant to this  
paragraph be transferred into a special account for use by the office of the county  
11 recorder. The county treasurer shall remit quarterly to the organization operating  
the program for legal services that receives the fees charged pursuant to NRS  
12 19.031 for the operation of programs for the indigent all the money received from  
the county recorder pursuant to this paragraph.

13 14. The fees collected pursuant to paragraphs (a) and (b) of subsection 13  
must be paid over to the county treasurer by the county recorder on or before the  
14 fifth day of each month for the preceding calendar month, and, except as  
15 otherwise provided in this subsection, must be placed to the credit of the State  
General Fund or the Account for Foreclosure Mediation Assistance as prescribed  
16 pursuant to subsection 13. The county recorder may direct that 1.5 percent of the  
fees collected by the county recorder be transferred into a special account for use  
17 by the office of the county recorder. The county treasurer shall, on or before the  
15th day of each month, remit the fees deposited by the county recorder pursuant  
18 to this subsection to the State Controller for credit to the State General Fund or  
the Account as prescribed in subsection 13.

19 15. The beneficiary, the successor in interest of the beneficiary or the trustee  
20 who causes to be recorded the notice of default and election to sell shall not  
21 charge the grantor or the successor in interest of the grantor any portion of any fee  
required to be paid pursuant to subsection 13.

22 The Nevada Supreme Court in *Las Vegas Development Group, LLC v Blaha*, 134 Nev.  
23 252, 256 (2018) held:

24 NRS 107.080 governs nonjudicial deed-of-trust foreclosure sales and sets  
25 forth the substantive requirements and procedures for such sales. Subsection 5(a)  
states that a sale under "this section may be declared void" if the individual  
26 "authorized to make the sale does not substantially comply with the provisions of  
this section or any applicable provision of NRS 107.086 and 107.087." 2010 Nev.  
27 Stat. 26th Spec. Sess., ch. 10, § 31, at 78. Subsection 5(b) requires that such an  
action be commenced "within 90 days after the date of the sale." *Id.* Subsection 6  
28

1 allows 120 days to commence an action if proper notice is not given. *Id.* Thus, if  
2 the person authorized to conduct the sale fails to substantially comply with NRS  
3 107.086, NRS 107.087, or one of NRS 107.080(5)'s provisions, it can render the  
4 sale void. By the statute's plain language, challenges to those violations are  
5 subject to the time limitations in subsections 5 and 6. However, the language of  
6 NRS 107.80 presumes that the person making this sale is authorized to do so as  
7 trustee or as the person designated under the terms of the deed of trust or transfer  
8 in trust. In this case, it is alleged that the security interest of the deed of trust was  
9 extinguished by the prior HOA foreclosure sale leaving the person to conduct the  
10 sale without authority to do so.

11 According to Blaha, we previously determined that NRS 107.080 applies  
12 to all challenges to a nonjudicial foreclosure sale in *Building Energetix Corp. v.*  
13 *EHE, LP*, 129 Nev. 78, 85–86, 294 P.3d 1228, 1234 (2013). We  
14 disagree. *Building Energetix* involved a delinquent-tax certificate issued to the  
15 county treasurer prior to a nonjudicial foreclosure sale. *Id.* at 79–80, 294 P.3d at  
16 1230. The issue was “whether, consistent with NRS 107.080(5), a trust-deed  
17 beneficiary who acquires such property on credit bid at the foreclosure sale can  
18 later redeem, or obtain reconveyance of, the property from the county  
19 treasurer.” *Id.* at 79, 294 P.3d at 1230. Thus, we were not confronted with, nor did  
20 we decide, whether NRS 107.080 applies to all challenges to an NRS Chapter 107  
21 nonjudicial foreclosure sale.

22 Blaha also contends that the application of NRS 107.080(5)–(6) to all  
23 claims challenging an NRS Chapter 107 foreclosure sale is consistent with the  
24 legislative history of the statute, which indicates that the legislators were  
25 concerned about individuals having the ability to reverse a foreclosure sale  
26 indefinitely. While that concern was stated at the hearing on the legislation, it was  
27 in the context of the statutory violations of NRS 107.080. *See* Hearing on S.B.  
28 217 Before the Senate Judiciary Comm., 74th Leg. (Nev., March 21, 2007);  
Hearing on S.B. 217 Before the Assembly Judiciary Comm., 74th Leg. (Nev.,  
May 2, 2007). The legislators did not discuss scenarios where the deed of trust is  
void. Thus, we conclude that the legislative history supports the plain language  
of NRS 107.080 and demonstrates that the legislators were not contemplating  
challenges to a foreclosing entity's authority. *See* Hearing on S.B. 217 Before the  
Senate Judiciary Comm., 74th Leg. (Nev., March 21, 2007).

21 The Nevada Supreme Court in *Brunzell v Golden Gate Nat. Bank*, 85 Nev. 345 (1969),  
22 set forth factors a trial court must consider when evaluating the amount of attorneys' fees  
23 requested under NRS 18.010. In *Logan v Abe*, 131 Nev. 260, 267 (2015) the Nevada Supreme  
24 Court held:

25 In determining the amount of fees to award, the [district] court is not limited to  
26 one specific approach; its analysis may begin with any method rationally designed  
27 to calculate a reasonable amount, so long as the requested amount is reviewed in  
28 light of the” *Brunzell* factors. *Haley v. Eighth Judicial Dist. Court*, — Nev. —  
—, —, 273 P.3d 855, 860 (2012) (internal quotations omitted). While it is  
preferable for a district court to expressly analyze each factor relating to an award

1 of attorney fees, express findings on each factor are not necessary for a district  
2 court to properly exercise its discretion. Certified Fire Prot., Inc. v. Precision  
3 Constr., Inc., —Nev. —, —, 283 P.3d 250, 258 (2012).

4 Costs must be allowed of course to the prevailing party against any adverse party against  
5 whom judgment is rendered, in an action for the recovery of real property or a possessory right  
6 thereto. NRS. 18.020 states:

7 1. In an action for the recovery of real property or a possessory right  
8 thereto.

9 2. In an action to recover the possession of personal property, where the  
10 value of the property amounts to more than \$2,500. The value must be determined  
11 by the jury, court or master by whom the action is tried.

12 3. In an action for the recovery of money or damages, where the plaintiff  
13 seeks to recover more than \$2,500.

14 4. In a special proceeding, except a special proceeding conducted pursuant  
15 to NRS 306.040.

16 5. In an action which involves the title or boundaries of real estate, or the  
17 legality of any tax, impost, assessment, toll or municipal fine, including the costs  
18 accrued in the action if originally commenced in a Justice Court.

19 NRS 18.110 states:

20 1. The party in whose favor judgment is rendered, and who claims costs,  
21 must file with the clerk, and serve a copy upon the adverse party, within 5 days  
22 after the entry of judgment, or such further time as the court or judge may grant, a  
23 memorandum of the items of the costs in the action or proceeding, which  
24 memorandum must be verified by the oath of the party, or the party's attorney or  
25 agent, or by the clerk of the party's attorney, stating that to the best of his or her  
26 knowledge and belief the items are correct, and that the costs have been  
27 necessarily incurred in the action or proceeding.

28 2. The party in whose favor judgment is rendered shall be entitled to recover  
the witness fees, although at the time the party may not actually have paid them.  
Issuance or service of subpoena shall not be necessary to entitle a prevailing party  
to tax, as costs, witness fees and mileage, provided that such witnesses be sworn  
and testify in the cause.

3. It shall not be necessary to embody in the memorandum the fees of the  
clerk, but the clerk shall add the same according to the fees of the clerk fixed by  
statute.

4. Within 3 days after service of a copy of the memorandum, the adverse  
party may move the court, upon 2 days' notice, to retax and settle the costs, notice  
of which motion shall be filed and served on the prevailing party claiming costs.  
Upon the hearing of the motion the court or judge shall settle the costs.

## II. Arguments

### A. Breckenridge



1 Breckenridge argues that its claims to superior title in this matter were supported by the  
2 record and well-founded Nevada law. Breckenridge did not become involved in this matter until  
3 it purchased the subject property at the foreclosure sale after the Plaintiffs failed to post the bond  
4 required by the Court.

5 Breckenridge took title to the Property pursuant to NRS 107.080, which states “every sale  
6 made under the provisions of this section and other sections of this chapter vests in the purchaser  
7 the title of the grantor and any successors in interest without equity or right of redemption.”  
8 Breckenridge argued that the majority of allegations in the Second Amended Complaint occurred  
9 prior to the foreclosure sale, which Breckenridge played no role in. Plaintiffs failed to put forth  
10 any evidence to support that they had the ability to pay the underlying obligation and foreclosure  
11 was not justified.

12 Breckenridge argues that the Plaintiffs filed this lawsuit as a last-minute attempt to stave  
13 off the foreclosure. They failed to post the required bond, the foreclosure sale occurred, and  
14 therefore the Plaintiffs had no claim to superior title over Breckenridge. The Plaintiffs’  
15 allegations of wrongful foreclosure after discovery was completed were not and could not have  
16 been established or proven by any legal and factual support.

17 Breckenridge asserts that attorneys’ fees are proper under NRS 18.010(2) because the  
18 Plaintiffs brought or maintained a claim against Breckenridge without reasonable grounds or to  
19 harass the prevailing party because it could not be supported by any credible evidence at trial.  
20 Breckenridge argues that the requested fees meet the *Brunzell* factors. Breckenridge asserts that  
21 costs must be awarded as the Plaintiffs did not file a motion to re-tax the costs pursuant to NRS  
22 18.110.

### 23 **B. Plaintiffs**

24 Plaintiffs argue that their claims were brought upon reasonable grounds and not for the  
25 purpose of harassment. Plaintiffs point to this Court’s 12/31/18 Order which stated that  
26 “Plaintiff is likely to prevail on a Homeowner Bill of Rights claims.” Plaintiffs also argued that  
27 Breckenridge knew about the underlying litigation prior to purchasing the property at the time of  
28

1 the foreclosure sale. Without providing any authority, Plaintiffs argued that any award should  
2 stay pending an appeal. The Court will not consider a stay without being presented any authority.

3 Finally, the Court notes that Plaintiffs did not argue that the requested attorneys' fees did  
4 not comply with statute or case law.

### 5 **III. Issue presented**

6 Did the Plaintiffs bring or maintain their claims against Breckenridge "without  
7 reasonable grounds or to harass" Breckenridge?

### 8 **IV. Conclusions of Law**

9 The facts clearly establish that the original action was brought against the foreclosing  
10 parties to prevent foreclosure on the property. Breckenridge was brought into the action after the  
11 Plaintiffs failed to obtain the preliminary injunction by failing to post the required bond. The  
12 evidence brought at the preliminary injunction hearing was in stark contrast to what was brought  
13 out in discovery.

14 NRS 107.080 provides an avenue to set aside a foreclosure sale if the foreclosing party or  
15 parties did not substantially comply with the provisions of the statute. Plaintiffs during the  
16 injunction hearing raised issues as to whether the foreclosing parties had adequately provided  
17 notice of what the deficiency was due based upon allegations of non-performance and  
18 intervening agreements. Based upon the limited evidence and case law provided, the Court found  
19 that the Plaintiffs had a likelihood of success at this preliminary stage.

20 The gravamen of Breckenridge's arguments correctly focus upon the Plaintiffs  
21 maintaining the action after it was clear that they had no basis to claim that a wrongful  
22 foreclosure had occurred or that the foreclosing parties had failed to substantially comply with  
23 NRS 107.080. Facts raised in discovery clearly presented a picture that was wholly different  
24 than what had been presented to the Court during the preliminary injunction hearing. At the  
25 completion of discovery, it was clear that the foreclosing parties had substantially complied with  
26 NRS 107.080.

27 The evidence also established that the Plaintiffs had abused the foreclosure mediation  
28 program in a previous action. The Plaintiffs never had the ability or desire to make payments on

1 the loan obligation. The maintenance of the action appears to the Court as done to prolong the  
2 Plaintiffs' ability to live rent free.

3 This Court has previously commented on how unreasonable Plaintiffs' legal theory that  
4 one or two unaccepted payments years ago would excuse the Plaintiffs from making years of  
5 mortgage payments. Plaintiffs provided no authority that a lender could not require them to  
6 make tender of back payments. Plaintiffs were given a second opportunity to settle the matter  
7 even after reneging on the agreement reached during the foreclosure mediation several years  
8 prior.

9 The Plaintiffs provided no legal authority that the failure to have an exact amount owed  
10 in the required notices compelled a finding that substantial compliance could not occur. The  
11 Court cannot find that the Plaintiffs presented novel legal theories concerning the application of  
12 NRS 107.080 or actions concerning wrongful foreclosure. See, e.g. *Rodriguez v. Primadonna*  
13 *Co.*, 125 Nev. 578, 588 (2009). Plaintiffs' claims were maintained without reasonable grounds as  
14 to Breckenridge.

15 The Plaintiffs did not contest the amounts requested for attorneys' fees. The Court  
16 reviewed the pleading and finds that Breckenridge has properly supported the amount requested  
17 as required under *Brunzell*. The character of the work, the work actually performed, the qualities  
18 of the advocacy and the result obtained warrant an award of the amount requested.

19 Breckenridge also correctly cited to NRS 18.110. The Plaintiffs did not file a motion to  
20 retax the costs. The Court thereby orders the costs requested.

21 Based upon the above and good cause appearing, **IT IS HEREBY ADJUDGED and**  
22 **ORDERED** that Breckenridge's Motion for Attorneys' Fees and Costs is **GRANTED**.

23 **IT IS HEREBY FURTHER ORDERED** that a Judgment in favor of Breckenridge in  
24 the amount of Forty Four Thousand Six Hundred Forty Eight Dollars (\$44,648.00) for attorneys'  
25 fees is **AWARDED**.

26 ///

27 ///

1           **IT IS HEREBY FURTHER ORDERED** that a Judgment in favor of Breckenridge in  
2 the amount of Three Thousand Seven Hundred Eighty Eight Dollars and One Cent (\$3,788.01)  
3 for costs is **AWARDED**.

4           DATED: This 18th day of January, 2022.

5  
6  
7           

8           HON. LEON ABERASTURI  
9           DISTRICT JUDGE  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Certificate of Mailing**

I hereby certify that I, Quoc Thai, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.  
Millward Law, Ltd.  
1591 Mono Ave.  
Minden, NV 89423

Shadd A. Wade  
Zieve, Brodnax & Steele, LLP  
9435 W. Russel Rd., Ste. 120  
Las Vegas, NV 89148

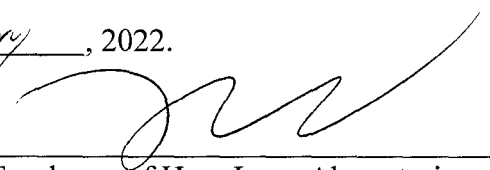
Scott R. Lachman, Esq.  
Akerman LLP  
1635 Village Center Cir. Ste. 200  
Las Vegas, NV 89134

Matthew K. Schriever, Esq.  
Hutchison & Steffen, PLLC  
10080 W. Alta Dr., Ste. 200  
Las Vegas, NV 89145

Casey J. Nelson, Esq.  
Wedgewood, LLC  
2320 Potosi St., Ste. 130  
Las Vegas, NV 89146

Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Ste. 200  
Las Vegas, NV 89117

DATED: This 18<sup>th</sup> day of January, 2022.

  
\_\_\_\_\_  
Employee of Hon. Leon Aberasturi

1 John T. Steffen (4390)  
2 Brenoch R. Wirthlin (10282)  
3 Todd W. Prall (9154)  
4 HUTCHISON & STEFFEN, PLLC  
5 10080 W. Alta Dr., Suite 200  
6 Las Vegas, NV 89145  
7 Telephone: (702) 385-2500  
8 Facsimile: (702) 385-2086  
9 bwirthlin@hutchlegal.com

6 Casey J. Nelson (12259)  
7 WEDGEWOOD, LLC  
8 Office of the General Counsel  
9 2320 Potosi Street, Suite 130  
10 Las Vegas, Nevada 89146  
11 Telephone: (702) 305-9157  
12 Facsimile: (310) 730-5967  
13 caseynelson@wedgewood-inc.com

14 *Attorney for Defendant / Counterclaimant*  
15 *Breckenridge Property Fund 2016, LLC*

12 **THIRD JUDICIAL DISTRICT COURT**  
13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR., and  
15 VICENTA LINCICOME,

16 Plaintiff,

17 v.

18 SABLES, LLC, a Nevada limited liability  
19 company, as Trustee of the Deed of Trust  
20 given by Vicenta Lincicome and dated  
21 5/23/2007; FAY SERVICING, LLC, a  
22 Delaware limited liability company and  
23 subsidiary of Fay Financial, LLC; PROF-  
24 2013-MF LEGAL TITLE TRUST by U.S.  
25 BANK, N.A., as Legal Title Trustee; for  
26 BANK OF AMERICA, N.A.;  
27 BRECKENRIDGE PROPERTY FUND  
2016; NEWREZ LLC dba SHELLPOINT  
MORTGAGE SERVICING, LLC; 1900  
CAPITAL TRUST II, BY U.S. BANK  
TRUST NATIONAL ASSOCIATION;  
MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED ACTIONS

**ORIGINAL**

**FILED**

2021 NOV 29 AM 10:57

TANYA BOEING  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*Kathy Thomas*

Case No.: 18-CV-01332

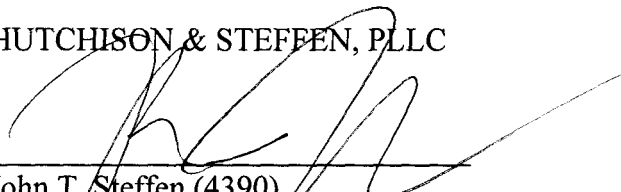
Dept No.: II

**NOTICE OF ENTRY OF ORDER**

1 Please take notice that a Permanent Writ of Restitution was entered on the 22nd day of  
2 November, 2021, a copy of which is attached hereto.

3 DATED this 24th day of November, 2021.

4 HUTCHISON & STEFFEN, PLLC

5   
6 John T. Steffen (4390)  
7 Brenoch R. Wirthlin (10282)  
8 Todd W. Prall (9154)  
9 10080 W. Alta Dr., Suite 200  
Las Vegas, NV 89145

10 Casey J. Nelson (12259)  
11 WEDGEWOOD, LLC  
12 Office of the General Counsel  
2320 Potosi Street, Suite 130  
Las Vegas, Nevada 89146

13 *Attorney for Defendant / Counterclaimant*  
14 *Breckenridge Property Fund, LLC*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of Hutchison & Steffen, and that on the date  
3 indicated below, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** via  
4 U.S. Mail to the parties designated below.

5 Michael G. Millward, Esq.  
6 MILLWARD LAW, LTD.  
7 1591 Mono Avenue  
8 Minden, NV 89423  
*Attorney for Plaintiffs*

Justin M. Clouser, Esq.  
1512 US Highway 395 N, Ste. 1  
Gardnerville, NV 89410  
*Attorney for Plaintiff*

9 R. Samuel Ehlers, Esq.  
10 Ramir M. Hernandez, Esq.  
11 WRIGHT FINLAY & ZAK, LLP  
12 7785 W. Sahara Avenue, #200  
13 Las Vegas, NV 89117  
*Attorney for Prof-2013-M4 Legal Title Trust by*  
*US. Bank, National Association as Legal Title*  
*Trustee; Fay Servicing, LLC, and Shellpoint*  
*Mortgage Servicing, LLC*

Shadd A. Wade, Esq  
ZIEVE BRODNAX & STEEL  
9435 W. Russell Road, #120  
Las Vegas, NV 89148  
*Attorney for Sables, LLC*

14 Melanie Morgan, Esq.  
15 Scott R. Lachman, Esq.  
16 ACKERMAN, LLP  
17 1635 Village Center Circle, #200  
18 Las Vegas, NV 89134  
*Attorney for Bank of America*

Darren T. Brenner, Esq.  
Ramir M. Hernandez, Esq.  
WRIGHT FINLAY & ZAK, LLP  
7785 W. Sahara Avenue, #200  
Las Vegas, NV 89117  
*Attorneys for Prof-2013-M4 Legal Title Trust*  
*by US Bank, National Association as Legal*  
*Title Trustee; Fay Servicing, LLC, and*  
*Shellpoint Mortgage Servicing, LLC*

20 DATED this 24th day of November 2021.

21   
22 \_\_\_\_\_  
23 An Employee of HUTCHISON & STEFFEN  
24  
25  
26  
27



FILED

2021 NOV 22 AM 9:52

JANVA S. BAPTIST  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

Bayley Baptist

John T. Steffen, Esq. (4390)  
Brenoch R. Wirthlin, Esq. (10282)  
Alex R. Velto, Esq. (14961)  
HUTCHISON & STEFFEN, PLLC  
10080 West Alta Drive, Suite 200  
Las Vegas, NV 89145  
Tel (702) 385-2500  
Fax (702) 385-2086  
[bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)

Casey J. Nelson, Esq. (12259)  
Wedgewood, LLC  
Office of the General Counsel  
2320 Potosi Street, Suite 130  
Las Vegas, Nevada 89146  
Tel (702) 305-9157  
Fax (310) 730-5967  
[caseynelson@wedgewood-inc.com](mailto:caseynelson@wedgewood-inc.com)

*Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*  
*Breckenridge Property Fund 2016, LLC*

**THIRD JUDICIAL DISTRICT COURT  
LYON COUNTY, NEVADA**

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust given  
by Vicenta Lincicome and dated 5/23/2007; FAY  
SERVICING, LLC, a Delaware limited liability  
company and subsidiary of Fay Financial, LLC;  
PROF-2013-MF LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for BANK  
OF AMERICA, N.A.; BRECKENRIDGE  
PROPERTY FUND 2016; NEWREZ LLC dba  
SHELLPOINT MORTGAGE SERVICING,  
LLC; 1900 CAPITAL TRUST II, BY U.S.  
BANK TRUST NATIONAL ASSOCIATION;  
MCM-2018-NPL2 and DOES 1-50.,

Defendants.

AND RELATED MATTERS.

Case No.: 18-CV-01332  
Dept No.: II

**PERMANENT WRIT OF RESTITUTION**

1 THE STATE OF NEVADA TO THE SHERIFF OR CONSTABLE OF LYON COUNT, GREETING.

2 WHEREAS on October 3, 2019, Defendant in Intervention/Counterclaimant Breckenridge  
3 Property Fund 2016, LLC ("Counterclaimant") filed its Intervenor's Counterclaim ("Counterclaim")  
4 pursuant to which Counterclaimant asserted, among other things, claims for quiet title and writ of  
5 restitution regarding that certain real property at issue located at 70 Riverside Drive, Dayton, Nevada  
6 89403 ("Property");

7  
8 WHEREAS on March 18, 2021, Counterclaimant filed its Motion for Summary Judgment  
9 ("Counterclaimant's MSJ") seeking judgment on all counterclaims;

10 WHEREAS on June 23, 2021, this Court entered its Order on Breckenridge Motion for Summary  
11 Judgment ("Order") pursuant to which it granted the Counterclaimant's MSJ in its entirety;

12  
13 WHEREAS in the Order this Court made numerous findings of fact and conclusions of law,  
14 adopted herein by reference, including but not limited to the findings that Counterclaimant purchased the  
15 Property at a proper foreclosure sale and is therefore entitled to summary judgment regarding its claims  
16 to title of the Property as against plaintiffs Albert Ellis Lincicome, Jr. and Vicenta Lincicome;

17  
18 WHEREAS on September 9, 2021, Counterclaimant filed a Motion for Entry of Order Granting  
19 Permanent Restitution and Payment of Overdue Rents.

20 WHEREAS on September 14, 2021, Plaintiffs filed and served their Motion for Stay Pending  
21 Appeal.

22 WHEREAS on October 12, 2021, at 1:30 p.m., after further briefing had been filed on the motions  
23 filed on October 9, 2021 and September 14, 2021, the Court held a hearing on the two motions.

24  
25 WHEREAS based on the evidence presented, the Court granted Plaintiff's Motion for Stay  
26 Pending Appeal, but required Plaintiffs to post a supersedeas bond of \$140,000.00 to be paid by  
27 November 12, 2021, at 5:00 p.m. in order for the stay to be entered.  
28

1 WHEREAS the court also granted Counterclaimant's request for a permanent writ of restitution  
2 and ordered that a permanent writ of restitution should be issued that states it is effective as of November  
3 15, 2021 if no supersedeas bond was posted by November 12, 2021.

4 WHEREAS pursuant to the Order Counterclaimant should have permanent restitution of the  
5 Property effective as of November 15, 2021.

6 WHEREAS, so long as this writ is delivered to you on or after November 15, 2021 and there has  
7 been no supersedeas bond posted with the Court:  
8

9 YOU ARE THEREFORE COMMANDED to take with you the force of the County, if necessary,  
10 and cause the said Albert Ellis Lincicome, Jr. and Vicenta Lincicome and any tenants or sub-tenants to  
11 be removed from the Property on November 16, 2021 at 9:00 a.m. or as soon as reasonably possible  
12 thereafter and allow the Counterclaimant to have permanent peaceable restitution of the same.  
13


14 GIVEN UNDER MY HAND this 17<sup>th</sup> day of November, 2021.

15  
16  
17 

18 DISTRICT COURT JUDGE  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 Affirmation pursuant to NRS 239B.030: The undersigned does hereby affirm that the preceding document  
2 filed in this court does not contain the social security number of any person

3 Respectfully Submitted:  
4 HUTCHISON & STEFFEN, PLLC

5   
6  
7 John T. Steffen (4390)  
8 Brenoch R. Wirthlin (10282)  
9 Alex R. Velto (14961)  
10 10080 West Alta Drive, Suite 200  
11 Las Vegas, NV 89145  
12 [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)

13 Wedgewood, LLC  
14 Office of the General Counsel  
15 Casey J. Nelson, Esq. (12259)  
16 2320 Potosi Street, Suite 130  
17 Las Vegas, Nevada 89146  
18 E-mail: [caseynelson@wedgewood-inc.com](mailto:caseynelson@wedgewood-inc.com)  
19 *Attorney for Defendant, Counterclaimant, and Cross-Plaintiff*  
20 *Breckenridge Property Fund 2016, LLC*  
21  
22  
23  
24  
25  
26  
27  
28

FILED

2021 JUL -6 AM 11:51

TANYA SCHEIDT  
COUNT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

*[Signature]*

1 WRIGHT, FINLAY & ZAK, LLP

2 Darren T. Brenner, Esq.

3 Nevada Bar No. 8386

4 Ramir M. Hernandez, Esq.

5 Nevada Bar No. 13146

6 7785 W. Sahara Ave, Suite 200

7 Las Vegas, NV 89117

8 (702) 475-7964; Fax: (702) 946-1345

9 [rhernandez@wrightlegal.net](mailto:rhernandez@wrightlegal.net)

10 *Attorney for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as*  
11 *Legal Title Trustee, Fay Servicing LLC, and Shellpoint Mortgage Servicing, LLC*

12 **THIRD JUDICIAL DISTRICT COURT**

13 **LYON COUNTY, NEVADA**

14 ALBERT ELLIS LINCICOME, JR. and  
15 VICENTA LINCICOME,

16 Plaintiffs,

17 vs.

18 SABLES, LLC, a Nevada limited liability  
19 company, as Trustee of the Deed of Trust, given  
20 by Vicenta Lincicome and dated 5/23/2007 *et*  
21 *al.*

22 Defendants.

23 and all related cases.

Case No.: 18-cv-01332

Dept. No.: II

**NOTICE OF ENTRY OF ORDER**

24 PLEASE TAKE NOTICE that an ORDER DENYING PLAINTIFFS MOTION FOR  
25 PARTIAL SUMMARY JUDGMENT/GRANTING MOTIONS FOR SUMMARY JUDGMENT  
26 FILED BY BANA, PROF-2013 M4 LEGALL TRUST, US BANK AND FAY SERVICING  
27 LLC was entered in the above-entitled Court on the 23rd day of June, 2021. A copy of which is  
28 attached hereto.

DATED this 29<sup>th</sup> day of June, 2021.

WRIGHT, FINLAY & ZAK, LLP

*[Signature]*

Ramir M. Hernandez, Esq.

Nevada Bar No. 13146

*Attorneys for Defendants, Prof-2013 M4-Legal Title Trust, by U.S. Bank, National Association, as Legal*

1 Title Trustee, Fay Servicing LLC, and Shellpoint  
2 Mortgage Servicing, LLC

3 **AFFIRMATION**

4 **Pursuant to NRS 239B.03/603A.040**


5 The undersigned does hereby affirm that the foregoing document does not contain any of  
6 the following information governed by NRS 239B.030 and NRS 603A.040:

- 7 1. Social Security Number;  
8 2. Driver License Number or Identification Card Number; or  
9 3. Account number, credit card number or debit card number, in combination with any  
10 required security code, access code or password that would permit access to the person's  
11 financial account.

12 The term does not include any publically available information that is lawfully made  
13 available to the general public.

14  
15 DATED this 29th day of June, 2021.

16 WRIGHT, FINLAY & ZAK, LLP

17   
18 Ramir M. Hernandez, Esq.

19 Nevada Bar No. 13146

20 Attorneys for Defendants, Prof-2013 M4-Legal Title  
21 Trust, by U.S. Bank, National Association, as Legal  
22 Title Trustee, Fay Servicing LLC, and Shellpoint  
23 Mortgage Servicing, LLC  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of WRIGHT, FINLAY & ZAK,  
3 LLP, and that on this 20<sup>th</sup> day of June, 2021, I did cause a true copy of the foregoing **NOTICE**  
4 **OF ENTRY OF ORDER** to be served by depositing a true copy of same in the United States  
5 Mail, at Las Vegas, Nevada, addressed as follows:

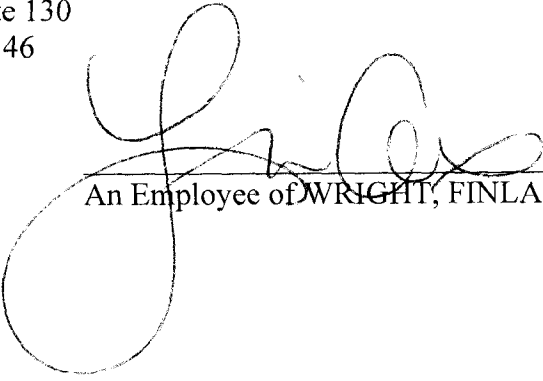
6 Michael G. Millward, Esq.  
7 MILLWARD LAW, LTD.  
8 1591 Mono Ave.  
9 Minden, NV 89423

10 Justin M. Clouser, Esq.  
11 1512 US Highway 395 N, Ste. 1  
12 Gardnerville, NV 89410

13 Scott R. Lachman, Esq.  
14 AKERMAN LLP  
15 1635 Village Center Circle, Ste. 200  
16 Las Vegas, NV 89134

17 John T. Steffen, Esq.  
18 Matthew K. Schriever, Esq.  
19 HUTCHISON & STEFFEN, PLLC  
20 10080 W. Alta Dr., Suite 200  
21 Las Vegas, NV 89145

22 Casey J. Nelson, Esq.  
23 WEDGEWOOD, LLC  
24 Office of the General Counsel  
25 2320 Potosi Street, Suite 130  
26 Las Vegas, Nevada 89146

27   
28 An Employee of WRIGHT, FINLAY & ZAK, LLP

Case No.: 18-CV-01332

Dept. No.: II

FILED

2021 JUN 23 PM 4:13

TANYA SCOTT  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

~~Victoria Tovar~~ DEPUTY

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF LYON

\* \* \*

ALBERT ELLIS LINCICOME, JR. and  
VICENTA LINCICOME,

Plaintiffs,

vs.

SABES, LLC, a Nevada limited liability company, as  
Trustee of the Deed of Trust given by Vicenta  
Lincicome and dated 5/23/2007; FAY SERVICING,  
LLC, a Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-2013 M4  
LEGAL TITLE TRUST by U.S. BANK, N.A., as Legal  
Title Trustee; for BANK OF AMERICAN, N.A.;  
BRECKENRIDGE PROPERTY FUND 2016, A Utah  
limited liability company; NEWREZ, LLC, d/b/a  
SHELLPOINT MORTGAGE SERVICING, LLC  
substituted in for DOE 1; 1900 CAPITAL TRUST II,  
BY U.S. BANK TRUST NATIONAL ASSOCIATION,  
substituted in for DOE 2; MNCM-2018-NPL@,  
substituted in for DOE 3; and DOES 4-10.

Defendants.

**ORDER DENYING  
PLAINTIFFS MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT/ GRANTING  
MOTIONS FOR SUMMARY  
JUDGMENT FILED BY  
BANA, PROF-2013 M4  
LEGALL TRUST, US BANK  
AND FAY SERVICING LLC**

I. STATEMENT OF THE CASE

On March 19, 2021, the Plaintiffs filed a Motion for Partial Summary Judgment. On April 19, 2021, Defendants, Prof-2013M4-Legal Trust, by U.S. Bank, National Association, as Legal Title trustee ("U.S. Bank Trust") and Fay Servicing LLC filed an Opposition. On May 5, 2021,



1 Breckenridge Property Fund 2016, LLC joined the Opposition. On May 6, 2021, Plaintiffs filed a  
2 Reply.

3 On March 25, 2021, Shellpoint Mortgage Servicing filed a Motion for Summary Judgment. On  
4 the same date Prof-2013 M4 Legal trust, U.S. Bank, National Association as Legal Trustee ("U.S.  
5 Bank Trust") and Fay Servicing LLC, filed a Motion for Summary Judgment. On April 15, 2021, the  
6 Plaintiffs filed an Opposition. On May 6, 2021 Prof-2013 M4 Legal trust, U.S. Bank, National  
7 Association as Legal Trustee ("U.S. Bank Trust") and Fay Servicing LLC, filed a Reply. On May 10,  
8 2021 Shellpoint Mortgage filed a Reply.

9 On March 17, 2021, Bank of America, hereinafter "BANA," filed a Motion for Summary  
10 Judgment and request for discovery sanctions. On April 15, 2021, the Plaintiffs filed an Opposition.  
11 On May 5, 2021, BANA filed a Reply. Defendant Breckenridge Property Fund 2016, LLC  
12 ("Breckenridge") joined in the Motion on March 29, 2021. Defendants Prof-2013 M4-Legal Title  
13 Trust, by U.S. Bank, National Association, as legal Title Trustee (U.S. Bank Trust"), Defendant Fay  
14 Servicing LLC ("Fay") and Shellpoint Mortgage Servicing, LLC ("Shellpoint") joined the Motion on  
15 April 19, 2021.

## 16 II. ISSUE PRESENTED

17 Should the Court sanction the Plaintiffs for discovery violations?

18 Should the Court grant the Plaintiffs' Motion for Summary Judgment?

19 Should the Court grant the Defendants' Motions for Summary Judgment?

## 20 III. SUMMARY OF DECISION

21 The Court finds that the Plaintiffs violated NRCP Rule 16.1 and sanctions are appropriate.

22 The Court finds that no genuine material issues of fact exist and Plaintiffs are not entitled to  
23 summary judgment as a matter of law.

24 The Court finds that no genuine material issues of fact exist and the Defendants are entitled to  
25 summary judgment as a matter of law.

## 26 IV. PRINCIPLES OF LAW

1 A. Standard of Review

2 NRCP 56(c) requires a court to enter summary judgment in favor of a party when the  
3 “pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if  
4 any, show that there is no genuine issue as to any material fact and that the moving party is entitled to  
5 a judgment as a matter of law. “ NRCP 56(c). A genuine issue of material fact exists where the  
6 evidence is such that a reasonable jury could return a verdict for the non-moving party. *Posada v. City*  
7 *of Reno*, 109 Nev. 448 (1993).

9 When reviewing a motion for summary judgment, the evidence and all reasonable inferences  
10 drawn from the evidence, must be viewed in a light most favorable to the non-moving party. *Richards*  
11 *v. Republic Silver State Disposal, Inc.*, 122 Nev. 1213 (2006). Summary judgment is appropriate and  
12 “shall be rendered forthwith” when the pleadings and other evidence on file demonstrate that no  
13 “genuine issue as to any material (remains) and that the moving party is entitled to a judgment as a  
14 matter of law. *Wood v. Safeway, Inc.*, 106 Nev. 601, 603 (1990).

16 B. Statutes of Limitation

17 NRS 11.190 states in relevant part:

19 (1) Within 6 years:

20 (a) Except as otherwise provided in NRS 62B.420 and 176.275, an action upon a  
21 judgment or decree of any court of the United States, or of any state or territory within  
22 the United States, or the renewal thereof.

(b) An action upon a contract, obligation or liability founded upon an instrument in  
writing, except those mentioned in the preceding sections of this chapter.

24 C. Enforceability of FMA Agreement

25 The Supreme Court held in *Cain v Price*, 134 Nev. 193 195 (2018), that to be “legally  
26 enforceable, a contract “must be supported by consideration.” In *Jones v SunTrust Mtg., Inc.* 128 Nev.  
27  
28

1 188, 191 (2012) the Nevada Supreme Court held that "Consideration is the exchange of a promise or  
2 performance, bargained for by the parties." The *Jones* Court held:

3 A party's affirmation of a preexisting duty is generally not adequate consideration to  
4 support a new agreement. See *Cty. of Clark v. Bonanza No. 1*, 96 Nev. 643, 650, 615  
5 P.2d 939, 943 (1980). However, where a party's promise, offered as consideration,  
6 differs from that which it already promised, there is sufficient consideration to support  
7 the subsequent agreement. 3 *Williston on Contracts* § 7:41 (4th ed. 2008).

8 In *Jones*, the Nevada Supreme Court had to determine the validity of a signed agreement  
9 resulting from Nevada's Foreclosure Mediation Program. The *Jones* Court held that, "when an  
10 agreement is reached as a result of an FMO mediation, the parties sign the agreement, and it otherwise  
11 comports with contract principles, the agreement is enforceable under District Court Rule 16."id.

12 District Court Rule 16 states:

13 No agreement or stipulation between the parties in a cause or their attorneys, in respect  
14 to proceedings therein, will be regarded unless the same shall, by consent, be entered in  
15 the minutes in the form of an order, or unless the same shall be in writing subscribed by  
16 the party against whom the same shall be alleged, or by the party's attorney.

17 NRS 40.453 states:

18 Except as otherwise provided in NRS 40.495:

19 1. It is hereby declared by the Legislature to be against public policy for any  
20 document relating to the sale of real property to contain any provision whereby a  
21 mortgagor or the grantor of a deed of trust or a guarantor or surety of the indebtedness  
22 secured thereby, waives any right secured to the person by the laws of this state.

23 2. A court shall not enforce any such provision.

24 In *Lowe Enterprise Residential Partners, L.P. v Eighth Judicial District Court ex rel. County*  
25 *of Clark*, 118 Nev. 92, 104 (2002) the Nevada Supreme Court delved into the legislative history of  
26 NRS 40.453. The Court held that a "review of the legislative history reveals that NRS 40.453 was  
27 enacted to protect the rights created by Nevada's anti-deficiency legislation, not to protect the right to a  
28 jury trial." This statute does not prohibit parties from agreeing to provide a deed in lieu of foreclosure.

D. Claim Preclusion

1 The Nevada Supreme Court has adopted a three-part test to determine the availability of claim  
2 preclusion: "(1) the parties or their privies are the same, (2) the final judgment is valid, and (3) the  
3 subsequent action is based on the same claims or any part of them that were or could have been  
4 brought in the first case." *G.C. Wallace, Inc. v Eighth Judicial District Court*, 127 Nev. 701, 706  
5 (2011), citing to *Five Star*, 124 Nev. at 1054, 194 P.3d at 713 (footnote omitted).  
6

7 E. Repudiation/Renunciation/Anticipatory Breach

8 17B C.J.S. Contracts § 718, *Acts constituting renunciation or repudiation*, states:

9 In order that the rule permitting the immediate institution of a suit on the renunciation  
10 or repudiation of a contract may apply, the renunciation or repudiation must be a  
11 present one. It must also be entire, or total, covering the entire performance to which  
12 the contract binds the promisor, or the refusal to perform must be of a covenant going  
13 to the whole consideration. Furthermore, the renunciation or repudiation must be  
14 absolute or unequivocal. It has also been said that in order to be effective for this  
15 purpose, the renunciation or repudiation must be clear, strict, positive, definite, specific,  
16 distinct, final, unqualified, or unconditional.

17 In order to constitute an absolute and unequivocal repudiation, no precise form of  
18 words is necessary. Whether an anticipatory repudiation has occurred is determined on  
19 a case-by-case basis, depending on the particular language used.

20 The repudiation or renunciation may be by language or act making it futile for the other  
21 party to proceed. An intent to repudiate may be expressly asserted or circumstantially  
22 manifested by conduct. However, a party's words and acts communicated to the other  
23 party, not its intention, should control. Thus, a mere expression of intention not to  
24 perform, or not to be bound, is not enough, nor is a mere threat to abandon, or a mere  
25 assertion that the party will be unable, or will refuse, to perform the contract. At the  
26 same time, a refusal to perform may itself be a repudiation of the contract, in spite of a  
27 party's words seeking to reassure the other party of its intent to perform in the future.

28 17B C.J.S. Contracts § 722, *Elections of remedies upon renunciation of executory contract-*

*Acceptance or rejection of renunciation* states:

29 The party injured by an anticipatory breach has an election to accept or reject the  
30 refusal of performance. For the doctrine of breach by anticipatory repudiation to be  
31 applied, the nonrepudiating party must treat the repudiation as a breach. That is, it must  
32 accept and act on it. Moreover, it must also act promptly and within a reasonable  
33 time. However, the effect of an anticipatory repudiation is not nullified by the fact that  
34 the nonrepudiating party attempts to enforce performance.

1 The renunciation of a contract by the promisor before the time stipulated for  
2 performance is not effective unless such repudiation is unequivocally or affirmatively  
3 accepted by the promisee. If the promisee declines to accept the renunciation and  
4 continues to insist on the performance of the promise, as it may do, the contract remains  
5 in existence for the benefit, and at the risk, of both parties, and is binding on them, and,  
6 if anything occurs to discharge it from other causes, the promisor may take advantage  
7 of such discharge. Where the contract thus remains in existence, no actionable claim for  
8 damages arises until the time for performance expires. Furthermore, a repudiation not  
9 treated as an anticipatory breach is immaterial in an action thereafter brought to enforce  
10 the contract.

11 If, after the attempted renunciation by one party to the contract, the other party elects to  
12 treat the contract as still binding and to await the time for full performance, it is  
13 incumbent on the party making such election to perform such of the obligations as may,  
14 in the meantime, fall on it under the terms of the contract.

#### 15 F. Tender of Payments

16 § 47:1. Showing of readiness and willingness to perform, 15 Williston on Contracts § 47:1 (4th  
17 ed.) states:

18 A party to a contract who complains that the other party has breached the terms of the  
19 contract must prove performance of the contract on his or her own part or a valid and  
20 unconditional tender of performance rejected by the other party. Tender of performance  
21 in this regard combines readiness, willingness, and ability to perform. In order to be  
22 valid, tender of payment on a contract must be: (1) timely; (2) made to the person  
23 entitled to payment; (3) unconditional; (4) an offer to pay the amount of money due;  
24 and (5) coupled with an actual production of the money or its equivalent. The rules that  
25 govern tenders are strict and strictly applied; a tender must be one of full performance  
26 and unconditional to be valid; moreover, the party alleging an offer of tender must  
27 possess the ability to perform, and the tender must be made in good faith. Unlike the  
28 situation where performance by one party is a condition precedent to performance by  
the other, where conditions are concurrent, the allegation of tender need not be of  
absolute tender. A tender conditional on contemporaneous performance by the  
defendant is sufficient and necessary. It has sometimes been said that in such a case, an  
allegation of readiness and willingness on the part of the plaintiff is sufficient or even  
that this is not part of the plaintiff's case. However, while in suits for specific  
performance a different rule prevails in many jurisdictions to maintain an action for  
legal relief, the plaintiff must not only be ready and willing to perform but also must  
have manifested this before bringing the action, by some offer of performance to the  
defendant, for, otherwise, both parties might be ready and willing and each stay at  
home waiting for the other to come forward. While the situation is possible that each of  
two parties has a right to specific performance against the other, it is not possible that  
each shall have a right to damages for a total breach of the contract.

1 (Citations omitted).

2 In *Bank of America, N.A. v SFR Investment Pool 1, LLC* 134 Nev. 604, 610-11 (2018) the  
3 Nevada Supreme Court discussed the obligation of a tendering party. The Supreme Court stated:  
4

5 Whether a tendering party must pay the amount into court depends on the nature of the  
6 proceeding and the statutory and common law of the  
7 jurisdiction. See Annotation, *Necessity of Keeping Tender Good in Equity*, 12 A.L.R.  
8 938 (1921) (“Generally, there is no fixed rule in equity which requires a tender to be  
9 kept good in the sense in which that phrase is used at law.”); see  
10 also Restatement (Third) of Prop.: Mortgages § 6.4 (Am. Law Inst. 1997) (“The tender  
11 must be kept good in the sense that the person making the tender must continue at all  
12 times to be ready, willing, and able to make the payment.”). Where payment into court  
13 is not explicitly required, “avertment of a readiness and willingness to bring the money  
14 into court, and pay the same on the order of the court, is sufficient.”  
15 Annotation, *Necessity of Keeping Tender Good in Equity*, 12 A.L.R. 938 (1921). And,  
16 “the necessity of keeping a tender good and of paying the money into court has no  
17 application to a tender made for the purpose of discharging a mortgage lien.”  
18 Annotation, *Unaccepted Tender as Affecting Lien of Real Estate Mortgage*, 93 A.L.R.  
19 12 (1934) (explaining that such a tender would either immediately discharge the  
20 mortgage lien or the lien would remain unimpaired by the tender).

21 (Citations omitted).

22 If a party seeks to reinstate a loan having alleged a wrongful foreclosure occurred in that the  
23 party was not in default, then the party must still allege and prove the party performed and has the  
24 ability to tender any amounts in contention and to continue performing. *Turner v Seterus, Inc.*, 27  
25 Cal.App 5<sup>th</sup> 516, 530-31 (Ct. App 3rd CA 2018).

26 G. Substantial Compliance and NRS 107.080

27 NRS 107.080 (5) through (8) states:

28 5. Every sale made under the provisions of this section and other sections of this  
chapter vests in the purchaser the title of the grantor and any successors in interest  
without equity or right of redemption. Except as otherwise provided in subsection 7, a  
sale made pursuant to this section must be declared void by any court of competent  
jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not substantially  
comply with the provisions of this section;

1 (b) Except as otherwise provided in subsection 6, an action is commenced in the  
2 county where the sale took place within 30 days after the date on which the trustee's  
3 deed upon sale is recorded pursuant to subsection 10 in the office of the county recorder  
4 of the county in which the property is located; and

5 (c) A notice of lis pendens providing notice of the pendency of the action is  
6 recorded in the office of the county recorder of the county where the sale took place  
7 within 5 days after commencement of the action.

8 6. If proper notice is not provided pursuant to subsection 3 or paragraph (a) of  
9 subsection 4 to the grantor, to the person who holds the title of record on the date the  
10 notice of default and election to sell is recorded, to each trustor or to any other person  
11 entitled to such notice, the person who did not receive such proper notice may  
12 commence an action pursuant to subsection 5 within 90 days after the date of the sale.

13 7. Upon expiration of the time for commencing an action which is set forth in  
14 subsections 5 and 6, any failure to comply with the provisions of this section or any  
15 other provision of this chapter does not affect the rights of a bona fide purchaser as  
16 described in NRS 111.180.

17 8. If, in an action brought by the grantor or the person who holds title of record in  
18 the district court in and for the county in which the real property is located, the court  
19 finds that the beneficiary, the successor in interest of the beneficiary or the trustee did  
20 not comply with any requirement of subsection 2, 3 or 4, the court must award to the  
21 grantor or the person who holds title of record:

22 (a) Damages of \$5,000 or treble the amount of actual damages, whichever is  
23 greater;

24 (b) An injunction enjoining the exercise of the power of sale until the beneficiary,  
25 the successor in interest of the beneficiary or the trustee complies with the requirements  
26 of subsections 2, 3 and 4; and

27 (c) Reasonable attorney's fees and costs,  
28 unless the court finds good cause for a different award. The remedy provided in this  
subsection is in addition to the remedy provided in subsection 5.

In *Schleining v Cap One, Inc*, 130 Nev. 323, 327 (2014), the Supreme Court held that NRS  
107.080 does not require strict adherence. The Court focused upon the "does not substantially comply  
with" language. In *Dayco Funding Corporation v Mona*, 134 Nev. 929 (2018) the Nevada Supreme  
Court held that substantial compliance is found when the title holder "had actual knowledge of the  
default and the pending foreclosure sale" and "was not prejudiced by the lack of statutory notice." Id.  
citations omitted.

1 This Court found one decision which stated that inaccurate numbers regarding a deficiency was  
2 not grounds to find that a notice of default was not in substantial compliance. *Kehoe v Aurora Loan*  
3 *Services LLC*, 2010 WL 4286331 (US Dst. Ct D. Nev 2010).

4 H. Computation of Damages-NRCP Rule 16.1

5 NRCP Rule 16.1 (a) (1) (iv) requires an initial disclosure regarding the Plaintiff's computation  
6 of damages:  
7

8 (iv) a computation of each category of damages claimed by the disclosing party--who  
9 must make available for inspection and copying as under Rule 34 the documents or  
10 other evidentiary material, unless privileged or protected from disclosure, on which  
each computation is based, including materials bearing on the nature and extent of  
injuries suffered; ....

11 In *Pizarro-Ortega v. Cervantes-Lopez*, 133 Nev. 261, 265 (2017), the Nevada Supreme Court  
12 held that NRCP Rule 37 (c) (1) "provides the appropriate analytical framework for district courts to  
13 employ in determining the consequence..." for a failure to comply with NRCP Rule 16.1. The party  
14 in violation must show a "substantial justification" or that the failure is harmless to avoid sanctions  
15 that include the exclusion of evidence. *Id.*  
16

17 NRCP Rule 37 (b) (1) states:  
18

19 (b) Sanctions for Failure to Comply With a Court Order.

20 (1) For Not Obeying a Discovery Order. If a party or a party's officer,  
21 director, or managing agent — or a witness designated under Rule 30(b)(6) or 31(a)(4)  
— fails to obey an order to provide or permit discovery, including an order under Rule  
22 35 or 37(a), the court may issue further just orders that may include the following:

23 (A) directing that the matters embraced in the order or other designated  
facts be taken as established for purposes of the action, as the prevailing party claims;

24 (B) prohibiting the disobedient party from supporting or opposing  
designated claims or defenses, or from introducing designated matters in evidence;

25 (C) striking pleadings in whole or in part;

26 (D) staying further proceedings until the order is obeyed;

27 (E) dismissing the action or proceeding in whole or in part;

28 (F) rendering a default judgment against the disobedient party; or

order to submit to a physical or mental examination.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**V. FINDINGS OF FACT**

1. In May of 2007, Vicenta Lincicome financed a property known as 70 Riverside Drive, Dayton Nevada 89403 with a loan in the amount of \$381,150.00 secured by a recorded deed. The deed of trust identified Sierra Pacific Mortgage Company, Inc. as the lender and Mortgage Electronic Registration Systems, Inc. "MERS" as the beneficiary and nominee of the lender. Vicenta Lincicome executed the documents that created the deed of trust and note and understood she had a 30-year maturity date.
2. On August 15, 2011, MERS recorded an assignment of the deed of trust, transferring the interest in the deed of trust to BANA, Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP.
3. On November 25, 2015, BANA recorded an assignment of the deed of trust transferring its interest to U.S. Bank.
4. In mid-2008, the Plaintiffs defaulted on the loan making less than ten payments.
5. In January 2009, the trustee under the deed of trust at the time recorded a notice of default.
6. In July 2009, BANA offered the Plaintiffs a loan modification agreement "LMA." The new loan balance was \$417,198.58. The Plaintiffs were provided a post office box to send payments.
7. BANA accepted the first modified payment from the Plaintiffs in person at a BANA branch in Carson City on September 1, 2009. The Plaintiffs attempted to make the second payment at a BANA Branch but it was rejected as BANA's computer system did not recognize the LMA. The Plaintiffs believe the breach of LMA occurred in 2009 and their deposition testimony states they were aware of the breach at that time.

- 1 8. The Plaintiffs made no other attempts to mail the payments. BANA then notified the  
2 Plaintiffs in October of 2009 stating that the loan had not been modified. However, then  
3 BANA signed the LMA and recorded it in March of 2011.
- 4 9. In April of 2010, the Plaintiffs filed for Chapter 13 bankruptcy and listed the debt for the  
5 property at \$381,000. The Plaintiffs made no payment at the time of bankruptcy filing or  
6 during the bankruptcy. The Plaintiffs did not challenge the underlying obligation.
- 7 10. BANA offered the Plaintiffs a modification in April of 2012 but the Plaintiffs made no  
8 payment on the offer. BANA offered another modification on April 2015 but the loan was  
9 service released to Fay Servicing prior to the final payment.
- 10 11. In January 2015, the Bankruptcy court terminated the automatic stay as to BANA. A final  
11 decree was filed by the Bankruptcy Court in July of 2015.
- 12 12. On November 3, 2017, Sables, as trustee under the deed of trust, recorded a notice of  
13 default.
- 14 13. On December 1, 2017, Vicenta Lincicome filed a petition for foreclosure mediation  
15 assistance in the Third Judicial District Court, 17-CV-01346, naming Sables, U.S. Bank  
16 and Fay Servicing as interested parties.
- 17 14. The Mediator's Statement indicates that Vincenta Lincicome was represented by Geoff  
18 Giles, Esq. at the Mediation. The Plaintiffs agreed to a Deed in Lieu of Foreclosure. All  
19 parties signed the statement on April 3, 2018. The Plaintiffs had the opportunity to make  
20 three payments of \$2462.30 as an offered trial period plan. The payments had to be made  
21 on April 1, 2018, May 1, 2018 and June 1, 2018.
- 22 15. The Plaintiffs decided not to make the payments. The Plaintiffs did not provide the deed in  
23 lieu of foreclosure. A certificate for foreclosure was issued.
- 24
- 25
- 26
- 27
- 28

- 1 16. The Plaintiffs did not place the required monthly payments in a bank account or escrow  
2 account. Plaintiffs spent all of their income on either items. Plaintiffs do not have  
3 sufficient funds to pay off what is owed under any theory as to what instrument controls the  
4 computation of what is owed.
- 5 17. In depositions attached to the Motion for Summary Judgment, the Plaintiffs admitted that  
6 they could not afford to make payments on the mortgage. The Plaintiffs have never averred  
7 to the Court that they are ready, willing, and able to perform on the original mortgage or  
8 subsequent modifications.
- 9 18. A Notice of Default and Notice of Sale was filed against the subject property.
- 10 19. On November 7, 2018, the Plaintiffs filed a complaint for injunctive relief, contractual  
11 claims and declaratory relief regarding the foreclosure sale of the subject property.
- 12 20. On November 8, 2018, the Plaintiffs recorded a lis pendens on the subject property and  
13 then filed an Application for Ex Parte Restraining Order, Preliminary Injunction and  
14 Permanent Injunction with the Court.
- 15 21. On December 31, 2018, the Court entered an order enjoining the foreclosure sale if the  
16 Plaintiffs posted a bond in the amount of \$172,610.67 and additional security in the amount  
17 of \$2,105.10 per month thereafter. The Plaintiffs did not file the bond.
- 18 22. The foreclosure sale went forward on January 4, 2019, and Breckenridge purchased the  
19 property for \$294,000.01.
- 20 23. On January 25, 2019, the Trustees Deed Upon Sale confirming Breckenridge's purchase of  
21 the subject property was recorded.

## 22 ANALYSIS

23 The gravamen of the Plaintiffs' causes of action is the alleged breach of the 2009 Loan  
24  
25  
26  
27  
28

1 Modification Agreement by Defendant BANA. The Plaintiffs allege that Vincenta Lincicome executed  
2 and mailed the application in July of 2009. The Court infers from these allegations that the Plaintiffs  
3 believe that the mailing of the application constituted an acceptance and the LMA was from that point  
4 on a binding contract between the parties.

5 After mailing the forms, BANA accepted a payment and informed the Plaintiffs that they  
6 would investigate whether the LMA was accepted. In October of 2009, the Plaintiffs received a  
7 mortgage statement indicating that BANA had not accepted the LMA and was using the terms of the  
8 original agreement. From these alleged facts, the Court cannot find an offer and acceptance of the  
9 LMA had occurred. BANA's conduct and statements clearly indicated the original agreement had not  
10 been modified.  
11

12 If the original agreement was still in place, then the Plaintiffs were legally obligated to perform  
13 as promised. No one argued that BANA had invited the Plaintiffs to apply for the modification which  
14 could be rejected. The Plaintiffs never received any notice from BANA that BANA accepted the  
15 LMA until March of 2011. It is unclear to the Court that the two year delay could constitute an  
16 acceptance nunc pro tunc, but as explained herein, it makes no difference to the Court's analysis.  
17

18 No issues of fact exist as to whether the Plaintiffs would have failed to make the required  
19 payments under any of the purported offers and alleged agreements. The Plaintiffs, admittedly, had no  
20 ability to pay and made no attempt to put any payments aside once BANA or other Defendants made a  
21 demand for payment. The Plaintiffs also admitted that they entered into different modification plans  
22 after the LMA based upon their inability to pay.  
23

24 The Plaintiffs rely on a theory that their performance was permanently excused by the failure  
25 of BANA to accept a single payment under the terms of the LMA. The Plaintiffs also rely on a theory  
26 that their performance was excused by the failure of Fay to accept a payment under a modification on  
27  
28

1 a subsequent modification. These theories fail under relevant law for several reasons.

2 If, as alleged, the LMA was effective upon mailing, then the breach occurred in 2009. If as  
3 alleged the LMA was effective in 2011, then the breach occurred in 2011. The Plaintiffs were told that  
4 BANA would not accept the modified payment in 2009. They understood BANA would not perform  
5 under the LMA in October of 2009. They failed to bring an action against BANA until November 7,  
6 2018. The six year statute of limitations in NRS 11.190 would apply. The date of the filing of the  
7 LMA had no impact on the date of the breach.  
8

9 Additionally, if the LMA or subsequent modification was effective, then the Plaintiffs' theory  
10 of excuse of performance also fails as contract law requires a non-breaching party to elect a remedy in  
11 a reasonable time. As stated in 17B C.J.S. Contracts § 722, the non-breaching party must accept the  
12 repudiation and elect a remedy. The non-breaching party must also act promptly and within a  
13 reasonable time. The Plaintiffs did nothing in either 2009 or 2011. Restitution to the lenders would  
14 also apply if the Plaintiffs had chosen to accept the repudiations and end the agreement.  
15

16 The theory of excuse put forth by the Plaintiffs also ignores the materiality and order of the  
17 performances under the agreement. A lender materially performs by providing the funds requested  
18 under the loan. A borrower must then materially perform by making the monthly payments. Further,  
19 the theory of excuse of performance may delay the need to perform but it does not discharge the duty  
20 to pay once the performance was demanded. Performance could be demanded as the Plaintiffs did not  
21 accept the repudiation.  
22

23 Contract and mortgage law would also require that the Plaintiffs remain ready, willing and able  
24 to perform each month. The deposition testimony clearly indicated that the Plaintiffs could not  
25 perform under any of the offers and modifications of the original agreement.  
26

27 The Plaintiffs entered into a bankruptcy after their incomes went down and they had an  
28

1 unanticipated tax bill. The bankruptcy filing indicates that the Plaintiffs believed they were under the  
2 original agreement and represented such to the bankruptcy court. The facts establish that the Plaintiffs  
3 did not have the ability to make the payments under any of the offers or alleged agreements. They  
4 have failed to pay for over a decade. The Plaintiffs had made no effort to tender the missed payments  
5 under any of the agreements.

6  
7 Additionally, as the Plaintiffs did not act upon the failure of BANA or its successors to accept  
8 the payment and repudiate the LMA or modification in a reasonable time, then subsequent agreements  
9 and the bankruptcy could act as an intervening event and excuse any breach of not accepting the  
10 original LMA payments. The subsequent modifications and agreement to provide a deed in lieu of  
11 foreclosure would have excused the original alleged breach.

12  
13 The failure of the Plaintiffs to repudiate the agreement also allowed BANA or its successors to  
14 demand at a later time that the Plaintiffs perform. Since their performance was merely delayed, the  
15 Plaintiffs became the breaching party once BANA and its successors made a demand for payment and  
16 payment did not occur. The Plaintiffs tendered very few payments over the course of a decade. The  
17 Plaintiffs should have offered the payments under the LMA if they believed it was in effect. They  
18 could have preserved any rights they believed they had under the LMA by making a tender after  
19 receiving the notice of default.

20  
21 Claim preclusion would also apply. The Plaintiffs are not entitled to switch theories depending  
22 upon what court they are in. BANA would be bound as well by any representations made in the  
23 bankruptcy proceedings.

24  
25 Disturbing to the Court, the Plaintiffs seem to believe that they can game the system to avoid  
26 repaying the money borrowed and to remain in a house rent free. Albert Ellis Lincicome, Jr.'s  
27 testimony clearly establishes that the Plaintiffs want more time to continue their free ride. If they have  
28

1 to abuse a mediation program to get more time then so be it. The Plaintiffs' signatures affirming that  
2 they would be bound by the agreement meant nothing. The Plaintiffs admit to engaging in bad faith.

3 Under *Jones*, the mediated agreement of deed in lieu of foreclosure is enforceable. The  
4 Plaintiffs admitted that they chose not to enter into the offered terms. The agreement settled all claims  
5 regarding the mortgage. The Plaintiffs have an obligation under the agreement to surrender the  
6 property. NRS 40.453 does not apply as argued in other motions.  
7

8 The foreclosing defendants substantially complied with NRS 107.080 notice requirements.  
9 The Plaintiffs were clearly noticed that they were in default and when the foreclosure sale would  
10 occur. The fact that they disputed the amount of the default did not create any prejudice to them as  
11 they never intended to make a tender of any amount. The notice provided them the opportunity to file  
12 an action to stop the foreclosure sale which they then did. They were given an opportunity to file a  
13 bond and then perform under the agreement they argued was in effect, but then failed to do so.  
14

15 Finally, the Court finds that the failure to provide a computation of damages as required by  
16 NRCP Rule 16 has not been justified. The Plaintiffs failure to provide the computation cannot be  
17 justified by their counsel's belief that to deal with damages at a later point in time is more economical.  
18 The epidemic and the Plaintiffs' hectic schedule has no impact on Counsel's determination of  
19 damages. The Plaintiffs had over two years to comply with the rule.  
20

21 The Court also notes that the Plaintiffs were supposed to negotiate in good faith during a  
22 settlement conference that was ordered. How they could do so without understanding their damages is  
23 perplexing. Is this just more bad faith? The Court believes that the appropriate sanction is to strike all  
24 allegations concerning monetary damages from the Complaint as the failure appears to be made in bad  
25 faith and in an effort to prolong this matter further.  
26

## 27 CONCLUSIONS OF LAW

28

1. Sanctions striking allegations the Plaintiffs have suffered monetary damages are appropriate as the Plaintiffs have not justified their failure to provide a computation of damages pursuant to NRCP Rule 16.1.
2. The Plaintiffs are not entitled to partial summary judgment.
3. The Defendants are entitled to summary judgment.

## VI. ORDER

Therefore, based upon the above and good cause appearing, **IT IS HEREBY ADJUDGED and ORDERED** that BANA's request for sanctions is **GRANTED**. The Court strikes all allegations in the Complaint that the Plaintiffs have suffered monetary damages.


IT IS HEREBY FURTHER ADJUDGED and ORDERED that that Plaintiffs' Motion for Partial Summary Judgment is **DENIED**.

**IT IS HEREBY FURTHER ADJUDGED and ORDERED** that the Motions for Summary Judgment filed by BANA, Shellpoint Mortgage Servicing, Prof-2013 M4 Legal Trust, U.S. Bank, National Association as Legal Trustee (“U.S. Bank Trust”) and Fay Servicing LLC., are **GRANTED**.

**IT IS HEREBY FURTHER ADJUDGED and ORDERED** that BANA's request for NRCPT Rule 54(b) certification as a final judgment is **GRANTED**. The Court finds no just reason for the delay.

**IT IS HEREBY FURTHER ORDERED** that the hearing on Motions set for July 28, 2021 is **VACATED**. The Court found the pleadings sufficient to enter an order without argument.

DATED: This 23rd day of June, 2021.

  
HON. LEON ABERASTURI  
DISTRICT COURT JUDGE



**Certificate of Mailing**

I hereby certify that I, Quoc Thai, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.  
Millward Law, Ltd.  
1591 Mono Ave.  
Minden, NV 89423

Shadd A. Wade  
Zieve, Brodnax & Steele, LLP  
9435 W. Russel Rd., Ste. 120  
Las Vegas, NV 89148


Scott R. Lachman, Esq.  
Akerman LLP  
1635 Village Center Cir. Ste. 200  
Las Vegas, NV 89134

Matthew K. Schriever, Esq.  
Hutchison & Steffen, PLLC  
10080 W. Alta Dr., Ste. 200  
Las Vegas, NV 89145

Casey J. Nelson, Esq.  
Wedgewood, LLC  
2320 Potosi St., Ste. 130  
Las Vegas, NV 89146

Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Ste. 200  
Las Vegas, NV 89117

DATED: This 23<sup>rd</sup> day of June, 2021.

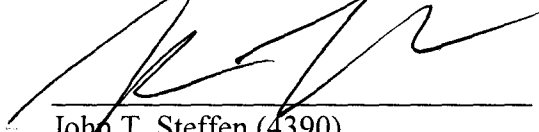
  
Employee of Hon. Leon Aberasturi

Kathy Thomas

1 Please take notice that an Order on Attorney's Fees and Costs was entered on the 19th day  
2 of January, 2022, a copy of which is attached hereto.

3 DATED this 26th day of January, 2022.

4 HUTCHISON & STEFFEN, PLLC

5 

6 John T. Steffen (4390)

7 Brenoch R. Wirthlin (10282)

8 Todd W. Prall (9154)

9 10080 W. Alta Dr., Suite 200

10 Las Vegas, NV 89145

11 Casey J. Nelson (12259)

12 WEDGEWOOD, LLC

13 Office of the General Counsel

14 2320 Potosi Street, Suite 130

15 Las Vegas, Nevada 89146

16 *Attorney for Defendant / Counterclaimant*

17 *Breckenridge Property Fund, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **NOTICE OF ENTRY OF ORDER** via U.S. Mail to the parties designated below.

Michael G. Millward, Esq.  
MILLWARD LAW, LTD.  
1591 Mono Avenue  
Minden, NV 89423  
*Attorney for Plaintiffs*

Justin M. Clouser, Esq.  
1512 US Highway 395 N, Ste. 1  
Gardnerville, NV 89410  
*Attorney for Plaintiff*

Darren T. Brenner, Esq.  
Ramir M. Hernandez, Esq.  
WRIGHT FINLAY & ZAK, LLP  
7785 W. Sahara Avenue, #200  
Las Vegas, NV 89117  
*Attorneys for Prof-2013-M4 Legal Title Trust  
by US Bank, National Association as Legal Title  
Trustee; Fay Servicing, LLC, and Shellpoint  
Mortgage Servicing, LLC*  
Melanie Morgan, Esq.  
Scott R. Lachman, Esq.  
ACKERMAN, LLP  
1635 Village Center Circle, #200  
Las Vegas, NV 89134  
*Attorney for Bank of America*

Shadd A. Wade, Esq  
ZIEVE BRODNAX & STEEL  
9435 W. Russell Road, #120  
Las Vegas, NV 89148  
*Attorney for Sables, LLC*

DATED this <sup>27<sup>th</sup></sup>~~26<sup>th</sup>~~ day of January 2022.

  
An Employee of HUTCHISON & STEFFEN

Case No.: 18-CV-01332

Dept. No.: II

FILED

2022 JAN 19 AM 8:24

TANYA SCERINE  
COURT ADMINISTRATOR  
THIRD JUDICIAL DISTRICT

IN THE THIRD JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

~~Victoria Tovar~~ DEPUTY

IN AND FOR THE COUNTY OF LYON

\*\*\*\*\*

ALBERT ELLIS LINCICOME, JR., and  
VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability  
company, as Trustee of the Deed of Trust  
given by Vicenta Lincicome and dated  
5/23/2007; FAY SERVICING, LLC a  
Delaware limited liability company and  
subsidiary of Fay Financial, LLC; PROF-  
20130MF LEGAL TITLE TRUST by U.S.  
BANK, N.A., as Legal Title Trustee; for  
BANK OF AMERICA, N.A.;  
BRECKENRIDGE PROPERTY FUND 2016;  
NEWREZ LLC dba SHELLPOINT  
MORTGAGE SERVICING, LLC; 1900  
CAPITAL TRUST II, BY U.S. BANK TRUST  
NATIONAL ASSOCIATION; MCM-2018-  
NPL2 and DOES 1-50.,

Defendants.

**ORDER ON ATTORNEY'S FEES AND  
COSTS**

On July 20, 2021, Breckenridge Property Fund ("Breckenridge") filed a Motion for Attorney Fees and Cost. On August 5, 2021, Plaintiffs filed an Opposition to Breckenridge's Motion for Attorney Fees and Cost. On September 2, 2021, Breckenridge filed a Reply in Support of its Motion for Attorney Fees and Cost.

**I. FINDINGS OF LAW**

1 Nevada Law permits an award of attorneys' fees whenever authorized by statute, rule, or  
2 contract. *See U.S. Design & Const. Corp. v. Int'l Broth. Of Elec. Workers*, 118 Nev. 458, 462, 50  
3 P.3d 170, 173 (2002). NRS 18.010 states:

4 1. The compensation of an attorney and counselor for his or her services is  
5 governed by agreement, express or implied, which is not restrained by law.

6 2. In addition to the cases where an allowance is authorized by specific  
7 statute, the court may make an allowance of attorney's fees to a prevailing party:

8 (a) When the prevailing party has not recovered more than \$20,000; or

9 (b) Without regard to the recovery sought, when the court finds that the  
10 claim, counterclaim, cross-claim or third-party complaint or defense of the  
11 opposing party was brought or maintained without reasonable ground or to harass  
12 the prevailing party. The court shall liberally construe the provisions of this  
13 paragraph in favor of awarding attorney's fees in all appropriate situations. It is  
14 the intent of the Legislature that the court award attorney's fees pursuant to this  
15 paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil  
16 Procedure in all appropriate situations to punish for and deter frivolous or  
17 vexatious claims and defenses because such claims and defenses overburden  
18 limited judicial resources, hinder the timely resolution of meritorious claims and  
19 increase the costs of engaging in business and providing professional services to  
20 the public.

21 3. In awarding attorney's fees, the court may pronounce its decision on the  
22 fees at the conclusion of the trial or special proceeding without written motion  
23 and with or without presentation of additional evidence.

24 4. Subsections 2 and 3 do not apply to any action arising out of a written  
25 instrument or agreement which entitles the prevailing party to an award of  
26 reasonable attorney's fees.

27 NRS 18.010(2) sets forth situations whereby the court may properly award attorneys'  
28 fees: when the prevailing party has not recover more than \$20,000 or, without regard to the  
recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party  
complaint or defense of the opposing party was brought or maintained without reasonable  
ground or to harass the prevailing party. NRS 18.010(2).

In *Capanna v. Orth*, 134 Nev. 888, 895 (2018) the Nevada Supreme Court held:

NRS 18.010(2) (b) allows the district court to award attorney fees to a prevailing  
party "when the court finds that the claim, counterclaim ... or defense of the  
opposing party was brought or maintained without reasonable ground or to harass  
the prevailing party."

"The court shall liberally construe the provisions of [NRS 18.010(2)(b)] in favor  
of awarding attorney's fees in all appropriate situations," and "[i]t is the intent of  
the Legislature that the court award attorney's fees pursuant to [NRS

1 18.010(2)(b) ] ... in all appropriate situations to punish for and deter frivolous or  
2 vexatious claims and defenses." *Id.* "For purposes of NRS 18.010(2) (b), a claim  
3 is frivolous or groundless if there is no credible evidence to support it." *Rodriguez*  
*v. Primadonna Co.*, 125 Nev. 578, 588, 216 P.3d 793, 800 (2009).

4 There must be evidence in the record supporting the proposition that the claim was  
5 brought or the defense maintained "without reasonable grounds or to harass the other party."  
6 *Kahn v. Morse & Mowbray*, 121 Nev. 464, 479, 117 P.3d 227, 238 (2005). Further, the decision  
7 to award attorney fees is within the sound discretion of the district court and will not be  
8 overturned absent a manifest abuse of discretion. *Id.*

9 NRS 107.080 states:

10 1. Except as otherwise provided in NRS  
11 106.210, 107.0805, 107.085 and 107.086, if any transfer in trust of any estate in  
12 real property is made after March 29, 1927, to secure the performance of an  
13 obligation or the payment of any debt, a power of sale is hereby conferred upon  
the trustee to be exercised after a breach of the obligation for which the transfer is  
security.

14 2. The power of sale must not be exercised, however, until:

(a) In the case of any deed of trust coming into force:

15 (1) On or after July 1, 1949, and before July 1, 1957, the grantor, the  
16 person who holds the title of record, a beneficiary under a subordinate deed of  
17 trust or any other person who has a subordinate lien or encumbrance of record on  
the property has, for a period of 15 days, computed as prescribed in subsection 3,  
failed to make good the deficiency in performance or payment; or

18 (2) On or after July 1, 1957, the grantor, the person who holds the title of  
19 record, a beneficiary under a subordinate deed of trust or any other person who  
has a subordinate lien or encumbrance of record on the property has, for a period  
of 35 days, computed as prescribed in subsection 3, failed to make good the  
deficiency in performance or payment.

20 (b) The beneficiary, the successor in interest of the beneficiary or the trustee  
21 first executes and causes to be recorded in the office of the recorder of the county  
wherein the trust property, or some part thereof, is situated a notice of the breach  
22 and of the election to sell or cause to be sold the property to satisfy the obligation.

23 (c) The beneficiary or its successor in interest or the servicer of the obligation  
or debt secured by the deed of trust has instructed the trustee to exercise the  
power of sale with respect to the property.

24 (d) Not less than 3 months have elapsed after the recording of the notice or, if  
25 the notice includes an affidavit and a certification indicating that, pursuant to NRS  
107.130, an election has been made to use the expedited procedure for the  
26 exercise of the power of sale with respect to abandoned residential property, not  
less than 60 days have elapsed after the recording of the notice.

27 3. The 15- or 35-day period provided in paragraph (a) of subsection 2  
28 commences on the first day following the day upon which the notice of default

1 and election to sell is recorded in the office of the county recorder of the county in  
2 which the property is located and a copy of the notice of default and election to  
3 sell is mailed by registered or certified mail, return receipt requested and with  
4 postage prepaid to the grantor or, to the person who holds the title of record on the  
5 date the notice of default and election to sell is recorded, and, if the property is  
6 operated as a facility licensed under chapter 449 of NRS, to the State Board of  
7 Health, at their respective addresses, if known, otherwise to the address of the  
8 trust property or, if authorized by the parties, delivered by electronic transmission.  
9 The notice of default and election to sell must describe the deficiency in  
10 performance or payment and may contain a notice of intent to declare the entire  
11 unpaid balance due if acceleration is permitted by the obligation secured by the  
12 deed of trust, but acceleration must not occur if the deficiency in performance or  
13 payment is made good and any costs, fees and expenses incident to the  
14 preparation or recordation of the notice and incident to the making good of the  
15 deficiency in performance or payment are paid within the time specified in  
16 subsection 2.

17 4. The trustee, or other person authorized to make the sale under the terms  
18 of the deed of trust, shall, after expiration of the applicable period specified in  
19 paragraph (d) of subsection 2 following the recording of the notice of breach and  
20 election to sell, and before the making of the sale, give notice of the time and  
21 place thereof by recording the notice of sale and by:

22 (a) Providing the notice to each trustor, any other person entitled to notice  
23 pursuant to this section and, if the property is operated as a facility licensed  
24 under chapter 449 of NRS, the State Board of Health, by personal service, by  
25 electronic transmission if authorized by the parties or by mailing the notice by  
26 registered or certified mail to the last known address of the trustor and any other  
27 person entitled to such notice pursuant to this section;

28 (b) Posting a similar notice particularly describing the property, for 20 days  
successively, in a public place in the county where the property is situated; and

(c) Publishing a copy of the notice three times, once each week for 3  
consecutive weeks, in a newspaper of general circulation in the county where the  
property is situated or, if the property is a time share, by posting a copy of the  
notice on an Internet website and publishing a statement in a newspaper in the  
manner required by subsection 3 of NRS 119A.560.

5. Every sale made under the provisions of this section and other sections of  
this chapter vests in the purchaser the title of the grantor and any successors in  
interest without equity or right of redemption. Except as otherwise provided in  
subsection 7, a sale made pursuant to this section must be declared void by any  
court of competent jurisdiction in the county where the sale took place if:

(a) The trustee or other person authorized to make the sale does not  
substantially comply with the provisions of this section;

(b) Except as otherwise provided in subsection 6, an action is commenced in  
the county where the sale took place within 30 days after the date on which the  
trustee's deed upon sale is recorded pursuant to subsection 10 in the office of the  
county recorder of the county in which the property is located; and

(c) A notice of lis pendens providing notice of the pendency of the action is  
recorded in the office of the county recorder of the county where the sale took  
place within 5 days after commencement of the action.



1           6. If proper notice is not provided pursuant to subsection 3 or paragraph (a)  
2 of subsection 4 to the grantor, to the person who holds the title of record on the  
3 date the notice of default and election to sell is recorded, to each trustor or to any  
4 other person entitled to such notice, the person who did not receive such proper  
notice may commence an action pursuant to subsection 5 within 90 days after the  
date of the sale.

5           7. Upon expiration of the time for commencing an action which is set forth  
6 in subsections 5 and 6, any failure to comply with the provisions of this section or  
any other provision of this chapter does not affect the rights of a bona fide  
purchaser as described in NRS 111.180.

7           8. If, in an action brought by the grantor or the person who holds title of  
8 record in the district court in and for the county in which the real property is  
located, the court finds that the beneficiary, the successor in interest of the  
9 beneficiary or the trustee did not comply with any requirement of subsection 2, 3  
or 4, the court must award to the grantor or the person who holds title of record:

10           (a) Damages of \$5,000 or treble the amount of actual damages, whichever is  
greater;

11           (b) An injunction enjoining the exercise of the power of sale until the  
12 beneficiary, the successor in interest of the beneficiary or the trustee complies  
with the requirements of subsections 2, 3 and 4; and

13           (c) Reasonable attorney's fees and costs,  
14       Ê unless the court finds good cause for a different award. The remedy provided in  
this subsection is in addition to the remedy provided in subsection 5.

15           9. The sale or assignment of a proprietary lease in a cooperative vests in the  
16 purchaser or assignee title to the ownership interest and votes in the cooperative  
association which accompany the proprietary lease.

17           10. After a sale of property is conducted pursuant to this section, the trustee  
shall:

18           (a) Within 30 days after the date of the sale, record the trustee's deed upon  
19 sale in the office of the county recorder of the county in which the property is  
located; or

20           (b) Within 20 days after the date of the sale, deliver the trustee's deed upon  
21 sale to the successful bidder. Within 10 days after the date of delivery of the deed  
by the trustee, the successful bidder shall record the trustee's deed upon sale in  
the office of the county recorder of the county in which the property is located.

22           11. Within 5 days after recording the trustee's deed upon sale, the trustee or  
23 successful bidder, whoever recorded the trustee's deed upon sale pursuant to  
subsection 10, shall cause a copy of the trustee's deed upon sale to be posted  
24 conspicuously on the property. The failure of a trustee or successful bidder to  
effect the posting required by this subsection does not affect the validity of a sale  
of the property to a bona fide purchaser for value without knowledge of the  
failure.

25           12. If the successful bidder fails to record the trustee's deed upon sale  
26 pursuant to paragraph (b) of subsection 10, the successful bidder:

27           (a) Is liable in a civil action to any party that is a senior lienholder against the  
28 property that is the subject of the sale in a sum of up to \$500 and for reasonable  
attorney's fees and the costs of bringing the action; and

1 (b) Is liable in a civil action for any actual damages caused by the failure to  
2 comply with the provisions of subsection 10 and for reasonable attorney's fees  
and the costs of bringing the action.

3 13. The county recorder shall, in addition to any other fee, at the time of  
4 recording a notice of default and election to sell collect:

5 (a) A fee of \$150 for deposit in the State General Fund.

6 (b) A fee of \$95 for deposit in the Account for Foreclosure Mediation  
7 Assistance, which is hereby created in the State General Fund. The Account must  
8 be administered by the Interim Finance Committee and the money in the Account  
may be expended only for the purpose of:

9 (1) Supporting a program of foreclosure mediation; and

10 (2) The development and maintenance of an Internet portal for a program  
11 of foreclosure mediation pursuant to subsection 16 of NRS 107.086.

12 (c) A fee of \$5 to be paid over to the county treasurer on or before the fifth  
13 day of each month for the preceding calendar month. The county recorder may  
14 direct that 1.5 percent of the fees collected by the county recorder pursuant to this  
15 paragraph be transferred into a special account for use by the office of the county  
16 recorder. The county treasurer shall remit quarterly to the organization operating  
17 the program for legal services that receives the fees charged pursuant to NRS  
18 19.031 for the operation of programs for the indigent all the money received from  
19 the county recorder pursuant to this paragraph.

20 14. The fees collected pursuant to paragraphs (a) and (b) of subsection 13  
21 must be paid over to the county treasurer by the county recorder on or before the  
22 fifth day of each month for the preceding calendar month, and, except as  
23 otherwise provided in this subsection, must be placed to the credit of the State  
24 General Fund or the Account for Foreclosure Mediation Assistance as prescribed  
25 pursuant to subsection 13. The county recorder may direct that 1.5 percent of the  
26 fees collected by the county recorder be transferred into a special account for use  
27 by the office of the county recorder. The county treasurer shall, on or before the  
28 15th day of each month, remit the fees deposited by the county recorder pursuant  
to this subsection to the State Controller for credit to the State General Fund or  
the Account as prescribed in subsection 13.

15. The beneficiary, the successor in interest of the beneficiary or the trustee  
who causes to be recorded the notice of default and election to sell shall not  
charge the grantor or the successor in interest of the grantor any portion of any fee  
required to be paid pursuant to subsection 13.

22 The Nevada Supreme Court in *Las Vegas Development Group, LLC v Blaha*, 134 Nev.  
23 252, 256 (2018) held:

24 NRS 107.080 governs nonjudicial deed-of-trust foreclosure sales and sets  
25 forth the substantive requirements and procedures for such sales. Subsection 5(a)  
26 states that a sale under "this section may be declared void" if the individual  
27 "authorized to make the sale does not substantially comply with the provisions of  
28 this section or any applicable provision of NRS 107.086 and 107.087." 2010 Nev.  
Stat. 26th Spec. Sess., ch. 10, § 31, at 78. Subsection 5(b) requires that such an  
action be commenced "within 90 days after the date of the sale." *Id.* Subsection 6

1 allows 120 days to commence an action if proper notice is not given. *Id.* Thus, if  
2 the person authorized to conduct the sale fails to substantially comply with NRS  
3 107.086, NRS 107.087, or one of NRS 107.080(5)'s provisions, it can render the  
4 sale void. By the statute's plain language, challenges to those violations are  
5 subject to the time limitations in subsections 5 and 6. However, the language of  
6 NRS 107.80 presumes that the person making this sale is authorized to do so as  
7 trustee or as the person designated under the terms of the deed of trust or transfer  
8 in trust. In this case, it is alleged that the security interest of the deed of trust was  
9 extinguished by the prior HOA foreclosure sale leaving the person to conduct the  
10 sale without authority to do so.

11 According to Blaha, we previously determined that NRS 107.080 applies  
12 to all challenges to a nonjudicial foreclosure sale in *Building Energetix Corp. v.*  
13 *EHE, LP*, 129 Nev. 78, 85–86, 294 P.3d 1228, 1234 (2013). We  
14 disagree. *Building Energetix* involved a delinquent-tax certificate issued to the  
15 county treasurer prior to a nonjudicial foreclosure sale. *Id.* at 79–80, 294 P.3d at  
16 1230. The issue was “whether, consistent with NRS 107.080(5), a trust-deed  
17 beneficiary who acquires such property on credit bid at the foreclosure sale can  
18 later redeem, or obtain reconveyance of, the property from the county  
19 treasurer.” *Id.* at 79, 294 P.3d at 1230. Thus, we were not confronted with, nor did  
20 we decide, whether NRS 107.080 applies to all challenges to an NRS Chapter 107  
21 nonjudicial foreclosure sale.

22 Blaha also contends that the application of NRS 107.080(5)–(6) to all  
23 claims challenging an NRS Chapter 107 foreclosure sale is consistent with the  
24 legislative history of the statute, which indicates that the legislators were  
25 concerned about individuals having the ability to reverse a foreclosure sale  
26 indefinitely. While that concern was stated at the hearing on the legislation, it was  
27 in the context of the statutory violations of NRS 107.080. *See* Hearing on S.B.  
28 217 Before the Senate Judiciary Comm., 74th Leg. (Nev., March 21, 2007);  
Hearing on S.B. 217 Before the Assembly Judiciary Comm., 74th Leg. (Nev.,  
May 2, 2007). The legislators did not discuss scenarios where the deed of trust is  
void. Thus, we conclude that the legislative history supports the plain language  
of NRS 107.080 and demonstrates that the legislators were not contemplating  
challenges to a foreclosing entity's authority. *See* Hearing on S.B. 217 Before the  
Senate Judiciary Comm., 74th Leg. (Nev., March 21, 2007).

21 The Nevada Supreme Court in *Brunzell v Golden Gate Nat. Bank*, 85 Nev. 345 (1969),  
22 set forth factors a trial court must consider when evaluating the amount of attorneys' fees  
23 requested under NRS 18.010. In *Logan v Abe*, 131 Nev. 260, 267 (2015) the Nevada Supreme  
24 Court held:

25 In determining the amount of fees to award, the [district] court is not limited to  
26 one specific approach; its analysis may begin with any method rationally designed  
27 to calculate a reasonable amount, so long as the requested amount is reviewed in  
28 light of the” *Brunzell* factors. *Haley v. Eighth Judicial Dist. Court*, — Nev. —  
—, 273 P.3d 855, 860 (2012) (internal quotations omitted). While it is  
preferable for a district court to expressly analyze each factor relating to an award

1 of attorney fees, express findings on each factor are not necessary for a district  
2 court to properly exercise its discretion. Certified Fire Prot., Inc. v. Precision  
3 Constr., Inc., —Nev. —, —, 283 P.3d 250, 258 (2012).

4 Costs must be allowed of course to the prevailing party against any adverse party against  
5 whom judgment is rendered, in an action for the recovery of real property or a possessory right  
6 thereto. NRS. 18.020 states:

7 1. In an action for the recovery of real property or a possessory right  
8 thereto.

9 2. In an action to recover the possession of personal property, where the  
10 value of the property amounts to more than \$2,500. The value must be determined  
11 by the jury, court or master by whom the action is tried.

12 3. In an action for the recovery of money or damages, where the plaintiff  
13 seeks to recover more than \$2,500.

14 4. In a special proceeding, except a special proceeding conducted pursuant  
15 to NRS 306.040.

16 5. In an action which involves the title or boundaries of real estate, or the  
17 legality of any tax, impost, assessment, toll or municipal fine, including the costs  
18 accrued in the action if originally commenced in a Justice Court.

19 NRS 18.110 states:

20 1. The party in whose favor judgment is rendered, and who claims costs,  
21 must file with the clerk, and serve a copy upon the adverse party, within 5 days  
22 after the entry of judgment, or such further time as the court or judge may grant, a  
23 memorandum of the items of the costs in the action or proceeding, which  
24 memorandum must be verified by the oath of the party, or the party's attorney or  
25 agent, or by the clerk of the party's attorney, stating that to the best of his or her  
26 knowledge and belief the items are correct, and that the costs have been  
27 necessarily incurred in the action or proceeding.

28 2. The party in whose favor judgment is rendered shall be entitled to recover  
the witness fees, although at the time the party may not actually have paid them.  
Issuance or service of subpoena shall not be necessary to entitle a prevailing party  
to tax, as costs, witness fees and mileage, provided that such witnesses be sworn  
and testify in the cause.

3. It shall not be necessary to embody in the memorandum the fees of the  
clerk, but the clerk shall add the same according to the fees of the clerk fixed by  
statute.

4. Within 3 days after service of a copy of the memorandum, the adverse  
party may move the court, upon 2 days' notice, to retax and settle the costs, notice  
of which motion shall be filed and served on the prevailing party claiming costs.  
Upon the hearing of the motion the court or judge shall settle the costs.

## II. Arguments

### A. Breckenridge

1 Breckenridge argues that its claims to superior title in this matter were supported by the  
2 record and well-founded Nevada law. Breckenridge did not become involved in this matter until  
3 it purchased the subject property at the foreclosure sale after the Plaintiffs failed to post the bond  
4 required by the Court.

5 Breckenridge took title to the Property pursuant to NRS 107.080, which states "every sale  
6 made under the provisions of this section and other sections of this chapter vests in the purchaser  
7 the title of the grantor and any successors in interest without equity or right of redemption."  
8 Breckenridge argued that the majority of allegations in the Second Amended Complaint occurred  
9 prior to the foreclosure sale, which Breckenridge played no role in. Plaintiffs failed to put forth  
10 any evidence to support that they had the ability to pay the underlying obligation and foreclosure  
11 was not justified.

12 Breckenridge argues that the Plaintiffs filed this lawsuit as a last-minute attempt to stave  
13 off the foreclosure. They failed to post the required bond, the foreclosure sale occurred, and  
14 therefore the Plaintiffs had no claim to superior title over Breckenridge. The Plaintiffs'  
15 allegations of wrongful foreclosure after discovery was completed were not and could not have  
16 been established or proven by any legal and factual support.

17 Breckenridge asserts that attorneys' fees are proper under NRS 18.010(2) because the  
18 Plaintiffs brought or maintained a claim against Breckenridge without reasonable grounds or to  
19 harass the prevailing party because it could not be supported by any credible evidence at trial.  
20 Breckenridge argues that the requested fees meet the *Brunzell* factors. Breckenridge asserts that  
21 costs must be awarded as the Plaintiffs did not file a motion to re-tax the costs pursuant to NRS  
22 18.110.

### 23 **B. Plaintiffs**

24 Plaintiffs argue that their claims were brought upon reasonable grounds and not for the  
25 purpose of harassment. Plaintiffs point to this Court's 12/31/18 Order which stated that  
26 "Plaintiff is likely to prevail on a Homeowner Bill of Rights claims." Plaintiffs also argued that  
27 Breckenridge knew about the underlying litigation prior to purchasing the property at the time of  
28

1 the foreclosure sale. Without providing any authority, Plaintiffs argued that any award should  
2 stay pending an appeal. The Court will not consider a stay without being presented any authority.

3 Finally, the Court notes that Plaintiffs did not argue that the requested attorneys' fees did  
4 not comply with statute or case law.

5 **III. Issue presented**

6 Did the Plaintiffs bring or maintain their claims against Breckenridge "without  
7 reasonable grounds or to harass" Breckenridge?

8 **IV. Conclusions of Law**

9 The facts clearly establish that the original action was brought against the foreclosing  
10 parties to prevent foreclosure on the property. Breckenridge was brought into the action after the  
11 Plaintiffs failed to obtain the preliminary injunction by failing to post the required bond. The  
12 evidence brought at the preliminary injunction hearing was in stark contrast to what was brought  
13 out in discovery.

14 NRS 107.080 provides an avenue to set aside a foreclosure sale if the foreclosing party or  
15 parties did not substantially comply with the provisions of the statute. Plaintiffs during the  
16 injunction hearing raised issues as to whether the foreclosing parties had adequately provided  
17 notice of what the deficiency was due based upon allegations of non-performance and  
18 intervening agreements. Based upon the limited evidence and case law provided, the Court found  
19 that the Plaintiffs had a likelihood of success at this preliminary stage.

20 The gravamen of Breckenridge's arguments correctly focus upon the Plaintiffs  
21 maintaining the action after it was clear that they had no basis to claim that a wrongful  
22 foreclosure had occurred or that the foreclosing parties had failed to substantially comply with  
23 NRS 107.080. Facts raised in discovery clearly presented a picture that was wholly different  
24 than what had been presented to the Court during the preliminary injunction hearing. At the  
25 completion of discovery, it was clear that the foreclosing parties had substantially complied with  
26 NRS 107.080.

27 The evidence also established that the Plaintiffs had abused the foreclosure mediation  
28 program in a previous action. The Plaintiffs never had the ability or desire to make payments on

1 the loan obligation. The maintenance of the action appears to the Court as done to prolong the  
2 Plaintiffs' ability to live rent free.

3 This Court has previously commented on how unreasonable Plaintiffs' legal theory that  
4 one or two unaccepted payments years ago would excuse the Plaintiffs from making years of  
5 mortgage payments. Plaintiffs provided no authority that a lender could not require them to  
6 make tender of back payments. Plaintiffs were given a second opportunity to settle the matter  
7 even after reneging on the agreement reached during the foreclosure mediation several years  
8 prior.

9 The Plaintiffs provided no legal authority that the failure to have an exact amount owed  
10 in the required notices compelled a finding that substantial compliance could not occur. The  
11 Court cannot find that the Plaintiffs presented novel legal theories concerning the application of  
12 NRS 107.080 or actions concerning wrongful foreclosure. See, e.g. *Rodriguez v. Primadonna*  
13 *Co.*, 125 Nev. 578, 588 (2009). Plaintiffs' claims were maintained without reasonable grounds as  
14 to Breckenridge.

15 The Plaintiffs did not contest the amounts requested for attorneys' fees. The Court  
16 reviewed the pleading and finds that Breckenridge has properly supported the amount requested  
17 as required under *Brunzell*. The character of the work, the work actually performed, the qualities  
18 of the advocacy and the result obtained warrant an award of the amount requested.

19 Breckenridge also correctly cited to NRS 18.110. The Plaintiffs did not file a motion to  
20 retax the costs. The Court thereby orders the costs requested.

21 Based upon the above and good cause appearing, **IT IS HEREBY ADJUDGED and**  
22 **ORDERED** that Breckenridge's Motion for Attorneys' Fees and Costs is **GRANTED**.

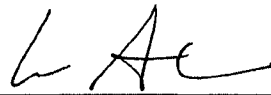
23 **IT IS HEREBY FURTHER ORDERED** that a Judgment in favor of Breckenridge in  
24 the amount of Forty Four Thousand Six Hundred Forty Eight Dollars (\$44,648.00) for attorneys'  
25 fees is **AWARDED**.

26 ///

27 ///

1           **IT IS HEREBY FURTHER ORDERED** that a Judgment in favor of Breckenridge in  
2 the amount of Three Thousand Seven Hundred Eighty Eight Dollars and One Cent (\$3,788.01)  
3 for costs is **AWARDED**.

4           DATED: This 18th day of January, 2022.

6  
7   
8 \_\_\_\_\_  
9 HON. LEON ABERASTURI  
10 DISTRICT JUDGE  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**Certificate of Mailing**

I hereby certify that I, Quoc Thai, am an employee of the Third Judicial District Court, and that on this date pursuant to NRCP 5(b), a true copy of the foregoing document was mailed at Yerington, Nevada addressed to:

Michael G. Millward, Esq.  
Millward Law, Ltd.  
1591 Mono Ave.  
Minden, NV 89423

Shadd A. Wade  
Zieve, Brodnax & Steele, LLP  
9435 W. Russel Rd., Ste. 120  
Las Vegas, NV 89148

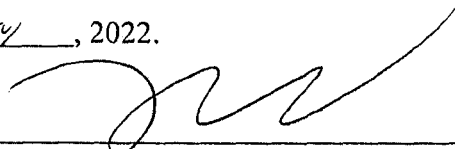
Scott R. Lachman, Esq.  
Akerman LLP  
1635 Village Center Cir. Ste. 200  
Las Vegas, NV 89134

Matthew K. Schriever, Esq.  
Hutchison & Steffen, PLLC  
10080 W. Alta Dr., Ste. 200  
Las Vegas, NV 89145

Casey J. Nelson, Esq.  
Wedgewood, LLC  
2320 Potosi St., Ste. 130  
Las Vegas, NV 89146

Ramir M. Hernandez, Esq.  
Wright, Finlay & Zak, LLP  
7785 W. Sahara Ave., Ste. 200  
Las Vegas, NV 89117

DATED: This 18th day of January, 2022.

  
\_\_\_\_\_  
Employee of Hon. Leon Aberasturi

## Case Summary

FAY SERVICING LLC, BRECKENRIDGE PROPERTY FUND 2016 LLC, BANK OF AMERICA, N.A., ALBERT ELLIS LINCICOME JR., VICENTA LINCICOME, SABLES, LLC, PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A., NEWREZ, LLC dba SHELLPOINT MORTGAGE SERVICING, LLC ~ COMPLAINT

Case Number: 18-CV-01332

Agency: Third Judicial District Court

Type: Other Title to Property Case

Received Date: 11/7/2018

Status: Closed

Status Date: 6/23/2021

### Involvements

#### Primary Involvements

NEWREZ, LLC dba SHELLPOINT MORTGAGE SERVICING, LLC

Defendant

BRECKENRIDGE PROPERTY FUND 2016 LLC Defendant

BANK OF AMERICA, N.A. Defendant

SABLES, LLC Defendant

FAY SERVICING LLC Defendant

PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A.

Defendant

LINCICOME, ALBERT ELLIS JR. Plaintiff

LINCICOME, VICENTA Plaintiff

#### Other Involvements

Wade, Shadd A. Esq. Defendant's Attorney

Clouser, Justin M. Esq. Plaintiff's Attorney

Schriever, Matthew K. Esq. Defendant's Attorney

Brenner, Darren T. Esq. Defendant's Attorney

Lachman, Scott Esq. Defendant's Attorney

Hernandez, Ramir Esq. Defendant's Attorney

Millward, Michael G. Esq. Plaintiff's Attorney

Third Judicial District Court (18-CV-01332)

Aberasturi, Leon A. - LAA Dept II - TJDC

### [5. NRCP 5 ~ ANSWER](#)

Lead/Active: False

### [7. NRCP 5 ~ ANSWER](#)

Notes: Newrez LLC dva Shellpoint Mortgage

Lead/Active: False

### [8. NRCP ~ RELATED PARTY](#)

Lead/Active: False

### Other Title to Property Case

#### [1. NRCP 3 ~ COMPLAINT](#)

Lead/Active: True

# Case Summary

## [2. NRCP 3 ~ COMPLAINT](#)

Lead/Active: False

## [3. NRCP 5 ~ ANSWER](#)

Lead/Active: False

## [4. NRCP 5 ~ ANSWER](#)

Lead/Active: False

## [6. NRCP 5 ~ ANSWER](#)

Notes: Sables, LLC First Appearance

Lead/Active: False

### Case Status History

11/7/2018 4:49:00 PM | Open

6/23/2021 3:25:00 PM | Closed

### Events

11/20/2018 2:30:00 PM | TPO Hearing | Dept II, Crtrm A 18-CV-01332 | Court Room A

Lachman, Scott Esq.

Telephonic, obo Bank of America

Andersen, Andrea Deputy Clerk -

AANDERSEN

Staff - STAFF

Geurts, Patrick Bailiff - X004896

lawclerk2 - LAW2

John Kilgore

Aberasturi, Leon A. - LAA (Dept II - TJDC)

Hernandez, Ramir Esq. (Defendant's Attorney)

obo Defendant, PROF-2013-M4 LEGAL TITLE TRUST BY U.S. BANK, N.A. and FAY SERVICING LLC

LINCICOME, ALBERT ELLIS JR. (Plaintiff)

Plaintiff

LINCICOME, VICENTA (Plaintiff)

Plaintiff

Millward, Michael G. Esq. (Plaintiff's Attorney)

with Plaintiffs

Notes: Counsel does not feel there is a chance of settlement. Court proceeded with the hearing. Mr. Lachman advised the court he was just retained on behalf of Bank of America and it does not appear that Bank of America has an interest, but requested to stay on the phone. Court allowed requested. Plaintiff's Exhibits 1-18 were marked. Counsel stipulated to the admission of Plaintiff's Exhibits 1-18. Plaintiff's Exhibits 1-18 were admitted. All the exhibits as attached to Defendants Response to Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction were admitted. No objections to the facts within the Affidavit. Counsel argued the Application for Ex Parte Restraining Order, Preliminary Injunction & Permanent Injunction. Court ruled in favor of the Plaintiff to extend due to the likelihood of success. Court ordered bond in the amount of the payments due, which is the monthly mortgage

## Case Summary

---

payment times twelve (12) times seven (7.) Bond is due within thirty (30) days. Payments are to be made each month starting December 20, 2018. Mediation is requested to be done by Washoe County Judge Hardy. Court will contact Judge Hardy and see if he is willing to preside over mediation. Court finds no statute of fraud. Mr. Millward to prepare Order and submit to opposing counsel. If counsel cannot agree on the Order in one (1) or two (2) emails, counsel is to submit their own orders. Order to be submitted December 10, 2018.

4/15/2019 1:30:00 PM | Motion Hearing | Shad A Wade telephonic dc Scott Lachman Telephonic | Court Room A

Thomas, Kathy Dep. Clerk - KTHOMAS

Staff - STAFF

Court Room A - CourtRmA

lawclerk2 - LAW2

Aberasturi, Leon A. - LAA (Dept II - TJDC)

Hernandez, Ramir Esq. (Defendant's Attorney)

Brenner, Darren T. Esq. (Defendant's Attorney)

telephonic

Millward, Michael G. Esq. (Plaintiff's Attorney)

Notes: Michael Millward, appearing on behalf of the Plaintiff. Ramir Hernandez, appearing obo Fay U.S Bank Trust, Shad Wade appearing telephonic obo Sables, LLC, Darren Brenner, obo Bank of America.

Counsel argued the Motion to set aside the Default Judgment.

Court granted the Motion to set aside default is granted. Counsel next argued the Motion for rule II Sanctions. Court granted the motion. Attorney fees were awarded.

Counsel argued the Motion to Dismiss is granted in part and denied in part. Any claims against BNA seeking injunctive relief are hereby dismissed. All other Claims will be allowed to remain. Sables Declaration of Non-Monetary Status is granted. Mr. Wade to provide Order. Motion for leave to file an Amended Complaint is granted leave to amend its claims as to Sables. Mr. Millard to file motion to Amend within 20 days. After filing of the Motion and oppositions the court will make a determination as to whether to grant leave to Plaintiff's to amend the Complaint.

Mr. Hernandez asked that a settlement conference be set. Court will not set at this time while motions are still being filed.

8/23/2019 11:30:00 AM | Telephonic Conference | Dept II - 18-CV-01332 | Court Room A

Tovar, Victoria Deputy Clerk - VTOVAR

lawclerk2 - LAW2

Schriever, Matthew K. Esq.

telephonic

Staff - STAFF

Court Room A - CourtRmA

Wade, Shadd A. Esq.

telephonic

Aberasturi, Leon A. - LAA (Dept II - TJDC)

Hernandez, Ramir Esq. (Defendant's Attorney)

telephonic

Millward, Michael G. Esq. (Plaintiff's Attorney)

telephonic

Notes: Mr. Schriever addressed Motion to Intervene. Court granted Breckenridge's Motion to Intervene. Court finds four (4) prongs satisfied, Mr. Millward to file second amended complaint within three (3) weeks, and court finds not cause of action for declaratory relief. Mr. Schriever to prepare order regarding motion to intervene and court to prepare order for remaining issues.

2/4/2020 9:30:00 AM | Motion Hearing | Dept II, Crtrm A 18-CV-01332 | Court Room A

Staff - STAFF

Court Room A - CourtRmA

Geurts, Patrick Bailiff - X004896

Tovar, Victoria Deputy Clerk - VTOVAR

lawclerk2 - LAW2

Aberasturi, Leon A. - LAA (Dept II - TJDC)

Hernandez, Ramir Esq. (Defendant's Attorney)

# Case Summary

---

telephonic/obo Fay Servicing LLC

Brenner, Darren T. Esq. (Defendant's Attorney)

telephonic/obo Bank of America N.A.

Wade, Shadd A. Esq. (Defendant's Attorney)

telephonic/obo Sables, LLC

Schriever, Matthew K. Esq. (Defendant's Attorney)

telephonic/obo Breckenridge Property Fund 2016 LLC

LINCICOME, ALBERT ELLIS JR. (Plaintiff)

LINCICOME, VICENTA (Plaintiff)

Clouser, Justin M. Esq. (Plaintiff's Attorney)

obo plaintiffs

Millward, Michael G. Esq. (Plaintiff's Attorney)

obo plaintiffs

Notes: Court heard statements and argument from counsel. Mr. Millward requested his Motion for Reconsideration be withdrawn. No objections. Court ordered Motion for Reconsideration withdrawn. Court denied Ex Parte Motion filed October 3, 2019 without prejudice. 16.1 conference set for March 16, 2020 at 12:00 p.m. Court ordered Mr. Millward set up conference call and all counsel to contact Mr. Millward with their phone numbers. Court to prepare Order Denying Ex Parte Motion and Mr. Millward to issue notice of 16.1 conference.

3/16/2020 12:00:00 PM | 16.1 Conference | Dept II - 18-CV-01332 | Court Room A

Staff - STAFF

lawclerk2 - LAW2

Aberasturi, Leon A. - LAA (Dept II - TJDC)

Notes: Per Sherry at Millward Law. Conference Call # to be emailed to Court day of hearing. dg

2/18/2021 9:30:00 AM | Settlement Conference | Dept I , Crtrm B 18-CV-01332 | Court Room B

Staff - STAFF

Court Room B - CourtRmB

Geurts, Patrick Bailiff - X004896

Schlegelmilch, John P. - JPS

lawclerk1 - LAW1

Notes: <https://us02web.zoom.us/j/82853007945?pwd=U0pmS0xQWVp2VnVmbW9ZMS9TQStFdz09>

Meeting ID: 828 5300 7945

Passcode: 18CV01332

10/13/2021 1:30:00 PM | Motion Hearing | 18-CV-01332 Dept II | Court Room A

Staff - STAFF

Involved via BizRule

Court Room A - CourtRmA

Third Judicial Court Clerks

Geurts, Patrick Bailiff - X004896

Thomas, Kathy Dep. Clerk - KTHOMAS

lawclerk2 - LAW2

Nelson, Casey J. Esq.

PRALL, TODD Esq.

Breckenridge Property Fund

MAGASTER, PAIGE Esq.

OBO Bank of America

PROF-2013-M4 LEGAL TITLE TRUST BY

U.S. BANK, N.A. (Defendant)

Aberasturi, Leon A. - LAA (Dept II - TJDC)

LINCICOME, ALBERT ELLIS JR. (Plaintiff)

LINCICOME, VICENTA (Plaintiff)

## Case Summary

---

Millward, Michael G. Esq. (Plaintiff's Attorney)

obo Lincicome

Notes: Vicenta Lincicome and Albert Lincicome were sworn and testified. Counsel argued the Matter.

Court Ordered: Court will not enter the writ at this time. Plaintiff's will the ability to post bond. Court will not grant the request for alternative. Request in not sufficient and propose equity in rental property is unclear. Mortgage on the property would make collection process complex. Additionally parties retirement is unclear. Plaintiff's finances are not in a good possession. Lack ability to pay judgment is not plain to the Court. Court will require a bond for back rent and perspective rent in the future. Court Order \$140,000 for bond. Will have until Nov 12, 2021 to post bond. If bond not posted Plaintiff's will have the ability to motion the supreme Court for a stay, if denied the Defendants would have ability to submit a ex parte motion which would just be submitted and considered without further hearing. Court will issue the writ effective on November 15, 2021 if Bond is not posted. Casey Nelson will prepare the Order. All counsel to review and confirm with the Court. If Any additional motions to be addressed counsel to contact Judicial Assistant.

## DISTRICT COURT CIVIL COVER SHEET

Lyon County, Nevada  
Case No. 18-CV-01332  
(Assigned by Clerk's Office) Dept. II

FILED

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

2018 NOV -7 PM 4:54

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

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

Ellis and Vicenta Lincicome

70 Riverside Drive, Dayton, NV 89403

(775) 246-0810

Attorney (name/address/phone):

Attorney (name/address/phone):

Michael G. Millward, Esq.

1590 Mono Avenue

Minden, NV 89423 (775) 600-2776

## II. Nature of Controversy (please select the one most applicable filing type below)

## Civil Case Filing Types

<b>Real Property</b> <b>Landlord/Tenant</b> <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant <b>Title to Property</b> <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property <b>Other Real Property</b> <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	<b>Negligence</b> <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence <b>Malpractice</b> <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	<b>Torts</b> <b>Other Torts</b> <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
<b>Probate</b> <b>Probate (select case type and estate value)</b> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Surviving Spouse <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate <b>Estate Value</b> <input type="checkbox"/> Greater than \$300,000 <input type="checkbox"/> \$200,000-\$300,000 <input type="checkbox"/> \$100,001-\$199,999 <input type="checkbox"/> \$25,001-\$100,000 <input type="checkbox"/> \$20,001-\$25,000 <input type="checkbox"/> \$2,501-20,000 <input type="checkbox"/> \$2,500 or less	<b>Construction Defect &amp; Contract</b> <b>Construction Defect</b> <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect <b>Contract Case</b> <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	<b>Judicial Review/Appeal</b> <b>Judicial Review</b> <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency <b>Nevada State Agency Appeal</b> <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency <b>Appeal Other</b> <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
<b>Civil Writ</b> <b>Civil Writ</b> <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		<b>Other Civil Filing</b> <b>Other Civil Filing</b> <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

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

November 7<sup>th</sup>, 2018

Date

Signature of initiating party or representative

See other side for family-related case filings.