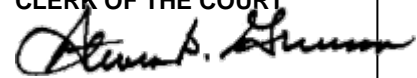


ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

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2/10/2022 12:05 PM
Steven D. Grierson
CLERK OF THE COURT



Electronically Filed
Feb 15 2022 02:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

NOAS
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
CHRISTOPHER L. BENNER, ESQ.
Nevada Bar No. 8963
ROGER P. CROTEAU & ASSOCIATES, LTD
2810 W. Charleston Blvd., Ste. 75
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(702) 254-7775 (phone)
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croteaulaw@croteaulaw.com
chris@croteaulaw.com
Attorneys for Plaintiff Saticoy Bay LLC
Series 2818 Calle Del Oro

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 2818 CALLE
DEL ORO, a Nevada Limited Liability
Company,

Plaintiff,

vs.

WILMINGTON SAVINGS FUND
SOCIETY, FSB, NOT IN ITS INDIVIDUAL
CAPACITY BUT SOLELY AS OWNER
TRUSTEE FOR CSMC 2017-RPL2 TRUST,
a National Association; DOE individuals I
through XX; and ROE CORPORATIONS I
through XX,

Defendants.

Case No. A-21-841665-C

Dept. No. 5

PLAINTIFF'S NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro
("Plaintiff Saticoy"), by and through its attorneys, Roger P. Croteau & Associates, LLC, hereby
appeals to the Supreme Court of Nevada from the Order granting (1) Defendant Wilmington
Savings Fund Society, FSB, Not in its Individual Capacity but solely as owner Trustee for CSMC

1 2017-RPL2 Trust's ("Defendant Wilmington Savings") Motion to Dismiss For Failure To State A
2 Claim Upon Which Relief May Be Granted, with Prejudice; and (2) Lifting Stay of Foreclosure
3 Proceedings, whose Notice of Entry of Order was filed with this Court on January 14, 2022; and all
4 rulings and interlocutory orders giving rise to or made appealable by the final judgment.
5

6 **DATED** this February 10, 2022.
7

8 ROGER P. CROTEAU & ASSOCIATES, LTD.

9 /s/ Roger P. Croteau

10 ROGER P. CROTEAU, ESQ.

11 Nevada Bar No. 4958

12 CHRISTOPHER L. BENNER, ESQ.

13 Nevada Bar No. 8963

14 2810 West Charleston Blvd., Ste. 75

15 Las Vegas, Nevada 89102

16 Tel: (702) 254-7775

17 Attorneys for Plaintiff Saticoy Bay LLC

18 Series 2818 Calle Del Oro
19
20
21
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CERTIFICATE OF SERVICE

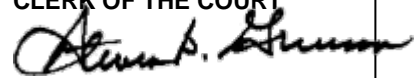
I hereby certify that on February 10, 2022, I caused the foregoing document to be served on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion Rules as follows:

Kent F. Larsen, Esq.
Karl L. Nielson, Esq.
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, Nevada 89134
Email: kfl@slwlaw.com
Email: Kln@slwlaw.com
Attorneys for Defendant Wilmington Savings
Fund Society FSB, not in its individual capacity
but solely as owner Trustee for CSMC 2017-RPLTrust

/s/ Joe Koehle
An employee of
ROGER P. CROTEAU & ASSOCIATES, LTD.

ROGER P. CROTEAU & ASSOCIATES, LTD.
• 2810 West Charleston Blvd, Suite 75 • Las Vegas, Nevada 89102 •
Telephone: (702) 254-7775 • Facsimile (702) 228-7719

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Steven D. Grierson
CLERK OF THE COURT



ASTA
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croteaulaw@croteaulaw.com
chris@croteaulaw.com
Attorneys for Plaintiff Saticoy Bay LLC
Series 2818 Calle Del Oro

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 2818 CALLE
DEL ORO, a Nevada Limited Liability
Company,

Plaintiff,

vs.

WILMINGTON SAVINGS FUND
SOCIETY, FSB, NOT IN ITS INDIVIDUAL
CAPACITY BUT SOLELY AS OWNER
TRUSTEE FOR CSMC 2017-RPL2 TRUST,
a National Association; DOE individuals I
through XX; and ROE CORPORATIONS I
through XX,

Defendants.

Case No. A-21-841665-C

Dept. No. 5

CASE APPEAL STATEMENT

Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro, by and through its attorneys, Roger
P. Croteau & Associates, Ltd., hereby submits its Case Appeal Statement as follows:

1 **1. Name of appellant filing this Case Appeal Statement:**

2 Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro.

3 **2. Identify the Judge issuing the decision, judgment, or order appealed from:**

4 District Court Judge, The Honorable Veronica M. Barisich.

5 **3. Set forth the name, law firm, address, and telephone number of all counsel on appeal**
6 **and identify the party or parties whom they represent:**

7 Saticoy Bay LLC Series 2818 Calle Del Oro (“Saticoy”)
8 Roger P. Croteau, Esq.
9 Christopher L. Benner, Esq.
10 Roger P. Croteau & Associates, Ltd.
11 2810 West Charleston Blvd., Suite 75
12 Las Vegas, Nevada 89102
(702) 254-7775 phone

13 **4. Identify each respondent and the name and address of appellant counsel, if known,**
14 **for each respondent (if the name of a respondent’s counsel is unknown, indicate as much**
15 **and provide the name and address of that respondent’s trial counsel):**

16 Wilmington Savings Fund Society, FSB, Not In Its Individual Capacity but Solely
17 as Owner Trustee for CSMC 2017-RPL2 Trust (“Wilmington”)
18 Kent F. Larsen, Esq.
19 Karl L. Nielson, Esq.
20 SMITH LARSEN & WIXOM
21 Hills Center Business Park
22 1935 Village Center Circle
23 Las Vegas, Nevada 89134
24 (702) 252-5002 phone

25 **5. Indicate whether any attorney identified above in response to question 3 or 4 is not**
26 **licensed to practice law in Nevada and, if so, whether the District Court granted that attorney**
27 **permission to appear under SCR 42 (attach a copy of any District Court order granting such**
28 **permission:**

N/A.

1 **6. Indicate whether the appellant was represented by appointed or retained counsel in**
2 **the District Court:**

3 Retained Counsel.

4
5 **7. Indicate whether appellant is represented by appointed or retained counsel on**
6 **appeal:**

7 Retained Counsel.

8 **8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the**
9 **date of entry of the District Court order granting such leave:**

10 N/A.

11
12 **9. Indicate the date the proceedings commenced in the District Court, e.g., date**
13 **complaint, indictment, information, or petition was filed:**

14 Complaint was filed with the Eighth Judicial District Court, Clark County, Nevada, Case
15 No. A-21-841665-C on September 24, 2021.

16
17 **10. Provide a brief description of the nature of the action and result in the District**
18 **Court, including the type of judgment or order being appealed from and the relief granted**
19 **by the District Court:**

20 The instant action relates to real property that was the subject of a prior HOA foreclosure
21 sale pursuant to unpaid assessments, which remained subject to a deed of trust on the real property
22 located at 2818 Calle Del Oro, Las Vegas, Nevada 89120 A.P.N. 162-25-111-002 ("Property").
23 Respondent Wilmington contended at the trial court level that its loan secured by a Deed of Trust
24 which was recorded on July 27, 2005, in the Official Records of the Clark County, Nevada
25 Recorder as Document Number 20050727-0004389, was in default and remained an encumbrance
26 on the Property ("First Deed of Trust"). Saticoy contended that on or before June 28, 2011,
27
28

Wilmington or its predecessor-in-interest, caused a Notice of Default and Election to Sell Under Deed of Trust (“Bank Notice of Default”) related to the First Deed of Trust to be recorded in the Official Records of the Clark County Recorder as Instrument No. 201106280001383 which accelerated the loan under the First Deed of Trust. Saticoy further contended that as Wilmington had failed to decelerate the debt in the ten years following June 28, 2011, then the First Deed of Trust and the underlying debt was extinguished by NRS 106.240.

On December 21, 2021, Wilmington filed a Motion to Dismiss (“Motion”) as its response to Saticoy’s Complaint. After briefing and argument, the district court granted Wilmington’s Motion. Saticoy contends that the district court erred as a matter of law. The Notice of Entry of Findings of Facts and Conclusions of Law granting Wilmington’s Motion was filed on January 14, 2022.

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

N/A.

12. Indicate whether is appeal involved child custody or visitation:

N/A.

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

Appellant believes that the possibility of settlement exists

DATED this February 10, 2022.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Christopher L. Benner
Roger P. Croteau, Esq.
Nevada Bar No. 4958
Christopher L. Benner, Esq.

ROGER P. CROTEAU & ASSOCIATES, LTD.
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Nevada Bar No. 8963
2810 W. Charleston Blvd., Suite 75
Las Vegas, Nevada 89102
(702) 254-7775 phone
Attorneys for Plaintiff Saticoy Bay LLC Series
2818 Calle Del Oro

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2022, I caused the foregoing document to be served on all persons and parties in the E-Service Master List in the Eighth Judicial District Court E-Filing System, by electronic service in accordance with the mandatory electronic service requirements of Administrative Order 14-1 and the Nevada Electronic Filing and Conversion

Rules as follows:

Kent F. Larsen, Esq.
Karl L. Nielson, Esq.
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, Nevada 89134
Email: kfl@slwlaw.com
Email: kln@slwlaw.com

Attorneys for Defendant Wilmington Savings
Fund Society FSB, not in its individual capacity
but solely as owner trustee for CSMC 2017-RPL@ Trust

/s/ Joe Koehle
An employee of
ROGER P. CROTEAU & ASSOCIATES, LTD.

CASE SUMMARY**CASE NO. A-21-841665-C**

Saticoy Bay LLC Series 2818 Calle Del Oro, Plaintiff(s)
vs.
Wilmington Savings Fund Society FSB, Defendant(s)

§
§
§
§
§

Location: **Department 5**
 Judicial Officer: **Barisich, Veronica M.**
 Filed on: **09/24/2021**
 Cross-Reference Case Number: **A841665**

CASE INFORMATIONCase Type: **Other Title to Property**

Case Status: **09/24/2021 Open**

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

Case Number A-21-841665-C
 Court Department 5
 Date Assigned 09/24/2021
 Judicial Officer Barisich, Veronica M.

PARTY INFORMATION**Plaintiff****Saticoy Bay LLC Series 2818 Calle Del Oro***Lead Attorneys***Croteau, Roger P, ESQ***Retained*

702-254-7775(W)

Defendant**Wilmington Savings Fund Society FSB****Larsen, Kent F***Retained*

702-252-5002(W)

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

09/24/2021

**Complaint**

Filed By: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro
[1] Complaint

09/24/2021

**Initial Appearance Fee Disclosure**

Filed By: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro
[2] Initial Appearance Fee Disclosure

09/24/2021

**Ex Parte Motion**

Filed By: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro
[3] Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction to Enjoin Foreclosure Sale to be Held on October 15, 2021

09/24/2021

**Ex Parte Motion**

Filed By: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro
[4] Ex Parte Motion for Order Shortening Time of Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction to Enjoin Foreclosure Sale to be Held on October 15, 2021

09/24/2021

**Summons Electronically Issued - Service Pending**

Party: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro
[5] Summons-Wilmington Savings Fund

CASE SUMMARY

CASE NO. A-21-841665-C

| | |
|------------|--|
| 09/27/2021 |  Order Shortening Time Filed By: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro <i>[6] Order Shortening Time for Hearing of Ex parte Motion for Temporary Restraining Order and Preliminary Injunction to Enjoin Foreclosure Sale to be Held on October 15, 2021</i> |
| 09/29/2021 |  Affidavit of Service Filed By: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro <i>[7] Affidavit of Service-Wilmington Savings Fund</i> |
| 10/05/2021 |  Notice of Hearing <i>[8] Instructions for BlueJeans VideoConferencing</i> |
| 10/08/2021 |  Notice of Appearance Party: Defendant Wilmington Savings Fund Society FSB <i>[9] Notice of Appearance</i> |
| 10/08/2021 |  Initial Appearance Fee Disclosure Filed By: Defendant Wilmington Savings Fund Society FSB <i>[10] Initial Appearance Fee Disclosure (NRS Chapter 19)</i> |
| 10/11/2021 |  Stipulation and Order Filed by: Defendant Wilmington Savings Fund Society FSB <i>[11] Stipulation and Order to (1) Withdraw Ex Parte Motion for TRO and Motion for PI to Enjoin Foreclosure Sale to be Held on October 15, 2021; (2) Vacate TRO and/or PI and (3) Stay Transfer or Sale of the Subject Property Pending Further Order of the Court</i> |
| 10/12/2021 |  Notice of Entry of Stipulation and Order Filed By: Defendant Wilmington Savings Fund Society FSB <i>[12] Notice of Entry of Stipulation and Order to (1) Withdraw ex Parte Motion for Temporary Restraining Order and Motion for Preliminary Injunction to Enjoin Foreclosure Sale to Be Held on October 15, 2021; (2) Vacate Temporary Restraining Order And/or Preliminary Injunction; and, (3) Stay Transfer or Sale of the Subject Property Pending Further Order of the Court</i> |
| 11/10/2021 |  Stipulation and Order Filed by: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro <i>[13] Stipulation and Order to Extend Deadline to Respond to Complaint</i> |
| 11/10/2021 |  Notice of Entry of Stipulation and Order Filed By: Defendant Wilmington Savings Fund Society FSB <i>[14] Notice of Entry of Stipulation and Order to Extend Deadline to Respond to Complaintt</i> |
| 11/10/2021 |  Notice of Entry of Stipulation and Order Filed By: Defendant Wilmington Savings Fund Society FSB <i>[15] Notice of Entry of Stipulation and Order to Extend Deadline to Respond to Complaint</i> |
| 11/18/2021 |  Motion To Dismiss - Alternative Motion For Summary Judgment Filed By: Defendant Wilmington Savings Fund Society FSB <i>[16] Defendant Wilmington Savings Fund Society, FSB Solely as Owner Trustee for CSMC 2017-RPL2 Trust's Motion to Dismiss For Failure to State a Claim Upon Which Relief May Be Granted and To Lift Stay, Or, in the Alternative, Motion for Summary Judgment</i> |
| 11/19/2021 |  Clerk's Notice of Hearing <i>[17] Notice of Hearing</i> |

CASE SUMMARY

CASE NO. A-21-841665-C

12/02/2021



Opposition to Motion to Dismiss

Filed By: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro
[18] Opposition to Defendant Wilmington Savings Fund Society, FSB Soley as Owner Trustee for CSMC 2017 RPL2 Trust's Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted and to Lift Stay, or, in the Alternative, Motion for Summary Judgment and Countermotion for 56(d)

12/14/2021



Reply

Filed by: Defendant Wilmington Savings Fund Society FSB
[19] Defendant s: (1) Reply to Plaintiff's Opposition to Motion to Dismiss For Failure to State a Claim Upon Which Relief May Be Granted and To Lift Stay, Or, in the Alternative, Motion for Summary Judgment; and, (2) Opposition to Countermotion For Rule 56(d)

12/17/2021



Notice of Hearing

[20] Instructions for BlueJeans VideoConferencing

01/14/2022



Order Granting Motion

[21] Order Granting Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief may be Granted With Prejudice and Lifting Stay of Foreclosure Proceedings

01/14/2022



Notice of Entry of Order

Filed By: Defendant Wilmington Savings Fund Society FSB
[22] Notice of Entry of Order Granting Defendant Wilmington Savings Fund Society, FSB Soley as Owner Trustee for CSMC 2017-RPL2 Trust's Motion to Dismiss for Failure to State a Claim upon Which Relief May Be Granted, with Prejudice and, (2) Lifting Stay of Foreclosure Proceedings

02/10/2022



Notice of Appeal

Filed By: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro
[23] Plaintiff's Notice of Appeal

02/10/2022



Case Appeal Statement

Filed By: Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro
[24] Case Appeal Statement

HEARINGS

10/07/2021



Motion for Temporary Restraining Order (9:30 AM) (Judicial Officer: Barisich, Veronica M.)

[6] Order Shortening Time for Hearing of Ex parte Motion for Temporary Restraining Order and Preliminary Injunction to Enjoin Forclosure Sale to be Held on October 15, 2021

Motion Granted;

Journal Entry Details:

Court stated no Defendant is present and provided an overview of the matter. Mr. Benner advised an Affidavit of Service was filed on September 29, 2021, which supports the Complaint and the Motion for Temporary Restraining Order was served on Defendant at Delaware Avenue, Wilmington, Delaware. Further, Mr. Benner advised the Plaintiff is requesting a Temporary Restraining Order based on the underlying Deed of Trust was extinguished pursuant to NRS 106.240 and therefore there is no basis for the foreclosure. COURT stated it FINDS that pursuant to NRC 65(a) a temporary restraining order may be issued if Plaintiff will suffer an immediate and irreparable injury and Plaintiff provided sufficient reasons. Here, should Defendant move forward with the sale of the real property, Plaintiff will suffer an immediate and irreparable injury. Further, Defendant was personally served with all of the pleadings and failed to file an objection or appear at today's hearing to oppose the Motion. Plaintiff has met its burden for a temporary restraining order. The bond amount shall be set at \$500.00 as that is deemed appropriate, ORDERED, Motion GRANTED. COURT further stated it FINDS the Defendant has not appeared nor opposed the Motion and pursuant to EDCR 2.20 (e), ORDERED, Preliminary Injunction GRANTED. Mr. Benner to prepare and submit the Order.;

CASE SUMMARY

CASE NO. A-21-841665-C

12/21/2021

Motion to Dismiss (9:30 AM) (Judicial Officer: Barisich, Veronica M.)

Defendant Wilmington Savings Fund Society, FSB Solely as Owner Trustee for CSMC 2017-RPL2 Trust s Motion to Dismiss For Failure to State a Claim Upon Which Relief May Be Granted and To Lift Stay, Or, in the Alternative, Motion for Summary Judgment

12/30/2021



Minute Order (3:00 AM) (Judicial Officer: Barisich, Veronica M.)

Minute Order - No Hearing Held;

Journal Entry Details:

The Court notes that Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief may be Granted and to Lift Stay, or, in the Alternative, Motion for Summary Judgment was heard on December 21, 2021. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After carefully considering the evidence and arguments submitted and good cause appearing, the COURT FINDS and ORDERS as follows: NRCP 12(b)(5) governs a motion to dismiss for failure to state a claim upon which relief can be granted. The court must accept all factual allegations in the complaint as true, and draw all inferences in the plaintiff's favor. Buzz Stew, LLC v. City of Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of the legally sufficient claim and relief requested. Breliant v. Preferred Equities Corp., 109 Nev. 842, 846, 858 P.3d 1258, 1260 (1993). Dismissal is proper if it appears beyond a doubt that [plaintiff] could prove no set of facts, which, if true, would entitle it to relief. Buzz Stew, 124 Nev. at 228, 181 P.3d 672. Additionally, NRCP 8(a) allows notice pleading, where all that is required in a complaint is a short and plain statement of the grounds for the court's jurisdiction, claim showing that the pleader is entitled to relief, a demand for the relief sought, and at least \$15,000 in monetary damages sought. "As a general rule, the court may not consider matters outside the pleading being attacked." Breliant v. Preferred Equities Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). "However, the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." Id. Additionally, "a document is not outside the complaint if the complaint specifically refers to the document and if its authenticity is not questioned." Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir.1994), overruled on other grounds by Galbraith v. Cnty. of Santa Clara, 307 F.3d 1119, 1125 26 (9th Cir.2002). Material which is properly submitted as part of the complaint may be considered on a motion to dismiss. Hal Roach Studios Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). The document is not "outside" the complaint if the complaint specifically refers to the document and if its authenticity is not questioned. Branch v. Tunnell, 14 F. 3d 449, 453 (9th Cir. 1994). If matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. NRCP 12(d). A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Villesscas v. CNA Ins. Companies., 109 Nev. 1075, 1078, 864 P.2d 288, 290 (1993). NRS 106.240 states, in relevant parts, "the lien created of any mortgage or deed of trust upon any real property . Shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the term thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged." This statute was interpreted as to create "a conclusive presumption that a lien on real property is extinguished ten years after the debt becomes due." Pro-Max Corp. v. Feenstra, 117 Nev. 90, 16 P.3d 1074 (2001). Under Glass v. Select Portfolio Servicing, Inc., 466 P.3d 939, 2020 WL 3604042 (2020)(unpublished), the Nevada Supreme Court confirmed that a rescission of a notice of default operates to restore the parties to their previous positions before a notice of default was recorded. See Johnston v. U.S. bank National Association as Trustee for TBW Mortgage-Backed Trust Series 2006-5, 466 P.3d 945, 2020 WL 3832873 (Ct. App., 2020) ("rescission of a notice of default restores a beneficiary to the position it occupied before the notice of default was recorded the deed of trust implicitly authorizes such action by providing [the holder of the deed of trust] with discretion to foreclose or pursue other remedies if a default is not cured after a notice of default is recorded."). A phrase "rescind, cancel and withdraw the notice of default" was deemed sufficient. Id; Bank of America, NA v. SFR Investments Pool 1, LLC, 849 Fed.Appx. 211 (9th Cir. 2021); Valin v. Nationstar Mortgage, LLC, 2020 WL 4606662 (D. Nev. 2020); 121 Sourcing & Supply, LLC v. Bank of New York Mellon, 2021 WL 2383221 (D. Nev. 2021); Florendo v. Bank of New York Mellon, 2021 WL 3708048 (D. Nev. 2021); Closson v. Bank of New York Mellon, 2021 WL 3723154 (D. Nev. 2021); TRP Fund V, LLC v. Nationstar Mortgage, LLC, 2021 WL 1225958 (D. Nev. 2021). A notice of rescission renders moot

CASE SUMMARY

CASE NO. A-21-841665-C

disputes concerning the notice of default or its timing. *Holt v. Regional Trustee Services Corp.*, 127 Nev. 886, 266 P.3d 602 (2011). The Court FINDS and CONCLUDES that according to the Notice of Default and Election to Sell, recorded on June 28, 2011, on page 3, first paragraph, Defendant "declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby." Thus, based on the express terms of this notice, this triggered the NRS 106.240 as the notice sought repayment of the entire loan amount secured by the deed of trust and thus, the loan became accelerated. Thus, under NRS 106.240, Defendant had until June 28, 2021 to decelerate the note. The Court FINDS and CONCLUDES that the Notice of Rescission recorded on December 19, 2011, on page 2, first paragraph states that Defendant "does hereby rescind, cancel and withdraw said Declaration of Default it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach of default under said Deed of Trust, or as impairing any right or remedy thereunder, but is, and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Declaration and Notice all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given." Under Glass, which involved a notice of rescission that included the substantially similar phrase "rescind, cancel and withdraw said Declaration of Default" without the use of the word "deceleration" was deemed sufficient to act as rescission of the acceleration of the note. Moreover, in the instant case, the Notice of Rescission also states that "all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given." This conclusively shows that the notice acted to decelerate the note, restoring the parties to their previous position, and the terms of the deed of trust are reinstated. Thus, NRS 106.240 presumption does not apply. The Court FINDS and CONCLUDES that as to Plaintiff's claims for slander of title and misrepresentation/fraud, based on the Court's ruling regarding the effect of the Notice of Rescission and inapplicability of NRS 106.240, these claims are not viable. The Court FINDS and CONCLUDES that in reaching the instant decision, the Court relied solely on the Complaint and the publically recorded documents, which were also referenced in the Complaint itself. Specifically, the Deed of Trust recorded on June 27, 2005, Notice of Default and Election to Sell recorded on June 28, 2011, and Notice of Rescission recorded on December 19, 2011. The authenticity of these documents is not being questioned. Thus, the Court reviewed and based its ruling on the motion to dismiss based on these documents. In making this ruling, the Court did not rely on the declaration submitted by Defendant, which did contain some factual allegations that were not made in the Complaint. Thus, the motion was not converted into a motion for summary judgment. As this is not a motion for summary judgment, Plaintiff's request for NRCP 56(d) relief cannot be granted. Furthermore, it is unclear what additional discovery will assist Plaintiff. The COURT ORDERS that Defendant's Motion shall be GRANTED. The case shall be dismissed with prejudice. Plaintiff's request for NRCP 56(d) relief is denied. Counsel for Defendant is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Plaintiff's counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 14 days consistent with the AO 21-04 and EDCR 7.21. CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 12-30-21 ;

DATE

FINANCIAL INFORMATION

Defendant Wilmington Savings Fund Society FSB

Total Charges 444.00

Total Payments and Credits 444.00

Balance Due as of 2/14/2022 0.00

Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro

Total Charges 297.50

Total Payments and Credits 297.50

Balance Due as of 2/14/2022 0.00

DISTRICT COURT CIVIL COVER SHEET

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

CASE NO: A-21-841665-C
Department 5

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

| | |
|------------------------------------|------------------------------------|
| Plaintiff(s) (name/address/phone): | Defendant(s) (name/address/phone): |
| | |
| | |
| | |
| Attorney (name/address/phone): | Attorney (name/address/phone): |
| | |
| | |
| | |

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

Civil Case Filing Types

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

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

Date



Signature of initiating party or representative

See other side for family-related case filings.

SMITH LARSEN & WIXOM

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Email: kfl@slwlaw.com
kln@slwlaw.com
Attorneys for Defendant
Wilmington Savings Fund Society, FSB,
Solely As Owner Trustee
for CSMC 2017-RPL2 Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 2818 CALLE
DEL ORO, a Nevada Limited Liability
Company,

Plaintiff,

v.

WILMINGTON SAVINGS FUND SOCIETY,
FSB, NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS OWNER TRUSTEE FOR
CSMC 2017-RPL2 TRUST, a National
Association; DOE individuals I through XX;
and ROE CORPORATIONS I through XX,

Defendants.

Case No. A-21-841665-C
Dept. No. 5

ORDER:

**(1) GRANTING DEFENDANT
WILMINGTON SAVINGS FUND
SOCIETY, FSB SOLELY AS OWNER
TRUSTEE FOR CSMC 2017-RPL2
TRUST'S MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED,
WITH PREJUDICE;
AND,
(2) LIFTING STAY OF
FORECLOSURE PROCEEDINGS**

21

**Date of Hearing: December 19, 2021
Time of Hearing: 9:30 a.m.**

\\

\\

The Court:

(i) having reviewed the Motion to Dismiss For Failure to State a Claim Upon Which Relief May Be Granted and To Lift Stay, Or, in the Alternative, Motion for Summary Judgment, filed with the Court on November 18, 2021 (the “Motion”) by Defendant Wilmington Savings Fund Society, FSB Solely as Owner Trustee for CSMC 2017-RPL2 Trust (the “CSMC 2017-RPL2 Trust”);

(ii) having reviewed Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro’s Opposition to Motion to Dismiss For Failure to State a Claim Upon Which Relief May Be Granted and To Lift Stay, Or, in the Alternative, Motion for Summary Judgment and Countermotion For Rule 56(d), filed by Plaintiff on December 2, 2021 (the “Opposition”);

(iii) having reviewed the CSMC 2017-RPL2 Trust’s reply brief filed on December 14, 2021;

(iv) having heard the oral argument of counsel for the parties at the hearing on the Motion, conducted on December 19, 2021; and,

(v) having considered and reviewed the pleadings and papers on file in this matter, and having evaluated the record herein on the issues raised in connection with the Motion and Opposition, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court adopts the following findings of fact relative to the issues pending before the Court in the above captioned matter and arising from the Motion and Opposition:

(a) This action involves the real property commonly known as 2818 Calle Del Oro, Las Vegas, Nevada 89120 (APN 162-25-111-002) (the “Property”);

(b) On or about July 27, 2005, Yana L. Velinova (“Velinova”) acquired title to the Property in the capacity of “an unmarried woman, as her Sole and Separate Property;

(c) In connection with her acquisition of the Property, Velinova obtained a \$133,000 loan from Allied Home Mortgage Capital Corporation, a Tennessee corporation (“Allied”), which loan was secured by that certain Deed of Trust, dated July 22, 2005, recorded in the Official Records of the Clark County, Nevada Recorder on July 27, 2005 as Document 20050727-0004389 (the “Deed of Trust”);

(d) The current beneficiary under the Deed of Trust is the Defendant CSMC 2017-RPL2 Trust, arising from a Corporate Assignment of Deed of Trust recorded in the Official Records of the Clark County, Nevada Recorder on November 24, 2011, as Document 20201124-0000453;

(e) On June 28, 2011, a Notice of Default and Election To Sell Under Deed of Trust was recorded in the Official Records of the Clark County, Nevada Recorder as Document 20110628-0001383 (the “2011 NOD”) regarding the Deed of Trust and the Property;

(f) The 2011 NOD (at page 3) states that the beneficiary under the Deed of Trust:
“...has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.”

(g) On December 19, 2011, a Notice of Rescission of Declaration Of Default and Demand For Sale and of Notice of Breach and Election To Cause Sale with respect to the 2011 NOD, was recorded in the Official Records of the Clark County, Nevada Recorder as Document 20111219-0001908 (the “2011 Rescission”);

(h) The 2011 Rescission expressly stated:
“NOW THEREFORE, NOTICE IS HEREBY GIVEN that Beneficiary, does hereby rescind, cancel and withdraw said Declaration of Default and Demand

for Sale and said Notice of Breach and Election to Cause Sale; it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach or default – past, present or future under said Deed of Trust, or as impairing any right or remedy thereunder, but is and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Declaration and Notice, and shall nowise jeopardize or impair any right, remedy or privilege secured to the Beneficiary and/or the Trustee, under said Deed of Trust, nor modify nor alter in any respect any of the terms, covenants, conditions or obligations thereof, and said Deed of Trust and all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given”;

(i) Plaintiff’s interest in the Property arises from being the successful bidder at a San Remo Home Owners’ Association foreclosure sale which occurred on November 3, 2020, as evidenced by the Foreclosure Deed recorded on January 7, 2021 in the Official Records of the Clark County, Nevada Recorder, as Document 20210107-0000561;

(j) On May 14, 2021, a Notice of Breach and Default and Election To Cause Sale of Real Property Under Deed of Trust was recorded in the Official Records of the Clark County, Nevada Recorder as Document 20210514-0002162 (the “2021 NOD”);

(k) On September 3, 2021, a Notice of Trustee’s Sale under the Deed of Trust and the 2021 NOD was recorded in the Official Records of the Clark County, Nevada Recorder as Document 20210903-0002736 (the “2021 NOS”), which established a foreclosure sale date of October 15, 2021;

(l) Plaintiff filed its Complaint in this action on September 24, 2021, and alleged claims for relief for “quiet title/declaratory relief,” “slander of title,” and “fraud/misrepresentation,”

(m) Defendant CSMC 2017-RPL2 Trust’s pending non-judicial foreclosure sale of the Property arising under the 2021 NOD and the 2021 NOS has been stayed pending further order of the Court;

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court adopts
2 the following conclusions of law relative to the issues pending before the Court in the above
3 captioned matter and arising from the Motion and Opposition:

4
5 (1) NRCP 12(b)(5) governs a motion to dismiss for failure to state a claim upon
6 which relief can be granted; the court must accept all factual allegations in the complaint
7 as true, and draw all inferences in the plaintiff's favor (*Buzz Stew, LLC v. City of Las*
8 *Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); the test for determining
9 whether the allegations of a complaint are sufficient to assert a claim for relief is whether
10 the allegations give fair notice of the nature and basis of the legally sufficient claim and
11 relief requested (*Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.3d
12 1258, 1260 (1993); and dismissal is proper if it appears beyond a doubt that [plaintiff]
13 could prove no set of facts, which, if true, would entitle it to relief (*Buzz Stew*, 124 Nev.
14 at 228, 181 P.3d 672);

15
16 (2) NRS 106.240 states, in relevant part, “the lien created of any mortgage or deed
17 of trust upon any real property... and not otherwise satisfied and discharged of record,
18 shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust
19 according to the term thereof or any recorded written extension thereof become wholly
20 due, terminate, and it shall be conclusively presumed that the debt has been regularly
21 satisfied and the lien discharged”;

22
23 (3) NRS 106.240 was interpreted as to create “a conclusive presumption that a lien
24 on real property is extinguished ten years after the debt becomes due” (*Pro-Max Corp.*
25 *v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001));

26
27 (4) Under *Glass v. Select Portfolio Servicing, Inc.*, 466 P.3d 939, 2020 WL 3604042
28 (2020)(unpublished), the Nevada Supreme Court confirmed that a rescission of a notice

of default operates to restore the parties to their previous positions before a notice of default was recorded;¹

(5) The 2011 NOD triggered the ten-year timeframe under NRS 106.240, as this notice sought repayment of the entire loan amount secured by the Deed of Trust, and, therefore, the loan secured by the Deed of Trust became accelerated and Defendant CSMC 2017-RPL2 Trust had until June 28, 2021 to decelerate the promissory note secured by the Deed of Trust;

(6) A notice of rescission renders moot disputes concerning the notice of default or its timing (*Holt v. Regional Trustee Services Corp.*, 127 Nev. 886, 266 P.3d 602 (2011));

(7) The 2011 Rescission (recorded on December 19, 2011) acted to decelerate the promissory note, thereby restoring the parties to their previous positions, and the terms of the Deed of Trust were reinstated;²

¹ See also *Johnston v. U.S. Bank National Association as Trustee for TBW Mortgage-Backed Trust Series 2006-5*, 466 P.3d 945, 2020 WL 3832873 (Nev. Ct. App., 2020) (“rescission of a notice of default restores a beneficiary to the position it occupied before the notice of default was recorded the deed of trust implicitly authorizes such action by providing [the holder of the deed of trust] with discretion to foreclose or pursue other remedies if a default is not cured after a notice of default is recorded.”). A phrase “rescind, cancel and withdraw the notice of default” was deemed sufficient. *Id.*; *Bank of America, NA v. SFR Investments Pool 1, LLC*, 849 Fed.Appx. 211 (9th Cir. 2021); *Valin v. Nationstar Mortgage, LLC*, 2020 WL 4606662 (D. Nev. 2020); *121 Sourcing & Supply, LLC v. Bank of New York Mellon*, 2021 WL 2383221 (D. Nev. 2021); *Florendo v. Bank of New York Mellon*, 2021 WL 3708048 (D. Nev. 2021); *Closson v. Bank of New York Mellon*, 2021 WL 3723154 (D. Nev. 2021); *TRP Fund V, LLC v. Nationstar Mortgage, LLC*, 2021 WL 1225958 (D. Nev. 2021).

² Under *Glass*, which involved a notice of rescission that included the substantially similar phrase “rescind, cancel and withdraw said Declaration of Default” without the use of the word “deceleration” was deemed sufficient to act as rescission of the acceleration of the promissory note. Additionally, the 2011 Rescission also states that “all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given.” This conclusively shows that the 2011 Rescission acted to decelerate the promissory note, restoring the parties to their previous position and the terms of the Deed of Trust were reinstated. Thus, any NRS 106.240 presumption does not apply in this instance.

(8) In light of the foregoing, none of the claims for relief in Plaintiff's Complaint are viable as all such claims are based on the assumption/predicate that the ten-year time period under NRS 106.240 has run/has expired, and the Court has expressly determined that the 2011 Rescission acted to decelerate the promissory note, restoring the parties to their previous position and reinstating the terms of the Deed of Trust;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court's Findings of Fact and Conclusions of Law were generated solely from reliance on Plaintiff's Complaint and the publicly recorded documents (the authenticity of these publicly recorded documents not being questioned), and the Court did not rely on the on the declaration submitted by Defendant CSMC 2017-RPL2 Trust (which contained factual allegations that were not made in the Complaint), and, therefore, the Motion was not converted into a motion for summary judgment;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's countermotion for NRCP Rule 56(d) relief is denied, as the Motion was not a motion for summary judgment and it is further unclear to the Court what additional discovery would assist Plaintiff in any event;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in light of all of the foregoing, the Motion is granted, and this case shall be dismissed, with prejudice, as the Complaint fails to state a claim upon which relief may be granted;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any stay entered by this Court regarding any non-judicial foreclosure proceedings arising under the Deed of Trust regarding the Property (as initiated by Defendant CSMC 2017-RPL2 Trust, and which were the subject of a request for injunctive relief by Plaintiff in this matter) are hereby terminated, and any such proceedings are allowed to move forward and be concluded;

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that upon entry of this
2 order, the Clerk of the Court is directed to close this case.

3
4 Dated this _____ day of January, 2022.

5 Dated this 14th day of January, 2022

6 

7 DISTRICT COURT JUDGE

8 Submitted By:

19A D97 9198 B4C6
Veronica M. Barisich
District Court Judge

9 SMITH LARSEN & WIXOM

10
11 /s/ Kent F. Larsen

12 Kent F. Larsen, Esq.
13 Nevada Bar No. 3463
14 Karl L. Nielson, Esq.
15 Nevada Bar No. 5082
16 1935 Village Center Circle
17 Las Vegas, Nevada 89134
18 Attorneys for Defendant
19 Wilmington Savings Fund Society, FSB,
20 Solely As Owner Trustee for
21 CSMC 2017-RPL2 Trust

22 Reviewed By:

23 ROGER P. CROTEAU & ASSOCIATES, LTD.

24 /s/ Christopher L. Benner

25 Roger P. Croteau, Esq.
26 Nevada Bar No. 4958
27 Christopher L. Benner, Esq.
28 Nevada Bar No. 8963
2810 W. Charleston Blvd. Suite 75
Las Vegas, Nevada 89102
Attorneys for Plaintiff
Saticoy Bay LLC Series 2818 Calle Del Oro

Jana Rivard

From: Chris Benner <chris@croteaulaw.com>
Sent: Thursday, January 13, 2022 4:05 PM
To: Kent Larsen
Cc: Jana Rivard
Subject: Saticoy Bay LLC Series 2818 Calle Del Oro v. Wilmington Savings Fund Society, FSB, as Trustee; Clark County Case No. A-21-841665-C

Yes, you may use my e-signature for Calle del Oro. Thank you.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

The information contained in this email message is intended for the personal and confidential use of the intended recipient(s) only. This message may be an attorney/client communication and therefore privileged and confidential. If the reader of this message is not the intended recipient, you are hereby notified that any review, use, dissemination, forwarding, or copying of this message is strictly prohibited. If you have received this message in error, please notify us immediately by reply email or telephone and delete the original message and any attachments from your system. Please note that nothing in the accompanying communication is intended to qualify as an "electronic signature."

From: Kent Larsen <kfl@slwlaw.com>
Sent: Thursday, January 13, 2022 4:01 PM
To: Chris Benner <chris@croteaulaw.com>
Cc: Jana Rivard <jlr@slwlaw.com>
Subject: Saticoy Bay LLC Series 2818 Calle Del Oro v. Wilmington Savings Fund Society, FSB, as Trustee; Clark County Case No. A-21-841665-C

Chris,

Per our exchange of emails, please confirm via return email that I may use your electronic signature and submit the attached form to the court.

Thank you,

Kent F. Larsen
Smith Larsen & Wixom
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134
PH 702.252.5002
FAX 702.252.5006

This e-mail communication contains confidential information which may be protected by the attorney-client privilege and/or work-product doctrine. Access to this e-mail by anyone other than the intended recipient is prohibited, and may be unlawful. If you received this communication in error, please notify us immediately and destroy this communication and all attachments.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Saticoy Bay LLC Series 2818
Calle Del Oro, Plaintiff(s)

CASE NO: A-21-841665-C

7 vs.

DEPT. NO. Department 5

8
9 Wilmington Savings Fund
Society FSB, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 1/14/2022

16 Kent Larsen

kfl@slwlaw.com

17 Karl Nielson

kln@slwlaw.com

18 Jana Rivard

jl原因@slwlaw.com

19 Roger Croteau

croteaulaw@croteaulaw.com

20 Croteau Admin

receptionist@croteaulaw.com

21 Christopher Benner

chris@croteaulaw.com

23

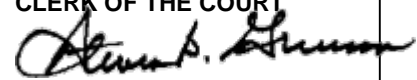
24

25

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27

28



NEOJ

Kent F. Larsen, Esq.
Nevada Bar No. 3463
Karl L. Nielson, Esq.
Nevada Bar No. 5082
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Attorneys for Defendant
Wilmington Savings Fund Society, FSB,
Solely As Owner Trustee for
CSMC 2017-RPL2 Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 2818 CALLE
DEL ORO, a Nevada Limited Liability
Company,

Plaintiff,

v.

WILMINGTON SAVINGS FUND SOCIETY,
FSB, NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS OWNER TRUSTEE FOR
CSMC 2017-RPL2 TRUST, a National
Association; DOE individuals I through XX;
and ROE CORPORATIONS I through XX,

Defendants.

CASE NO. A-21-841665-C
DEPT. NO. 5

**NOTICE OF ENTRY OF ORDER (1)
GRANTING DEFENDANT
WILMINGTON SAVINGS FUND
SOCIETY, FSB SOLELY AS OWNER
TRUSTEE FOR CSMC 2017-RPL2
TRUST'S MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED,
WITH PREJUDICE;
AND,
(2) LIFTING STAY OF FORECLOSURE
PROCEEDINGS**

\\

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\\

1 NOTICE IS HEREBY GIVEN that the attached Order Granting Defendant Wilmington
2 Savings Fund Society, FSB Solely as Owner Trustee for CSMC 2017-RPL2 Trust's Motion to
3 Dismiss for Failure to State a Claim upon Which Relief May Be Granted, with Prejudice and,
4
5 (2) Lifting Stay of Foreclosure was entered by the Court on the 14th day of January, 2022.

6 DATED this 14th day of January, 2022.

7 SMITH LARSEN & WIXOM

8 /s/ Kent F. Larsen

9 Kent F. Larsen, Esq.

10 Nevada Bar No. 3463

11 Karl L. Nielson, Esq.

12 Nevada Bar No. 5082

13 1935 Village Center Circle

14 Las Vegas, Nevada 89134

15 Attorneys for Defendant

16 Wilmington Savings Fund Society, FSB,

17 Solely As Owner Trustee for

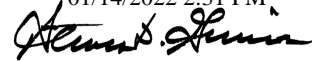
18 CSMC 2017-RPL2 Trust
19
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of January, 2022, a true copy of the foregoing
**Notice of Entry of Order Granting Defendant Wilmington Savings Fund Society, FSB
Solely as Owner Trustee for CSMC 2017-RPL2 Trust's Motion to Dismiss for Failure to
State a Claim upon Which Relief May Be Granted, with Prejudice and, (2) Lifting Stay of
Foreclosure Proceedings** was filed and served electronically via the Court's electronic filing
system, to the following pursuant to NEFCR 9:

Roger P. Croteau, Esq.
Timothy E. Rhoda, Esq.
Christopher L. Benner, Esq.
Nevada Bar No. 8963
Roger P. Croteau & Associates, Ltd.
2810 W. Charleston Blvd., #75
Las Vegas, Nevada 89102
croteaulaw@croteaulaw.com
Attorney for Plaintiff

/s/ Jana L. Rivard
an employee of Smith Larsen & Wixom



CLERK OF THE COURT

SMITH LARSEN & WIXOM

ATTORNEYS
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1935 VILLAGE CENTER CIRCLE
LAS VEGAS, NEVADA 89134
TEL (702) 252-5002 • FAX (702) 252-5006

OGM

Kent F. Larsen, Esq.
Nevada Bar No. 3463
Karl L. Nielson, Esq.
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Email: kfl@slwlaw.com
kln@slwlaw.com
Attorneys for Defendant
Wilmington Savings Fund Society, FSB,
Solely As Owner Trustee
for CSMC 2017-RPL2 Trust

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 2818 CALLE
DEL ORO, a Nevada Limited Liability
Company,

Plaintiff,

v.

WILMINGTON SAVINGS FUND SOCIETY,
FSB, NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS OWNER TRUSTEE FOR
CSMC 2017-RPL2 TRUST, a National
Association; DOE individuals I through XX;
and ROE CORPORATIONS I through XX,

Defendants.

Case No. A-21-841665-C
Dept. No. 5

ORDER:

**(1) GRANTING DEFENDANT
WILMINGTON SAVINGS FUND
SOCIETY, FSB SOLELY AS OWNER
TRUSTEE FOR CSMC 2017-RPL2
TRUST'S MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MAY BE GRANTED,
WITH PREJUDICE;
AND,
(2) LIFTING STAY OF
FORECLOSURE PROCEEDINGS**

21

**Date of Hearing: December 19, 2021
Time of Hearing: 9:30 a.m.**

\\

\\

The Court:

(i) having reviewed the Motion to Dismiss For Failure to State a Claim Upon Which Relief May Be Granted and To Lift Stay, Or, in the Alternative, Motion for Summary Judgment, filed with the Court on November 18, 2021 (the “Motion”) by Defendant Wilmington Savings Fund Society, FSB Solely as Owner Trustee for CSMC 2017-RPL2 Trust (the “CSMC 2017-RPL2 Trust”);

(ii) having reviewed Plaintiff Saticoy Bay LLC Series 2818 Calle Del Oro’s Opposition to Motion to Dismiss For Failure to State a Claim Upon Which Relief May Be Granted and To Lift Stay, Or, in the Alternative, Motion for Summary Judgment and Countermotion For Rule 56(d), filed by Plaintiff on December 2, 2021 (the “Opposition”);

(iii) having reviewed the CSMC 2017-RPL2 Trust’s reply brief filed on December 14, 2021;

(iv) having heard the oral argument of counsel for the parties at the hearing on the Motion, conducted on December ²¹~~19~~, 2021; and,

(v) having considered and reviewed the pleadings and papers on file in this matter, and having evaluated the record herein on the issues raised in connection with the Motion and Opposition, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court adopts the following findings of fact relative to the issues pending before the Court in the above captioned matter and arising from the Motion and Opposition:

(a) This action involves the real property commonly known as 2818 Calle Del Oro, Las Vegas, Nevada 89120 (APN 162-25-111-002) (the “Property”);

(b) On or about July 27, 2005, Yana L. Velinova (“Velinova”) acquired title to the Property in the capacity of “an unmarried woman, as her Sole and Separate Property;

(c) In connection with her acquisition of the Property, Velinova obtained a \$133,000 loan from Allied Home Mortgage Capital Corporation, a Tennessee corporation (“Allied”), which loan was secured by that certain Deed of Trust, dated July 22, 2005, recorded in the Official Records of the Clark County, Nevada Recorder on July 27, 2005 as Document 20050727-0004389 (the “Deed of Trust”);

(d) The current beneficiary under the Deed of Trust is the Defendant CSMC 2017-RPL2 Trust, arising from a Corporate Assignment of Deed of Trust recorded in the Official Records of the Clark County, Nevada Recorder on November 24, 2011, as Document 20201124-0000453;

(e) On June 28, 2011, a Notice of Default and Election To Sell Under Deed of Trust was recorded in the Official Records of the Clark County, Nevada Recorder as Document 20110628-0001383 (the “2011 NOD”) regarding the Deed of Trust and the Property;

(f) The 2011 NOD (at page 3) states that the beneficiary under the Deed of Trust:
“...has declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby.”

(g) On December 19, 2011, a Notice of Rescission of Declaration Of Default and Demand For Sale and of Notice of Breach and Election To Cause Sale with respect to the 2011 NOD, was recorded in the Official Records of the Clark County, Nevada Recorder as Document 20111219-0001908 (the “2011 Rescission”);

(h) The 2011 Rescission expressly stated:
“NOW THEREFORE, NOTICE IS HEREBY GIVEN that Beneficiary, does hereby rescind, cancel and withdraw said Declaration of Default and Demand

for Sale and said Notice of Breach and Election to Cause Sale; it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach or default – past, present or future under said Deed of Trust, or as impairing any right or remedy thereunder, but is and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Declaration and Notice, and shall nowise jeopardize or impair any right, remedy or privilege secured to the Beneficiary and/or the Trustee, under said Deed of Trust, nor modify nor alter in any respect any of the terms, covenants, conditions or obligations thereof, and said Deed of Trust and all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given”;

(i) Plaintiff’s interest in the Property arises from being the successful bidder at a San Remo Home Owners’ Association foreclosure sale which occurred on November 3, 2020, as evidenced by the Foreclosure Deed recorded on January 7, 2021 in the Official Records of the Clark County, Nevada Recorder, as Document 20210107-0000561;

(j) On May 14, 2021, a Notice of Breach and Default and Election To Cause Sale of Real Property Under Deed of Trust was recorded in the Official Records of the Clark County, Nevada Recorder as Document 20210514-0002162 (the “2021 NOD”);

(k) On September 3, 2021, a Notice of Trustee’s Sale under the Deed of Trust and the 2021 NOD was recorded in the Official Records of the Clark County, Nevada Recorder as Document 20210903-0002736 (the “2021 NOS”), which established a foreclosure sale date of October 15, 2021;

(l) Plaintiff filed its Complaint in this action on September 24, 2021, and alleged claims for relief for “quiet title/declaratory relief,” “slander of title,” and “fraud/misrepresentation,”

(m) Defendant CSMC 2017-RPL2 Trust’s pending non-judicial foreclosure sale of the Property arising under the 2021 NOD and the 2021 NOS has been stayed pending further order of the Court;

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court adopts
2 the following conclusions of law relative to the issues pending before the Court in the above
3 captioned matter and arising from the Motion and Opposition:

4 (1) NRCP 12(b)(5) governs a motion to dismiss for failure to state a claim upon
5 which relief can be granted; the court must accept all factual allegations in the complaint
6 as true, and draw all inferences in the plaintiff's favor (*Buzz Stew, LLC v. City of Las*
7 *Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008); the test for determining
8 whether the allegations of a complaint are sufficient to assert a claim for relief is whether
9 the allegations give fair notice of the nature and basis of the legally sufficient claim and
10 relief requested (*Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.3d
11 1258, 1260 (1993); and dismissal is proper if it appears beyond a doubt that [plaintiff]
12 could prove no set of facts, which, if true, would entitle it to relief (*Buzz Stew*, 124 Nev.
13 at 228, 181 P.3d 672);

14 (2) NRS 106.240 states, in relevant part, “the lien created of any mortgage or deed
15 of trust upon any real property... and not otherwise satisfied and discharged of record,
16 shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust
17 according to the term thereof or any recorded written extension thereof become wholly
18 due, terminate, and it shall be conclusively presumed that the debt has been regularly
19 satisfied and the lien discharged”;

20 (3) NRS 106.240 was interpreted as to create “a conclusive presumption that a lien
21 on real property is extinguished ten years after the debt becomes due” (*Pro-Max Corp.*
22 *v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001));

23 (4) Under *Glass v. Select Portfolio Servicing, Inc.*, 466 P.3d 939, 2020 WL 3604042
24 (2020)(unpublished), the Nevada Supreme Court confirmed that a rescission of a notice
25
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28

of default operates to restore the parties to their previous positions before a notice of default was recorded;¹

(5) The 2011 NOD triggered the ten-year timeframe under NRS 106.240, as this notice sought repayment of the entire loan amount secured by the Deed of Trust, and, therefore, the loan secured by the Deed of Trust became accelerated and Defendant CSMC 2017-RPL2 Trust had until June 28, 2021 to decelerate the promissory note secured by the Deed of Trust;

(6) A notice of rescission renders moot disputes concerning the notice of default or its timing (*Holt v. Regional Trustee Services Corp.*, 127 Nev. 886, 266 P.3d 602 (2011));

(7) The 2011 Rescission (recorded on December 19, 2011) acted to decelerate the promissory note, thereby restoring the parties to their previous positions, and the terms of the Deed of Trust were reinstated;²

¹ See also *Johnston v. U.S. Bank National Association as Trustee for TBW Mortgage-Backed Trust Series 2006-5*, 466 P.3d 945, 2020 WL 3832873 (Nev. Ct. App., 2020) (“rescission of a notice of default restores a beneficiary to the position it occupied before the notice of default was recorded the deed of trust implicitly authorizes such action by providing [the holder of the deed of trust] with discretion to foreclose or pursue other remedies if a default is not cured after a notice of default is recorded.”). A phrase “rescind, cancel and withdraw the notice of default” was deemed sufficient. *Id.*; *Bank of America, NA v. SFR Investments Pool 1, LLC*, 849 Fed.Appx. 211 (9th Cir. 2021); *Valin v. Nationstar Mortgage, LLC*, 2020 WL 4606662 (D. Nev. 2020); *121 Sourcing & Supply, LLC v. Bank of New York Mellon*, 2021 WL 2383221 (D. Nev. 2021); *Florendo v. Bank of New York Mellon*, 2021 WL 3708048 (D. Nev. 2021); *Closson v. Bank of New York Mellon*, 2021 WL 3723154 (D. Nev. 2021); *TRP Fund V, LLC v. Nationstar Mortgage, LLC*, 2021 WL 1225958 (D. Nev. 2021).

² Under *Glass*, which involved a notice of rescission that included the substantially similar phrase “rescind, cancel and withdraw said Declaration of Default” without the use of the word “deceleration” was deemed sufficient to act as rescission of the acceleration of the promissory note. Additionally, the 2011 Rescission also states that “all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given.” This conclusively shows that the 2011 Rescission acted to decelerate the promissory note, restoring the parties to their previous position and the terms of the Deed of Trust were reinstated. Thus, any NRS 106.240 presumption does not apply in this instance.

(8) In light of the foregoing, none of the claims for relief in Plaintiff's Complaint are viable as all such claims are based on the assumption/predicate that the ten-year time period under NRS 106.240 has run/has expired, and the Court has expressly determined that the 2011 Rescission acted to decelerate the promissory note, restoring the parties to their previous position and reinstating the terms of the Deed of Trust;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court's Findings of Fact and Conclusions of Law were generated solely from reliance on Plaintiff's Complaint and the publicly recorded documents (the authenticity of these publicly recorded documents not being questioned), and the Court did not rely on the on the declaration submitted by Defendant CSMC 2017-RPL2 Trust (which contained factual allegations that were not made in the Complaint), and, therefore, the Motion was not converted into a motion for summary judgment;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's countermotion for NRCP Rule 56(d) relief is denied, as the Motion was not a motion for summary judgment and it is further unclear to the Court what additional discovery would assist Plaintiff in any event;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in light of all of the foregoing, the Motion is granted, and this case shall be dismissed, with prejudice, as the Complaint fails to state a claim upon which relief may be granted;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any stay entered by this Court regarding any non-judicial foreclosure proceedings arising under the Deed of Trust regarding the Property (as initiated by Defendant CSMC 2017-RPL2 Trust, and which were the subject of a request for injunctive relief by Plaintiff in this matter) are hereby terminated, and any such proceedings are allowed to move forward and be concluded;

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that upon entry of this
2 order, the Clerk of the Court is directed to close this case.

3
4 Dated this _____ day of January, 2022.

5 Dated this 14th day of January, 2022

6 

7 DISTRICT COURT JUDGE

8 Submitted By:

19A D97 9198 B4C6
Veronica M. Barisich
District Court Judge

9 SMITH LARSEN & WIXOM

10
11 /s/ Kent F. Larsen

12 Kent F. Larsen, Esq.
13 Nevada Bar No. 3463
14 Karl L. Nielson, Esq.
15 Nevada Bar No. 5082
16 1935 Village Center Circle
17 Las Vegas, Nevada 89134
18 Attorneys for Defendant
19 Wilmington Savings Fund Society, FSB,
20 Solely As Owner Trustee for
21 CSMC 2017-RPL2 Trust

22 Reviewed By:

23 ROGER P. CROTEAU & ASSOCIATES, LTD.

24
25 /s/ Christopher L. Benner

26 Roger P. Croteau, Esq.
27 Nevada Bar No. 4958
28 Christopher L. Benner, Esq.
Nevada Bar No. 8963
2810 W. Charleston Blvd. Suite 75
Las Vegas, Nevada 89102
Attorneys for Plaintiff
Saticoy Bay LLC Series 2818 Calle Del Oro

Jana Rivard

From: Chris Benner <chris@croteaulaw.com>
Sent: Thursday, January 13, 2022 4:05 PM
To: Kent Larsen
Cc: Jana Rivard
Subject: Saticoy Bay LLC Series 2818 Calle Del Oro v. Wilmington Savings Fund Society, FSB, as Trustee; Clark County Case No. A-21-841665-C

Yes, you may use my e-signature for Calle del Oro. Thank you.

Christopher L. Benner, Esq.
Roger P. Croteau & Associates
2810 Charleston Boulevard, No. H-75
Las Vegas, NV 89102
(702) 254-7775
chris@croteaulaw.com

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From: Kent Larsen <kfl@slwlaw.com>
Sent: Thursday, January 13, 2022 4:01 PM
To: Chris Benner <chris@croteaulaw.com>
Cc: Jana Rivard <jlr@slwlaw.com>
Subject: Saticoy Bay LLC Series 2818 Calle Del Oro v. Wilmington Savings Fund Society, FSB, as Trustee; Clark County Case No. A-21-841665-C

Chris,

Per our exchange of emails, please confirm via return email that I may use your electronic signature and submit the attached form to the court.

Thank you,

Kent F. Larsen
Smith Larsen & Wixom
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134
PH 702.252.5002
FAX 702.252.5006

This e-mail communication contains confidential information which may be protected by the attorney-client privilege and/or work-product doctrine. Access to this e-mail by anyone other than the intended recipient is prohibited, and may be unlawful. If you received this communication in error, please notify us immediately and destroy this communication and all attachments.

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Saticoy Bay LLC Series 2818
7 Calle Del Oro, Plaintiff(s)

CASE NO: A-21-841665-C

8 vs.

DEPT. NO. Department 5

9 Wilmington Savings Fund
10 Society FSB, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 1/14/2022

16 Kent Larsen

kfl@slwlaw.com

17 Karl Nielson

kln@slwlaw.com

18 Jana Rivard

jl原因@slwlaw.com

19 Roger Croteau

croteaulaw@croteaulaw.com

20 Croteau Admin

receptionist@croteaulaw.com

21 Christopher Benner

chris@croteaulaw.com

23

24

25

26

27

28

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Title to Property

COURT MINUTES

October 07, 2021

| | |
|---------------|---|
| A-21-841665-C | Saticoy Bay LLC Series 2818 Calle Del Oro, Plaintiff(s) |
| | vs. |
| | Wilmington Savings Fund Society FSB, Defendant(s) |

**October 07, 2021 9:30 AM Motion for Temporary
Restraining Order**

HEARD BY: Barisich, Veronica M. **COURTROOM:** Phoenix Building 11th Floor
110

COURT CLERK: Carolyn Jackson

RECORDER: Christine Erickson

REPORTER:

PARTIES

PRESENT: Benner, Christopher L. Attorney

JOURNAL ENTRIES

- Court stated no Defendant is present and provided an overview of the matter. Mr. Benner advised an Affidavit of Service was filed on September 29, 2021, which supports the Complaint and the Motion for Temporary Restraining Order was served on Defendant at Delaware Avenue, Wilmington, Delaware. Further, Mr. Benner advised the Plaintiff is requesting a Temporary Restraining Order based on the underlying Deed of Trust was extinguished pursuant to NRS 106.240 and therefore there is no basis for the foreclosure.

COURT stated it FINDS that pursuant to NRCP 65(a) a temporary restraining order may be issued if Plaintiff will suffer an immediate and irreparable injury and Plaintiff provided sufficient reasons. Here, should Defendant move forward with the sale of the real property, Plaintiff will suffer an immediate and irreparable injury. Further, Defendant was personally served with all of the pleadings and failed to file an objection or appear at today's hearing to oppose the Motion. Plaintiff has met its burden for a temporary restraining order. The bond amount shall be set at \$500.00 as that is deemed appropriate, ORDERED, Motion GRANTED.

COURT further stated it FINDS the Defendant has not appeared nor opposed the Motion and pursuant to EDCR 2.20(e), ORDERED, Preliminary Injunction GRANTED. Mr. Benner to prepare and submit the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

| | | |
|--------------------------------|----------------------|--------------------------|
| Other Title to Property | COURT MINUTES | December 30, 2021 |
|--------------------------------|----------------------|--------------------------|

| | |
|---------------|---|
| A-21-841665-C | Saticoy Bay LLC Series 2818 Calle Del Oro, Plaintiff(s) vs. Wilmington Savings Fund Society FSB, Defendant(s) |
|---------------|---|

December 30, 2021 3:00 AM Minute Order

HEARD BY: Barisich, Veronica M.

COURTROOM: Chambers

COURT CLERK: Carolyn Jackson

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court notes that Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief may be Granted and to Lift Stay, or, in the Alternative, Motion for Summary Judgment was heard on December 21, 2021. After hearing the oral arguments, the Court took the matter UNDER ADVISEMENT. After carefully considering the evidence and arguments submitted and good cause appearing, the COURT FINDS and ORDERS as follows:

NRCP 12(b)(5) governs a motion to dismiss for failure to state a claim upon which relief can be granted. The court must accept all factual allegations in the complaint as true, and draw all inferences in the plaintiff's favor. Buzz Stew, LLC v. City of Las Vegas, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). The test for determining whether the allegations of a complaint are sufficient to assert a claim for relief is whether the allegations give fair notice of the nature and basis of the legally sufficient claim and relief requested. Breliant v. Preferred Equities Corp., 109 Nev. 842, 846, 858 P.3d 1258, 1260 (1993). Dismissal is proper if it appears beyond a doubt that [plaintiff] could prove no set of facts, which, if true, would entitle it to relief. Buzz Stew, 124 Nev. at 228, 181 P.3d 672. Additionally, NRCP 8(a) allows notice pleading, where all that is required in a complaint is a short and plain statement of the grounds for the court's jurisdiction, claim showing that the pleader is

entitled to relief, a demand for the relief sought, and at least \$15,000 in monetary damages sought.

"As a general rule, the court may not consider matters outside the pleading being attacked." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). "However, the court may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." *Id.* Additionally, "a document is not outside the complaint if the complaint specifically refers to the document and if its authenticity is not questioned." *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir.1994), overruled on other grounds by *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119, 1125 26 (9th Cir.2002). Material which is properly submitted as part of the complaint may be considered on a motion to dismiss. *Hal Roach Studios Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). The document is not "outside" the complaint if the complaint specifically refers to the document and if its authenticity is not questioned. *Branch v. Tunnell*, 14 F. 3d 449, 453 (9th Cir. 1994). If matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. NRCp 12(d). A party may move for summary judgment at any time and must be granted if the pleadings and affidavits show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Villescas v. CNA Ins. Companies.*, 109 Nev. 1075, 1078, 864 P.2d 288, 290 (1993).

NRS 106.240 states, in relevant parts, "the lien created of any mortgage or deed of trust upon any real property . Shall at the expiration of 10 years after the debt secured by the mortgage or deed of trust according to the term thereof or any recorded written extension thereof become wholly due, terminate, and it shall be conclusively presumed that the debt has been regularly satisfied and the lien discharged." This statute was interpreted as to create "a conclusive presumption that a lien on real property is extinguished ten years after the debt becomes due." *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 16 P.3d 1074 (2001).

Under *Glass v. Select Portfolio Servicing, Inc.*, 466 P.3d 939, 2020 WL 3604042 (2020)(unpublished), the Nevada Supreme Court confirmed that a rescission of a notice of default operates to restore the parties to their previous positions before a notice of default was recorded. See *Johnston v. U.S. bank National Association as Trustee for TBW Mortgage-Backed Trust Series 2006-5*, 466 P.3d 945, 2020 WL 3832873 (Ct. App., 2020) ("rescission of a notice of default restores a beneficiary to the position it occupied before the notice of default was recorded the deed of trust implicitly authorizes such action by providing [the holder of the deed of trust] with discretion to foreclose or pursue other remedies if a default is not cured after a notice of default is recorded."). A phrase "rescind, cancel and withdraw the notice of default" was deemed sufficient. *Id*; *Bank of America, NA v. SFR Investments Pool 1, LLC*, 849 Fed.Appx. 211 (9th Cir. 2021); *Valin v. Nationstar Mortgage, LLC*, 2020 WL 4606662 (D. Nev. 2020); *121 Sourcing & Supply, LLC v. Bank of New York Mellon*, 2021 WL 2383221 (D. Nev. 2021); *Florendo v. Bank of New York Mellon*, 2021 WL 3708048 (D. Nev. 2021); *Closson v. Bank of New York Mellon*, 2021 WL 3723154 (D. Nev. 2021); *TRP Fund V, LLC v. Nationstar Mortgage, LLC*,

2021 WL 1225958 (D. Nev. 2021).

A notice of rescission renders moot disputes concerning the notice of default or its timing. *Holt v. Regional Trustee Services Corp.*, 127 Nev. 886, 266 P.3d 602 (2011).

The Court FINDS and CONCLUDES that according to the Notice of Default and Election to Sell, recorded on June 28, 2011, on page 3, first paragraph, Defendant "declared and does hereby declare all sums secured thereby immediately due and payable and has elected and does hereby elect to cause the trust property to be sold to satisfy the obligations secured thereby." Thus, based on the express terms of this notice, this triggered the NRS 106.240 as the notice sought repayment of the entire loan amount secured by the deed of trust and thus, the loan became accelerated. Thus, under NRS 106.240, Defendant had until June 28, 2021 to decelerate the note.

The Court FINDS and CONCLUDES that the Notice of Rescission recorded on December 19, 2011, on page 2, first paragraph states that Defendant "does hereby rescind, cancel and withdraw said Declaration of Default it being understood, however, that this rescission shall not in any manner be construed as waiving or affecting any breach of default under said Deed of Trust, or as impairing any right or remedy thereunder, but is, and shall be deemed to be, only an election, without prejudice, not to cause a sale to be made pursuant to said Declaration and Notice all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given." Under Glass, which involved a notice of rescission that included the substantially similar phrase "rescind, cancel and withdraw said Declaration of Default" without the use of the word "deceleration" was deemed sufficient to act as rescission of the acceleration of the note. Moreover, in the instant case, the Notice of Rescission also states that "all obligations secured thereby are hereby reinstated and shall be and remain in force and effect the same as if said Declaration of Default and Notice of Breach had not been made and given." This conclusively shows that the notice acted to decelerate the note, restoring the parties to their previous position, and the terms of the deed of trust are reinstated. Thus, NRS 106.240 presumption does not apply.

The Court FINDS and CONCLUDES that as to Plaintiff's claims for slander of title and misrepresentation/fraud, based on the Court's ruling regarding the effect of the Notice of Rescission and inapplicability of NRS 106.240, these claims are not viable.

The Court FINDS and CONCLUDES that in reaching the instant decision, the Court relied solely on the Complaint and the publically recorded documents, which were also referenced in the Complaint itself. Specifically, the Deed of Trust recorded on June 27, 2005, Notice of Default and Election to Sell recorded on June 28, 2011, and Notice of Rescission recorded on December 19, 2011. The authenticity of these documents is not being questioned. Thus, the Court reviewed and based its ruling on the motion to dismiss based on these documents. In making this ruling, the Court did not rely on the declaration submitted by Defendant, which did contain some factual allegations that were not made in the Complaint. Thus, the motion was not converted into a motion for summary judgment. As this

is not a motion for summary judgment, Plaintiff's request for NRCP 56(d) relief cannot be granted. Furthermore, it is unclear what additional discovery will assist Plaintiff.

The COURT ORDERS that Defendant's Motion shall be GRANTED. The case shall be dismissed with prejudice. Plaintiff's request for NRCP 56(d) relief is denied.

Counsel for Defendant is directed to submit a proposed Order consistent with this Minute Order and the submitted briefing. Counsel may add language to further supplement the proposed Order in accordance with the Court's findings and any submitted arguments. Plaintiff's counsel is to review and countersign as to form and content. Counsel is directed to have the proposed Order submitted to chambers within 14 days consistent with the AO 21-04 and EDCR 7.21.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Carolyn Jackson, to all registered parties for Odyssey File & Serve. /cj 12-30-21



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

ROGER P. CROTEAU, ESQ.
2810 W. CHARLESTON BLVD., STER 75
LAS VEGAS, NV 89102

DATE: February 14, 2022
CASE: A-21-841665-C

RE CASE: SATICOY BAY , LLC, SERIES 2818 CALLE DEL ORO vs. WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR CSMC 2017-RPL2 TRUST

NOTICE OF APPEAL FILED: February 10, 2022

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

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

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

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

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

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

Certification of Copy

State of Nevada }
County of Clark } SS:

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

PLAINTIFF'S NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER: (1) GRANTING DEFENDANT WILMINGTON SAVINGS FUND SOCIETY, FSB SOLELY AS OWNER TRUSTEE FOR CSMC 2017-RPL2 TRUST'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED, WITH PREJUDICE; AND, (2) LIFTING STAY OF FORECLOSURE PROCEEDINGS; NOTICE OF ENTRY OF ORDER (1) GRANTING DEFENDANT WILMINGTON SAVINGS FUND SOCIETY, FSB SOLELY AS OWNER TRUSTEE FOR CSMC 2017-RPL2 TRUST'S MOTION TO DISMISS FROM FAILURE TO STATE A CLAIM UPON WHICH RELIEF MAY BE GRANTED, WITH PREJUDICE; AND (2) LIFTING STAY OF FORECLOSURE PROCEEDINGS; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

SATICOY BAY , LLC, SERIES 2818 CALLE
DEL ORO,

Plaintiff(s),

vs.

WILMINGTON SAVINGS FUND SOCIETY,
FSB, NOT IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS OWNER TRUSTEE FOR
CSMC 2017-RPL2 TRUST,

Defendant(s),

Case No: A-21-841665-C

Dept No: V

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 14 day of February 2022.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk

