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2 Kerry Faughnan, Esq.

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4 P.O. Box 335361

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Attorney for LN MANAGEMENT, LLC SERIES 3111 BEL AIR 24G

Electronically Filed
Feb 24 2021 01:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

6 **EIGHTH JUDICIAL DISTRICT COURT FOR**

7 **CLARK COUNTY, NEVADA**

8 DITECH FINANCIAL LLC F/K/A GREEN
9 TREE SERVICING LLC,

10 Plaintiff,

11 vs.

12 MICHAEL T. ELLIOTT, an individual; LAS
13 VEGAS INTERNATIONAL COUNTRY
14 CLUB ESTATES HOME OWNERS
15 ASSOCIATION, INC., a Nevada
16 Corporation; REGENCY TOWERS
ASSOCIATION, INC., a Nevada
Corporation; and DOES I-X INCLUSIVE,

17 Defendants.

18 LN MANAGEMENT LLC SERIES 3111
19 BEL AIR 24G

20 Plaintiff,

21 v.

22 MICHAEL T. ELLIOT, an individual;
DITECH FINANCIAL LLC F/K/A
GREEN TREE SERVICING LLC and
DOES 1 through 10, inclusive;

23 Defendants.

Case No.: A-12-669570-C

Dept. No.: XIII

Consolidated with Case No. A-13-682055-C

NOTICE OF APPEAL

1 Comes now Plaintiff, LN Management LLC Series 3111 Bel Air 24G, by and through its
2 counsel of record, Kerry P. Faughnan, Esq., who hereby appeals the January 20, 2021 Order
3 Granting Ditech Financial LLC f/k/a Green Tree Servicing LLC's Motion for Summary
4 Judgment; Notice of Entry filed January 21, 2021.

5 DATED February 22, 2021.

6 /s/ Kerry P. Faughnan
7 Kerry P. Faughnan, Esq.

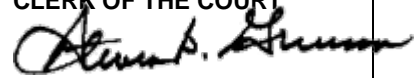
8 **CERTIFICATE OF SERVICE**

9 I hereby certify that on February 22, 2021 I allowed the Court's ECF system to serve the
10 following interest persons who have appeared in this matter:

11 ~ All Parties on E-Service List ~
12

13
14 DATED February 22, 2021.

15 /s/ Kerry P. Faughnan
16 Kerry P. Faughnan, Esq.
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Kerry Faughnan, Esq.
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Kerry.faughnan@gmail.com
Attorney for LN MANAGEMENT, LLC SERIES 3111 BEL AIR 24G

**EIGHTH JUDICIAL DISTRICT COURT FOR
CLARK COUNTY, NEVADA**

DITECH FINANCIAL LLC F/K/A GREEN
TREE SERVICING LLC,

Plaintiff,

vs.

MICHAEL T. ELLIOTT, an individual; LAS
VEGAS INTERNATIONAL COUNTRY
CLUB ESTATES HOME OWNERS
ASSOCIATION, INC., a Nevada
Corporation; REGENCY TOWERS
ASSOCIATION, INC., a Nevada
Corporation; and DOES I-X INCLUSIVE,

Defendants.

LN MANAGEMENT LLC SERIES 3111
BEL AIR 24G

Plaintiff,

v.

MICHAEL T. ELLIOT, an individual;
DITECH FINANCIAL LLC F/K/A
GREEN TREE SERVICING LLC and
DOES 1 through 10, inclusive;

Defendants.

Case No.: A-12-669570-C

Dept. No.: XIII

Consolidated with Case No. A-13-682055-C

CASE APPEAL STATEMENT

1. Appellants filing this case appeal statement: LN Management LLC Series 3111 Bel Air
24G

2. Judge Issuing Decision: Honorable Mark Denton

3. Parties in the proceeding:

Plaintiff: LN Management LLC Series 3111 Bel Air 24G

1 Defendant: PennyMac Holdings LLC

2 4. Parties involved in this appeal:

3 Plaintiff: LN Management LLC Series 3111 Bel Air 24G

4 Defendant: Ditech Financial LLC f/k/a Green Tree Servicing LLC

5 5. Counsel for parties on appeal:

6 Plaintiff: LN Management LLC Series 3111 Bel Air 24G

7 Kerry P. Faughnan, Esq.
8 Nevada Bar No. 12204
9 P.O. Box 335361
10 North Las Vegas, Nevada 89033
11 (702) 301-3096
(702) 331-4222 - Fax
Kerry.faughnan@gmail.com

12 Defendant: Ditech Financial LLC f/k/a Green Tree Servicing LLC;

13 Ariel E. Stern, Esq.
14 Natalie L. Winslow, Esq.
15 Nicholas E. Belay, Esq.
16 Akerman LLP
17 1635 Village Center Circle, Suite 200
18 Las Vegas, NV 89134
19 (702) 634-5000
(702) 380-8572- Fax
Ariel.stern@akerman.com
Natalie.winslow@akeman.com
Nicholas.belay@akerman.com

20 6. Appellant was represented by retained counsel in the district court.

21 7. Appellant is represented by retained counsel on appeal.

22 8. No request has been made to proceed in forma pauperis.

23 9. The Complaint in this matter was originally filed October 3, 2012.

24 10. The state court proceeding was an action for Quiet Title and Declaratory Relief after a
25 HOA foreclosure. The order appealed from is January 20, 2021 Order Granting Ditech Financial
26 LLC f/k/a Green Tree Servicing LLC's Motion for Summary Judgment; Notice of Entry filed
27 January 21, 2021.

28 11. The case has not been subject of an appeal to or original writ proceeding in the

1 Supreme Court.

2 12. This appeal does not involve child custody or visitation.

3 13. This appeal does involve the possibility of settlement.

4 DATED February 22, 2021.

5 /s/ Kerry P. Faughnan
6 Kerry P. Faughnan, Esq.

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14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on October 14, 2020 I allowed the Court's ECF system to serve the
16 following interest persons who have appeared in this matter:

17 ~ All Parties on E-Service List ~
18

19
20 DATED October 14, 2020.

21 /s/ Kerry P. Faughnan
22 Kerry P. Faughnan, Esq.
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DISTRICT COURT
CASE SUMMARY
CASE NO. A-12-669570-C

Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

§
§
§
§
§

Location: **Department 13**
Judicial Officer: **Denton, Mark R.**
Filed on: **10/03/2012**
Cross-Reference Case Number: **A669570**

CASE INFORMATION

Related Cases

A-13-682055-C (Consolidated)

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

Statistical Closures

08/14/2019 Transferred (before trial)
05/23/2018 Involuntary Dismissal

Case Flags: **Consolidated - Lead Case**
Appealed to Supreme Court
Automatically Exempt from Arbitration

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number A-12-669570-C
Court Department 13
Date Assigned 10/03/2012
Judicial Officer Denton, Mark R.

PARTY INFORMATION

Plaintiff	Bank of America	<i>Lead Attorneys</i> Bergstrom, Jeremy T. <i>Retained</i> 702-333-0007(W)
	Green Tree	Brenner, Darren T. <i>Retained</i> 702-634-5000(W)
Defendant	Elliott, Michael T	
	Las Vegas International Country Club Estates Home Owners Association Inc	
	Removed: 05/23/2018 Dismissed	
	LN Management LLC Series 311 Bel Air 24G	
Third Party Plaintiff	Removed: 05/23/2018 Dismissed	
	Regency Towers Association Inc	
	Removed: 05/23/2018 Dismissed	
	LN Management LLC Series 3111 Bel Air 24G	
	Removed: 06/21/2018 Data Entry Error	














DATE

EVENTS & ORDERS OF THE COURT














INDEX

10/03/2012	 Complaint Filed By: Plaintiff Bank of America <i>Complaint</i>	
10/03/2012	Case Opened	
10/04/2012	 Initial Appearance Fee Disclosure	













DISTRICT COURT
CASE SUMMARY
CASE NO. A-12-669570-C

	Filed By: Plaintiff Bank of America <i>Initial Appearance Fee Disclosure</i>
10/05/2012	 Notice of Lis Pendens Filed by: Plaintiff Bank of America <i>Notice of Lis Pendens</i>
10/10/2012	 Affidavit of Service Filed By: Plaintiff Bank of America <i>Affidavit of Service Re Regency Towers Association, Inc., a Nevada Corporation, by Serving Michael T Schulman, Registered Agent</i>
10/11/2012	 Summons Filed by: Plaintiff Bank of America <i>Summons</i>
10/18/2012	 Summons Issued Party: Plaintiff Bank of America <i>Summons</i>
11/05/2012	 Initial Appearance Fee Disclosure Filed By: Defendant Regency Towers Association Inc <i>Initial Appearance Fee Disclosure (NRS Chapter 19)</i>
11/05/2012	 Notice of Appearance Party: Defendant Regency Towers Association Inc <i>Notice of Appearance of Counsel</i>
11/21/2012	 Notice of Intent to Take Default Party: Plaintiff Bank of America <i>Notice of Intent to take Default</i>
12/12/2012	 Default Filed By: Plaintiff Bank of America <i>(SET ASIDE 01-23-14)Default</i>
12/26/2012	 Stipulation and Order Filed by: Defendant Regency Towers Association Inc <i>Stipulation and Order Regarding Status of Defendant Regency Towers Association, Inc.</i>
12/27/2012	 Notice of Entry Filed By: Defendant Regency Towers Association Inc <i>Notice of Entry of Order Regarding Status of Defendant Regency Towers Association, Inc.</i>
05/07/2013	 Notice of Entry of Order Filed By: Plaintiff Bank of America <i>Notice of Entry of Order</i>
05/07/2013	 Stipulation and Order Filed by: Plaintiff Bank of America <i>Stipulation And Order Regarding Status of Las Vegas International Country Club Estates Home Owners Association</i>
09/09/2013	 Motion to Consolidate

DISTRICT COURT
CASE SUMMARY
CASE NO. A-12-669570-C













	Filed By: Plaintiff Bank of America <i>Motion to Consolidate</i>
09/30/2013	 Opposition to Motion Filed By: Defendant LN Management LLC Series 311 Bel Air 24G <i>LN Management LLC Series 3111 Bel Air 24G Opposition to Motion to Consolidate</i>
10/10/2013	 Stipulation and Order Filed by: Plaintiff Bank of America <i>Stipulation and Order to Continue Motion to Consolidate Hearing</i>
10/11/2013	 Notice of Entry of Order Filed By: Plaintiff Bank of America <i>Notice of Entry of Order</i>
10/16/2013	 Reply in Support Filed By: Plaintiff Bank of America <i>Reply in Support of Motion to Consolidate</i>
10/21/2013	 Motion to Consolidate (9:00 AM) (Judicial Officer: Denton, Mark R.) Events: 09/09/2013 Motion to Consolidate <i>Plaintiff's Motion to Consolidate Cases A669570 and A682055</i> Granted; Plaintiff's Motion to Consolidate Cases A669570 and A682055 <i>Granted</i>
10/22/2013	 Notice of Department Reassignment
10/29/2013	 Order Granting Motion Filed By: Plaintiff Bank of America <i>Order Granting Motion to Consolidate</i>
10/30/2013	 Notice of Entry of Order Filed By: Plaintiff Bank of America <i>Notice of Entry of Order</i>
01/23/2014	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Bank of America <i>Notice of Entry of Stipulation and Order</i>
01/23/2014	 Stipulation and Order Filed by: Plaintiff Bank of America <i>Stipulation and Order</i>
03/11/2014	 Answer to Third Party Complaint Filed By: Plaintiff Green Tree <i>Green Tree Servicing LLC's Answer to LN Management LLC Series 3111 Bel Air 24G's Complaint for Quiet Title and Declaratory Relief</i>
06/19/2014	 Motion for Summary Judgment Filed By: Plaintiff Green Tree <i>Motion for Summary Judgment</i>
06/20/2014	 Notice of Hearing Filed By: Plaintiff Green Tree

DISTRICT COURT
CASE SUMMARY
CASE NO. A-12-669570-C

	<i>Notice of Hearing</i>
06/20/2014	 Certificate of Mailing Filed By: Plaintiff Green Tree <i>Certificate of Mailing</i>
07/17/2014	 Motion for Summary Judgment (3:00 AM) (Judicial Officer: Denton, Mark R.) <i>Motion for Summary Judgment</i> Motion Granted; <i>Motion Granted</i>
08/12/2014	 Order Granting Summary Judgment Filed By: Plaintiff Green Tree <i>Order Granting Motion for Summary Judgment</i>
08/13/2014	 Notice of Entry of Order Filed By: Plaintiff Green Tree <i>Notice of Entry of Order Granting Motion for Summary Judgment</i>
09/03/2014	 Motion to Set Aside Filed By: Defendant LN Management LLC Series 311 Bel Air 24G <i>LN Management LLC Series 311 Bel Air 24G's Motion to Set Aside Summary Judgment Entered August 12, 2014</i>
09/03/2014	 Ex Parte Application Party: Defendant LN Management LLC Series 311 Bel Air 24G <i>Ex Parte Application for an Order Shortening Time</i>
09/04/2014	 Order Shortening Time Filed By: Defendant LN Management LLC Series 311 Bel Air 24G <i>Order Shortening Time</i>
09/08/2014	 Receipt of Copy Filed by: Defendant LN Management LLC Series 311 Bel Air 24G <i>Receipt of Copy</i>
09/08/2014	 Receipt of Copy Filed by: Defendant LN Management LLC Series 311 Bel Air 24G <i>Receipt of Copy</i>
09/08/2014	 Receipt of Copy Filed by: Defendant LN Management LLC Series 311 Bel Air 24G <i>Receipt of Copy</i>
09/09/2014	 Motion to Set Aside (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>LN Management LLC Series 311 Bel Air 24G's Motion to Set Aside Summary Judgment Entered August 12, 2014</i> Granted; <i>Granted</i>
09/24/2014	 Order Granting Motion Filed By: Plaintiff Bank of America <i>Order Granting Plaintiff's Motion to Set Aside Summary Judgment</i>
09/24/2014	Amended Judgment Set Aside (Judicial Officer: Denton, Mark R.)

DISTRICT COURT
CASE SUMMARY
CASE NO. A-12-669570-C

Debtors: Michael T Elliott (Defendant), Las Vegas International Country Club Estates Home Owners Association Inc (Defendant), Regency Towers Association Inc (Defendant), LN Management LLC Series 311 Bel Air 24G (Defendant)
Creditors: Bank of America (Plaintiff), Green Tree (Plaintiff)
Judgment: 09/24/2014, Docketed: 09/02/2014

09/25/2014	 Notice of Entry Filed By: Defendant LN Management LLC Series 311 Bel Air 24G <i>Notice of Entry of Order</i>
09/25/2014	 Opposition to Motion Filed By: Defendant LN Management LLC Series 311 Bel Air 24G <i>Opposition to Green Tree Servicing LLC's Motion for Summary Judgment</i>
10/02/2014	 Hearing (9:00 AM) (Judicial Officer: Denton, Mark R.) 10/02/2014, 10/13/2014 <i>Hearing Re: Motion for Summary Judgment</i> Continued; Granted in Part; Continued; Granted in Part; <i>Continued</i>
10/09/2014	 Reply in Support Filed By: Plaintiff Green Tree <i>Reply in Support of Motion for Summary Judgment</i>
12/07/2015	 Order Scheduling Dismissal Hearing <i>Order Scheduling Dismissal Hearing</i>
01/25/2016	 Dismissal Hearing (2:45 PM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
12/23/2016	 Order Scheduling Dismissal Hearing <i>Order Scheduling Dismissal Hearing</i>
02/21/2017	 Dismissal Hearing (3:00 PM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
08/15/2017	 Order <i>Order Re: Status Check</i>
09/07/2017	 Status Check (9:00 AM) (Judicial Officer: Denton, Mark R.) Matter Heard; <i>Matter Heard</i>
10/02/2017	 Order Scheduling Status Check <i>Order Scheduling Status Check</i>
10/19/2017	 Status Check (9:00 AM) (Judicial Officer: Denton, Mark R.) 10/19/2017, 01/18/2018 Continued; Matter Heard;







DISTRICT COURT
CASE SUMMARY
CASE NO. A-12-669570-C

	Continued; Matter Heard; <i>Continued</i>
05/23/2018	Order of Dismissal Without Prejudice (Judicial Officer: Denton, Mark R.) Debtors: Michael T Elliott (Defendant), Las Vegas International Country Club Estates Home Owners Association Inc (Defendant), Regency Towers Association Inc (Defendant), LN Management LLC Series 311 Bel Air 24G (Defendant) Creditors: Bank of America (Plaintiff), Green Tree (Plaintiff) Judgment: 05/23/2018, Docketed: 05/23/2018
05/23/2018	 Order of Dismissal Without Prejudice Filed By: Plaintiff Bank of America <i>Order of Dismissal Without Prejudice</i>
06/21/2018	 Motion Filed By: Third Party Plaintiff LN Management LLC Series 3111 Bel Air 24G <i>Motion to Reopen Case</i>
07/05/2018	 Substitution of Attorney Filed by: Plaintiff Bank of America <i>Substitution Of Counsel</i>
07/23/2018	 Motion (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Plaintiff, LN Management LLC Series 3111 Bel Air 24G's Motion to Reopen Case</i> Granted; <i>Granted</i>
07/27/2018	 Order Filed By: Third Party Plaintiff LN Management LLC Series 3111 Bel Air 24G <i>(A682055) Order Granting LN Management LLC Series 3111 Bel Air 24G's Motion to Reopen Case</i>
07/27/2018	 Motion for Summary Judgment Filed By: Third Party Plaintiff LN Management LLC Series 3111 Bel Air 24G <i>LN Management LLC Sereis 3111 Bel Air 24G's Motion for Summary Judgment against Green Tree Servicing LLC</i>
08/27/2018	 Motion for Summary Judgment (9:00 AM) (Judicial Officer: Denton, Mark R.) 08/27/2018, 09/27/2018 <i>LN Management LLC Sereis 3111 Bel Air 24G's Motion for Summary Judgment against Green Tree Servicing LLC</i> Matter Continued; Denied With Prejudice; Matter Continued; Denied With Prejudice; <i>Matter Continued</i>
08/27/2018	 Stipulation and Order Filed by: Plaintiff Green Tree <i>Stipulation and Order to Extend Briefing Schedule and Continue Hearing on LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Judgment</i>
08/28/2018	 Opposition to Motion For Summary Judgment Filed By: Plaintiff Green Tree <i>Bank of America, N.A.'s Opposition to Plaintiff's Motion for Summary Judgment</i>

DISTRICT COURT
CASE SUMMARY
CASE NO. A-12-669570-C

08/30/2018	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Green Tree <i>Notice of Entry of Stipulation and Order to Extend Briefing Schedule and Continue Hearing on LN Management LLC Series 3111 Bel Air 24G's Motion for Summary Judgment</i>
09/17/2018	 Reply to Opposition <i>Reply to Opposition to Motion for Summary Judgment and Erata to Motion for Summary Judgment</i>
09/26/2018	 Errata Filed By: Plaintiff Bank of America <i>Errata to Bank of America, N.A.'s Opposition to Plaintiff's Motion for Summary Judgment</i>
03/27/2019	 Notice of Bankruptcy Filed By: Plaintiff Green Tree <i>Notice of Bankruptcy Filing and Imposition of Automatic Stay</i>
08/14/2019	 Order to Statistically Close Case <i>Civil Order to Statistically Close Case</i>
09/29/2020	 Motion for Summary Judgment Filed By: Plaintiff Bank of America; Plaintiff Green Tree <i>Bank of America, N.A. and Ditech Financial LLC f/k/a Green Tree Servicing LLC's Motion For Summary Judgment (Hearing Requested)</i>
09/29/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
10/26/2020	 Notice of Non Opposition Filed By: Plaintiff Bank of America; Plaintiff Green Tree <i>Bank of America, N.A. and Ditech Financial LLC f/k/a Green Tree Servicing LLC's Reply in Support of Motion for Summary Judgment and Notice of Non-Opposition</i>
10/28/2020	 Stipulation and Order <i>Stipulation and Order to Continue Hearing</i>
11/11/2020	 Opposition to Motion Filed By: Defendant Elliott, Michael T <i>Opposition to Ditech Financial LLC f/k/a Green Tree Servicing LLC's Motion for Summary Judgment</i>
11/30/2020	 Reply in Support Filed By: Plaintiff Bank of America; Plaintiff Green Tree <i>Bank of America, N.A. and Ditech Financial LLC f/k/a Green Tree Servicing LLC's Reply Supporting Summary Judgment Motion</i>
12/01/2020	 Minute Order (1:15 PM) (Judicial Officer: Denton, Mark R.) <i>Re: BlueJeans Appearance</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>
12/03/2020	 Motion for Summary Judgment (9:00 AM) (Judicial Officer: Denton, Mark R.) <i>Bank of America, N.A. and Ditech Financial LLC f/k/a Green Tree Servicing LLC's Motion For Summary Judgment</i>

DISTRICT COURT
CASE SUMMARY
CASE NO. A-12-669570-C

	Granted; <i>Granted</i>	
12/14/2020	 Minute Order (7:15 AM) (Judicial Officer: Denton, Mark R.) <i>Re: Bank of America, N.A. and Ditech Financial LLC f/k/a Green Tree Servicing LLC's Motion For Summary Judgment</i> Minute Order - No Hearing Held; <i>Minute Order - No Hearing Held</i>	
01/20/2021	 Findings of Fact, Conclusions of Law and Judgment (A682055) <i>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT</i>	
01/21/2021	 Notice of Entry of Findings of Fact, Conclusions of Law Filed By: Plaintiff Bank of America <i>Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment</i>	
01/25/2021	 Memorandum of Costs and Disbursements Filed By: Plaintiff Bank of America; Plaintiff Green Tree <i>Bank of America, N.A. and Ditech Financial LLC f/k/a Green Tree Servicing LLC's Memorandum of Costs and Disbursements</i>	
02/22/2021	 Notice of Appeal <i>Notice of Appeal</i>	
02/22/2021	 Case Appeal Statement <i>Case Appeal Statement</i>	

DATE

FINANCIAL INFORMATION

Third Party Plaintiff LN Management LLC Series 3111 Bel Air 24G		
Total Charges		200.00
Total Payments and Credits		200.00
Balance Due as of 2/23/2021		0.00
Defendant Regency Towers Association Inc		
Total Charges		223.00
Total Payments and Credits		223.00
Balance Due as of 2/23/2021		0.00
Defendant Elliott, Michael T		
Total Charges		24.00
Total Payments and Credits		24.00
Balance Due as of 2/23/2021		0.00
Plaintiff Bank of America		
Total Charges		470.00
Total Payments and Credits		470.00
Balance Due as of 2/23/2021		0.00
Plaintiff Green Tree		
Total Charges		200.00
Total Payments and Credits		200.00
Balance Due as of 2/23/2021		0.00

CIVIL COVER SHEET

A-12-669570-C

Clark County, Nevada

XIII

Case No. _____

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Bank of America, N.A.

Attorney (name/address/phone):

Jory C. Garabedian, Esq. Nevada Bar No. 10352

Miles, Bauer, Bergstrom & Winters, LLP.

2200 Paseo Verde Parkway, Suite 250

Henderson, NV 89052

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

Michael T. Elliot, an individual; Las Vegas International Country Club Estates Home Owners Association, Inc., a Nevada Corporation; Regency Towers Association, Inc., a Nevada Corporation; and Does I-X Inclusive

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

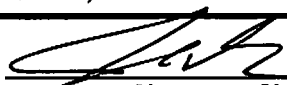
Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input checked="" type="checkbox"/> Title to Property Foreclosure <input checked="" type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input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

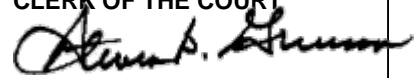
III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

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

10/03/2012

Date


 Signature of initiating party or representative



FFCL

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

NICHOLAS E. BELAY, ESQ.

Nevada Bar No. 15175

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*Attorneys for Bank of America, N.A. and Ditech
Financial LLC f/k/a Green Tree Servicing LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LN MANAGEMENT LLC SERIES 3111 BEL
AIR 24G,

Plaintiff,

v.

MICHAEL T. ELLIOTT, an individual; BANK
OF AMERICA, N.A.; and DOES 1 through 10,
inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No. : A-12-669570-C
Consolidated with: A-13-682055-C

Dept. No.: XIII

**~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT**

Ditech Financial LLC f/k/a Green Tree Servicing LLC (**Ditech**) and Bank of America, N.A. (collectively, **defendants**) filed a summary judgment motion on September 29, 2020. LN Management LLC Series 3111 Bel Air 24G filed an opposition on November 11, 2020, and defendants filed reply on November 20, 2020. The court held a hearing on the motion on December 3, 2020. Following the hearing, the court took the matter under advisement.

1 On December 14, 2020, the court entered a minute order granting defendants' summary
2 judgment motion. The court now enters the following findings of fact and conclusions of law.

3 **FINDINGS OF FACT**

4 ***The Subject Property, Note, and Deed of Trust***

5 1. A deed of trust listing Michael T. Elliott as the borrower (**Borrower**) and Bank of
6 America as the lender and beneficiary was executed on October 6, 2004 and recorded on October 20,
7 2004 (**Deed of Trust**). The Deed of Trust granted Lender a security interest in real property known
8 as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada 89109 (the **Property**) to secure the repayment of
9 a promissory note (the **Note**) in the original amount of \$322,100.00 to the Borrower (the Note and
10 Deed of Trust together are the **Loan**). The Deed of Trust listed the APN number as 162-10-812-185.

11 2. In November 2004, Fannie Mae purchased the Loan, thereby acquiring ownership of
12 the Deed of Trust. Fannie Mae maintained that ownership at the time of the HOA Sale on December
13 12, 2012.

14 3. In September 2008, Federal Housing Finance Agency (**FHFA**) placed Fannie Mae
15 into conservatorship "for the purpose of reorganizing, rehabilitating, or winding up [its] affairs." 12
16 U.S.C. § 4617(a)(2). Fannie Mae remains in conservatorship today.

17 4. At the time of the HOA Sale, Bank of America was the servicer of the Loan for
18 Fannie Mae.

19 5. Bank of America serviced the Loan for Fannie Mae up until on or about April 30,
20 2013, when the servicing rights were transferred to Ditech.

21 6. On July 30, 2013, Bank of America recorded an assignment of the Deed of Trust to
22 Ditech.

23 7. On December 20, 2019, Ditech recorded an assignment of the Deed of Trust to New
24 Residential Mortgage, LLC.

25 8. On March 17, 2020, New Residential Mortgage, LLC recorded an assignment of the
26 Deed of Trust to NewRez LLC d/b/a Shellpoint Mortgage Servicing (**NewRez**).

27 . . .

28 . . .

1 ***Fannie Mae's Contract with Its Servicers, Including Bank of America, Ditech, and NewRez***

2 9. The relationship between Bank of America, Ditech, and NewRez, as the servicers of
3 the Loan, and Fannie Mae, as owner of the Loan, is governed by the Fannie Mae's Single-Family
4 Selling Guide at A2-1-01 and Fannie Mae's Single-Family Servicing Guide (**Guide**), a central
5 governing document for Fannie Mae's relationship with servicers nationwide. Among other things,
6 the Guide provides that Fannie Mae's servicers may act as record beneficiaries for the deeds of trust
7 owned by Fannie Mae and requires that servicers assign these deeds of trust to Fannie Mae upon
8 Fannie Mae's demand. Selling Guide at A2-1-01, Servicing Guide F-1-11.

9 10. The Guide provides that:

10 The servicer ordinarily appears in the land records as the mortgagee to
11 facilitate performance of the servicer's contractual responsibilities, including
12 (but not limited to) the receipt of legal notices that may impact Fannie Mae's
13 lien, such as notices of foreclosure, tax, and other liens. However, *Fannie*
14 *Mae may take any and all action with respect to the mortgage loan it deems*
15 *necessary to protect its ... ownership of the mortgage loan, including*
16 *recordation of a mortgage assignment, or its legal equivalent, from the*
17 *servicer to Fannie Mae or its designee.* In the event that Fannie Mae
18 determines it necessary to record such an instrument, the servicer must assist
19 Fannie Mae by

- 16 • preparing and recording any required documentation, such as
17 mortgage assignments, powers of attorney, or affidavits; and
- 18 • providing recordation information for the affected mortgage loans.

19 Selling Guide at A2-1-03 (emphasis added).

20 11. The Guide also provides for a temporary transfer of possession of the note when
21 necessary for servicing, such as managing litigation on behalf of Fannie Mae:

22 In order to ensure that a servicer is able to perform the services and duties
23 incident to the servicing of the mortgage loan, Fannie Mae temporarily
24 gives the servicer possession of the mortgage note whenever the servicer,
25 acting in its own name, represents the interests of Fannie Mae in
26 foreclosure actions, bankruptcy cases, probate proceedings, or other legal
27 proceedings.

28 This temporary transfer of possession occurs automatically and
immediately upon the commencement of the servicer's representation, in

its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

Selling Guide at A2-1-04.

11. The Guide includes a chapter describing how and when servicers should pursue foreclosure. *See generally* Guide at E-3 (Managing Foreclosure Proceedings). The chapter includes detailed provisions for how servicers may foreclose on properties when either Fannie Mae, MERS, or the servicer itself is the beneficiary of record of the relevant deed of trust. Guide at E-3.2-09.

12. The Guide also includes a chapter that explains how servicers should manage litigation on behalf of Fannie Mae. *See generally* Guide at E-1 (Referring Default-Related Legal Matters and Non-Routine Litigation to Law Firms).

13. The Guide states that "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure . . . possession automatically reverts to Fannie Mae." Guide at A2-1-04.

14. Pursuant to the Guide, a servicer is required to "maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the individual mortgage loan." Guide at A2-4-01.

15. Any servicer retaining documents related to a particular loan, such as a deed of trust, has "no right to possess these documents and records except under the conditions specified by Fannie Mae." Guide at A2-5.1-02.

The HOA Foreclosure Sale and LN Management's Purported Acquisition of the Property

16. On June 21, 2012, Collections, as agent for the HOA, recorded a Notice of Claim – Delinquent Assessment Notice.

17. On July 25, 2012, Collections, as agent for the HOA, recorded a Notice of Default and Election to Sell.

18. After the Notice of Default was recorded, on or about August 16, 2012, Bank of America, through counsel at Miles, Bauer, Bergstrom, & Winters, LLP (**Miles Bauer**), contacted the HOA through Collections and requested the super-priority amount.

...

1 19. Collections responded on or about November 27, 2012, and provided a Statement of
2 Account.

3 20. Following receipt of the Statement of Account, Miles Bauer and Collections
4 discussed the HOA Sale via telephone. In email correspondence recounting the details of the
5 telephone conversation, Collections confirmed that neither it nor the HOA was "foreclosing on a
6 super-priority lien pursuant to NRS 116.3116."

7 21. Collections further confirmed that it and the HOA were "not claiming to have a
8 super-priority lien since the first mortgage [had] not been foreclosed on the property."

9 22. Miles Bauer advised Collections that if the HOA and Collections were to conduct a
10 super-priority sale, "Bank of America would like to payoff any potential senior lien, should one
11 exist, to protect its first mortgage security interest."

12 23. Collections, on behalf of the HOA, then recorded a Notice of Trustee Sale on
13 November 15, 2012.

14 24. On December 17, 2012, a foreclosure deed was recorded against the Property. The
15 foreclosure deed states that the Property was sold at an HOA foreclosure sale on December 12, 2012,
16 to 3111 Bel Air Drive 24G Trust for \$7,001.00.

17 25. 3111 Bel Air Drive 24G Trust subsequently conveyed the Property to LN
18 Management via a Quitclaim Deed recorded on April 26, 2013.

19 26. At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing
20 Fannie Mae's interest in the Property. (FHFA's Statement on HOA Super-Priority Lien Foreclosures
21 (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)
22 [Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)).

23 27. The fair market value of the Property at the time of the HOA Sale was \$360,000. The
24 purchase price at the HOA Sale was less than 2% of the fair market value.

25 ***Procedural History***

26 28. LN Management initiated an action for quiet title/declaratory relief on May 17, 2013.
27 See Case No. A-13-682055-C. The court consolidated the case with the above-captioned action on
28 October 29, 2013.

1 3. NRS 30.010 *et seq.* gives courts "power to declare rights, status and other legal
2 relations." LN Management and defendants both seek declaratory relief under that statute.

3 4. Here, defendants request declaratory relief and quiet title. LN Management contends
4 that it bought the property and the first deed of trust was extinguished. Defendants assert the sale
5 did not extinguish the deed of trust because: (1) Fannie Mae owned the loan, and Bank of America
6 was the beneficiary of record of the deed of trust in its capacity as the servicer of the loan for Fannie
7 Mae at the time of the HOA foreclosure sale in December 2012, and thus, the Federal Foreclosure
8 Bar applies; (2) the HOA foreclosed on only the sub-priority portion of its statutory lien; (3) the deed
9 of trust survived as a matter of equity.

10 5. In an action such as the present one, the parties must prove their claims and
11 affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law,
12 "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that
13 opposed to it, has more convincing force, and from which it appears that the greater probability of
14 truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding
15 entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that
16 opposed to it, has more convincing force and the greater probability of truth.").

17 6. Nevada law draws no distinction between circumstantial and direct evidence.
18 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction
19 between the weight to be given either direct or circumstantial evidence. Therefore, all of the
20 evidence in the case, including circumstantial evidence, should be considered...").

21 ***B. The Five-Year Rule under NRCP 41(e) Has Not Run***

22 7. LN Management contends the court should dismiss this case under NRCP 41(e)
23 because the five-year rule has expired. The court rejects this argument.

24 **The Action was Brought to Trial**

25 8. NRCP 41(e) only applies if an action is not brought to trial within 5 years after the
26 action was filed. *See* NRCP 41(e)(2)(B). The Nevada supreme court defines "trial" as "the
27 examination before a competent tribunal, according to the law of the land, of questions of fact or of
28 law put in issue by pleadings, for the purpose of determining the rights of the parties." *United Ass'n*

1 of *Journeyman & Apprentices of Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 819–20,
2 783 P.2d 955, 957 (1989). Under this definition, "proceedings leading to a complete grant of
3 summary judgment constitute a trial" for purposes of the five-year rule. *Monroe v. Columbia Sunrise*
4 *Hosp. & Med. Ctr.*, 123 Nev. 96, 100, 158 P.3d 1008, 1010 (2007). This holds true even when third-
5 party claims remain outstanding. *Id.* at 1011.

6 9. The court granted summary judgment in favor of Ditech on August 13, 2014. The
7 order granted Ditech's motion "in its entirety" and constituted the "final order/judgment in this
8 matter." While the court ultimately granted LN Management's motion to set aside the judgment in
9 September 2014, nothing in either NRCP 41(e) or Nevada case law negates the fact Ditech brought
10 the action "to trial" within the meaning of Rule 41(e).

11 10. Rule 41(e)'s plain language does not contemplate the five-year rule being reinstated
12 after it has already been satisfied on summary judgment. *See Vanguard Piping v. Eighth Jud. Dist.*
13 *Ct.*, 129 Nev. 602, 608, 309 P.3d 1017, 1020 (2013) (stating the rules of statutory interpretation
14 apply to procedural rules and noting the court should look to the plain language of the rule); *Thran v.*
15 *District Ct.*, 79 Nev. 176, 180-81 (1963) (Rule 41(e) is "clear, unambiguous and requires no
16 construction other than its own language.").

17 11. Because Ditech already satisfied the five-year rule, it is no longer applicable to this
18 action.

19 LN Management Stipulated to Forego the Five-Year Rule

20 12. Even if the five-year rule had not already been satisfied, the court finds the parties
21 have stipulated to waive it.

22 13. NRCP 41(e)(5) provides a party may stipulate in writing to extend the time in which
23 to prosecute an action.

24 14. The court finds this is precisely what LN Management did when it moved for
25 reconsideration of the court's May 2018 order dismissing the action under Rule 41(e).

26 15. In the motion, LN Management argued the court should set aside the court's five-year
27 rule dismissal and reopen the case so that the parties could obtain "final orders that would determine
28

1 each of the parties rights as to the property." No other party filed an opposition to LN Management's
2 motion.

3 16. By filing an unopposed motion to disregard the five-year rule dismissal and litigate
4 the matter on the merits, the court finds LN Management and the remaining parties stipulated to
5 forego application of the five-year rule to this matter.

6 **LN Management is judicially estopped from obtaining dismissal under the Five-Year**
7 **Rule.**

8 17. Even assuming the five-year rule continues to apply, the court finds LN Management
9 is judicially estopped from obtaining dismissal.

10 18. Judicial estoppel has five elements: "(1) the same party has taken two positions; (2)
11 the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was
12 successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true);
13 (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of
14 ignorance, fraud, or mistake." *Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 56,
15 390 P.3d 646, 652 (2017) (citation omitted). All elements are satisfied to prevent LN Management
16 from now asserting the five-year rule.

17 19. *First*, LN Management has taken two positions. In its opposition, LN Management
18 contends the five-year rule expired on October 3, 2017, necessitating dismissal of this action. But
19 LN Management previously moved for reconsideration on June 21, 2018, of the court's order
20 dismissing the action for want of prosecution under the very same rule LN Management now seeks
21 to enforce.

22 20. *Second*, LN Management's positions were taken in this case, a judicial proceeding.

23 21. *Third*, LN Management successfully obtained reconsideration of the court's order
24 dismissing the action under Rule 41(e). The court granted LN Management's motion and reopened
25 the case on July 27, 2018.

26 22. *Fourth*, the positions are inconsistent. LN Management moved for (and obtained)
27 reconsideration of the court's Rule 41(e) dismissal, explicitly arguing such relief was appropriate due
28 to its own wrongful conduct. LN Management now seeks to undo its own motion by arguing the

1 five-year rule somehow expired in October 2017. These positions are entirely irreconcilable. LN
2 Management cannot now argue for dismissal under Rule 41(e) when it previously moved to reopen
3 the case (for the second time) notwithstanding this very rule.

4 23. *Finally*, LN Management's conduct cannot be found to result from ignorance, fraud or
5 mistake. LN Management moved on its own volition for reconsideration of the court's dismissal
6 order and directly argued the order should be set aside based on excusable neglect. In LN
7 Management's own words, such reconsideration was justified because the parties "need" the court to
8 determine the parties' respective rights in the property.

9 **LN Management's Five-Year Rule argument is barred by Waiver and Equitable**
10 **Estoppel.**

11 24. In addition to being judicially estopped from arguing for five-year rule dismissal, LN
12 Management also waived or else should be equitably estopped from raising the issue.

13 25. Waiver is the intentional relinquishment of a known right. *Nev. Yellow Cab Corp. v.*
14 *Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 152 P.3d 737, 740 (Nev. 2007). Waiver of a right
15 may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right
16 as to induce a reasonable belief that the right has been relinquished. *Id.* Further, a party seeking
17 equity is required to do equity. *Overhead Door Co. of Reno, Inc. v. Overhead Door Corp.*, 734 P.2d
18 1233, 1235 (Nev. 1987). Equitable estoppel operates to prevent a party from asserting legal rights
19 that, in equity and good conscience, they should not be allowed to assert because of their own
20 conduct. *NGA #2 Liab. Co. v. Rains*, 946 P.2d 163, 168 (Nev. 1997).

21 26. Here, the court finds LN Management *twice* moved to reopen this case: First, after
22 Ditech brought the action to trial; and second, after LN Management obtained reconsideration of the
23 court's rule 41(e) dismissal order.

24 27. To the extent LN Management believed the five-year rule expired in October 2017,
25 LN Management has intentionally relinquished any such argument.

26 28. Had LN Management indicated any intent to argue for five-year rule dismissal prior
27 to its opposition to the instant motion, defendants could have acted accordingly to either obtain
28

1 affirmative relief or request an expedited resolution of the matter. Instead, LN Management did the
2 exact opposite, arguing the court should maintain the case notwithstanding any such rule.

3 29. Defendants reasonably relied on this relinquishment and would be severely
4 prejudiced if the court dismissed the action without resolving the parties' respective interests in the
5 property.

6 **Alternatively, the Five-Year Rule has not run due to tolling.**

7 30. To the extent the five-year rule was reinstituted based on its September 24, 2014
8 order granting LN Management's post-trial motion to reopen the case, the court finds the deadline
9 still would not have run due to tolling.

10 31. Under this scenario, the earliest the five-year rule could have expired is September
11 24, 2019, or five-years after the court reinstituted the action.

12 32. But the Nevada supreme court has explicitly recognized the deadline can be tolled
13 under certain circumstances, such as when the court stays proceedings. *Baker v. Noback*, 112 Nev.
14 1106, 1110 (1996) (noting it would be "patently unfair" to dismiss an action for failure to bring to
15 trial when a stay prevented the parties from going to trial within the period); *see also Boren v. City of*
16 *N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982) ("**Any** period during which the parties are
17 prevented from bringing an action to trial by reason of a stay order shall not be computed in
18 determining the five-year period of [NRCPP] 41(e).") (emphasis added).

19 33. Here, this matter was closed between May 23, 2018 and July 27, 2018 before the
20 court granted LN Management's motion to reopen. The matter was then stayed due to Ditech's
21 bankruptcy on March 27, 2019, and it remains stayed to date.

22 34. Accounting for these tolling periods, the five-year deadline would be at least **246**
23 **days** from when the stay is lifted and/or the case is reopened. Accordingly, the court finds there is
24 no merit to LN Management's contention the five-year rule deadline has expired.

25 **C. Federal Foreclosure Bar – 12 U.S.C. § 4617(j)(3)**

26 Pursuant to the Housing and Economic Recovery Act of 2008 ("HERA"), Congress granted
27 FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable
28 FHFA to carry out its statutory functions when acting as Conservator of Fannie Mae and Freddie

1 Mac (together, the "enterprises"). Among these is a broad statutory "exemption" captioned
2 "property protection" that provides when the enterprises are under the conservatorship of the FHFA,
3 none of their property "shall be subject to ... foreclosure ... without the consent of [FHFA]." 12
4 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").

5 35. The Federal Foreclosure Bar contains no conditions precedent to effectiveness of its
6 statutory protections. Unless and until FHFA gives its consent, the federal protection "shall" be
7 given full effect, which includes preemption of state law. *SFR Invs. Pool 1, LLC v. Green Tree*
8 *Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016) (citing 12 U.S.C. § 4617(j)(3)). A
9 contrary interpretation would invert the default rule provided in the statutory text on its head, as if
10 Congress decreed that FHFA's property interests are subject to extinguishment by foreclosure unless
11 FHFA affirmatively declares that it will not grant consent to the extinguishment of a specific
12 property interest. This is not what the statute says, and courts should not rewrite a statute's text. *See*
13 *Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) (rejecting argument that "would result not
14 [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (quoting *Iselin v.*
15 *United States*, 270 U. S. 245, 251 (1926))); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54
16 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all
17 others . . . that a legislature says in a statute what it means and means in a statute what it says.").
18 Here, there is no evidence FHFA consented to extinguishment of the deed of trust.

19 36. The Nevada supreme court and the Ninth Circuit have both held unequivocally that
20 the Federal Foreclosure Bar, 12 U.S.C. § 4617(j)(3), protects Fannie Mae's property interests while it
21 under the conservatorship of the FHFA by preempting the NRS 116.3116 (the **State Foreclosure**
22 **Statute**), which would otherwise permit an HOA's foreclosure of its superpriority lien to extinguish
23 Fannie Mae's deed of trust. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417
24 P.3d 363 (Nev. 2018); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool*
25 *1, LLC*, 893 F.3d 1136 (9th Cir. 2018); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir.
26 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir. 2017).

27 37. In *Christine View*, the Nevada supreme court held that "according to the plain
28 language of the statute, Fannie Mae's property interest effectively becomes the FHFA's while the

1 conservatorship exists. Thus, the Federal Foreclosure Bar protects Fannie Mae's deed of trust while
2 Fannie Mae is under the conservatorship." *Christine View*, 417 P.3d at 367. *Christine View* is
3 published precedent that forecloses any argument suggesting that the Federal Foreclosure Bar does
4 not preempt the State Foreclosure Statute or does not protect Fannie Mae's property interest from
5 extinguishment. *See id.* at 365 (holding that "the Federal Foreclosure Bar invalidates any purported
6 extinguishment of a regulated entity's property interest while under the FHFA's conservatorship
7 unless the FHFA affirmatively consents.").

8 38. Three other recent decisions from the Nevada supreme court, four Ninth Circuit
9 decisions, and dozens of decisions from federal and state district courts in Nevada agree with the
10 Nevada Supreme Court's decision in *Christine View*—an HOA foreclosure sale cannot extinguish
11 property interests of the Enterprises while they are in conservatorship. *See, e.g., Guberland*, 2018
12 WL 3025919, at *2; *A&I Series 3, LLC v. Fannie Mae*, No. 71124, 2018 WL 3387787 (Nev. July 10,
13 2018) (unpublished disposition); *5312 La Quinta Hills, LLC v. BAC Home Loans Servicing, LP*, No.
14 71069, 2018 WL 3025927, at *1 (Nev. June 15, 2018) (unpublished disposition); *Berezovsky*, 869
15 F.3d 923; *FHFA v. SFR*, 893 F.3d 1136; *Elmer*, 707 F. App'x 426; *Flagstar Bank, FSB*, 699 F. App'x
16 658; *see also* CMI's Motion for Summary Judgment at (citing dozens of state and federal district
17 court cases in Nevada).

18 39. The preemption doctrine, which provides that federal law supersedes conflicting state
19 law, arises from the Supremacy Clause of the U.S. Constitution. Here, the text of the Federal
20 Foreclosure Bar declares that "[n]o property of the Agency shall be subject to levy, attachment,
21 garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3).

22 40. The Federal Foreclosure Bar preempts the State Foreclosure Statute under a theory of
23 conflict preemption because "state law is naturally preempted to the extent of any conflict with a
24 federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*,
25 530 U.S. 363, 372 (2000)).

26 41. Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect
27 FHFA conservatorships from actions, such as the HOA Sale, that otherwise would deprive them of
28 their property interests. "[T]he [State Foreclosure Statute] is in direct conflict with Congress's clear

1 and manifest goal to protect Fannie Mae's property interest while under the FHFA's conservatorship
2 from threats arising from state foreclosure law." *Christine View*, 417 P.3d at 367; *Berezovsky*, 869
3 F.3d at 930 ("[T]he Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the
4 State Foreclosure Statute]."); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d at 1146-47 (following
5 *Berezovsky*); *Elmer*, 707 F. App'x at 427-28 (same); *Flagstar*, 699 F. App'x at 658-59 (same).

6 42. Accordingly, the Federal Foreclosure Bar preempts the State Foreclosure Statute to
7 the extent a homeowner association's foreclosure of its super-priority lien cannot extinguish a Fannie
8 Mae property interest while it is under FHFA's conservatorship, without the consent of FHFA.

9 43. At the time of the HOA foreclosure sale, Bank of America was the Deed of Trust
10 beneficiary of record in its capacity as the servicer for Fannie Mae. The evidence, which includes a
11 Fannie Mae employee declaration and supporting business records, proves Fannie Mae owned the
12 note and deed of trust at the time of the HOA sale and was in a contractual relationship with Bank of
13 America as the loan servicer. Fannie Mae maintained a property interest in the underlying collateral.
14 *See Daisy Trust*, 135 Nev. at 233-34, 445 P.3d at 849; *In re Montierth*, 131 Nev. 543, 354 P.3d 648
15 (2015); *CitiMortgage, Inc. v. SFR Invs. Pool 1, LLC*, No. 70237, 2019 WL 289690 (Nev. Jan. 18,
16 2019) (unpublished disposition); *CitiMortgage, Inc. v. TRP Fund VI, LLC*, No. 71318, 2019 WL
17 1245886, at *1 (Nev. Mar. 14, 2019); *Guberland*, 2018 WL 3025919 at *2-3 (citing *Montierth*);
18 Restatement (Third) of Property: Mortgages § 5.4 (1997). In citing *Montierth* and the Nevada
19 Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held
20 that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest
21 under the security instrument, because the note owner can direct the beneficiary to foreclose on its
22 behalf." *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a
23 secured property interest. *Id.* Therefore, an enterprise's "property interest is valid and enforceable
24 under Nevada law even if the recorded document omits [the Enterprise]'s name, if the recorded
25 beneficiary of the deed of trust is a party acting on [the Enterprise's] behalf." *Elmer*, 2017 WL
26 3822061, at *1.

27 44. The Nevada Supreme Court has held materially identical "business records and
28 testimony" constitute "ample evidence" to demonstrate an Enterprise's ownership of a loan and the

1 contractual relationship between an Enterprise and its servicer. *See M&T Bank v. Wild Calla St. Tr.*,
2 No. 74715, 2019 WL 1423107, at *2 (Nev. Mar. 28, 2019) (unpublished disposition); *see also*
3 *CitiMortgage v. SFR*, 2019 WL 289690, at *1 & n.1 ("Although respondent contends that appellant's
4 evidence[—"deposition testimony of appellant's NRCP 30(b)(6) witness, affidavit, and relied-upon
5 business records"—] does not establish that Fannie Mae owned the loan at the time of the HOA
6 foreclosure sale, we disagree."); *CitiMortgage v. TRP*, 2019 WL 1245886, at *1; *SFR Invs. Pool 1,*
7 *LLC v. Green Tree Servicing, LLC*, No. 72010, 2018 WL 6721370, at *1 (Dec. 17, 2018)
8 (unpublished disposition).

9 45. The Ninth Circuit agrees and has held materially the same evidence was admissible
10 and sufficient to establish an Enterprise's property interest for the purposes of summary judgment.
11 *See, e.g., Berezovsky*, 869 F.3d at 933; *Elmer*, 707 F. App'x at 428; *Williston*, 736 F. App'x at 169;
12 *G&P Investments*, 740 F. App'x at 564.

13 46. Nevada law does not require Fannie Mae's ownership interest to be recorded in its
14 own name. *Daisy Trust*, 445 P.3d at 849; *JPMorgan Chase Bank, N.A. v. Guberland LLC-Series 2*,
15 No. 73196, 2019 WL 2339537, at *1 (Nev. May 31, 2019) ("*Guberland II*"). The protection of the
16 Federal Foreclosure Bar is not limited to the interest Fannie Mae might have if it were *record*
17 *beneficiary* of the deed of trust at the time of the HOA sale. Rather, it extends to the property
18 interest that Fannie Mae has as the *owner* of the note and deed of trust while its contractually
19 authorized servicer appears as record beneficiary of that deed of trust, a property interest that Nevada
20 law recognizes. *See Montierth*, 131 Nev. 543, 354 P.3d 648 (holding that a loan owner has a secured
21 property interest when a contractually authorized servicer is the record beneficiary of a deed of
22 trust); *see also Guberland*, 2018 WL 3025919, at *2-3 (applying the Federal Foreclosure Bar where
23 an enterprise "was not the beneficiary of the deed of trust" and its servicer appeared as record
24 beneficiary); *CitiMortgage v. SFR*, 2019 WL 289690 at *2 (relying on *Montierth* and holding the
25 loan servicer's status as record beneficiary of the deed of trust "does not create a question of material
26 fact regarding whether Fannie Mae owns the subject loan"); *CitiMortgage v. TRP*, 2019 WL
27 1245886, at *1 (reversing the district court's finding that the Federal Foreclosure Bar did not prevent
28 the extinguishment of Fannie Mae's deed of trust because it was not publicly recorded in Fannie

1 Mae's name and confirming, under *Montierth*, that "the record beneficiary need not be the actual
2 owner of the loan").

3 47. LN Management bears the burden of proof to establish that FHFA expressly
4 consented to extinguish Fannie Mae's ownership interest in the deed of trust. FHFA's April 21, 2015
5 statement confirms that FHFA did not provide express consent here. In the absence of express
6 consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the
7 Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent can only be
8 manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-
9 CWH, 2017 WL 773827, at *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which
10 FHFA's statement was sufficient to show FHFA's lack of consent). Although the federal law
11 controls, it is consistent with Nevada's policy against requiring a party to prove a negative, such as
12 proving a lack of consent. *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092,
13 1096-97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it
14 is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered.");
15 *see also State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the defendant
16 establishes good title to the property the burden shifts to the state – "not upon the defendants to
17 prove a negative", *i.e.* that the property was not abandoned or forfeited).

18 48. LN Management has not shown it obtained such consent. To the contrary, FHFA has
19 publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or
20 other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection
21 with HOA foreclosures of super-priority liens." Therefore, the Federal Foreclosure Bar applies.

22 49. Having found that the Federal Foreclosure Bar applies, the next step is to determine if
23 defendants have standing, as the servicer and beneficiary of record at the time of the HOA
24 foreclosure sale and during the applicable periods of this action, to represent Fannie Mae's Mac
25 interest in the loan. The Court finds that defendants were Fannie Mae's contractually authorized
26 servicers of the loan, with standing to represent and defend Fannie Mae's interests in this action. *See*
27 *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017); *Flagstar*,
28 699 F. App'x at 658.

1 50. The Nevada Supreme Court confirmed that "the servicer of a loan owned by [Fannie
2 Mae] may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [Freddie
3 Mac] nor the FHFA need be joined as a party." *Nationstar*, 396 P.3d at 758.

4 51. Furthermore, there is no bar against private parties like defendants raising a federal
5 preemption argument. *Id.* at 757. To the contrary, in cases state and federal law clash, "*judges are*
6 *bound by federal law.*" *Id.* (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378,
7 1384 (2015)) (emphasis in original); *See Saticoy Bay LLC Series Christine View v. Federal National*
8 *Mortgage Association*, 134 Nev. Adv. Op. 36 (2018).

9 52. LN Management offers no evidence conflicting with Fannie Mae's ownership of the
10 loan or defendants' right to represent Fannie Mae's interest in the loan.

11 53. Since no party has refuted evidence of Fannie Mae's ownership, the Federal
12 Foreclosure Bar defeats LN Management's contention it took title to the property free and clear of
13 the deed of trust.

14 ***D. Tender Was Excused as Futile.***

15 54. Even if the Federal Foreclosure Bar did not apply, Fannie Mae's deed of trust would
16 still have survived because Bank of America's tender was excused under the Nevada supreme court's
17 decision in *Perla del Mar. 7510 Perla Del Mar Ave Trust v. Bank of Am. N.A.*, 458 P.3d 348, 349
18 (Nev. 2020). That case held the obligation to tender is excused for futility where the evidence shows
19 that the HOA or its foreclosure agent "had a known policy of rejecting such payments." *Id.* at 351
20 (citing cases from other jurisdictions endorsing the general proposition that a tender is excused when
21 the party entitled to payment demonstrates by words or conduct it will not accept the tender).

22 55. Just as in *Perla Del Mar*, Bank of America and Miles Bauer offered to pay the HOA,
23 through Collections of America, the superpriority amount "actually due" with no impermissible
24 conditions attached. *See 7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 458 P.3d 348,
25 349 (Nev. 2020) (noting "[a]n actual tender is unnecessary where it is apparent the other party will
26 not accept it."). The HOA, through its agent, stated no superpriority lien existed until Bank of
27 America completed its own foreclosure.

28 ...

1 56. In analyzing materially similar representations from an HOA trustee, the Nevada
2 supreme court confirmed "[t]he necessary implication of these statements is that [the HOA trustee]
3 would not have accepted a superpriority tender before the first deed of trust was foreclosed." *See*
4 *U.S. Bank N.A. v. SFR Invs. Pool 1 LLC*, No. 78003, 2020 WL 3003017, at *1 (Nev. June 4, 2020)
5 (unpublished) (directing judgment in the bank's favor based on futility).

6 57. Bank of America stood ready, willing, and able to tender the full statutory super-
7 priority amount to protect the deed of trust, but the HOA obstructed Bank of America's ability to
8 tender the superpriority portion of the HOA's lien through its false representations and assurances.
9 *Id.* The HOA sale thus did not extinguish the deed of trust because Bank of America was excused
10 from formal tender.

11 ***E. The HOA Conducted a Sub-Priority Sale.***

12 58. Irrespective of Bank of America's superpriority offer, the HOA foreclosed on only the
13 subpriority portion of its lien because that is what the HOA and its agent chose to do.

14 59. The Nevada Supreme Court in *SFR Investments*, applying the plain language of the
15 statute, explained that "[a]s to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two
16 pieces, a superpriority piece and a subpriority piece." *SFR Investments Pool 1 v. U.S. Bank*, 334
17 P.3d 408, 411 (Nev. 2014). Only "[t]he superpriority piece" is "prior to a first deed of trust." *Id.*
18 "The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed
19 of trust." *Id.* An association can choose to foreclose on either the sub-priority or super-priority
20 portion of its lien. *See Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132
21 Nev. Adv. Op. 5, 366 P.3d 1105, 1116 (2016) ("And if the association forecloses on its superpriority
22 lien portion, the sale also would extinguish other subordinate interests in the property."). *See also*
23 *River Glider Ave. Tr. v. The Bank of N.Y. Mellon*, No. 79808 (Nev. Sup. Ct. Sept. 18, 2020)
24 (unpublished disposition) (finding representations of purchaser in judicial proceeding determinative
25 for whether a sale was a subpriority or super-priority sale).

26 60. This comports with long-standing Nevada law that the foreclosing party's intent
27 determines what is transferred at auction. *See, e.g., Dayton Valley Investors, LLC v. Union Pac. R.*
28 *Co.*, 664 F.Supp. 2d 1174, 1185 (D. Nev. 2009) ("[I]t is the intent of the parties to the deed which ...

1 must determine the nature and extent of the interest conveyed.") (quoting *City Motel, Inc. v. Nevada*
2 *ex. rel. State Dep't of Highways*, 75 Nev. 137, 140, 336 P.2d 375, 377 (1959)). The foreclosing
3 party's intent "is determined from 'all the circumstances surrounding the transaction[.]'" *See Dayton*
4 *Valley*, 664 F.Supp. 2d at 1185 (quoting *Kartheiser v. Hawkins*, 98 Nev. 237, 239, 645 P.2d 967, 968
5 (1982)).

6 61. Here, the undisputed evidence shows the HOA's agent, Collections of America,
7 explicitly informed Bank of America it was not "foreclosing on a super-priority lien pursuant to NRS
8 116.3116" and that the HOA did not claim "to have a super-priority lien since the first mortgage
9 [had] not [been] foreclosed."

10 62. "Because the HOA foreclosed on only its sub-priority lien, [LN Management] cannot
11 meet its burden of showing it has title superior to [the Deed of Trust]." *7912 Limbwood Court Trust*
12 *v. Wells Fargo Bank, N.A.*, 2015 WL 5123317 at *4 (D. Nev. Aug. 31, 2015); *see also MacDonald v.*
13 *Krause*, 77 Nev. 312, 315, 362 P.2d 724, 727 (1961) ("In a quiet title action, the only issue is
14 whether plaintiff has an interest or estate in the property superior to the adverse claim.").
15 Accordingly, defendants are entitled to summary judgment on this alternative basis.

16 ***F. Alternatively, The Court Finds the Deed of Trust Survived as a Matter of Equity***

17 63. The court need not reach the equities in this matter because Fannie Mae's deed of
18 trust survived as a matter of law. *Bank of America, N.A. v. SFR Invs. Pool I, LLC*, 427 P.3d 113
19 (Nev. 2018). But even if the court balanced the equities in this case, they tip strongly in defendants'
20 favor.

21 64. If an association sells a property for a price that is "palpabl[y] and great[ly]
22 inadequate," all that is needed to show the deed of trust survived as a matter of equity is "very slight
23 additional evidence of unfairness." *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227*
24 *Shadow Canyon*, 405 P.3d 641, 642 (Nev. 2017). To determine if an association's foreclosure-sale
25 price is inadequate, courts must compare that price to the foreclosed property's fair market value at
26 the time of the sale. *See id.*, at 649 (comparing the \$35,000.00 association-foreclosure-sale price to
27 an appraisal showing the fair-market value of free and clear title was \$335,000.00 to determine the
28 association sold the property "for roughly 11 percent of [its] fair market value"). A foreclosure-sale

1 price below 20% of fair market value is "obviously inadequate." *See Shadow Wood*, 366 P.3d at
2 1116.

3 65. The Nevada supreme court has provided a non-exhaustive list of "irregularities that
4 may rise to the level of fraud, unfairness, or oppression" required to set aside an association sale or
5 hold that it did not extinguish a senior deed of trust, including: (1) "failure to mail a deed of trust
6 beneficiary the statutorily required notices"; (2) "***an HOA's representation that the foreclosure sale***
7 ***will not extinguish the first deed of trust***"; (3) "collusion between the winning bidder and the entity
8 selling the property"; (4) "a foreclosure trustee's refusal to accept a higher bid"; and (5) "a
9 foreclosure trustee's misrepresentation of the sale date." *Id.* at n.11 (emphasis added).

10 66. Here, the HOA sold the Property for less than 2% of its fair market value. In light of
11 this "palpabl[y] and great[ly]" inadequate sales price, only slight evidence of unfairness is needed to
12 set aside the foreclosure sale. *See Nationstar*, 405 P.3d at 648. Prior to the HOA Sale, Bank of
13 America contacted Collections to offer to pay the full statutory super-priority amount, as it has done
14 in hundreds – if not thousands – of other cases. Collections subsequently assured Bank of America
15 that it was not foreclosing on a "super-priority lien pursuant to NRS 116.3116" and that the HOA did
16 not claim to "have a super-priority lien." Miles Bauer, on behalf of Bank of America, asked
17 Collections to let them know if the circumstances of the HOA Sale changed, as "Bank of America
18 would like to payoff any potential senior lien, should one exist, to protect [the Deed of Trust]." *Id.*
19 Again, in response to Bank of America's willingness to tender the full statutory super-priority
20 amount, Collections advised that no such lien existed, and it would notify Bank of America if
21 anything changed. *Id.*

22 67. Bank of America attempted to pay the superpriority amount of the HOA's lien here to
23 ensure Fannie Mae's deed of trust was protected, and the HOA prevented it from doing so. This is
24 another example of unfairness the supreme court explicitly identified in *Shadow Canyon*. *See* 405
25 P.3d at 650 (explaining that whether a senior lender "tried to tender payment" to an association
26 before the sale is "significant[]" to determine whether the lender's deed of trust survived as an
27 equitable matter).

28 . . .

1 68. In light of the HOA and its agents' representations to Bank of America and Miles
2 Bauer, coupled with the HOA's efforts to thwart Bank of America's superpriority payment, holding
3 that the deed of trust was extinguished would be much more than "very slight[ly] unfair," and
4 "[v]ery slight additional evidence of unfairness or oppression" is all that is needed in light of the
5 "palpabl[y] and great[ly]" inadequate sale price to hold the deed of trust was not extinguished on
6 equitable grounds. *See Shadow Canyon*, 405 P.3d at 648.

7 69. Even if LN Management was a bona fide purchaser, it is but one factor of many when
8 balancing the equities between it and defendants and does not change the above result. Further, the
9 court finds LN Management was not a bona fide purchaser.

10 70. To be a bona fide purchaser, one must take property "for a valuable consideration and
11 without notice of the prior equity, and without notice of facts which upon diligent inquiry would be
12 indicated and from which notice would be imputed to him, if he failed to make such inquiry."
13 *Shadow Wood*, 366 P.3d at 1115 (citing *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)).

14 71. A putative bona fide purchaser has the burden to prove it is a bona fide purchaser.
15 *See, e.g., Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the
16 putative bona fide purchaser "was required to show that legal title had been transferred to her before
17 she had notice of the prior conveyance to appellant"). Here, LN Management cannot satisfy its
18 burden to show that it was a bona fide purchaser.

19 72. First, and most obvious, LN Management put forth no evidence that it was a bona
20 fide purchaser.

21 73. Second, LN Management cannot be a bona fide purchaser because it had inquiry
22 notice of Miles Bauer's superpriority offer. A party cannot qualify as a bona fide purchaser if it was
23 under a duty of inquiry that it failed to discharge before purchasing the property at issue. *Berge*, 95
24 Nev. at 189. The *Berge* Court explained that this duty arises:

25 when the circumstances are such that a purchaser is in possession of
26 facts which would lead a reasonable man in his position to make an
27 investigation that would advise him of the existence of prior
28 unrecorded rights. He is said to have constructive notice of their
existence whether he does or does not make the investigation. The
authorities are unanimous in holding that he has notice of whatever the
search would disclose.

1 *Id.*

2 74. A purchaser "put upon inquiry may rebut the presumption of notice by showing that
3 he made due investigation without discovering the prior right or title he was bound to investigate."
4 *Id.*, at 185. LN Management has produced no evidence it conducted such an investigation.

5 75. The bona fide purchaser doctrine does not protect against willful ignorance—
6 plaintiff's decision to purchase a lawsuit cannot transform the encumbered interest it purchased into
7 free and clear title. *See Allison Steel*, 86 Nev. at 497.

8 76. As such, the deed of trust survived the HOA's foreclosure sale as a matter of equity
9 and continues to encumber plaintiff's title to the property.

10 **G. The Court Reforms the Deed of Trust and Subsequent Assignment.**

11 77. Deeds and other instruments, like an assignment, can be "reformed in accordance
12 with the intention of parties when that intention is frustrated by a mutual mistake." *Grappo v.*
13 *Mauch*, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994). Reformation should be utilized "when a
14 written instrument fails to conform to the parties' previous understanding or agreement." *Id.*

15 78. Borrower purchased two units in the same condominium development. First,
16 Borrower obtained a loan in the amount of \$322,100.00 to purchase the Property (3111 Bel Air Dr.,
17 Unit 24G), repayment of which was secured by a Deed of Trust recorded on October 20, 2004. The
18 Property was conveyed to Borrower by the previous owner through a Grant Deed recorded on
19 October 16, 2003 as instrument number 20031016-01640. The Deed of Trust lists the APN as 162-
20 10-812-185.

21 79. Borrower subsequently obtained a second loan to purchase another unit in the same
22 condominium complex. Specifically, Borrower obtained a loan in the amount of \$149,000 to
23 purchase real property commonly known as 3111 Bel Air Dr. #216, Las Vegas, NV 89109 (**216**
24 **Property**), repayment of which was secured by a Deed of Trust recorded on December 31, 2007
25 (**216 Deed of Trust**). The 216 Deed of Trust, like the Deed of Trust, lists Bank of America as the
26 Lender. The 216 Property's APN number as 162-10-812-003.

27 80. While the property address and the APN on the Deed of Trust are correct, the Court
28 finds the legal description is incorrect. The Grant Deed conveying the Property to Borrower

1 specifies that Unit 24G is designated Unit 185 in the original Regency Towers plat. Due to a mutual
2 mistake, however, the legal description in the Deed of Trust states that Unit 24G is designated as
3 Unit 3 in the Regency Towers plat. In reality, Unit 3 is the correct legal description for the 216
4 Property. The property records, the Regency Towers plat, and defendants' expert report make clear
5 that the Property's legal description should list Unit 185, as opposed to Unit 3.

6 81. Based on the uncontroverted evidence, the Court reforms the legal description in the
7 Deed of Trust to list Unit 185, as opposed to Unit 3.

8 82. The second instrument requiring reformation is an Assignment of the Deed of Trust
9 recorded on July 30, 2013. Due to a mutual mistake and confusion, the Assignment was
10 inadvertently recorded against APN #162-10-812-003, which is the 216 Property. The Assignment
11 correctly states that it is assigning the Deed of Trust (not the 216 Deed of Trust) but does not appear
12 in the property records for the Property when conducting an assessor's parcel no. search on account
13 of the incorrect APN. The language in the Assignment makes it clear that the Assignment should
14 have been recorded against APN 162-10-812-185.

15 83. Based on the uncontroverted evidence, the Court reforms the Assignment to reflect
16 the correct APN (162-10-812-185) and orders that the Assignment's effective date as to the subject
17 property was the date it was recorded against the incorrect parcel number (July 30, 2013).

18 **ORDER AND JUDGMENT**

19 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,
20 instrument number 20041020-0001569 with the Clark County Recorder, was not extinguished by the
21 HOA's foreclosure sale that is reflected in the trustee's deed upon sale, instrument number
22 201212170000834 with the Clark County Recorder.

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,
24 instrument number 20041020-0001569 with the Clark County Recorder, remains a valid, first-
25 position lien encumbering the property located at as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada
26 89109, assessor's parcel no. 162-10-812-185.

27 . . .

28 . . .

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the legal description of the property in the deed of trust, instrument number 20041020-0001569 with the Clark County Recorder, is reformed to list Unit 185, as opposed to Unit 3.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Assignment of the deed of trust, recorded on July 30, 2013 as instrument number 201307300000199 with the Clark County Recorder, is reformed to reflect the assessor's parcel no. 162-10-812-185. The assignment's effective date remains the date it was recorded against the incorrect parcel number, or July 30, 2013. The court intends this judgment to correct any alleged deficiencies in the at-issue deed of trust and subsequent assignment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion for summary judgment is **GRANTED in its entirety**. Judgment is entered in favor of defendants and against LN Management. This is a final judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the court lifts the stay and reopens this case for the purpose of granting defendants' summary judgment motion and entering the court's judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all remaining claims are **DISMISSED** as moot.

DATED this 20th day of January, 2021.


 DISTRICT JUDGE

Submitted by:

AKERMAN LLP

/s/ Nicholas E. Belay

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Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

Nevada Bar No. 12125

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Financial LLC f/k/a Green Tree Servicing LLC

Approved as to form and content by:

/s/ Kerry P. Faughnan

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Llarena, Carla (LAA-Las)

From: Belay, Nicholas (Assoc-Las)
Sent: Wednesday, January 6, 2021 2:00 PM
To: Belay, Nicholas (Assoc-Las)
Subject: FW: A-12-669570-C (Elliott, Michael) - proposed order

From: Kerry Faughnan
Sent: Wednesday, January 6, 2021 8:45 AM
To: Belay, Nicholas (Assoc-Las)
Subject: Re: A-12-669570-C (Elliott, Michael) - proposed order

You may add my electronic signature.

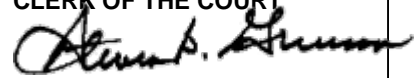
On Tue, Jan 5, 2021 at 4:16 PM <nicholas.belay@akerman.com> wrote:

Hi Kerry,

Just following up. Think you could let me know by tomorrow?

Nicholas Belay

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Financial LLC f/k/a Green Tree Servicing LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LN MANAGEMENT LLC SERIES 3111 BEL
AIR 24G,

Plaintiff,

v.

MICHAEL T. ELLIOTT, an individual; BANK
OF AMERICA, N.A.; and DOES 1 through 10,
inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No. : A-12-669570-C

Consolidated with: A-13-682055-C

Dept. No.: XIII

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

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

2 PLEASE TAKE NOTICE that a **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND**
3 **JUDGMENT** has been entered by this Court on the 20th day of January, 2021, in the above-
4 captioned matter. A copy of said Order is attached hereto as **Exhibit A**.

5 Dated this 21st day of January, 2021.

6 **AKERMAN LLP**

7 /s/ Nicholas E. Belay

8 ARIEL E. STERN, ESQ.

9 Nevada Bar No. 8276

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11 Nevada Bar No. 12125

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17 *Financial LLC f/k/a Green Tree Servicing LLC*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 21st day of January, 2021, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**, in the following manner:

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

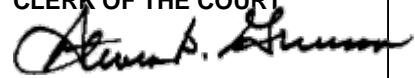
Kerry P. Faughnan, Esq.	kerry.faughnan@gmail.com
DocPrep	filings@docprep.info
Jory Garabedian	jgarabedian@mileslegal.com

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

/s/ Carla Llarena
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A



FFCL

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Financial LLC f/k/a Green Tree Servicing LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

LN MANAGEMENT LLC SERIES 3111 BEL
AIR 24G,

Plaintiff,

v.

MICHAEL T. ELLIOTT, an individual; BANK
OF AMERICA, N.A.; and DOES 1 through 10,
inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No. : A-12-669570-C
Consolidated with: A-13-682055-C

Dept. No.: XIII

**~~PROPOSED~~ FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
JUDGMENT**

Ditech Financial LLC f/k/a Green Tree Servicing LLC (**Ditech**) and Bank of America, N.A. (collectively, **defendants**) filed a summary judgment motion on September 29, 2020. LN Management LLC Series 3111 Bel Air 24G filed an opposition on November 11, 2020, and defendants filed reply on November 20, 2020. The court held a hearing on the motion on December 3, 2020. Following the hearing, the court took the matter under advisement.

1 On December 14, 2020, the court entered a minute order granting defendants' summary
2 judgment motion. The court now enters the following findings of fact and conclusions of law.

3 FINDINGS OF FACT

4 *The Subject Property, Note, and Deed of Trust*

5 1. A deed of trust listing Michael T. Elliott as the borrower (**Borrower**) and Bank of
6 America as the lender and beneficiary was executed on October 6, 2004 and recorded on October 20,
7 2004 (**Deed of Trust**). The Deed of Trust granted Lender a security interest in real property known
8 as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada 89109 (the **Property**) to secure the repayment of
9 a promissory note (the **Note**) in the original amount of \$322,100.00 to the Borrower (the Note and
10 Deed of Trust together are the **Loan**). The Deed of Trust listed the APN number as 162-10-812-185.

11 2. In November 2004, Fannie Mae purchased the Loan, thereby acquiring ownership of
12 the Deed of Trust. Fannie Mae maintained that ownership at the time of the HOA Sale on December
13 12, 2012.

14 3. In September 2008, Federal Housing Finance Agency (**FHFA**) placed Fannie Mae
15 into conservatorship "for the purpose of reorganizing, rehabilitating, or winding up [its] affairs." 12
16 U.S.C. § 4617(a)(2). Fannie Mae remains in conservatorship today.

17 4. At the time of the HOA Sale, Bank of America was the servicer of the Loan for
18 Fannie Mae.

19 5. Bank of America serviced the Loan for Fannie Mae up until on or about April 30,
20 2013, when the servicing rights were transferred to Ditech.

21 6. On July 30, 2013, Bank of America recorded an assignment of the Deed of Trust to
22 Ditech.

23 7. On December 20, 2019, Ditech recorded an assignment of the Deed of Trust to New
24 Residential Mortgage, LLC.

25 8. On March 17, 2020, New Residential Mortgage, LLC recorded an assignment of the
26 Deed of Trust to NewRez LLC d/b/a Shellpoint Mortgage Servicing (**NewRez**).

27 . . .

28 . . .

1 ***Fannie Mae's Contract with Its Servicers, Including Bank of America, Ditech, and NewRez***

2 9. The relationship between Bank of America, Ditech, and NewRez, as the servicers of
3 the Loan, and Fannie Mae, as owner of the Loan, is governed by the Fannie Mae's Single-Family
4 Selling Guide at A2-1-01 and Fannie Mae's Single-Family Servicing Guide (**Guide**), a central
5 governing document for Fannie Mae's relationship with servicers nationwide. Among other things,
6 the Guide provides that Fannie Mae's servicers may act as record beneficiaries for the deeds of trust
7 owned by Fannie Mae and requires that servicers assign these deeds of trust to Fannie Mae upon
8 Fannie Mae's demand. Selling Guide at A2-1-01, Servicing Guide F-1-11.

9 10. The Guide provides that:

10 The servicer ordinarily appears in the land records as the mortgagee to
11 facilitate performance of the servicer's contractual responsibilities, including
12 (but not limited to) the receipt of legal notices that may impact Fannie Mae's
13 lien, such as notices of foreclosure, tax, and other liens. However, *Fannie*
14 *Mae may take any and all action with respect to the mortgage loan it deems*
15 *necessary to protect its ... ownership of the mortgage loan, including*
16 *recordation of a mortgage assignment, or its legal equivalent, from the*
17 *servicer to Fannie Mae or its designee.* In the event that Fannie Mae
18 determines it necessary to record such an instrument, the servicer must assist
19 Fannie Mae by

- 16 • preparing and recording any required documentation, such as
17 mortgage assignments, powers of attorney, or affidavits; and
- 18 • providing recordation information for the affected mortgage loans.

19 Selling Guide at A2-1-03 (emphasis added).

20 11. The Guide also provides for a temporary transfer of possession of the note when
21 necessary for servicing, such as managing litigation on behalf of Fannie Mae:

22 In order to ensure that a servicer is able to perform the services and duties
23 incident to the servicing of the mortgage loan, Fannie Mae temporarily
24 gives the servicer possession of the mortgage note whenever the servicer,
25 acting in its own name, represents the interests of Fannie Mae in
26 foreclosure actions, bankruptcy cases, probate proceedings, or other legal
27 proceedings.

28 This temporary transfer of possession occurs automatically and
immediately upon the commencement of the servicer's representation, in

its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

Selling Guide at A2-1-04.

11. The Guide includes a chapter describing how and when servicers should pursue foreclosure. *See generally* Guide at E-3 (Managing Foreclosure Proceedings). The chapter includes detailed provisions for how servicers may foreclose on properties when either Fannie Mae, MERS, or the servicer itself is the beneficiary of record of the relevant deed of trust. Guide at E-3.2-09.

12. The Guide also includes a chapter that explains how servicers should manage litigation on behalf of Fannie Mae. *See generally* Guide at E-1 (Referring Default-Related Legal Matters and Non-Routine Litigation to Law Firms).

13. The Guide states that "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure . . . possession automatically reverts to Fannie Mae." Guide at A2-1-04.

14. Pursuant to the Guide, a servicer is required to "maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the individual mortgage loan." Guide at A2-4-01.

15. Any servicer retaining documents related to a particular loan, such as a deed of trust, has "no right to possess these documents and records except under the conditions specified by Fannie Mae." Guide at A2-5.1-02.

The HOA Foreclosure Sale and LN Management's Purported Acquisition of the Property

16. On June 21, 2012, Collections, as agent for the HOA, recorded a Notice of Claim – Delinquent Assessment Notice.

17. On July 25, 2012, Collections, as agent for the HOA, recorded a Notice of Default and Election to Sell.

18. After the Notice of Default was recorded, on or about August 16, 2012, Bank of America, through counsel at Miles, Bauer, Bergstrom, & Winters, LLP (**Miles Bauer**), contacted the HOA through Collections and requested the super-priority amount.

...

1 19. Collections responded on or about November 27, 2012, and provided a Statement of
2 Account.

3 20. Following receipt of the Statement of Account, Miles Bauer and Collections
4 discussed the HOA Sale via telephone. In email correspondence recounting the details of the
5 telephone conversation, Collections confirmed that neither it nor the HOA was "foreclosing on a
6 super-priority lien pursuant to NRS 116.3116."

7 21. Collections further confirmed that it and the HOA were "not claiming to have a
8 super-priority lien since the first mortgage [had] not been foreclosed on the property."

9 22. Miles Bauer advised Collections that if the HOA and Collections were to conduct a
10 super-priority sale, "Bank of America would like to payoff any potential senior lien, should one
11 exist, to protect its first mortgage security interest."

12 23. Collections, on behalf of the HOA, then recorded a Notice of Trustee Sale on
13 November 15, 2012.

14 24. On December 17, 2012, a foreclosure deed was recorded against the Property. The
15 foreclosure deed states that the Property was sold at an HOA foreclosure sale on December 12, 2012,
16 to 3111 Bel Air Drive 24G Trust for \$7,001.00.

17 25. 3111 Bel Air Drive 24G Trust subsequently conveyed the Property to LN
18 Management via a Quitclaim Deed recorded on April 26, 2013.

19 26. At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing
20 Fannie Mae's interest in the Property. (FHFA's Statement on HOA Super-Priority Lien Foreclosures
21 (Apr. 21, 2015), [www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)
22 [Foreclosures.aspx](http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx)).

23 27. The fair market value of the Property at the time of the HOA Sale was \$360,000. The
24 purchase price at the HOA Sale was less than 2% of the fair market value.

25 ***Procedural History***

26 28. LN Management initiated an action for quiet title/declaratory relief on May 17, 2013.
27 See Case No. A-13-682055-C. The court consolidated the case with the above-captioned action on
28 October 29, 2013.

1 3. NRS 30.010 *et seq.* gives courts "power to declare rights, status and other legal
2 relations." LN Management and defendants both seek declaratory relief under that statute.

3 4. Here, defendants request declaratory relief and quiet title. LN Management contends
4 that it bought the property and the first deed of trust was extinguished. Defendants assert the sale
5 did not extinguish the deed of trust because: (1) Fannie Mae owned the loan, and Bank of America
6 was the beneficiary of record of the deed of trust in its capacity as the servicer of the loan for Fannie
7 Mae at the time of the HOA foreclosure sale in December 2012, and thus, the Federal Foreclosure
8 Bar applies; (2) the HOA foreclosed on only the sub-priority portion of its statutory lien; (3) the deed
9 of trust survived as a matter of equity.

10 5. In an action such as the present one, the parties must prove their claims and
11 affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law,
12 "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that
13 opposed to it, has more convincing force, and from which it appears that the greater probability of
14 truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding
15 entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that
16 opposed to it, has more convincing force and the greater probability of truth.").

17 6. Nevada law draws no distinction between circumstantial and direct evidence.
18 *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction
19 between the weight to be given either direct or circumstantial evidence. Therefore, all of the
20 evidence in the case, including circumstantial evidence, should be considered...").

21 ***B. The Five-Year Rule under NRCP 41(e) Has Not Run***

22 7. LN Management contends the court should dismiss this case under NRCP 41(e)
23 because the five-year rule has expired. The court rejects this argument.

24 **The Action was Brought to Trial**

25 8. NRCP 41(e) only applies if an action is not brought to trial within 5 years after the
26 action was filed. *See* NRCP 41(e)(2)(B). The Nevada supreme court defines "trial" as "the
27 examination before a competent tribunal, according to the law of the land, of questions of fact or of
28 law put in issue by pleadings, for the purpose of determining the rights of the parties." *United Ass'n*

1 of *Journeyman & Apprentices of Plumbing & Pipe Fitting Indus. v. Manson*, 105 Nev. 816, 819–20,
2 783 P.2d 955, 957 (1989). Under this definition, "proceedings leading to a complete grant of
3 summary judgment constitute a trial" for purposes of the five-year rule. *Monroe v. Columbia Sunrise*
4 *Hosp. & Med. Ctr.*, 123 Nev. 96, 100, 158 P.3d 1008, 1010 (2007). This holds true even when third-
5 party claims remain outstanding. *Id.* at 1011.

6 9. The court granted summary judgment in favor of Ditech on August 13, 2014. The
7 order granted Ditech's motion "in its entirety" and constituted the "final order/judgment in this
8 matter." While the court ultimately granted LN Management's motion to set aside the judgment in
9 September 2014, nothing in either NRCP 41(e) or Nevada case law negates the fact Ditech brought
10 the action "to trial" within the meaning of Rule 41(e).

11 10. Rule 41(e)'s plain language does not contemplate the five-year rule being reinstated
12 after it has already been satisfied on summary judgment. *See Vanguard Piping v. Eighth Jud. Dist.*
13 *Ct.*, 129 Nev. 602, 608, 309 P.3d 1017, 1020 (2013) (stating the rules of statutory interpretation
14 apply to procedural rules and noting the court should look to the plain language of the rule); *Thran v.*
15 *District Ct.*, 79 Nev. 176, 180-81 (1963) (Rule 41(e) is "clear, unambiguous and requires no
16 construction other than its own language.").

17 11. Because Ditech already satisfied the five-year rule, it is no longer applicable to this
18 action.

19 LN Management Stipulated to Forego the Five-Year Rule

20 12. Even if the five-year rule had not already been satisfied, the court finds the parties
21 have stipulated to waive it.

22 13. NRCP 41(e)(5) provides a party may stipulate in writing to extend the time in which
23 to prosecute an action.

24 14. The court finds this is precisely what LN Management did when it moved for
25 reconsideration of the court's May 2018 order dismissing the action under Rule 41(e).

26 15. In the motion, LN Management argued the court should set aside the court's five-year
27 rule dismissal and reopen the case so that the parties could obtain "final orders that would determine
28

1 each of the parties rights as to the property." No other party filed an opposition to LN Management's
2 motion.

3 16. By filing an unopposed motion to disregard the five-year rule dismissal and litigate
4 the matter on the merits, the court finds LN Management and the remaining parties stipulated to
5 forego application of the five-year rule to this matter.

6 **LN Management is judicially estopped from obtaining dismissal under the Five-Year**
7 **Rule.**

8 17. Even assuming the five-year rule continues to apply, the court finds LN Management
9 is judicially estopped from obtaining dismissal.

10 18. Judicial estoppel has five elements: "(1) the same party has taken two positions; (2)
11 the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was
12 successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true);
13 (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of
14 ignorance, fraud, or mistake." *Matter of Frei Irrevocable Tr. Dated Oct. 29, 1996*, 133 Nev. 50, 56,
15 390 P.3d 646, 652 (2017) (citation omitted). All elements are satisfied to prevent LN Management
16 from now asserting the five-year rule.

17 19. *First*, LN Management has taken two positions. In its opposition, LN Management
18 contends the five-year rule expired on October 3, 2017, necessitating dismissal of this action. But
19 LN Management previously moved for reconsideration on June 21, 2018, of the court's order
20 dismissing the action for want of prosecution under the very same rule LN Management now seeks
21 to enforce.

22 20. *Second*, LN Management's positions were taken in this case, a judicial proceeding.

23 21. *Third*, LN Management successfully obtained reconsideration of the court's order
24 dismissing the action under Rule 41(e). The court granted LN Management's motion and reopened
25 the case on July 27, 2018.

26 22. *Fourth*, the positions are inconsistent. LN Management moved for (and obtained)
27 reconsideration of the court's Rule 41(e) dismissal, explicitly arguing such relief was appropriate due
28 to its own wrongful conduct. LN Management now seeks to undo its own motion by arguing the

1 five-year rule somehow expired in October 2017. These positions are entirely irreconcilable. LN
2 Management cannot now argue for dismissal under Rule 41(e) when it previously moved to reopen
3 the case (for the second time) notwithstanding this very rule.

4 23. *Finally*, LN Management's conduct cannot be found to result from ignorance, fraud or
5 mistake. LN Management moved on its own volition for reconsideration of the court's dismissal
6 order and directly argued the order should be set aside based on excusable neglect. In LN
7 Management's own words, such reconsideration was justified because the parties "need" the court to
8 determine the parties' respective rights in the property.

9 **LN Management's Five-Year Rule argument is barred by Waiver and Equitable**
10 **Estoppel.**

11 24. In addition to being judicially estopped from arguing for five-year rule dismissal, LN
12 Management also waived or else should be equitably estopped from raising the issue.

13 25. Waiver is the intentional relinquishment of a known right. *Nev. Yellow Cab Corp. v.*
14 *Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 152 P.3d 737, 740 (Nev. 2007). Waiver of a right
15 may be inferred when a party engages in conduct so inconsistent with an intent to enforce the right
16 as to induce a reasonable belief that the right has been relinquished. *Id.* Further, a party seeking
17 equity is required to do equity. *Overhead Door Co. of Reno, Inc. v. Overhead Door Corp.*, 734 P.2d
18 1233, 1235 (Nev. 1987). Equitable estoppel operates to prevent a party from asserting legal rights
19 that, in equity and good conscience, they should not be allowed to assert because of their own
20 conduct. *NGA #2 Liab. Co. v. Rains*, 946 P.2d 163, 168 (Nev. 1997).

21 26. Here, the court finds LN Management *twice* moved to reopen this case: First, after
22 Ditech brought the action to trial; and second, after LN Management obtained reconsideration of the
23 court's rule 41(e) dismissal order.

24 27. To the extent LN Management believed the five-year rule expired in October 2017,
25 LN Management has intentionally relinquished any such argument.

26 28. Had LN Management indicated any intent to argue for five-year rule dismissal prior
27 to its opposition to the instant motion, defendants could have acted accordingly to either obtain
28

1 affirmative relief or request an expediated resolution of the matter. Instead, LN Management did the
2 exact opposite, arguing the court should maintain the case notwithstanding any such rule.

3 29. Defendants reasonably relied on this relinquishment and would be severely
4 prejudiced if the court dismissed the action without resolving the parties' respective interests in the
5 property.

6 **Alternatively, the Five-Year Rule has not run due to tolling.**

7 30. To the extent the five-year rule was reinstituted based on its September 24, 2014
8 order granting LN Management's post-trial motion to reopen the case, the court finds the deadline
9 still would not have run due to tolling.

10 31. Under this scenario, the earliest the five-year rule could have expired is September
11 24, 2019, or five-years after the court reinstituted the action.

12 32. But the Nevada supreme court has explicitly recognized the deadline can be tolled
13 under certain circumstances, such as when the court stays proceedings. *Baker v. Noback*, 112 Nev.
14 1106, 1110 (1996) (noting it would be "patently unfair" to dismiss an action for failure to bring to
15 trial when a stay prevented the parties from going to trial within the period); *see also Boren v. City of*
16 *N. Las Vegas*, 98 Nev. 5, 6, 638 P.2d 404, 405 (1982) ("**Any** period during which the parties are
17 prevented from bringing an action to trial by reason of a stay order shall not be computed in
18 determining the five-year period of [NRCPP] 41(e).") (emphasis added).

19 33. Here, this matter was closed between May 23, 2018 and July 27, 2018 before the
20 court granted LN Management's motion to reopen. The matter was then stayed due to Ditech's
21 bankruptcy on March 27, 2019, and it remains stayed to date.

22 34. Accounting for these tolling periods, the five-year deadline would be at least **246**
23 **days** from when the stay is lifted and/or the case is reopened. Accordingly, the court finds there is
24 no merit to LN Management's contention the five-year rule deadline has expired.

25 **C. Federal Foreclosure Bar – 12 U.S.C. § 4617(j)(3)**

26 Pursuant to the Housing and Economic Recovery Act of 2008 ("HERA"), Congress granted
27 FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable
28 FHFA to carry out its statutory functions when acting as Conservator of Fannie Mae and Freddie

1 Mac (together, the "enterprises"). Among these is a broad statutory "exemption" captioned
2 "property protection" that provides when the enterprises are under the conservatorship of the FHFA,
3 none of their property "shall be subject to ... foreclosure ... without the consent of [FHFA]." 12
4 U.S.C. § 4617(j)(3) (the "Federal Foreclosure Bar").

5 35. The Federal Foreclosure Bar contains no conditions precedent to effectiveness of its
6 statutory protections. Unless and until FHFA gives its consent, the federal protection "shall" be
7 given full effect, which includes preemption of state law. *SFR Invs. Pool 1, LLC v. Green Tree*
8 *Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016) (citing 12 U.S.C. § 4617(j)(3)). A
9 contrary interpretation would invert the default rule provided in the statutory text on its head, as if
10 Congress decreed that FHFA's property interests are subject to extinguishment by foreclosure unless
11 FHFA affirmatively declares that it will not grant consent to the extinguishment of a specific
12 property interest. This is not what the statute says, and courts should not rewrite a statute's text. *See*
13 *Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) (rejecting argument that "would result not
14 [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (quoting *Iselin v.*
15 *United States*, 270 U. S. 245, 251 (1926))); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54
16 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all
17 others . . . that a legislature says in a statute what it means and means in a statute what it says.").
18 Here, there is no evidence FHFA consented to extinguishment of the deed of trust.

19 36. The Nevada supreme court and the Ninth Circuit have both held unequivocally that
20 the Federal Foreclosure Bar, 12 U.S.C. § 4617(j)(3), protects Fannie Mae's property interests while it
21 under the conservatorship of the FHFA by preempting the NRS 116.3116 (the **State Foreclosure**
22 **Statute**), which would otherwise permit an HOA's foreclosure of its superpriority lien to extinguish
23 Fannie Mae's deed of trust. *See Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, 417
24 P.3d 363 (Nev. 2018); *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017); *FHFA v. SFR Invs. Pool*
25 *1, LLC*, 893 F.3d 1136 (9th Cir. 2018); *Elmer v. JPMorgan Chase & Co.*, 707 F. App'x 426 (9th Cir.
26 2017); *Saticoy Bay, LLC v. Flagstar Bank, FSB*, 699 F. App'x 658 (9th Cir. 2017).

27 37. In *Christine View*, the Nevada supreme court held that "according to the plain
28 language of the statute, Fannie Mae's property interest effectively becomes the FHFA's while the

1 conservatorship exists. Thus, the Federal Foreclosure Bar protects Fannie Mae's deed of trust while
2 Fannie Mae is under the conservatorship." *Christine View*, 417 P.3d at 367. *Christine View* is
3 published precedent that forecloses any argument suggesting that the Federal Foreclosure Bar does
4 not preempt the State Foreclosure Statute or does not protect Fannie Mae's property interest from
5 extinguishment. *See id.* at 365 (holding that "the Federal Foreclosure Bar invalidates any purported
6 extinguishment of a regulated entity's property interest while under the FHFA's conservatorship
7 unless the FHFA affirmatively consents.").

8 38. Three other recent decisions from the Nevada supreme court, four Ninth Circuit
9 decisions, and dozens of decisions from federal and state district courts in Nevada agree with the
10 Nevada Supreme Court's decision in *Christine View*—an HOA foreclosure sale cannot extinguish
11 property interests of the Enterprises while they are in conservatorship. *See, e.g., Guberland*, 2018
12 WL 3025919, at *2; *A&I Series 3, LLC v. Fannie Mae*, No. 71124, 2018 WL 3387787 (Nev. July 10,
13 2018) (unpublished disposition); *5312 La Quinta Hills, LLC v. BAC Home Loans Servicing, LP*, No.
14 71069, 2018 WL 3025927, at *1 (Nev. June 15, 2018) (unpublished disposition); *Berezovsky*, 869
15 F.3d 923; *FHFA v. SFR*, 893 F.3d 1136; *Elmer*, 707 F. App'x 426; *Flagstar Bank, FSB*, 699 F. App'x
16 658; *see also* CMI's Motion for Summary Judgment at (citing dozens of state and federal district
17 court cases in Nevada).

18 39. The preemption doctrine, which provides that federal law supersedes conflicting state
19 law, arises from the Supremacy Clause of the U.S. Constitution. Here, the text of the Federal
20 Foreclosure Bar declares that "[n]o property of the Agency shall be subject to levy, attachment,
21 garnishment, foreclosure, or sale." 12 U.S.C. § 4617(j)(3).

22 40. The Federal Foreclosure Bar preempts the State Foreclosure Statute under a theory of
23 conflict preemption because "state law is naturally preempted to the extent of any conflict with a
24 federal statute." *Valle del Sol*, 732 F.3d at 1023 (quoting *Crosby v. Nat'l Foreign Trade Council*,
25 530 U.S. 363, 372 (2000)).

26 41. Congress's clear and manifest purpose in enacting Section 4617(j)(3) was to protect
27 FHFA conservatorships from actions, such as the HOA Sale, that otherwise would deprive them of
28 their property interests. "[T]he [State Foreclosure Statute] is in direct conflict with Congress's clear

1 and manifest goal to protect Fannie Mae's property interest while under the FHFA's conservatorship
2 from threats arising from state foreclosure law." *Christine View*, 417 P.3d at 367; *Berezovsky*, 869
3 F.3d at 930 ("[T]he Federal Foreclosure Bar implicitly demonstrates a clear intent to preempt [the
4 State Foreclosure Statute]."); *FHFA v. SFR Invs. Pool 1, LLC*, 893 F.3d at 1146-47 (following
5 *Berezovsky*); *Elmer*, 707 F. App'x at 427-28 (same); *Flagstar*, 699 F. App'x at 658-59 (same).

6 42. Accordingly, the Federal Foreclosure Bar preempts the State Foreclosure Statute to
7 the extent a homeowner association's foreclosure of its super-priority lien cannot extinguish a Fannie
8 Mae property interest while it is under FHFA's conservatorship, without the consent of FHFA.

9 43. At the time of the HOA foreclosure sale, Bank of America was the Deed of Trust
10 beneficiary of record in its capacity as the servicer for Fannie Mae. The evidence, which includes a
11 Fannie Mae employee declaration and supporting business records, proves Fannie Mae owned the
12 note and deed of trust at the time of the HOA sale and was in a contractual relationship with Bank of
13 America as the loan servicer. Fannie Mae maintained a property interest in the underlying collateral.
14 *See Daisy Trust*, 135 Nev. at 233-34, 445 P.3d at 849; *In re Montierth*, 131 Nev. 543, 354 P.3d 648
15 (2015); *CitiMortgage, Inc. v. SFR Invs. Pool 1, LLC*, No. 70237, 2019 WL 289690 (Nev. Jan. 18,
16 2019) (unpublished disposition); *CitiMortgage, Inc. v. TRP Fund VI, LLC*, No. 71318, 2019 WL
17 1245886, at *1 (Nev. Mar. 14, 2019); *Guberland*, 2018 WL 3025919 at *2-3 (citing *Montierth*);
18 Restatement (Third) of Property: Mortgages § 5.4 (1997). In citing *Montierth* and the Nevada
19 Supreme Court's adoption of the Restatement (Third) of Property: Mortgages, the Ninth Circuit held
20 that a loan-owner servicer relationship "preserves the note owner's power to enforce its interest
21 under the security instrument, because the note owner can direct the beneficiary to foreclose on its
22 behalf." *Berezovsky*, 869 F.3d at 931. Under these circumstances, the loan owner maintains a
23 secured property interest. *Id.* Therefore, an enterprise's "property interest is valid and enforceable
24 under Nevada law even if the recorded document omits [the Enterprise]'s name, if the recorded
25 beneficiary of the deed of trust is a party acting on [the Enterprise's] behalf." *Elmer*, 2017 WL
26 3822061, at *1.

27 44. The Nevada Supreme Court has held materially identical "business records and
28 testimony" constitute "ample evidence" to demonstrate an Enterprise's ownership of a loan and the

1 contractual relationship between an Enterprise and its servicer. *See M&T Bank v. Wild Calla St. Tr.*,
2 No. 74715, 2019 WL 1423107, at *2 (Nev. Mar. 28, 2019) (unpublished disposition); *see also*
3 *CitiMortgage v. SFR*, 2019 WL 289690, at *1 & n.1 ("Although respondent contends that appellant's
4 evidence[—"deposition testimony of appellant's NRCP 30(b)(6) witness, affidavit, and relied-upon
5 business records"—] does not establish that Fannie Mae owned the loan at the time of the HOA
6 foreclosure sale, we disagree."); *CitiMortgage v. TRP*, 2019 WL 1245886, at *1; *SFR Invs. Pool 1,*
7 *LLC v. Green Tree Servicing, LLC*, No. 72010, 2018 WL 6721370, at *1 (Dec. 17, 2018)
8 (unpublished disposition).

9 45. The Ninth Circuit agrees and has held materially the same evidence was admissible
10 and sufficient to establish an Enterprise's property interest for the purposes of summary judgment.
11 *See, e.g., Berezovsky*, 869 F.3d at 933; *Elmer*, 707 F. App'x at 428; *Williston*, 736 F. App'x at 169;
12 *G&P Investments*, 740 F. App'x at 564.

13 46. Nevada law does not require Fannie Mae's ownership interest to be recorded in its
14 own name. *Daisy Trust*, 445 P.3d at 849; *JPMorgan Chase Bank, N.A. v. Guberland LLC-Series 2*,
15 No. 73196, 2019 WL 2339537, at *1 (Nev. May 31, 2019) ("*Guberland II*"). The protection of the
16 Federal Foreclosure Bar is not limited to the interest Fannie Mae might have if it were *record*
17 *beneficiary* of the deed of trust at the time of the HOA sale. Rather, it extends to the property
18 interest that Fannie Mae has as the *owner* of the note and deed of trust while its contractually
19 authorized servicer appears as record beneficiary of that deed of trust, a property interest that Nevada
20 law recognizes. *See Montierth*, 131 Nev. 543, 354 P.3d 648 (holding that a loan owner has a secured
21 property interest when a contractually authorized servicer is the record beneficiary of a deed of
22 trust); *see also Guberland*, 2018 WL 3025919, at *2-3 (applying the Federal Foreclosure Bar where
23 an enterprise "was not the beneficiary of the deed of trust" and its servicer appeared as record
24 beneficiary); *CitiMortgage v. SFR*, 2019 WL 289690 at *2 (relying on *Montierth* and holding the
25 loan servicer's status as record beneficiary of the deed of trust "does not create a question of material
26 fact regarding whether Fannie Mae owns the subject loan"); *CitiMortgage v. TRP*, 2019 WL
27 1245886, at *1 (reversing the district court's finding that the Federal Foreclosure Bar did not prevent
28 the extinguishment of Fannie Mae's deed of trust because it was not publicly recorded in Fannie

1 Mae's name and confirming, under *Montierth*, that "the record beneficiary need not be the actual
2 owner of the loan").

3 47. LN Management bears the burden of proof to establish that FHFA expressly
4 consented to extinguish Fannie Mae's ownership interest in the deed of trust. FHFA's April 21, 2015
5 statement confirms that FHFA did not provide express consent here. In the absence of express
6 consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the
7 Federal Foreclosure Bar. *See Berezovsky*, 869 F.3d 923 (holding that FHFA's consent can only be
8 manifested affirmatively); *see also Alessi & Koenig, LLC v. Dolan, Jr.*, No. 2:15-cv-00805-JCM-
9 CWH, 2017 WL 773827, at *3 (D. Nev. Feb. 27, 2017) (citing and relying on cases in which
10 FHFA's statement was sufficient to show FHFA's lack of consent). Although the federal law
11 controls, it is consistent with Nevada's policy against requiring a party to prove a negative, such as
12 proving a lack of consent. *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092,
13 1096-97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it
14 is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered.");
15 *see also State v. Haskell*, 14 Nev. 209, 209-210 (1879) (in a forfeiture case, once the defendant
16 establishes good title to the property the burden shifts to the state – "not upon the defendants to
17 prove a negative", *i.e.* that the property was not abandoned or forfeited).

18 48. LN Management has not shown it obtained such consent. To the contrary, FHFA has
19 publicly announced that it "has not consented, and will not consent in the future, to the foreclosure or
20 other extinguishment of any Fannie Mae or Freddie Mac lien or other property interest in connection
21 with HOA foreclosures of super-priority liens." Therefore, the Federal Foreclosure Bar applies.

22 49. Having found that the Federal Foreclosure Bar applies, the next step is to determine if
23 defendants have standing, as the servicer and beneficiary of record at the time of the HOA
24 foreclosure sale and during the applicable periods of this action, to represent Fannie Mae's Mac
25 interest in the loan. The Court finds that defendants were Fannie Mae's contractually authorized
26 servicers of the loan, with standing to represent and defend Fannie Mae's interests in this action. *See*
27 *Nationstar Mortgage, LLC v. SFR Investments Pool 1, LLC*, 396 P.3d 754 (Nev. 2017); *Flagstar*,
28 699 F. App'x at 658.

1 50. The Nevada Supreme Court confirmed that "the servicer of a loan owned by [Fannie
2 Mae] may argue that the Federal Foreclosure Bar preempts NRS 116.3116, and that neither [Freddie
3 Mac] nor the FHFA need be joined as a party." *Nationstar*, 396 P.3d at 758.

4 51. Furthermore, there is no bar against private parties like defendants raising a federal
5 preemption argument. *Id.* at 757. To the contrary, in cases state and federal law clash, "*judges are*
6 *bound by federal law.*" *Id.* (quoting *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378,
7 1384 (2015)) (emphasis in original); *See Saticoy Bay LLC Series Christine View v. Federal National*
8 *Mortgage Association*, 134 Nev. Adv. Op. 36 (2018).

9 52. LN Management offers no evidence conflicting with Fannie Mae's ownership of the
10 loan or defendants' right to represent Fannie Mae's interest in the loan.

11 53. Since no party has refuted evidence of Fannie Mae's ownership, the Federal
12 Foreclosure Bar defeats LN Management's contention it took title to the property free and clear of
13 the deed of trust.

14 ***D. Tender Was Excused as Futile.***

15 54. Even if the Federal Foreclosure Bar did not apply, Fannie Mae's deed of trust would
16 still have survived because Bank of America's tender was excused under the Nevada supreme court's
17 decision in *Perla del Mar. 7510 Perla Del Mar Ave Trust v. Bank of Am. N.A.*, 458 P.3d 348, 349
18 (Nev. 2020). That case held the obligation to tender is excused for futility where the evidence shows
19 that the HOA or its foreclosure agent "had a known policy of rejecting such payments." *Id.* at 351
20 (citing cases from other jurisdictions endorsing the general proposition that a tender is excused when
21 the party entitled to payment demonstrates by words or conduct it will not accept the tender).

22 55. Just as in *Perla Del Mar*, Bank of America and Miles Bauer offered to pay the HOA,
23 through Collections of America, the superpriority amount "actually due" with no impermissible
24 conditions attached. *See 7510 Perla Del Mar Ave. Trust v. Bank of America, N.A.*, 458 P.3d 348,
25 349 (Nev. 2020) (noting "[a]n actual tender is unnecessary where it is apparent the other party will
26 not accept it."). The HOA, through its agent, stated no superpriority lien existed until Bank of
27 America completed its own foreclosure.

28 ...

1 56. In analyzing materially similar representations from an HOA trustee, the Nevada
2 supreme court confirmed "[t]he necessary implication of these statements is that [the HOA trustee]
3 would not have accepted a superpriority tender before the first deed of trust was foreclosed." *See*
4 *U.S. Bank N.A. v. SFR Invs. Pool 1 LLC*, No. 78003, 2020 WL 3003017, at *1 (Nev. June 4, 2020)
5 (unpublished) (directing judgment in the bank's favor based on futility).

6 57. Bank of America stood ready, willing, and able to tender the full statutory super-
7 priority amount to protect the deed of trust, but the HOA obstructed Bank of America's ability to
8 tender the superpriority portion of the HOA's lien through its false representations and assurances.
9 *Id.* The HOA sale thus did not extinguish the deed of trust because Bank of America was excused
10 from formal tender.

11 ***E. The HOA Conducted a Sub-Priority Sale.***

12 58. Irrespective of Bank of America's superpriority offer, the HOA foreclosed on only the
13 subpriority portion of its lien because that is what the HOA and its agent chose to do.

14 59. The Nevada Supreme Court in *SFR Investments*, applying the plain language of the
15 statute, explained that "[a]s to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two
16 pieces, a superpriority piece and a subpriority piece." *SFR Investments Pool 1 v. U.S. Bank*, 334
17 P.3d 408, 411 (Nev. 2014). Only "[t]he superpriority piece" is "prior to a first deed of trust." *Id.*
18 "The subpriority piece, consisting of all other HOA fees or assessments, is subordinate to a first deed
19 of trust." *Id.* An association can choose to foreclose on either the sub-priority or super-priority
20 portion of its lien. *See Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 132
21 Nev. Adv. Op. 5, 366 P.3d 1105, 1116 (2016) ("And if the association forecloses on its superpriority
22 lien portion, the sale also would extinguish other subordinate interests in the property."). *See also*
23 *River Glider Ave. Tr. v. The Bank of N.Y. Mellon*, No. 79808 (Nev. Sup. Ct. Sept. 18, 2020)
24 (unpublished disposition) (finding representations of purchaser in judicial proceeding determinative
25 for whether a sale was a subpriority or super-priority sale).

26 60. This comports with long-standing Nevada law that the foreclosing party's intent
27 determines what is transferred at auction. *See, e.g., Dayton Valley Investors, LLC v. Union Pac. R.*
28 *Co.*, 664 F.Supp. 2d 1174, 1185 (D. Nev. 2009) ("[I]t is the intent of the parties to the deed which ...

1 must determine the nature and extent of the interest conveyed.") (quoting *City Motel, Inc. v. Nevada*
2 *ex. rel. State Dep't of Highways*, 75 Nev. 137, 140, 336 P.2d 375, 377 (1959)). The foreclosing
3 party's intent "is determined from 'all the circumstances surrounding the transaction[.]'" *See Dayton*
4 *Valley*, 664 F.Supp. 2d at 1185 (quoting *Kartheiser v. Hawkins*, 98 Nev. 237, 239, 645 P.2d 967, 968
5 (1982)).

6 61. Here, the undisputed evidence shows the HOA's agent, Collections of America,
7 explicitly informed Bank of America it was not "foreclosing on a super-priority lien pursuant to NRS
8 116.3116" and that the HOA did not claim "to have a super-priority lien since the first mortgage
9 [had] not [been] foreclosed."

10 62. "Because the HOA foreclosed on only its sub-priority lien, [LN Management] cannot
11 meet its burden of showing it has title superior to [the Deed of Trust]." *7912 Limbwood Court Trust*
12 *v. Wells Fargo Bank, N.A.*, 2015 WL 5123317 at *4 (D. Nev. Aug. 31, 2015); *see also MacDonald v.*
13 *Krause*, 77 Nev. 312, 315, 362 P.2d 724, 727 (1961) ("In a quiet title action, the only issue is
14 whether plaintiff has an interest or estate in the property superior to the adverse claim.").
15 Accordingly, defendants are entitled to summary judgment on this alternative basis.

16 ***F. Alternatively, The Court Finds the Deed of Trust Survived as a Matter of Equity***

17 63. The court need not reach the equities in this matter because Fannie Mae's deed of
18 trust survived as a matter of law. *Bank of America, N.A. v. SFR Invs. Pool I, LLC*, 427 P.3d 113
19 (Nev. 2018). But even if the court balanced the equities in this case, they tip strongly in defendants'
20 favor.

21 64. If an association sells a property for a price that is "palpabl[y] and great[ly]
22 inadequate," all that is needed to show the deed of trust survived as a matter of equity is "very slight
23 additional evidence of unfairness." *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227*
24 *Shadow Canyon*, 405 P.3d 641, 642 (Nev. 2017). To determine if an association's foreclosure-sale
25 price is inadequate, courts must compare that price to the foreclosed property's fair market value at
26 the time of the sale. *See id.*, at 649 (comparing the \$35,000.00 association-foreclosure-sale price to
27 an appraisal showing the fair-market value of free and clear title was \$335,000.00 to determine the
28 association sold the property "for roughly 11 percent of [its] fair market value"). A foreclosure-sale

1 price below 20% of fair market value is "obviously inadequate." *See Shadow Wood*, 366 P.3d at
2 1116.

3 65. The Nevada supreme court has provided a non-exhaustive list of "irregularities that
4 may rise to the level of fraud, unfairness, or oppression" required to set aside an association sale or
5 hold that it did not extinguish a senior deed of trust, including: (1) "failure to mail a deed of trust
6 beneficiary the statutorily required notices"; (2) "***an HOA's representation that the foreclosure sale***
7 ***will not extinguish the first deed of trust***"; (3) "collusion between the winning bidder and the entity
8 selling the property"; (4) "a foreclosure trustee's refusal to accept a higher bid"; and (5) "a
9 foreclosure trustee's misrepresentation of the sale date." *Id.* at n.11 (emphasis added).

10 66. Here, the HOA sold the Property for less than 2% of its fair market value. In light of
11 this "palpabl[y] and great[ly]" inadequate sales price, only slight evidence of unfairness is needed to
12 set aside the foreclosure sale. *See Nationstar*, 405 P.3d at 648. Prior to the HOA Sale, Bank of
13 America contacted Collections to offer to pay the full statutory super-priority amount, as it has done
14 in hundreds – if not thousands – of other cases. Collections subsequently assured Bank of America
15 that it was not foreclosing on a "super-priority lien pursuant to NRS 116.3116" and that the HOA did
16 not claim to "have a super-priority lien." Miles Bauer, on behalf of Bank of America, asked
17 Collections to let them know if the circumstances of the HOA Sale changed, as "Bank of America
18 would like to payoff any potential senior lien, should one exist, to protect [the Deed of Trust]." *Id.*
19 Again, in response to Bank of America's willingness to tender the full statutory super-priority
20 amount, Collections advised that no such lien existed, and it would notify Bank of America if
21 anything changed. *Id.*

22 67. Bank of America attempted to pay the superpriority amount of the HOA's lien here to
23 ensure Fannie Mae's deed of trust was protected, and the HOA prevented it from doing so. This is
24 another example of unfairness the supreme court explicitly identified in *Shadow Canyon*. *See* 405
25 P.3d at 650 (explaining that whether a senior lender "tried to tender payment" to an association
26 before the sale is "significant[]" to determine whether the lender's deed of trust survived as an
27 equitable matter).

28 . . .

1 68. In light of the HOA and its agents' representations to Bank of America and Miles
2 Bauer, coupled with the HOA's efforts to thwart Bank of America's superpriority payment, holding
3 that the deed of trust was extinguished would be much more than "very slight[ly] unfair," and
4 "[v]ery slight additional evidence of unfairness or oppression" is all that is needed in light of the
5 "palpabl[y] and great[ly]" inadequate sale price to hold the deed of trust was not extinguished on
6 equitable grounds. *See Shadow Canyon*, 405 P.3d at 648.

7 69. Even if LN Management was a bona fide purchaser, it is but one factor of many when
8 balancing the equities between it and defendants and does not change the above result. Further, the
9 court finds LN Management was not a bona fide purchaser.

10 70. To be a bona fide purchaser, one must take property "for a valuable consideration and
11 without notice of the prior equity, and without notice of facts which upon diligent inquiry would be
12 indicated and from which notice would be imputed to him, if he failed to make such inquiry."
13 *Shadow Wood*, 366 P.3d at 1115 (citing *Bailey v. Butner*, 64 Nev. 1, 19, 176 P.2d 226, 234 (1947)).

14 71. A putative bona fide purchaser has the burden to prove it is a bona fide purchaser.
15 *See, e.g., Berge v. Fredericks*, 95 Nev. 183, 185, 591 P.2d 246, 248 (1979) (explaining that the
16 putative bona fide purchaser "was required to show that legal title had been transferred to her before
17 she had notice of the prior conveyance to appellant"). Here, LN Management cannot satisfy its
18 burden to show that it was a bona fide purchaser.

19 72. First, and most obvious, LN Management put forth no evidence that it was a bona
20 fide purchaser.

21 73. Second, LN Management cannot be a bona fide purchaser because it had inquiry
22 notice of Miles Bauer's superpriority offer. A party cannot qualify as a bona fide purchaser if it was
23 under a duty of inquiry that it failed to discharge before purchasing the property at issue. *Berge*, 95
24 Nev. at 189. The *Berge* Court explained that this duty arises:

25 when the circumstances are such that a purchaser is in possession of
26 facts which would lead a reasonable man in his position to make an
27 investigation that would advise him of the existence of prior
28 unrecorded rights. He is said to have constructive notice of their
existence whether he does or does not make the investigation. The
authorities are unanimous in holding that he has notice of whatever the
search would disclose.

1 *Id.*

2 74. A purchaser "put upon inquiry may rebut the presumption of notice by showing that
3 he made due investigation without discovering the prior right or title he was bound to investigate."

4 *Id.*, at 185. LN Management has produced no evidence it conducted such an investigation.

5 75. The bona fide purchaser doctrine does not protect against willful ignorance—
6 plaintiff's decision to purchase a lawsuit cannot transform the encumbered interest it purchased into
7 free and clear title. *See Allison Steel*, 86 Nev. at 497.

8 76. As such, the deed of trust survived the HOA's foreclosure sale as a matter of equity
9 and continues to encumber plaintiff's title to the property.

10 **G. The Court Reforms the Deed of Trust and Subsequent Assignment.**

11 77. Deeds and other instruments, like an assignment, can be "reformed in accordance
12 with the intention of parties when that intention is frustrated by a mutual mistake." *Grappo v.*
13 *Mauch*, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994). Reformation should be utilized "when a
14 written instrument fails to conform to the parties' previous understanding or agreement." *Id.*

15 78. Borrower purchased two units in the same condominium development. First,
16 Borrower obtained a loan in the amount of \$322,100.00 to purchase the Property (3111 Bel Air Dr.,
17 Unit 24G), repayment of which was secured by a Deed of Trust recorded on October 20, 2004. The
18 Property was conveyed to Borrower by the previous owner through a Grant Deed recorded on
19 October 16, 2003 as instrument number 20031016-01640. The Deed of Trust lists the APN as 162-
20 10-812-185.

21 79. Borrower subsequently obtained a second loan to purchase another unit in the same
22 condominium complex. Specifically, Borrower obtained a loan in the amount of \$149,000 to
23 purchase real property commonly known as 3111 Bel Air Dr. #216, Las Vegas, NV 89109 (**216**
24 **Property**), repayment of which was secured by a Deed of Trust recorded on December 31, 2007
25 (**216 Deed of Trust**). The 216 Deed of Trust, like the Deed of Trust, lists Bank of America as the
26 Lender. The 216 Property's APN number as 162-10-812-003.

27 80. While the property address and the APN on the Deed of Trust are correct, the Court
28 finds the legal description is incorrect. The Grant Deed conveying the Property to Borrower

1 specifies that Unit 24G is designated Unit 185 in the original Regency Towers plat. Due to a mutual
2 mistake, however, the legal description in the Deed of Trust states that Unit 24G is designated as
3 Unit 3 in the Regency Towers plat. In reality, Unit 3 is the correct legal description for the 216
4 Property. The property records, the Regency Towers plat, and defendants' expert report make clear
5 that the Property's legal description should list Unit 185, as opposed to Unit 3.

6 81. Based on the uncontroverted evidence, the Court reforms the legal description in the
7 Deed of Trust to list Unit 185, as opposed to Unit 3.

8 82. The second instrument requiring reformation is an Assignment of the Deed of Trust
9 recorded on July 30, 2013. Due to a mutual mistake and confusion, the Assignment was
10 inadvertently recorded against APN #162-10-812-003, which is the 216 Property. The Assignment
11 correctly states that it is assigning the Deed of Trust (not the 216 Deed of Trust) but does not appear
12 in the property records for the Property when conducting an assessor's parcel no. search on account
13 of the incorrect APN. The language in the Assignment makes it clear that the Assignment should
14 have been recorded against APN 162-10-812-185.

15 83. Based on the uncontroverted evidence, the Court reforms the Assignment to reflect
16 the correct APN (162-10-812-185) and orders that the Assignment's effective date as to the subject
17 property was the date it was recorded against the incorrect parcel number (July 30, 2013).

18 **ORDER AND JUDGMENT**

19 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,
20 instrument number 20041020-0001569 with the Clark County Recorder, was not extinguished by the
21 HOA's foreclosure sale that is reflected in the trustee's deed upon sale, instrument number
22 201212170000834 with the Clark County Recorder.

23 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the deed of trust,
24 instrument number 20041020-0001569 with the Clark County Recorder, remains a valid, first-
25 position lien encumbering the property located at as 3111 Bel Air Dr., Unit 24G, Las Vegas, Nevada
26 89109, assessor's parcel no. 162-10-812-185.

27 . . .

28 . . .

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the legal description of the property in the deed of trust, instrument number 20041020-0001569 with the Clark County Recorder, is reformed to list Unit 185, as opposed to Unit 3.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Assignment of the deed of trust, recorded on July 30, 2013 as instrument number 201307300000199 with the Clark County Recorder, is reformed to reflect the assessor's parcel no. 162-10-812-185. The assignment's effective date remains the date it was recorded against the incorrect parcel number, or July 30, 2013. The court intends this judgment to correct any alleged deficiencies in the at-issue deed of trust and subsequent assignment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion for summary judgment is **GRANTED in its entirety**. Judgment is entered in favor of defendants and against LN Management. This is a final judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the court lifts the stay and reopens this case for the purpose of granting defendants' summary judgment motion and entering the court's judgment.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that all remaining claims are **DISMISSED** as moot.

DATED this 20th day of January, 2021.


 DISTRICT JUDGE

Submitted by:

AKERMAN LLP

/s/ Nicholas E. Belay

ARIEL E. STERN, ESQ.

Nevada Bar No. 8276

NATALIE L. WINSLOW, ESQ.

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Financial LLC f/k/a Green Tree Servicing LLC

Approved as to form and content by:

/s/ Kerry P. Faughnan

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*Attorneys for LN Management LLC Series 3111
Bel Air 24G*

Llarena, Carla (LAA-Las)

From: Belay, Nicholas (Assoc-Las)
Sent: Wednesday, January 6, 2021 2:00 PM
To: Belay, Nicholas (Assoc-Las)
Subject: FW: A-12-669570-C (Elliott, Michael) - proposed order

From: Kerry Faughnan
Sent: Wednesday, January 6, 2021 8:45 AM
To: Belay, Nicholas (Assoc-Las)
Subject: Re: A-12-669570-C (Elliott, Michael) - proposed order

You may add my electronic signature.

On Tue, Jan 5, 2021 at 4:16 PM <nicholas.belay@akerman.com> wrote:

Hi Kerry,

Just following up. Think you could let me know by tomorrow?

Nicholas Belay

Associate
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5029
nicholas.belay@akerman.com

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 21, 2013

A-12-669570-C	Bank of America, Plaintiff(s) vs. Michael Elliott, Defendant(s)
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October 21, 2013	9:00 AM	Motion to Consolidate	Plaintiff's Motion to Consolidate Cases A669570 and A682055
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HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 12A

COURT CLERK: Sharon Chun

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Counsel present for A669570: Jory Garabedian for Bank of America and Gregory Kerr for Regency Towers Association Inc. Counsel present for A682055: Kerry Faughnan.

THIS MATTER having come before the Court on October 21, 2013, for hearing on Plaintiffs Motion To Consolidate A669570 and A682055, and the Court, having considered the papers submitted in connection with such item and heard the arguments made on behalf of the parties, hereby entered its decision as follows:

COURT ORDERED, Plaintiff's Motion to Consolidate A669570 and A682055, GRANTED and both cases are now assigned to Department XIII.

CLERK'S NOTE: Clerk has notified Master Calendar of the consolidation of A682055 with A669570.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

July 17, 2014

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

July 17, 2014

3:00 AM

**Motion for Summary
Judgment**

HEARD BY: Denton, Mark R.

COURTROOM: No Location

COURT CLERK: Keri Cromer

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Cause appearing, and pursuant to EDCR 2.20(e) and EDCR 2.23(c), the Court GRANTS Plaintiff s Motion for Summary Judgment without oral argument and ORDERS such Motion removed from its civil law and motion calendar of July 21, 2014. Counsel for Plaintiff to submit a proposed order.

IT IS SO ORDERED.

Attorneys/Parties:

Jory C. Garabedian, Esq. (MILES, BAUER, BERGSTROM & WINTERS LLP)

Fax: 702-369-4955

Kerry Faughnan, Esq.

Fax: 702-331-4222

Gregory Kerr, Esq. (WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP)

A-12-669570-C

Fax: 702-341-5300

Michael R. Mushkin, Esq. (MICHAEL R. MUSHKIN & ASSOC.)

Fax: 702-454-3333

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 09, 2014

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

September 09, 2014 9:00 AM

Motion to Set Aside

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 12A

COURT CLERK: Keri Cromer

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Faughnan, Kerry P, ESQ Attorney
 Garabedian, Jory Attorney

JOURNAL ENTRIES

- Arguments by counsel regarding whether or not summary judgment should be set aside; whether or not there were genuine issues of material fact; whether or not there had to be some meritorious defense. Colloquy regarding whether or not Yochum vs. Davis applied or if it had been modified. Court stated its findings and ORDERED, Motion GRANTED; briefing schedule SET; hearing SET. Opposition due by close of business on 9/19/14; reply to opposition due by close of business on 9/26/14; hearing to be held on 10/2/14, 9:00 AM. Mr. Faughnan to submit a proposed order; Mr. Garabedian to review as to form and content.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 02, 2014

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

October 02, 2014 9:00 AM Hearing

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Keri Cromer

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Faughnan, Kerry P, ESQ Attorney
Garabedian, Jory Attorney

JOURNAL ENTRIES

- Mr. Garabedian requested a continuance in order to file a reply; advised his firm moved offices and he did not have access to files. Mr. Faughnan did not oppose a continuance. COURT ORDERED, matter CONTINUED; reply due by noon on 10/9/14; requested courtesy copies be provided to the Court.

CONTINUED TO: 10/13/14; 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 13, 2014

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

October 13, 2014 9:00 AM Hearing

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Keri Cromer

RECORDER: Cynthia Georgilas

REPORTER:

PARTIES

PRESENT: Faughnan, Kerry P, ESQ Attorney
Garabedian, Jory Attorney

JOURNAL ENTRIES

- Mr. Garabedian reviewed the background of the case. Arguments by counsel regarding the merits of the motion. Applicable statutes cited. COURT ORDERED, Motion GRANTED as to Reformation; DENIED as to Lien Priority. Mr. Garabedian to submit a proposed order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 25, 2016

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

January 25, 2016 2:45 PM Dismissal Hearing

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 12A

COURT CLERK: Marwanda Knight

RECORDER: Debbie Winn

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Kerry P. Faughnan, Esq., appearing on behalf of Defendant, LN Management LLC Series 311 Bel Air 24G

Following representations made by Mr. Faughnan at the Dismissal Hearing, Court stated counsel had shown cause why this action should not be dismissed; counsel to file the appropriate motions.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

February 21, 2017

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

February 21, 2017 3:00 PM Dismissal Hearing

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 03D

COURT CLERK: Marwanda Knight

RECORDER: Martha Szramek

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Kerry Faughnan, Esq., appeared on behalf of Deft., LN Management LLC Series 311 Bell Air 24G

In light of the representations made by Mr. Faughnan regarding the claims his client has in this case, COURT FINDS that cause has been shown why said claims of LN Management should not be dismissed and ORDERED the remaining claims DISMISSED WITHOUT PREJUDICE.

Mr. Faughnan directed to submit a proposed order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

September 07, 2017

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

September 07, 2017 9:00 AM Status Check

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Marwanda Knight

RECORDER: Jennifer Gerold

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Court noted no appearances and no status reported. Court will accordingly dismiss the action and close the case.

IT IS SO ORDERED.

CLERK S NOTE: Following these proceedings, Kerry Faughnan contacted chambers and stated that an associate mistakenly missed the fact that this item was on calendar and requested that a status check be set. Accordingly, upon so informing the Court, the dismissal is rescinded and the Court will issue an Order Scheduling a Status Hearing and providing that failure to attend on the part of Plaintiff s counsel will result in a dismissal of the action.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

October 19, 2017

A-12-669570-C	Bank of America, Plaintiff(s)
	vs.
	Michael Elliott, Defendant(s)

October 19, 2017 9:00 AM Status Check

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Marwanda Knight

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- APPEARANCES: Kerry Faughnan, Attorney for Deft. LN Management LLC Series 311 Bell Air 24G
Gregory Kerr, Attorney for Deft, Regency Towers Association

Mr. Faughnan stated that in his review of the register it appears that the only parties remaining are the former homeowners. Further, Mr. Faughnan stated his intent is to do a default judgment or a Motion for Summary Judgment to finish the case. Mr. Kerr advised that there are no claims pending against Regency Towers.

Court noted the status of the case reported, and ORDERED status check CONTINUED ninety (90) days.

CONTINUED TO: 01/18/2018 9:00 A.M.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

January 18, 2018

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

January 18, 2018 9:00 AM Status Check

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 03D

COURT CLERK: Marwanda Knight

RECORDER: Jennifer Gerold

REPORTER:

**PARTIES
PRESENT:**

JOURNAL ENTRIES

- Mr. Faughnan stated Defts have tried to reach out to opposing counsel to get some type of resolution with no responses; advised counsel will file a motion for summary judgment within the next thirty (30) days. COURT so noted.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

July 23, 2018

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

July 23, 2018

9:00 AM

Motion

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT: Faughnan, Kerry P, ESQ Attorney

JOURNAL ENTRIES

- Mr. Faughnan advised the Motion is unopposed. There being good cause appearing and no opposition, COURT ORDERED, Motion GRANTED.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

August 27, 2018

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

**August 27, 2018 9:00 AM Motion for Summary
Judgment**

HEARD BY: Denton, Mark R. **COURTROOM:** RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT: Faughnan, Kerry P, ESQ Attorney

JOURNAL ENTRIES

- Jared Sechrist, Esq, present for Plaintiff Bank of America.

Mr. Sechrist advised he has a Stipulation and Order to continue as his office did not get an opposition on file and Mr. Faughnan agreed to allow a continuance. Stipulation and Order SIGNED IN OPEN COURT.

CONTINUED TO: 9/27/18 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property**COURT MINUTES****September 27, 2018**

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

**September 27, 2018 9:00 AM Motion for Summary
Judgment**

HEARD BY: Denton, Mark R.**COURTROOM:** RJC Courtroom 03D**COURT CLERK:** Elizabeth Vargas**RECORDER:** Sandra Pruchnic**REPORTER:****PARTIES**

PRESENT: Brenner, Darren T. Attorney
Faughnan, Kerry P, ESQ Attorney

JOURNAL ENTRIES

- Mr. Faughnan noted this case was closed and reopened for the purpose of filing this Motion for Summary Judgment; argued given the lack of evidence presented, summary judgment in LN Management's favor was appropriate. Court reviewed the history of the Motion for Summary Judgment and Motion to Set Aside in 2014, stated due to inactivity the case was closed. Mr. Faughnan stated he had an issue contacting prior opposing counsel, there was no evidence, discovery was closed, and now claim the federal foreclosure bar, stated there was nothing that bars summary judgment at this point. Arguments by counsel regarding the 5-year rule. Mr. Brenner argued LN Management stated they would file a Motion for Summary Judgment and did not, this was a Fannie Mae or Freddie Mac deed of trust, if the court was not going to find that the 5-year rule applies, requesting additional time to meet and confer, conduct discovery. Mr. Faughnan argued regarding what constitutes tender and lack of proof that Freddie Mae or Fannie Mac purchased the loan. COURT ORDERED, Motion DENIED WITHOUT PREJUDICE. Court directed counsel to agree regarding the proposed Order, or submit competing orders. Mr. Faughnan stated he believed parties would come to an agreement on the Order.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 01, 2020

A-12-669570-C	Bank of America, Plaintiff(s)
	vs.
	Michael Elliott, Defendant(s)

December 01, 2020 1:15 PM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Until further notice, Department 13 will be conducting court hearings REMOTELY using the BlueJeans Video Conferencing system. Department 13 has adopted this policy as a precautionary measure in light of public health concerns for Coronavirus COVID-19, and the Court orders that any party intending to appear before Department 13 for law and motion matters do so by BlueJeans only. As a result, your matter scheduled December 3, 2020 in this case will be conducted via BlueJeans. You have the choice to appear either by phone or computer/video.

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

Meeting ID: 628 582 066

URL: [bluejeans.com/ 628582066](https://bluejeans.com/628582066)

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

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

You may also download the BlueJeans app and join the meeting by entering the meeting ID.

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

You will be automatically muted upon entry to the meeting. Please remain muted while waiting for your matter to be called. If you are connecting by phone, you can mute/unmute yourself by pressing *4.

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

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

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

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

Please be mindful of where your camera is pointing.

We encourage you to visit the Bluejeans.com website to get familiar with the BlueJeans phone/videoconferencing system before your hearing.

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

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

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 12/1/20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 03, 2020

A-12-669570-C Bank of America, Plaintiff(s)
vs.
Michael Elliott, Defendant(s)

**December 03, 2020 9:00 AM Motion for Summary
Judgment**

HEARD BY: Denton, Mark R.

COURTROOM: RJC Courtroom 03D

COURT CLERK: Madalyn Kearney

RECORDER: Jennifer Gerold

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Natalie Winslow, Esq. present for Bank of America. Kerry Faughnan, Esq. present for LN Management LLC Series 3111 Bel Air 24G. Counsel present via BlueJeans.

Following arguments by Ms. Winslow and Mr. Faughnan, COURT ORDERED, Bank of America, N.A. and Ditech Financial LLC f/k/a Green Tree Servicing LLC's Motion for Summary Judgment UNDER ADVISEMENT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Title to Property

COURT MINUTES

December 14, 2020

A-12-669570-C	Bank of America, Plaintiff(s)
	vs.
	Michael Elliott, Defendant(s)

December 14, 2020 7:15 AM Minute Order

HEARD BY: Denton, Mark R.

COURTROOM: Chambers

COURT CLERK: Madalyn Kearney

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- HAVING further reviewed and considered the parties' filings and the argument of counsel pertaining to the Bank of America/Ditech Financial moving parties' Motion for Summary Judgment, heard and taken under advisement on December 3, 2020, and being now fully advised in the premises, and being persuaded by the procedural and substantive contentions of the moving parties, the Court GRANTS the subject Motion in its entirety. Counsel for the moving parties is directed to submit a proposed order consistent herewith and with supportive briefing and argument after providing the same to opposing counsel for signification of approval/disapproval.

IT IS SO ORDERED.

CLERK'S NOTE: This Minute Order was electronically served by Courtroom Clerk, Madalyn Kearney, to all registered parties for Odyssey File & Serve. /mk 12/14/20



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

KERRY FAUGHNAN, ESQ.
P.O. BOX 335361
NORTH LAS VEGAS, NV 89033

DATE: February 23, 2021
CASE: A-12-669570-C
C/W A-13-682055-C

RE CASE: GREEN TREE SERVICING LLC nka DITECH FINANCIAL LLC vs. MICHAEL T. ELLIOTT

NOTICE OF APPEAL FILED: February 22, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

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

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

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

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

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

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

Certification of Copy

State of Nevada }
County of Clark } SS:

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

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

GREEN TREE SERVICING LLC nka DITECH
FINANCIAL LLC,

Plaintiff(s),

vs.

MICHAEL T. ELLIOTT,

Defendant(s),

Case No: A-12-669570-C

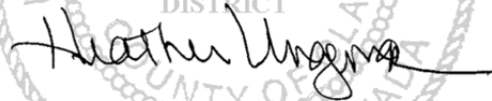
Consolidated with A-13-682055-C

Dept No: XXIII

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 23 day of February 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk