IN THE SUPREME COURT OF THE STATE OF NEVADA

NONA TOBIN, AN INDIVIDUAL, Appellant

vs.

BRIAN CHIESI, AN INDIVIDUAL, DEBORA CHIESI, AN INDIVIDUAL; QUICKEN LOANS, INC.; JOEL A. STOKES, AN INDIVIDUAL; JOEL A. STOKES AND SANDRA F. STOKES, AS TRUSTEES OF JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAR MORTGAGE LLC; AND RED ROCK FINANCIAL SERVICES, Respondents.

Electronically Filed
Feb 02 2021 05:10 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 82294/District Court Case No. A799890

DOCKETING STATEMENT

CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The Purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of the appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXII

County Clark Judge Susan Johnson

District Ct. Case No. A-19-799890-C

2. Attorney filing this docketing statement:

Attorney John W. Thomson Telephone (702) 478-8282

Firm Address 2450 St. Rose Parkway, Suite 120, Henderson NV 89074

Client(s) Nona Tobin

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondent(s): in instant appeal 82294

Attorney **See Below** Telephone _____

Firm _____
Address

Client(s) _____

Attorney _____ Telephone _____

Firm _____
Address
Client(s) _____

Respondents	Attorneys
Red Rock Financial Services 6/23/20 MTD Defendant Red Rock Financial Services, LLC's Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5) and (6) 8/3/20 RIS Defendant Red Rock Financial Services' Reply in Support of its Motion to Dismiss the Complaint Pursuant to NRCP 12(b)(5) and (6)	David R. Koch, Esq. (NV Bar No. 8830) Steven B. Scow, Esq. (NV Bar No. 9906) Brody B. Wight, Esq. (NV Bar No. 13615) KOCH & SCOW, LLC 11500 South Eastern Avenue, Suite 210 Henderson, NV 89052 Telephone: (702) 318-5040 Facsimile: (702) 318-5039 dkoch@kochscow.com sscow@kochscow.com bwight@kochscow.com
Quicken Loans, Inc., Brian Chiesi, an individual, Debora Chiesi, an individual 7/6/20 JMOT Brian and Debora Chiesi and Quicken Loan Inc.'s Joinder to Defendant Red Rock Financial Service's Motion to Dismiss Plaintiff's Amended Complaint 7/6/20 RFJN Request for Judicial Notice 8/3/20 RIS Brian and Debora Chiesi and Quicken Loans, LLC's Reply to Plaintiff's Opposition to Motion to Dismiss and Joinders thereto	AARON R. MAURICE, ESQ. Nevada Bar No. 6412 BRITTANY WOOD, ESQ. Nevada Bar No. 7562 ELIZABETH E. ARONSON, ESQ. Nevada Bar No. 14472 MAURICE WOOD 9525 Hillwood Drive, Suite 140 Las Vegas, Nevada 89134 Telephone: (702) 463-7616 Facsimile: (702) 463-6224 E-Mail: amaurice@mauricewood.com bwood@mauricewood.com earonson@mauricewood.com *Attorneys for Defendants, BRIAN CHIESI AND DEBORA CHIESI, and QUICKEN LOANS INC.*
Nationstar Mortgage LLC 6/25/20 JMOT Nationstar's Joinder to Defendant Red Rock Financial Services' Motion to Dismiss First Amended Complaint 6/25/20 JMOT NSM annotated	MELANIE D. MORGAN, ESQ. Nevada Bar No. 8215 DONNA M. WITTIG, ESQ. Nevada Bar No. 11015 AKERMAN LLP 1635 Village Center Circle, Suite 200 Las Vegas, Nevada 89134 Telephone: (702) 634-5000 Facsimile: (702) 380-8572 Email: melanie.morgan@akerman.com Email: donna.wittig@akerman.com *Attorney for Nationstar Mortgage LLC*

Joel A. Stokes & Sandra F. Stokes as trustees of Jimijack Irrevocable Trust; Joel A. Stokes, an individual; Jimijack Irrevocable Trust; 8/3/20 RIS *Joel A. Stokes, Joel A. Stokes And Sandra Stokes, As Trustees Of The Jimijack Irrevocable Trust, And Jimijack Irrevocable Trust s Reply In Support Of Joinder To Defendant, Red Rock Financial Services , Motion To Dismiss First Amended Complaint And For Attorney s Fees And Costs Pursuant To E.D.C.R. Rule 7.60(b)(1) And/Or (3)* 8/3/20 RIS JJ annotated 10/16/20 OST *Defendants, Joel A. Stokes and Sandra Stokes, as Trustees of The JimiJack Irrevocable Trust and Jimijack Irrevocable Trust's, Motion to Enforce Order for Attorney's Fees and Costs and for Contempt and for Attorney's Fees and Costs Pursuant to E.D.C.R. Rule 7.60(b)(3) and/or(5) and Order Shortening Time*	JOSEPH Y. HONG, ESQ. State Bar No. 005995 HONG & HONG LAW OFFICE 1980 Festival Plaza Drive, Suite 650 Las Vegas, Nevada 89135 Telephone No.: (702) 870-1777 Facsimile No.: (702) 870-0500 E-mail: yosuphonglaw@gmail.com *Attorney for Joel A. Stokes,* *Joel A. Stokes and Sandra Stokes,* *as trustees of the Jimijack Irrevocable Trust, and Jimijack Irrevocable Trust*

Filed by Plaintiff

8/7/19 COMP
Complaint for Quiet Title, and Equitable, Declaratory, and Injunctive Relief (PRO SE)

8/13/19 NOLP
Notice of Lis Pendens (PRO SE)

6/3/20 ACOM
First Amended Complaint

7/20/20 OPPM
Opposition to Motion to Dismiss and to Joinder Thereto

4. Nature of disposition below (check all that apply):

☐ Judgment after bench trial X Dismissal

☐ Judgment after jury verdict ☐ Lack of jurisdiction

☐ Summary judgment X Failure to state a claim NRCP(b)(5)

☐ Default judgment ☐ Failure to prosecute

□ Grant/Denial of NRCP 60(b) relief ☐ Other (specify): award of
☐ Grant/Denial of injunction ☐ Divorce Decree:

X Grant/Denial of declaratory relief ☐ Original ☐ Modification
NRS 30.030 & NRS 30.130

☐ Review of agency determination ☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following? No

☐ Child Custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

A. Appeal 82294 docketed on 1/8/21, A-19-799890-C **(the instant appeal)**

from 12/3/20 NODP notice of dismissal with prejudice (NRCP 12(b)(5))

NONA TOBIN, Appellant, v. BRIAN CHIESI, an individual; DEBORA CHIESI, an individual; QUICKEN LOANS INC.; JOEL A. STOKES, an individual; JOEL A. STOKES and SANDRA STOKES as Trustees of JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES, Respondents.

B. Appeal 82234, docketed on 12/18/20, A-19-799890-C

from 11/17/20 NEOJ order to grant $8,948.99 to Quicken Loans/Chiesi attorney per (NRS 18.010 (2) NONA TOBIN, Appellant v. BRIAN CHIESI, an individual; DEBORA CHIESI, an individual; QUICKEN LOANS INC. Respondents.

C. Appeal 82094, docketed on 11/17/20, A-19-799890-C

from order entered on 10/8/20 order granting $3,455 to Joseph Hong as EDCR 7.60 (1) and/or (3) sanction for filing A-19-799890-C complaint;

NONA TOBIN, Appellant, v. JOEL A. STOKES, an individual; JOEL A. STOKES and SANDRA STOKES as Trustees of JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST, Respondents.

D. Appeal 79295, docketed on 7/30/19, A-15-720032-C and A-16-730078-C,

from orders entered on 4/18/19 granting Sun City Anthem's motion for summary judgment on the Hansen Trust's quiet title claim and Nationstar's limited joinder, 5/31/19 denial of motion to reconsider 4/18/19 order, and 6/24/19 final judgment from 6/5/19-6/6/19 bench trial

NONA TOBIN, as Trustee of the GORDON B. HANSEN TRUST, dated 8/22/08, Appellant, v. JOEL A. STOKES and SANDRA F. STOKES as Trustees of JIMIJACK IRREVOCABLE TRUST; NATIONSTAR MORTGAGE ,LLC; SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC., Respondents.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

NONA TOBIN v. BRIAN CHIESI, an individual; DEBORA CHIESI, an individual; QUICKEN LOANS INC.; JOEL A. STOKES, an individual; JOEL A. STOKES and SANDRA STOKES as Trustees of JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES, Case No. A-19-799890-C, Eighth Judicial District Court, Clark County, Nevada 10/8/20, 11/17/20 & 12/3/20

A-16-730078-C NATIONSTAR MORTGAGE LLC vs. OPPORTUNITY HOMES LLC 7/29/16

A-15-720032-C JIMIJACK IRREVOCABLE TRUST vs. BANK OF AMERICA and SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC. 11/22/19

8. Nature of the action. Briefly describe the nature of the action and the result below:

Nona Tobin as an individual filed an action in her individual capacity on 8/7/19 for quiet title, declaratory relief and equitable relief/unjust enrichment for the excess proceeds of sale, against several defendants, from a defective HOA foreclosure sale and many other statutory and other violations of law.

9. Issues on appeal. State concisely the principal issues(s) in this appeal (attach separate sheets as necessary):

Did the court err in dismissing Nona Tobin's quiet title and declaratory relief claims with prejudice?

Did the court err in dismissing Tobin's complaint when she filed as an individual and the prior litigation precluded her from being a party to the case as an individual?

Did the court err in dismissing Tobin's complaint on the grounds of claims preclusion and res judicata, especially against defendants who were non-parties to the prior proceedings and who recorded claims adverse to Nona Tobin during the pendency of the case and when valid lis pendens were filed and recorded?

Did the court err in dismissing with prejudice Nona Tobin's claims of unjust enrichment and declaratory relief when it was undisputed by the parties that defendant Red Rock had not distributed the excess proceeds of the sale to her, or interplead them with the court?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised.

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130:

X N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitution

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decision

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance.

The matter should presumptively be assigned to the Court of Appeals under NRAP 17(b)(6) and (7).

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

16. Date of entry of written judgment or order appealed from 12/3/20

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served 12/3/20

Was service by:

☐ Delivery

X Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

N/A

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed _____
12/17/20 filed 12/18/20 docketed NOAS into appeal 82234 Chiesi/Quicken (20-45890)
11/9/20 filed 11/17/20 docketed NOAS into appeal 82094 Hong (20-41867)
12/29/20 filed 1/8/21 docketed NOAS into appeal 82294 red Rock MTD (21-00536)

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify THE statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☐ NRCP 3A(b)(1) ☐ NRS 38.205

☐ NRCP 3A(b)(2) ☐ NRS 233B.150

☐ NRCP 3A(b)(3) ☐ NRS 703.376

X OTHER (specify) NRAP 3(A)(b)(8)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

22. List all parties involved in the action or consolidated actions in the district court:
(a) Parties:

Appellant – Nona Tobin, AN INDIVIDUAL, Plaintiff

There are three appeals to this case, two involving sanctions against Nona Tobin for filing the complaint and one that dismisses all Tobin's claims against all defendants with prejudice and expunges three lis pendens.

82094 involves awarding $3,455 as an EDCR 7.60(b)(1) and/or (3) sanction against Nona Tobin to Joseph Hong, attorney for JOEL A. STOKES, AN INDIVIDUAL; JOEL A. STOKES AND SANDRA F. STOKES, AS TRUSTEES OF JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; AND JIMIJACK IRREVOCABLE TRUST, for his filing a 6/25/20 joinder to Red Rock's motion to dismiss.

82234 involves awarding $8,948.99 as a NRS 18.010(2) sanction against Nona Tobin to Brittany Wood, attorney for BRIAN CHIESI, AN INDIVIDUAL, DEBORA CHIESI, AN INDIVIDUAL; QUICKEN LOANS, INC. for her filing her 7/6/20 joinder to Red Rock's motion to dismiss and her 7/6/20 request for judicial notice.

82294 appeals from the order granting Red Rock's motion to dismiss and all defendants' joinders so all parties in that appeal BRIAN CHIESI, AN INDIVIDUAL, DEBORA CHIESI, AN INDIVIDUAL; QUICKEN LOANS, INC.; JOEL A. STOKES, AN INDIVIDUAL; JOEL A. STOKES AND SANDRA F. STOKES, AS TRUSTEES OF JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; AND NATIONSTAR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

The attached table in response to item #9 includes the details of Nona Tobin's unadjudicated claims filed in her original pro se 8/7/19 complaint and the requests for declaratory relief she delineated in her pro se notice of lis pendens filed into the district court case A-19-799890-C on 8/13/19 NOLP. The 12/3/20 order not only dismisses all Nona Tobin's claims with prejudice pursuant to claims preclusion, but the order also includes an order to expunge the three lis pendens that were recorded related both district court case A-19-799890-C and the two appeals filed into SC case 79295

201908080002097 LIS PENDENS RECORD ON 8/8/19

201908140003083 LIS PENDENS RECORD ON 8/14/19

201908140003084 LIS PENDENS RECORD ON 8/14/19

Plaintiff Nona Tobin's 6/3/20 ACOM, first amended complaint, contained claims for:

- Quiet title and Equitable Relief against all defendants (HOA sale was improper; Tobin holds superior title. Jimijack deed was inadmissible and all subsequent transfers were void. Two Lis Pendens were on record).

- Unjust enrichment/equitable relief (against the Chiesi's, the Stokes ($100,000+ in rens and $505,000 sale to Chiesi and Jimijack (fraudulent conveyance), Red Rock (retention of excess proceeds) and Nationstar (fraudulent claim to be the beneficial owner of the Hansen deed of trust
- Declaratory relief against all defendants That the Court issue a declaration that the transfers of ownership and encumbrances after the transfer from the GBH Trust to the present title are void and unenforceable and that Tobin is the rightful beneficial owner of the Subject Property, or alternatively that the financial benefits derived by the defendants belong to Tobin

No Defendants filed any counter-claims against Tobin. No defendants refuted Tobin's claims. All Defendants' motions to dismiss Tobin's claims per NRCP 12(b)(5) under claims preclusion and motions for attorneys' fees as sanctions for filing the NRS 40.010 complaint were granted and are being appealed.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below:

X Yes

No

There are no claims or parties that remain pending below based on the Motion to Dismiss granted. 12/3/20 NODP notice of dismissal with prejudice

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

X No.

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

X No. ?? It was a dismissal with prejudice pursuant to NRCP 12(b)(5).

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

The Order is independently appealable under NRAP 3(A)(b)(8).

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

PLEASE SEE ATTACHED

1. 6/3/20 ACOM 1st amended complaint
2. 9/6/20 ORDER to sanction per EDCR 7.60
3. 10/8/20 NEO order to sanction per EDCR 7.60 (1)(3) $3,455 to Hong for Jimijack/Stokes
4. 11/17/20 ORDER to sanction $8,948.99 per NRCP 18.010(2) to Wood for Chiesi/Quicken

5. 11/17/20 NEOJ order to sanction $8,948.99 per NRCP 18.010(2) to Wood for Chiesi/Quicken

6. 12/3/20 OGM order granting Red Rock's motion to dismiss per NRCP 12(b)(5) (non-mutual claims preclusion) and Joel Stokes's, Sandra Stokes's, Joel Stokes & Sandra Stokes as trustees of Jimijack Irrevocable Trust's, Jimijack Irrevocable Trust's, Nationstar Mortgage LLC's, Brian Chiesi's, Debora Chiesi's, and Quicken's joinders to dismiss Tobin's complaint for quiet title, unjust enrichment and declaratory and equitable relief with prejudice per NRCP 12(b)(5) (non-mutual claims preclusion/res judicata)

7. 12/3/20 NODP notice of entry of order granting all defendants' motions and joinders and expunging three lis pendens **as if** they had been expunged on the dates they were recorded, i.e., 8/8/19, 8/1419 and 8/14/19

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nona Tobin	John W. Thomson, Esq.
Name of appellant	Name of counsel of record
February 2, 2021	*/s/ John W. Thomson*
Date	Signature of counsel of record

Clark County
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 2nd day of February , 2021, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

X By Supreme Court Electronic Efiling System.

Joseph Y. Hong, Esq.
Hong & Hong Law Office
1980 Festival Plaza Drive, Suite 650
Las Vegas, NV 89135
Attorney for Defs' Joel A. Stokes, Joel A. Stokes and Sandra Stokes, as Trustees of Jimijack Irrevocable Trust, and Jimijack Irrevocable Trust

Brittany Wood, Esq.
Maurice Wood
9525 Hillwood Drive, Suite 140
Las Vegas, NV 89134
Attorney for Defendants, Brian Chiesi and Debora Chiesi, erroneously sued as Brian Chiesti and Dobora Chiesti, and Quicken Loans Inc. n/k/a Quicken Loans, LLC

Brody B. Wight, Esq.
Koch & Scow, LLC
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052
Attorneys for Defendant Red Rock Financial Services

Dated this 2nd day of February , 2021

/s/ John W. Thomson
Signature

Electronically Filed
6/3/2020 2:01 PM
Steven D. Grierson
CLERK OF THE COURT

JOHN W. THOMSON, ESQ.
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DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an Individual Plaintiff, vs. BRIAN CHIESTI, an individual; DEBORA CHIESTI, an individual; QUICKEN LOANS INC.; JOEL A. STOKES, an individual; JOEL A. STOKES and SANDRA STOKES as Trustees of JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES; DOES I through X inclusive; and ROE CORPORATIONS I through V, inclusive Defendants.	Case No.: A-19-799890-C Dept No.: 22 **FIRST AMENDED COMPLAINT** **(EXEMPT FROM ARBITRATION—TITLE TO REAL PROPERTY AND DECLARATORY RELIEF)**

Comes now, Plaintiff NONA TOBIN, AN INDIVIDUAL, (hereinafter "Plaintiff" or "Tobin"), by and through her attorney of record, Thomson Law PC, through attorney John W. Thomson, Esq., and hereby asserts her claims against the above-named Defendants as follows.

INTRODUCTION

1. Tobin asserts that the real property commonly known as the 2763 White Sage Drive, Henderson, NV belongs to her and seeks a declaration from the Court that the actions, and

Docket 82294 Document 2021-03255

Case Number: A-19-799890-C

inactions, leading to the foreclosure of the real property, were wrongful and that Tobin is the sole owner of the real property.

2. In addition, the excess proceeds from the improper sale belong to Tobin and she has incurred damages as a result of the wrongful conduct of the Defendants.

JURISDICTION, VENUE

3. The real property which is the subject of this civil action is a single-family residence commonly known as the 2763 White Sage Drive, Henderson, NV 89052, APN 191-13-811-052, (hereinafter "Subject Property"), located in Clark County, Nevada. Tobin seeks a declaration that she is legal owner of the Subject Property. All of the events surrounding the Subject Property took place in Clark County, Nevada, and the Defendants do business in, or reside in Clark County, Nevada. As such, jurisdiction and venue are properly before this Court.

PARTIES

4. Plaintiff Nona Tobin, an Individual, resides at 2664 Olivia Heights Avenue, where she has been a home owner in good standing in Sun City Anthem, since 2/20/04.

5. The Subject Property, is also located in Sun City Anthem, and was owned by the Gordon B. Hansen Trust, dated 8/22/08, of which Tobin was the beneficiary and successor trustee, when the Subject Property was foreclosed on by the HOA on 08/15/14.

6. Brian and Debora Chiesti, upon information and belief, are husband & wife, (hereinafter "Chiesti") who reside in Clark County, Nevada, in the Subject Property and together acquired the Subject Property by a deed recorded 12/27/19 from defendant Joel A. Stokes, an Individual.

7. Defendant Quicken Loans Inc. is a Michigan Corporation doing business in Clark County, Nevada, and holds an adverse claim against Tobin's interest in the Subject Property by way of its loan to the Chiesti Defendants.

8. Defendant Red Rock Financial Services (hereinafter "RRFS") is an entity doing business in Clark County, Nevada, and was contracted with Sun City Anthem to provide debt collection services for the Subject Property and wrongly foreclosed on the property after refusing assessment payments that cured the default, and has yet to distribute $57,232 in excess proceeds belonging to Tobin from the August, 15, 2014 sale.

9. Joel A. Stokes, (hereinafter "Stokes") is an individual residing in Clark County, Nevada, and all acts complained of took place in Clark County, Nevada.

10. Joel A. Stokes and Sandra Stokes (hereinafter "Jimijack Trustees"), are being sued in their capacities as Trustees of the Jimijack Irrevocable Trust (hereinafter "Jimijack"), and reside and did the acts complained of in Clark County, Nevada.

11. Upon information and belief, Jimijack Irrevocable Trust (hereinafter "Jimijack") is an unknown Nevada entity that operates in Clark County, Nevada, as a licensed business to buy foreclosed real property. Jimijack's sole recorded claim to the Subject Property is a defective deed, recorded on 6/9/15, fraught with notarial violations, which render it voidable and insufficient evidence to support Jimijack's ownership claims in the Subject Property, pursuant to NRS 111.345.

12. Nationstar Mortgage LLC (hereinafter "NSM") is an unknown entity doing business in Clark County, Nevada, and was the servicing bank on a Deed of Trust on the Subject Property. NSM recorded multiple disputed and unverified assignments, substitution of trustee, and reconveyance.

GENERAL ALLEGATIONS

13. Tobin became the sole successor trustee when Mr. Hansen died on 01/14/12, and obtained a 100% beneficiary interest of the Gordon B. Hansen Trust (hereinafter "GBH Trust")

when Steve Hansen, a 50% beneficiary of the GBH Trust, disclaimed his interest in the Subject Property and in the GBH Trust, on 3/27/17.

a. The Gordon B. Hansen Trust, was the prior owner of the Subject Property, which was the sole significant asset of the GBH Trust, appraised at $310,000 in August, 2012.

b. There were two recorded encumbrances on the Subject Property in January 2012: a mortgage recorded by Western Thrift & Loan on 7/22/04 with an outstanding balance on 10/30/12 of $389,000, and Wells Fargo Bank held a second mortgage lien with approximately a $15,000 balance.

c. Nona Tobin closed the GBH Trust on 3/28/17 when the Subject Property, the GBH Trust's sole significant asset, was transferred into the name of Nona Tobin, an individual, by means of a deed recorded on 3/28/17 when Tobin was the GBH Trust's sole successor trustee and sole beneficiary.

14. Tobin listed the Subject Property with Proudfit Realty, on 2/14/12. Owners, Doug & Linda Proudfit, have been Sun City Anthem owners in good standing since the community began in 1998.

15. On 8/10/12, Tobin accepted an offer from Sparkman for $310,000 for a short sale that needed to be approved by the lenders. This offer equal to the pre-approved Wells Fargo appraisal, with the stipulation that all the seller's costs were to be paid by the lender and not by Tobin, as there were no assets in the GBH Trust or Estate, other than the Subject Property, from which to pay closing costs. As the executor of the estate and trustee of the GBH Trust, Tobin, an individual, as the beneficiary of the GBH Trust, was entitled to receive the proceeds of the sale but was not responsible for any of the costs of sale.

16. After the death of Mr. Hansen, Tobin paid, out of her own personal money, the HOA assessments for the Subject Property in 2012 by check, covering all assessments due through 9/30/12.

17. RRFS improperly recorded a lien on 12/14/12 for $925.76 when only $275.00 in assessments and $25 late fee was due for the quarter ending 12/31/12.

18. Even though the amount claimed to be owed by RRFS was improper, the closing agent, Ticor title, was given instructions to pay the HOA whatever was demanded without proof.

19. RRFS provided improper payoff demands to Ticor title on 12/20/12 and 1/16/13 during the Sparkman escrow, on 05/29/13 during the Mazzeo escrow, and on 03/28/14 during the RRRI escrow. RRFS wrongfully rejected NSM's $1,110 offer to pay the lien by misrepresenting to the HOA Board that is was a $459.32 request for a fee waiver from the owner rather than from the lender.

20. In anticipation of an easy close of escrow, and not suspecting the foul play by BANA that was to come, Tobin evicted the non-paying tenants, and allowed Sparkman to move in on 10/16/12, without closing escrow. BANA allowed the Sparkman escrow to languish for eight months without providing lender approval of the fair market value sale.

21. BANA subjected Proudfit, Ticor Title, Sparkman, and Tobin to months of problems and demanded an increase of $80,000 over the asking price and then current appraisal, in order to approve the sale.

22. On 4/3/13, Sparkman demanded their earnest deposit money back and moved out by the end of the month.

23. On 4/8/13 BANA's agent, Miles Bauer, wrote a letter to the Hansen estate claiming that BANA was both the beneficiary and the servicing bank, and that BANA was going

to pay the super-priority lien amount owed to the HOA, but that Tobin should pay the rest. Tobin did not know who they were or what they were talking about since escrow had instructions to pay the HOA paid the full amount demanded out of the Sparkman escrow.

24. Unbeknownst to Tobin, Proudfit, Ticor Title, or the SCA Board, BANA's agent sent a check for $825.00 directly to the HOA's collection agent, Red Rock Financial Services (RRFS), the exact amount of nine months of assessments that were then delinquent.

25. RRFS rejected BANA's tender without notice to any of the interested parties, including Tobin and the GBH Trust.

26. On 5/7/13 Tobin put BANA on notice by letter of their responsibilities for the Subject Property.

27. On 5/10/13 Tobin accepted another offer on the Subject Property from a new purchaser, Mazzeo, for $395,000. This offer was for $6,000 above the outstanding first mortgage balance.

28. On 5/29/13, RRFS demanded $3,055.47 to be paid to close the Mazzeo escrow, even though only $825.00 was due for the nine months of assessments that were then still delinquent because RRFS had rejected the $825.00 tendered by BANA's agent on 05/09/13.

29. On 6/4/13 Ticor Title amended the HUD-1 Settlement Statement according to the escrow instructions and demand by RRFS to pay the HOA $3,055.47.

30. On or about 6/24/13, BANA rejected the buyers' credit pre-approval, and Mazzeo withdrew their offer.

31. On or about 7/13/13 Tobin took the property off the market and asked Proudfit and Ticor to assist her to get BANA to take a deed in lieu of foreclosure.

32. On 8/15/13 RRFS sent a "courtesy" notice to the GBH Trust regarding the delinquent assessments, but this was while BANA had possession of the Subject Property. BANA did not act on this notice to protect its interest in the Subject Property and protect it from foreclosure.

33. Over the summer of 2013, Tobin worked with BANA's agent, Liberty Title in Rhode Island, to try to transfer the title to BANA. Even though BANA took possession of the Subject Property on during the summer of 2013, locking out Tobin, it refused to take title or to pay anything to avoid deterioration of the Subject Property.

34. On 12/1/13 servicing of the Hansen loan transferred to NSM, but neither BANA nor NSM ever took any of the proper steps to foreclose on the Hansen loan which had been in default since January 2012, or to protect it against foreclosure by the HOA.

35. In January 2014, frustrated with having the title/liability of the property without having possession or any control, Tobin asked another Relator, long-time SCA resident and owner in good standing, Craig Leidy, for help.

36. Leidy found that while BANA had placed a lock box on the property, a side door to the garage had been left unlocked.

37. On 1/29/14 RRFS sent another "courtesy" notice to the Estate of Gordon Hansen to Tobin's personal residence about the delinquent assessments.

38. On 2/12/14, RRFS recorded a Notice of Sale for 3/7/14 Sale (NOS) claiming the amount of $5,081.45 as delinquent assessments and costs.

39. Shocked at the sudden notice, on 2/14/14 Tobin sent Leidy the 2/12/14 Notice of Foreclosure Sale that RRFS had sent to her.

40. Leidy reassured Tobin that the HOA wouldn't sell the Subject Property because the mortgage holders would step in and pay the HOA to stop the sale.

41. Tobin relisted the property with Leidy under BHHS (fka Prudential) Broker Forest Barbee on 2/20/14.

42. On 2/25/14 Red Rock Regional Investors (hereinafter "RRRI") offered $340,000 cash to purchase the Subject Property, which Tobin accepted on 3/4/14.

43. On 2/27/14 Leidy informed RRFS of the cash offer and asked for the 3/7/14 sale to be cancelled, and it was cancelled by RRFS.

44. On 5/11/18 and again in 5/13/19, Leidy declared under the penalty of perjury that the RRFS sale was postponed at least four times and that he never received any notice of the 8/15/14 sale from the HOA or from RRFS.

45. Leidy requested that Christie Marling, an agent for RRFS, give him an opportunity to make an appeal to the HOA board for a reduction in fees to close the RRRI escrow.

46. Marling informed the Board of the request, but Leidy was not permitted to speak to the Board about it.

47. Unbeknownst to Tobin or Leidy, the HOA Board did approve Leidy's request at their 3/27/14 meeting that was closed to owners based on the HOA Board's misapplication and misunderstanding of the law.

48. On 3/28/14 RRFS attached a ledger to its 3/28/14 pay-off demand to Chicago Title on the RRRI escrow that shows that the HOA Board had approved a $400 reduction.

49. Before approving the RRRI offer, NSM, on 4/18/14, required that Tobin put the Subject Property on a public internet auction in order to validate whether the $340,000 RRRI cash offer was truly at market value.

50. The property was listed for public auction on www.auction.com from 5/4/14-5/8/14 at which time Tobin accepted a $367,500 offer from high bidder MZK Properties ($350,000 plus $17,500 buyer's premium).

51. On 6/2/14, the Ombudsman logged that notice had been received by the Ombudsman on 5/15/14 that the HOA sale was canceled and the "owner retained".

52. The Ombudsman closed the 2/12/14 Notice of Sale compliance tracking as no new notice of sale was published prior to the 8/15/14 sale and no foreclosure deed was delivered to the Ombudsman as mandated by NRS 116.31164 (3)(b) (2013).

53. On 5/22/14, the RRRI escrow was canceled and RRRI's earnest money deposit was returned.

54. On 5/28/14 Veronica Duran, NSM's negotiator, sent Leidy a message through the Equator System that "$1,100 is the max I can pay to the HOA" referring to the escrow opened 5/8/14 for the MZK $367,500 deal.

55. RRFS did not inform the HOA board that the servicing bank had offered to pay one-year of assessments to close escrow on the MZK $367,500 sale.

56. RRFS presented to the HOA Board a misrepresentation of the bank's super-priority tender, by mischaracterizing SCA 302 as a request for waiver from the deceased owner.

57. RRFS falsified the documents disclosed in SCA which purported to have sent notice to Tobin at her address and to the property address notifying her of the non-existent HOA Board decision to a nonexistent request for a waiver. Tobin did not receive any notice from

RRFS after the 02/12/14 Notice of Sale scheduled for 03/07/14 that was cancelled with the Ombudsman.

58. On 7/24/14 NSM told Leidy that the beneficiary did not approve the MZK deal and to put the property back on the market for $390,000, but Leidy informed them that he was required to get Tobin's signature.

59. Tobin demanded by email to Leidy and in person to BHHS managing broker Carlos Ciapa to know the name of the recalcitrant beneficiary of the Hansen Deed of Trust, but NSM refused to identify the beneficiary.

60. On 7/25/14 Leidy posted a notice on the MLS that the Subject Property was back on the market after being refused by the beneficiary and should close quickly as "all the other liens were worked out".

61. On 7/26/14 Blum offered $358,800, and NSM said to counter with $375,000, which Tobin reluctantly did on 8/1/14.

62. On 8/13/14 the HOA sent a Notice of Fines for $25.00 to Gordon Hansen addressed to 2664 Olivia Heights (Tobin's residence), for dead plants.

63. On 8/15/14, the Subject Property was sold in foreclosure sale by RRFS without any notice to any party with a known interest; Upon information and belief, no notice was given to RRRI, MZK, Blum, Tobin, Leidy, or Ticor Title. It is unknown whether NSM or Chicago title were informed, or if so, why they would not have prevented the sale.

64. Tobin was given no notice of any SCA Board meeting at which the decision to foreclose was made.

65. Tobin was given none of the due process that is required by the HOA governing documents and NRS 116.

66. Non-party, Thomas Lucas (hereinafter "Lucas"), was the Manager for Opportunity Homes, LLC, through which Lucas claimed to have purchased the Subject Property for $63,100 at an home owner association (hereinafter "HOA") foreclosure sale on 8/15/14. Lucas held a deed to the property, recorded on 8/22/14, in which he took title in the name of non-party Opportunity Homes, LLC.

67. On the Declaration of Value form, mandated to be recorded with all deeds, Thomas Lucas stated under penalty of perjury, that the property value on that day was $353,529.

68. Lucas paid $1,801 in Real Property Transfer Tax (hereinafter "RPTT") and did not request an exemption.

69. Six months and one day later, Thomas Lucas recorded that he received an RPTT refund on which the Clerk had noted the exemption #3, "Proof of notification of HOA foreclosure" that was allegedly provided on that later date. Upon information and belief, the "proof of notice" was not recorded with the deed because it did not exist.

70. Although Thomas Lucas had recorded a deed as Opportunity Homes LLC on 8/22/14, Sun City Anthem's (hereinafter "SCA") Resident Transaction Report contains no entry to indicate that either Thomas Lucas or Opportunity Homes LLC ever owned the property, paid a new owner set up fee or paid the Asset Enhancement Fee, one-third of one-percent of the purchase price, that is mandated by SCA's CC&Rs 8.12.

71. Thomas Lucas is a licensed Real Estate Agent and works under the broker license of Berkshire Hathaway Broker Forrest Barbee with whom Nona Tobin, Successor Trustee of the GBH Trust, had a contract from 2/20/14 – 10/31/14 with the exclusive right to sell the subject property.

72. Real estate licensee Thomas Lucas never listed the Subject Property for sale.

73. On 6/4/15, Public Notary Debra Batesel, witnessed Thomas Lucas's signature on a purported purchase agreement and a quit claim deed that transferred Opportunity Homes LLC's interest in the property for One Dollar to non-party, F. Bondurant LLC.

74. On 6/9/15, at 12:58 PM, non-party Robert Goldsmith, a Nevada real estate agent, recorded the Opportunity Homes to F. Bondurant LLC deed (hereinafter "Bondurant Deed").

75. The Nevada State Declaration of Value on the Bondurant Deed dated 06/09/15 stated the property's RPTT value was $270,000, but there is no signature under penalty of perjury attesting to that value.

76. Non-party, Yuen K. Lee, executed a quit claim deed to transfer the interest of F. Bondurant LLC, if any, to Defendants Joel A. and Sandra Stokes, as trustees of Jimijack Irrevocable Trust for One Dollar on 06/08/15.

77. Yuen K. Lee, not Lucas, allegedly executed the deed on 6/8/15 that transferred F. Bondurant LLC's title to Jimijack, but there is no known notary record of it.

78. CluAynne M. Corwin, Nevada Notary affixed her notary stamp and attested to the statement that Thomas Lucas stood before her and signed the 06/08/15 Jimijack deed which was recorded on 6/09/15.

79. However, there is no entry in Corwin's notary journal that the notarial act of witnessing that the execution of the Jimijack deed by Lee occurred.

80. Defendants Joel A. and Sandra Stokes', as trustees of Jimijack Irrevocable Trust, only recorded claim to the Subject Property is the defective deed executed by Yuen K. Lee, as if he were Thomas Lucas on 6/8/15.

81. Contradicting the flawed Jimijack deed, the HOA's Resident Transaction Report documents that Jimijack became the immediate subsequent owner, after the GBHT, of the property on 9/25/14 when a new owner set-up fee was assessed.

82. Non-party, Realtor Robert Goldsmith, recorded the Jimijack deed on 6/9/15 at 1:06 PM, minutes after recording the F. Bondurant LLC deed.

83. On 6/16/15 Joel A. and Sandra Stokes, as trustees of Jimijack Irrevocable Trust listed the property for sale using non-party, Realtor Robert Goldsmith, working under URBAN Broker, as their agent. Jimijack leased the Subject Property and retained these funds despite the issues with title.

84. On 6/16/15 Joel A. and Sandra Stokes, as trustees of Jimijack Irrevocable Trust filed a complaint, seeking to quiet title in the Subject Property, Case No. A-15-720032-C in the Eighth Judicial District Court, against Bank of America (BANA) and Sun City Anthem (SCA), Defendants.

85. Jimijack had five claims for relief but never served SCA.

86. BANA never responded to the complaint, possibly because it was served on BANA, a national banking association, and not on BAC Home servicing, successor to countrywide, the actual entity that serviced the disputed Hansen deed of trust from an unknown date to 11/30/13.

87. BANA never responded to the complaint, possibly because BANA did not have a recorded claim when Jimijack filed suit. BANA was the servicing bank that had one recorded claim, immediately disavowed, to be the beneficiary of the disputed Hansen Deed of Trust, that was on record from 4/12/12 to 9/9/14 when BANA recorded an assignment of its interest, if any, to Wells Fargo.

88. A Judgment of Default was filed against BANA, but not entered, by Jimijack on 10/23/15 and recorded on 12/1/15.

89. Jimijack accepted an offer to purchase the Subject Property from Jesse James and close of escrow was anticipated to be 10/16/15.

90. NSM became the servicing bank for the Hansen Deed of Trust on 12/1/13. BANA transferred its servicing responsibilities to NSM immediately after refusing to accept Tobin's offer to turn the title to the property over to BANA rather than tolerate any more of BANA's abusive practices.

91. BANA never recorded a notice of default or took any of the steps required under NRS Chapter 107 to foreclose on the property even though the Hansen Deed of Trust was in default from January, 2012 due to the death of the borrower.

92. BANA actions and inactions prevented Tobin, the executor of the Hansen estate, the trustee of Hansen Trust, and the beneficiary of the Trust and beneficial owner of the Real Property, from selling the Subject Property at fair market value.

93. Tobin recorded Hansen's disclaimer of interest on 3/31/17, along with the disclaimers of other non-parties, Thomas Lucas dba Manager, Opportunity Homes, LLC, and Yuen K. Lee dba Manager, F. Bondurant, LLC.

94. Several lis pendens were recorded against the Subject Property:

a. On 1/13/16 NSM recorded a lis pendens which was on record until 7/10/19 when it was released by NSM;

b. On 6/7/16 NSM recorded a lis pendens which was on record until 5/28/19 when released by Jimijack;

c. On 5/6/19 Tobin/GBH Trust recorded a lis pendens which expunged by the 6/24/19 trial order against GBH Trust, currently on appeal;

d. On 8/8/19 Tobin, individually, recorded a lis pendens which was expunged by court order on 11/22/19, because Tobin was ruled to be in the 2015 lawsuit only on behalf of the GBH Trust, not individually;

e. On 8/14/19 Tobin/GBH Trust recorded two lis pendens; one for this lawsuit and one for the Nevada Supreme Court Appeal No. 79295 of case No. A-15-720032-C consolidated with A-16-730078-C. Both are still on record with the Clark County Recorder.

95. All 2019 recorded claims by Jimijack, Joel Stokes, NSM and their assignees and successors were done while Tobin's and the GBH Trust's Lis Pendens were on the record.

96. By virtue of recording a title transfer from Jimijack to Joel Stokes on 5/1/19, none of the parties whose claims were supposedly resolved at the 6/5/19 trial in Case No. A-15-720032-C held a current and valid recorded interest at that time.

97. Tobin's individual claims, as sole beneficiary of the GBH Trust, to the Subject Property have never been adjudicated, as she attempted to participate, but was excluded, as an individual in Case No. A-15-720032-C.

98. On 12/27/19, Defendant Joel Stokes sold the Subject Property to the Chiesti defendants for $505,000, after renting out the property for almost five years, keeping the rents and the profits.

99. Upon information and belief, Joel Stokes did not disclose to the Chiesti or Quicken Defendants that there are two Tobin Lis Pendens, dated 8/14/19, on record related to this case and to the GBH Trust appeals of Case No. A-15-720032-C.

100. Upon information and belief, the Driggs title company that handled the Chiesti-Stokes-Quicken escrow issued title insurance, based on a defective Property profile, which failed to show the pending lawsuit and notices of current lis pendens.

101. RRFS is currently holding $57,282.32 in excess proceeds from the foreclosure sale that belong to Tobin.

FIRST CAUSE OF ACTION
QUIET TITLE AGAINST ALL DEFENDANTS

102. Tobin repeats and realleges each and every allegation contained in paragraphs 1 through 101 inclusive.

103. The foreclosure sale was improper and the deeds conveying title to the Subject Property from the GBH Trust and from Nona Tobin to every subsequent person or entity are void and unenforceable.

104. Tobin has a superior interest in the Subject Property than all defendants and title to the Subject Property should be restored to reflect the parties' true interests in the Subject Property.

105. The Chiesti deed from Stokes is void as all defendants were on notice of the lis pendens' and Tobin's claims to the Subject Property when the Chiesti defendants purportedly purchased the Subject Property.

106. As such the Subject Property should be quieted in Tobin's name.

SECOND CAUSE OF ACTION
UNJUST ENRICHMENT/EQUITY AGAINST CHIESTI'S, STOKES', JIMIJACK, RED ROCK FINANCIAL SERVICES, AND NATIONSTAR MORTGAGE

107. Tobin repeats and realleges each and every allegation contained in paragraphs 1 through 106 inclusive.

108. Defendants have benefitted financially from their actions and inactions to the detriment of Tobin and the defendants have acted without equity with regards to Tobin's rights in the Subject Property.

109. As such, it would be unjust for Defendants to benefit at the expense of Tobin and therefore they should be disgorged of their improper gain.

110. Specifically, ownership and possessory rights belonging to Tobin have been deprived by defendants and the excess proceeds of the unlawful foreclosure sale, and the profits derived from the rental, transfer and sale of the Subject Property after the foreclosure sale should be awarded to Tobin.

111. Tobin claims that the Subject Property should be held in a constructive trust for Tobin according to equity and that she has suffered damages and losses due to the defendants' unjust enrichment in an amount in excess of $15,000.

THIRD CAUSE OF ACTION
DECLARATORY RELIEF AS TO ALL DEFENDANTS

112. Tobin repeats and realleges each and every allegation contained in paragraphs 1 through 111 inclusive.

113. Defendants had notice of Tobin's interest in the Subject Property prior to transferring title, holding a foreclosure sale and recording their interests.

114. Defendants knew, or should have known, that their interests were inferior to, or subject to, Tobin's superior claims.

115. The actions and inactions of defendants as outlined above show that Tobin is the owner of the Subject Property, and not defendants.

116. Tobin seeks a declaration from the Court that the transfers of ownership and encumbrances after the transfer from the GBH Trust to the present title are void and

unenforceable.

117. Tobin seeks a declaration from the Court that Tobin is the rightful beneficial owner of the Subject Property, or alternatively that the financial benefits derived by the defendants belong to Tobin.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Nona Tobin prays for judgment as follows:

1. That the Court quiet title to the Subject Property in Tobin's name;

2. That Tobin be awarded damages in equity in excess of $15,000.00 plus interest, fees, and costs;

3. That the Court issue a declaration that the transfers of ownership and encumbrances after the transfer from the GBH Trust to the present title are void and unenforceable and that Tobin is the rightful beneficial owner of the Subject Property, or alternatively that the financial benefits derived by the defendants belong to Tobin.

4. For an award of reasonable costs of suit;

5. For an award of reasonable attorney's fees by statute and as special damages;

6. For pre-judgment and post-judgment interest; and

7. For such other and further relief as the Court may deem just and proper under the law and equity.

Dated this 3rd day of June, 2020,

THOMSON LAW PC

/s/ *John W. Thomson*
JOHN W. THOMSON, ESQ.
Nevada Bar No. 5802
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Henderson, Nevada 89074
Attorney for Plaintiff Nona Tobin

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DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual, **Plaintiff,** **Vs.** **BRIAN CHIESTI, an individual; DEBORA CHIESTI, an individual; QUICKEN LOANS INC.; JOEL A. STOKES, an individual; JOEL A. STOKES and SANDRA STOKES, as Trustees of JIMIJACK IRREVICABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAIR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive,** **Defendants.**	**Case No. A-19-799890-C** **Dept. No. XXII**

ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS FILED BY JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST, AND JIMIJACK IRREVOCABLE TRUST, PURSUANT TO EDCR 7.60(b)(1) AND/OR (3)

This matter, concerning the Motion for Attorney's Fees and Costs filed by JOEL A. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST pursuant to EDCR 7.60(b)(1) and/or (3) filed June 25, 2020,[1] came on for hearing on the 11th day of August 2020 at the hour of 8:30 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark

[1]This motion was included within these Defendants' Joinder to Defendant RED ROCK FINANCIAL SERVICES' Motion to Dismiss First Amended Complaint.

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

Case Number: A-19-799890-C

County, Nevada with JUDGE SUSAN JOHNSON presiding; Plaintiff NONA TOBIN appeared by and through her attorney, JOHN W. THOMSON, ESQ.; Defendants BRIAN CHIESI and DEBORA CHIESI appeared in *pro se;* Defendants JOEL A. STOKES, JOEL A STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST appeared by and through their attorney, JOSEPH Y HONG, ESQ. of the law firm, HONG & HONG LAW OFFICE; Defendant RED ROCK FINANCIAL SERVICES appeared by and through its attorney, BRODY R. WIGHT, ESQ. of the law firm, KOCH & SCOW; Defendant NATIONSTAR MORTGAGE, LLC appeared by and through its attorney, DONNA WITTIG, ESQ. of the law firm, AKERMAN; and Defendant QUICKEN LOANS INC. appeared by and through its attorney, BRITTANY WOOD, ESQ. of the law firm, MAURICE WOOD. Having reviewed the papers and pleadings on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. On June 16, 2015, Defendants JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST filed their Complaint against BANK OF AMERICA[2] and SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC., seeking, *inter alia,* to quiet title to their residence, 2763 White Sage, Henderson, Nevada 89052. *See* Stokes v. Bank of America, Case No. A-15-720032-C, filed in Department XXXI, Eighth Judicial District Court, in and for Clark County, Nevada. Subsequently, on May 17, 2016, NATIONSTAR MORTGAGE, LLC intervened, and filed its Counter-Claim against, *inter alia*, JIMIJACK IRREVOCABLE TRUST.[3] Further, a

[2]NATIONSTAR MORTGAGE, LLC thereafter was permitted to intervene in that it was BANK OF AMERICA'S successor-in-interest.

[3]The Counter-Claim was also filed against OPPORTUNITY HOMES, LLC, F. BONDURANT, LLC as well as DOE and ROE defendants. In this Court's view, the pleading lodged against these "Counter-Defendants" was

Complaint previously filed by NATIONSTAR MORTGAGE, LLC against OPPORTUNITY HOMES, LLC in another action, Case No. A-16-730078-C, on January 11, 2016 was consolidated with the older case filed by MR. STOKES and the Trustees of JIMIJACK IRREVOCABLE TRUST in Department XXXI.

2. In July 2016, Plaintiff NONA TOBIN and STEVEN HANSEN, as individuals, filed their Motion to Intervene in Case No. A-16-730078-C, claiming MS. TOBIN was a Trustee and MR. HANSEN was a beneficiary of the GORDON B. HANSEN TRUST, the entity that owned the subject property until the homeowners' association foreclosure sale took place. Such motion was denied without prejudice given MS. TOBIN and MR. HANSEN, individually, lacked standing to sue or intervene in the action. MS. TOBIN eventually was permitted to intervene as Trustee of the GORDON B. HANSEN TRUST in early 2017. MS. TOBIN thereafter filed her Counter-Claim against MR. STOKES and JIMIJACK IRREVOCABLE TRUST and Cross-Claims against SUN CITY ANTHEM COMMUNITY ASSOCIATION, OPPORTUNITY HOMES, INC. and F. BONDURANT, LLC. Of interest here, MS. TOBIN identified herself interchangeably as an individual and trustee throughout the pleadings, an error noted by JUDGE JOANNA KISHNER in her Findings of Fact, Conclusions of Law and Judgment filed June 24, 2019, pp. 4 and 8.

3. On April 17, 2019, JUDGE KISHNER granted summary judgment in favor of SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC. as it held a valid homeowners' association foreclosure sale which terminated the interest of GORDON B. HANSEN TRUST within the subject property and MS. TOBIN showed no reason such as "fraud," "oppression" or "malice" for the sale to be set aside Further, JUDGE KISHNER noted MS. TOBIN, as an individual, had no standing to sue and papers identifying her as a plaintiff suing individually were stricken. On June 5 and 6, 2019,

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inappropriately called a "counter-claim," as these parties were not listed as plaintiffs in the primary action.

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

a bench trial was heard by JUDGE KISHNER with respect to the claims of MS. TOBIN, as Trustee of the GORDON B. HANSEN TRUST against, *inter alia,* MR. STOKES and the JIMIJACK IRREVOCABLE TRUST. After hearing the evidence, that Court issued Findings of Fact, Conclusions of Law and Judgment in favor of MR. STOKES and the JIMIJACK IRREVOCABLE TRUST, and ordered the *lis pendens* filed by MS. TOBIN against the subject property be expunged. The consolidated action heard by Department XXXI is now pending before the Nevada Court of Appeals.

4. MS. TOBIN, in her individual capacity, has now sued various persons and entities, including MR. STOKES and JIMIJACK IRREVOCABLE TRUST in the instant matter before Department XXII for declaratory relief and to quiet title in the real estate that was the subject of the previous consolidated litigation. Various Defendants filed their Motions to Dismiss, along with Joinders thereto, upon the basis, *inter alia,* MS. TOBIN was judicially estopped from asserting an ownership interest in the subject property and re-litigating the case which had already been adjudged by JUDGE KISHNER. This Court granted the motions and now considers the Motion for Attorney's Fees and Costs filed by MR. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST. They seek reimbursement of $3,165.00 in attorney's fees and $290.00 in costs pursuant to Rule 7.60 of the Eighth Judicial District Court Rules (EDCR).

CONCLUSIONS OF LAW

1. EDCR 7.60(b) provides in salient part:

> The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted; …or

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

(3) So multiplies the proceeding in a case as to increase costs unreasonably and vexatiously.

2. Although not cited by movants, this Court notes NRS 18.010(2) specifically provides:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> . . .
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Also see NRS 18.020 (costs *must* be awarded to the prevailing party).

3. Here, the intervention action and claims of the GORDON B. HANSEN TRUST and MS. TOBIN, whether individually or as Trustee of the Trust, were decided before JUDGE KISHNER in the aforementioned consolidated actions. Specifically, JUDGE KISHNER found MS. TOBIN, as an individual, had no standing to sue as she had no ownership interest in the subject residence. Although JUDGE KISHNER made such a finding, MS. TOBIN continued to interchangeably refer to herself as suing individually and as Trustee. After hearing the matter fully in both summary judgment and a bench trial, JUDGE KISHNER concluded the homeowners' association held a valid foreclosure sale which terminated the property interests of GORDON B. HANSEN TRUST, and title ultimately vested in MR. STOKES, individually, and the JIMIJACK IRREVOCABLE TRUST. Although a final determination was made in Department XXXI and is now being appealed, MS. TOBIN nevertheless sought another bite at the apple and filed the instant litigation. The second lawsuit was a multiplication of the previous proceeding, was precluded by virtue of principles of claim and issue preclusion, and thus, was brought without reasonable ground.

It resulted in MR. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST unnecessarily incurring attorney's fees and costs in the instant matter.

4. The movants provided this Court their analyses concerning the reasonableness of their attorneys' fees under Brunzell v. Golden Gate National Bank, 84 Nev. 345, 349-350, 455 P.2d 31, 33 (1969). This Court has considered all the *Brunzell* factors, noting the qualities of JOSEPH Y. HONG, ESQ.'S and HONG AND HONG LAW'S advocacy, the character of the work to be done and actually performed by the lawyers, and result. All in all, this Court believes an award of $3,165.00 in attorneys' fees and $290.00 in costs incurred by MR. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST in defending the matter to be reasonable under the circumstances under EDCR 7.60 and NRS 18.010 and 18.020. This Court therefore grants the Motion for Attorney's Fees and Costs.

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the Motion for Attorney's Fees and Costs filed by JOEL A. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST pursuant to EDCR 7.60(b)(1) and/or (3) filed June 25, 2020 is granted. These Defendants are awarded $3,165.00 in attorney's fees and $290.00 in costs as against Plaintiff NONA TOBIN.

Dated this 6th day of September, 2020

SUSAN JOHNSON, DISTRICT COURT JUDGE

208 4A7 24C5 145D
Susan Johnson
District Court Judge

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Nona Tobin, Plaintiff(s)	CASE NO: A-19-799890-C
vs.	DEPT. NO. Department 22
Joel Stokes, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 9/6/2020

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 9/8/2020

Aaron Maurice	Maurice Wood Attn: Aaron Maurice, Esq 9525 Hillwood Drive, Suite 140 Las Vegas, NV, 89134
Joseph Hong	Hong & Hong Attn: Joseph Y. Hong 1980 Festival Plaza Drive, Suite 650 Las Vegas, NV, 89133

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10/8/2020 4:10 PM
Steven D. Grierson
CLERK OF THE COURT

NEOJ
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State Bar No. 005995
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Attorney for JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST, AND JIMIJACK IRREVOCABLE TRUST

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual,

Plaintiff,

vs.

BRIAN CHIESTI, an individual; DEBORA CHIESTI, an individual; QUICKEN LOANS INC.; JOEL A. STOKES, an individual; JOEL A. STOKES and SANDRA STOKES, as Trustees of JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive,

Defendants.

Case No.: A-19-799890-C

Dept. No.: XXII

NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS FILED BY JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST, AND JIMIJACK IRREVOCABLE TRUST, PURSUANT TO EDCR 7.60(b)(1) AND/OR (3)

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

///

///

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS FILED BY JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST, AND JIMIJACK IRREVOCABLE TRUST, PURSUANT TO EDCR 7.60(b)(1) AND/OR (3) was entered in the above-entitled matter, and filed on the 6th day of September, 2020, a copy of which is attached hereto.

DATED this 8th day of October, 2020.

HONG & HONG LAW OFFICE

/s/ Joseph Y. Hong
JOSEPH Y. HONG, ESQ.
State Bar No. 005995
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135
Attorney for JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST, AND JIMIJACK IRREVOCABLE TRUST

CERTIFICATE OF ELECTRONIC SERVICE

Pursuant to NRCP 5(b)(2)(E), I certify that I am an employee of Joseph Y. Hong, Esq., and that on this 8th day of October, 2020, I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS FILED BY JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST, AND JIMIJACK IRREVOCABLE TRUST, PURSUANT TO EDCR 7.60(b)(1) AND/OR (3)** by electronic transmission through the Eighth Judicial District Court EFP system (Odyssey eFileNV) pursuant to NEFCR 9 upon each party in this case who is registered as an electronic case filing user with the Clerk.

By /s/ Debra L. Batesel
An employee of Joseph Y. Hong, Esq.

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09/06/2020 4:07 PM
CLERK OF THE COURT

OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual, **Plaintiff,** **Vs.** **BRIAN CHIESTI, an individual; DEBORA CHIESTI, an individual; QUICKEN LOANS INC.; JOEL A. STOKES, an individual; JOEL A. STOKES and SANDRA STOKES, as Trustees of JIMIJACK IRREVICABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAIR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive,** **Defendants.**	**Case No. A-19-799890-C** **Dept. No. XXII**

ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS FILED BY JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST, AND JIMIJACK IRREVOCABLE TRUST, PURSUANT TO EDCR 7.60(b)(1) AND/OR (3)

This matter, concerning the Motion for Attorney's Fees and Costs filed by JOEL A. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST pursuant to EDCR 7.60(b)(1) and/or (3) filed June 25, 2020,[1] came on for hearing on the 11th day of August 2020 at the hour of 8:30 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark

[1]This motion was included within these Defendants' Joinder to Defendant RED ROCK FINANCIAL SERVICES' Motion to Dismiss First Amended Complaint.

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

County, Nevada with JUDGE SUSAN JOHNSON presiding; Plaintiff NONA TOBIN appeared by and through her attorney, JOHN W. THOMSON, ESQ.; Defendants BRIAN CHIESI and DEBORA CHIESI appeared in *pro se;* Defendants JOEL A. STOKES, JOEL A STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST appeared by and through their attorney, JOSEPH Y HONG, ESQ. of the law firm, HONG & HONG LAW OFFICE; Defendant RED ROCK FINANCIAL SERVICES appeared by and through its attorney, BRODY R. WIGHT, ESQ. of the law firm, KOCH & SCOW; Defendant NATIONSTAR MORTGAGE, LLC appeared by and through its attorney, DONNA WITTIG, ESQ. of the law firm, AKERMAN; and Defendant QUICKEN LOANS INC. appeared by and through its attorney, BRITTANY WOOD, ESQ. of the law firm, MAURICE WOOD. Having reviewed the papers and pleadings on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. On June 16, 2015, Defendants JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST filed their Complaint against BANK OF AMERICA[2] and SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC., seeking, *inter alia,* to quiet title to their residence, 2763 White Sage, Henderson, Nevada 89052. *See* Stokes v. Bank of America, Case No. A-15-720032-C, filed in Department XXXI, Eighth Judicial District Court, in and for Clark County, Nevada. Subsequently, on May 17, 2016, NATIONSTAR MORTGAGE, LLC intervened, and filed its Counter-Claim against, *inter alia,* JIMIJACK IRREVOCABLE TRUST.[3] Further, a

[2]NATIONSTAR MORTGAGE, LLC thereafter was permitted to intervene in that it was BANK OF AMERICA'S successor-in-interest.

[3]The Counter-Claim was also filed against OPPORTUNITY HOMES, LLC, F. BONDURANT, LLC as well as DOE and ROE defendants. In this Court's view, the pleading lodged against these "Counter-Defendants" was

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

Complaint previously filed by NATIONSTAR MORTGAGE, LLC against OPPORTUNITY HOMES, LLC in another action, Case No. A-16-730078-C, on January 11, 2016 was consolidated with the older case filed by MR. STOKES and the Trustees of JIMIJACK IRREVOCABLE TRUST in Department XXXI.

2. In July 2016, Plaintiff NONA TOBIN and STEVEN HANSEN, as individuals, filed their Motion to Intervene in Case No. A-16-730078-C, claiming MS. TOBIN was a Trustee and MR. HANSEN was a beneficiary of the GORDON B. HANSEN TRUST, the entity that owned the subject property until the homeowners' association foreclosure sale took place. Such motion was denied without prejudice given MS. TOBIN and MR. HANSEN, individually, lacked standing to sue or intervene in the action. MS. TOBIN eventually was permitted to intervene as Trustee of the GORDON B. HANSEN TRUST in early 2017. MS. TOBIN thereafter filed her Counter-Claim against MR. STOKES and JIMIJACK IRREVOCABLE TRUST and Cross-Claims against SUN CITY ANTHEM COMMUNITY ASSOCIATION, OPPORTUNITY HOMES, INC. and F. BONDURANT, LLC. Of interest here, MS. TOBIN identified herself interchangeably as an individual and trustee throughout the pleadings, an error noted by JUDGE JOANNA KISHNER in her Findings of Fact, Conclusions of Law and Judgment filed June 24, 2019, pp. 4 and 8.

3. On April 17, 2019, JUDGE KISHNER granted summary judgment in favor of SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC. as it held a valid homeowners' association foreclosure sale which terminated the interest of GORDON B. HANSEN TRUST within the subject property and MS. TOBIN showed no reason such as "fraud," "oppression" or "malice" for the sale to be set aside Further, JUDGE KISHNER noted MS. TOBIN, as an individual, had no standing to sue and papers identifying her as a plaintiff suing individually were stricken. On June 5 and 6, 2019,

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inappropriately called a "counter-claim," as these parties were not listed as plaintiffs in the primary action.

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

a bench trial was heard by JUDGE KISHNER with respect to the claims of MS. TOBIN, as Trustee of the GORDON B. HANSEN TRUST against, *inter alia,* MR. STOKES and the JIMIJACK IRREVOCABLE TRUST. After hearing the evidence, that Court issued Findings of Fact, Conclusions of Law and Judgment in favor of MR. STOKES and the JIMIJACK IRREVOCABLE TRUST, and ordered the *lis pendens* filed by MS. TOBIN against the subject property be expunged. The consolidated action heard by Department XXXI is now pending before the Nevada Court of Appeals.

4. MS. TOBIN, in her individual capacity, has now sued various persons and entities, including MR. STOKES and JIMIJACK IRREVOCABLE TRUST in the instant matter before Department XXII for declaratory relief and to quiet title in the real estate that was the subject of the previous consolidated litigation. Various Defendants filed their Motions to Dismiss, along with Joinders thereto, upon the basis, *inter alia,* MS. TOBIN was judicially estopped from asserting an ownership interest in the subject property and re-litigating the case which had already been adjudged by JUDGE KISHNER. This Court granted the motions and now considers the Motion for Attorney's Fees and Costs filed by MR. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST. They seek reimbursement of $3,165.00 in attorney's fees and $290.00 in costs pursuant to Rule 7.60 of the Eighth Judicial District Court Rules (EDCR).

CONCLUSIONS OF LAW

1. EDCR 7.60(b) provides in salient part:

> The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted; …or

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

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OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual, **Plaintiff,** **Vs.** **BRIAN CHIESTI, an individual; DEBORA CHIESTI, an individual; QUICKEN LOANS INC.; JOEL A. STOKES, an individual; JOEL A. STOKES and SANDRA STOKES, as Trustees of JIMIJACK IRREVICABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAIR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive,** **Defendants.**	**Case No. A-19-799890-C** **Dept. No. XXII**

ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS

This matter, concerning the Motion for Attorney's Fees and Costs filed by Defendants BRIAN CHIESI, DEBORA CHIESI and QUICKEN LOANS, INC. on September 16, 2020, came on for hearing on the 29th day of October 2020 at the hour of 9:00 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada with JUDGE SUSAN JOHNSON presiding; Plaintiff NONA TOBIN personally attended, and appeared by and through her attorney, JOHN W. THOMSON, ESQ.; Defendants BRIAN CHIESI, DEBORA CHIESI and QUICKEN LOANS, INC. appeared by and through their attorney, BRITTANY WOOD, ESQ. of the law firm, MAURICE WOOD; and Defendants JOEL A. STOKES, JOEL A STOKES AND

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

Case Number: A-19-799890-C

SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST appeared by and through their attorney, JOSEPH Y HONG, ESQ. of the law firm, HONG & HONG LAW OFFICE. Having reviewed the papers and pleadings on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. For ease and convenience, this Court repeats its findings and procedural history has set forth within its Order filed September 6, 2020. On June 16, 2015, Defendants JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST filed their Complaint against BANK OF AMERICA[1] and SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC., seeking, *inter alia*, to quiet title to their residence, 2763 White Sage, Henderson, Nevada 89052. *See* Stokes v. Bank of America, Case No. A-15-720032-C, filed in Department XXXI, Eighth Judicial District Court, in and for Clark County, Nevada. Subsequently, on May 17, 2016, NATIONSTAR MORTGAGE, LLC intervened, and filed its Counter-Claim against, *inter alia*, JIMIJACK IRREVOCABLE TRUST.[2] Further, a Complaint previously filed by NATIONSTAR MORTGAGE, LLC against OPPORTUNITY HOMES, LLC in another action, Case No. A-16-730078-C, on January 11, 2016 was consolidated with the older case filed by MR. STOKES and the Trustees of JIMIJACK IRREVOCABLE TRUST in Department XXXI.

. . .

[1]NATIONSTAR MORTGAGE, LLC thereafter was permitted to intervene in that it was BANK OF AMERICA'S successor-in-interest.

[2]The Counter-Claim was also filed against OPPORTUNITY HOMES, LLC, F. BONDURANT, LLC as well as DOE and ROE defendants. In this Court's view, the pleading lodged against these "Counter-Defendants" was inappropriately called a "counter-claim," as these parties were not listed as plaintiffs in the primary action.

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

2. In July 2016, Plaintiff NONA TOBIN and STEVEN HANSEN, as individuals, filed their Motion to Intervene in Case No. A-16-730078-C, claiming MS. TOBIN was a Trustee and MR. HANSEN was a beneficiary of the GORDON B. HANSEN TRUST, the entity that owned the subject property until the homeowners' association foreclosure sale took place. Such motion was denied without prejudice given MS. TOBIN and MR. HANSEN, individually, lacked standing to sue or intervene in the action. MS. TOBIN eventually was permitted to intervene as Trustee of the GORDON B. HANSEN TRUST in early 2017. MS. TOBIN thereafter filed her Counter-Claim against MR. STOKES and JIMIJACK IRREVOCABLE TRUST and Cross-Claims against SUN CITY ANTHEM COMMUNITY ASSOCIATION, OPPORTUNITY HOMES, INC. and F. BONDURANT, LLC. Of interest here, MS. TOBIN identified herself interchangeably as an individual and trustee throughout the pleadings, an error noted by JUDGE JOANNA KISHNER in her Findings of Fact, Conclusions of Law and Judgment filed June 24, 2019, pp. 4 and 8.

3. On April 17, 2019, JUDGE KISHNER granted summary judgment in favor of SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC. as it held a valid homeowners' association foreclosure sale which terminated the interest of GORDON B. HANSEN TRUST within the subject property and MS. TOBIN showed no reason such as "fraud," "oppression" or "malice" for the sale to be set aside. Further, JUDGE KISHNER noted MS. TOBIN, as an individual, had no standing to sue and papers identifying her as a plaintiff suing individually were stricken. On June 5 and 6, 2019, a bench trial was heard by JUDGE KISHNER with respect to the claims of MS. TOBIN, as Trustee of the GORDON B. HANSEN TRUST against, *inter alia,* MR. STOKES and the JIMIJACK IRREVOCABLE TRUST. After hearing the evidence, that Court issued Findings of Fact, Conclusions of Law and Judgment in favor of MR. STOKES and the JIMIJACK IRREVOCABLE TRUST, and ordered the *lis pendens* filed by MS. TOBIN against the subject property be expunged.

. . .

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

The consolidated action heard by Department XXXI is now pending before the Nevada Court of Appeals.

4. On or about December 27, 2019, JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST sold the residence, 2763 White Sage, Henderson, Nevada 89052, to Defendants BRIAN CHIESI and DEBORA CHIESI, who acquired the property by borrowing funds from Defendant QUICKEN LOANS, INC. QUICKEN LOANS, INC. recorded a security interest in the subject property by virtue of its loan to the CHIESIS.

5. MS. TOBIN, in her individual capacity, sued various persons and entities, including MR. and MRS. CHIESI and QUICKEN LOANS, INC. in the instant matter before Department XXII for declaratory relief and to quiet title in the real estate that was the subject of the previous consolidated litigation. Various Defendants filed their Motions to Dismiss, along with Joinders thereto, upon the basis, *inter alia,* MS. TOBIN was judicially estopped from asserting an ownership interest in the subject property and re-litigating the case which had already been adjudged by JUDGE KISHNER. This Court granted the motions and now considers the Motion for Attorney's Fees and Costs filed by MR. and MRS. CHIESI and QUICKEN LOANS, INC. They seek reimbursement of $9,480.00 in attorney's fees and $308.99 in costs pursuant to NRS 18.010(2)(b).

CONCLUSIONS OF LAW

1. NRS 18.010(2) specifically provides:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> . . .
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

> sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Also see NRS 18.020 (costs *must* be awarded to the prevailing party).

3. Here, the intervention action and claims of the GORDON B. HANSEN TRUST and MS. TOBIN, whether individually or as Trustee of the Trust, were decided before JUDGE KISHNER in the aforementioned consolidated actions. Specifically, JUDGE KISHNER found MS. TOBIN, as an individual, had no standing to sue as she had no ownership interest in the subject residence. Although JUDGE KISHNER made such a finding, MS. TOBIN continued to interchangeably refer to herself as suing individually and as Trustee. After hearing the matter fully in both summary judgment and a bench trial, JUDGE KISHNER concluded the homeowners' association held a valid foreclosure sale which terminated the property interests of GORDON B. HANSEN TRUST, and title ultimately vested in MR. STOKES, individually, and the JIMIJACK IRREVOCABLE TRUST, and it was these parties who later sold the residence to MR. and MRS. CHIESI. Although a final determination was made in Department XXXI and is now being appealed, MS. TOBIN nevertheless sought another bite at the apple and filed the instant litigation which included the successors-in-interest, the CHIESIS and QUICKEN LOANS, INC. The second lawsuit was a multiplication of the previous proceeding, was precluded by virtue of principles of claim and issue preclusion, and thus, was brought without reasonable ground. It resulted in MR. and MRS. CHIESI and QUICKEN LOANS, INC. unnecessarily incurring attorney's fees and costs in the instant matter.

4. The movants provided this Court their analyses concerning the reasonableness of their attorneys' fees under Brunzell v. Golden Gate National Bank, 84 Nev. 345, 349-350, 455 P.2d 31, 33 (1969). This Court has considered all the ***Brunzell*** factors, noting the qualities of BRITTANY

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

WOOD, ESQ.'S and MAURICE WOOD'S advocacy, the character of the work to be done and actually performed by the lawyers, and result. All in all, this Court believes an award of $8,640.00 in attorneys' fees and $308.99 in costs incurred by MR. and MRS. CHIESI and QUICKEN LOANS, INC. in defending the matter to be reasonable under the circumstances under NRS 18.010(2)(b) and 18.020. This Court therefore grants the Motion for Attorney's Fees and Costs.

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the Motion for Attorney's Fees and Costs filed by Defendants BRIAN CHIESI, DEBORA CHIESI and QUICKEN LOANS, INC. on September 16, 2020 is granted as modified. These Defendants are awarded $8,640.00 in attorney's fees and $308.99 in costs as against Plaintiff NONA TOBIN.

Dated this 17th day of November, 2020

SUSAN JOHNSON, DISTRICT COURT JUDGE

659 EBC F4CD 0F51
Susan Johnson
District Court Judge

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Nona Tobin, Plaintiff(s)	CASE NO: A-19-799890-C
vs.	DEPT. NO. Department 22
Joel Stokes, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 11/17/2020

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/18/2020

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Joseph Hong	Hong & Hong Attn: Joseph Y. Hong 1980 Festival Plaza Drive, Suite 650 Las Vegas, NV, 89133

(3) So multiplies the proceeding in a case as to increase costs unreasonably and vexatiously.

2. Although not cited by movants, this Court notes NRS 18.010(2) specifically provides:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> . . .
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Also see NRS 18.020 (costs *must* be awarded to the prevailing party).

3. Here, the intervention action and claims of the GORDON B. HANSEN TRUST and MS. TOBIN, whether individually or as Trustee of the Trust, were decided before JUDGE KISHNER in the aforementioned consolidated actions. Specifically, JUDGE KISHNER found MS. TOBIN, as an individual, had no standing to sue as she had no ownership interest in the subject residence. Although JUDGE KISHNER made such a finding, MS. TOBIN continued to interchangeably refer to herself as suing individually and as Trustee. After hearing the matter fully in both summary judgment and a bench trial, JUDGE KISHNER concluded the homeowners' association held a valid foreclosure sale which terminated the property interests of GORDON B. HANSEN TRUST, and title ultimately vested in MR. STOKES, individually, and the JIMIJACK IRREVOCABLE TRUST. Although a final determination was made in Department XXXI and is now being appealed, MS. TOBIN nevertheless sought another bite at the apple and filed the instant litigation. The second lawsuit was a multiplication of the previous proceeding, was precluded by virtue of principles of claim and issue preclusion, and thus, was brought without reasonable ground.

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

It resulted in MR. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST unnecessarily incurring attorney's fees and costs in the instant matter.

4. The movants provided this Court their analyses concerning the reasonableness of their attorneys' fees under Brunzell v. Golden Gate National Bank, 84 Nev. 345, 349-350, 455 P.2d 31, 33 (1969). This Court has considered all the *Brunzell* factors, noting the qualities of JOSEPH Y. HONG, ESQ.'S and HONG AND HONG LAW'S advocacy, the character of the work to be done and actually performed by the lawyers, and result. All in all, this Court believes an award of $3,165.00 in attorneys' fees and $290.00 in costs incurred by MR. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST in defending the matter to be reasonable under the circumstances under EDCR 7.60 and NRS 18.010 and 18.020. This Court therefore grants the Motion for Attorney's Fees and Costs.

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the Motion for Attorney's Fees and Costs filed by JOEL A. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST pursuant to EDCR 7.60(b)(1) and/or (3) filed June 25, 2020 is granted. These Defendants are awarded $3,165.00 in attorney's fees and $290.00 in costs as against Plaintiff NONA TOBIN.

Dated this 6th day of September, 2020

SUSAN JOHNSON, DISTRICT COURT JUDGE

208 4A7 24C5 145D
Susan Johnson
District Court Judge

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Nona Tobin, Plaintiff(s)	CASE NO: A-19-799890-C
vs.	DEPT. NO. Department 22
Joel Stokes, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

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Steven D. Grierson
CLERK OF THE COURT

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Attorneys for Defendants,
BRIAN CHIESI AND DEBORA CHIESI,
erroneously sued as Brian Chiesti and Debora Chiesti, and QUICKEN LOANS INC. n/k/a QUICKEN LOANS, LLC

MAURICE WOOD
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Las Vegas, Nevada 89134
Tel: (702) 463-7616 Fax: (702) 463-6224

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

NONA TOBIN, an individual, Plaintiff, vs. BRIAN CHIESTI, an individual; DEBORA CHIESTI, an individual; QUICKEN LOANS INC.; JOEL A. STOKES, an individual; SANDRA STOKES as Trustees of JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES; DOES I through X inclusive; and ROE CORPORATIONS I through V, inclusive, Defendants.	CASE NO. A-19-799890-C DEPT NO. 22 **NOTICE OF ENTRY OF ORDER**

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Case Number: A-19-799890-C

NOTICE OF ENTRY OF ORDER

Please take notice that an Order was entered with the above Court on the 17th day of November, 2020, a copy of which is attached hereto.

DATED this 17th day of November, 2020.

MAURICE WOOD

By */s/Brittany Wood*
AARON R. MAURICE, ESQ.
Nevada Bar No. 006412
BRITTANY WOOD, ESQ.
Nevada Bar No. 007562
ELIZABETH E. ARONSON, ESQ.
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Las Vegas, Nevada 89134

Attorneys for Defendants,
BRIAN CHIESI AND DEBORA CHIESI, erroneously sued as Brian Chiesti and Debora Chiesti, and QUICKEN LOANS INC., n/k/a QUICKEN LOANS LLC

MAURICE WOOD
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Las Vegas, Nevada 89134
Tel: (702) 463-7616 Fax: (702) 463-6224

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Maurice Wood, and that on the 17th day of November, 2020, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** 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.

/s/ Brittany Wood
An Employee of MAURICE WOOD

MAURICE WOOD
9525 Hillwood Drive, Suite 140
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11/17/2020 9:02 AM

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CLERK OF THE COURT

OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual, **Plaintiff,** **Vs.** **BRIAN CHIESTI, an individual; DEBORA CHIESTI, an individual; QUICKEN LOANS INC.; JOEL A. STOKES, an individual; JOEL A. STOKES and SANDRA STOKES, as Trustees of JIMIJACK IRREVICABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAIR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES; DOES I through X, inclusive; and ROE CORPORATIONS I through V, inclusive,** **Defendants.**	**Case No. A-19-799890-C** **Dept. No. XXII**

ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS

This matter, concerning the Motion for Attorney's Fees and Costs filed by Defendants BRIAN CHIESI, DEBORA CHIESI and QUICKEN LOANS, INC. on September 16, 2020, came on for hearing on the 29th day of October 2020 at the hour of 9:00 a.m. before Department XXII of the Eighth Judicial District Court, in and for Clark County, Nevada with JUDGE SUSAN JOHNSON presiding; Plaintiff NONA TOBIN personally attended, and appeared by and through her attorney, JOHN W. THOMSON, ESQ.; Defendants BRIAN CHIESI, DEBORA CHIESI and QUICKEN LOANS, INC. appeared by and through their attorney, BRITTANY WOOD, ESQ. of the law firm, MAURICE WOOD; and Defendants JOEL A. STOKES, JOEL A STOKES AND

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

Case Number: A-19-799890-C

SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST and JIMIJACK IRREVOCABLE TRUST appeared by and through their attorney, JOSEPH Y HONG, ESQ. of the law firm, HONG & HONG LAW OFFICE. Having reviewed the papers and pleadings on file herein, heard oral arguments of the lawyers and taken this matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. For ease and convenience, this Court repeats its findings and procedural history has set forth within its Order filed September 6, 2020. On June 16, 2015, Defendants JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST filed their Complaint against BANK OF AMERICA[1] and SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC., seeking, *inter alia*, to quiet title to their residence, 2763 White Sage, Henderson, Nevada 89052. *See* Stokes v. Bank of America, Case No. A-15-720032-C, filed in Department XXXI, Eighth Judicial District Court, in and for Clark County, Nevada. Subsequently, on May 17, 2016, NATIONSTAR MORTGAGE, LLC intervened, and filed its Counter-Claim against, *inter alia*, JIMIJACK IRREVOCABLE TRUST.[2] Further, a Complaint previously filed by NATIONSTAR MORTGAGE, LLC against OPPORTUNITY HOMES, LLC in another action, Case No. A-16-730078-C, on January 11, 2016 was consolidated with the older case filed by MR. STOKES and the Trustees of JIMIJACK IRREVOCABLE TRUST in Department XXXI.

. . .

[1]NATIONSTAR MORTGAGE, LLC thereafter was permitted to intervene in that it was BANK OF AMERICA'S successor-in-interest.

[2]The Counter-Claim was also filed against OPPORTUNITY HOMES, LLC, F. BONDURANT, LLC as well as DOE and ROE defendants. In this Court's view, the pleading lodged against these "Counter-Defendants" was inappropriately called a "counter-claim," as these parties were not listed as plaintiffs in the primary action.

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

2. In July 2016, Plaintiff NONA TOBIN and STEVEN HANSEN, as individuals, filed their Motion to Intervene in Case No. A-16-730078-C, claiming MS. TOBIN was a Trustee and MR. HANSEN was a beneficiary of the GORDON B. HANSEN TRUST, the entity that owned the subject property until the homeowners' association foreclosure sale took place. Such motion was denied without prejudice given MS. TOBIN and MR. HANSEN, individually, lacked standing to sue or intervene in the action. MS. TOBIN eventually was permitted to intervene as Trustee of the GORDON B. HANSEN TRUST in early 2017. MS. TOBIN thereafter filed her Counter-Claim against MR. STOKES and JIMIJACK IRREVOCABLE TRUST and Cross-Claims against SUN CITY ANTHEM COMMUNITY ASSOCIATION, OPPORTUNITY HOMES, INC. and F. BONDURANT, LLC. Of interest here, MS. TOBIN identified herself interchangeably as an individual and trustee throughout the pleadings, an error noted by JUDGE JOANNA KISHNER in her Findings of Fact, Conclusions of Law and Judgment filed June 24, 2019, pp. 4 and 8.

3. On April 17, 2019, JUDGE KISHNER granted summary judgment in favor of SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC. as it held a valid homeowners' association foreclosure sale which terminated the interest of GORDON B. HANSEN TRUST within the subject property and MS. TOBIN showed no reason such as "fraud," "oppression" or "malice" for the sale to be set aside. Further, JUDGE KISHNER noted MS. TOBIN, as an individual, had no standing to sue and papers identifying her as a plaintiff suing individually were stricken. On June 5 and 6, 2019, a bench trial was heard by JUDGE KISHNER with respect to the claims of MS. TOBIN, as Trustee of the GORDON B. HANSEN TRUST against, *inter alia,* MR. STOKES and the JIMIJACK IRREVOCABLE TRUST. After hearing the evidence, that Court issued Findings of Fact, Conclusions of Law and Judgment in favor of MR. STOKES and the JIMIJACK IRREVOCABLE TRUST, and ordered the *lis pendens* filed by MS. TOBIN against the subject property be expunged.

. . .

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

The consolidated action heard by Department XXXI is now pending before the Nevada Court of Appeals.

4. On or about December 27, 2019, JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST sold the residence, 2763 White Sage, Henderson, Nevada 89052, to Defendants BRIAN CHIESI and DEBORA CHIESI, who acquired the property by borrowing funds from Defendant QUICKEN LOANS, INC. QUICKEN LOANS, INC. recorded a security interest in the subject property by virtue of its loan to the CHIESIS.

5. MS. TOBIN, in her individual capacity, sued various persons and entities, including MR. and MRS. CHIESI and QUICKEN LOANS, INC. in the instant matter before Department XXII for declaratory relief and to quiet title in the real estate that was the subject of the previous consolidated litigation. Various Defendants filed their Motions to Dismiss, along with Joinders thereto, upon the basis, *inter alia,* MS. TOBIN was judicially estopped from asserting an ownership interest in the subject property and re-litigating the case which had already been adjudged by JUDGE KISHNER. This Court granted the motions and now considers the Motion for Attorney's Fees and Costs filed by MR. and MRS. CHIESI and QUICKEN LOANS, INC. They seek reimbursement of $9,480.00 in attorney's fees and $308.99 in costs pursuant to NRS 18.010(2)(b).

CONCLUSIONS OF LAW

1. NRS 18.010(2) specifically provides:

> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> . . .
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

> sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Also see NRS 18.020 (costs *must* be awarded to the prevailing party).

3. Here, the intervention action and claims of the GORDON B. HANSEN TRUST and MS. TOBIN, whether individually or as Trustee of the Trust, were decided before JUDGE KISHNER in the aforementioned consolidated actions. Specifically, JUDGE KISHNER found MS. TOBIN, as an individual, had no standing to sue as she had no ownership interest in the subject residence. Although JUDGE KISHNER made such a finding, MS. TOBIN continued to interchangeably refer to herself as suing individually and as Trustee. After hearing the matter fully in both summary judgment and a bench trial, JUDGE KISHNER concluded the homeowners' association held a valid foreclosure sale which terminated the property interests of GORDON B. HANSEN TRUST, and title ultimately vested in MR. STOKES, individually, and the JIMIJACK IRREVOCABLE TRUST, and it was these parties who later sold the residence to MR. and MRS. CHIESI. Although a final determination was made in Department XXXI and is now being appealed, MS. TOBIN nevertheless sought another bite at the apple and filed the instant litigation which included the successors-in-interest, the CHIESIS and QUICKEN LOANS, INC. The second lawsuit was a multiplication of the previous proceeding, was precluded by virtue of principles of claim and issue preclusion, and thus, was brought without reasonable ground. It resulted in MR. and MRS. CHIESI and QUICKEN LOANS, INC. unnecessarily incurring attorney's fees and costs in the instant matter.

4. The movants provided this Court their analyses concerning the reasonableness of their attorneys' fees under Brunzell v. Golden Gate National Bank, 84 Nev. 345, 349-350, 455 P.2d 31, 33 (1969). This Court has considered all the ***Brunzell*** factors, noting the qualities of BRITTANY

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

WOOD, ESQ.'S and MAURICE WOOD'S advocacy, the character of the work to be done and actually performed by the lawyers, and result. All in all, this Court believes an award of $8,640.00 in attorneys' fees and $308.99 in costs incurred by MR. and MRS. CHIESI and QUICKEN LOANS, INC. in defending the matter to be reasonable under the circumstances under NRS 18.010(2)(b) and 18.020. This Court therefore grants the Motion for Attorney's Fees and Costs.

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

IT IS HEREBY ORDERED, ADJUDGED AND DECREED the Motion for Attorney's Fees and Costs filed by Defendants BRIAN CHIESI, DEBORA CHIESI and QUICKEN LOANS, INC. on September 16, 2020 is granted as modified. These Defendants are awarded $8,640.00 in attorney's fees and $308.99 in costs as against Plaintiff NONA TOBIN.

Dated this 17th day of November, 2020

SUSAN JOHNSON, DISTRICT COURT JUDGE

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Susan Johnson
District Court Judge

SUSAN H. JOHNSON
DISTRICT JUDGE
DEPARTMENT XXII

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Nona Tobin, Plaintiff(s)	CASE NO: A-19-799890-C
vs.	DEPT. NO. Department 22
Joel Stokes, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

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DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual,

Plaintiff,

vs.

BRIAN CHIESTI, an individual; DEBORA CHIESTI, an individual; QUICKEN LOANS IN.; JOEL A. STOKES, an individual; JOEL A . STOKES AND SANDRA STOKES as Trustees of JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES, DOES I through X inclusive; and ROE CORPORATIONS I through V, inclusive

Defendants.

Case No. A-19-799890-C
Dept. 22

ORDER GRANTING DEFENDANT RED ROCK FINANCIAL SERVICES' MOTION TO DISMISS COMPLAINT AND ALL JOINDERS TO THE MOTION

On August 11, 2020 Defendant Red Rock Financial, LLC's ("Red Rock") Motion to Dismiss Nona Tobin's Claims against it and as well as Nationstar Mortgage, LLC's ("Nationstar") Joinder to Red Rock's motion; Joel a Stokes, Joel A. Stokes and Sandra Stokes as trustees of Jimijack Irrevocable Trust, and Jimijack Irrevocable Trust (the "Jimijack Defendants") Joinder to Red Rock's motion; and Brian Chiesi, Debora Chiesi,

and Quicken Loans, Inc.'s (the "Chiesi Defendants") Joinder to Red Rock's motion came on for hearing in this Court (collectively all above Defendants shall be referred to as the "Defendants"). Appearing on behalf of Red Rock was counsel of record, Brody Wight appearing on behalf of Nationstar was counsel of record Donna Wittig, appearing on behalf of the Jimijack Defendants was counsel of record Joseph Hong, appearing on behalf of the Chiesi Defendants was counsel of record Brittany Wood, and appearing on behalf of Tobin was counsel of record John Thomson. The Court, having considered the motion, all of the joinders to the motion, the opposition filed by Tobin, the reply filed by Red Rock, and all joinders to the reply, having heard and considered any argument of counsel at the time of hearing, finds and orders as follows.

FACTS

A. Tobin Unsuccessfully Brings Claims Against the HOA

1. On January 31, 2017, Tobin, in her capacity as the trustee of the Gordon B. Hansen Trust (the "Trust"), filed a Cross-claim against the Sun City Anthem Community Association (the "HOA") in District Court Case No. A-15-720032-C (the "Previous Case" or "Previous Action") claiming the HOA, through its collection agent Red Rock, wrongfully foreclosed on a residence owned by the Trust and located at 2763 White Sage Drive, Henderson, Nevada 89052 (the "Property") on August 15, 2014.

2. In that same litigation, Tobin brought claims against the Jimijack Defendants as successors in interest to the party that purchased the Property at the foreclosure.

3. Tobin's central allegation in the Previous Case was that Red Rock committed fraud and wrongfully colluded with several parties, including the HOA, in foreclosing on the Property without complying with the requirements of NRS Chapter 116 or the HOA's governing documents.

4. Tobin's Cross-claim in the Previous Case listed a host of allegations of wrongdoing against Red Rock including claims that Red Rock failed to provide the Trust

with proper notice of the foreclosure sale and that it frequently misstated the amounts due and owing to the HOA under the HOA lien.

5. The Cross-claim in the Previous Case contained a cause of action against the HOA for quiet title and equitable relief claiming that Red Rock's actions caused the foreclosure sale to be null and void as well as causes of action for civil conspiracy, fraud, unjust enrichment, and breach of contract. The allegations of each of those claims centered around Red Rock.

6. The Cross-claim in the Previous Case alleged that it was Red Rock that conspired, Red Rock that committed fraud, Red Rock that was unjustly enriched, and Red Rock that breached the contract, but the Cross-claim did not list Red Rock as a party.

7. On February 5, 2019, the HOA brought a motion for summary judgment seeking the dismissal of the Trust's Cross-claim. The HOA argued that Red Rock clearly complied with all requirements of law in foreclosing on the Property and carefully presented the court with all of the notices Red Rock provided.

8. The Trust filed an opposition attempting to defend its allegations with a declaration from Tobin attached that claimed the Trust owned the Property.

9. On April 17, 2019, the court in that case signed an order granting the HOA's motion in its entirety reasoning that "[t]he totality of the facts evidence that the HOA properly followed the processes and procedures in foreclosing upon the Property."

10. Tobin, as the trustee to the Trust, also brought identical claims against the Jimijack Defendants, as successors in interest to the party that purchased the Property at the foreclosure, in the Previous Case. After a full trial on the merits, the Court entered a judgment on June 24, 2019, finding in favor of the Jimijack Defendants and against the Trust on all of the Trust's claims in part due to the fact that the claims were precluded by the order granting summary judgment.

11. Nationstar, as the servicing bank for the Deed of Trust on the Property at the time of foreclosure, was also party to the Previous Case, but Tobin did not bring claims against Nationstar directly.

B. Tobin Brings the Current Complaint

12. Shortly after all of her claims were denied at trial, Tobin filed a new complaint on August 8, 2019, but this time she filed the Complaint in her individual capacity. Tobin then filed a First Amended Complaint on June 3, 2020 (the "Complaint").

13. Tobin's new Complaint alleges that in March 2017, in the middle of the previous litigation and before the Trust filed its motion for summary judgment against the HOA, the Trust transferred title to the Property to Tobin individually.

14. Other than asserting claims in her individual capacity, Tobin's current action is based, once again, on allegations that Red Rock did not comply with the requirements of law in foreclosing on the Property in August 2014.

15. The Complaint specifically brings claims against all of the Defendants for quiet title, unjust enrichment, and declaratory relief based on allegations that Red Rock wrongfully foreclosed on the Property.

16. The Complaint brings the above claims against the Jimijack Defendants and Chiesi Defendants presumably because those Defendants obtained interests in the Property after foreclosure. The Complaint alleges that Nationstar was the servicer on the Deed of Trust on the Property at the time of foreclosure, but the Complaint does not specify why Nationstar was named as a defendant in the current action.

17. On June 23, 2020, Red Rock filed a motion to dismiss arguing, in part, that all of Tobin's claims are barred by the doctrines of claim preclusion and nonmutual claim preclusion. The remaining Defendants all properly joined Red Rock's motion.

18. In their joinders, the Chiesi Defendants and the Jimijack Defendants requested this Court grant them attorney's fees and costs for defending against Tobin's

claims. The Jimijack Defendants' Motion for Attorney's Fees and Costs were pursuant to EDCR Rule 7.60(b)(1) and/or (3).

STANDARD FOR DISMISSAL UNDER NRCP 12(B)(5)

19. Pursuant to NRCP 12(b)(5), a motion to dismiss should be granted upon "failure to state a claim upon which relief can be granted." A motion brought under NRCP 12(b)(5) tests the legal sufficiency of the claim as alleged by the moving party. A motion to dismiss must be granted where it appears to a certainty that the plaintiff is entitled to no relief under any set of facts that could be proved in support of a claim. *Buzz Stew, LLC v. City of N. Las Vegas,* 124 Nev. 224, 228 (2008); *Blackjack Bonding* v. *Las Vegas Mun. Ct.,* 116 Nev. 1213,1217 (2000); *Simpson* v. *Mars Inc.,* 113 Nev. 188, 190 (1997).

20. In reviewing motions to dismiss, courts may consider the allegations of the Complaint and "may also consider unattached [or attached] evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document." *Baxter v. Dignity Health*, 357 P.3d 927, 930 (Nev. 2015) (quoting *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir.2011)).

LEGAL FINDINGS

21. The doctrine of claim preclusion, otherwise known as *res judicata* is designed to prevent plaintiffs and their privies from filing any claims that were or could have been asserted in a different suit. *U. of Nevada v. Tarkanian*, 879 P.2d 1180, 1191–92 (Nev. 1994).

22. The concept of *nonmutual* claim preclusion extends the doctrine and "embraces the idea that a plaintiff's second suit against a new party should be precluded 'if the new party can show good reasons why he should have been joined in the first action and the [plaintiff] cannot show any good reasons to justify a second chance.' " *Weddell v. Sharp*, 350 P.3d 80, 84–85 (Nev. 2015) (quoting 18A Charles Alan Wright, et al., Federal Practice and Procedure § 4464.1 (2d ed.2002)

23. Courts should apply the doctrine of nonmutual claim preclusion when:

(1) There is a valid final judgment,

(2) a subsequent action is based on the same claims or any part of them that were or could have been brought in the first action, and

(3) "the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a 'good reason' for not having done so." *Id.* at 85.

24. In this case, there was a valid final judgment on all of the claims Tobin brought against the HOA and all other parties to the foreclosure sale. In granting summary judgment and issuing a decision after a bench trial, the trial court in the previous action finally held that the foreclosure conducted by Red Rock was lawful and that Tobin's claims were all improper.

25. The current action is based on the same claims that were or could have been brought in the first action. In both actions Tobin is challenging the validity of the foreclosure sale conducted by Red Rock based on Red Rock's actions during the foreclosure sale.

26. The plaintiff in this action is the same or in privity to the plaintiff in the previous action. While Tobin did file on behalf of the Trust in the first case and in her individual capacity in this case, Tobin as an individual is clearly in privity with Tobin as a trustee. Tobin obtained her interest in the Property that was the subject of the previous action through the Trust by inheritance, succession, or purchase, and, even if Tobin were not the trustee of the Trust, she would be in privity with the Trust. *See*, *Bower v. Harrah's Laughlin, Inc.*, 215 P.3d 709, 718 (Nev. 2009).

27. All of the Defendants or their privities were or should have been named in the previous action. In the previous action, the Trust did name the Jimijack Defendants ,to whom the Chiesi Defendants are in privity, and Nationstar. Red Rock was known at

the time of the previous action, and Tobin has not provided any good reason for not having brought Red Rock in the previous action.

28. Because this case meets all of the elements of claim preclusion and nonmutual claim preclusion, those doctrines now bar Tobin from bringing all of her claims against the Defendants.

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ACCORDINGLY, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that Red Rock's Motion to Dismiss all claims asserted against it in Tobin's First Amended Complaint and the joinders to that motion filed by all other Defendants are GRANTED and the action is dismissed in its entirety with prejudice.

IT IS FURTHER ORDERED THAT pursuant to NRS 14.017, the Notices of Lis Pendens recorded by Plaintiff in the Office of the Clark County Recorder as Instrument Numbers 201908080002097, 201908140003083, and 201908140003084, are hereby cancelled and expunged. Said cancellation has the same effect as an expungement of the original notice.

The requests for attorney's fees made by the Chiesi Defendants and Jimijack Defendants shall be addressed in a separate order. On September 6, 2020, the Court entered and filed its Order granting the Jimijack Defendants' Motion for Attorney's Fees and Costs pursuant to EDCR Rule 7.60 (b)(1) and/or (3)

IT IS SO ORDERED.

Dated: December 3, 2020

Dated this 3rd day of December, 2020

HONORABLE SUSAN JOHNSON
DISTRICT COURT JUDGE

6CA 205 1CBE 2555
Susan Johnson
District Court Judge

Submitted by:

/s/ Brody Wight
Brody Wight, Esq.
Counsel for Defendant Red Rock Financial Services, LLC.

Approved as to Form and Content:

/s/ Scott Lachman
Scott Lachman, Esq.
Counsel for Nationtar Mortgage, LLC

/s/ Joseph Hong
Joseph Hong, Esq.
Counsel for Joel a Stokes, Joel A. Stokes and Sandra Stokes as trustees of Jimijack Irrevocable Trust, and Jimijack Irrevocable Trust

/s/ Brittany Wood
Brittany Wood, Esq.
Counsel for Brian Chiesi, Debora Chiesi, and Quicken Loans, Inc.

Mr. Thomson has refused to approve the proposed order for the reasons put forth in the letter attached as Exhibit 2
John Thomson, Esq.
Counsel for Nona Tobin

EXHIBIT 1

EXHIBIT 1

From: **joseph hong** yosuphonglaw@gmail.com
Subject: Re: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C
Date: November 30, 2020 at 12:57 PM
To: Brody Wight bwight@kochscow.com

JH

Hi Brody...please affix my e-signature on the Order...

On Thu, Nov 19, 2020 at 10:42 AM Brody Wight <bwight@kochscow.com> wrote:

> I am attaching the order granting Red Rock's motion to dismiss and all joinders that has the changes requested by the Court. If you approve of this order, please respond to this email authorizing me to attach your e-signature.
>
> John, I am aware that you do not approve of the order and will attach the letter you sent regarding the order as an exhibit to the order per the Court's request.
>
> Brody Wight
> Koch & Scow LLC
> 11500 S. Eastern Ave., Suite 210
> Henderson, Nevada 89052
> 702-318-5040 (office)
> 702-318-5039 (fax)
> 801-645-8978 (cell)
> bwight@kochscow.com

--
Joseph Y, Hong, Esq
Hong & Hong Law Office
One Summerlin
1980 Festival Plaza Dr., Suite 650
Las Vegas, Nevada 89135
Tel: (702) 870-1777
Fax: (702) 870-0500
Cell: (702) 409-6544
Email: Yosuphonglaw@gmail.com

From: **Brittany Wood** bwood@mauricewood.com
Subject: RE: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C
Date: November 19, 2020 at 2:00 PM
To: Brody Wight bwight@kochscow.com, donna.wittig@akerman.com, joseph hong yosuphonglaw@gmail.com, melanie.morgan@akerman.com, scott.lachman@akerman.com, J Thomson jwtlaw@ymail.com

BW

You have my authority to attach my electronic signature.

Brittany Wood
Partner
MAURICE WOOD
ATTORNEYS AT LAW
9525 Hillwood Drive | Suite 140
Las Vegas, Nevada | 89134
Office: (702) 463-7616 | Fax: (702) 463-6224
bwood@mauricewood.com

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From: Brody Wight <bwight@kochscow.com>
Sent: Thursday, November 19, 2020 10:42 AM
To: donna.wittig@akerman.com; joseph hong <yosuphonglaw@gmail.com>; melanie.morgan@akerman.com; scott.lachman@akerman.com; Brittany Wood <bwood@mauricewood.com>; J Thomson <jwtlaw@ymail.com>
Subject: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C

I am attaching the order granting Red Rock's motion to dismiss and all joinders that has the changes requested by the Court. If you approve of this order, please respond to this email authorizing me to attach your e-signature.

John, I am aware that you do not approve of the order and will attach the letter you sent regarding the order as an exhibit to the order per the Court's request.

Brody Wight
Koch & Scow LLC
11500 S. Eastern Ave., Suite 210
Henderson, Nevada 89052
702-318-5040 (office)
702-318-5039 (fax)
801-645-8978 (cell)
bwight@kochscow.com

From: Scott.lachman@akerman.com
Subject: RE: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C
Date: November 19, 2020 at 11:04 AM
To: bwight@kochscow.com, donna.wittig@akerman.com, yosuphonglaw@gmail.com, melanie.morgan@akerman.com, bwood@mauricewood.com, jwtlaw@ymail.com
Cc: elizabeth.streible@akerman.com

Brody – You have permission to use my e-signature for Nationstar. Bar No. 12016. Thanks for preparing the order.

Scott Lachman
Associate, Consumer Financial Services Practice Group
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5021 | C: 702 321 7282
Scott.Lachman@akerman.com

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From: Brody Wight <bwight@kochscow.com>
Sent: Thursday, November 19, 2020 10:42 AM
To: Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; joseph hong <yosuphonglaw@gmail.com>; Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>; Lachman, Scott (Assoc-Las) <scott.lachman@akerman.com>; Brittany Wood <bwood@mauricewood.com>; J Thomson <jwtlaw@ymail.com>
Subject: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C

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Order Granting Defend…n.docx

From: **Brody Wight** bwight@kochscow.com
Subject: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C
Date: November 19, 2020 at 10:42 AM
To: donna.wittig@akerman.com, joseph hong yosuphonglaw@gmail.com, melanie.morgan@akerman.com, scott.lachman@akerman.com, Brittany Wood bwood@mauricewood.com, J Thomson jwtlaw@ymail.com

BW

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John, I am aware that you do not approve of the order and will attach the letter you sent regarding the order as an exhibit to the order per the Court's request.



Order Granting Defend...n.docx

Brody Wight
Koch & Scow LLC
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702-318-5039 (fax)
801-645-8978 (cell)
bwight@kochscow.com

EXHIBIT 2

EXHIBIT 2

LAW OFFICE OF JOHN W. THOMSON
2450 ST. ROSE PARKWAY, SUITE 120
HENDERSON, NV 89074
OFFICE: 702-478-8282
FAX: 702-541-9500
EMAIL: johnwthomson@ymail.com/jwtlaw@ymail.com

October 27, 2020

Via Email Only:

David Koch – dkoch@kochscow.com
Brody Wight – bwight@kochscow.com
Daniel Scow – dscow@kochscow.com
Steven Scow – sscow@kochscow.com
Donna Wittig – donna.wittig@akerman.com
Melanie Morgan – Melanie.morgan@akerman.com
Joseph Hong – yosuphonglaw@gmail.com
Brittany Wood – bwood@mauricewood.com

Re: Tobin v. Chiesi, et al
Case No.: A-19-799890-C

Dear Counsel:

Please see below Nona Tobin's comments and objections to the Order:

1. On January 31, 2017, Tobin, in her capacity as the trustee of the Gordon B. Hansen Trust (the "Trust"), filed a Cross-claim against the Sun City Anthem Community Association (the "HOA") in District Court Case No. A-15-720032-C (the "Previous Case" or "Previous Action") claiming the HOA, through its collection agent Red Rock, wrongfully foreclosed on a residence owned by the Trust and located at 2763 White Sage Drive, Henderson, Nevada 89052 (the "Property") on August 15, 2014.

   Claims were brought in both capacities as Trustee and an Individual. The proposed pleadings attached to the 11/15/16 Motion to Intervene, the 12/20/16 hearing minutes & Recorder's Transcript Tobin as filing as an individual beneficiary & Gordon B. Hansen Trust, trustee. Her acceptance as an individual party was reaffirmed at a hearing on 4/27/17 See Recorder's Transcript Page.

2. In that same litigation, Tobin brought claims against the Jimijack Defendants as successors in interest to the party that purchased the Property at the foreclosure.

Tobin/Gordon B. Hansen Trust's primary claim was never adjudicated at trial, i.e., that Jimijack had no valid interest as its deed was inadmissible per NRS 111.345 & was not the successor in interest to the party that purchased the property at foreclosure. Jimijack evaded judicial scrutiny of Jimijack's defective deed by transferring Jimijack's deed to non-party Joel Stokes as an individual five weeks before the trial that allegedly adjudicated the Gordon B. Hansen Trust 's quiet title claim v Jimijack.

3. Tobin's central allegation in the Previous Case was that Red Rock committed fraud and wrongfully colluded with several parties, including the HOA, in foreclosing on the Property without complying with the requirements of NRS Chapter 116 or the HOA's governing documents. (*Id.* at ¶ 17).

The documents and record speak for themselves, and the summary here is not adequate.

4. Tobin's Cross-claim in the Previous Case listed a host of allegations of wrongdoing against including claims that Red Rock failed to provide the Trust with proper notice of the foreclosure sale and that it frequently misstated the amounts due and owing to the HOA under the HOA lien.

Tobin/Gordon B. Hansen Trust filed six causes of actions vs. Sun City Anthem. Sun City Anthem's Motion for Summary Judgment addressed quiet title only. Court rejected the Ombudsman's notice of sale log because it was not authenticated. It was authenticated on 4/15/19, but the court did not consider it.

5. The Cross-claim in the Previous Case contained a cause of action against the HOA for quiet title and equitable relief claiming that Red Rock's actions caused the foreclosure sale to be null and void as well as causes of action for civil conspiracy, fraud, unjust enrichment, and breach of contract. The allegations of each of those claims centered around Red Rock.

The degree to which Red Rock & FSR misled the HOA Board, usurped control of funds belonging to the HOA and other parties was revealed during discovery of the prior proceedings but there was no judicial scrutiny of the evidence because Sun City Anthem's attorneys misrepresented the Red Rock foreclosure file as Sun City Anthem's official records and concealed the HOA's verified, corroborated agendas, minutes, and ownership accounts.

These claims were not heard. Five of the six causes of actions were dismissed to go to mediation, but were not returned. Sun City Anthem Motion for Summary Judgment was a partial Motion for Summary Judgment.

There are things about Red Rock's fraud that were only discovered during discovery in the first proceedings. Tobin was prevented from addressing them at trial because she was removed as a Party in her individual capacity; documentary evidence was all excluded from trial, Page 18 of 1/31/17 cross-claim, failure to distribute proceeds, and many other findings of fact were misrepresented in the 4/17/19 Sun City Anthem Motion for Summary Judgment.

6. The Cross-claim in the Previous Case alleged that it was Red Rock that conspired, Red Rock that committed fraud, Red Rock that was unjustly enriched, and Red Rock that breached the contract, but the Cross-claim did not list Red Rock as a party.

None of these claims were heard. See # 13

Red Rock was not a party in the prior suit. Tobin tried to add them in her attempted amendment of her 1/31/17 Cross-Claim vs Sun City Anthem that it could not have any added parties or claims, but the Court wouldn't allow it. See 1/10/19 Recorder's Transcript.

7. On February 5, 2019, the HOA brought a motion for summary judgment seeking the dismissal of the Trust's Cross-claim. The HOA argued that Red Rock clearly complied with all requirements of law in foreclosing on the Property and carefully presented the court with all of the notices Red Rock provided.

Disagree. It was a partial Motion for Summary Judgment vs. the Gordon B. Hansen Trust on the quiet title claim. It did not address five of the six causes of actions in the 1/31/17 CRCM that all parties agreed on 3/26/19 hearing (See Recorder's Transcript) was the operative pleading.

Misstates what happened. While it is true that the HOA argues these points, it did so without any verified, corroborated supporting evidence and by unverified, uncorroborated Red Rock foreclosure file as if it was the HOA's official record.

Sun City Anthem's assisted Red Rock's alleged fraud by presenting inaccurate notices that were never sent, as if they were real, and concealed from discovery the actual official HOA records that support Tobin's and Leidy's declarations made under penalty of perjury.

8. The Trust filed an opposition attempting to defend its allegations with a declaration from Tobin attached that claimed the Trust owned the Property.

Tobin's 3/6/19 declaration under penalty of perjury was consistent with the many other declarations she made under penalty of perjury (9/23/16, 1/17/17, 3/14/19, 3/22/19, 4/20/19).

This implies there was some conflict in her statement about who owned it at the time of the sale and how she acquired title as an individual, but alternate theories of recovery are allowed.

Further, this 3/6/19 declaration was not considered by the court at the 3/26/19 hearing because the court had granted the HOA's Motion for Summary Judgment and Nationstar Mortgage's sua sponte on 3/5/19.

9. On April 17, 2019, the court in that case signed an order granting the HOA's motion in its entirety reasoning that "**[**t]he totality of the facts evidence that the HO properly followed the processes and procedures in foreclosing upon the Property." (Exhibit 4, pg. 9).

While it is true that is what the order says, there are many disputed facts in that order. See Tobin 4/20/19 DECL that was exhibit 1 to the 5/23/19 Reply to SCA's opposition to reconsider.

All evidence, meaning all sworn affidavits, declarations under penalty of perjury by Teralyn Lewis -Nevada Real Estate Division Custodian of Records; Craig Leidy- 2014 listing agent; Doug Proudfit- 2012-2013 Listing agent; Linda Proudfit – Proudfit Realty Custodian of Records; Steve Hansen – co-beneficiary to the Gordon B. Hansen Trust until 3/27/17; and Nona Tobin as well as all verified & corroborated documentary evidence support Nona Tobin's claims.

The court erred in relying solely on the HOA's oral arguments and Red Rock's unverified, uncorroborated file; ignoring all of the verified evidence that contradicts that statement.

10. Tobin, as the trustee to the Trust also brought identical claims against the Jimijack Defendant, as successors in interest to the party that purchased the Property at the foreclosure, in the Previous Case. After a full trial on the merits, the Court entered a judgment on June 24, 2019 finding in favor of the Jimijack Defendants and against the Trust on all of the Trust's claims in part due to the fact that the claims were precluded by the order granting summary judgment.

The 5 causes of actions of Tobin/Gordon B. Hansen Trust's 2/1/17 AACC vs Joel & Sandra as Trustees of Jimijack were not identical to the claims against the HOA and no claims against Jimijack were heard at trial. There was no "full trial on the merits". Joel A. Stokes, a party in this case, who held Jimijack's recorded interest as of 5/1/19, was not a party in either of the

consolidated cases. The court was not aware at trial that non-party Joel Stokes had encumbered the property with a $355,000 deed of trust from non-party Civic Financial Services. The Stokes-Civil Financial Services Deed of Trust was wrongly identified as the Jimijack-Nationstar Mortgage "settlement" even though neither NSM nor Jimijack was party to Stokes-Civil Financial Services Deed of Trust.

Further, Plaintiff Jimijack that did not have an admissible deed filed, no quiet title (or any other) claims, into the consolidated cases except its original 6/16/15 COMP vs BANA. BANA defaulted & JDDF was filed on 10/16/15 so BANA was not a party.

Claims preclusion should not have been applied by the court. The Sun City Anthem's Motion for Summary Judgment was a partial Motion for Summary Judgment as it specifically limited its scope to the quiet title causes of action of the Gordon B. Hansen Trust. The Motion for Summary Judgment was specifically not addressing five of the six Gordon B. Hansen Trust causes of actions or six of Tobin's causes of actions against Sun City Anthem. Motion for Summary did not apply to Tobin/Gordon B. Hansen Trust's five causes of actions against Jimijack or the four causes of actions against Hong's other client Yuen K. Lee dba F. Bondurant as Hong did not file a joinder to Sun City Anthem's Motion for Summary Judgment and his oral motion to join at the 3/26/19 hearing was denied. (Page 20, lines 16-17 Recorder's Transcript)

11. Nationstar, as the servicing bank for the Deed of Trust on the Property at the time of foreclosure, was also party to the Previous Case, but Tobin did not bring claims against Nationstar directly.

Nationstar Mortgage was party in the previous case because it inaccurately claimed to hold the beneficial interest of the Hansen Deed of Trust.

Tobin filed an affidavit on 9/23/16 that stated on Page 5 "23. In our scenario, Nationstar Mortgage would retain whatever security interest they had (and could legitimately prove they had in the first deed of trust on August 14, 2014 and no more.

24. Our prayer to the court would be 1) void the sale, 2) give back the title to us as the equitable titleholders prior to the fraudulent HOA sale, and 3) not allow NSM's claims to a security interest prevail by bypassing the requirements of Nevada's 2011 anti-foreclosure fraud law." (AB 284 2011)

25. I believe Nationstar Mortgage's claims are clearly contradicted by evidence I possess."

12. Shortly after all of her claims were denied at trial, Tobin filed a whole new complaint on August 8, 2019, but this time she filed the Complaint in her individual

capacity. Tobin then filed a First Amended Complaint on June 3, 2020 (the "Complaint")

Filing the new claim was necessary to protect my individual rights arising from my 3/28/17 deed. The parties would have asserted they were time-barred if I had not filed an individual claim prior to the 8/14/19 statute of limitations.[i]

13. Tobin's new Complaint alleges that in March 2017, in the middle of the previous litigation and before the Trust filed its motion for summary judgment against the HOA, the Trust transferred title to the Property to Tobin individually.

"…before the trust filed its Motion for Summary Judgment vs. the HOA" misstates the facts & the court record.
1/31/17 Tobin Cross-Claim vs Sun City Anthem
2/23/17 Sun City Anthem Motion to Dismiss Tobin/Gordon B. Hansen Trust per NRS 38.310
3/3/17 Tobin filed a Pro Se Motion for Summary Judgment to void the sale vs. the HOA on behalf of herself & Gordon B. Hansen Trust
3/14/17 Sun City Anthem changed attorneys from Lech to Lipson
3/22/17 Tobin gave Sun City Anthem a settlement offer to avoid litigation
3/22/17 Sun City Anthem filed Motion to Dismiss vs Tobin & Gordon B. Hansen Trust per NRCP 41 because Tobin was a Pro Se
3/31/17 Sun City Anthem filed an Opposition to Motion to Tobin Motion for Summary Judgment
4/27/17 Court denied Sun City Anthem Motion to Dismiss per 41 "as to the individual" but erred in not hearing the Tobin/Gordon B. Hansen Trust Motion for Summary Judgment which was scheduled to be heard 4/27/17
5/25/17 Sun City Anthem & Tobin/Gordon B. Hansen Trust new attorney stipulated to withdraw all claims & Tobin's MSJ pending completion of mediation. Sun City Anthem's 3/31/17 opposition was withdrawn erroneously as Sun City Anthem new attorney Ochoa misrepresented Sun City Anthem's opposition as a 2nd Tobin/Gordon B. Hansen Trust Motion for Summary Judgment. Tobin/Gordon B. Hansen Trust completed mediation on 11/13/18, but her claims were not restored to the jurisdiction of the court as her 4/9/19, 4/12/19, 7/26/19 notices of completion of mediation and her 7/29/19 motion to dismiss per 38.310 were all stricken from the record unheard. This resulted in the court refusing to hear her 3/3/17 Motion for Summary Judgment vs. Sun City Anthem, her 4/10/19 Motion for Summary Judgment vs. Jimijack and her 4/24/19 motion to vacate the Sun City Anthem partial Motion for Summary Judgment of the Gordon B. Hansen Trust's quiet title claims & Nationstar Mortgage's limited joinder thereto pursuant to NRCP 60 fraud on court.

14. Other than asserting claims in her individual capacity, Tobin's current action is based, once again, on allegations that Red Rock did not comply with the requirements of law in foreclosing on the Property in August 2014.

Tobin filed the claims that the HOA's agent did not comply with legal requirements in an individual capacity in the prior case, but the court did not hear her as an individual previously, and so the court was unaware of the specific evidence of Red Rock's falsification of its unverified, uncorroborated foreclosure file, keeping two sets of books, taking the authority of the HOA Board to retain proprietary control over funds collected for the benefit of the HOA, conspiring with Nationstar Mortgage to mischaracterize Nationstar Mortgage's rejected $1100 tender to close the 5/8/14 $367,500 auction.com sale, authenticated Ombudsman's log shows there was no notice of sale in effect when the 8/15/14 sale was held that was uncovered during the prior proceedings, so she reasserts those claims in the current case. The claim that Red Rock wrongly retained the proceeds of the sale was on page 18-19 of the 1/31/17 Cross-Claim vs. Sun City Anthem, but was never heard because Tobin was prohibited from adding back in the 5 of 6 causes of actions that were withdrawn pending completion of mediation. Tobin's individual motions and notices were all stricken from the record unheard.

15. The Complaint specifically brings claims against all of the Defendants for quiet title, unjust enrichment, and declaratory relief based entirely on allegations that Red Rock wrongfully foreclosed on the Property.

Disagree. The complaint speaks for itself and the summary is inadequately simple and incorrect. The claim against Nationstar Mortgage is that it never was the beneficial owner of the Hansen deed of trust, and is judicially estopped from claiming to own it now. However, because Nationstar Mortgage misrepresented to the court that Tobin's choosing to move to void the sale subject to the Hansen Deed of Trust meant that Tobin/Gordon B. Hansen Trust and Nationstar Mortgage were not opposing parties. Nationstar Mortgage therefore "settled out of court" and dropped its quiet title claims without meeting its burden of proof. Further, if the sale was valid to extinguish the Gordon B. Hansen Trust's interest, then it was valid to extinguish the Hansen Deed of Trust. Also, Nationstar Mortgage & Red Rock both concealed that the Nationstar Mortgage offer of $1100 and the 3/28/14 Red Rock Financial Services pay off demand to Chicago title the complaint against Jimijack was that the deed was fraudulent and inadmissible per NRS 111.345. All other defendant's deeds that stemmed from Jimijack's are void as well. These are new claims never heard.

16. The Complaint brings the above claims against the Jimijack Defendants and Chiesi Defendants presumably because those Defendants obtained interests in the Property after foreclosure. The Complaint alleges that Nationstar was the servicer on the Deed of Trust on the Property at the time of foreclosure, but the Complaint does not specify why Nationstar was named as a defendant in the current action.

Nationstar Mortgage did not admit that it was only the servicer and not the beneficiary until after the end of discovery, and then they immediately contradicted it by recording a claim that contradicted its previous claim of being the beneficiary. Nationstar Mortgage recorded false claims related to the disputed Hansen DOT on 12/1/14, two on 3/8/19, 1/22/15, 8/17/15, and 6/3/19. In settlement with the other parties, the Jimijack-Nationstar Mortgage settlement, they decided to recording documents on 5/1/19 and 5/23/19 which clouded the title with reassignments of the Stokes-CFS DOT on 6/4/19 and 7/17/19. Chiesi/Quicken defendants recorded claims adverse to Tobin's claimed interest on 12/27/19 during the pendency of these proceedings and the appeal of the prior case. NSM reconveyed the Hansen deed of trust to Joel Stokes as an individual instead of to the estate of the borrower; while the Stokes-Civil Financial Services Deed of Trust still encumbered the property.

17. On June 23, 2020, Red Rock filed a motion to dismiss arguing, in part, that all of Tobin's claims are barred by the doctrines of claim preclusion and nonmutual claim preclusion. The remaining Defendants all properly joined Red Rock's motion.

Claims preclusion is not supported by the facts. Tobin's individual claims in the prior case were not heard. Nationstar Mortgage's claims were not heard because they were dismissed without Tobin's consent, allegedly in order to evade judicial scrutiny of any evidence, and creating a side deal with Jimijack to thwart Tobin's ownership interest. Jimijack didn't have any claims to adjudicate, but somehow won without any claims or any evidence.

Different parties, different claims, no fair adjudication previously equals no applicability of claims preclusion doctrine.

18. In their joinders, the Chiesi Defendants and the Jimijack Defendants requested this Court grant them attorney's fees and costs for defending against Tobin's claims. The Jimijack Defendant's Motion for Attorney's Fees and Costs were pursuant to EDCR Rule 7.60(b)(1) and/or (3).

The attorney fees and costs are separate matters and should not be included in the Order granting motion to dismiss.

Sincerely,

/s/ John W. Thomson

John W. Thomson. Esq.

JWT/ac

cc: Nona Tobin

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Nona Tobin, Plaintiff(s)	CASE NO: A-19-799890-C
vs.	DEPT. NO. Department 22
Joel Stokes, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 12/3/2020

David Koch	dkoch@kochscow.com
Brody Wight	bwight@kochscow.com
Akerman LLP	AkermanLAS@akerman.com
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Donna Wittig	donna.wittig@akerman.com
Daniel Scow	dscow@kochscow.com
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Vincenette Caruana	jwtlaw@ymail.com
Brittany Wood	bwood@mauricewood.com

Electronically Filed
12/3/2020 4:02 PM
Steven D. Grierson
CLERK OF THE COURT

David R. Koch, Esq. (NV Bar No. 8830)
Steven B. Scow, Esq. (NV Bar No. 9906)
Brody B. Wight, Esq. (NV Bar No. 13615)
KOCH & SCOW, LLC
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sscow@kochscow.com
bwight@kochscow.com

Attorneys for Defendant
Red Rock Financial Services

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual, Plaintiff, vs. BRIAN CHIESTI, an individual; DEBORA CHIESTI, an individual; QUICKEN LOANS IN.; JOEL A. STOKES, an individual; JOEL A . STOKES AND SANDRA STOKES as Trustees of JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONAL MORTGAGE LLC; RED ROCK FINANCIAL SERVICES; DOES I through X inclusive; and ROE CORPORATIONS I through V, inclusive Defendants.	Case No. A-19-799890-C Dept. 22 **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that the *Order Granting Defendant Red Rock Financial Services' Motion to Dismiss Complaint and All Joinders to the Motion* was entered in the above-referenced matter on December 3, 2020, a copy of which is attached hereto.

DATED: December 3, 2020.

KOCH & SCOW, LLC

/s/Steven B. Scow
Steven B. Scow, Esq.
Attorney for Red Rock Financial Services, LLC

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on December 3, 2020, I caused the foregoing document entitled: **NOTICE OF ENTRY OF ORDER**, to be electronically filed and served with the Eighth Judicial District Court, County of Clark, State of Nevada EFile system.

Executed on December 3, 2020 at Henderson, Nevada.

/s/ Andrea W. Eshenbaugh
An Employee of Koch & Scow LLC

ELECTRONICALLY SERVED
12/3/2020 3:36 PM

Electronically Filed
12/03/2020 3:33 PM
CLERK OF THE COURT

OGM
~~ODWO~~

David R. Koch, Esq. (NV Bar No. 8830)
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Attorneys for Defendant
Red Rock Financial Services

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual,

Plaintiff,

vs.

BRIAN CHIESTI, an individual; DEBORA CHIESTI, an individual; QUICKEN LOANS IN.; JOEL A. STOKES, an individual; JOEL A . STOKES AND SANDRA STOKES as Trustees of JIMIJACK IRREVOCABLE TRUST; JIMIJACK IRREVOCABLE TRUST; NATIONSTAR MORTGAGE LLC; RED ROCK FINANCIAL SERVICES, DOES I through X inclusive; and ROE CORPORATIONS I through V, inclusive

Defendants.

Case No. A-19-799890-C
Dept. 22

ORDER GRANTING DEFENDANT RED ROCK FINANCIAL SERVICES' MOTION TO DISMISS COMPLAINT AND ALL JOINDERS TO THE MOTION

On August 11, 2020 Defendant Red Rock Financial, LLC's ("Red Rock") Motion to Dismiss Nona Tobin's Claims against it and as well as Nationstar Mortgage, LLC's ("Nationstar") Joinder to Red Rock's motion; Joel a Stokes, Joel A. Stokes and Sandra Stokes as trustees of Jimijack Irrevocable Trust, and Jimijack Irrevocable Trust (the "Jimijack Defendants") Joinder to Red Rock's motion; and Brian Chiesi, Debora Chiesi,

and Quicken Loans, Inc.'s (the "Chiesi Defendants") Joinder to Red Rock's motion came on for hearing in this Court (collectively all above Defendants shall be referred to as the "Defendants"). Appearing on behalf of Red Rock was counsel of record, Brody Wight appearing on behalf of Nationstar was counsel of record Donna Wittig, appearing on behalf of the Jimijack Defendants was counsel of record Joseph Hong, appearing on behalf of the Chiesi Defendants was counsel of record Brittany Wood, and appearing on behalf of Tobin was counsel of record John Thomson. The Court, having considered the motion, all of the joinders to the motion, the opposition filed by Tobin, the reply filed by Red Rock, and all joinders to the reply, having heard and considered any argument of counsel at the time of hearing, finds and orders as follows.

FACTS

A. Tobin Unsuccessfully Brings Claims Against the HOA

1. On January 31, 2017, Tobin, in her capacity as the trustee of the Gordon B. Hansen Trust (the "Trust"), filed a Cross-claim against the Sun City Anthem Community Association (the "HOA") in District Court Case No. A-15-720032-C (the "Previous Case" or "Previous Action") claiming the HOA, through its collection agent Red Rock, wrongfully foreclosed on a residence owned by the Trust and located at 2763 White Sage Drive, Henderson, Nevada 89052 (the "Property") on August 15, 2014.

2. In that same litigation, Tobin brought claims against the Jimijack Defendants as successors in interest to the party that purchased the Property at the foreclosure.

3. Tobin's central allegation in the Previous Case was that Red Rock committed fraud and wrongfully colluded with several parties, including the HOA, in foreclosing on the Property without complying with the requirements of NRS Chapter 116 or the HOA's governing documents.

4. Tobin's Cross-claim in the Previous Case listed a host of allegations of wrongdoing against Red Rock including claims that Red Rock failed to provide the Trust

with proper notice of the foreclosure sale and that it frequently misstated the amounts due and owing to the HOA under the HOA lien.

5. The Cross-claim in the Previous Case contained a cause of action against the HOA for quiet title and equitable relief claiming that Red Rock's actions caused the foreclosure sale to be null and void as well as causes of action for civil conspiracy, fraud, unjust enrichment, and breach of contract. The allegations of each of those claims centered around Red Rock.

6. The Cross-claim in the Previous Case alleged that it was Red Rock that conspired, Red Rock that committed fraud, Red Rock that was unjustly enriched, and Red Rock that breached the contract, but the Cross-claim did not list Red Rock as a party.

7. On February 5, 2019, the HOA brought a motion for summary judgment seeking the dismissal of the Trust's Cross-claim. The HOA argued that Red Rock clearly complied with all requirements of law in foreclosing on the Property and carefully presented the court with all of the notices Red Rock provided.

8. The Trust filed an opposition attempting to defend its allegations with a declaration from Tobin attached that claimed the Trust owned the Property.

9. On April 17, 2019, the court in that case signed an order granting the HOA's motion in its entirety reasoning that "[t]he totality of the facts evidence that the HOA properly followed the processes and procedures in foreclosing upon the Property."

10. Tobin, as the trustee to the Trust, also brought identical claims against the Jimijack Defendants, as successors in interest to the party that purchased the Property at the foreclosure, in the Previous Case. After a full trial on the merits, the Court entered a judgment on June 24, 2019, finding in favor of the Jimijack Defendants and against the Trust on all of the Trust's claims in part due to the fact that the claims were precluded by the order granting summary judgment.

11. Nationstar, as the servicing bank for the Deed of Trust on the Property at the time of foreclosure, was also party to the Previous Case, but Tobin did not bring claims against Nationstar directly.

B. Tobin Brings the Current Complaint

12. Shortly after all of her claims were denied at trial, Tobin filed a new complaint on August 8, 2019, but this time she filed the Complaint in her individual capacity. Tobin then filed a First Amended Complaint on June 3, 2020 (the "Complaint").

13. Tobin's new Complaint alleges that in March 2017, in the middle of the previous litigation and before the Trust filed its motion for summary judgment against the HOA, the Trust transferred title to the Property to Tobin individually.

14. Other than asserting claims in her individual capacity, Tobin's current action is based, once again, on allegations that Red Rock did not comply with the requirements of law in foreclosing on the Property in August 2014.

15. The Complaint specifically brings claims against all of the Defendants for quiet title, unjust enrichment, and declaratory relief based on allegations that Red Rock wrongfully foreclosed on the Property.

16. The Complaint brings the above claims against the Jimijack Defendants and Chiesi Defendants presumably because those Defendants obtained interests in the Property after foreclosure. The Complaint alleges that Nationstar was the servicer on the Deed of Trust on the Property at the time of foreclosure, but the Complaint does not specify why Nationstar was named as a defendant in the current action.

17. On June 23, 2020, Red Rock filed a motion to dismiss arguing, in part, that all of Tobin's claims are barred by the doctrines of claim preclusion and nonmutual claim preclusion. The remaining Defendants all properly joined Red Rock's motion.

18. In their joinders, the Chiesi Defendants and the Jimijack Defendants requested this Court grant them attorney's fees and costs for defending against Tobin's

claims. The Jimijack Defendants' Motion for Attorney's Fees and Costs were pursuant to EDCR Rule 7.60(b)(1) and/or (3).

STANDARD FOR DISMISSAL UNDER NRCP 12(B)(5)

19. Pursuant to NRCP 12(b)(5), a motion to dismiss should be granted upon "failure to state a claim upon which relief can be granted." A motion brought under NRCP 12(b)(5) tests the legal sufficiency of the claim as alleged by the moving party. A motion to dismiss must be granted where it appears to a certainty that the plaintiff is entitled to no relief under any set of facts that could be proved in support of a claim. *Buzz Stew, LLC v. City of N. Las Vegas,* 124 Nev. 224, 228 (2008); *Blackjack Bonding* v. *Las Vegas Mun. Ct.,* 116 Nev. 1213,1217 (2000); *Simpson* v. *Mars Inc.,* 113 Nev. 188, 190 (1997).

20. In reviewing motions to dismiss, courts may consider the allegations of the Complaint and "may also consider unattached [or attached] evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the document." *Baxter v. Dignity Health*, 357 P.3d 927, 930 (Nev. 2015) (quoting *United States v. Corinthian Colleges*, 655 F.3d 984, 999 (9th Cir.2011)).

LEGAL FINDINGS

21. The doctrine of claim preclusion, otherwise known as *res judicata* is designed to prevent plaintiffs and their privies from filing any claims that were or could have been asserted in a different suit. *U. of Nevada v. Tarkanian*, 879 P.2d 1180, 1191–92 (Nev. 1994).

22. The concept of *nonmutual* claim preclusion extends the doctrine and "embraces the idea that a plaintiff's second suit against a new party should be precluded 'if the new party can show good reasons why he should have been joined in the first action and the [plaintiff] cannot show any good reasons to justify a second chance.' " *Weddell v. Sharp*, 350 P.3d 80, 84–85 (Nev. 2015) (quoting 18A Charles Alan Wright, et al., Federal Practice and Procedure § 4464.1 (2d ed.2002)

23. Courts should apply the doctrine of nonmutual claim preclusion when:

(1) There is a valid final judgment,

(2) a subsequent action is based on the same claims or any part of them that were or could have been brought in the first action, and

(3) "the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, or the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a 'good reason' for not having done so." *Id.* at 85.

24. In this case, there was a valid final judgment on all of the claims Tobin brought against the HOA and all other parties to the foreclosure sale. In granting summary judgment and issuing a decision after a bench trial, the trial court in the previous action finally held that the foreclosure conducted by Red Rock was lawful and that Tobin's claims were all improper.

25. The current action is based on the same claims that were or could have been brought in the first action. In both actions Tobin is challenging the validity of the foreclosure sale conducted by Red Rock based on Red Rock's actions during the foreclosure sale.

26. The plaintiff in this action is the same or in privity to the plaintiff in the previous action. While Tobin did file on behalf of the Trust in the first case and in her individual capacity in this case, Tobin as an individual is clearly in privity with Tobin as a trustee. Tobin obtained her interest in the Property that was the subject of the previous action through the Trust by inheritance, succession, or purchase, and, even if Tobin were not the trustee of the Trust, she would be in privity with the Trust. *See*, *Bower v. Harrah's Laughlin, Inc.*, 215 P.3d 709, 718 (Nev. 2009).

27. All of the Defendants or their privities were or should have been named in the previous action. In the previous action, the Trust did name the Jimijack Defendants ,to whom the Chiesi Defendants are in privity, and Nationstar. Red Rock was known at

the time of the previous action, and Tobin has not provided any good reason for not having brought Red Rock in the previous action.

28. Because this case meets all of the elements of claim preclusion and nonmutual claim preclusion, those doctrines now bar Tobin from bringing all of her claims against the Defendants.

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ACCORDINGLY, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED that Red Rock's Motion to Dismiss all claims asserted against it in Tobin's First Amended Complaint and the joinders to that motion filed by all other Defendants are GRANTED and the action is dismissed in its entirety with prejudice.

IT IS FURTHER ORDERED THAT pursuant to NRS 14.017, the Notices of Lis Pendens recorded by Plaintiff in the Office of the Clark County Recorder as Instrument Numbers 201908080002097, 201908140003083, and 201908140003084, are hereby cancelled and expunged. Said cancellation has the same effect as an expungement of the original notice.

The requests for attorney's fees made by the Chiesi Defendants and Jimijack Defendants shall be addressed in a separate order. On September 6, 2020, the Court entered and filed its Order granting the Jimijack Defendants' Motion for Attorney's Fees and Costs pursuant to EDCR Rule 7.60 (b)(1) and/or (3)

IT IS SO ORDERED.

Dated: December 3, 2020

Dated this 3rd day of December, 2020

HONORABLE SUSAN JOHNSON
DISTRICT COURT JUDGE

6CA 205 1CBE 2555
Susan Johnson
District Court Judge

Submitted by:

/s/ Brody Wight
Brody Wight, Esq.
Counsel for Defendant Red Rock Financial Services, LLC.

Approved as to Form and Content:

/s/ Scott Lachman
Scott Lachman, Esq.
Counsel for Nationtar Mortgage, LLC

/s/ Joseph Hong
Joseph Hong, Esq.
Counsel for Joel a Stokes, Joel A. Stokes and Sandra Stokes as trustees of Jimijack Irrevocable Trust, and Jimijack Irrevocable Trust

/s/ Brittany Wood
Brittany Wood, Esq.
Counsel for Brian Chiesi, Debora Chiesi, and Quicken Loans, Inc.

Mr. Thomson has refused to approve the proposed order for the reasons put forth in the letter attached as Exhibit 2
John Thomson, Esq.
Counsel for Nona Tobin

EXHIBIT 1

EXHIBIT 1

From: **joseph hong** yosuphonglaw@gmail.com
Subject: Re: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C
Date: November 30, 2020 at 12:57 PM
To: Brody Wight bwight@kochscow.com

JH

Hi Brody...please affix my e-signature on the Order...

On Thu, Nov 19, 2020 at 10:42 AM Brody Wight <bwight@kochscow.com> wrote:

> I am attaching the order granting Red Rock's motion to dismiss and all joinders that has the changes requested by the Court. If you approve of this order, please respond to this email authorizing me to attach your e-signature.
>
> John, I am aware that you do not approve of the order and will attach the letter you sent regarding the order as an exhibit to the order per the Court's request.
>
> Brody Wight
> Koch & Scow LLC
> 11500 S. Eastern Ave., Suite 210
> Henderson, Nevada 89052
> 702-318-5040 (office)
> 702-318-5039 (fax)
> 801-645-8978 (cell)
> bwight@kochscow.com

--
Joseph Y, Hong, Esq
Hong & Hong Law Office
One Summerlin
1980 Festival Plaza Dr., Suite 650
Las Vegas, Nevada 89135
Tel: (702) 870-1777
Fax: (702) 870-0500
Cell: (702) 409-6544
Email: Yosuphonglaw@gmail.com

From: **Brittany Wood** bwood@mauricewood.com
Subject: RE: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C
Date: November 19, 2020 at 2:00 PM
To: Brody Wight bwight@kochscow.com, donna.wittig@akerman.com, joseph hong yosuphonglaw@gmail.com, melanie.morgan@akerman.com, scott.lachman@akerman.com, J Thomson jwtlaw@ymail.com

BW

You have my authority to attach my electronic signature.

Brittany Wood
Partner
MAURICE WOOD
ATTORNEYS AT LAW
9525 Hillwood Drive | Suite 140
Las Vegas, Nevada | 89134
Office: (702) 463-7616 | Fax: (702) 463-6224
bwood@mauricewood.com

This communication (including any attachments) is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer. This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, any use of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately.

From: Brody Wight <bwight@kochscow.com>
Sent: Thursday, November 19, 2020 10:42 AM
To: donna.wittig@akerman.com; joseph hong <yosuphonglaw@gmail.com>; melanie.morgan@akerman.com; scott.lachman@akerman.com; Brittany Wood <bwood@mauricewood.com>; J Thomson <jwtlaw@ymail.com>
Subject: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C

I am attaching the order granting Red Rock's motion to dismiss and all joinders that has the changes requested by the Court. If you approve of this order, please respond to this email authorizing me to attach your e-signature.

John, I am aware that you do not approve of the order and will attach the letter you sent regarding the order as an exhibit to the order per the Court's request.

Brody Wight
Koch & Scow LLC
11500 S. Eastern Ave., Suite 210
Henderson, Nevada 89052
702-318-5040 (office)
702-318-5039 (fax)
801-645-8978 (cell)
bwight@kochscow.com

From: Scott.lachman@akerman.com
Subject: RE: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C
Date: November 19, 2020 at 11:04 AM
To: bwight@kochscow.com, donna.wittig@akerman.com, yosuphonglaw@gmail.com, melanie.morgan@akerman.com, bwood@mauricewood.com, jwtlaw@ymail.com
Cc: elizabeth.streible@akerman.com

Brody – You have permission to use my e-signature for Nationstar. Bar No. 12016. Thanks for preparing the order.

Scott Lachman
Associate, Consumer Financial Services Practice Group
Akerman LLP | 1635 Village Center Circle, Suite 200 | Las Vegas, NV 89134
D: 702 634 5021 | C: 702 321 7282
Scott.Lachman@akerman.com

vCard | Profile

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CONFIDENTIALITY NOTE: The information contained in this transmission may be privileged and confidential, and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately reply to the sender that you have received this communication in error and then delete it. Thank you.

From: Brody Wight <bwight@kochscow.com>
Sent: Thursday, November 19, 2020 10:42 AM
To: Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; joseph hong <yosuphonglaw@gmail.com>; Morgan, Melanie (Ptnr-Las) <melanie.morgan@akerman.com>; Lachman, Scott (Assoc-Las) <scott.lachman@akerman.com>; Brittany Wood <bwood@mauricewood.com>; J Thomson <jwtlaw@ymail.com>
Subject: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C

I am attaching the order granting Red Rock's motion to dismiss and all joinders that has the changes requested by the Court. If you approve of this order, please respond to this email authorizing me to attach your e-signature.

John, I am aware that you do not approve of the order and will attach the letter you sent regarding the order as an exhibit to the order per the Court's request.



Order Granting Defend…n.docx

From: **Brody Wight** bwight@kochscow.com
Subject: Order Granting Motion to Dismiss Tobin v. Chiesti A-19-799890-C
Date: November 19, 2020 at 10:42 AM
To: donna.wittig@akerman.com, joseph hong yosuphonglaw@gmail.com, melanie.morgan@akerman.com, scott.lachman@akerman.com, Brittany Wood bwood@mauricewood.com, J Thomson jwtlaw@ymail.com

BW

I am attaching the order granting Red Rock's motion to dismiss and all joinders that has the changes requested by the Court. If you approve of this order, please respond to this email authorizing me to attach your e-signature.

John, I am aware that you do not approve of the order and will attach the letter you sent regarding the order as an exhibit to the order per the Court's request.



Order Granting Defend...n.docx

Brody Wight
Koch & Scow LLC
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bwight@kochscow.com

EXHIBIT 2

EXHIBIT 2

LAW OFFICE OF JOHN W. THOMSON
2450 ST. ROSE PARKWAY, SUITE 120
HENDERSON, NV 89074
OFFICE: 702-478-8282
FAX: 702-541-9500
EMAIL: johnwthomson@ymail.com/jwtlaw@ymail.com

October 27, 2020

Via Email Only:

David Koch – dkoch@kochscow.com
Brody Wight – bwight@kochscow.com
Daniel Scow – dscow@kochscow.com
Steven Scow – sscow@kochscow.com
Donna Wittig – donna.wittig@akerman.com
Melanie Morgan – Melanie.morgan@akerman.com
Joseph Hong – yosuphonglaw@gmail.com
Brittany Wood – bwood@mauricewood.com

Re: Tobin v. Chiesi, et al
Case No.: A-19-799890-C

Dear Counsel:

Please see below Nona Tobin's comments and objections to the Order:

1. On January 31, 2017, Tobin, in her capacity as the trustee of the Gordon B. Hansen Trust (the "Trust"), filed a Cross-claim against the Sun City Anthem Community Association (the "HOA") in District Court Case No. A-15-720032-C (the "Previous Case" or "Previous Action") claiming the HOA, through its collection agent Red Rock, wrongfully foreclosed on a residence owned by the Trust and located at 2763 White Sage Drive, Henderson, Nevada 89052 (the "Property") on August 15, 2014.

   Claims were brought in both capacities as Trustee and an Individual. The proposed pleadings attached to the 11/15/16 Motion to Intervene, the 12/20/16 hearing minutes & Recorder's Transcript Tobin as filing as an individual beneficiary & Gordon B. Hansen Trust, trustee. Her acceptance as an individual party was reaffirmed at a hearing on 4/27/17 See Recorder's Transcript Page.

2. In that same litigation, Tobin brought claims against the Jimijack Defendants as successors in interest to the party that purchased the Property at the foreclosure.

Tobin/Gordon B. Hansen Trust's primary claim was never adjudicated at trial, i.e., that Jimijack had no valid interest as its deed was inadmissible per NRS 111.345 & was not the successor in interest to the party that purchased the property at foreclosure. Jimijack evaded judicial scrutiny of Jimijack's defective deed by transferring Jimijack's deed to non-party Joel Stokes as an individual five weeks before the trial that allegedly adjudicated the Gordon B. Hansen Trust 's quiet title claim v Jimijack.

3. Tobin's central allegation in the Previous Case was that Red Rock committed fraud and wrongfully colluded with several parties, including the HOA, in foreclosing on the Property without complying with the requirements of NRS Chapter 116 or the HOA's governing documents. (*Id.* at ¶ 17).

The documents and record speak for themselves, and the summary here is not adequate.

4. Tobin's Cross-claim in the Previous Case listed a host of allegations of wrongdoing against including claims that Red Rock failed to provide the Trust with proper notice of the foreclosure sale and that it frequently misstated the amounts due and owing to the HOA under the HOA lien.

Tobin/Gordon B. Hansen Trust filed six causes of actions vs. Sun City Anthem. Sun City Anthem's Motion for Summary Judgment addressed quiet title only. Court rejected the Ombudsman's notice of sale log because it was not authenticated. It was authenticated on 4/15/19, but the court did not consider it.

5. The Cross-claim in the Previous Case contained a cause of action against the HOA for quiet title and equitable relief claiming that Red Rock's actions caused the foreclosure sale to be null and void as well as causes of action for civil conspiracy, fraud, unjust enrichment, and breach of contract. The allegations of each of those claims centered around Red Rock.

The degree to which Red Rock & FSR misled the HOA Board, usurped control of funds belonging to the HOA and other parties was revealed during discovery of the prior proceedings but there was no judicial scrutiny of the evidence because Sun City Anthem's attorneys misrepresented the Red Rock foreclosure file as Sun City Anthem's official records and concealed the HOA's verified, corroborated agendas, minutes, and ownership accounts.

These claims were not heard. Five of the six causes of actions were dismissed to go to mediation, but were not returned. Sun City Anthem Motion for Summary Judgment was a partial Motion for Summary Judgment.

There are things about Red Rock's fraud that were only discovered during discovery in the first proceedings. Tobin was prevented from addressing them at trial because she was removed as a Party in her individual capacity; documentary evidence was all excluded from trial, Page 18 of 1/31/17 cross-claim, failure to distribute proceeds, and many other findings of fact were misrepresented in the 4/17/19 Sun City Anthem Motion for Summary Judgment.

6. The Cross-claim in the Previous Case alleged that it was Red Rock that conspired, Red Rock that committed fraud, Red Rock that was unjustly enriched, and Red Rock that breached the contract, but the Cross-claim did not list Red Rock as a party.

None of these claims were heard. See # 13

Red Rock was not a party in the prior suit. Tobin tried to add them in her attempted amendment of her 1/31/17 Cross-Claim vs Sun City Anthem that it could not have any added parties or claims, but the Court wouldn't allow it. See 1/10/19 Recorder's Transcript.

7. On February 5, 2019, the HOA brought a motion for summary judgment seeking the dismissal of the Trust's Cross-claim. The HOA argued that Red Rock clearly complied with all requirements of law in foreclosing on the Property and carefully presented the court with all of the notices Red Rock provided.

Disagree. It was a partial Motion for Summary Judgment vs. the Gordon B. Hansen Trust on the quiet title claim. It did not address five of the six causes of actions in the 1/31/17 CRCM that all parties agreed on 3/26/19 hearing (See Recorder's Transcript) was the operative pleading.

Misstates what happened. While it is true that the HOA argues these points, it did so without any verified, corroborated supporting evidence and by unverified, uncorroborated Red Rock foreclosure file as if it was the HOA's official record.

Sun City Anthem's assisted Red Rock's alleged fraud by presenting inaccurate notices that were never sent, as if they were real, and concealed from discovery the actual official HOA records that support Tobin's and Leidy's declarations made under penalty of perjury.

8. The Trust filed an opposition attempting to defend its allegations with a declaration from Tobin attached that claimed the Trust owned the Property.

Tobin's 3/6/19 declaration under penalty of perjury was consistent with the many other declarations she made under penalty of perjury (9/23/16, 1/17/17, 3/14/19, 3/22/19, 4/20/19).

This implies there was some conflict in her statement about who owned it at the time of the sale and how she acquired title as an individual, but alternate theories of recovery are allowed.

Further, this 3/6/19 declaration was not considered by the court at the 3/26/19 hearing because the court had granted the HOA's Motion for Summary Judgment and Nationstar Mortgage's sua sponte on 3/5/19.

9. On April 17, 2019, the court in that case signed an order granting the HOA's motion in its entirety reasoning that "**[**t]he totality of the facts evidence that the HO properly followed the processes and procedures in foreclosing upon the Property." (Exhibit 4, pg. 9).

While it is true that is what the order says, there are many disputed facts in that order. See Tobin 4/20/19 DECL that was exhibit 1 to the 5/23/19 Reply to SCA's opposition to reconsider.

All evidence, meaning all sworn affidavits, declarations under penalty of perjury by Teralyn Lewis -Nevada Real Estate Division Custodian of Records; Craig Leidy- 2014 listing agent; Doug Proudfit- 2012-2013 Listing agent; Linda Proudfit – Proudfit Realty Custodian of Records; Steve Hansen – co-beneficiary to the Gordon B. Hansen Trust until 3/27/17; and Nona Tobin as well as all verified & corroborated documentary evidence support Nona Tobin's claims.

The court erred in relying solely on the HOA's oral arguments and Red Rock's unverified, uncorroborated file; ignoring all of the verified evidence that contradicts that statement.

10. Tobin, as the trustee to the Trust also brought identical claims against the Jimijack Defendant, as successors in interest to the party that purchased the Property at the foreclosure, in the Previous Case. After a full trial on the merits, the Court entered a judgment on June 24, 2019 finding in favor of the Jimijack Defendants and against the Trust on all of the Trust's claims in part due to the fact that the claims were precluded by the order granting summary judgment.

The 5 causes of actions of Tobin/Gordon B. Hansen Trust's 2/1/17 AACC vs Joel & Sandra as Trustees of Jimijack were not identical to the claims against the HOA and no claims against Jimijack were heard at trial. There was no "full trial on the merits". Joel A. Stokes, a party in this case, who held Jimijack's recorded interest as of 5/1/19, was not a party in either of the

consolidated cases. The court was not aware at trial that non-party Joel Stokes had encumbered the property with a $355,000 deed of trust from non-party Civic Financial Services. The Stokes-Civil Financial Services Deed of Trust was wrongly identified as the Jimijack-Nationstar Mortgage "settlement" even though neither NSM nor Jimijack was party to Stokes-Civil Financial Services Deed of Trust.

Further, Plaintiff Jimijack that did not have an admissible deed filed, no quiet title (or any other) claims, into the consolidated cases except its original 6/16/15 COMP vs BANA. BANA defaulted & JDDF was filed on 10/16/15 so BANA was not a party.

Claims preclusion should not have been applied by the court. The Sun City Anthem's Motion for Summary Judgment was a partial Motion for Summary Judgment as it specifically limited its scope to the quiet title causes of action of the Gordon B. Hansen Trust. The Motion for Summary Judgment was specifically not addressing five of the six Gordon B. Hansen Trust causes of actions or six of Tobin's causes of actions against Sun City Anthem. Motion for Summary did not apply to Tobin/Gordon B. Hansen Trust's five causes of actions against Jimijack or the four causes of actions against Hong's other client Yuen K. Lee dba F. Bondurant as Hong did not file a joinder to Sun City Anthem's Motion for Summary Judgment and his oral motion to join at the 3/26/19 hearing was denied. (Page 20, lines 16-17 Recorder's Transcript)

11. Nationstar, as the servicing bank for the Deed of Trust on the Property at the time of foreclosure, was also party to the Previous Case, but Tobin did not bring claims against Nationstar directly.

Nationstar Mortgage was party in the previous case because it inaccurately claimed to hold the beneficial interest of the Hansen Deed of Trust.

Tobin filed an affidavit on 9/23/16 that stated on Page 5 "23. In our scenario, Nationstar Mortgage would retain whatever security interest they had (and could legitimately prove they had in the first deed of trust on August 14, 2014 and no more.

24. Our prayer to the court would be 1) void the sale, 2) give back the title to us as the equitable titleholders prior to the fraudulent HOA sale, and 3) not allow NSM's claims to a security interest prevail by bypassing the requirements of Nevada's 2011 anti-foreclosure fraud law." (AB 284 2011)

25. I believe Nationstar Mortgage's claims are clearly contradicted by evidence I possess."

12. Shortly after all of her claims were denied at trial, Tobin filed a whole new complaint on August 8, 2019, but this time she filed the Complaint in her individual

capacity. Tobin then filed a First Amended Complaint on June 3, 2020 (the "Complaint")

Filing the new claim was necessary to protect my individual rights arising from my 3/28/17 deed. The parties would have asserted they were time-barred if I had not filed an individual claim prior to the 8/14/19 statute of limitations.[i]

13. Tobin's new Complaint alleges that in March 2017, in the middle of the previous litigation and before the Trust filed its motion for summary judgment against the HOA, the Trust transferred title to the Property to Tobin individually.

"…before the trust filed its Motion for Summary Judgment vs. the HOA" misstates the facts & the court record.
1/31/17 Tobin Cross-Claim vs Sun City Anthem
2/23/17 Sun City Anthem Motion to Dismiss Tobin/Gordon B. Hansen Trust per NRS 38.310
3/3/17 Tobin filed a Pro Se Motion for Summary Judgment to void the sale vs. the HOA on behalf of herself & Gordon B. Hansen Trust
3/14/17 Sun City Anthem changed attorneys from Lech to Lipson
3/22/17 Tobin gave Sun City Anthem a settlement offer to avoid litigation
3/22/17 Sun City Anthem filed Motion to Dismiss vs Tobin & Gordon B. Hansen Trust per NRCP 41 because Tobin was a Pro Se
3/31/17 Sun City Anthem filed an Opposition to Motion to Tobin Motion for Summary Judgment
4/27/17 Court denied Sun City Anthem Motion to Dismiss per 41 "as to the individual" but erred in not hearing the Tobin/Gordon B. Hansen Trust Motion for Summary Judgment which was scheduled to be heard 4/27/17
5/25/17 Sun City Anthem & Tobin/Gordon B. Hansen Trust new attorney stipulated to withdraw all claims & Tobin's MSJ pending completion of mediation. Sun City Anthem's 3/31/17 opposition was withdrawn erroneously as Sun City Anthem new attorney Ochoa misrepresented Sun City Anthem's opposition as a 2nd Tobin/Gordon B. Hansen Trust Motion for Summary Judgment. Tobin/Gordon B. Hansen Trust completed mediation on 11/13/18, but her claims were not restored to the jurisdiction of the court as her 4/9/19, 4/12/19, 7/26/19 notices of completion of mediation and her 7/29/19 motion to dismiss per 38.310 were all stricken from the record unheard. This resulted in the court refusing to hear her 3/3/17 Motion for Summary Judgment vs. Sun City Anthem, her 4/10/19 Motion for Summary Judgment vs. Jimijack and her 4/24/19 motion to vacate the Sun City Anthem partial Motion for Summary Judgment of the Gordon B. Hansen Trust's quiet title claims & Nationstar Mortgage's limited joinder thereto pursuant to NRCP 60 fraud on court.

14. Other than asserting claims in her individual capacity, Tobin's current action is based, once again, on allegations that Red Rock did not comply with the requirements of law in foreclosing on the Property in August 2014.

Tobin filed the claims that the HOA's agent did not comply with legal requirements in an individual capacity in the prior case, but the court did not hear her as an individual previously, and so the court was unaware of the specific evidence of Red Rock's falsification of its unverified, uncorroborated foreclosure file, keeping two sets of books, taking the authority of the HOA Board to retain proprietary control over funds collected for the benefit of the HOA, conspiring with Nationstar Mortgage to mischaracterize Nationstar Mortgage's rejected $1100 tender to close the 5/8/14 $367,500 auction.com sale, authenticated Ombudsman's log shows there was no notice of sale in effect when the 8/15/14 sale was held that was uncovered during the prior proceedings, so she reasserts those claims in the current case. The claim that Red Rock wrongly retained the proceeds of the sale was on page 18-19 of the 1/31/17 Cross-Claim vs. Sun City Anthem, but was never heard because Tobin was prohibited from adding back in the 5 of 6 causes of actions that were withdrawn pending completion of mediation. Tobin's individual motions and notices were all stricken from the record unheard.

15. The Complaint specifically brings claims against all of the Defendants for quiet title, unjust enrichment, and declaratory relief based entirely on allegations that Red Rock wrongfully foreclosed on the Property.

Disagree. The complaint speaks for itself and the summary is inadequately simple and incorrect. The claim against Nationstar Mortgage is that it never was the beneficial owner of the Hansen deed of trust, and is judicially estopped from claiming to own it now. However, because Nationstar Mortgage misrepresented to the court that Tobin's choosing to move to void the sale subject to the Hansen Deed of Trust meant that Tobin/Gordon B. Hansen Trust and Nationstar Mortgage were not opposing parties. Nationstar Mortgage therefore "settled out of court" and dropped its quiet title claims without meeting its burden of proof. Further, if the sale was valid to extinguish the Gordon B. Hansen Trust's interest, then it was valid to extinguish the Hansen Deed of Trust. Also, Nationstar Mortgage & Red Rock both concealed that the Nationstar Mortgage offer of $1100 and the 3/28/14 Red Rock Financial Services pay off demand to Chicago title the complaint against Jimijack was that the deed was fraudulent and inadmissible per NRS 111.345. All other defendant's deeds that stemmed from Jimijack's are void as well. These are new claims never heard.

16. The Complaint brings the above claims against the Jimijack Defendants and Chiesi Defendants presumably because those Defendants obtained interests in the Property after foreclosure. The Complaint alleges that Nationstar was the servicer on the Deed of Trust on the Property at the time of foreclosure, but the Complaint does not specify why Nationstar was named as a defendant in the current action.

Nationstar Mortgage did not admit that it was only the servicer and not the beneficiary until after the end of discovery, and then they immediately contradicted it by recording a claim that contradicted its previous claim of being the beneficiary. Nationstar Mortgage recorded false claims related to the disputed Hansen DOT on 12/1/14, two on 3/8/19, 1/22/15, 8/17/15, and 6/3/19. In settlement with the other parties, the Jimijack-Nationstar Mortgage settlement, they decided to recording documents on 5/1/19 and 5/23/19 which clouded the title with reassignments of the Stokes-CFS DOT on 6/4/19 and 7/17/19. Chiesi/Quicken defendants recorded claims adverse to Tobin's claimed interest on 12/27/19 during the pendency of these proceedings and the appeal of the prior case. NSM reconveyed the Hansen deed of trust to Joel Stokes as an individual instead of to the estate of the borrower; while the Stokes-Civil Financial Services Deed of Trust still encumbered the property.

17. On June 23, 2020, Red Rock filed a motion to dismiss arguing, in part, that all of Tobin's claims are barred by the doctrines of claim preclusion and nonmutual claim preclusion. The remaining Defendants all properly joined Red Rock's motion.

Claims preclusion is not supported by the facts. Tobin's individual claims in the prior case were not heard. Nationstar Mortgage's claims were not heard because they were dismissed without Tobin's consent, allegedly in order to evade judicial scrutiny of any evidence, and creating a side deal with Jimijack to thwart Tobin's ownership interest. Jimijack didn't have any claims to adjudicate, but somehow won without any claims or any evidence.

Different parties, different claims, no fair adjudication previously equals no applicability of claims preclusion doctrine.

18. In their joinders, the Chiesi Defendants and the Jimijack Defendants requested this Court grant them attorney's fees and costs for defending against Tobin's claims. The Jimijack Defendant's Motion for Attorney's Fees and Costs were pursuant to EDCR Rule 7.60(b)(1) and/or (3).

The attorney fees and costs are separate matters and should not be included in the Order granting motion to dismiss.

Sincerely,

/s/ John W. Thomson

John W. Thomson. Esq.

JWT/ac

cc: Nona Tobin

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Nona Tobin, Plaintiff(s)	CASE NO: A-19-799890-C
vs.	DEPT. NO. Department 22
Joel Stokes, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

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

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