Docket No. 62528

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Mar 10 2014 10:43 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

VILLA PALMS COURT 102 TRUST,

Appellant,

v.

WILLIAM L. RILEY, an individual; DEUTSCHE BANK NATIONAL TRUST COMPANY, an expired Nevada Corporation, in its capacity as indenture trustee for the Noteholders of AAMES MORTGAGE INVESTMENT TRUST 2005-3, a Delaware Statutory Trust; and any and all other persons unknown claiming any right, title, estate, lien or interest in the Property adverse to the Plaintiff's ownership, or any cloud upon Plaintiff's title thereto (DOES 1 through 10, inclusive),

Respondents.

ON APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, DOCKET NO. A-13-674595-C

APPENDIX

Kristin A. Schuler-Hintz, Esq.
Nevada Bar No. 7171
McCarthy & Holthus LLP
9510 W. Sahara Ave. Ste. 200
Las Vegas, NV 89117
Telephone: (702) 685-0329
Facsimile: (866) 339-5691
Counsel for Respondent Deutsche Bank National Trust Company as Trustee

Docket 62528 Document 2014-07499

INDEX

Electronically Filed
09/06/2013 04:11:48 PM

CLERK OF THE COURT

OPPS
LEACH JOHNSON SONG & GRUCHOW
SEAN L. ANDERSON
Nevada Bar No. 7259
RYAN D. HASTINGS
Nevada Bar No. 12394
8945 W. Russell Road, Suite 330
Las Vegas, NV 89148
Telephone: (702) 538-9074
Facsimile: (702) 538-9113
sanderson@leachjohnson.com
rhastings@leachjohnson.com
Attorneys for Defendant Aliante Master Association

DISTRICT COURT

CLARK COUNTY, NEVADA

BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWMBS, INC., CHL MORTGAGE PASS-THROUGH TRUST 2005-12, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-12,

Plaintiff,

vs.

JANET D. PETRILLO; THOMAS A. PETRILLO; ALIANTE MASTER ASSOCIATION; DOES 1-X; and ROES 1-10 inclusive,

Defendants.

Case No.: A-13-678369-C

Dept. No.: XXX

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND ATTORNEY'S FEES SANCTIONS AGAINST ALIANTE MASTER ASSOCIATION

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

Defendant Aliante Master Association (the "Association"), by and through its attorneys, Sean L. Anderson and Ryan D. Hastings and the law firm of Leach Johnson Song & Gruchow, hereby submits its Opposition to Plaintiff's Motion for Temporary Restraining Order, Preliminary Injunction and Attorney's Fees Sanctions ("Opposition"). This Opposition is based on the attached Memorandum of Points and Authorities, together with such other and further

...

...

...

evidence and argument as may be presented and considered by this Court at the time this matter is heard.

DATED this 6th day of September, 2013.

LEACH JOHNSON SONG & GRUCHOW

Sean L. Anderson
Nevada Bar No. 7259
Ryan D. Hastings
Nevada Bar No. 12394
8945 West Russell Road, Suite 300
Las Vegas, Nevada 89148
Attorneys for Foothills at MacDonald Ranch

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Ignoring the most basic tenets of lien and foreclosure law, Plaintiff Bank of New York Mellon asks this Court to issue a declaration permitting lenders to pay off statutorily superior liens at a substantial discount without completing the requisite step of foreclosing on the property subject to the lien. Such a declaration would allow lenders to obtain clear title to the asset subject to their security interest without ever owning the property. In this way, lenders, which engaged in poor lending practices to begin with, insulate the asset from foreclosure by the homeowners' association and, at the same time, avoid all of the obligations of property ownership, including the payments of assessments prospectively and maintaining the property in accordance with the covenants, conditions and restrictions recorded against the property. Such a declaration would allow Plaintiff to sit on the property without maintaining it or paying assessments to the homeowners' association for as long as it takes the real estate market to improve so that Plaintiff can maximize its profits. Plaintiff's paradigm, if employed, would result in a tremendous windfall for lenders and bankruptcy or receivership for Nevada common-interest communities.

Furthermore, Plaintiff could have avoided the Association's foreclosure had it been inclined to. First, Plaintiff could have tendered delinquent assessment payments to the Association on behalf of the delinquent borrower. Second, Plaintiff could have paid the Association's **entire lien** secured under NRS 116.3116. Finally, Plaintiff could have foreclosed under its Deed of Trust. Instead, on the morning of the Association's legally authorized non-judicial foreclosure sale, Plaintiff brought the present Motion arguing that it has a right to enjoin Plaintiff from its statutory right to foreclose on its delinquent assessment lien pursuant to NRS 116.3116(2). (*See* Plaintiff's Motion, 9.)

II. LEGAL STANDARD

Injunctions and temporary restraining orders are governed by NRS 33.010 and NRCP 65(b). A party is entitled to entitled to injunctive relief when that party enjoys a reasonable probability of success on the merits of its claims and that the defendant's conduct, if permitted to continue, would results in irreparable injury for which compensatory damages are an inadequate remedy. *Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1029 (1987); *Sobol v. Capital Mgmt. Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986). When the facts of this case are applied to the standard however, it becomes clear that because Plaintiff has not proceeded to foreclosure, is not likely to succeed on the merits, and is in no danger of irreparable harm. Accordingly, Plaintiff's Motion should be denied.

III. ARGUMENTS

A. Plaintiff Cannot Succeed on the Merits Because Its Entire Action is Based Upon a Fundamental Misunderstanding of NRS Chapter 116.

Plaintiff's Complaint, as well as the arguments set forth in its Motion for Temporary Restraining Order and Preliminary Injunction ("Plaintiff's Motion"), demonstrate that Plaintiff has a fundamental misunderstanding of NRS 116.3116 and its application to the facts of this case. At its essence, Plaintiff's arguments may be summarized as follows: (1) the Association is not entitled to exercise its rights to non-judicial foreclosure as expressly set forth in NRS 116.31162 through 116.31168; and (2) Plaintiff, even though it has not proceeded to foreclosure, has the right to remove the Association's lien interest in the Property by pre-paying only a

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

portion of that lien interest. For the following reasons, Plaintiff's arguments and analysis of NRS 116.3116 are patently incorrect and unsupported by Nevada law. As such, Plaintiff fails to demonstrate that it is likely to succeed on the merits. This Court should deny Plaintiff's Motion for Preliminary Injunction, and allow the Association to proceed with its statutorily authorized foreclosure sale.

1. Both Federal and State Laws Restrict the Association's Ability to Communicate with Third Parties such as Plaintiff.

Plaintiff identifies the Association's refusal to provide Plaintiff with payoff information as an "extortionist tactic." (*See* Plaintiff's Motion, 2:14.) However, the Association acted in accordance with both state and federal law when it refused to disclose specific payoff information related to the property owners account absent authorization from the property owner. NRS 649.370 indicates that a violation of the federal Fair Debt Collection Practices Act ("FDCPA") is deemed a violation of NRS 649. The FDCPA provides the following:

> **Communication with third parties**:
>
> Except as provided as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, **a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector**. (Emphasis added.)

See 15 U.S.C. 1692(b).

As set forth above, neither the Association, nor its debt collector, NAS, was authorized to provide the information requested by Plaintiff, and their refusal to do so cannot support a granting of a preliminary injunction as requested in Plaintiff's Motion. (*See generally* Plaintiff's Motion.)

...

...

...

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

2. The Association Has a Lien Interest in the Property on which It can Foreclose Pursuant to Nevada law.

NRS 116.3116 provides the Association with **a lien for delinquent assessments** and reads, in relevant part, as follows:

> 1. **The association has a lien on a unit for** any construction penalty that is imposed against the unit's owner pursuant to NRS 116.310305, **any assessment levied against that unit** or any fines imposed against the unit's owner from the time the construction penalty, assessment or fine becomes due. Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102 are enforceable as assessments under this section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment thereof becomes due.

Based on the foregoing, an association has a lien on a unit for assessments, construction penalties and fines imposed against the unit's owner. *Id.* Subsection (1) also identifies additional obligations which are considered "assessments" for the purpose of this statute including "penalties, fees, charges, late charges, fines and interest charged pursuant to (j) to (n) of NRS 116.3102(1)." Collection costs are included in the Association's lien because they fall within the general categories identified in NRS 116.3102(1)(j)-(n) and are specifically included in the definition of "assessments." Although the term "assessments" is not defined in NRS Chapter 116, it is defined in NRS 38.300(1) as follows:

> 1. "Assessments" means:
>
> (a) **Any charge** which an association may impose against an owner of residential property pursuant to a declaration of covenants, conditions and restrictions, **including** any late charges, interest and **costs of collecting the charges**; and
>
> (b) **Any penalties, fines, fees and other charges which may be imposed by an association pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102** or subsections 10, 11 and 12 of NRS 116B.420. (Emphasis added.)

Based upon the foregoing, costs of collecting are included in the Association's lien because they are included within the term "assessments." Furthermore, there can be no doubt that when the legislature defined "assessments" in NRS 38.300 to include costs of collection, it did so with knowledge of how the term was being used in NRS 116 because **38.300(b) includes**

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

the exact same language regarding NRS 116.3102 as is found in NRS 116.3116(1).[1]

When, as in this case, a property owner falls delinquent in the payment of assessments, **NRS 116.31162 through 116.31168 unequivocally authorizes a homeowners association to proceed to foreclose on its entire delinquent assessment lien**, including costs of collecting as defined in NRS 116.310313.

3. The Association's Lien Interest can only be Reduced to a Super Priority Amount After a Foreclosure of the First Deed of Trust.

Plaintiff argues claims that it is only required to pay the HOA's **super-priority lien** under NRS 116.3116 and the amount necessary to satisfy that purported lien. (*See* Plaintiff's Motion, at 5:6-7, emphasis added.) However, a review of NRS 116.3116 demonstrates that there is no dispute over the existence of a **super priority lien** in this case. Plaintiff's arguments represent a classic case of "placing the cart before the horse." NRS 116.3116(2) establishes the priority of the Association's lien as it relates to other security interests in the property, including Plaintiff's "first security interest," **in those cases in which the first security interest actually institutes an action to enforce its lien.** However, in this case, Plaintiff has not undertaken "an action to enforce its lien," therefore Plaintiff's arguments regarding NRS 116.3116(2) are inapplicable.

NRS 116.3116(2), provides, in relevant part, as follows:

> **A lien under this section is prior to all other liens and encumbrances** on a unit except:
>
> (a) ...
>
> (b) A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and
>
> (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.
>
> **The lien is also prior to all security interests** described in paragraph (b) to the extent of the assessments for common

[1] "Any penalties, fines, fees and other charges which may be imposed by an association pursuant to paragraphs (j) to (n), inclusive, of subsection 1 of NRS 116.3102," is found in both 38.300 and NRS 116.3116(1).

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

> expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration **during the 9 months immediately preceding institution of an action to enforce the lien.**

(Emphasis added.)

Plaintiff has ignored and continues to ignore the express language of NRS 116.3116(1) & (2), which provide that a common-interest community has a lien for all amounts due and owing, a portion of which is entitled to priority status over all other liens, including that of first security interest **when the first security interest initiates a foreclosure action to enforce its lien.** *Id.* Here, instead of simply foreclosing, like virtually every other lender in Nevada, Plaintiff looks to tender merely a portion of the amount due to the Association and demand that the Association refrain from conducting its non-judicial foreclosure sale of the property to cure the deficiency. (*See* generally, Plaintiff's Complaint.)

Simply stated, Plaintiff's pre-payment scheme falls woefully short of the amounts due to the Association and, as such, the Association should be allowed to proceed with its sale of the property. Importantly, **Plaintiff's Motion failed to identify any statutory language within NRS 116.3116 that would grant to Plaintiff, who is not the record owner of the property, this right or standing to assert this right.** The reason for this omission is clear—no such language exists. As stated above, in the context of this case, if Plaintiff does not foreclose its interest then there is no cognizable reason to analyze NRS 116.3116(2)(c).

4. Absent Foreclosure of Its Lien, neither Plaintiff nor the Association can Properly Calculate the Amounts Due and Owing under NRS 116.3116(2).

NRS 116.3116(2)(c) provides that the a portion of the Association's lien would similarly survive foreclosure of Plaintiff's interest in the Property to the extent of assessments for common expense assessments which would have become due in the absence of acceleration during the 9 months immediately preceding institution of the an action to enforce the lien. However, in the present case the Plaintiff has not proceeded to foreclosure. In the absence of foreclosure of its interest, there is no point of reference by which either the Plaintiff (or the Association) could

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

correctly identify the 9 months term at issue as numerous variables may impact the amount due under NRS 116.3116. For example, the assessments frequently change annually and that budget may also include special assessments and reserve assessments levied periodically throughout the year, which is reflected in an association's budget.

In addition, amounts levied by an association that are entitled to lien priority under NRS 116.3116(2)(c) may include amounts incurred by an association in abating a public nuisance or performing exterior maintenance on a property within the community. *See* NRS 116.310312. NRS 116.310312 further provides that the lien is recoverable as part of the priority portion of the lien, and that it includes collection costs and other charges. *Id.*

Simply stated, in the context of this case, lien priority cannot be calculated unless a first security interest is foreclosed upon and the relevant 9 month period determined. Any efforts to accept pre-payments from the Plaintiff would arbitrarily cut off the Association's right to secure other assessments that may come due after that payment as well as the Association's lien rights as provided in NRS 116.310312.

5. Plaintiff has not tendered payment in the full amount of the Association's lien.

Plaintiff incorrectly claims that the HOA has received full payment of its lien interest. (*See* Plaintiff's Motion, 6:9.) Plaintiff submitted a payment of $3,408.91 on August 26, 2013. This amount was listed on the notice of foreclosure sale dated August 9, 2013. However, the Notice of Sale does not represent that this amount represents the entire amount of the Association's lien. In fact, the Notice specifically states that the amount listed is the amount of the unpaid balance **"at the time of the initial publication of the Notice of Sale."** (*See* Notice of Foreclosure Sale attached as Exhibit 1 to Plaintiff's Motion.)(Emphsis added.)

Furthermore, Plaintiff was placed on notice by defense counsel prior to submitting payment, that $3,408.91 was not an accurate amount of the Association's entire lien interest, as it did not include all amounts for collection costs which are specifically authorized to be included

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

in the amount of the Association's lien by statute.[2] (*See* Email Correspondence dated August 21, 2013, attached to Plaintiff's Motion as Exhibit 3.) Therefore, even before preparing its Motion, Plaintiff knew that it had not offered to pay the Association's entire interest. Had Plaintiff offered to pay the Association's entire lien, the Association would have cancelled the sale and agreed to release its lien on the property.

6. Plaintiff's hypothetical injuries are insufficient to raise an actionable case or controversy and, as such, are not ripe.

Hypothetical injuries are insufficient to raise an actionable case or controversy and invoke the court's subject-matter jurisdiction. *See e.g., Coast Range Conifers v. Board of Forestry,* 83 P.3d 966 (Or. 2004). If a case is not ripe for review, then there is no case or controversy and the court cannot exercise subject-matter jurisdiction over the action. *See American States Ins. Co. v. Kearns,* 15 F.3d 142, 143 (9th Cir.1994). Thus, in the absence of a live case or controversy, Plaintiff's Complaint is not ripe for review and, therefore, should be dismissed.

Here, Plaintiff claims that should the HOA be allowed to continue to sale, Plaintiff will suffer irreparable harm in the form of elimination of their interest. (*See* Plaintiff's Motion, 6:6-7.) However, it is clear from Plaintiff's Complaint that Plaintiff does not believe its interest in the property is at risk of being eliminated by an HOA sale. Plaintiff's Complaint declares in numerous places that its interest is superior to any interest held by any defendant. (*See* Plaintiff's Complaint, ¶18, ¶B(3).) Basic property law dictates that only a foreclosure of a superior interest will extinguish a junior interest. Therefore, pursuant to the allegations made Plaintiff's Complaint, Plaintiff's claim that it believes there to be a threat of irreparable harm is disingenuous.

Additionally, Plaintiff's allegation that irreparable harm exists is completely contingent on a hypothetical scenario wherein a future third party purchases the property at the HOA foreclosure sale and then that third party subsequently brings a separate action against Plaintiff

[2] *See* NRS 116.310313

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

claiming to have wiped out the Bank's interest in the property. What a third party purchaser, who is not a party to this action, may or may not do in the future after possibly purchasing an HOA's lien interest at an HOA sale cannot be relied on to demonstrate that there is irreparable harm prior to that sale being conducted. This connection is simply too tenuous to support this Court using its awesome power to enjoin the Association from conducting a sale which it is otherwise specifically authorized to conduct pursuant to NRS 116.31162-116.31168.

8. Plaintiff's paradigm incorrectly assumes that it will take record title to the Property at a foreclosure sale.

Plaintiff's proposed paradigm and Complaint are based on hypothetical suppositions that are unknown unless the first deed of trust proceeds to foreclosure sale. As set forth above, if the first deed of trust holder takes record title to a property at a foreclosure sale an association's lien claim is extinguished except for the amount entitled to priority status. Pursuant to NRS 116.3116, the super-priority portion of the lien survives the foreclosure sale and entitles an association to recover the same against the foreclosing lender.

However, the foregoing assumes that the first deed of trust takes record title to the property at the foreclosure sale. This supposition fails to account for the possibility of a third party successfully bidding at the lender's foreclosure sale causing title transferred to someone other than the holder of first deed of trust. In such cases, an association still has a super-priority claim to the foreclosure sale proceeds. However, an association also has an additional claim to any remaining balance it is owed in the event that the first deed of trust holder is paid in full from the foreclosure sale proceeds. The Association's remaining balance claim takes precedence over all lenders except for the first deed of trust holder's claim.

Plaintiff's arguments set forth in its Motion erroneously assume that the Association will never get more from a lender foreclosure than the 9 times monthly assessments. However, if there are sufficient sale proceeds an association may be entitled to an amount in excess of that which is prioritized pursuant NRS 116.3116. Accordingly, it is absurd for Plaintiff to assert that it is entitled to "pre-pay" an association's delinquent assessment lien or any portion of the lien

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

when, as here, Plaintiff has failed to initiate an action to enforce its lien as required by NRS 116.3116, and the proceeds from the sale have not come to fruition.

9. Plaintiff's Interpretation of NRS 116 Leads to an Unreasonable and Absurd Result.

The goal of statutory interpretation is to ascertain the legislature's intent. *Karcher Firestopping v. Meadow Valley Contractors, Inc.*,--- Nev. ---,204 P.3d 1262, 1263 (2009). When interpreting a statute, Nevada courts are constrained to give effect to the apparent intent of the statutory language, "thereby avoiding meaningless or unreasonable results." *Matter of Petition of Phillip A. C.,* 122 Nev. 1284, 1293, 149 P.3d 51, 57 (2006). Under the interpretation proposed by Plaintiff, a common-interest community may recover the sum total of 9 times the monthly assessments and nothing more regardless of the circumstances. This construction of NRS 116.3116 not only contradicts the express language of the statute, but leads to the "meaningless and unreasonable result" that this Court must avoid.

As an initial matter, the scheme proposed by Plaintiff seeks to utilize the Association as a windfall for poor lending practices rather than to protect the Association. Lending institutions provided financing to individuals who could not afford their homes thus resulting in the mortgage crisis. While traditionally banks could recover the amount loaned to these borrowers via foreclosure, home values in the depressed Nevada real-estate market have fallen to the point that these lenders are now seeking to shift their losses by whatever means possible. Plaintiff's pre-payment paradigm is but the latest manifestation of such efforts.

Under Plaintiff's pre-payment scheme, not only does Plaintiff avoid paying any costs of collecting incurred by the Association proximately caused by Plaintiff, it can also obtain clear title to the asset subject to the security interest without ever owning the property. In this way, lenders insulate the asset from foreclosure by the homeowners' association and, at the same time, avoid all of the obligations of property ownership, including the payments of assessments prospectively and maintaining the property in accordance with the covenants, conditions and restrictions recorded against the property for a payment of a mere 9 times monthly assessments. However, Plaintiff's analysis of NRS 116 is simply unreasonable.

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

Most obviously, if costs of collecting are not recoverable, not only would the legislature have enacted NRS 116.310313 without any means to collect these amounts, executive boards of common-interest communities will be discouraged from complying with their fiduciary duties in hiring professionals to pursue delinquent owners in an effort to maintain the financial stability of the common-interest community. *See* NAC 116.400 (requiring that executive boards consult with appropriate professionals and fairly enforce collection policies). As such, Boards will be subject to criticism by owners and, subsequently, exposed to NRED claims, civil actions, and/or State of Nevada intervention complaints by owners for alleged failure to comply with Chapter 116 and the community's governing documents by failing to comply with the Board's fiduciary duties in taking necessary action in preserving the financial stability of the community by pursuing delinquent assessments.

On the other hand, if the Board spends Association money with a legal professional in pursuing delinquent assessments through routine collection efforts, an NRED action, a district court action, or a bankruptcy, only to be told the expenditure is unrecoverable, the Board will likewise be exposed for alleged improper use of Association funds. As a result, either action the Board takes could easily come under attack and subject the Association and its executive board to legal action, regardless of the justification for the board's action. In sum, the public policy behind NRS 116.3116 rejects any finite cap to the priority portion of the Association' lien. If such a cap were to exist, the ability of the Association's ability to collect the priority portion would be non-existent.

In other words, Plaintiff's paradigm, which was expressly rejected under nearly identical circumstances by the Connecticut Supreme Court in *Hudson House Condominium Association, Inc. v. Brooks*, 223 Conn. 610, 611 A.2d 862 (1992), ignores the purpose and intent of NRS 116.3116, would result in a tremendous windfall for lenders, would completely discourage any Association from pursuing any collection efforts as against owners that are delinquent, and culminates in an irrational, unreasonable and unjust result.

...

...

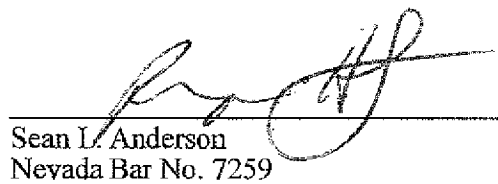
LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

IV. CONCLUSION

Based on the foregoing, Plaintiff is not likely to succeed on the merits, the balance of hardships clearly weighs in favor of the Association and Plaintiff's efforts to have the foreclosure sale of the property enjoined should be denied.

Dated this 6 day of September, 2013.

LEACH JOHNSON SONG & GRUCHOW



Sean L. Anderson
Nevada Bar No. 7259
Ryan D. Hastings
Nevada Bar No. 12394
8945 W. Russell Road, Suite 330
Las Vegas, Nevada 89148
Attorneys for Defendant Aliante Master Association

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the undersigned, an employee of LEACH JOHNSON SONG & GRUCHOW, hereby certified that on the 6th day of September, 2013, she served a true and correct copy of the foregoing, **DEFENDANT OPPOSITION TO PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND ATTORNEY'S FEES SANCTIONS AGAINST ALIANTE MASTER ASSOCIATION** by:

XX Depositing for mailing, in a sealed envelope, U.S. postage prepaid, at Las Vegas, Nevada

_____ Personal Delivery

_____ Facsimile

_____ Federal Express/Airborne Express/Other Overnight Delivery

_____ Las Vegas Messenger Service

addressed as follows:

Kristin a. Schuler-Hintz, Esq.
Christopher M. Hunter, Esq.
McCarthy & Holthus, LLP
9510 W. Sahara Ave., Suite 110
Las Vegas, NV 89117
Email: NVJud@McCarthyHolthus.com
Attorneys for Plaintiff

Christie Chen Vernon
An Employee of LEACH JOHNSON SONG & GRUCHOW

LEACH JOHNSON SONG & GRUCHOW
8945 West Russell Road, Suite 330, Las Vegas, NV 89148
Telephone: (702) 538-9074 – Facsimile (702) 538-9113