

IN THE SUPREME COURT OF THE STATE OF NEVADA

NONA TOBIN, AN INDIVIDUAL, Appellant

vs.

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

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

No. 82294/District Court Case No. A799890

DOCKETING STATEMENT

CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

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

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

1. Judicial District Eighth Department XXII

County Clark Judge Susan Johnson

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

2. Attorney filing this docketing statement:

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

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

Client(s) Nona Tobin

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

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

Attorney See Below Telephone _____

Firm _____
Address _____

Client(s) _____

Attorney _____ Telephone _____

Firm _____
Address _____

Client(s) _____

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

Joel A. Stokes & Sandra F. Stokes as trustees
of Jimijack Irrevocable Trust;
Joel A. Stokes, an individual;
Jimijack Irrevocable Trust;

8/3/20 RIS

*Joel A. Stokes, Joel A. Stokes And Sandra Stokes, As Trustees
Of The Jimijack Irrevocable Trust, And Jimijack Irrevocable
Trust s Reply In Support Of Joinder To Defendant, Red Rock
Financial Services , Motion To Dismiss First Amended
Complaint And For Attorney s Fees And Costs Pursuant To
E.D.C.R. Rule 7.60(b)(1) And/Or (3)*

8/3/20 RIS JJ annotated

10/16/20 OST

*Defendants, Joel A. Stokes and Sandra Stokes, as Trustees of
The JimiJack Irrevocable Trust and Jimijack Irrevocable
Trust's, Motion to Enforce Order for Attorney's Fees and
Costs and for Contempt and for Attorney's Fees and Costs
Pursuant to E.D.C.R. Rule 7.60(b)(3) and/or(5) and Order
Shortening Time*

JOSEPH Y. HONG, ESQ.

State Bar No. 005995

HONG & HONG LAW OFFICE

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Las Vegas, Nevada 89135

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Facsimile No.: (702) 870-0500

E-mail: yosuphonglaw@gmail.com

*Attorney for Joel A. Stokes,
Joel A. Stokes and Sandra Stokes,
as trustees of the Jimijack Irrevocable
Trust, and Jimijack Irrevocable Trust*

Filed by Plaintiff

8/7/19 COMP

Complaint for Quiet Title, and Equitable, Declaratory, and Injunctive Relief (PRO SE)

8/13/19 NOLP

Notice of Lis Pendens (PRO SE)

6/3/20 ACOM

First Amended Complaint

7/20/20 OPPM

Opposition to Motion to Dismiss and to Joinder Thereto

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

- | | |
|---|---|
| ☐ Judgment after bench trial | ☒ Dismissal |
| ☐ Judgment after jury verdict | ☐ Lack of jurisdiction |
| ☐ Summary judgment | ☒ Failure to state a claim NRCP(b)(5) |
| ☐ Default judgment | ☐ Failure to prosecute |
| ☐ Grant/Denial of NRCP 60(b) relief | ☐ Other (specify): award of |
| ☐ Grant/Denial of injunction | ☐ Divorce Decree: |
| ☒ Grant/Denial of declaratory relief
NRS 30.030 & NRS 30.130 | ☐ Original ☐ Modification |
| ☐ Review of agency determination | ☐ Other disposition (specify): _____ |

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

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

N/A

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

X N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

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

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

Was it a bench or jury? _____

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

No.

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

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

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

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

N/A

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

☐ NRCp 50(b) Date of filing N/A

☐ NRCp 52(b) Date of filing

☐ NRCp 59 Date of filing

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed _____

12/17/20 filed 12/18/20 docketed NOAS into appeal 82234 Chiesi/Quicken (20-45890)

11/9/20 filed 11/17/20 docketed NOAS into appeal 82094 Hong (20-41867)

12/29/20 filed 1/8/21 docketed NOAS into appeal 82294 red Rock MTD (21-00536)

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

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

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

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

(a)

☐ NRCP 3A(b)(1)

☐ NRS 38.205

☐ NRCP 3A(b)(2)

☐ NRS 233B.150

☐ NRCP 3A(b)(3)

☐ NRS 703.376

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

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

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Appellant – Nona Tobin, AN INDIVIDUAL, Plaintiff

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

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

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

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

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

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

201908080002097 LIS PENDENS RECORD ON 8/8/19

201908140003083 LIS PENDENS RECORD ON 8/14/19

201908140003084 LIS PENDENS RECORD ON 8/14/19

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

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

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

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

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

☒ Yes

☐ No

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

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☒ No.

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

☐ Yes

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

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

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

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

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

PLEASE SEE ATTACHED

1. 6/3/20 ACOM 1st amended complaint
2. 9/6/20 ORDER to sanction per EDCR 7.60
3. 10/8/20 NEO order to sanction per EDCR 7.60 (1)(3) \$3,455 to Hong for Jimijack/Stokes
4. 11/17/20 ORDER to sanction \$8,948.99 per NRCP 18.010(2) to Wood for Chiesi/Quicken
5. 11/17/20 NEOI order to sanction \$8,948.99 per NRCP 18.010(2) to Wood for Chiesi/Quicken
6. 12/3/20 OGM order granting Red Rock's motion to dismiss per NRCP 12(b)(5) (non-mutual claims preclusion) and Joel Stokes's, Sandra Stokes's, Joel Stokes & Sandra Stokes as trustees of Jimijack Irrevocable Trust's, Jimijack Irrevocable Trust's, Nationstar Mortgage LLC's, Brian Chiesi's, Debora Chiesi's, and Quicken's joinders to dismiss Tobin's complaint for quiet title, unjust enrichment and declaratory and equitable relief with prejudice per NRCP 12(b)(5) (non-mutual claims preclusion/res judicata)

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

VERIFICATION

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

Nona Tobin
Name of appellant

John W. Thomson, Esq.
Name of counsel of record

February 2, 2021
Date

/s/ John W. Thomson
Signature of counsel of record

Clark County
State and county where signed

CERTIFICATE OF SERVICE

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

☐ By personally serving it upon him/her; or

☒ By Supreme Court Electronic Efiling System.

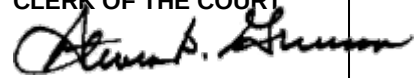
Joseph Y. Hong, Esq.
Hong & Hong Law Office
1980 Festival Plaza Drive, Suite 650
Las Vegas, NV 89135
Attorney for Defs' Joel A. Stokes, Joel A. Stokes and
Sandra Stokes, as Trustees of Jimijack
Irrevocable Trust, and Jimijack Irrevocable Trust

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

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

Dated this 2nd day of February, 2021

/s/ John W. Thomson
Signature



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DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an Individual

Plaintiff,

vs.

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

Defendants.

Case No.: A-19-799890-C

Dept No.: 22

FIRST AMENDED COMPLAINT

**(EXEMPT FROM ARBITRATION—
TITLE TO REAL PROPERTY AND
DECLARATORY RELIEF)**

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

INTRODUCTION

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

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

3 2. In addition, the excess proceeds from the improper sale belong to Tobin and she
4 has incurred damages as a result of the wrongful conduct of the Defendants.
5

6 **JURISDICTION, VENUE**

7 3. The real property which is the subject of this civil action is a single-family
8 residence commonly known as the 2763 White Sage Drive, Henderson, NV 89052, APN 191-13-
9 811-052, (hereinafter “Subject Property”), located in Clark County, Nevada. Tobin seeks a
10 declaration that she is legal owner of the Subject Property. All of the events surrounding the
11 Subject Property took place in Clark County, Nevada, and the Defendants do business in, or
12 reside in Clark County, Nevada. As such, jurisdiction and venue are properly before this Court.
13

14 **PARTIES**

15 4. Plaintiff Nona Tobin, an Individual, resides at 2664 Olivia Heights Avenue,
16 where she has been a home owner in good standing in Sun City Anthem, since 2/20/04.
17

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

21 6. Brian and Debora Chiesti, upon information and belief, are husband & wife,
22 (hereinafter “Chiesti”) who reside in Clark County, Nevada, in the Subject Property and together
23 acquired the Subject Property by a deed recorded 12/27/19 from defendant Joel A. Stokes, an
24 Individual.
25

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

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

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

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

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

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

GENERAL ALLEGATIONS

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

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

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

5 b. There were two recorded encumbrances on the Subject Property in January 2012:
6 a mortgage recorded by Western Thrift & Loan on 7/22/04 with an outstanding balance on
7 10/30/12 of \$389,000, and Wells Fargo Bank held a second mortgage lien with approximately a
8 \$15,000 balance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 32. On 8/15/13 RRFS sent a “courtesy” notice to the GBH Trust regarding the
2 delinquent assessments, but this was while BANA had possession of the Subject Property.
3 BANA did not act on this notice to protect its interest in the Subject Property and protect it from
4 foreclosure.
5

6 33. Over the summer of 2013, Tobin worked with BANA’s agent, Liberty Title in
7 Rhode Island, to try to transfer the title to BANA. Even though BANA took possession of the
8 Subject Property on during the summer of 2013, locking out Tobin, it refused to take title or to
9 pay anything to avoid deterioration of the Subject Property.
10

11 34. On 12/1/13 servicing of the Hansen loan transferred to NSM, but neither BANA
12 nor NSM ever took any of the proper steps to foreclose on the Hansen loan which had been in
13 default since January 2012, or to protect it against foreclosure by the HOA.
14

15 35. In January 2014, frustrated with having the title/liability of the property without
16 having possession or any control, Tobin asked another Relator, long-time SCA resident and
17 owner in good standing, Craig Leidy, for help.
18

19 36. Leidy found that while BANA had placed a lock box on the property, a side door
20 to the garage had been left unlocked.
21

22 37. On 1/29/14 RRFS sent another “courtesy” notice to the Estate of Gordon Hansen
23 to Tobin’s personal residence about the delinquent assessments.
24

25 38. On 2/12/14, RRFS recorded a Notice of Sale for 3/7/14 Sale (NOS) claiming the
26 amount of \$5,081.45 as delinquent assessments and costs.
27

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

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

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

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

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

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

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

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

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

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

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

4 50. The property was listed for public auction on www.auction.com from 5/4/14-
5 5/8/14 at which time Tobin accepted a \$367,500 offer from high bidder MZK Properties
6 (\$350,000 plus \$17,500 buyer's premium).

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

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

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

14 54. On 5/28/14 Veronica Duran, NSM's negotiator, sent Leidy a message through the
15 Equator System that "\$1,100 is the max I can pay to the HOA" referring to the escrow opened
16 5/8/14 for the MZK \$367,500 deal.

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

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

21 57. RRFS falsified the documents disclosed in SCA which purported to have sent
22 notice to Tobin at her address and to the property address notifying her of the non-existent HOA
23 Board decision to a nonexistent request for a waiver. Tobin did not receive any notice from
24
25
26
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28

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

3 58. On 7/24/14 NSM told Leidy that the beneficiary did not approve the MZK deal
4 and to put the property back on the market for \$390,000, but Leidy informed them that he was
5 required to get Tobin's signature.
6

7 59. Tobin demanded by email to Leidy and in person to BHHS managing broker
8 Carlos Ciapa to know the name of the recalcitrant beneficiary of the Hansen Deed of Trust, but
9 NSM refused to identify the beneficiary.
10

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

14 61. On 7/26/14 Blum offered \$358,800, and NSM said to counter with \$375,000,
15 which Tobin reluctantly did on 8/1/14.
16

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

19 63. On 8/15/14, the Subject Property was sold in foreclosure sale by RRFs without
20 any notice to any party with a known interest; Upon information and belief, no notice was given
21 to RRRI, MZK, Blum, Tobin, Leidy, or Ticor Title. It is unknown whether NSM or Chicago title
22 were informed, or if so, why they would not have prevented the sale.
23

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

26 65. Tobin was given none of the due process that is required by the HOA governing
27 documents and NRS 116.
28

1 66. Non-party, Thomas Lucas (hereinafter "Lucas"), was the Manager for
2 Opportunity Homes, LLC, through which Lucas claimed to have purchased the Subject Property
3 for \$63,100 at an home owner association (hereinafter "HOA") foreclosure sale on 8/15/14.
4 Lucas held a deed to the property, recorded on 8/22/14, in which he took title in the name of non-
5 party Opportunity Homes, LLC.
6

7 67. On the Declaration of Value form, mandated to be recorded with all deeds,
8 Thomas Lucas stated under penalty of perjury, that the property value on that day was \$353,529.
9

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

12 69. Six months and one day later, Thomas Lucas recorded that he received an RPTT
13 refund on which the Clerk had noted the exemption #3, "Proof of notification of HOA
14 foreclosure" that was allegedly provided on that later date. Upon information and belief, the
15 "proof of notice" was not recorded with the deed because it did not exist.
16

17 70. Although Thomas Lucas had recorded a deed as Opportunity Homes LLC on
18 8/22/14, Sun City Anthem's (hereinafter "SCA") Resident Transaction Report contains no entry
19 to indicate that either Thomas Lucas or Opportunity Homes LLC ever owned the property, paid a
20 new owner set up fee or paid the Asset Enhancement Fee, one-third of one-percent of the
21 purchase price, that is mandated by SCA's CC&Rs 8.12.
22

23 71. Thomas Lucas is a licensed Real Estate Agent and works under the broker license
24 of Berkshire Hathaway Broker Forrest Barbee with whom Nona Tobin, Successor Trustee of the
25 GBH Trust, had a contract from 2/20/14 – 10/31/14 with the exclusive right to sell the subject
26 property.
27

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

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

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

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

10 76. Non-party, Yuen K. Lee, executed a quit claim deed to transfer the interest of F.
11 Bondurant LLC, if any, to Defendants Joel A. and Sandra Stokes, as trustees of Jimijack
12 Irrevocable Trust for One Dollar on 06/08/15.
13

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

16 78. CluAynne M. Corwin, Nevada Notary affixed her notary stamp and attested to the
17 statement that Thomas Lucas stood before her and signed the 06/08/15 Jimijack deed which was
18 recorded on 6/09/15.
19

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

22 80. Defendants Joel A. and Sandra Stokes', as trustees of Jimijack Irrevocable Trust,
23 only recorded claim to the Subject Property is the defective deed executed by Yuen K. Lee, as if
24 he were Thomas Lucas on 6/8/15.
25
26
27
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1 81. Contradicting the flawed Jimijack deed, the HOA's Resident Transaction Report
2 documents that Jimijack became the immediate subsequent owner, after the GBHT, of the
3 property on 9/25/14 when a new owner set-up fee was assessed.

4 82. Non-party, Realtor Robert Goldsmith, recorded the Jimijack deed on 6/9/15 at
5 1:06 PM, minutes after recording the F. Bondurant LLC deed.

6 83. On 6/16/15 Joel A. and Sandra Stokes, as trustees of Jimijack Irrevocable Trust
7 listed the property for sale using non-party, Realtor Robert Goldsmith, working under URBAN
8 Broker, as their agent. Jimijack leased the Subject Property and retained these funds despite the
9 issues with title.
10

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

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

17 86. BANA never responded to the complaint, possibly because it was served on
18 BANA, a national banking association, and not on BAC Home servicing, successor to
19 countrywide, the actual entity that serviced the disputed Hansen deed of trust from an unknown
20 date to 11/30/13.
21

22 87. BANA never responded to the complaint, possibly because BANA did not have a
23 recorded claim when Jimijack filed suit. BANA was the servicing bank that had one recorded
24 claim, immediately disavowed, to be the beneficiary of the disputed Hansen Deed of Trust, that
25 was on record from 4/12/12 to 9/9/14 when BANA recorded an assignment of its interest, if any,
26 to Wells Fargo.
27
28

1 88. A Judgment of Default was filed against BANA, but not entered, by Jimijack on
2 10/23/15 and recorded on 12/1/15.

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

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

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

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

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

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

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

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

1 c. On 5/6/19 Tobin/GBH Trust recorded a lis pendens which expunged by the
2 6/24/19 trial order against GBH Trust, currently on appeal;

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

6 e. On 8/14/19 Tobin/GBH Trust recorded two lis pendens; one for this lawsuit and
7 one for the Nevada Supreme Court Appeal No. 79295 of case No. A-15-720032-C consolidated
8 with A-16-730078-C. Both are still on record with the Clark County Recorder.
9

10 95. All 2019 recorded claims by Jimijack, Joel Stokes, NSM and their assignees and
11 successors were done while Tobin's and the GBH Trust's Lis Pendens were on the record.
12

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

16 97. Tobin's individual claims, as sole beneficiary of the GBH Trust, to the Subject
17 Property have never been adjudicated, as she attempted to participate, but was excluded, as an
18 individual in Case No. A-15-720032-C.
19

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

23 99. Upon information and belief, Joel Stokes did not disclose to the Chiesti or
24 Quicken Defendants that there are two Tobin Lis Pendens, dated 8/14/19, on record related to
25 this case and to the GBH Trust appeals of Case No. A-15-720032-C.
26
27
28

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

4 101. RRFS is currently holding \$57,282.32 in excess proceeds from the foreclosure
5 sale that belong to Tobin.
6

7
8 **FIRST CAUSE OF ACTION**
9 **QUIET TITLE AGAINST ALL DEFENDANTS**

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

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

15 104. Tobin has a superior interest in the Subject Property than all defendants and title
16 to the Subject Property should be restored to reflect the parties' true interests in the Subject
17 Property.
18

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

22 106. As such the Subject Property should be quieted in Tobin's name.
23

24 **SECOND CAUSE OF ACTION**
25 **UNJUST ENRICHMENT/EQUITY AGAINST CHIESTI'S, STOKES', JIMI JACK, RED**
26 **ROCK FINANCIAL SERVICES, AND NATIONSTAR MORTGAGE**

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

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

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

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

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

13 **THIRD CAUSE OF ACTION**
14 **DECLARATORY RELIEF AS TO ALL DEFENDANTS**

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

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

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

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

23 116. Tobin seeks a declaration from the Court that the transfers of ownership and
24 encumbrances after the transfer from the GBH Trust to the present title are void and
25
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unenforceable.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Nona Tobin prays for judgment as follows:

1. That the Court quiet title to the Subject Property in Tobin's name;
2. That Tobin be awarded damages in equity in excess of \$15,000.00 plus interest, fees, and costs;
3. That the Court issue a declaration that the transfers of ownership and encumbrances after the transfer from the GBH Trust to the present title are void and unenforceable and that Tobin is the rightful beneficial owner of the Subject Property, or alternatively that the financial benefits derived by the defendants belong to Tobin.
4. For an award of reasonable costs of suit;
5. For an award of reasonable attorney's fees by statute and as special damages;
6. For pre-judgment and post-judgment interest; and
7. For such other and further relief as the Court may deem just and proper under the law and equity.

Dated this 3rd day of June, 2020,

THOMSON LAW PC

/s/ John W. Thomson

JOHN W. THOMSON, ESQ.

Nevada Bar No. 5802

2450 St. Rose Parkway, Suite 120

Henderson, Nevada 89074

Attorney for Plaintiff Nona Tobin

OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual,

Plaintiff,

Vs.

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

Defendants.

Case No. A-19-799890-C

Dept. No. XXII

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

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

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

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

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. On June 16, 2015, Defendants JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST filed their Complaint against BANK OF AMERICA² and SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC., seeking, *inter alia*, to quiet title to their residence, 2763 White Sage, Henderson, Nevada 89052. See Stokes v. Bank of America, Case No. A-15-720032-C, filed in Department XXXI, Eighth Judicial District Court, in and for Clark County, Nevada. Subsequently, on May 17, 2016, NATIONSTAR MORTGAGE, LLC intervened, and filed its Counter-Claim against, *inter alia*, JIMIACK IRREVOCABLE TRUST.³ Further, a

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

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

1 Complaint previously filed by NATIONSTAR MORTGAGE, LLC against OPPORTUNITY
2 HOMES, LLC in another action, Case No. A-16-730078-C, on January 11, 2016 was
3 consolidated with the older case filed by MR. STOKES and the Trustees of JIMI JACK
4 IRREVOCABLE TRUST in Department XXXI.
5

6 2. In July 2016, Plaintiff NONA TOBIN and STEVEN HANSEN, as individuals, filed
7 their Motion to Intervene in Case No. A-16-730078-C, claiming MS. TOBIN was a Trustee and MR.
8 HANSEN was a beneficiary of the GORDON B. HANSEN TRUST, the entity that owned the
9 subject property until the homeowners' association foreclosure sale took place. Such motion was
10 denied without prejudice given MS. TOBIN and MR. HANSEN, individually, lacked standing to sue
11 or intervene in the action. MS. TOBIN eventually was permitted to intervene as Trustee of the
12 GORDON B. HANSEN TRUST in early 2017. MS. TOBIN thereafter filed her Counter-Claim
13 against MR. STOKES and JIMI JACK IRREVOCABLE TRUST and Cross-Claims against SUN
14 CITY ANTHEM COMMUNITY ASSOCIATION, OPPORTUNITY HOMES, INC. and F.
15 BONDURANT, LLC. Of interest here, MS. TOBIN identified herself interchangeably as an
16 individual and trustee throughout the pleadings, an error noted by JUDGE JOANNA KISHNER in
17 her Findings of Fact, Conclusions of Law and Judgment filed June 24, 2019, pp. 4 and 8.
18
19

20 3. On April 17, 2019, JUDGE KISHNER granted summary judgment in favor of SUN
21 CITY ANTHEM COMMUNITY ASSOCIATION, INC. as it held a valid homeowners' association
22 foreclosure sale which terminated the interest of GORDON B. HANSEN TRUST within the subject
23 property and MS. TOBIN showed no reason such as "fraud," "oppression" or "malice" for the sale
24 to be set aside. Further, JUDGE KISHNER noted MS. TOBIN, as an individual, had no standing to
25 sue and papers identifying her as a plaintiff suing individually were stricken. On June 5 and 6, 2019,
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inappropriately called a "counter-claim," as these parties were not listed as plaintiffs in the primary action.

1 a bench trial was heard by JUDGE KISHNER with respect to the claims of MS. TOBIN, as Trustee
2 of the GORDON B. HANSEN TRUST against, *inter alia*, MR. STOKES and the JIMIACK
3 IRREVOCABLE TRUST. After hearing the evidence, that Court issued Findings of Fact,
4 Conclusions of Law and Judgment in favor of MR. STOKES and the JIMIACK IRREVOCABLE
5 TRUST, and ordered the *lis pendens* filed by MS. TOBIN against the subject property be expunged.
6 The consolidated action heard by Department XXXI is now pending before the Nevada Court of
7 Appeals.
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9 4. MS. TOBIN, in her individual capacity, has now sued various persons and entities,
10 including MR. STOKES and JIMIACK IRREVOCABLE TRUST in the instant matter before
11 Department XXII for declaratory relief and to quiet title in the real estate that was the subject of the
12 previous consolidated litigation. Various Defendants filed their Motions to Dismiss, along with
13 Joinders thereto, upon the basis, *inter alia*, MS. TOBIN was judicially estopped from asserting an
14 ownership interest in the subject property and re-litigating the case which had already been adjudged
15 by JUDGE KISHNER. This Court granted the motions and now considers the Motion for
16 Attorney's Fees and Costs filed by MR. STOKES, individually, JOEL A. STOKES AND SANDRA
17 STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST and JIMIACK
18 IRREVOCABLE TRUST. They seek reimbursement of \$3,165.00 in attorney's fees and \$290.00 in
19 costs pursuant to Rule 7.60 of the Eighth Judicial District Court Rules (EDCR).
20
21

22 CONCLUSIONS OF LAW

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

24 The court may, after notice and an opportunity to be heard, impose upon an attorney
25 or a party any and all sanctions which may, under the facts of the case, be reasonable,
26 including the imposition of fines, costs or attorney's fees when an attorney or a party without
27 just cause:

28 (1) Presents to the court a motion or an opposition to a motion which is obviously
frivolous, unnecessary or unwarranted; ...or

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

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

4 2. In addition to the cases where an allowance is authorized by specific statute,
5 the court may make an allowance of attorney's fees to a prevailing party:

6 (b) Without regard to the recovery sought, when the court finds that the
7 claim, counterclaim, cross-claim or third-party complaint or defense of the opposing
8 party was brought or maintained without reasonable ground or to harass the
9 prevailing party. The court shall liberally construe the provisions of this paragraph in
10 favor of awarding attorney's fees in all appropriate situations. It is the intent of the
11 Legislature that the court award attorney's fees pursuant to this paragraph and impose
12 sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all
13 appropriate situations to punish for and deter frivolous or vexatious claims and
14 defenses because such claims and defenses overburden limited judicial resources,
15 hinder the timely resolution of meritorious claims and increase the costs of engaging
16 in business and providing professional services to the public.

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

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

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

4 4. The movants provided this Court their analyses concerning the reasonableness of
5 their attorneys' fees under Brunzell v. Golden Gate National Bank, 84 Nev. 345, 349-350, 455 P.2d
6 31, 33 (1969). This Court has considered all the Brunzell factors, noting the qualities of JOSEPH Y.
7 HONG, ESQ.'S and HONG AND HONG LAW'S advocacy, the character of the work to be done
8 and actually performed by the lawyers, and result. All in all, this Court believes an award of
9 \$3,165.00 in attorneys' fees and \$290.00 in costs incurred by MR. STOKES, individually, JOEL A.
10 STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE
11 TRUST and JIMIACK IRREVOCABLE TRUST in defending the matter to be reasonable under
12 the circumstances under EDCR 7.60 and NRS 18.010 and 18.020. This Court therefore grants the
13 Motion for Attorney's Fees and Costs.
14

15
16 Accordingly, and based upon the foregoing Findings of Fact and Conclusions of Law,

17 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** the Motion for Attorney's
18 Fees and Costs filed by JOEL A. STOKES, individually, JOEL A. STOKES AND SANDRA
19 STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST and JIMIACK
20 IRREVOCABLE TRUST pursuant to EDCR 7.60(b)(1) and/or (3) filed June 25, 2020 is granted.
21 These Defendants are awarded \$3,165.00 in attorney's fees and \$290.00 in costs as against Plaintiff
22 NONA TOBIN.
23

Dated this 6th day of September, 2020

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26 SUSAN JOHNSON, DISTRICT COURT JUDGE

27
28 **208 4A7 24C5 145D**
Susan Johnson
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Nona Tobin, Plaintiff(s)

CASE NO: A-19-799890-C

7 vs.

DEPT. NO. Department 22

8 Joel Stokes, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 9/6/2020

15 David Koch

dkoch@kochscow.com

16 Brody Wight

bwight@kochscow.com

17 Akerman LLP

AkermanLAS@akerman.com

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aeshenbaugh@kochscow.com

19 Donna Wittig

donna.wittig@akerman.com

20 Daniel Scow

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21 JOSEPH HONG

YOSUPHONGLAW@GMAIL.COM

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YOSUPHONGLAW@GMAIL.COM

23 MELANIE MORGAN

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24 JOSEPH HONG

yosuphonglaw@gmail.com

25 JOSEPH HONG

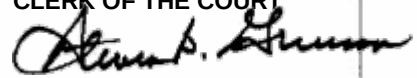
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MELANIE MORGAN	MELANIE.MORGAN@AKERMAN.COM
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STEVEN SCOW	sscow@kochscow.com
John Thomson	johnwthomson@ymail.com
Vincenette Caruana	jwtlaw@ymail.com
Brittany Wood	bwood@mauricewood.com

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

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



1 **NEOJ**
2 JOSEPH Y. HONG, ESQ.
3 State Bar No. 005995
4 HONG & HONG LAW OFFICE
5 1980 Festival Plaza Drive, Suite 650
6 Las Vegas, Nevada 89135
7 Telephone No.: (702) 870-1777
8 Facsimile No.: (702) 870-0500
9 E-mail: yosuphonglaw@gmail.com
10 Attorney for **JOEL A. STOKES,**
11 **JOEL A. STOKES AND SANDRA**
12 **STOKES, AS TRUSTEES OF THE**
13 **JIMIACK IRREVOCABLE TRUST,**
14 **AND JIMIACK IRREVOCABLE TRUST**

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

12 NONA TOBIN, an individual,
13
14 Plaintiff,

Case No.: A-19-799890-C

Dept. No.: XXII

15 vs.

16 BRIAN CHIESTI, an individual; DEBORA
17 CHIESTI, an individual; QUICKEN LOANS
18 INC.; JOEL A. STOKES, an individual; JOEL A.
19 STOKES and SANDRA STOKES, as Trustees of
20 JIMIACK IRREVOCABLE TRUST; JIMIACK
21 IRREVOCABLE TRUST; NATIONSTAR
22 MORTGAGE LLC; RED ROCK FINANCIAL
23 SERVICES; DOES I through X, inclusive; and
24 ROE CORPORATIONS I through V, inclusive,

25 Defendants.

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

26 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD:

27 ///

28 ///

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

DATED this 8th day of October, 2020.

HONG & HONG LAW OFFICE

/s/ Joseph Y. Hong

JOSEPH Y. HONG, ESQ.

State Bar No. 005995

1980 Festival Plaza Drive, Suite 650

Las Vegas, Nevada 89135

Attorney for JOEL A. STOKES, JOEL A.

STOKES AND SANDRA STOKES, AS

TRUSTEES OF THE JIMI JACK

IRREVOCABLE TRUST, AND JIMI JACK

IRREVOCABLE TRUST

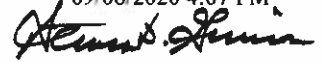
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CERTIFICATE OF ELECTRONIC SERVICE

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

By /s/ Debra L. Batesel

An employee of Joseph Y. Hong, Esq.



CLERK OF THE COURT

OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual,

Plaintiff,

Vs.

Case No. A-19-799890-C

Dept. No. XXII

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

Defendants.

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

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

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

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

FINDINGS OF FACT AND PROCEDURAL HISTORY

1. On June 16, 2015, Defendants JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST filed their Complaint against BANK OF AMERICA² and SUN CITY ANTHEM COMMUNITY ASSOCIATION, INC., seeking, *inter alia*, to quiet title to their residence, 2763 White Sage, Henderson, Nevada 89052. See Stokes v. Bank of America, Case No. A-15-720032-C, filed in Department XXXI, Eighth Judicial District Court, in and for Clark County, Nevada. Subsequently, on May 17, 2016, NATIONSTAR MORTGAGE, LLC intervened, and filed its Counter-Claim against, *inter alia*, JIMIACK IRREVOCABLE TRUST.³ Further, a

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

1 Complaint previously filed by NATIONSTAR MORTGAGE, LLC against OPPORTUNITY
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5

6 2. In July 2016, Plaintiff NONA TOBIN and STEVEN HANSEN, as individuals, filed
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8 HANSEN was a beneficiary of the GORDON B. HANSEN TRUST, the entity that owned the
9 subject property until the homeowners' association foreclosure sale took place. Such motion was
10 denied without prejudice given MS. TOBIN and MR. HANSEN, individually, lacked standing to sue
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1 a bench trial was heard by JUDGE KISHNER with respect to the claims of MS. TOBIN, as Trustee
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4 Conclusions of Law and Judgment in favor of MR. STOKES and the JIMIACK IRREVOCABLE
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9 4. MS. TOBIN, in her individual capacity, has now sued various persons and entities,
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13 Joinders thereto, upon the basis, *inter alia*, MS. TOBIN was judicially estopped from asserting an
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15 by JUDGE KISHNER. This Court granted the motions and now considers the Motion for
16 Attorney's Fees and Costs filed by MR. STOKES, individually, JOEL A. STOKES AND SANDRA
17 STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST and JIMIACK
18 IRREVOCABLE TRUST. They seek reimbursement of \$3,165.00 in attorney's fees and \$290.00 in
19 costs pursuant to Rule 7.60 of the Eighth Judicial District Court Rules (EDCR).
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22 CONCLUSIONS OF LAW

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

24 The court may, after notice and an opportunity to be heard, impose upon an attorney
25 or a party any and all sanctions which may, under the facts of the case, be reasonable,
26 including the imposition of fines, costs or attorney's fees when an attorney or a party without
27 just cause:

28 (1) Presents to the court a motion or an opposition to a motion which is obviously
frivolous, unnecessary or unwarranted; ...or

OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual,

Plaintiff,

Vs.

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

Defendants.

Case No. A-19-799890-C

Dept. No. XXII

ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS

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

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

6
7 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

8 1. For ease and convenience, this Court repeats its findings and procedural history has
9 set forth within its Order filed September 6, 2020. On June 16, 2015, Defendants JOEL A.
10 STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIACK
11 IRREVOCABLE TRUST filed their Complaint against BANK OF AMERICA¹ and SUN CITY
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13 residence, 2763 White Sage, Henderson, Nevada 89052. See Stokes v. Bank of America, Case
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12 her Findings of Fact, Conclusions of Law and Judgment filed June 24, 2019, pp. 4 and 8.
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14 3. On April 17, 2019, JUDGE KISHNER granted summary judgment in favor of SUN
15 CITY ANTHEM COMMUNITY ASSOCIATION, INC. as it held a valid homeowners' association
16 foreclosure sale which terminated the interest of GORDON B. HANSEN TRUST within the subject
17 property and MS. TOBIN showed no reason such as "fraud," "oppression" or "malice" for the sale
18 to be set aside. Further, JUDGE KISHNER noted MS. TOBIN, as an individual, had no standing to
19 sue and papers identifying her as a plaintiff suing individually were stricken. On June 5 and 6, 2019,
20 a bench trial was heard by JUDGE KISHNER with respect to the claims of MS. TOBIN, as Trustee
21 of the GORDON B. HANSEN TRUST against, *inter alia*, MR. STOKES and the JIMIACK
22 IRREVOCABLE TRUST. After hearing the evidence, that Court issued Findings of Fact,
23 Conclusions of Law and Judgment in favor of MR. STOKES and the JIMIACK IRREVOCABLE
24 TRUST, and ordered the *lis pendens* filed by MS. TOBIN against the subject property be expunged.
25

26 ...
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1 The consolidated action heard by Department XXXI is now pending before the Nevada Court of
2 Appeals.

3 4. On or about December 27, 2019, JOEL A. STOKES, JOEL A. STOKES AND
4 SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST sold the
5 residence, 2763 White Sage, Henderson, Nevada 89052, to Defendants BRIAN CHIESI and
6 DEBORA CHIESI, who acquired the property by borrowing funds from Defendant QUICKEN
7 LOANS, INC. QUICKEN LOANS, INC. recorded a security interest in the subject property by
8 virtue of its loan to the CHIESIS.
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10 5. MS. TOBIN, in her individual capacity, sued various persons and entities, including
11 MR. and MRS. CHIESI and QUICKEN LOANS, INC. in the instant matter before Department XXII
12 for declaratory relief and to quiet title in the real estate that was the subject of the previous
13 consolidated litigation. Various Defendants filed their Motions to Dismiss, along with Joinders
14 thereto, upon the basis, *inter alia*, MS. TOBIN was judicially estopped from asserting an ownership
15 interest in the subject property and re-litigating the case which had already been adjudged by
16 JUDGE KISHNER. This Court granted the motions and now considers the Motion for Attorney's
17 Fees and Costs filed by MR. and MRS. CHIESI and QUICKEN LOANS, INC. They seek
18 reimbursement of \$9,480.00 in attorney's fees and \$308.99 in costs pursuant to NRS 18.010(2)(b).
19
20

21 **CONCLUSIONS OF LAW**

22 1. NRS 18.010(2) specifically provides:

23 2. In addition to the cases where an allowance is authorized by specific statute,
24 the court may make an allowance of attorney's fees to a prevailing party:

25 . . .

26 (b) Without regard to the recovery sought, when the court finds that the
27 claim, counterclaim, cross-claim or third-party complaint or defense of the opposing
28 party was brought or maintained without reasonable ground or to harass the
prevailing party. The court shall liberally construe the provisions of this paragraph in
favor of awarding attorney's fees in all appropriate situations. It is the intent of the
Legislature that the court award attorney's fees pursuant to this paragraph and impose

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

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

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

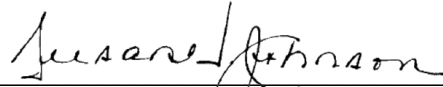
4. The movants provided this Court their analyses concerning the reasonableness of their attorneys' fees under Brunzell v. Golden Gate National Bank, 84 Nev. 345, 349-350, 455 P.2d 31, 33 (1969). This Court has considered all the Brunzell factors, noting the qualities of BRITTANY

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

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

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

Dated this 17th day of November, 2020



SUSAN JOHNSON, DISTRICT COURT JUDGE

659 EBC F4CD 0F51
Susan Johnson
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Nona Tobin, Plaintiff(s)

CASE NO: A-19-799890-C

7 vs.

DEPT. NO. Department 22

8 Joel Stokes, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/17/2020

15 David Koch

dkoch@kochscow.com

16 Brody Wight

bwight@kochscow.com

17 Akerman LLP

AkermanLAS@akerman.com

18 Andrea Eshenbaugh - Legal Assistant

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19 Donna Wittig

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20 Daniel Scow

dscow@kochscow.com

21 JOSEPH HONG

YOSUPHONGLAW@GMAIL.COM

22 JOSEPH HONG

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23 MELANIE MORGAN

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yosuphonglaw@gmail.com

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John Thomson	johnwthomson@ymail.com
Vincenette Caruana	jwtlaw@ymail.com
Brittany Wood	bwood@mauricewood.com

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

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

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

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

4 2. In addition to the cases where an allowance is authorized by specific statute,
5 the court may make an allowance of attorney's fees to a prevailing party:

6 (b) Without regard to the recovery sought, when the court finds that the
7 claim, counterclaim, cross-claim or third-party complaint or defense of the opposing
8 party was brought or maintained without reasonable ground or to harass the
9 prevailing party. The court shall liberally construe the provisions of this paragraph in
10 favor of awarding attorney's fees in all appropriate situations. It is the intent of the
11 Legislature that the court award attorney's fees pursuant to this paragraph and impose
12 sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all
13 appropriate situations to punish for and deter frivolous or vexatious claims and
14 defenses because such claims and defenses overburden limited judicial resources,
15 hinder the timely resolution of meritorious claims and increase the costs of engaging
16 in business and providing professional services to the public.

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

18 3. Here, the intervention action and claims of the GORDON B. HANSEN TRUST and
19 MS. TOBIN, whether individually or as Trustee of the Trust, were decided before JUDGE
20 KISHNER in the aforementioned consolidated actions. Specifically, JUDGE KISHNER found MS.
21 TOBIN, as an individual, had no standing to sue as she had no ownership interest in the subject
22 residence. Although JUDGE KISHNER made such a finding, MS. TOBIN continued to
23 interchangeably refer to herself as suing individually and as Trustee. After hearing the matter fully
24 in both summary judgment and a bench trial, JUDGE KISHNER concluded the homeowners'
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virtue of principles of claim and issue preclusion, and thus, was brought without reasonable ground.

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

4 4. The movants provided this Court their analyses concerning the reasonableness of
5 their attorneys' fees under Brunzell v. Golden Gate National Bank, 84 Nev. 345, 349-350, 455 P.2d
6 31, 33 (1969). This Court has considered all the Brunzell factors, noting the qualities of JOSEPH Y.
7 HONG, ESQ.'S and HONG AND HONG LAW'S advocacy, the character of the work to be done
8 and actually performed by the lawyers, and result. All in all, this Court believes an award of
9 \$3,165.00 in attorneys' fees and \$290.00 in costs incurred by MR. STOKES, individually, JOEL A.
10 STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE
11 TRUST and JIMIACK IRREVOCABLE TRUST in defending the matter to be reasonable under
12 the circumstances under EDCR 7.60 and NRS 18.010 and 18.020. This Court therefore grants the
13 Motion for Attorney's Fees and Costs.
14

15 Accordingly, and based upon the foregoing Findings of Fact and Conclusions of Law,
16

17 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** the Motion for Attorney's
18 Fees and Costs filed by JOEL A. STOKES, individually, JOEL A. STOKES AND SANDRA
19 STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST and JIMIACK
20 IRREVOCABLE TRUST pursuant to EDCR 7.60(b)(1) and/or (3) filed June 25, 2020 is granted.
21 These Defendants are awarded \$3,165.00 in attorney's fees and \$290.00 in costs as against Plaintiff
22 NONA TOBIN.
23

Dated this 6th day of September, 2020

24 

25
26 SUSAN JOHNSON, DISTRICT COURT JUDGE

27
28 **208 4A7 24C5 145D**
Susan Johnson
District Court Judge

1 **CSERV**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 Nona Tobin, Plaintiff(s)

CASE NO: A-19-799890-C

7 vs.

DEPT. NO. Department 22

8 Joel Stokes, Defendant(s)

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12 Court. The foregoing Order Granting Motion was served via the court's electronic eFile
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14 Service Date: 9/6/2020

15 David Koch

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17 Akerman LLP

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18 Andrea Eshenbaugh - Legal Assistant

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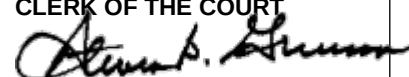
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John Thomson	johnwthomson@ymail.com
Vincenette Caruana	jwtlaw@ymail.com
Brittany Wood	bwood@mauricewood.com

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

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

MAURICE WOOD
9525 Hillwood Drive, Suite 140
Las Vegas, Nevada 89134
Tel: (702) 463-7616 Fax: (702) 463-6224



NEOJ

AARON R. MAURICE, ESQ.

Nevada Bar No. 6412

BRITTANY WOOD, ESQ.

Nevada Bar No. 7562

ELIZABETH E. ARONSON, ESQ.

Nevada Bar No. 14472

MAURICE WOOD

9525 Hillwood Drive, Suite 140

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Telephone: (702) 463-7616

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

DISTRICT COURT

CLARK COUNTY, NEVADA

* * *

NONA TOBIN, an individual,
Plaintiff,

vs.

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

Defendants.

CASE NO. A-19-799890-C

DEPT NO. 22

NOTICE OF ENTRY OF ORDER

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MAURICE WOOD
9525 Hillwood Drive, Suite 140
Las Vegas, Nevada 89134
Tel: (702) 463-7616 Fax: (702) 463-6224

NOTICE OF ENTRY OF ORDER

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

DATED this 17th day of November, 2020.

MAURICE WOOD

By /s/Brittany Wood

AARON R. MAURICE, ESQ.
Nevada Bar No. 006412
BRITTANY WOOD, ESQ.
Nevada Bar No. 007562
ELIZABETH E. ARONSON, ESQ.
Nevada Bar No. 14472
9525 Hillwood Drive, Suite 140
Las Vegas, Nevada 89134

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

CERTIFICATE OF SERVICE

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

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

/s/ Brittany Wood
An Employee of MAURICE WOOD

OGM

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual,

Plaintiff,

Vs.

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

Defendants.

Case No. A-19-799890-C

Dept. No. XXII

ORDER GRANTING MOTION FOR ATTORNEY'S FEES AND COSTS

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

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

6
7 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

8 1. For ease and convenience, this Court repeats its findings and procedural history has
9 set forth within its Order filed September 6, 2020. On June 16, 2015, Defendants JOEL A.
10 STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIACK
11 IRREVOCABLE TRUST filed their Complaint against BANK OF AMERICA¹ and SUN CITY
12 ANTHEM COMMUNITY ASSOCIATION, INC., seeking, *inter alia*, to quiet title to their
13 residence, 2763 White Sage, Henderson, Nevada 89052. See Stokes v. Bank of America, Case
14 No. A-15-720032-C, filed in Department XXXI, Eighth Judicial District Court, in and for
15 Clark County, Nevada. Subsequently, on May 17, 2016, NATIONSTAR MORTGAGE,
16 LLC intervened, and filed its Counter-Claim against, *inter alia*, JIMIACK IRREVOCABLE
17 TRUST.² Further, a Complaint previously filed by NATIONSTAR MORTGAGE, LLC
18 against OPPORTUNITY HOMES, LLC in another action, Case No. A-16-730078-C, on
19 January 11, 2016 was consolidated with the older case filed by MR. STOKES and the
20 Trustees of JIMIACK IRREVOCABLE TRUST in Department XXXI.
21
22
23

24 . . .

25
26 _____
27 ¹NATIONSTAR MORTGAGE, LLC thereafter was permitted to intervene in that it was BANK OF
AMERICA'S successor-in-interest.

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

1 2. In July 2016, Plaintiff NONA TOBIN and STEVEN HANSEN, as individuals, filed
2 their Motion to Intervene in Case No. A-16-730078-C, claiming MS. TOBIN was a Trustee and MR.
3 HANSEN was a beneficiary of the GORDON B. HANSEN TRUST, the entity that owned the
4 subject property until the homeowners' association foreclosure sale took place. Such motion was
5 denied without prejudice given MS. TOBIN and MR. HANSEN, individually, lacked standing to sue
6 or intervene in the action. MS. TOBIN eventually was permitted to intervene as Trustee of the
7 GORDON B. HANSEN TRUST in early 2017. MS. TOBIN thereafter filed her Counter-Claim
8 against MR. STOKES and JIMIACK IRREVOCABLE TRUST and Cross-Claims against SUN
9 CITY ANTHEM COMMUNITY ASSOCIATION, OPPORTUNITY HOMES, INC. and F.
10 BONDURANT, LLC. Of interest here, MS. TOBIN identified herself interchangeably as an
11 individual and trustee throughout the pleadings, an error noted by JUDGE JOANNA KISHNER in
12 her Findings of Fact, Conclusions of Law and Judgment filed June 24, 2019, pp. 4 and 8.
13

14 3. On April 17, 2019, JUDGE KISHNER granted summary judgment in favor of SUN
15 CITY ANTHEM COMMUNITY ASSOCIATION, INC. as it held a valid homeowners' association
16 foreclosure sale which terminated the interest of GORDON B. HANSEN TRUST within the subject
17 property and MS. TOBIN showed no reason such as "fraud," "oppression" or "malice" for the sale
18 to be set aside. Further, JUDGE KISHNER noted MS. TOBIN, as an individual, had no standing to
19 sue and papers identifying her as a plaintiff suing individually were stricken. On June 5 and 6, 2019,
20 a bench trial was heard by JUDGE KISHNER with respect to the claims of MS. TOBIN, as Trustee
21 of the GORDON B. HANSEN TRUST against, *inter alia*, MR. STOKES and the JIMIACK
22 IRREVOCABLE TRUST. After hearing the evidence, that Court issued Findings of Fact,
23 Conclusions of Law and Judgment in favor of MR. STOKES and the JIMIACK IRREVOCABLE
24 TRUST, and ordered the *lis pendens* filed by MS. TOBIN against the subject property be expunged.
25

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27
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1 The consolidated action heard by Department XXXI is now pending before the Nevada Court of
2 Appeals.

3 4. On or about December 27, 2019, JOEL A. STOKES, JOEL A. STOKES AND
4 SANDRA STOKES, AS TRUSTEES OF THE JIMIJACK IRREVOCABLE TRUST sold the
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11 MR. and MRS. CHIESI and QUICKEN LOANS, INC. in the instant matter before Department XXII
12 for declaratory relief and to quiet title in the real estate that was the subject of the previous
13 consolidated litigation. Various Defendants filed their Motions to Dismiss, along with Joinders
14 thereto, upon the basis, *inter alia*, MS. TOBIN was judicially estopped from asserting an ownership
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18 reimbursement of \$9,480.00 in attorney's fees and \$308.99 in costs pursuant to NRS 18.010(2)(b).
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21 **CONCLUSIONS OF LAW**

22 1. NRS 18.010(2) specifically provides:

23 2. In addition to the cases where an allowance is authorized by specific statute,
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Also see NRS 18.020 (costs *must* be awarded to the prevailing party).

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

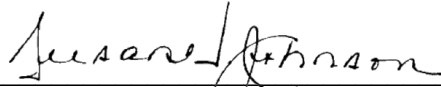
4. The movants provided this Court their analyses concerning the reasonableness of their attorneys' fees under Brunzell v. Golden Gate National Bank, 84 Nev. 345, 349-350, 455 P.2d 31, 33 (1969). This Court has considered all the Brunzell factors, noting the qualities of BRITTANY

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

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

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

Dated this 17th day of November, 2020



SUSAN JOHNSON, DISTRICT COURT JUDGE

659 EBC F4CD 0F51
Susan Johnson
District Court Judge

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Nona Tobin, Plaintiff(s)

CASE NO: A-19-799890-C

7 vs.

DEPT. NO. Department 22

8 Joel Stokes, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 11/17/2020

15 David Koch

dkoch@kochscow.com

16 Brody Wight

bwight@kochscow.com

17 Akerman LLP

AkermanLAS@akerman.com

18 Andrea Eshenbaugh - Legal Assistant

aeshenbaugh@kochscow.com

19 Donna Wittig

donna.wittig@akerman.com

20 Daniel Scow

dscow@kochscow.com

21 JOSEPH HONG

YOSUPHONGLAW@GMAIL.COM

22 JOSEPH HONG

YOSUPHONGLAW@GMAIL.COM

23 MELANIE MORGAN

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24 JOSEPH HONG

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25 JOSEPH HONG

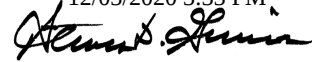
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JOSEPH HONG	YOSUPHONGLAW@GMAIL.COM
MELANIE MORGAN	MELANIE.MORGAN@AKERMAN.COM
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STEVEN SCOW	sscow@kochscow.com
John Thomson	johnwthomson@ymail.com
Vincenette Caruana	jwtlaw@ymail.com
Brittany Wood	bwood@mauricewood.com

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

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


CLERK OF THE COURT

OGM

~~EDWO~~

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

*Attorneys for Defendant
Red Rock Financial Services*

DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual,

Plaintiff,

vs.

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

Defendants.

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

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

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

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

11 **FACTS**

12 **A. Tobin Unsuccessfully Brings Claims Against the HOA**

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

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

22 3. Tobin's central allegation in the Previous Case was that Red Rock
23 committed fraud and wrongfully colluded with several parties, including the HOA, in
24 foreclosing on the Property without complying with the requirements of NRS Chapter
25 116 or the HOA's governing documents.

26 4. Tobin's Cross-claim in the Previous Case listed a host of allegations of
27 wrongdoing against Red Rock including claims that Red Rock failed to provide the Trust
28

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

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

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

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

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

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

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

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

4 **B. Tobin Brings the Current Complaint**

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

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

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

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

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

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

25 18. In their joinders, the Chiesi Defendants and the Jimijack Defendants
26 requested this Court grant them attorney’s fees and costs for defending against Tobin’s
27

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

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

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

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

17 **LEGAL FINDINGS**

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

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

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

2 (1) There is a valid final judgment,

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

Dated: December 3, 2020

Dated this 3rd day of December, 2020

Jessie Johnson

HONORABLE SUSAN JOHNSON
DISTRICT COURT JUDGE

Submitted by:

_____/s/ Brody Wight

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

6CA 205 1CBE 2555
Susan Johnson
District Court Judge

Approved as to Form and Content:

/s/ Scott Lachman

Scott Lachman, Esq.
Counsel for Nanttar Mortgage, LLC

/s/ Joseph Hong

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

/s/ Brittany Wood

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

Mr. Thomson has refused to approve the proposed order for the reasons put forth in the letter attached as Exhibit 2

John Thomson, Esq.
Counsel for Nona Tobin

EXHIBIT 1

EXHIBIT 1

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



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

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

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

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

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

--

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

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

BW

You have my authority to attach my electronic signature.

Brittany Wood

Partner



9525 Hillwood Drive | Suite 140
Las Vegas, Nevada | 89134
Office: (702) 463-7616 | Fax: (702) 463-6224
bwood@mauricewood.com

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

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

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

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Henderson, Nevada 89052
702-318-5040 (office)
702-318-5039 (fax)
801-645-8978 (cell)
bwight@kochscow.com

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



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

Scott Lachman

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

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

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Order Granting
Defend...n.docx

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

BW

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

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



Order Granting
Defend...n.docx

Brody Wight
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801-645-8978 (cell)
bwight@kochscow.com

EXHIBIT 2

EXHIBIT 2

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

October 27, 2020

Via Email Only:

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

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

Dear Counsel:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

None of these claims were heard. See # 13

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“...before the trust filed its Motion for Summary Judgment vs. the HOA” misstates the facts & the court record.

1/31/17 Tobin Cross-Claim vs Sun City Anthem

2/23/17 Sun City Anthem Motion to Dismiss Tobin/Gordon B. Hansen Trust per NRS 38.310

3/3/17 Tobin filed a Pro Se Motion for Summary Judgment to void the sale vs. the HOA on behalf of herself & Gordon B. Hansen Trust

3/14/17 Sun City Anthem changed attorneys from Lech to Lipson

3/22/17 Tobin gave Sun City Anthem a settlement offer to avoid litigation

3/22/17 Sun City Anthem filed Motion to Dismiss vs Tobin & Gordon B. Hansen Trust per NRCP 41 because Tobin was a Pro Se

3/31/17 Sun City Anthem filed an Opposition to Motion to Tobin Motion for Summary Judgment

4/27/17 Court denied Sun City Anthem Motion to Dismiss per 41 “as to the individual” but erred in not hearing the Tobin/Gordon B. Hansen Trust Motion for Summary Judgment which was scheduled to be heard 4/27/17

5/25/17 Sun City Anthem & Tobin/Gordon B. Hansen Trust new attorney stipulated to withdraw all claims & Tobin’s MSJ pending completion of mediation. Sun City Anthem’s 3/31/17 opposition was withdrawn erroneously as Sun City Anthem new attorney Ochoa misrepresented Sun City Anthem’s opposition as a 2nd Tobin/Gordon B. Hansen Trust Motion for Summary Judgment. Tobin/Gordon B. Hansen Trust completed mediation on 11/13/18, but her claims were not restored to the jurisdiction of the court as her 4/9/19, 4/12/19, 7/26/19 notices of completion of mediation and her 7/29/19 motion to dismiss per 38.310 were all stricken from the record unheard. This resulted in the court refusing to hear her 3/3/17 Motion for Summary Judgment vs. Sun City Anthem, her 4/10/19 Motion for Summary Judgment vs. Jimijack and her 4/24/19 motion to vacate the Sun City Anthem partial Motion for Summary Judgment of the Gordon B. Hansen Trust’s quiet title claims & Nationstar Mortgage’s limited joinder thereto pursuant to NRCP 60 fraud on court.

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/s/ John W. Thomson

John W. Thomson. Esq.

JWT/ac

cc: Nona Tobin

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Nona Tobin, Plaintiff(s)

CASE NO: A-19-799890-C

7 vs.

DEPT. NO. Department 22

8 Joel Stokes, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/3/2020

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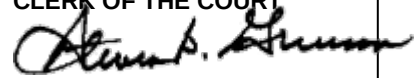
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DISTRICT COURT
CLARK COUNTY, NEVADA

NONA TOBIN, an individual,

Plaintiff,

vs.

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

Defendants.

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

NOTICE OF ENTRY OF ORDER

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

DATED: December 3, 2020.

KOCH & SCOW, LLC

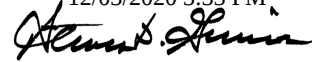
/s/ Steven B. Scow
Steven B. Scow, Esq.
Attorney for Red Rock Financial Services, LLC

CERTIFICATE OF SERVICE

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

Executed on December 3, 2020 at Henderson, Nevada.

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


CLERK OF THE COURT

OGM

~~EDWO~~

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DISTRICT COURT

CLARK COUNTY, NEVADA

NONA TOBIN, an individual,

Plaintiff,

vs.

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

Defendants.

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

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

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

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

11 **FACTS**

12 **A. Tobin Unsuccessfully Brings Claims Against the HOA**

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

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

22 3. Tobin's central allegation in the Previous Case was that Red Rock
23 committed fraud and wrongfully colluded with several parties, including the HOA, in
24 foreclosing on the Property without complying with the requirements of NRS Chapter
25 116 or the HOA's governing documents.

26 4. Tobin's Cross-claim in the Previous Case listed a host of allegations of
27 wrongdoing against Red Rock including claims that Red Rock failed to provide the Trust
28

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

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

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

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

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

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

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

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

4 **B. Tobin Brings the Current Complaint**

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

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

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

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

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

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

25 18. In their joinders, the Chiesi Defendants and the Jimijack Defendants
26 requested this Court grant them attorney's fees and costs for defending against Tobin's
27

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

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

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

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

17 **LEGAL FINDINGS**

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

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

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

2 (1) There is a valid final judgment,

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

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

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

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

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

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

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

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

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

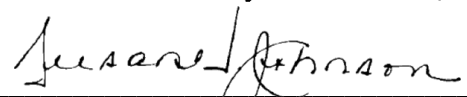
5 IT IS FURTHER ORDERED THAT pursuant to NRS 14.017, the Notices of Lis
6 Pendens recorded by Plaintiff in the Office of the Clark County Recorder as Instrument
7 Numbers 201908080002097, 201908140003083, and 201908140003084, are hereby cancelled
8 and expunged. Said cancellation has the same effect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

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

14 **IT IS SO ORDERED.**

15 Dated: December 3 , 2020

Dated this 3rd day of December, 2020



HONORABLE SUSAN JOHNSON
DISTRICT COURT JUDGE

17 **Submitted by:**

18 /s/ Brody Wight

19 Brody Wight, Esq.
20 Counsel for Defendant Red Rock
 Financial Services, LLC.

6CA 205 1CBE 2555
Susan Johnson
District Court Judge

21 **Approved as to Form and Content:**

22 /s/ Scott Lachman

23 Scott Lachman, Esq.
 Counsel for Nationtar Mortgage, LLC

24 /s/ Joseph Hong

25 Joseph Hong, Esq.
26 Counsel for Joel a Stokes, Joel A. Stokes
 and Sandra Stokes as trustees of Jimijack
27 Irrevocable Trust, and Jimijack
 Irrevocable Trust

 /s/ Brittany Wood

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

Mr. Thomson has refused to approve the
proposed order for the reasons put forth
in the letter attached as Exhibit 2

John Thomson, Esq.
Counsel for Nona Tobin

EXHIBIT 1

EXHIBIT 1

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



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

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

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

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

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

--

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

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

BW

You have my authority to attach my electronic signature.

Brittany Wood

Partner



9525 Hillwood Drive | Suite 140
Las Vegas, Nevada | 89134
Office: (702) 463-7616 | Fax: (702) 463-6224
bwood@mauricewood.com

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

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

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

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Brody Wight
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Henderson, Nevada 89052
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702-318-5039 (fax)
801-645-8978 (cell)
bwight@kochscow.com

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



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

Scott Lachman

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

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

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

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

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



Order Granting
Defend...n.docx

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

BW

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

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



Order Granting
Defend...n.docx

Brody Wight
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EXHIBIT 2

EXHIBIT 2

LAW OFFICE OF JOHN W. THOMSON
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OFFICE: 702-478-8282
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EMAIL: johnwthomson@ymail.com/jwtdlaw@ymail.com

October 27, 2020

Via Email Only:

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

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

Dear Counsel:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

None of these claims were heard. See # 13

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“...before the trust filed its Motion for Summary Judgment vs. the HOA” misstates the facts & the court record.

1/31/17 Tobin Cross-Claim vs Sun City Anthem

2/23/17 Sun City Anthem Motion to Dismiss Tobin/Gordon B. Hansen Trust per NRS 38.310

3/3/17 Tobin filed a Pro Se Motion for Summary Judgment to void the sale vs. the HOA on behalf of herself & Gordon B. Hansen Trust

3/14/17 Sun City Anthem changed attorneys from Lech to Lipson

3/22/17 Tobin gave Sun City Anthem a settlement offer to avoid litigation

3/22/17 Sun City Anthem filed Motion to Dismiss vs Tobin & Gordon B. Hansen Trust per NRCP 41 because Tobin was a Pro Se

3/31/17 Sun City Anthem filed an Opposition to Motion to Tobin Motion for Summary Judgment

4/27/17 Court denied Sun City Anthem Motion to Dismiss per 41 “as to the individual” but erred in not hearing the Tobin/Gordon B. Hansen Trust Motion for Summary Judgment which was scheduled to be heard 4/27/17

5/25/17 Sun City Anthem & Tobin/Gordon B. Hansen Trust new attorney stipulated to withdraw all claims & Tobin’s MSJ pending completion of mediation. Sun City Anthem’s 3/31/17 opposition was withdrawn erroneously as Sun City Anthem new attorney Ochoa misrepresented Sun City Anthem’s opposition as a 2nd Tobin/Gordon B. Hansen Trust Motion for Summary Judgment. Tobin/Gordon B. Hansen Trust completed mediation on 11/13/18, but her claims were not restored to the jurisdiction of the court as her 4/9/19, 4/12/19, 7/26/19 notices of completion of mediation and her 7/29/19 motion to dismiss per 38.310 were all stricken from the record unheard. This resulted in the court refusing to hear her 3/3/17 Motion for Summary Judgment vs. Sun City Anthem, her 4/10/19 Motion for Summary Judgment vs. Jimijack and her 4/24/19 motion to vacate the Sun City Anthem partial Motion for Summary Judgment of the Gordon B. Hansen Trust’s quiet title claims & Nationstar Mortgage’s limited joinder thereto pursuant to NRCP 60 fraud on court.

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

/s/ John W. Thomson

John W. Thomson. Esq.

JWT/ac

cc: Nona Tobin

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Nona Tobin, Plaintiff(s)

CASE NO: A-19-799890-C

7 vs.

DEPT. NO. Department 22

8 Joel Stokes, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

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

14 Service Date: 12/3/2020

15 David Koch

dkoch@kochscow.com

16 Brody Wight

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17 Akerman LLP

AkermanLAS@akerman.com

18 Andrea Eshenbaugh - Legal Assistant

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19 Donna Wittig

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