

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT ELLIS LINCICOME, JR;
AND VICENTA LINCICOME,

Appellants,

v.

BRECKENRIDGE PROPERTY
FUND 2016, LLC,

Respondent.

Supreme Court Case No. 86324
District Case No: 18-JV-05120
Electronically Filed
Jan 05 2024 05:31 PM
Elizabeth A. Brown
Clerk of Supreme Court

REPLY TO APPELLANTS RESPONSE TO ORDER TO SHOW CAUSE

The Lincicomes' Response does not show this Court has jurisdiction because it fails to show all causes of action below were resolved by the district court. To date, this jurisdictional defect has not been corrected. The two claims remaining below are a slander of title claim against the Lincicomes, and a crossclaim against Prof-2013-M4 Legal Title Trust, alleging wrongful foreclosure/recission and restitution.

As such, the district court has not yet entered a final judgment resolving all claims of all parties. *See* NRAP 3A(b)(1). A final judgment is one that finally resolves all claims and issues against all parties to an action and leaves nothing to the district court's consideration except post judgment issues such as attorney fees and costs. *Lee v. GNLV, Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). There

can be only one final judgment in a case. *Alper v. Posin*, 77 Nev. 328, 363 P.2d 502 (1961), *overruled on other grounds by Lee*, 116 Nev. at 426, 996 P.2d at 417.

Therefore, dismissal of this appeal is appropriate until a final judgment is properly rendered below.

On October 3, 2019, Breckenridge filed Counterclaims against the Lincicomes in the underlying case, alleging, among other causes of action, slander of title. *See* Intervenor's Counterclaim, attached hereto as Exhibit A, at ¶ 28-31. The district court entered an order on February 10, 2023, granting Respondent's Motion for Summary Judgment of all remaining counterclaims against Appellants, *except* the slander of quiet title claim, which remains unresolved. *See* Order Granting in Part Respondent's Motion for Summary Judgment on its Remaining Claims, attached hereto as Exhibit B, at pg. 11, ¶ 1.

The Lincicomes are correct that the district court denied Breckenridge's Motion for Summary Judgment on the slander of title claim and further opined Breckenridge could not prevail on that claim. Despite this, to the undersigned's knowledge, the district court neither awarded the Lincicomes' summary judgment on nor dismissed the claim.

On October 2, 2020, Respondent filed a Crossclaim against Prof-2013-M4 Legal Title Trust, alleging wrongful foreclosure/recission and restitution. *See*

Respondent's Crossclaim, attached hereto as Exhibit C, at ¶ 24-27. To date, Respondent's underlying crossclaim has not yet been decided.

This crossclaim simply appears to have been overlooked by the parties owing to subsequent decisions made by the district court. It has neither been substantively pursued nor defended. Nevertheless, to the undersigned's knowledge, the crossclaim has never been dismissed and remains an active claim.

A draft stipulation resolving the slander of title claim was circulated, but it does not appear to have been finalized, signed, or filed. To date, no stipulation dismissing the crossclaim has been circulated, but it is not expected Prof-2013-M4 Legal Title Trust will resist any such effort.

Appeals are only permitted from final judgments. NRAP 3A(b)(1). This requirement is jurisdictional. As two claims remain unresolved in the district court, those claims must be finalized below before an appeal may be brought before this Court. As such, the Lincicomes' appeal is premature and should be dismissed.

DATED this 5th day of January, 2024.

HUTCHISON & STEFFEN, PLLC

/s/ Robert E. Werbicky

By: _____

Robert E. Werbicky (6166)

Peccole Professional Park

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rwerbicky@hutchlegal.com

Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, PLLC and that on this date the **REPLY TO APPELLANTS RESPONSE TO ORDER TO SHOW CAUSE** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

ALL COUNSEL ON SERVICE LIST

DATED this 5th day of January, 2024.

/s/ Kaylee Conradi

An employee of Hutchison & Steffen, PLLC

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EXHIBIT PAGE ONLY

EXHIBIT A

HUTCHISON & STEFFEN
A PROFESSIONAL LLC

FILED

2019 OCT -3 PM 3:25

TANYA SCERINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

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Attorney for Defendant in Intervention / Counterclaimant

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

ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

Plaintiff,

v.

SABLES, LLC, a Nevada limited liability
company, as Trustee of the Deed of Trust
given by Vicenta Lincicome and dated
5/23/2007; FAY SERVICING, LLC, a
Delaware limited liability company and
subsidiary of Fay Financial, LLC; PROF-
2013-MF LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for
BANK OF AMERICA, N.A.; and DOES 1-
50.,

Defendants.

BRECKENRIDGE PROPERTY FUND
2016, LLC,

Defendant in Intervention.

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

INTERVENOR'S COUNTERCLAIM

Caption continued on next page.

1 BRECKENRIDGE PROPERTY FUND
2016, LLC,

2 Counterclaimant,

3 vs.

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

7 Counterdefendants.

8 COMES NOW, BRECKENRIDGE PROPERTY FUND 2016, LLC
9 (“Counterclaimant”), by and through its counsel of record, HUTCHISON & STEFFEN,
10 PLLC and WEDGEWOOD, LLC, and hereby files this Counterclaim against ALBERT
11 ELLIS LINCICOME, JR., VICENTA LINCICOME, and DOE OCCUPANTS 1-5
12 (collectively “Counterdefendants”) as follows:

13 **JURISDICTION AND VENUE**

14 1. This court has subject matter jurisdiction over this action under § 6, Article
15 6 of the Nevada Constitution.

16 2. This Court has subject matter jurisdiction over this matter.

17 3. Defendants has sufficient minimum contacts with Nevada so as to allow
18 this Court to exercise jurisdiction over it.

19 4. Venue is proper in this Judicial District under NRS § 13.010 and 13.040.

20 **PARTIES**

21 5. The following are real parties in interest pursuant to NRCP 17.

22 6. ALBERT ELLIS LINCICOME, JR. and VICENTA LINCICOME are
23 individual residents of Lyon County, Nevada residing at the property located at 70
24 Riverside Drive, Dayton, Nevada 89403 (“Subject Property”).

7. The Defendants DOE OCCUPANTS 1-5 are set forth herein pursuant to Rule 10 of the Nevada Rules of Civil Procedure, are all unknown persons or business entities currently unknown to Counterclaimant who have wrongfully remained in the Subject Property, and who are believed to be responsible for the events and happening referred to in this Complaint, causing injuries and damages to Counterclaimant. At such time when the names of said DOE OCCUPANTS 1-5 have been ascertained, Counterclaimant will request leave from the Court to insert their true names and capacities and join them in this action.

FACTUAL ALLEGATIONS

8. On October 12, 2018, Sables, LLC recorded a Notice of Trustee's Sale ("NOS") setting a foreclosure sale date for the Subject Property because the Counterdefendants were in default of loan obligations.

9. Counterdefendants subsequently filed the underlying Complaint in this action and recorded a Lis Pendens with the county recorder on November 8, 2018 at Document No. 588549, seeking to postpone or cancel the scheduled foreclosure sale.

10. On December 31, 2018, this Court entered an Order enjoining Sables, LLC from foreclosing on the Subject Property on the condition that Counterdefendants post a bond in the amount of \$172,610.67 and additional security in the amount of \$2,105.10 per month thereafter. (Exhibit #1).

11. The Counterdefendants failed to post the required bond and security, which resulted in the foreclosure sale proceeding forward on January 4, 2019. (*Id.*).

12. Counterclaimant purchased the Subject Property at the NRS 107 foreclosure sale for \$294,000.01 and took title thereto. (Exhibit #2).

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1 13. Despite Counterclaimant's sole and superior ownership interest in the
2 Subject Property, the Lis Pendens remains a cloud on title and negatively affects
3 Counterclaimant's interests in the Subject Property.

4 14. The Counterdefendants were in possession of the Subject Property at the
5 time Counterclaimant purchased the Subject Property and have been in possession since
6 that date.

7 15. On or about January 28, 2019, Counterclaimant served a Three-Day Notice
8 to Quit to the Counterdefendants. (Exhibit #3).

9 16. Notwithstanding the Three-Day Notice to Quit, the Counterdefendants have
10 remained in possession of the Subject Property up to and including the present time.

11 17. The Counterclaimant has made repeated demand on the Counterdefendants
12 to vacate the Subject Property, but the Counterdefendants, without cause or reason, have
13 refused to vacate the Subject Property.

14 18. The Counterdefendants continue in possession of the Subject Property
15 notwithstanding the termination of the tenancy by service of the aforesaid Three-Day
16 Notice.

17 19. The Counterdefendants' actions are in violation of NRS 40.250-255 and the
18 Counterclaimant is entitled to possession of the Subject Property as prescribed in NRS
19 40.290-420.

20 20. Pursuant to NRS 40.360, Counterclaimant is further entitled to treble
21 damages occasioned by Counterdefendants' unlawful detainer, including, but not limited
22 to, the reasonable rental value of the Subject Property as the Counterdefendants have been
23 in possession from January 4, 2019 until the time that Counterdefendants vacate the
24 Subject Property.

21. As a result of the Counterdefendants' actions, the Counterclaimant has suffered damages in an amount in excess of \$15,000.00, but which amount will be determined at the time of trial.

22. It has become necessary for the Counterclaimant to retain the services of counsel to prosecute these claims and Counterclaimant is entitled to any and all costs incurred herein including, without limitation, any and all attorneys fees.

FIRST CAUSE OF ACTION
(Quiet Title)

23. Counterclaimant repeats and realleges each and every allegation contained in paragraphs 1 through 22 inclusively and incorporates them by reference as if fully set forth herein.

24. Counterclaimant owns in fee simple title to the Subject Property.

25. Counterdefendants' claim, or may have claimed, an interest in the Subject Property adverse to Counterclaimant; Counterclaimant' claims are without any right, estate, title, lien, or interest in the Subject Property or any part thereof.

26. Counterclaimants' claim of any interest, estate, right, title or lien in or to the Subject Property is adverse to Counterclaimant and such claim or claims constitute a cloud on Counterclaimant's Property.

27. Counterclaimant is entitled to a judgment from this Court pursuant to NRS 40.010, *et seq.*, quieting title to the Subject Property in Counterclaimant's favor and declaring that the Counterdefendants do not have any estate, right, title, lien or interest in or to the Subject Property.

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1 **SECOND CAUSE OF ACTION**
2 **(Slander of Title)**

3 28. Counterclaimant repeats and realleges each and every allegation contained
4 in paragraphs 1 through 27 inclusively and incorporates them by reference as if fully set
5 forth herein.

6 29. Counterdefendants, by allowing the November 8, 2018 Lis Pendens to
7 remain recorded against the Subject Property, has made false and malicious
8 communications disparaging to Counterclaimant's title in the Subject Property.

9 30. Counterclaimant has been damaged by the conduct of the
10 Counterdefendants in an amount in excess of \$15,000.00, which amount will be proven at
11 the time of trial of this matter.

12 31. The conduct of the Counterdefendants has been fraudulent and malicious
13 entitling the Counterclaimant to punitive damages against the Counterdefendants in an
14 amount sufficient to punish the Counterdefendants and to deter similar conduct in those
15 similarly situated.

16 **THIRD CAUSE OF ACTION**
17 **(Writ of Restitution)**

18 32. Counterclaimant repeats and realleges each and every allegation contained
19 in paragraphs 1 through 31 inclusively and incorporates them by reference as if fully set
20 forth herein.

21 33. The Counterclaimant is entitled to a Writ of Restitution for the Subject
22 Property pending the outcome of this matter.

23 ///

24 ///

1 34. The Counterdefendants should be required to pay reasonable rents for the
2 period of time from service of the Three-Day Notice until such time as the
3 Counterdefendants vacate the Subject Property.

4 **FOURTH CAUSE OF ACTION**
5 **(Unjust Enrichment)**

6 35. Counterclaimant repeats and realleges each and every allegation contained
7 in paragraphs 1 through 34 inclusively and incorporates them by reference as if fully set
8 forth herein.

9 36. On or about January 4, 2019, the Counterclaimant became the owner of the
10 Subject Property.

11 37. Counterclaimant is entitled to sole use and possession of the Subject
12 Property.

13 38. The Counterdefendants have unjustly retained possession of the Subject
14 Property, rightfully owned by the Counterclaimant, against the fundamental principles of
15 justice, equity, and good conscience.

16 39. Despite repeated demands to vacate the Subject Property, the
17 Counterdefendants have remained in possession of the Subject Property up to and
18 including the present time without cause or reason and refused to vacate the Subject
19 Property and give Counterclaimant peaceable restitution of the Subject Property.

20 40. The Counterdefendants have not paid any rents or monies to
21 Counterclaimant for possession of the Subject Property from the time the Counterclaimant
22 became the owner of it.

23 ///

24 ///

41. The Counterdefendants have benefited from the possession of the Subject Property, without cause or reason, to the inequitable and unjust detriment of the Counterclaimant.

42. The Counterdefendants have been unjustly enriched to the detriment of the Counterclaimant. The Counterdefendants continual possession of the Subject Property, despite Counterclaimant's repeated demands that the Counterdefendants vacate the Subject Property, has resulted in the Counterclaimant suffering damages in an amount in excess of \$15,000.00, but which amount will be determined at the time of trial.

FIFTH CAUSE OF ACTION
(Rent or Monies for Possession of the Subject Property)

43. Counterclaimant repeats and realleges each and every allegation contained in paragraphs 1 through 42 inclusively and incorporates them by reference as if fully set forth herein.

44. On or about January 4, 2019, the Counterclaimant became the owner of the Subject Property.

45. The Counterclaimant is entitled to use and possession of the Subject Property.

46. The Counterdefendants have retained possession of the Subject Property, rightly owned by the Counterclaimant.

47. Despite repeated demands to vacate the Subject Property, the Counterdefendants have remained in possession of the Subject Property up to and including the present time without cause or reason, and refuses to vacate the Subject Property and give Counterclaimant peaceable restitution of same.

///

48. The Counterdefendants have not paid any rents or monies to the Counterclaimant for possession of the Subject Property from the time the Counterclaimant became the owner of it.

49. The Counterdefendants have benefited from possession of the Subject Property, without cause or reason, and has not paid Counterclaimant, the rightful owner of the Subject Property, any rents or monies for possession of the Subject Property.

50. Because the Counterdefendants have received the benefit from possession of the Subject Property owned by the Counterclaimant, the Counterdefendants should be compelled to pay Counterclaimant rents or monies for possession of the Subject Property in an amount that will be determined at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, Counterclaimant prays for judgment against Counterdefendants as follows:

1. For damages against the Counterdefendants in an amount in excess of \$15,000.00;
2. For restitution and possession of the Subject Property;
3. For a Writ of Restitution without bond;
4. For the Court to quiet title to the Subject Property in favor of Counterclaimant;
5. For the Court to declare that title in the Subject Property is vested in the Counterclaimant free and clear of all other liens, Lis Pendens', and encumbrances and that the Counterdefendants herein have no estate, right, title or interest in the Subject Property.

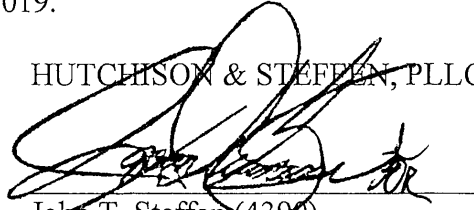
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6. For an award of attorney's fees and litigation costs incurred; and
7. Such other and further relief as may be deemed just and proper under the circumstances.

DATED this 30 day of October, 2019.

HUTCHISON & STEFFEN, PLLC



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*Attorney for Defendant in Intervention /
Counterclaimant*

CERTIFICATE OF SERVICE

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

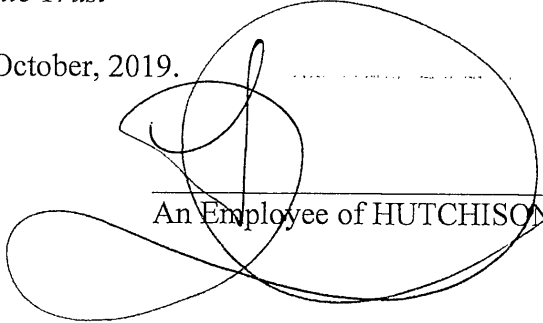
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Attorney for Bank of America

DATED this 3 day of October, 2019.


An Employee of HUTCHISON & STEFFEN

LIST OF EXHIBITS

INTERVENOR'S COUNTERCLAIM

18-CV-01332

Exhibit No.	DOCUMENT TITLE	# OF PAGES
1	Order date 12/31/2018	8
2	Deed Upon Sale	4
3	Three Day Notice to Quit	4

EXHIBIT 1

EXHIBIT 1

FILED

2018 DEC 31 AM 10:48

TANYA GEE RIFE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Andrea Andersen

Case No: 18-CV-01332

Dept.: II

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

ALBERT ELLIS LINCICOME, JR., and
VICENTA LINCICOME,

Plaintiffs,

v.

SABLES, LLC, a Nevada limited liability
company, as Trustee of the Deed of Trust
given by Vicenta Lincicome and dated
5/23/2007; FAY SERVICING, LLC, a
Delaware limited liability company and
subsidiary of Fay Financial, LLC; PROF-
2013-M4 LEGAL TITLE TRUST by U.S.
BANK, N.A., as Legal Title Trustee; for
BANK OF AMERICA, N.A.; and DOES 1-50.

Defendants.

ORDER

THIS MATTER comes before the Court upon the *Application for Ex Parte Restraining Order, Preliminary Injunction and Permanent Injunction* (hereinafter "Application") filed on November 7, 2018, by Plaintiffs Albert Ellis Lincicome, Jr., and Vicenta Lincicome (hereinafter "Lincicomes"), thereby seeking a restraining order, preliminary injunction and permanent injunction upon the sale of the Lincicomes' residence by Sables, LLC, at public auction.

On November 8, 2018, the Court entered an Order temporarily enjoining and restraining Sables, LLC, from conducting a trustee's sale of the Lincicomes' residence, and set a hearing upon the application to occur on November 20, 2018.

ORDER

PAGE 1 OF 8

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1 On November 14, 2018, Defendants Prof-2013 M4-Legal Title Trust, by U.S. Bank,
2 N.A., as Legal Title Trustee (hereinafter "US Bank") and Fay Servicing, LLC (hereinafter "Fay
3 Servicing"), filed their *Response to Application for Ex Parte Restraining Order, Preliminary*
4 *Injunction and Permanent Injunction* (hereinafter "Response"). Defendants argued in their
5 Response that Plaintiff's arguments lack merit because Plaintiffs had previously consented to
6 foreclosure, and because violations of the applicable Homeowners Bill of Rights statute are
7 not material.

8 On November 20, 2018, the Court held a hearing on the Application and Response.
9 The Lincicomes attended with their attorney, Michael G. Millward, Esq., of Millward Law, Ltd.,
10 and US Bank and Fay Servicing appeared through their counsel Ramir M. Hernandez, Esq., of
11 Wright, Finlay & Zak, LLP. As well, Defendant Bank of America, N.A., (hereinafter "Bank of
12 America") appeared telephonically through its counsel Scott Lachman, Esq., of Akerman,
13 LLP.

14 Counsel at the hearing stipulated to the admission of the evidence presented in the
15 Application and Response previously filed before the Court as well as documents presented
16 at the hearing on behalf of the Lincicomes. Additionally, Counsel stipulated that the
17 Lincicomes' respective Affidavits filed with the Application be considered as evidence by the
18 Court as testimony.

19 The Court having considered the documentary evidence, testimony and arguments
20 presented hereby makes the following FINDINGS OF FACT:

21 1. That on May 23, 2007, in connection with the purchase of the residence located
22 at 70 Riverside Drive, Dayton, Nevada 89403, Vicenta Lincicome (hereinafter "Vicenta")
23 executed a Promissory Note in favor of Sierra Pacific, and also a Deed of Trust (hereinafter
24 "2007 DOT") in favor of Mortgage Electronic Registration Systems, Inc. (hereinafter referred
25 to as "MERS"), as the nominee for Sierra Pacific, to secure the mortgage loan;

26 2. That on or about July 11, 2009, Bank of America offered Vicenta a Loan
27 Modification Agreement (hereinafter "LMA") which modified and extended the maturity date
28

ORDER

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AA001560

1 of the 2007 DOT from June 1, 2037, to August 1, 2049 and further modified the interest rate
2 applicable to the 2007 DOT by reducing the same from 6.875% to 4.875%;

3 3. That the LMA provided that on September 1, 2014, the interest rate applicable
4 to the 2007 DOT would increase from 4.875% to 5.375%;

5 4. That the LMA capitalized existing arrears of September 1, 2009, and modified
6 the principal balance owed under the 2007 DOT from \$381,150 to \$417,196.58;

7 5. That on July 31, 2009, Vicenta accepted Bank of America's offer to modify the
8 2007 DOT, and executed the LMA and sent the document to Bank of America;

9 6. That on September 1, 2009, the Lincicomes made a payment of \$2,272.62 to
10 Bank of America upon the 2007 DOT as modified by the LMA;

11 7. That on September 1, 2009, Bank of America accepted payment, but was
12 unable to find the modified loan in its system;

13 8. That on October 1, 2009, Bank of America refused payment from the
14 Lincicomes, because it did not have a record that the 2007 DOT had been modified by the
15 LMA;

16 9. That the Lincicomes' requests to make payment on the 2007 DOT as modified
17 by the LMA between October 1, 2009 and December 2011, were refused by Bank of
18 America;

19 10. That the Lincicomes filed a petition for Chapter 13 Bankruptcy protection
20 before the United States Bankruptcy Court, District of Nevada, on April 6, 2010, under Case
21 No. 10-51219, and listed Bank of America as a secured creditor;

22 11. That Bank of America did not file a claim or appear in the Lincicomes Chapter
23 13 Bankruptcy case prior to confirmation of the Lincicomes' Chapter 13 Plan;

24 12. That on May 4, 2011, Bank of America recorded a fully executed copy of the
25 July 11, 2009 LMA with the office of the Lyon County Recorder, as Document No. 475808;

26 13. That the Lincicomes were not made aware of the execution and recording of
27 the LMA until 2017;

28 //

ORDER

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1 14. That on November 26, 2014, Bank of America appeared in the Lincicomes'
2 Chapter 13 Bankruptcy case and filed a Motion for Relief of Stay seeking relief from the
3 automatic stay, pursuant to 11 U.S.C. § 362;

4 15. That Bank of America's Motion for Relief of Stay did not inform the Lincicomes
5 or the Bankruptcy Court that the LMA had been executed and recorded;

6 16. That on June 15, 2015, the Bankruptcy Court Clerk granted the Lincicomes a
7 discharge of all of their scheduled debts;

8 17. That on August 1, 2015, Bank of America transferred the servicing of the 2007
9 DOT as modified by the LMA to Fay Servicing;

10 18. That all statements provided by Fay Servicing to the Lincicomes between
11 August 10, 2015 and October 10, 2018, do not reflect that the terms of the 2007 DOT had
12 been modified by the LMA.

13 19. All statements between August 10, 2015 and October 10, 2018, reported the
14 principal balance owed, the applicable interest rate, the payment amount, the total
15 arrearage owed, as well as the total number of payments remaining due;

16 20. That on November 10, 2015, Bank of America assigned its interest in the Deed
17 of Trust to PROF-2013-M4 Legal Title Trust, by U.S. Bank National Association, as Legal Title
18 Trustee (hereinafter "US Bank");

19 21. That on November 3, 2017, Sables, LLC, as then acting Trustee under the 2007
20 DOT, recorded its Notice of Breach and Default and of Election to Sell the Real Property
21 under Deed of Trust (hereinafter "NOD") with the Lyon County Recorder as Document No.
22 572258;

23 22. That the NOD provides that the "subject Deed of Trust was modified by Loan
24 Modification Agreement recorded as Instrument 475808 . . . on 5/4/2011;"

25 23. That the NOD provides that all monthly installments from "9/1/2008" forward
26 are due, instead of 9/1/2009 as required by the LMA;

27 24. That the NOD provides that the principal balance owed is \$381,150.00, instead
28 of \$417,196.58 as provided in the LMA;

ORDER

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1 25. That on October 12, 2018, Defendant Sables, LLC, recorded its Notice of
2 Trustee's Sale with the Lyon County Recorder as Document No. 587470, providing that the
3 Property would be sold by public auction on November 9, 2018, at 11:00 AM, at the Lyon
4 County Court House on 31 S. Main Street, Yerington, Nevada 89447;

5 26. That under the circumstances the foreclosure of the Lincicome's residence
6 would cause them irreparable injury;

7 27. The LMA appears to be a valid modification of the 2007 DOT;

8 28. That based on the record before the Court at the hearing neither Fay Servicing
9 nor Sables has accurately reported the total balance owed Vicenta Lincicome under the 2007
10 DOT as modified by the LMA;

11 29. That based on the record before the Court at the hearing neither Fay Servicing
12 nor Sables has accurately reported the principal obligation owed by Vicenta Lincicome under
13 the 2007 DOT as modified under the LMA;

14 30. That based on the record before the Court at the hearing neither Fay Servicing
15 nor Sables has accurately reported the date through which 2007 DOT as modified under LMA
16 is paid; and

17 31. That based on the record before the Court at the hearing neither Fay Servicing
18 nor Sables has accurately reported the current interest rate effective under the 2007 DOT as
19 modified under the LMA.

20 The Court hereby enters the following Conclusions of Law:

21 1. The Homeowners Bill of Rights codified under NRS 107.400 through NRS
22 107.560 is applicable to this foreclosure matter;

23 2. That Plaintiffs established that Irreparable Injury would result if Defendant
24 Sables, LLC, was permitted to exercise the power of sale and foreclose on the Plaintiffs' real
25 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, Assessor Parcel
26 Number 29-401-17;

27 //

28 //

ORDER

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AA001563

1 3. That Plaintiffs have established that they will succeed on their claim that
2 Defendants have violated NRS 107.500(1)(b) for failing to provide accurate information
3 required to be provided prior to the initiation of a foreclosure; and

4 4. That Plaintiffs have established to the Court's satisfaction that they were likely
5 to succeed on the merits of their claims pertaining to material violations of the Homeowner's
6 Bill of Rights pursuant to NRS 107.400 through NRS 107.560.

7 THEREFORE, GOOD CAUSE APPEARING, the Court enters the following orders:

8 1. That Sables, LLC, is hereby enjoined from selling at public auction the real
9 property located at 70 Riverside Drive, Dayton, Lyon County, Nevada, and identified in the
10 Notice of Trustee's Sale recorded with the Office of the Lyon County Recorder as Document
11 No. 587470, until further order of the Court;

12 2. That Plaintiffs shall post bond a bond in the amount of \$172,610.67 by
13 December 20, 2018, and shall file with the Court and serve opposing counsel with a Notice of
14 Bond filing;

15 3. That the injunction shall be effective against Defendants so long as bond is
16 posted and Plaintiffs post additional security in the sum of \$2,105.10 on January 20, 2019,
17 and on the 20th day of each month thereafter with the Third Judicial District Court Clerk's
18 office;

19 4. Plaintiffs shall file a notice of compliance with the requirement to pay additional
20 security with the Third Judicial District Court Clerk and shall contemporaneously serve the
21 same upon Defendants after making payment of additional security as set forth above;

22 5. That failure of Plaintiffs to timely post a bond and provide notice of bond by
23 December 20, 2018, shall relieve Defendants of their duty to comply with this injunction
24 enjoining the sale of 70 Riverside Drive, Dayton, Lyon County, Nevada, until a filing of notice
25 of bond and a notice of compliance of Plaintiffs' satisfaction of the requirement to post
26 additional security with the Third Judicial District Court Clerk in this matter are thereafter
27 served upon Defendants; and

28 //

ORDER

PAGE 6 OF 8

AA001564

6. That the Court's orders entered in the Court's November 8, 2018 Order and the Court's November 14, 2018 Corrected Order, pertaining to the cancellation of the Notice of Sale, are hereby set aside.

IT IS SO ORDERED.

Dated this 31st day of December, 2018

LA

DISTRICT JUDGE

AFFIRMATION

The undersigned hereby affirms pursuant to NRS 239B.03 that the foregoing does not contain the social security number of any person, or other personal information as defined by NRS 603A.040.

Reviewed, approved and submitted this 18 day of December, 2018

Michael G. Millward, Esq.
Nevada Bar No. 11212
Millward Law, Ltd.
1591 Mono Ave.
Minden, NV 89423

1 Reviewed, approved and submitted this 18th day of December, 2018.

2
3 

4 Ramir M. Hernandez, Esq.
5 Nevada Bar No. 13146
6 Wright, Finlay & Zak
7 7785 W. Sahara Ave., Suite 200
8 Las Vegas, NV 89117
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EXHIBIT 2

EXHIBIT 2

70 RIVERSIDE DR

Doc #: 591393

01/25/2019 08:21 AM Page: 1 of 2

OFFICIAL RECORD

Requested By: FIRST AMERICAN TITLE INSURANCE C

Lyon County, NV
Margie Kassebaum, Recorder

Fee: \$38.00 RPTT: \$1,148.55

Recorded By: Inhumildad

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:
Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Recorded As An Accommodation

Forward Tax Statements to **Only Without Liability**
the address given above

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55
The Grantee Herein **WAS NOT** the Foreclosing Beneficiary.
The Amount of the Unpaid Debt was **\$671,249.37**
The Amount Paid by the Grantee was **\$294,000.01**
Said Property is in the City of **DAYTON**, County of **Lyon**

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby **GRANT** and **CONVEY** to

Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of **Lyon**, State of **Nevada**, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of **Lyon**, State of **Nevada**, described as follows:
Lot 42 as shown on the official map of **GOLD CANYON ESTATES, PHASE 2**, filed in the office of the **Lyon** County, Nevada Recorder, on **October 20, 2005**, as Document No. **365687**.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the **Carson River**.

Property Address: **70 RIVERSIDE DRIVE, DAYTON, Nevada 89403**

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by **VICENTA LINCICOME, A MARRIED WOMAN** as Trustor, dated **5/23/2007** of the Official Records in the office of the Recorder of **Lyon**, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on **5/25/2007**, as Instrument No. **407150**, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument **475808** and recorded on **5/4/2011**, of official records.

A.P.N.: 029-401-17

RECORDING REQUESTED BY:

AND WHEN RECORDED TO:

Breckenridge Property Fund, 2016, LLC
2320 Potosi St. Ste 130
Las Vegas, NV 89146

Recorded As An Accommodation

Forward Tax Statements to
the address given above

Only Without Liability

SPACE ABOVE LINE FOR RECORDER'S USE

T.S. # 16-42397

Order #: 160069595-NV-VOO

TRUSTEE'S DEED UPON SALE

Transfer Tax: \$ 1148.55

The Grantee Herein **WAS NOT** the Foreclosing Beneficiary.

The Amount of the Unpaid Debt was \$671,249.37

The Amount Paid by the Grantee was \$294,000.01

Said Property is in the City of DAYTON, County of Lyon

SABLES, LLC, a Nevada limited liability company, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby **GRANT** and **CONVEY** to

Breckenridge Property Fund, 2016, LLC

(herein called Grantee) but without covenant or warranty, expressed or implied, all rights, title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of Lyon, State of Nevada, described as follows:

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LYON, STATE OF NEVADA, AND IS DESCRIBED AS FOLLOWS:

All that certain real property situate in the County of Lyon, State of Nevada, described as follows:

Lot 42 as shown on the official map of GOLD CANYON ESTATES, PHASE 2, filed in the office of the Lyon County, Nevada Recorder, on October 20, 2005, as Document No. 365687.

EXCEPTING THEREFROM all that portion thereof, lying below the natural ordinary high water line of the Carson River.

Property Address: 70 RIVERSIDE DRIVE, DAYTON, Nevada 89403

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by **VICENTA LINCICOME, A MARRIED WOMAN** as Trustor, dated 5/23/2007 of the Official Records in the office of the Recorder of Lyon, Nevada under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Breach and Election to Sell under the Deed of Trust recorded on 5/25/2007, as Instrument No. 407150, The subject Deed of Trust was modified by Loan Modification Agreement recorded as Instrument 475808 and recorded on 5/4/2011, of official records.

TRUSTEE'S DEED UPON SALE

T.S. #: 16-42397

Order #: 160069595-NV-VOO

Trustee having complied with all applicable statutory requirements of the State of Nevada and performed all duties required by the Deed of Trust including sending a Notice of Breach and Election to Sell within ten days after its recording and a Notice of Sale at least twenty days prior to the Sale Date by certified return receipt mail, postage prepaid to each person entitled to notice in compliance with Nevada Revised Statutes 107.080.

All requirements per Nevada Statutes regarding the mailing, personal delivery and publication of copies of Notice of Default and Election to Sell under Deed of Trust and Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 1/4/2019. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$ \$294,000.01, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, SABLES, LLC, a Nevada limited liability company, as Trustee, has this day, caused its name to be hereunto affixed.

Date: 1/15/2019

SABLES, LLC, a Nevada limited liability company

Geoffrey Neal, Trustee Sale Officer

Geoffrey
Neal

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA
County of ORANGE

On 1/15/2019 before me, the undersigned, J. Develasco Notary Public, personally appeared Geoffrey Neal who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

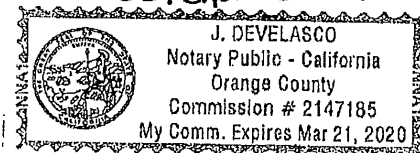
WITNESS my hand and official seal.

Signature _____ (Seal)

J. Develasco

J. Develasco

J. Develasco
#2147185 Expires 3/21/20



STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)

- a) 029-401-17
b) _____
c) _____
d) _____

2. Type of Property:

- | | |
|--|---|
| a) <input type="checkbox"/> Vacant Land | b) <input checked="" type="checkbox"/> Single Fam. Res. |
| c) <input type="checkbox"/> Condo/Twnhse | d) <input type="checkbox"/> 2-4 Plex |
| e) <input type="checkbox"/> Apt. Bldg | f) <input type="checkbox"/> Comm'l/Ind'l |
| g) <input type="checkbox"/> Agricultural | h) <input type="checkbox"/> Mobile Home |
| <input type="checkbox"/> Other | |

FOR RECORDER'S OPTIONAL USE ONLY

Book: _____ Page: _____
Date of Recording: _____
Notes: _____

3. a. Total Value/Sales Price of Property \$ \$294,000.01
b. Deed in Lieu of Foreclosure Only (value of property) _____
c. Transfer Tax Value: \$ \$294,000.01
d. Real Property Transfer Tax Due \$ 1148.55

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity AGENT

Signature _____ Capacity AGENT

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Sables, LLC, a Nevada
limited liability company
Address: 3753 Howard Hughes Parkway,
Suite 200, Las Vegas, NV 89169

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Breckenridge Property Fund,
2016, LLC
Address: 2320 Potosi St. Ste 130
Las Vegas, NV 89146

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: First American Escrow #: ACCU
Address: 1000 W. Charleston
City: Las Vegas State: NV Zip: 89102

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 3

EXHIBIT 3

THREE-DAY NOTICE TO QUIT

TO: VICENTA LINCICOME
TENANT AND SUBTENANT AND ALL OCCUPANTS
70 RIVERSIDE DR.
DAYTON, NEVADA 89403

Or any occupants of the above-named property or any persons in possession of the above-mentioned property.

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

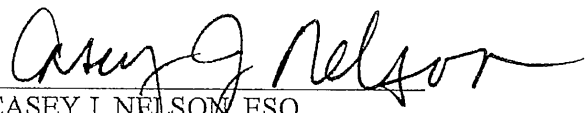
YOU ARE HEREBY NOTIFIED AND DEMAND IS MADE that you surrender possession of the property to the undersigned at or before noon of the third (3) day after receipt of this Notice pursuant to Sections 40.255, 40.280, and 40.290 to 40.420 of the Nevada Revised Statutes.

YOU ARE HEREBY NOTIFIED that if you are a tenant of the prior owner of the Property, you are to refer to the Notice to Tenant which is attached as Exhibit A to this Three-Day Notice to Quit. If you need another copy of the Notice to Tenant, please contact the undersigned below.

UPON YOUR FAILURE TO VACATE OR SURRENDER THE PREMISES AS DEMANDED, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC


CASEY J. NELSON, ESQ.
Nevada Bar # 12259
Office of the General Counsel
2320 Potosi Street, Suite 130
Las Vegas, Nevada 89146

*Attorney for Plaintiff
Breckenridge Property Fund 2016, LLC*

EXHIBIT A

EXHIBIT A

NOTICE TO TENANT

TO: VICENTA LINCICOME
TENANT AND SUBTENANT AND ALL OCCUPANTS
70 RIVERSIDE DR.
DAYTON, NEVADA 89403

PLEASE TAKE NOTICE that the above-described real property has been sold at a foreclosure sale, pursuant to NRS 107 *et seq.*, and VICENTA LINCICOME is no longer the owner of the above-described real property. The new owner is BRECKENRIDGE PROPERTY FUND 2016, LLC.

YOU ARE HEREBY NOTIFIED OF A CHANGE OF OWNERSHIP. The new owner of the property is BRECKENRIDGE PROPERTY FUND 2016, LLC, 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146.

YOU MUST CONTACT US AND ESTABLISH YOUR BONA FIDE TENANCY in the property **within three (3) business days** of receipt of this Notice.

IN ORDER TO ESTABLISH YOUR TENANCY, within three (3) business days of receipt of this Notice you must furnish a copy of your fully executed, current lease or rental agreement and proof of all past payments to Breckenridge Property Fund 2016, c/o the owner's attorney, Casey J. Nelson, Esq., at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Failure to produce valid documentation clearly demonstrating a bona fide tenancy will result in eviction proceedings immediately being brought against all occupants.

A LEASE OR TENANCY shall be considered bona fide only if:

- 1) The mortgagor/prior owner or the child, spouse, or parent of the mortgagor/prior owner under the contract is not the tenant or occupant;
- 2) The lease or tenancy was the result of an arms-length transaction; and
- 3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy

The new owner reserves the right to challenge the authenticity and validity of any purported lease or tenancy based upon other terms, conditions, or factors which appear fraudulent or which are not otherwise standard terms within residential leases in the geographic area.

YOU ARE HEREBY NOTIFIED that if you are a bona fide tenant or subtenant in the property, you must still vacate the property within either 1) 90 days of this notice; or 2) upon the expiration of the remainder of the term of your bona fide lease, whichever date is later.

YOU ARE HEREBY NOTIFIED that you must continue to pay rent to the new owner throughout the remainder of your tenancy in order to avoid eviction proceedings being brought against you for non-payment of rent.

Rent shall be remitted to BRECKENRIDGE PROPERTY FUND 2016, LLC at 2320 Potosi St., Ste. 130, Las Vegas, Nevada 89146. Your failure to pay rent to the new owner throughout the notice period or comply with any other term of the agreement or applicable law shall constitute a breach of the lease or rental agreement and may result in eviction proceedings.

YOU ARE HEREBY NOTIFIED that upon your failure to timely establish your tenancy or upon your failure to fully vacate or surrender the premises as demanded, the undersigned may apply to the Dayton Township Justice Court or other court of appropriate jurisdiction, for an order from the Court granting BRECKENRIDGE PROPERTY FUND 2016, LLC possession of the property. Upon the Court granting such an order the Court may direct the Sheriff or Constable of the County or City to remove the occupant within twenty-four (24) hours after the receipt of the aforesaid order.

DATED this 25th day of January, 2019.

WEDGEWOOD, LLC



CASEY J. NELSON, ESQ.

Nevada Bar # 12259

Office of the General Counsel

2320 Potosi Street, Suite 130

Las Vegas, Nevada 89146

Attorney for Plaintiff

Breckenridge Property Fund 2016, LLC

Attorney or Party without Attorney: Wedgewood, LLC Casey J. Nelson, Esq. (SBN 12259) 2320 Potosi Street, Suite 130 Las Vegas, NV 89146 Telephone No: (702) 305-9157 Attorney For: Plaintiff				For Court Use Only
Ref. No. or File No.: 70 RIVERSIDE DR.				
Insert name of Court, and Judicial District and Branch Court:				
Plaintiff: BRECKENRIDGE PROPERTY FUND 2016, LLC Defendant: VICENTA LINCICOME; TENANT AND SUBTENANT AND ALL OCCUPANTS				
AFFIDAVIT OF SERVICE	Hearing Date:	Time:	Dept/Div:	Case Number:

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Three-Day Notice to Quit, Notice to Tenant
3.
 - a. Party served: Vicenta Lincicome; Tenant and Subtenant and All Occupants
 - b. Person served: Posted
4. Address where the party was served: 70 Riverside Drive, Dayton, NV 89403
5. I served the party:
 - a. By Posting. On: Mon, Jan 28 2019 (2) at: 02:20 PM by posting a copy of the documents in a conspicuous place on the property.
 - b. By Mailing. On: Mon, Jan 28 2019 by mailing a copy of the documents, addressed as shown in item 4, via Certified Mail issued by United States Post Office from: Las Vegas, NV.
6. Person Who Served Papers:
 - a. Toni Ruckman (R-052005, Washoe)
 - b. FIRST LEGAL
2920 N. Green Valley Parkway, Suite 514
Henderson, NV 89014
 - c. (702) 671-4002
 - d. The Fee for Service was:

Pursuant to NRS 53.045

7. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

01/29/2019

(Date)

Toni L Ruckman

(Signature)



AFFIDAVIT OF
SERVICE

3012509
(55105770)

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

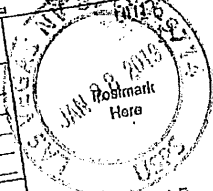
DAYTON, NV 89403

Certified Mail Fee \$3.50
Extra Services & Fees (check box, add fee of \$0.00 per day)
☐ Return Receipt (hardcopy) \$0.00
☐ Return Receipt (electronic) \$0.00
☐ Certified Mail Restricted Delivery \$0.00
☐ Adult Signature Required \$0.00
☐ Adult Signature Restricted Delivery \$0.00

Postage \$0.55

Total Postage and Fees \$6.85

Sent To VICENTA LINCICOME
Street or PO Box TENANT/SUBTENANT/ALL OCCUPANTS
City, State 70 RIVERSIDE DR.
DAYTON, NV 89403-9055



01/28/2019
55105770

Instructions

TS20 S00T 2000 DEPT 9102

INTENTIONALLY LEFT BLANK
EXHIBIT PAGE ONLY

EXHIBIT B

Case No.: 18-CV-01332

Dept. No.: II

The undersigned hereby affirms that
this document does not contain the
social security number of any person.

FILED

2023 FEB 10 PM 1:26

ANDREA ANDERSEN
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT
ANDREA ANDERSEN DEPUTY

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

ALBERT ELLIS LICICOME, JR. and
VICENTA LINCICOME,

Plaintiffs,

vs.

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

Defendants.

ORDER GRANTING IN PART
BRECKENRIDGE PROPERTY FUND
2016'S MOTION FOR JUDGMENT ON
ITS REMAINING CLAIMS

1 BRECKENRIDGE PROPERTY FUND 2016,
2 LLC

3 Counterclaimant,

4 vs.

5 ALBERT ELLIS LICICOME, JR., an
6 individual; VICENTA LINCICOME, an
7 individual; and DOE OCCUPANT 1-5,

8 Counterdefendants.
9

10
11 On August 26, 2022, Breckenridge Property Fund 2016 filed a Motion for Judgment on its
12 Remaining Claims. On September 13, 2022, the Plaintiffs filed an Opposition to Breckenridge
13 Property Fund 2016's Motion for Judgment on its Remaining Claim. On September 30, 2022,
14 Breckenridge Property Fund 2016 filed a Reply in Support of its Motion for Judgment on its
15 Remaining Claims. On December 29, 2022, the Supreme Court filed an Order of Affirmance.
16 The Nevada Supreme Court affirmed the judgment of this Court regarding the Plaintiffs' claims
17 of wrongful foreclosure.

18 I. STATEMENT OF FACTS

19 In the Order Concerning: Breckenridge Property Fund 2106, LLC's Motion for Entry of
20 Order Granting Permanent Writ of Restitution and Payments of Overdue Rents and Plaintiffs
21 Motion for Stay of Pending Appeal filed on November 5, 2021, this Court found that the fair
22 rental market value of the property in dispute was \$2,500.00 per month. P. 5, ll. 3-4.

23 Breckenridge purchased the Property on January 4, 2019, and a Three-Day Notice to
24 vacate the Property was served on the Plaintiffs on January 28, 2019. This Court found that the
25 Plaintiffs had lived in the property from February 1, 2019, and that the fair market rental value of
26 the Property was \$2,500.00 per month. Further, on November 17, 2021, this Court entered its
27 Permanent Writ of Restitution ("Permanent Writ") in favor of Breckenridge regarding the
28 Property, requiring the Plaintiffs to vacate the property on or before November 16, 2021.

1 The Plaintiffs paid no rent. The Plaintiffs paid no damages during this period. The
2 Plaintiffs did not leave the property until November 15, 2021. This equates to thirty-three and
3 one-half (33.5) months that the Lincicomes lived rent-free on the property. Breckenridge now
4 controls the property, and restitution of the property is no longer at issue.

5 Breckenridge alleged five causes of action. Breckenridge sought to quiet title in the first
6 cause of action. In the Second cause of action, Breckenridge requested damages for slander of
7 title. Breckenridge requested and this Court granted a Writ of Restitution in the Third Cause of
8 action on November 22, 2021. The Fourth Cause of Action requested the Court to award
9 damages for unjust enrichment. The final cause of action requested the Court to award rent for
10 the use of the property.

11 The Supreme Court has affirmed this Court's ruling that no wrongful foreclosure
12 occurred. The Supreme Court declared that the Lincicomes breached the foreclosure mediation
13 agreement by failing to prepare and deliver a deed in lieu of foreclosure. The Lincicomes' breach
14 permitted the foreclosing defendants to proceed with the foreclosure. Breckenridge purchased the
15 property at a legal foreclosure sale.

16 II. FINDINGS OF LAW

17 A. SUMMARY JUDGMENT

18 Nevada Rule of Civil Procedure, Rule 56 states:

- 19 (a) A party may move for summary judgment, identifying each claim or defense--or
20 the part of each claim or defense--on which summary judgment is sought. The
21 court shall grant summary judgment if the movant shows that there is no genuine
22 dispute as to any material fact and the movant is entitled to judgment as a matter
23 of law. The court should state on the record the reasons for granting or denying
24 the motion.
- (b) Unless a different time is set by local rule or the court orders otherwise, a party
25 may file a motion for summary judgment at any time until 30 days after the close
26 of all discovery.
- (c)
- (1) A party asserting that a fact cannot be or is genuinely disputed must support
27 the assertion by:
28 (A) citing to particular parts of materials in the record, including depositions,
documents, electronically stored information, affidavits or declarations,
stipulations (including those made for purposes of the motion only), admissions,
interrogatory answers, or other materials; or

1 (B) showing that the materials cited do not establish the absence or presence of a
2 genuine dispute, or that an adverse party cannot produce admissible evidence to
3 support the fact.

4 (2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may
5 object that the material cited to support or dispute a fact cannot be presented in a
6 form that would be admissible in evidence.

7 (3) Materials Not Cited. The court need consider only the cited materials, but it
8 may consider other materials in the record.

9 (4) Affidavits or Declarations. An affidavit or declaration used to support or
10 oppose a motion must be made on personal knowledge, set out facts that would be
11 admissible in evidence, and show that the affiant or declarant is competent to
12 testify on the matters stated.

13 (d) If a nonmovant shows by affidavit or declaration that, for specified reasons, it
14 cannot present facts essential to justify its opposition, the court may:

- 15 (1) defer considering the motion or deny it;
- 16 (2) allow time to obtain affidavits or declarations or to take discovery; or
- 17 (3) issue any other appropriate order.

18 (e) If a party fails to properly support an assertion of fact or fails to properly
19 address another party's assertion of fact as required by Rule 56(c), the court may:

- 20 (1) give an opportunity to properly support or address the fact;
- 21 (2) consider the fact undisputed for purposes of the motion;

22 (3) grant summary judgment if the motion and supporting materials--including the
23 facts considered undisputed--show that the movant is entitled to it; or

- 24 (4) issue any other appropriate order.

25 (f) After giving notice and a reasonable time to respond, the court may:

- 26 (1) grant summary judgment for a nonmovant;
- 27 (2) grant the motion on grounds not raised by a party; or

28 (3) consider summary judgment on its own after identifying for the parties
material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the
relief requested by the motion, it may enter an order stating any material fact--
including an item of damages or other relief--that is not genuinely in dispute and
treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit
or declaration under this rule is submitted in bad faith or solely for delay, the
court--after notice and a reasonable time to respond--may order the submitting
party to pay the other party the reasonable expenses, including attorney fees, it
incurred as a result. An offending party or attorney may also be held in contempt
or subjected to other appropriate sanctions.

Summary Judgment is appropriate when the evidence, viewed in the light most favorable
to the non-moving party, demonstrates that no genuine issue of material fact remains and that the
moving party is entitled to judgment as a matter of law. *Palmieri v. Clark County*, 131 Nev 1028
(2015). If a genuine issue of fact exists, summary judgment must be denied in a proceeding for

1 equitable relief. *Shadow Wood HOA v. NY Camty Bancorp*, 132 Nev 49 (2016). An issue is
2 genuine for purposes of summary judgment if there is a sufficient evidentiary basis on which a
3 reasonable fact-finder could find for the non-moving party and a dispute is material if it could
4 affect the outcome of the suit under the governing law. *Amerson v. Clark County*, 995 F. Supp 2d
5 1155 (U.S. Dist. Court, District of Nevada 2014).

6
7 The Purpose of the summary judgment rule is not to deprive litigants of their right to a
8 trial on merits if they have issues to try. *Pine v. Leavitt*, 84 Nev 507 (1968). The principal
9 purpose of summary judgment is to isolate and dispose of factually unsupported claims. *Las*
10 *Vegas Tribe of Paiute Indians v. Phebus*, 5 F. Supp 3d 1221 (U.S. Dist. Court, District of Nevada
11 2014).

12 B. UNLAWFUL DETAINER

13
14 In *Chapman v. Deutsche Bank Nat'l Trust Co.*, 129 Nev. 314 (2013), the Nevada
15 Supreme Court held:

16 The primary purpose of an unlawful detainer action is to restore the possession of
17 property to one from whom it has been forcibly taken or to give possession to one
18 from whom it is unlawfully being withheld. *G.C. Wallace, Inc. v. Eighth Judicial*
19 *Dist. Court*, 127 Nev. —, —, 262 P.3d 1135, 1140 (2011); *Seitz*, 909
F.Supp.2d at 496, 2012 WL 5523078, at *4 (citing *Shorter v. Shelton*, 183 Va.
819, 33 S.E.2d 643, 647 (1945)).

20 Consistent with this purpose, a person who obtains title to property at a trustee's
21 sale may remove holdover tenants by means of an unlawful detainer action
under NRS 40.255(1) (c).

22 To initiate an action under NRS 40.255, the would-be plaintiff must serve the
23 property's occupants with a notice to quit. If the occupants do not vacate the
24 property within the time set by the notice, the owner may file a written complaint
25 for unlawful detainer, seeking restitution of the premises. NRS 40.300. The
26 plaintiff must serve the complaint with summons on the occupants, *id.*, and
provide the court with proof of service of the notice to quit as required by NRS
40.280(3) or (4).

27 Thereafter, a trial may ensue if the parties' pleadings demonstrate an issue of
28 fact. NRS 40.310. But the proceedings are summary and their scope
limited. See *G.C. Wallace*, 127 Nev. at —, 262 P.3d at 1140 (explaining that

1 evidence extrinsic to the issue of immediate possession cannot be introduced at
2 trial). Typically, the issues are whether the plaintiff gave the statutorily required
3 notice, *Davidsohn v. Doyle*, 108 Nev. 145, 150, 825 P.2d 1227, 1230 (1992), and
4 who as between the plaintiff and the defendant has a superior right to
5 possession. NRS 40.320; *Lachman v. Barnett*, 18 Nev. 269, 274, 3 P. 38, 41–42
6 (1884) (holding that unlawful detainer does not adjudicate title or
7 an *absolute* right to possession of property because "[t]he object of the
8 [unlawful detainer] statute was not to try titles, but to preserve the peace and
9 prevent violence"); *Seitz*, 909 F.Supp.2d at 499–500, 2012 WL 5523078, at
10 *7 (unlawful detainer action *321 limits court to determining possession between
11 plaintiff and defendant). Notably, a superior right to possession does not require
12 proof of title, although title can be evidence of the right to possession. *Yori v.*
13 *Phenix*, 38 Nev. 277, 282, 149 P. 180, 180–81 (1915) ("[I]t has universally been
14 held that title to property cannot be an issue in such actions ... even though such
15 pleading and proof may incidentally involve the question of title."). If after a trial,
16 the court determines that the occupant has no legal defense to the
17 alleged unlawful detainer, it will issue a summary order for restitution of the
18 premises. NRS 40.360(1).

12 Although possession of property differs from ownership of property, possession is
13 nonetheless a type of property interest. *Loretto v. Teleprompter Manhattan CATV*
14 *Corp.*, 458 U.S. 419, 435, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982) ("Property
15 rights in a physical thing have been described as the rights 'to possess, use and
16 dispose of it.'" (quoting *1108 United States v. General Motors Corp.*, 323 U.S.
17 373, 378, 65 S.Ct. 357, 89 L.Ed. 311 (1945))); *Seitz*, 909 F.Supp.2d at 497, 2012
18 WL 5523078, at *5. In his *Commentaries on the Laws of England*, Blackstone
19 instructed that "there are four 'degrees' of title: (1) 'naked possession,' (2) 'right of
20 possession,' (3) 'mere right of property,' and (4) 'complete title.'" *Seitz*, 909
21 F.Supp.2d at 497, 2012 WL 5523078, at *5 (quoting 2 William Blackstone,
22 *Commentaries* *195–99). Unlawful detainer actions fall into the second "degree"
23 of title in a property, "right of possession," and accordingly, are actions that affect
24 interests in a thing—real property. As such, unlawful detainer is in rem or quasi in
25 rem. *See G.C. Wallace*, 127 Nev. at —, 262 P.3d at 1140–41 (explaining in the
26 analogous summary eviction setting that the key elements and defenses
27 of unlawful detainer center on possession and property rights, rather than personal
28 rights or obligations.); *Seitz*, 909 F.Supp.2d at 500, 2012 WL 5523078, at *8; *see*
also Hepburn & Dundas' Heirs v. Dunlop & Co., 14 U.S. 179, 203 n. d, 1 Wheat.
179, 4 L.Ed. 65 (1816) (describing ejectment as a proceeding in
rem); *Scherbenske v. Wachovia Mortg., FSB*, 626 F.Supp.2d 1052, 1057
(E.D.Cal.2009) (holding that the unlawful detainer action plaintiff sought to
enjoin was a quasi-in-rem action).

25 A tenancy at sufferance "arises when one, who came into possession rightfully, continues
26 in possession wrongfully after his right thereto has terminated. *Baker v. Simonds*, 79 Nev. 434,
27 440 (1963) citing to Restatement, Property, Section 22. In *Eikelberger v Tolotti*, 94 Nev. 58, 62

1 (1978), the Nevada Supreme Court held that a landlord is entitled to recovery from tenants at
2 sufferance for "for the use and occupation of the leased property during the holdover period at a
3 rate based upon the previous rental rate, or on the proven reasonable value independently
4 established if that differs from the previous rental rate."

5
6 1. **NRS 40.2512 (2)**

7 1. Except as otherwise provided in subsection 2, a tenant of real property or a
8 mobile home for a term less than life is guilty of an unlawful detainer when the tenant
9 continues in possession, in person or by subtenant, after default in the payment of any
10 rent and after a notice in writing, requiring in the alternative the payment of the rent or
11 the surrender of the detained premises, remains uncomplied with for a period of:

(a) Five days for a commercial premises;

(b) Seven judicial days for real property other than a commercial premises; or

(c) Ten days for a mobile home lot,

after service thereof. The notice may be served at any time after the rent becomes due.

12 2. Except as otherwise provided in NRS 118A.315, the provisions of subsection 1
13 do not apply to a person who provides to the landlord proof that he or she is a federal
14 worker, tribal worker, state worker or household member of such a worker during a
15 shutdown.

16 2. **NRS 40.385**

17 1. Either party may appeal an order entered pursuant to NRS
18 40.253, 40.254 or 40.2542 by filing a notice of appeal within 10 judicial days
19 after the date of entry of the order.

20 2. Except as otherwise provided in this section, a stay of execution may be
21 obtained by filing with the trial court a bond in the amount of \$250 to cover the
22 expected costs on appeal. A surety upon the bond submits to the jurisdiction of
23 the appellate court and irrevocably appoints the clerk of that court as the surety's
24 agent upon whom papers affecting the surety's liability upon the bond may be
25 served. Liability of a surety may be enforced, or the bond may be released, on
26 motion in the appellate court without independent action. A tenant of commercial
27 property may obtain a stay of execution only upon the issuance of a stay pursuant
28 to Rule 8 of the Nevada Rules of Appellate Procedure and the posting of a
supersedeas bond in the amount of 100 percent of any unpaid rent claim of the
landlord.

3. A tenant who retains possession of the premises that are the subject of the
appeal during the pendency of the appeal shall pay to the landlord rent in the
amount provided in the underlying contract between the tenant and the landlord as
it becomes due. If the tenant fails to pay such rent, the landlord may initiate new

proceedings for a summary eviction by serving the tenant with a new notice pursuant to NRS 40.253, 40.254 or 40.2542.

3. **NRS 40.360**

1. Judgment. If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and, if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of the lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of such lease or agreement.

2. Damages. The jury or the court, if the proceeding be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, and any amount found due the plaintiff by reason of waste of the premises by the defendant during the tenancy, alleged in the complaint and proved on the trial, and find the amount of any rent due, if the alleged unlawful detainer be after default in the payment of rent; and the judgment shall be rendered against the defendant guilty of the forcible entry, or forcible or unlawful detainer, for the rent and for three times the amount of the damages thus assessed.

3. Execution and enforcement. When the proceeding is for an unlawful detainer after default in the payment of the rent, and the lease or agreement under which the rent is payable has not by its terms expired, execution upon the judgment shall not be issued until the expiration of 5 days after the entry of the judgment, within which time the tenant, or any subtenant, or any mortgagee of the term, or other party interested in its continuance, may pay into court for the landlord the amount of the judgment and costs, and thereupon the judgment shall be satisfied and the tenant be restored to the tenant's estate; but, if payment, as herein provided, be not made within the 5 days, the judgment may be enforced for its full amount and for the possession of the premises. In all other cases the judgment may be enforced immediately.

Emphasis Added.

The Nevada Supreme Court has held that NRS 40.360 requires assessment of treble damages only in cases of forcible entry or forcible or unlawful detainer. The Court has held that these causes of actions are all possessory in nature, and their objective is to reinstitute possession of property where one has wrongfully been excluded. *McKinnon v. Cantarutti-Althuizen*, 98 Nev 72, 73 (1982).

C. **UNJUST ENRICHMENT**

1 The elements of unjust enrichment are: (1) The Plaintiff confers a benefit to the
2 defendant; (2) the defendant accepts the benefits; (3) there is acceptance and retention by the
3 defendant of such benefit under such circumstances that it would be inequitable for him to retain
4 the benefit without payment of the value thereon. *Cert. Fire Prot. Inc v Precision Construction*,
5 128 Nev 371, 381 (2012).
6

7 The Court will examine the statute's plain meaning to determine if treble damages apply.
8 The Court has held, "Where language of the statute is plain and unambiguous, and its meaning is
9 clear and unmistakable, there is no room for construction, and courts are not permitted to search
10 for its meaning beyond the statute itself. *State v Jepsen*, 46 Nev. 193, 196 (1922). The statutes do
11 not appear to apply to a tenancy at sufferance created due to a dispute over mortgage foreclosure.
12

13 D. SLANDER OF TITLE

14 Slander of title elements requires proof that (1) the words spoken be false, (2) that they be
15 maliciously spoken, and (3) that the plaintiff sustain some special damage as a direct result of
16 their having been spoken.". *DeCarnelle v Guimont*, 101 Nev. 412, 415 (1985), citing to *Rowland*
17 *v. Lepire*, 99 Nev. 308 313 (1983).
18

19 III. CONCLUSIONS OF FACT/ LAW

20 The Court finds no genuine issues of material fact remain after viewing the facts in the
21 light most favorable to the non-moving party. No genuine issues of material fact exist regarding
22 Breckenridge's ownership of the property. Breckenridge is entitled to judgment as a matter of
23 law under the First, Fourth, and Fifth Causes of Action. The Court previously granted the Third
24 Cause of Action. Breckenridge cannot succeed on the slander of title cause of action. The
25 Plaintiffs lost the legal title to the property after the foreclosure sale. The Court must quiet title in
26 favor of Breckenridge. Breckenridge is entitled to restitution of the property.
27
28

1 No material issues of fact exist regarding the Plaintiffs' occupation and use of the property after
2 receiving notice of the sale and the notice to quit the property. Plaintiffs prevented Breckenridge
3 from using the property for thirty-three and a half months. The Court had previously determined
4 a fair market rental value of two thousand five hundred dollars (\$2,500.00) per month. The total
5 rent equals eighty-three thousand seven hundred fifty dollars (\$83,750.00).
6

7 Less clear from the pleadings provided is whether Breckenridge is entitled to the treble
8 damages. Both parties failed to provide the Court with any analysis regarding damages owed by
9 a tenant at sufferance. The Court found no Nevada case law in which detainer statutes were used
10 as a basis to award treble damages against a mortgagor tenant at sufferance in favor of the
11 purchaser of the property at the foreclosure sale. However, the Plaintiffs would qualify as tenants
12 at sufferance under *Baker*. 79 Nev. at 440 Under *Eikelberger*, the Plaintiffs would be liable for
13 the reasonable rent they should have paid during their occupancy. 94 Nev. at 62.
14

15 The Court finds Breckenridge Fund 2016 is entitled to a reasonable rent of eighty-three
16 thousand seven hundred fifty dollars (\$83,750.00). This conclusion also finds support under the
17 general principles of unjust enrichment and the Fifth Cause of Action, which the Lincicomes did
18 not challenge.

19 NRS 40.385, 40.360, 40.2512 (2) do not appear to this Court as providing a basis for
20 treble damages. Neither Party provided this Court any evidence that the mortgage documents
21 contained any provisions regarding a holdover by the mortgagor after the foreclosure sale.
22

23 Breckenridge provided no proof of malice. The Court cannot award any damages under
24 the slander of title cause of action.

25 Good cause appearing, **IT IS HEREBY ADJUDGED, ORDERED, and DECREED:**

26 1. Summary Judgment is **GRANTED** in favor of Breckenridge's First, Fourth, and Fifth
27 Causes of Action.
28

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2. Summary Judgment is **DENIED** as to Breckenridge's Second Cause of Action.

3. Damages are awarded in the amount of eighty-three thousand seven hundred fifty dollars (\$83,750.00) in favor of Breckenridge.

DATED: This 9th day of February 2023.



HON. LEON ABERASTURI
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I, Azhana Hobemi, am an employee of the Honorable Leon Aberasturi, District Judge and that on this date pursuant to NRCF 5(b), I mailed at Yerington, Nevada, a true copy of the foregoing document addressed to:

Michael G. Millward, Esq.
1591 Mono Avenue
Minden, NV 89423

John T. Steffen, Esq.
Brenoch R. Wirthlin, Esq.
Alex R. Velto, Esq.
Hutchison and Steffen, PLLC
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Casey J. Nelson, Esq.
Wedgewood, LLC
Office of General Counsel
2320 Potosi Street, Suite 130
Las Vegas, NV 89146

DATED: This 10 day of February 2023.

Azhana Hobemi
Employee of Hon. Leon Aberasturi

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EXHIBIT PAGE ONLY

EXHIBIT C

FILED

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TANYA SCEIRINE
COURT ADMINISTRATOR
THIRD JUDICIAL DISTRICT

Lindsey McCabe DEPUTY

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

13 **THIRD JUDICIAL DISTRICT COURT**
14 **LYONCOUNTY, NEVADA**

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

17 Plaintiff,

18 v.

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

28 Defendants.

Case No.: 18-CV-01332

DeptNo.: II

**BRECKENRIDGE PROPERTY
FUND 2016, LLC'S CROSSCLAIM
AGAINST PROF-2013-M4 LEGAL
TITLE TRUST, BY U.S. BANK
NATIONAL ASSOCIATION, AS
LEGAL TITLE TRUSTEE**

1 BRECKENRIDGE PROPERTY FUND 2016,
2 LLC,

3 Counterclaimant,

4 vs.

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

8 Counterdefendants.

9 BRECKENRIDGE PROPERTY FUND 2016,
10 LLC,

11 Cross-Plaintiff,

12 vs.

13 PROF-2013-M4 LEGAL TITLE TRUST, BY
14 U.S. BANK NATIONAL ASSOCIATION, AS
15 LEGAL TITLE TRUSTEE,

16 Cross-Defendant.

17 COMES NOW, BRECKENRIDGE PROPERTY FUND 2016, LLC ("Cross-
18 Plaintiff"), by and through its counsel of record, HUTCHISON & STEFFEN, PLLC and
19 WEDGEWOOD, LLC, and hereby files this Crossclaim against PROF-2013-M4 LEGAL
20 TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE
21 TRUSTEE ("Cross-Defendant") as follows:

22 **JURISDICTION AND VENUE**

23 1. This court has subject matter jurisdiction over this action under § 6, Article
24 6 of the Nevada Constitution.

25 2. This Court has subject matter jurisdiction over this matter.

26 3. Cross-Defendant has sufficient minimum contacts with Nevada so as to
27 allow this Court to exercise jurisdiction over it.

28 4. Venue is proper in this Judicial District under NRS § 13.010 and 13.040.

///

1 **PARTIES**

2 5. The following are real parties in interest pursuant to NRCP 17.

3 6. Cross-Plaintiff is a limited liability company authorized to do business and
4 doing business in Lyon County, Nevada and is the lawful title holder of the real property
5 located at 70 Riverside Drive, Dayton, Nevada 89403 ("Subject Property").

6 7. Cross-Defendant is, and at all times pertinent hereto was, a national
7 banking association authorized to do business and doing business in Lyon County,
8 Nevada.

9 **FACTUAL ALLEGATIONS**

10 8. In May 2007, Albert and Vicente Lincicome ("Lincicome's") obtained a
11 loan from Sierra Pacific ("Sierra Loan") to finance their purchase of the Subject Property.

12 9. As security for repayment of the Sierra Loan, the Lincicome's executed a
13 first priority Deed of Trust against the Subject Property ("Deed of Trust"), which was
14 recorded with the Lyon County Recorder's Office on or about May 25, 2007.

15 10. Thereafter, the Deed of Trust was eventually assigned to PROF-2013-M4
16 Legal Title Trust, by U.S. Bank National Association, as Legal Title Trustee ("Cross-
17 Defendant") through a Nevada Assignment of Deed of Trust, which was recorded with the
18 Lyon County Recorder's Office on or about November 25, 2015.

19 11. Cross-Plaintiff is informed and believes, and on that basis alleges, that
20 during the Lincicome's ownership of the Subject Property, they became delinquent in the
21 payment of the Sierra Loan.

22 12. As a result of that delinquency, Cross-Defendant caused its foreclosure
23 agent and/or trustee to record a Notice of Default and Election with the Lyon County
24 Recorder's Office on or about November 3, 2017.

25 13. Thereafter, Cross-Defendant caused its foreclosure agent and/or trustee to
26 record a Notice of Trustee's Sale with the Lyon County Recorder's Office.

27 14. The Lincicome's subsequently filed the underlying Complaint in this
28 action, seeking to postpone or cancel the scheduled foreclosure sale.

1 15. On December 31, 2018, this Court entered an Order enjoining the
2 foreclosure on the Subject Property on the condition that the Lincicome's post a bond in
3 the amount of \$172,610.67 and additional security in the amount of \$2,105.10 per month
4 thereafter.

5 16. The Lincicome's failed to post the required bond and security, which
6 resulted in the foreclosure sale proceeding forward on January 4, 2019.

7 17. Counterclaimant purchased the Subject Property at the NRS 107
8 foreclosure sale for \$294,000.01 and took title thereto.

9 18. The acquisition of the Subject Property by Cross-Plaintiff was: (i) at or
10 above fair market value for the Subject Property; (ii) made in good faith and for valuable
11 consideration; and (iii) made without knowledge of any adverse legal or equitable claim to
12 the Subject Property.

13 19. Cross-Plaintiff filed a Counterclaim against the Lincicome's on October 3,
14 2019 through which it claims ownership to the Subject Property, seeks to quiet title in its
15 favor, seeks possession of the Subject Property, and seeks other monetary damages

16 20. On December 20, 2019, the Lincicome's filed their Second Amended
17 Complaint through which it claims ownership to the Subject Property, seeks to quiet title
18 in its favor, seeks to set aside Cross-Defendant's foreclosure sale, and seeks other
19 monetary damages.

20 21. In the event the Lincicome's claims to set aside the foreclosure sale are
21 sustained, then Cross-Plaintiff is entitled to damages against Cross-Defendant for its
22 wrongful foreclosure sale of the Subject Property.

23 22. It has become necessary for the Cross-Plaintiff to retain the services of
24 counsel to prosecute these claims and Cross-Plaintiff is entitled to any and all costs
25 incurred herein including, without limitation, any and all attorney fees.

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 (Wrongful Foreclosure/Rescission and Restitution)

3 23. Cross-Plaintiff repeats and realleges the allegations contained in the
4 preceding paragraphs as though fully set forth herein.

5 24. Cross-Plaintiff properly acquired title and ownership of the Subject
6 Property in exchange for good and valuable consideration paid.

7 25. In the event the Lincicome's claims to set aside the foreclosure sale are
8 sustained, then Cross-Defendant's sale of the Subject Property to Cross-Plaintiff was
9 wrongful, null, void, and of no effect.

10 26. If Cross-Defendant's foreclosure sale was wrongful, null, void, and of no
11 effect, then it would be unjust for Cross-Defendant to retain the benefit of its invalid
12 foreclosure sale. Thus, the sale must be rescinded and the funds paid by Cross-Plaintiff's
13 invalid foreclosure sale must be returned.

14 27. As a direct, legal, and proximate result of Cross-Defendant's actions,
15 Cross-Plaintiff has been damaged by suffering a loss of equity, loss of rental income,
16 unavailability of credit, and increased costs of credit in an amount in excess of Fifteen
17 Thousand Dollars (\$15,000.00).

18 WHEREFORE, Cross-Plaintiff prays for the following:

19 1. In the event the Court does not order, declare, and determine that Cross-
20 Plaintiff has free and clear title to the Subject Property as prayed for in Cross-Plaintiff's
21 counterclaim against the Lincicome's, then the Court must order, declare, and determine
22 that Cross-Defendant's foreclosure sale and deed to Cross-Plaintiff was wrongful, null,
23 void, and of no effect; that the foreclosure sale must be rescinded; and that the funds paid
24 by Cross-Plaintiff be returned;

25 2. For an award of damages and losses against Cross-Defendant in an amount
26 in excess of \$15,000.00 to be proven at trial;

27 3. For an award of reasonable attorney's fees and costs incurred in this action;
28 and;

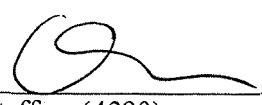
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4. For such other and further relief as the Court may deem proper.

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

DATED this 2 day of October, 2020.

HUTCHISON & STEFFEN, PLLC



John T. Steffen (4390)
Matthew K. Schriever (10745)
Alex R. Velto (14961)
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Las Vegas, Nevada 89146

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

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Hutchison & Steffen, and that on the date indicated below, I served a true and correct copy of the **BRECKENRIDGE PROPERTY FUND 2016, LLC'S CROSSCLAIM AGAINST PROF-2013-M4 LEGAL TITLE TRUST, BY U.S. BANK NATIONAL ASSOCIATION, AS LEGAL TITLE TRUSTEE** via U.S. Mail to the parties designated below.

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Attorney for Prof-2013-M4 Legal Title Trust by US. Bank, National Association as Legal Title Trustee; Fay Servicing, LLC, and Shellpoint Mortgage Servicing, LLC

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Las Vegas, NV 89134

Attorney for Bank of America

DATED this 21 day of October, 2020.


An Employee of HUTCHISON & STEFFEN