

THE COURT OF APPEALS OF THE STATE OF NEVADA

NONA TOBIN,

Appellant,

v.

BRIAN CHIESI, an individual; DEBORA CHIESI, an individual; QUICKEN LOANS, INC.; JOEL A. STOKES, an individual; JOEL A. STOCKS and SANDRA F. STOKES as Trustees of the JIMI JACK IRREVOCABLE TRUST; REDROCK FINANCIAL SERVICES; and NATIONSTAR MORTGAGE, LLC,

Respondents.

Electronically Filed
Oct 01 2021 10:24 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No.: 82294

Dist. Court No.: A-19-799890-C

**APPENDIX
VOLUME 21 of 22**

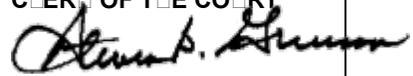
Prepared and Submitted by:

/s/ John W. Thomson
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THOMSON LAW PC
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Attorney for Appellant Nona Tobin

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9 Attorney for Plaintiff

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 NONA TOBIN, an Individual

13 Plaintiff,

14 vs.

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

25 Defendants.

26 Case No.: A-19-799890-C

27 Dept No.: 22

28 **NOTICE OF ENTRY OF
STIPULATION AND ORDER TO
RESCHEDULE HEARING FOR
DEFENDANT RED ROCK
FINANCIAL SERVICES, LLC'S
MOTION TO DISMISS COMPLAINT
PURSUANT TO NRCP 12(B)(5) AND
(6), JOINDERS THERETO, AND
REQUEST FOR JUDICIAL NOTICE**

29 PLEASE TAKE NOTICE that a **STIPULATION AND ORDER TO RESCHEDULE**
30 **HEARING FOR DEFENDANT RED ROCK FINANCIAL SERVICES, LLC'S MOTION**
31 **TO DISMISS COMPLAINT PURSUANT TO NRCP 12(B)(5) AND (6), JOINDERS**

32 ///

1 **THERE TO, AND REQUEST FOR JUDICIAL NOTICE** was entered by the Court on the
2 13th day of July, 2020. A copy of the Order is attached hereto as Exhibit A.

3 DATED this 14th day of July, 2020.

4
5 By: John W. Thomson
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this foregoing document was electronically filed on this 14th day of July, 2020, and served via the Eighth Judicial District Court’s Odyssey electronic filing system to:

All parties listed to receive notice on above mentioned case.

/s/Annette Cooper
An Employee of Thomson Law PC

Exhibit 1

SAO

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8 Email: johnwthomson@ymail.com
9 Attorney for Plaintiff Nona Tobin

HEARING REQUIRED

DATE: August 11, 2020

DISTRICT COURT

TIME: 8:30 AM

CLARK COUNTY, NEVADA

File with Master Calendar

10 NONA TOBIN, an Individual

11 Plaintiff,

12 vs.

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

24 Defendants.

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

**STIPULATION AND ORDER TO
RESCHEDULE HEARING FOR
DEFENDANT RED ROCK
FINANCIAL SERVICES, LLC'S
MOTION TO DISMISS
COMPLAINT PURSUANT TO
NRCP 12(B)(5) AND (6), JOINDERS
THERE TO, AND REQUEST FOR
JUDICIAL NOTICE**

**Original Hearing Date: July 28, 2020
Time: 8:30 a.m.**

25 **IT IS HEREBY STIPULATED** by and between NONA TOBIN, by and through her
26 attorney, JOHN W. THOMSON, ESQ., of THOMSON LAW PC and, BRIAN CHIESI and
27 DEBORA CHIESI by and through their attorneys AARON R. MAURICE, ESQ., of
28 MAURICE WOOD, and JOEL A. STOKES, individually, JOEL A. STOKES and SANDRA
STOKES, as TRUSTEES OF JIMIACK IRREVOCABLE TRUST, and JIMIACK
IRREVOCABLE TRUST by and through their attorney JOSEPH Y. HONG, ESQ. of HONG
& HONG LAW OFFICE, and NATIONSTAR MORTGAGE LLC, by and through its

1 attorneys MELANIE D. MORGAN, ESQ., and DONNA M. WITTIG, ESQ. of AKERMAN
2 LLP, and DAVID R. KOCH, ESQ., STEVEN B. SCOW, ESQ., and BRODY B. WIGHT,
3 ESQ., of KOCH AND SCOW, LLC, that the hearing for Defendant Red Rock Financial
4 Services, LLC's Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5) and (6), Joinders
5 thereto, and the Request for Judicial Notice originally scheduled to occur in Department 22, on
6 July 28, 2020 at 8:30a.m., be rescheduled to occur at the same location on Tuesday August 11,
7 2020 at 8:30 a.m.

8
9 The plaintiff's opposition brief to the Motion to dismiss is due on July 20, 2020 and
10 the Defendants shall have until August 3, 2020 to file a Reply Brief.

11 IT IS HERBY STIPULATED THIS 13th DAY OF JULY, 2020:

12 THOMSON LAW PC

13
14 /s/ John W. Thomson
15 JOHN W. THOMSON, ESQ.
16 Nevada Bar No. 5802
17 2450 St. Rose Parkway, Suite 120
18 Henderson, Nevada 89074
19 johnwthomson@ymail.com
20 *Attorney for Plaintiff Nona Tobin*

21 MAURICE WOOD

22 /s/ Brittany Wood
23 Aaron R. Maurice, Esq.
24 Nevada Bar No. 6412
25 Brittany Wood, Esq.
26 Nevada Bar No. 7562
27 Elizabeth E. Aronson, Esq.
28 Nevada Bar No. 14472
9525 Hillwood Dr., Suite 140
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bwood@mauricewood.com
earonson@mauricewood.com
*Attorney for Defendants,
Brian Chiesi and Debora Chiesi, and Quicken Loans, Inc.*

HONG & HONG LAW OFFICE

/s/ Joseph Y. Hong
Joseph Y. Hong, Esq.
Nevada Bar No. 5995
1980 Festival Plaza Dr., Suite 650
Las Vegas, Nevada 89135
*Attorney for Defendants Joel A. Stokes,
Joel A. Stokes and Sandra Stokes,
as trustees of the Jimijack Irrevocable
Trust, and Jimijack Irrevocable Trust*
yosuphonglaw@gmail.com

1
2 AKERMAN LLP

3 /s/ Melanie D. Morgan
4 Melanie D. Morgan, Esq.
5 Nevada Bar No. 8215
6 Donna M. Wittig, Esq.
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10 melanie.morgan@akerman.com
11 donna.wittig@akerman.com
12 Attorney for Defendant,
13 Nationstar Mortgage LLC

KOCH & SCOW, LLC

14 /s/ Brody B. Wight
15 David R. Koch, Esq.
16 Nevada Bar No. 8830
17 Steven B. Scow, Esq.
18 Nevada Bar No. 9906
19 Brody B. Wight, Esq.
20 Nevada Bar No. 13615
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23 dkoch@kochscow.com
24 sscow@kochscow.com
25 bwight@kochscow.com
26 Attorneys for Defendant,
27 Red Rock Financial Services

28
ORDER

IT IS HEREBY ORDERED THAT the hearing for Defendant Red Rock
Financial Services, LLC's Motion to Dismiss Complaint Pursuant to NRCP 12(b)(5) and (6),
Joinders thereto, and the Request for Judicial Notice will be rescheduled to occur at the same
location on Tuesday August 11, 2020 at 8:30 a.m.

DATED this _____ the day of _____, 2020.

Susan Johnson

DISTRICT COURT JUDGE
E08 4DA E8F9 79B8
Susan Johnson
District Court Judge

Respectfully submitted by:

THOMSON LAW PC

BY: /s/ John W. Thomson
John W. Thomson, Esq.
Nevada Bar No. 5802
2450 St. Rose Parkway, Suite 120
Henderson, NV 89074
Attorney for Plaintiff

RE: Tobin v. Chiesti et al. Case No. A-19-799890-C

From: Brittany Wood (bwood@mauricewood.com)

To: jwtlaw@ymail.com; yosuphonglaw@gmail.com; melanie.morgan@akerman.com; donna.wittig@akerman.com; dkoch@kochscow.com; bwight@kochscow.com; sscow@kochscow.com

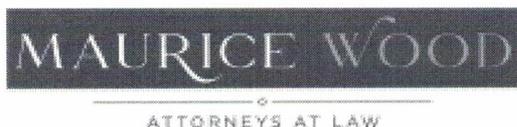
Cc: johnwthomson@ymail.com

Date: Friday, July 10, 2020, 4:39 PM PDT

You have my consent.

Brittany Wood, Esq.

Partner



9525 Hillwood Drive | Suite 140

Las Vegas, Nevada | 89134

Office: (702) 463-7616 | Fax: (702) 463-6224

bwood@mauricewood.com

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

From: Brody Wight (bwight@kochscow.com)

To: jwtlaw@ymail.com

Cc: dkoch@kochscow.com; sscow@kochscow.com; johnwthomson@ymail.com

Date: Friday, July 10, 2020, 8:50 AM PDT

You may attach my electronic signature.

Brody R. Wight
Koch & Scow LLC
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Henderson, NV 89052
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Fax: (702) 318-5039
e-mail: bwight@kochscow.com

On Jul 9, 2020, at 6:17 PM, J Thomson <jwtlaw@ymail.com> wrote:

Dear Counsel,

Good afternoon. Attached for your review is the Stip & Order to Reschedule the Hearing for Defendant Red Rock Financial Services, LLC's Motion to Dismiss Complaint Pursuant to NRCP 12(B)(5) and (6), Joinders thereto, and Request for Judicial Notice on 7/28. If everything looks ok, please respond in an email authorizing your electronic signature. If you have any questions or changes, please let me know.

Thank you,

Annette Cooper
Legal Assistant to John W. Thomson, Esq.

RE: Tobin v. Chiesti et al. Case No. A-19-799890-C

From: melanie.morgan@akerman.com (melanie.morgan@akerman.com)
To: jwtlaw@ymail.com; bwood@mauricewood.com; earonson@mauricewood.com; yosuphonglaw@gmail.com; donna.wittig@akerman.com; amaurice@mauricewood.com; dkoch@kochscow.com; bwight@kochscow.com; sscow@kochscow.com
Cc: johnwthomson@ymail.com
Date: Friday, July 10, 2020, 7:22 PM PDT

You have my consent as well.

[vCard](#) | [Profile](#)

akerman

700+ Lawyers
25 Offices
akerman.com

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: J Thomson <jwtlaw@ymail.com>
Sent: Friday, July 10, 2020 4:29 PM
To: bwood@mauricewood.com; earonson@mauricewood.com; yosuphonglaw@gmail.com; Morgan, Melanie (Ptrn-Las) <melanie.morgan@akerman.com>; Wittig, Donna (Assoc-Las) <donna.wittig@akerman.com>; amaurice@mauricewood.com; dkoch@kochscow.com; bwight@kochscow.com; sscow@kochscow.com
Cc: J. W. Thomson <johnwthomson@ymail.com>

Re: Fw: Tobin v. Chiesti et al. Case No. A-19-799890-C

From: joseph hong (yosuphonglaw@gmail.com)

To: jwtlaw@ymail.com

Cc: bwood@mauricewood.com; bwight@kochscow.com;
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amaurice@mauricewood.com; dkoch@kochscow.com;
donna.wittig@akerman.com; earonson@mauricewood.com;
melanie.morgan@akerman.com

Date: Monday, July 13, 2020, 9:49 AM PDT

Please confirm that the new date of August 11 at 8:30am has been authorized by Dept. 22. If Dept. 22 has authorized this new date, you may affix my e-sign on the SAO. Also, please be advised that I will not be authorized to enter into any further SAOs for any further continuances UNDER ANY CIRCUMSTANCES wherein if Mr. Thomson is not available on August 11, he must have an associate and/or colleague appear on his behalf.

Joseph Y. Hong, Esq.

On Mon, Jul 13, 2020 at 5:16 AM J Thomson <jwtlaw@ymail.com> wrote:

Dear Counsel,

Just a reminder regarding the SAO for your review and signature. If you can please let me know today if I have your authorization for the electronic signature. ***I did receive Melanie Morgan, Brittany Wood and Brody Wight's approval and now am waiting to hear from Mr. Hong.*** I would appreciate your response as soon as possible. If you do not agree, please advise and I will set up a time for you to speak to Mr. Thomson. Thank you to all who have responded. It is much appreciated.

Thank you,

Annette Cooper
Legal Assistant to John W. Thomson, Esq.

LAW OFFICE OF JOHN W. THOMSON
2450 St. Rose Parkway, Suite 120

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 Stipulation and Order was served via the court's electronic eFile system
13 to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/13/2020

15 David Koch

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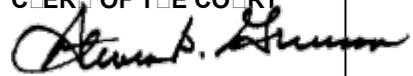
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8 Email: johnwthomson@ymail.com
9 Attorney for Plaintiff Nona Tobin

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 NONA TOBIN, an Individual

10 Plaintiff,

11 vs.

12
13 BRIAN CHIESTI, an individual; DEBORA
14 CHIESTI, an individual; QUICKEN LOANS
15 INC.; JOEL A. STOKES, an individual;
16 JOEL A. STOKES and SANDRA STOKES
17 as Trustees of JIMI JACK IRREVOCABLE
18 TRUST; JIMI JACK IRREVOCABLE
19 TRUST; NATIONSTAR MORTGAGE LLC;
20 RED ROCK FINANCIAL SERVICES;
21 DOES I through X inclusive; and ROE
22 CORPORATIONS I through V, inclusive

23 Defendants.

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

**OPPOSITION TO MOTION TO
DISMISS AND TO JOINDERS
THERE TO**

**Hearing Date: August 11, 2020
Hearing Time: 8:30 AM**

21 Comes now, Plaintiff NONA TOBIN, AN INDIVIDUAL, (hereinafter "Plaintiff" or
22 "Tobin"), by and through her attorney of record, Thomson Law PC, through attorney John W.
23 Thomson, Esq., and hereby submits her Opposition to defendant Red Rock Financial
24 Services' (hereinafter "Red Rock") Motion to Dismiss and Opposition to the Joinders to the
25 Motion to Dismiss filed by all other defendants.
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1 This motion is based on the attached Memorandum of Points and Authorities, the
2 pleadings and papers on file in this case, and any oral arguments made at the time of hearing on
3 this matter.

4 Dated this 20th day of July, 2020.

6 THOMSON LAW PC

7 */s/ John W. Thomson*

8 JOHN W. THOMSON, ESQ.

9 Nevada Bar No. 5802

10 2450 St. Rose Parkway, Suite 120

11 Henderson, Nevada 89074

Attorney for Plaintiff Nona Tobin

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **INTRODUCTION**

14 Tobin, as an individual, asserts that the real property commonly known as the 2763 White
15 Sage Drive, Henderson, NV (herein “subject property”) belongs to her and seeks a declaration
16 from the Court that the actions, and inactions, leading to the foreclosure of the real property,
17 were wrongful and that Tobin is the sole owner of the real property. Specifically, the HOA, Sun
18 City Anthem Community Association, Inc. (hereinafter “SCA”), with the aid of Red Rock
19 Financial Services (herein “Red Rock”), sold the subject property for almost \$300,000 less than a
20 contemporary offer, when only \$2000 in delinquent assessments and about \$3,000 in
21 questionable fees were demanded by Red Rock that had not been paid out of the escrow for a
22 5/8/14 auction.com sale.. Red Rock has kept, for over 5 years, the excess proceeds that belong to
23 Tobin, despite representing that it had deposited the funds with the court. In fact, a check was
24 made to the district court by Red Rock in 2014 for the excess proceeds, but evidentially and
25 inexplicitly never tendered. Tobin was precluded by the district court, and subsequently the
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1 Nevada Supreme Court, from asserting her claims as an individual in the prior litigation. The
2 court's refusal to allow her to appear as an individual and to assert claims in that actions
3 necessitate the instant action.

4
5 Because Nona was not a plaintiff in the prior action, and the other parties and defendants
6 here opposed her inclusion as a party, they cannot now assert that Nona had a full and fair
7 opportunity to litigate her claims. Nona is not precluded from bringing her claims and the Motion
8 to Dismiss and Joinders must be denied.

9 **FACTS**

10 Nona vigorously attempted to have her individual claims and arguments heard in District
11 Court Case No. A-15720032-C (hereinafter "prior litigation"), but the defendants opposed her
12 inclusion (a true and correct copy of the Order Granting Nona Tobin's Motion to Intervene on
13 Jan. 11, 2017, is attached hereto as **Exhibit 1**). Although the Motion to Intervene was granted,
14 the District Court, after three and half years, did not recognize Nona Tobin an individual as a
15 party to the litigation but only in her capacity as trustee of the Gordon B. Hansen Trust (a true
16 and correct copy of the June 3, 2019 minutes in the prior litigation are attached hereto and
17 incorporated herein by reference as **Exhibit 2**).

18
19
20 Specifically, this hearing was the calendar call for the upcoming bench trial and the notes
21 state: "Court clarified there is nothing in the record that shows Ms. Tobin as an individual, the
22 Court had asked Mr. Mushkin about this at the last hearing, the intervention motion was granted
23 back in 2016 as Tobin trustee on behalf of the trust, there is nothing in the record that allowed
24 Ms. Tobin to come in as an individual..." *Id.* On 4/7/17 the court denied the HOA's motion to
25 dismiss Nona Tobin as an individual for not having an attorney The HOA did not include this in
26 the order until 9/20/19.

1 Nona tried to assert her claims at the bench trial and was not allowed (see the 11/22/19
2 Notice of Findings of Fact, Conclusions of Law and Order entered by the District Court in the
3 prior litigation, attached hereto and incorporated herein by reference as **Exhibit 3**). Under the
4 Findings of Fact section, the Court ruled: “1. Nona Tobin, an individual, is not, and has never
5 been, a party to this case.” *Id.*, page 3, line 2. Further, the Court found in paragraph 4: “Despite
6 pronouncements from the Court regarding Nona Tobin’s status as a non-party in this matter, all
7 parties to the case have perpetuated confusion as to Nona Tobin’s status as a party by continuing
8 to make reference to Nona Tobin, as an individual, as a party to the case.” *Id.*, at lines 7-10.
9

10
11 In the Conclusions of Law section, the District Court ordered: “Because she is not now,
12 nor has she ever been, as a party to the case, Nona Tobin is not authorized to file anything with
13 this court in her individual capacity.” *Id.*, page 4, lines 3-4. All of her documents, evidence and
14 Motions filed by Nona in her individual capacity were stricken from the record as rogue
15 documents. *Id.*, lines 8-28, and page 5, lines 2-8. These stricken documents included several
16 motions for summary judgment, a motion to vacate the HOA MSJ and NSM joinder, a motion
17 for a new trial, and a motion to dismiss for lack of jurisdiction for the prevailing parties lack of
18 compliance with NRD 38.310(2) and hundreds of pages of evidence supported by sworn
19 affidavits.
20

21 Nona appealed, as an individual, the 11/22/19 (**Exhibit 3**) Order to the Nevada Supreme
22 Court but her appeal was dismissed because she was “not a party to this appeal and this court
23 lacks jurisdiction to address her claims as an individual.” (a true and correct copy of the Order
24 entered on April 30, 2020 by the Nevada Supreme Court is attached hereto and incorporated
25 herein by reference as **Exhibit 4**). Nona argued in the appeal that she did have standing to appeal
26 because she was, or should have been, included as an individual in the prior litigation, but the
27
28

1 Court disagreed (a true and correct copy of Nona’s Response to Order to Show Cause filed
2 March 3, 2020, is attached hereto and incorporated herein by reference as **Exhibit 5**). See also
3 **Exhibit 4**.

4 Nationstar Mortgage and Jimijack Irrevocable Trust, defendants herein filing a Joinder to
5 the present Motion to Dismiss, and SCA filed a joint reply to the Order to Show Cause, arguing
6 that Nona was never a party to the underlying litigation (a true and correct copy of the
7 Respondents’ Joint Reply to the Order to Show Cause filed on March 30, 2020, with their
8 exhibits, are attached hereto and incorporated herein by reference as **Exhibit 6**). The same
9 defendants now want to preclude Nona from litigating her claims, saying that the issues have
10 already been decided, despite the fact that they prevented and acknowledged the fact that Nona
11 never was a party to the underlying case, and never had the opportunity to litigate.

12 It is undisputed that Nona, as an individual, was not a party plaintiff to the underlying
13 litigation, and that Red Rock, Joel Stokes as an individual, the Chiesi’s and Quicken Loans were
14 not defendant parties to the underlying litigation. Fairness requires Nona have her day in court.

15 **LEGAL ARGUMENT**

16 A motion to dismiss for failure to state a claim should not be granted unless it appears
17 **beyond a doubt** that plaintiff is entitled to **no relief under any set of facts that could be**
18 **proved** in support of the claim. See, *Buzz Stew, LLC*, 124 Nev. at 228, 181 P.3d at 672
19 (emphasis added); *Stockmeier v Nevada Dep’t of Corr.*, 124 Nev. 313, 316, 183 P.3d 133, 135
20 (2008); *Pankopf v. Peterson*, 124 Nev. 43, 175 P.3d 910, 912 (2008).

21 When ruling on a NRCP 12(b)(5) motion, a court must accept the allegations of the
22 complaint as true, and draw all inferences in favor of the non-moving party. *Buzz Stew*, at 228,
23 181 P.3d at 672; *Seput v. Lacayo*, 122 Nev. 499, 501, 134 P.3d 733, 734 (2006).

1 In the event that an amendment to the complaint will cure any defect thereto, including
2 joining SCA as a party, and including facts stated herein that could be included in the
3 amendment, Nona requests leave of court to amend her First Amended Complaint. This is based
4 on Nevada's strong policy to have cases heard on their merits.
5

6 **Claim Preclusion Does Not Apply.**

7 Defendants argue that Nona's claims are barred because the initial suit was based on the
8 same set of facts. Despite many different facts, including allegations occurring after the end of
9 the prior lawsuit, the parties are not the same. Nona Tobin, an individual, was not a party to the
10 first suit (see **Exhibits 2-6**). The doctrine of claim preclusion is meant "to obtain finality by
11 preventing a party from filing another suit that is based on the same set of facts that were present
12 in the initial suit." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 712
13 (2008). Nona is not filing "another suit" because she was not allowed to make any claims
14 individually in the initial suit (see **Exhibits 1-6**). The *Weddell* case cited by the defendants only
15 applies to new defendants that should have been included as defendants in the prior suit. *Weddell*
16 *v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80, 86 (2015). Nona is a plaintiff who tried to bring
17 her claims but the defendants resisted here efforts. It is disingenuous to actively oppose Nona an
18 individual from pursuing her claims, and then when she asserts them, argue that she had the
19 chance to litigate and is now precluded.
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22 Because Nona is a plaintiff and new party with new claims and different facts from the
23 prior litigation, the doctrine of claim preclusion does not apply. Alternatively, the factors for
24 nonmutual claim preclusion, with the burden of proof on the defendants, has not been met. Issue
25 and claim preclusion do not apply when a party does not have a full and fair opportunity to
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1 litigate. *Thompson v. City of North Las Vegas*, 833 P.2d 1132, 1134-35, 108 Nev. 435, 439-40
2 (1992).

3 First, there must be a **valid** final judgment. The district court in the 2015 case and the
4 Supreme Court of Nevada affirmed that Nona, an individual, was not a party to the underlying
5 case, so the judgment does not apply to her or her claims. In addition, there are different parties
6 and claims based on facts that arose after the judgment in the underlying case. Nona did not have
7 a full and fair opportunity to litigate her individual claims to the subject property and excess
8 proceeds. “The doctrine of collateral estoppel is based upon the sound public policy of limiting
9 litigation by preventing a party who had one full and fair opportunity to litigate an issue from
10 again drawing it into controversy.” *Thompson v. City of North Las Vegas*, 833 P.2d 1132, 1134-
11 35, 108 Nev. 435, 439-40 (1992), citing *Bernhard v. Bank of America Nat. Trust & Sav. Ass'n*,
12 19 Cal.2d 807, 122 P.2d 892, 894 (1942). “Again, accepting as true the allegations contained in
13 appellants' affidavits, appellants, as a matter of law, simply did not have a full and fair
14 opportunity to litigate the ownership of the parcel...”. *Thompson v. City of North Las Vegas*, 833
15 P.2d 1132, 108 Nev. 435 (Nev. 1992). In this case, the plaintiff lost title to property by not
16 participating as a litigant. After filing a lawsuit to quiet title, the defendant argued estoppel and
17 waiver. The Nevada Supreme Court reversed the district court’s ruling granting the defendant’s
18 NRCP 12(b)(5) motion to dismiss. The case was remanded for trial on the merits. *Id.*

19 Likewise, Nona tried to intervene as an individual. The parties and the lawyers thought
20 Nona was in the underlying case as an individual. Only on the eve of trial at the calendar call did
21 Nona discover that she was not involved in the case as an individual (see **Exhibit 2**). Nona tried
22 to present evidence at the trial and filed motions to assert her claims but the defendants and the
23 court would not allow it. Nona appealed the decisions made in the prior case but the Nevada
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1 Supreme Court ruled she did not have standing to appeal because she was not a party to the
2 litigation. The defendants cannot now argue that Nona is bringing claims that she could have
3 brought in the underlying action.

4
5 Second, the defendants must prove that this action is based on the same claims or that
6 they could have been brought in the first action. Nona could not have brought the claims because
7 many are based on new facts, and also because the court and the defendants, some of which are
8 the same, denied her that right.

9
10 Third, the defendants have not shown conclusively that the parties are the same in the
11 instant lawsuit. Therefore, the three factors outlined in the *Weddell* case have not been met.

12 **Judicial Estoppel Does Not Preclude Nona From Bringing the Present Claims**

13 Nona Tobin was not a party-plaintiff in the underlying case so she cannot be precluded
14 from asserting her claims here. In addition, alternative pleading is always allowed by the Nevada
15 Courts, see NRCPP 8(d)(3): “**Inconsistent Claims or Defenses.** A party may state as many
16 separate claims or defenses as it has, regardless of consistency.” Further, “inconsistent
17 allegations in alternative claims cannot be used as admissions.” *Mallin v. Farmers Ins.*
18 *Exchange*, 839 P.2d 105, 108 Nev. 788 (Nev. 1992), *Trans W. Leasing Corp. v. Corrao Constr.*
19 *Co.*, 98 Nev. 445, 448, 652 P.2d 1181, 1183 (1982); *Auto Fair, Inc. v. Spiegelman*, 92 Nev. 656,
20 658, 557 P.2d 273, 275 (1976). *Mallin v. Farmers Ins. Exchange*, 839 P.2d 105, 108 Nev. 788
21 (Nev. 1992).

22
23
24 **Nona Has Standing.**

25 To maintain a suit in Nevada, Nona must be the real party in interest. NRCPP 17(a). A real
26 party in interest is a party who possesses the right to enforce the claim and has a significant
27 interest in the litigation. *Arguello v. Sunset Station, Inc.*, 127 Nev. 365, 252 P.3d 206, 208
28

1 (2011). Nona, as trustee, on March 28, 2017, closed the insolvent trust and transferred title to
2 herself individually, after she had become the sole beneficiary of the trust when the other
3 beneficiary relinquished all rights (see First Amended Complaint). Despite this fact, the court
4 and the defendants did not allow Nona to enter the case as an individual. If they had, all of the
5 claims might have been resolved at trial. Instead, her claims survived and she has a right to bring
6 them here.
7

8 As an individual, Nona is also the sole claim holder the excess proceeds funds held by
9 Red Rock for over five years. Through no fault of her own, Nona was excluded from bringing
10 her individual claims in the prior suit. If the defendants did not want a second lawsuit, they
11 should have insured, instead of prohibited, that Nona was allowed to litigate her claims.
12

13 **The Unjust Enrichment Claim Is Not Time Barred and Has Been Properly Pled.**

14 The same arguments about Nona not being a plaintiff in the earlier case apply here. In
15 addition, Red Rock promised, and had a duty, to interplead the funds from the excess proceeds of
16 sale immediately, and not wait over five years. For some undisclosed reason, Red Rock waited to
17 deposit the funds with the court, and still hasn't done so. Red Rock's actions are ongoing as they
18 promised to interplead but have not. Because Red Rock decided to retain the excess funds
19 unjustly, their harm is ongoing and the statute of limitations has not run. The statute of limitation
20 for unjust enrichment does not begin to run until Nona discovers that Red Rock has no intention
21 of paying her the excess proceed, or to refuse to interplead the funds. *Nanyah Vegas, LLC v.*
22 *Rogich* (Nev. 2016) Since Red Rock previously promised to interplead (in fact it affirmed that it
23 already had), the statute of limitations has not run. When a fiduciary "fails to fulfill his
24 obligations" and keeps that failure hidden, the statute of limitations will not begin to run until the
25 failure of the fiduciary is "discovered, or should have been discovered, by the injured party."
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1 *Golden Nugget, Inc. v. Ham*, 95 Nev. 45, 48–49, 589 P.2d 173, 175 (1979). “Mere disclosure of
2 a transaction by a director, without disclosure of the circumstances surrounding the transaction,
3 is not sufficient, as a matter of law, to commence the running of the statute.” *Id.* at 48, 589 P.2d
4 at 175. *In re Amerco Derivative Litig..Glenbrook Capital Ltd. P'ship*, 252 P.3d 681, 127 Nev.
5 Adv. Op. 17 (Nev. 2011).

7 **Quiet Title and Declaratory Relief Are Proper Claims.**

8 Red Rock argues that it should have been included as a party-defendant in the prior
9 litigation, but then later maintains that the Quiet Title and Declaratory Relief causes of action do
10 not apply to it because it has no interest in the subject property. Red Rock cannot have it both
11 way; either it was a necessary party then or it is now. In order to get full relief, all the parties
12 named must be included in this lawsuit.

14 All of the parties are properly before this Court because Nona never had her day in court;
15 she, as a plaintiff, was denied the opportunity to fully and fairly litigate her interest. Specifically,
16 and additionally, Red Rock is also a proper party because it wrongfully retained the excess
17 proceeds from the sale of the subject property for over five years, and facilitated the wrongful
18 foreclosure sale. The Chiesi’s, the Jimijack defendants, and Quicken Loans are proper parties
19 because the actions complained of in the First Amended Complaint took place after the
20 underlying litigation; specifically, they ignored the lis pendens filed against the property and
21 Nona cannot recover without addressing their claims to title and secured interest in the subject
22 property.
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1 **CONCLUSION**

2 Nona Tobin never received her day in court. Her claims were not fully and fairly
3 litigated. As such, the Motion to Dismiss and the Joinders thereto should be denied.

4 Dated this 20th day of July 2020,
5

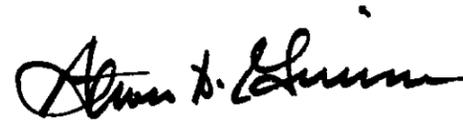
6 THOMSON LAW PC
7 */s/John W. Thomson*
8 JOHN W. THOMSON, ESQ.
9 Nevada Bar No. 5802
10 2450 St. Rose Parkway, Suite 120
11 Henderson, Nevada 89074
12 *Attorney for Plaintiff Nona Tobin*
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Exhibit 1

EXHIBIT 1

**Order Granting Applicant Nona Tobin's
Motion to Intervene
(Filed January 11, 2017)**

EXHIBIT 1



CLERK OF THE COURT

1 **ORDR**
NONA TOBIN, Trustee
2 Gordon B. Hansen Trust, Dated 8/22/08
2664 Olivia Heights Avenue
3 Henderson NV 89052
Phone: (702) 465-2199
4 nonatobin@gmail.com
Defendant-in-Intervention, Cross-Claimant, Counter-Claimant
5 *In Proper Person*

6
7 **DISTRICT COURT**
CLARK COUNTY, NEVADA

8 JOEL A. STOKES and SANDRA F. STOKES,
as trustees of the JIMIACK IRREVOCABLE
9 TRUST,

10 Plaintiffs,

11 vs.

12 BANK OF AMERICA, N.A.; SUN CITY
ANTHEM COMMUNITY ASSOCIATION,
13 INC.; DOES 1 through X and ROE
BUSINESS ENTITIES 1 through 10, inclusive,

14 Defendants.

15
16 NATIONSTAR MORTGAGE, LLC,

17 Counter-Claimant,

18 vs.

19 JIMIACK IRREVOCABLE TRUST;
OPPORTUNITY HOMES, LLC, a Nevada
20 limited liability company; F. BONDURANT,
LLC, a Nevada limited liability company;
21 DOES I X, ROE CORPORATIONS XI XX,
inclusive,

22 Counter-Defendants
23
24

Case No.: A-15-720032-C

Dept. No.: XXXI

**ORDER GRANTING APPLICANT
NONA TOBIN'S MOTION TO
INTERVENE**

Hearing date: December 20, 2016

Hearing time: 9:00 a.m.



1 This matter came for hearing before the Court on December 20, 2016, at 9:00 AM.
2 Applicant/Intervening Defendant/Counter-Claimant Nona Tobin, Trustee of the Gordon
3 B. Hansen Trust, appeared in Proper Person while Plaintiffs/Counter-Defendants, Joel
4 A. Stokes and Sandra F, Stokes, as Trustees of the Jimijack Irrevocable Trust, were represented
5 by Joseph Y. Hong, Esq., of Hong & Hong, a Professional Law Corporation.

6 The motion to Intervene and Notice of Hearing was electronically served to all parties
7 included on the Wiz-net E-file Master Service list for the consolidated cases. Plaintiff/Counter-
8 Defendant Nationstar Mortgage, LLC, received e-service through their Counsel, Wright, Finlay
9 & Zak, LLP, but no appearance at the hearing was made on behalf of Nationstar Mortgage,
10 LLC.

11 The Court, having considered the pleadings and papers on file and heard the arguments
12 of the parties present at the hearing, and for good cause appearing, hereby rules as follows:

13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Applicant
14 Nona Tobin's Motion to Intervene into consolidated cases No. A-15-720032-C and
15 A-16-730078-C, of which Case No. A-15-720032-C serves as the main case is GRANTED.

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IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Applicant Nona

Tobin shall file her Counter-Claim(s) and Cross-Claim(s) ~~on or before January~~ ^{within twenty (20) days} ~~2017~~ _{hereof.}

~~Any Cross-Claim Ms. Tobin may file against Nationstar Mortgage, LLC, may be filed no later than twenty (20) days following a determination by this Court to void the disputed foreclosure sale for delinquent HOA assessments.~~

IT IS SO ORDERED this 10 day of Jan, 2017.


JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully submitted,

NONA TOBIN, Trustee
Gordon B. Hansen Trust, Dated 8/22/08
2664 Olivia Heights Avenue
Henderson NV 89052
Phone: (702) 465-2199
Defendant-in-Intervention/Counter-Claimant
In Proper Person

Approved as to form and content,
HONG & HONG, A PROFESSIONAL
LAW CORPORATION

Joseph Y. Hong, Esq.
Nevada Bar No. 5995
10781 W. Twain Avenue
Las Vegas, NV 89135
Attorney for Plaintiff/Counter-Defendant,
Joel A. and Sandra F. Stokes, as trustees
of Jimijack Irrevocable Trust

Approved as to form and content,
WRIGHT, FINLAY & ZAK, LLP

Edgar C. Smith, Esq.
Nevada Bar. No. 05506
7785 West Sahara Ave., Suite 200
Las Vegas, NV 89135
Attorney for Counter-Defendant,
Nationstar Mortgage, LLC

Exhibit 2

EXHIBIT 2

**Court Minutes
(Calendar Call; June 3, 2019)**

EXHIBIT 2

REGISTER OF ACTIONS

CASE NO. A-15-720032-C

Joel Stokes, Plaintiff(s) vs. Bank of America NA, Defendant(s)

§
§
§
§
§
§
§
§
§
§

Case Type: **Other Title to Property**
Date Filed: **06/16/2015**
Location: **Department 31**
Cross-Reference Case Number: **A720032**
Supreme Court No.: **79295**

RELATED CASE INFORMATION

Related Cases

A-16-730078-C (Companion Case)

PARTY INFORMATION

Counter Claimant	Gordon B. Hansen Trust Dated 8/22/08	Lead Attorneys
Counter Claimant	Nationstar Mortgage, LLC	Melanie D. Morgan <i>Retained</i> 702-634-5000(W)
Counter Claimant	Tobin, Nona	Pro Se
Counter Defendant	Stokes, Joel A	Joseph Y. Hong <i>Retained</i> 702-870-1777(W)
Counter Defendant	Stokes, Sandra F	Joseph Y. Hong <i>Retained</i> 702-870-1777(W)
Cross Claimant	Gordon B. Hansen Trust Dated 8/22/08	
Cross Claimant	Tobin, Nona	Pro Se
Cross Defendant	Lee, Yuen K.	
Cross Defendant	Sun City Anthem Community Association Inc	David A. Clark <i>Retained</i> 7023822200(W)
Defendant	Bank of America NA	Dana J. Nitz <i>Retained</i> 702-475-7964(W)
Defendant	Sun City Anthem Community Association Inc	David A. Clark <i>Retained</i> 7023822200(W)

Plaintiff JimiJack Irrevocable Trust**Joseph Y. Hong**
Retained
702-870-1777(W)

EVENTS & ORDERS OF THE COURT

06/03/2019 **Calendar Call** (8:45 AM) (Judicial Officer Kishner, Joanna S.)**Minutes**

05/21/2019 9:00 AM

05/23/2019 3:30 PM

06/03/2019 8:45 AM

- Parties made appearances; and Mr. Coppedge identified Ms. Tobin as an individual. Court clarified there is nothing in the record that shows Ms. Tobin as an individual, the Court had asked Mr. Mushkin about this at the last hearing, the intervention motion was granted back in 2016 as Tobin trustee on behalf of the trust, there is nothing in the record that allowed Ms. Tobin to come in as an individual, and a trustee has to be represented by counsel. Court addressed the caption issue and history of the case, including the ruling made at the prior hearing. Upon Court's inquiry about whether a Rule 2.67 conference was held, Mr. Coppedge stated this occurred two weeks ago, telephonically, and he does not have an exact date. Mr. Hong noted he spoke with opposing counsel telephonically, and will not be providing witnesses or documents. Court noted there was a Joint Case Conference Report filed and an Individual Case Conference Report filed. Statements by counsel. Court addressed the procedural aspects of the case; and determined non-compliance by the parties under EDCR 2.67, EDCR 2.68, and EDCR 2.69 or NRCP 16.1 (a) (3); and no pre-trial memorandums were filed, no joint pre-trial memorandums were filed, and there were no pre-trial disclosures. Parties did not provide trial exhibits. Court stated neither side can provide documents or witnesses at trial. Trial schedule was provided to the parties by Court, orally. COURT ORDERED, trial date SET. 6/05/19 8:30 A.M. BENCH TRIAL CLERK'S NOTE: Minutes updated to only include the trial start time for June 5, 2019. (6/04/19 sb)

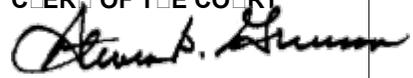
[Parties Present](#)[Return to Register of Actions](#)

Exhibit 3

EXHIBIT 3

**Notice of Entry of Findings of Fact,
Conclusions of Law and Order
(Filed November 22, 2019)**

EXHIBIT 3



1 LIPSON NEILSON P.C.
2 KALEB D. ANDERSON, ESQ.
3 Nevada Bar No. 7582
4 DAVID T. OCHOA, ESQ.
5 Nevada Bar No. 10414
6 9900 Covington Cross Drive, Suite 120
7 Las Vegas, Nevada 89144
8 (702) 382-1500 - Telephone
9 (702) 382-1512 - Facsimile
10 kanderson@lipsonneilson.com
11 dochoa@lipsonneilson.com
12 *Attorneys for Cross-Defendant*
13 *Sun City Anthem Community Association*

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

11 JOEL STOKES and SANDRA F.
12 STOKES, as trustees of the JIMI JACK
13 IRREVOCABLE TRUST,

14 Plaintiff,

15 vs.

16 BANK OF AMERICA, N.A.; SUN CITY
17 ANTHEM COMMUNITY ASSOCIATION,
18 INC.; DOES I through X and ROE
19 BUSINESSENTITIES I through X,
20 inclusive,

21 Defendants.

22 NATIONSTAR MORTGAGE, LLC

23 Counter-Claimant,

24 vs.

25 JIMI JACK IRREVOCABLE TRUST;
26 OPPORTUNITY HOMES, LLC, a Nevada
27 limited liability company; F. BONDURANT,
28 LLC, a Nevada limited liability company;
DOES I through X, inclusive; and ROE
CORPORATIONS XI through XX,
inclusive,

Counter-Defendants.

NONA TOBIN, an individual, and Trustee
of the GORDON B. HANSEN TRUST.

CASE NO.: A-15-720032-C

Dept. XXXI

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

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

1 Dated 8/22/08
2 Counter-Claimant,
3 vs.
4 JOEL A. STOKES and SANDRA F.
5 STOKES, as trustees of the JIMI JACK
6 IRREVOCABLE TRUST,
7 Counter-Defendants.
8
9 NONA TOBIN, an individual, and Trustee
10 of the GORDON B. HANSEN TRUST.
11 Dated 8/22/08
12 Cross-Claimant,
13 vs.
14 SUN CITY ANTHEM COMMUNITY
15 ASSOCIATION, INC., DOES 1-10, AND
16 ROE CORPORATIONS 1-10, inclusive,
17 Counter-Defendants.
18
19 NONA TOBIN, an individual, and Trustee
20 of the GORDON B. HANSEN TRUST.
21 Dated 8/22/08
22 Cross-Claimant,
23 vs.
24 OPPORTUNITY HOMES, LLC, THOMAS
25 LUCAS, Manager,
26 Counter-Defendant.
27
28 NONA TOBIN, an individual, and Trustee
of the GORDON B. HANSEN TRUST.
Dated 8/22/08
Cross-Claimant,
vs.
YUEN K. LEE, an Individual, d/b/a
Manager, F. BONDURANT, LLC,
Counter-Defendant.

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

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NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Please take notice that the Findings of Fact, Conclusions of Law and Order was filed with this court on the 22nd day of November, 2019, a copy of which is hereto attached as Exhibit "A".

Dated this 22nd day of November, 2019.

LIPSON NEILSON P.C.

/s/ DAVID OCHOA

BY: _____
KALEB ANDERSON, ESQ. (NV Bar No. 7582)
DAVID T. OCHOA, ESQ. (NV Bar No. 10414)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
*Attorneys for Defendant SUN CITY ANTHEM
COMMUNITY ASSOCIATION*

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of November, 2019, service of the foregoing
NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal
to the following Odyssey E-File & Serve registrants:

Melanie D Morgan, Esq.
Donna Wittig, Esq.
AKERMAN LLP
1635 Village Center Circle Ste. 200
Las Vegas, NV 89134

Attorneys for Defendants

Joseph Y. Hong, Esq.
HONG & HONG
1980 Festival Plaza Dr., Suite 650
Las Vegas, NV 89135

Attorneys for Plaintiff

David R. Koch
Steven B. Scow
KOCH & SCOW LLC
11500 S. Eastern Ave. Suite 210
Henderson, NV 89052

*Attorneys for Cross-Defendant Red Rock
Financial Services, LLC*

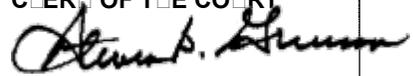
Joe Coppedge, Esq.
Michael R. Mushkin & Associates, P.C.
4475 S. Pecos Road
Las Vegas, NV 89121

*Attorney for Nona Tobin an individual and
Trustee of the Gordon B. Hansen Trust,
dated 8/22/25*

/s/ Juan Cerezo

An Employee of LIPSON NEILSON P.C.

EXHIBIT “A”



1 LIPSON NEILSON, P.C.
2 KALEB D. ANDERSON, ESQ.
3 Nevada Bar No. 7582
4 DAVID T. OCHOA, ESQ.
5 Nevada Bar No. 10414
6 9900 Covington Cross Drive, Suite 120
7 Las Vegas, Nevada 89144
8 (702) 382-1500 - Telephone
9 (702) 382-1512 - Facsimile
10 kanderson@lipsonneilson.com
11 dochoa@lipsonneilson.com
12 *Attorneys for Cross-Defendant*
13 *Sun City Anthem Community Association*

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DISTRICT COURT
CLARK COUNTY, NEVADA

10 JOEL STOKES and SANDRA F.
11 STOKES, as trustees of the JIMI JACK
12 IRREVOCABLE TRUST,

13 Plaintiffs,

14 vs.

15 BANK OF AMERICA, N.A.,

16 Defendant.

17 NATIONSTAR MORTGAGE, LLC

18 Counter-Claimant,

19 vs.

20 JIMI JACK IRREVOCABLE TRUST,

21 Counter-Defendant.

22
23 NONA TOBIN, Trustee of the GORDON
24 B. HANSEN TRUST. Dated 8/22/08

25 Counter-Claimant,

26 vs.

27 JOEL A. STOKES and SANDRA F.
28 STOKES, as trustees of the JIMI JACK
IRREVOCABLE TRUST, SUN CITY
ANTHEM COMMUNITY ASSOCIATION.

CASE NO.: A-15-720032-C

Dept. XXXI

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

Lipson, Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

1 INC., YUEN K. LEE, an Individual, d/b/a/
2 Manager, F. BONDURANT, LLC, and
DOES 1-10, and ROE CORPORATIONS
1-10, inclusive,

3
4 Counter-Defendants,

5
6 On September 3, 2019, the Court heard and considered the following Motions:

7 (1) Nona Tobin's Motion for a New Trial Per Rule 54(B) and RULE
8 59(1)(A)(B)(C)(F) ("Motion for New Trial");

9 (2) Nona Tobin's Motion to Dismiss Pursuant to NRS 38.310(2) ("Motion to
10 Dismiss");

11 (3) Counterdefendants' Response to Nona Tobin's Motion for New Trial and
12 Motion to Dismiss and Countermotion to Strike from the Record the Rogue
13 Motions and for Attorney's Fees and Costs Pursuant to EDCR Rule 7.6(b)(1)
14 and/or (3);

15 (4) Sun City Anthem Community Association's Joinder to Counterdefendants'
16 Response and Sun City Anthem Community Association's Countermotion to
17 Strike Notice of Lis Pendens, for a Vexatious Litigant Order, and for Attorney's
18 Fees Pursuant to NRS 18.010 and EDCR 7.6.

19 Non Party Nona Tobin appeared on her own behalf; Joseph Hong, Esq. appeared
20 for Counterdefendants Joel A Stokes and Sandra F. Stokes, as Trustees of the Jimijack
21 Irrevocable Trust, Yuen K Lee and F. Dondurant, LLC; Kaleb Anderson, Esq. appeared
22 for Sun City Anthem Community Association; and Donna Wittig, Esq. appeared for
23 Nationstar Mortgage, LLC.

24 Being fully briefed, and the Court having considered the Motions, Oppositions,
25 and Replies, and being fully advised in the premises, finds as follows:

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FINDINGS OF FACT

1. Nona Tobin, an individual, is not, and has never been, a party to this case.
2. Nona Tobin's involvement in this case is limited to her role as trustee of the GORDON B. HANSEN TRUST Dated 8/22/08.
3. Nona Tobin, as Trustee of the GORDON B. HANSEN TRUST Dated 8/22/08 is represented in this matter by Joe Coppedge Esq.
4. Despite pronouncements from this Court regarding Nona Tobin's status as a non-party in this matter, all parties to the case have perpetuated confusion as to Nona Tobin's status as a party by continuing to make reference to Nona Tobin, as an individual, as a party to the case.
5. Although this Court orally granted a Motion to Withdraw by Attorney Coppedge, no final Order was filed. Pursuant to *Division of Child and Family Services, Dept. of Human Resources, State of Nevada v. Eighth Judicial District Court ex rel. County of Clark*, 120 Nev. 445, 92 P.3d 1239 (2004), the oral pronouncement of the Court is ineffectual without a written, signed, and filed order.
6. On July 23, 2019, Nona Tobin, as Trustee of the GORDON B. HANSEN TRUST Dated 8/22/08 filed a Notice of Appeal.
7. On July 22, 2019, Nona Tobin, as an individual, filed a Motion for a New Trial Per Rule 54(B) and RULE 59(1)(A)(B)(C)(F).
8. On July 29, 2019, Nona Tobin, as an individual, filed a Motion to Dismiss Pursuant to NRS 38.310(2).
9. On August 7, 2019, Nona Tobin, as an individual, filed a Notice of Lis Pendens.

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CONCLUSIONS OF LAW

1. Because she is not now, nor has she ever been, as party to this case, Nona Tobin is not authorized to file anything with this court in her individual capacity.
2. The only way Nona Tobin is involved in this matter is in her capacity as Trustee of the GORDON B. HANSEN TRUST Dated 8/22/08. In this capacity, she is represented by attorney Joe Coppedge, Esq..
3. Because she is not a party to the case, all documents filed with this Court by Nona Tobin as an individual, are rogue documents and are stricken from the record. This includes both the Motion to Dismiss and Motion for New Trial (and all oppositions or replies) and the Notice of Lis Pendens.
4. In addition to being stricken as rogue documents, the Motion to Dismiss and Motion for a New Trial denied under NRCP 62.1, as there is no ^{basis for} relief possible given the pending appeal ^{and the lack of authority provided.}
5. Counterdefendants have requested attorney's fees from Nona Tobin as part of their response to the Motion to Dismiss and Motion for a New Trial. Because ^{the} Court has no jurisdiction over Nona Tobin as an individual, ^{the} this Court has ^{no jurisdiction over her.} ^{no basis upon which fees could be assessed against her.}
6. Further, all parties to the case have contributed to the confusion regarding Nona Tobin's (as an individual) status in the case, so this Court finds no basis for an award of attorney's fees.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that non-party Nona Tobin's Motion for a New Trial Per Rule 54(B) and RULE 59(1)(A)(B)(C)(F) is stricken from the Record as a rogue document.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that non-party Nona Tobin's Motion to Dismiss Pursuant to NRS 38.310(2) is stricken from the Record as a rogue document.

Lipson, Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

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IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion to expunge the lis pendens is GRANTED.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Counter defendants' Requests for Attorney's fees are denied without prejudice.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Counterdefendant Sun City Anthem Community Association's Counter Motion to have Nona Tobin deemed a vexation litigant is denied *without prejudice.*

Dated this 20 day of ~~October~~, 2019.
November


JOANNA S. KISHNER
HONORABLE JOANNA KISHNER

Submitted by:
LIPSON NEILSON, P.C.
By: 
Kaleb D. Anderson, Esq. (Bar No. 7582)
David T. Ochoa, Esq. (Bar No. 10414)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Cross-Defendant
Sun City Anthem Community Association

1 Approved as to form and content

2 Dated this ____ day of October, 2019

3 **AKERMAN, LLP**

4

5 By: Signature waived
6 Melanie D. Morgan, Esq. (Bar No. 8215)
7 1635 Village Center Circle Ste. 200
8 Las Vegas, NV 89134

9 *Attorneys for Defendants*

Dated this 29th day of October, 2019

HONG & HONG

By: s/ Joseph Hong
Joseph Y. Hong, Esq. (Bar No: 5995)
1980 Festival Plaza Dr., Suite 650
Las Vegas, NV 89135

*Attorney for Plaintiff/Counterdefendant
Jimijack Irrevocable Trust*

10 Dated this ____ day of October, 2019

11 **MUSHKIN CICA COPPEDGE**

12

13 By: Declined to sign
14 Joe Coppedge, Esq. (Bar No. 4954)
15 4495 S. Pecos Rd.
16 Las Vegas, NV 89121

Attorney for Nona Tobin

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Exhibit 4

IN THE SUPREME COURT OF THE STATE OF NEVADA

NONA TOBIN, AS TRUSTEE OF THE
GORDON B. HANSEN TRUST, DATED
8/22/08,

Appellants,

vs.

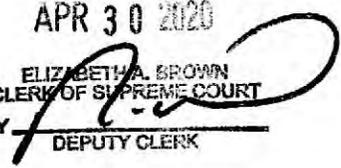
JOEL A. STOKES; SANDRA F.
STOKES, AS TRUSTEE OF THE
JIMI JACK IRREVOCABLE TRUST;
YUEN K. LEE, AN INDIVIDUAL, D/B/A
MANAGER; F. BONDURANT, LLC;
SUN CITY ANTHEM COMMUNITY
ASSOCIATION, INC.; AND
NATIONSTAR MORTGAGE, LLC,

Respondents.

No. 79295

FILED

APR 30 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER

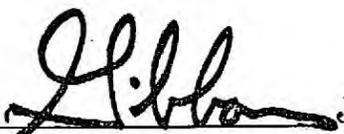
On September 4, 2019, this court entered an order dismissing this appeal as to appellant Nona Tobin in her individual capacity. On October 11, 2019, attorney John W. Thomson made an appearance as counsel for Ms. Tobin, and subsequently filed an amended notice of appeal on Ms. Tobin's behalf. This court entered an order to show cause directing counsel to demonstrate Ms. Tobin's eligibility to proceed in her individual capacity. Counsel has responded, and respondents have filed a reply.

Having considered the arguments of the parties, this court confirms that Nona Tobin has not been granted leave to intervene as an individual and her filings in the district court were stricken as rogue documents. Nona Tobin is not a party to this appeal and this court lacks jurisdiction to address her claims as an individual. "[T]his court has jurisdiction to entertain an appeal only where the appeal is brought by an aggrieved party." *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874

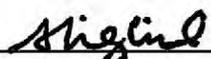
P.2d 729, 734 (1994). Accordingly, this appeal remains dismissed as to Nona Tobin in her individual capacity.

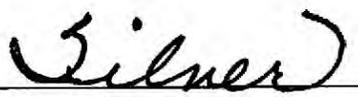
The briefing schedule is reinstated as follows. Respondents shall have 30 days from the date of this order to file and serve the answering brief. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.



Gibbons


_____, J.
Stiglich


_____, J.
Silver

cc: Thomson Law PC
Mushkin & Coppedge
Akerman LLP/Las Vegas
Lipson Neilson P.C.
Hong & Hong

Exhibit 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

NONA TOBIN, AS TRUSTEE OF THE
GORDON B. HANSEN TRUST, DATED
8/22/08; AND NONA TOBIN, AN INDIVIDUAL,

Appellants,

vs.

JOEL A. STOKES; SNADRA F. STOKES, AS
TRUSTEE OF JIMI JACK IRREVOCABLE
TRUST; YUEN K. LEE, AN INDIVIDUAL,
D/B/A MANAGER; F. BOUDRANT, LLC; SUN
CITY ANTHEM COMMUNITY
ASSOCIATION, INC.; AND NATIONSTAR
MORTGAGE, LLC

Respondents.

Supreme Court Electronically Filed
Mar 03 2020 05:43 p.m.
District Court Case No. A720032
Elizabeth A. Brown
Clerk of Supreme Court

RESPONSE TO ORDER TO SHOW CAUSE

Comes now NONA TOBIN, AN INDIVIDUAL, by and through her
counsel, the law firm Thomson Law PC, hereby responds to the Order to Show
Cause.

POINTS AND AUTHORITIES

FACTS

1. On February 23, 2017, Sun City Anthem Community Association filed a
Motion to Dismiss Nona Tobin, an individual and Trustee of the Gordon B.
Hansen Trust's Cross Claim (Exhibit 1, Register of Actions: Case No. A-15-
720032; 02/23/2017).

2. On March 23, 2017, Sun City Anthem Community Association's Motion to Dismiss Nona Tobin, an individual and Trustee of the Gordon B. Hansen Trust's Cross Claim was heard before the Honorable Joanna Kishner, and was continued until April 27, 2017 (Exhibit 1, Register of Actions: Case No. A-15-720032; 03/23/2017).

3. On April 27, 2017, Sun City Anthem Community Association's Motion to Dismiss Nona Tobin, and individual and Trustee of the Gordon B. Hansen Trust's Cross Claim was heard before the Honorable Joanna Kirshner, the Motion was Denied Without Prejudice (Exhibit 1, Register of Actions: Case No. A-15-720032; 04/27/2017).

4. On April 20, 2018, Cross Defendant Sun City Anthem Community Association filed their Answer to Cross-Claims by Nona Tobin, an individual and Trustee of the Gordon B. Hansen Trust (Exhibit 1, Register of Actions: Case No. A-15-720032; 04/20/2018)

5. The Trial was held on June 5, 2019 and June 6, 2019 (Exhibit 1, Register of Actions: Case No. A-15-720032; 06/05/2019).

6. The Judgment was filed on June 24, 2019 (Exhibit 1, Register of Actions: Case No. A-15-720032; 06/24/2019) .

7. On June 17, 2019, L. Joe Coppedge, Esq. filed a Motion to Withdraw as Counsel of Record for Nona Tobin, an Individual on Order Shortening Time (Exhibit 1, Register of Actions: Case No. A-15-720032; 06/17/2019).

8. On June 17, 2019, Nona Tobin filed a Motion to Intervene as an Individual (Exhibit 1, Register of Actions: Case No. A-15-720032; 06/17/2019).

9. On June 20, 2019, Proof of Service Re: Nona Tobin, an Individual was filed (Exhibit 1, Register of Actions: Case No. A-15-720032; 06/20/2019).

10. On June 21, 2019, Nona Tobin filed Nona Tobin Declaration in Support of her Rule 24 Motion to Intervene into A-15-720032-C as an Individual (Exhibit 1, Register of Actions: Case No. A-15-720032; 06/21/2019).

11. On July 9, 2019, Mr. Coppedge's Motion to Withdraw as Counsel was Granted (Exhibit 2, Minutes 07/09/2019), however it does not appear that Mr. Coppedge ever prepared or filed an order.

12. On July 23, 2019, Nona Tobin filed a Motion for a New Trial Per Rule 54(B) and Rule 59(1)(A)(B)(C)(F) and a Motion to Dismiss Pursuant to NRS 38.310(2) (Exhibit 1, Register of Actions: Case No. A-15-720032; 07/23/2019).

13. On November 22, 2019 it was Ordered that Nona Tobin's Motion for a New Trial Per Rule 54(B) and Rule 59(1)(A)(B)(C)(F) and Nona Tobin's Motion to Dismiss Pursuant to NRS 38.310(2) be stricken from the Record as a rogue documents.

14. On December 20, 2019 this Notice of Appeal was filed on behalf of Nona Tobin an individual.

The district court record is confusing on the issue of whether or not Nona Tobin was a party before the court as an individual, but it appears that she in fact was a party and was never dismissed until the Order from which Ms. Tobin now appeals. Ms. Tobin constantly and consistently asserted, through counsel and on her own, her individual rights in the case. Many captions and documents listed her as both as an individual and as trustee.

LEGAL ARGUMENT

This brief is a response to the Court's Order to Show Cause filed on January 7, 2020, *sua sponte*. The Court has questioned whether or not Nona Tobin, as an individual, is an aggrieved party within the meaning of NRAP 3A(a), and therefore has standing as a party to appeal. The second issue is whether or not the Court has jurisdiction over Ms. Tobin's individual claims under NRAP 3A(b). The Order appealed from was entered on September 3, 2019 ("Order").¹

Tobin, As An Individual, Was An Aggrieved Party In The District Court Case and This Court has Jurisdiction Over the Issues Decided by the Order.

NRAP 3A(a) states: "A party who is aggrieved by an appealable judgment or order may appeal from that judgment or order, with or without first moving for a

¹ Exhibit 2, Order filed September 3, 2019.

new trial.” A party is ‘aggrieved’ under NRAP 3A(a) when a personal right or property right is “adversely and substantially affected” by an order or judgment of the district court.²

Ms. Tobin’s individual claims in the district court arise from her standing as the sole beneficiary of the Gordon B. Hansen Trust (“Trust”). The beneficiary of a revocable trust, after the trustor has died, has standing as an individual to assert her rights in the assets of the trust.

The surviving asset of the trust is the real property, and any proceeds from the sale thereof, at issue in the district court case. Recently, this Court ruled that the beneficiary of record for the first deed of trust had standing to assert that the first deed of trust was not extinguished by the foreclosure sale.³ This ruling was based in

² *Valley Bank of Nev. V. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) (quoting *Estate of Hughes v. First Nat’l Bank*, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980).

³ *Christiana Tr. v. SFR Invs. Pool 1,2 LLC* (Nev. 2019). “*Cf. Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 133 Nev. 247, 250-51, 396 P.3d 754, 757-58 (2017) (recognizing, albeit in a different context, that a recorded deed of trust beneficiary has standing to defend the deed of trust in litigation even though the beneficiary of record is not also the note holder).”

part that the beneficiaries standing was important because it's claims "...could render the HOA's foreclosure sale void or voidable." ⁴

By analogy, Ms. Tobin has standing to assert her rights to the subject property and that the foreclosure sale was not proper. The rights of a beneficiary and trustee are different, and each has standing to assert their rights. "To have standing, the party seeking relief [must have] a sufficient interest in the litigation, so as to ensure the litigant will vigorously and effectively present his or her case against an adverse party." ⁵

This subject matter of her Motion for a New Trial, Motion to Dismiss, and Lis Pendens recorded as an individual, directly, adversely, and substantially affected her personal right to collect the excess proceeds from the sale, to sue for damages, and her real property interest in the subject property. Because of the Order appealed from, Ms. Tobin lost the right to contest the foreclosure sale and seek to introduce testimony and documents that were precluded improperly at trial. The evidence denied will show that the sale was improper, restoring Ms. Tobin's

⁴ Id., at 2-3, "See *U.S. Bank, Nat'l Ass'n ND v. Resources Grp., LLC*, 135 Nev., Adv. Op. 26, 444 P.3d 442, 447-49 (2019).

⁵ *Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC*, 133 Nev. —, —, 396 P.3d 754, 756 (2017) (internal quotation marks omitted). *Saticoy Bay LLC v. Fed. Nat'l Mortg. Ass'n*, 417 P.3d 363 (Nev. 2018).

interest in the subject property or awarding damages for the improper exclusions. Clearly, Ms. Tobin qualifies as an aggrieved party.

The Order appealed from finally disposed of all the remaining issues in the case; it was the district court's intention to do so. This Court should look at "what the order or judgment actually *does*, not what it is called." ⁶ The Order effectively and unfairly resolved, post-trial, all of Ms. Tobin's individual claims without an NRCP 56 motion, or the actual motions filed, being briefed, heard and decided.

Ms. Tobin was not allowed to participate as an individual at the trial, and therefore filed a Motion for New Trial, which was resolved by the Order without being heard. If it was clear from the record before trial that Ms. Tobin as an individual was not a party to the lawsuit, sufficient to preclude her in all ways from participating in the trial, then there should have been no need to issue the post-trial Order with its findings of fact and conclusions of law. Ms. Tobin has a right to appeal the ruling that she has no right to participate in a new trial and to submit evidence by testimony and documents to show that the foreclosure was improper.

Looking further at what the Order actually does, Ms. Tobin, after the Order, lost her rights to contest the trial results based on NRS 38.310(2), which states that

⁶ *Valley Bank of Nev. V. Ginsburg*, 110 Nev. 440, 445, 874 P.2d 729, 733 (1994) (emphasis in original).

the civil action must be dismissed unless mediation and the administrative remedies have all been exhausted. Ms. Tobin's rights under that statute were adjudicated by the Order, without due process or briefing.

In addition, Ms. Tobin's right to put the world on notice of her individual rights in the subject property were adjudicated when the district court struck her Lis Pendens without due process as outlined in NRS 14.015.

The doctrine of lis pendens provides constructive notice to the world that a dispute involving real property is ongoing. NRS 14.010(3). The purpose of a lis pendens is to prevent the transfer or loss of real property which is the subject of dispute in the action that provides the basis for the lis pendens.⁷ Therefore, under Nevada law, the filing of a notice of pendency is limited to actions involving "the foreclosure of a mortgage upon real property, or affecting the title or possession of real property."⁸

Because the Order was final and at last resolved the outstanding matters, Ms. Tobin has standing and this Court has jurisdiction over the issues appealed. "To be

⁷ *Levinson v. District Court*, 109 Nev. 747, 750, 857 P.2d 18, 20 (1993); see NRS 86.351(1) (providing that "[t]he interest of each member of a limited-liability company is personal property").

⁸ NRS 14.010(1); NRS 14.015(2)(a); see *Thomas v. Nevans*, 67 Nev. 122, 130, 215 P.2d 244, 247-48 (1950) (providing that "[t]he doctrine of constructive notice resulting from the filing with the county recorder of a notice of lis pendens applies ... only to actions affecting real property").

final, an order or judgment must ‘dispose of all the issues presented in the case, and leave nothing for the future consideration of the court, except for post-judgment issues such as attorney’s fees and costs.’”⁹

When Ms. Tobin’s Motion for a New Trial, her Motion to Dismiss, and her Lis Pendens was stricken by the district court, her rights as the sole beneficiary of the Trust were adversely and substantially affected. In fact, shortly after the November 22, 2019 Order was filed, the subject real property was sold to Ms. Tobin’s detriment on December 27, 2019. In addition, the excess proceeds from the improper foreclosure sale belong to the Trust, and therefore to Ms. Tobin. Those funds have yet to be distributed to Ms. Tobin, despite demand and claims to them by Ms. Tobin in the district court case.

CONCLUSION

Ms. Tobin’s personal and property rights have been adversely and substantially affected by the district court’s Order. Looking at what the Order actually does, instead of what it is called, brings to light the substantive appealable

⁹ *Brown v. MHC Stagecoach*, 301 P.3d 850, 851 (Nev. 2013) (quoting *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000)).

issues subject to this Court's jurisdiction.

THOMSON LAW PC

/s/ John W. Thomson

JOHN W. THOMSON, ESQ.

Nevada Bar No. 5802

2450 St. Rose Pkwy, Ste 120

Henderson, NV 89074

Tel: 702-478-8282

Fax: 702-541-9500

Attorney for Appellant Nona Tobin

CERTIFICATE OF SERVICE

The undersigned hereby certifies on March 3, 2020, a true and correct copy of RESPONSE TO ORDER TO SHOW CAUSE was served via the Court's Eflex service system to the following:

Joseph Y. Hong, Esq.
Hong & Hong Law Office
1980 Festival Plaza Dr., Suite 650
Las Vegas, NV 89135
Yosuphonglaw@gmail.com
Attorney for Defendants

Melanie Morgan, Esq.
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1635 Village Center Circle, Suite 200
Las Vegas, NV 89134
Melanie.morgan@akerman.com
Attorney for Defendants

/s/ Kim Vroman

An employee of the Thomson Law PC

Exhibit 6

IN THE SUPREME COURT OF NEVADA

NONA TOBIN, AS TRUSTEE OF THE
GORDON B. HANSEN TRUST,
DATED 8/22/08,

Appellant,

vs.

JOEL A. STOKES; SANDRA F.
STOKES, AS TRUSTEE OF THE
JIMIACK IRREVOCABLE TRUST;
YUEN K. LEE, AN INDIVIDUAL,
D/B/A MANAGER; F. BONDURANT,
LLC; SUN CITY ANTHEM
COMMUNITY ASSOCIATION, INC.;
AND NATIONSTAR MORTGAGE,
LLC,

Respondents.

Electronically Filed
Mar 30 2020 11:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 79295

APPEAL

from the Eighth Judicial District Court, Department XXXI
The Honorable Joanna S.. Kishner, District Judge
District Court Case No. A-15-720032-C

RESPONDENTS' JOINT REPLY TO ORDER TO SHOW CAUSE

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

Attorneys for Respondent Nationstar Mortgage LLC

Respondents Nationstar Mortgage LLC, Sun City Anthem Community Association, Inc. (**SCA**), and Jimijack Irrevocable Trust (**Jimijack**, and with Nationstar and SCA, collectively, **respondents**), by and through their counsel of record, submit their joint reply to the Court's order to show cause filed January 7, 2010.

MEMORANDUM OF POINTS AND AUTHORITIES

In an order dated January 11, 2017, the court granted Nona Tobin, **as Trustee** of the Gordon B. Hansen Trust, to intervene in the underlying lawsuit. (*See Ex. 1*, order.) The Order in multiple locations refers to Nona Tobin, **as Trustee** of the Gordon B. Hansen Trust, and does not refer to Nona Tobin individually. Ms. Tobin, the individual, never obtained an order allowing her to intervene in the litigation. The district court confirmed this interpretation of the January 11, 2017 order in minutes of a June 3, 2019 hearing, stating: “the intervention motion was granted back in 2016 as Tobin trustee on behalf of the trust, there is nothing in the record that allowed Ms. Tobin to come in as an individual”¹ (**Ex. 2**, court minutes, June 3, 2019.)

In the same month of January of 2017, the Gordon B. Hansen Trust (**Hansen Trust** or **Trust**) filed cross-claims against SCA. (*See* January 31, 2017 Cross-

¹ Though granted in 2016 the Order was entered January 11, 2017.

Claim.) SCA challenged Nona Tobin as Trustee's ability to represent the Trust without legal counsel. The Trust, through counsel, eventually stipulated to dismiss all claims except for quiet title against SCA. The quiet title claim included allegations SCA failed to comply with NRS 116 and the Community's Covenants, Conditions & Restrictions (**CC&Rs**). SCA eventually obtained summary judgment against Nona Tobin as Trustee for the Trust. That decision is on appeal.

After the court granted summary judgment, Ms. Tobin individually moved for a new trial and moved to dismiss, and counterdefendants opposed her motions. The district court struck her motion for new trial and motion to dismiss from the record as rogue documents. The court's findings of fact and conclusions of law further confirm Ms. Tobin was never a party to this matter in her individual capacity. *See Ex. 3*, notice of entry findings of fact and conclusions of law, November 22, 2019 ("1. Nona Tobin, an individual, is not, and has never been, a party to this case."; "2. Nona Tobin's involvement in this case is limited to her role as trustee of the GORDON B. HANSEN TRUST Dated 8/22/08.").

The district court's striking of Ms. Tobin's individual filings does not provide jurisdiction over her attempts to appeal in her individual capacity.² The court never denied Ms. Tobin, individually, the ability to properly seek entry into the litigation,

² *See* Nona Tobin's individual amended notice of appeal filed in this Court January 2, 2020, attempting to appeal an order striking rogue documents and *see* NRAP 3A(a).

nor did it determine whether Ms. Tobin could or could not participate in the litigation as an individual. Finding that Ms. Tobin is not a party and therefore cannot file in the litigation is not the same. The closest Ms. Tobin ever came to requesting entry into the litigation individually was a motion to substitute real party in interest filed May 23, 2019. (See **Ex. 4**, motion.) She later withdrew that motion and the court never ruled on it. (See **Ex. 5**, court minutes, May 29, 2019.) Ms. Tobin, individually, previously attempted to appeal, and on September 4, 2019, this Court dismissed that attempt, finding “[it] lacks jurisdiction to address her claims as an individual[]”, citing to *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994), which references NRAP 3A(a) (standing to appeal).

The district court's order later striking additional rogue filings by Ms. Tobin, individually, does not change the fact she was never a party to the underlying litigation, and that this Court still lacks jurisdiction based on its prior reasoning. *Id.* That Ms. Tobin's amended notice of appeal was filed by an attorney rather than *pro se* is also a distinction without difference for purposes of jurisdiction.

The Court also lacks jurisdiction on the grounds “no statute or court rule permits an appeal from an order striking filings.” See *Cunningham v. Exec. Branch of Nevada Gov't*, 127 Nev. 1128, 373 P.3d 907 (2011) (unpublished) (citing *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990)), and see also NRAP 3A(a) (“a party who is aggrieved by an appealable judgment or order may appeal from that

judgment or order. . . .”) Here, the most recent notice of appeal attempts to appeal an order striking documents—which is not appealable.

CONCLUSION

Based on the foregoing, respondents request the appeal be dismissed in part as to the appeal by Nona Tobin in her individual capacity.

DATED March 30th, 2020.

<p>Akerman LLP</p> <p><i>/s/ Donna M. Wittig</i> _____ MELANIE D. MORGAN, ESQ. Nevada Bar No. 8215 DONNA M. WITTIG, ESQ. Nevada Bar No. 11015 1635 Village Center Circle, Suite 200 Las Vegas, Nevada 89134 <i>Attorneys for Nationstar Mortgage LLC</i></p>	<p>LIPSON NEILSON, P.C.</p> <p><i>/s/ David T. Ochoa</i> _____ Kaleb D. Anderson, Esq. (Bar No. 7582) David T. Ochoa, Esq. (Bar No. 10414) 9900 Covington Cross Dr., Suite 120 Las Vegas, NV 89148 <i>Attorneys for Sun City Anthem Community Association</i></p>
<p>HONG & HONG</p> <p><i>/s/ Joseph Y. Hong</i> _____ Joseph Y. Hong, Esq. 10781 W. Twain Avenue Las Vegas, NV 89135 <i>Attorneys for Jimijack Irrevocable Trust</i></p>	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of AKERMAN LLP, and that on this 30th day of March, 2019, I caused to be served a true and correct copy of the foregoing **RESPONDENTS' JOINT REPLY TO ORDER TO SHOW CAUSE**, 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.

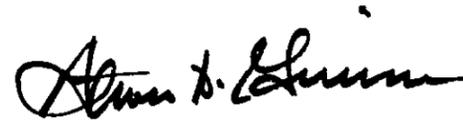
I declare that I am employed in the office of a member of the bar of this Court at whose discretion the service was made.

/s/ Carla Llarena _____
An employee of AKERMAN LLP

EXHIBIT 1

**Order Granting Applicant Nona Tobin's
Motion to Intervene
(Filed January 11, 2017)**

EXHIBIT 1



CLERK OF THE COURT

1 **ORDR**
NONA TOBIN, Trustee
2 Gordon B. Hansen Trust, Dated 8/22/08
2664 Olivia Heights Avenue
3 Henderson NV 89052
Phone: (702) 465-2199
4 nonatobin@gmail.com
Defendant-in-Intervention, Cross-Claimant, Counter-Claimant
5 *In Proper Person*

6
7 **DISTRICT COURT**
CLARK COUNTY, NEVADA

8 JOEL A. STOKES and SANDRA F. STOKES,
as trustees of the JIMIACK IRREVOCABLE
9 TRUST,

10 Plaintiffs,

11 vs.

12 BANK OF AMERICA, N.A.; SUN CITY
ANTHEM COMMUNITY ASSOCIATION,
13 INC.; DOES 1 through X and ROE
BUSINESS ENTITIES 1 through 10, inclusive,

14 Defendants.

15
16 NATIONSTAR MORTGAGE, LLC,

17 Counter-Claimant,

18 vs.

19 JIMIACK IRREVOCABLE TRUST;
OPPORTUNITY HOMES, LLC, a Nevada
20 limited liability company; F. BONDURANT,
LLC, a Nevada limited liability company;
21 DOES I X, ROE CORPORATIONS XI XX,
inclusive,

22 Counter-Defendants
23
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Case No.: A-15-720032-C

Dept. No.: XXXI

**ORDER GRANTING APPLICANT
NONA TOBIN'S MOTION TO
INTERVENE**

Hearing date: December 20, 2016

Hearing time: 9:00 a.m.



1 This matter came for hearing before the Court on December 20, 2016, at 9:00 AM.
2 Applicant/Intervening Defendant/Counter-Claimant Nona Tobin, Trustee of the Gordon
3 B. Hansen Trust, appeared in Proper Person while Plaintiffs/Counter-Defendants, Joel
4 A. Stokes and Sandra F, Stokes, as Trustees of the Jimijack Irrevocable Trust, were represented
5 by Joseph Y. Hong, Esq., of Hong & Hong, a Professional Law Corporation.

6 The motion to Intervene and Notice of Hearing was electronically served to all parties
7 included on the Wiz-net E-file Master Service list for the consolidated cases. Plaintiff/Counter-
8 Defendant Nationstar Mortgage, LLC, received e-service through their Counsel, Wright, Finlay
9 & Zak, LLP, but no appearance at the hearing was made on behalf of Nationstar Mortgage,
10 LLC.

11 The Court, having considered the pleadings and papers on file and heard the arguments
12 of the parties present at the hearing, and for good cause appearing, hereby rules as follows:

13 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Applicant
14 Nona Tobin's Motion to Intervene into consolidated cases No. A-15-720032-C and
15 A-16-730078-C, of which Case No. A-15-720032-C serves as the main case is GRANTED.

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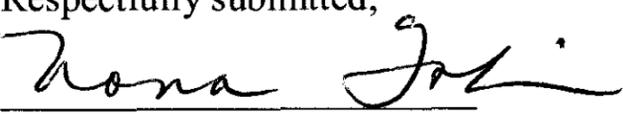
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Applicant Nona

Tobin shall file her Counter-Claim(s) and Cross-Claim(s) ~~on or before January~~ ^{within twenty (20) days} ~~2017~~ _{hereof.}

Any Cross-Claim Ms. Tobin may file against Nationstar Mortgage, LLC, may be filed no later than twenty (20) days following a determination by this Court to void the disputed foreclosure sale for delinquent HOA assessments.

IT IS SO ORDERED this 10 day of Jan, 2017.


JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully submitted,

NONA TOBIN, Trustee
Gordon B. Hansen Trust, Dated 8/22/08
2664 Olivia Heights Avenue
Henderson NV 89052
Phone: (702) 465-2199
Defendant-in-Intervention/Counter-Claimant
In Proper Person

Approved as to form and content,
HONG & HONG, A PROFESSIONAL
LAW CORPORATION

Joseph Y. Hong, Esq.
Nevada Bar No. 5995
10781 W. Twain Avenue
Las Vegas, NV 89135
Attorney for Plaintiff/Counter-Defendant,
Joel A. and Sandra F. Stokes, as trustees
of Jimijack Irrevocable Trust

Approved as to form and content,
WRIGHT, FINLAY & ZAK, LLP

Edgar C. Smith, Esq.
Nevada Bar. No. 05506
7785 West Sahara Ave., Suite 200
Las Vegas, NV 89135
Attorney for Counter-Defendant,
Nationstar Mortgage, LLC

EXHIBIT 2

**Court Minutes
(Calendar Call; June 3, 2019)**

EXHIBIT 2

REGISTER OF ACTIONS

CASE NO. A-15-720032-C

Joel Stokes, Plaintiff(s) vs. Bank of America NA, Defendant(s)

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Case Type: **Other Title to Property**
Date Filed: **06/16/2015**
Location: **Department 31**
Cross-Reference Case Number: **A720032**
Supreme Court No.: **79295**

RELATED CASE INFORMATION

Related Cases

A-16-730078-C (Companion Case)

PARTY INFORMATION

		Lead Attorneys
Counter Claimant	Gordon B. Hansen Trust Dated 8/22/08	
Counter Claimant	Nationstar Mortgage, LLC	Melanie D. Morgan <i>Retained</i> 702-634-5000(W)
Counter Claimant	Tobin, Nona	Pro Se
Counter Defendant	Stokes, Joel A	Joseph Y. Hong <i>Retained</i> 702-870-1777(W)
Counter Defendant	Stokes, Sandra F	Joseph Y. Hong <i>Retained</i> 702-870-1777(W)
Cross Claimant	Gordon B. Hansen Trust Dated 8/22/08	
Cross Claimant	Tobin, Nona	Pro Se
Cross Defendant	Lee, Yuen K.	
Cross Defendant	Sun City Anthem Community Association Inc	David A. Clark <i>Retained</i> 7023822200(W)
Defendant	Bank of America NA	Dana J. Nitz <i>Retained</i> 702-475-7964(W)
Defendant	Sun City Anthem Community Association Inc	David A. Clark <i>Retained</i> 7023822200(W)

Plaintiff JimiJack Irrevocable Trust**Joseph Y. Hong**
Retained
702-870-1777(W)

EVENTS & ORDERS OF THE COURT

06/03/2019 **Calendar Call** (8:45 AM) (Judicial Officer Kishner, Joanna S.)**Minutes**

05/21/2019 9:00 AM

05/23/2019 3:30 PM

06/03/2019 8:45 AM

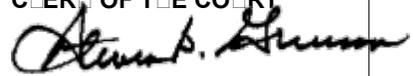
- Parties made appearances; and Mr. Coppedge identified Ms. Tobin as an individual. Court clarified there is nothing in the record that shows Ms. Tobin as an individual, the Court had asked Mr. Mushkin about this at the last hearing, the intervention motion was granted back in 2016 as Tobin trustee on behalf of the trust, there is nothing in the record that allowed Ms. Tobin to come in as an individual, and a trustee has to be represented by counsel. Court addressed the caption issue and history of the case, including the ruling made at the prior hearing. Upon Court's inquiry about whether a Rule 2.67 conference was held, Mr. Coppedge stated this occurred two weeks ago, telephonically, and he does not have an exact date. Mr. Hong noted he spoke with opposing counsel telephonically, and will not be providing witnesses or documents. Court noted there was a Joint Case Conference Report filed and an Individual Case Conference Report filed. Statements by counsel. Court addressed the procedural aspects of the case; and determined non-compliance by the parties under EDCR 2.67, EDCR 2.68, and EDCR 2.69 or NRCP 16.1 (a) (3); and no pre-trial memorandums were filed, no joint pre-trial memorandums were filed, and there were no pre-trial disclosures. Parties did not provide trial exhibits. Court stated neither side can provide documents or witnesses at trial. Trial schedule was provided to the parties by Court, orally. COURT ORDERED, trial date SET. 6/05/19 8:30 A.M. BENCH TRIAL CLERK'S NOTE: Minutes updated to only include the trial start time for June 5, 2019. (6/04/19 sb)

[Parties Present](#)[Return to Register of Actions](#)

EXHIBIT 3

**Notice of Entry of Findings of Fact,
Conclusions of Law and Order
(Filed November 22, 2019)**

EXHIBIT 3



1 LIPSON NEILSON P.C.
2 KALEB D. ANDERSON, ESQ.
3 Nevada Bar No. 7582
4 DAVID T. OCHOA, ESQ.
5 Nevada Bar No. 10414
6 9900 Covington Cross Drive, Suite 120
7 Las Vegas, Nevada 89144
8 (702) 382-1500 - Telephone
9 (702) 382-1512 - Facsimile
10 kanderson@lipsonneilson.com
11 dochoa@lipsonneilson.com
12 *Attorneys for Cross-Defendant*
13 *Sun City Anthem Community Association*

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

11 JOEL STOKES and SANDRA F.
12 STOKES, as trustees of the JIMI JACK
13 IRREVOCABLE TRUST,

14 Plaintiff,

15 vs.

16 BANK OF AMERICA, N.A.; SUN CITY
17 ANTHEM COMMUNITY ASSOCIATION,
18 INC.; DOES I through X and ROE
19 BUSINESSENTITIES I through X,
20 inclusive,

21 Defendants.

22 NATIONSTAR MORTGAGE, LLC

23 Counter-Claimant,

24 vs.

25 JIMI JACK IRREVOCABLE TRUST;
26 OPPORTUNITY HOMES, LLC, a Nevada
27 limited liability company; F. BONDURANT,
28 LLC, a Nevada limited liability company;
DOES I through X, inclusive; and ROE
CORPORATIONS XI through XX,
inclusive,

Counter-Defendants.

NONA TOBIN, an individual, and Trustee
of the GORDON B. HANSEN TRUST.

CASE NO.: A-15-720032-C

Dept. XXXI

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

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

1 Dated 8/22/08
2 Counter-Claimant,
3 vs.
4 JOEL A. STOKES and SANDRA F.
5 STOKES, as trustees of the JIMI JACK
6 IRREVOCABLE TRUST,
7 Counter-Defendants.
8
9 NONA TOBIN, an individual, and Trustee
10 of the GORDON B. HANSEN TRUST.
11 Dated 8/22/08
12 Cross-Claimant,
13 vs.
14 SUN CITY ANTHEM COMMUNITY
15 ASSOCIATION, INC., DOES 1-10, AND
16 ROE CORPORATIONS 1-10, inclusive,
17 Counter-Defendants.
18
19 NONA TOBIN, an individual, and Trustee
20 of the GORDON B. HANSEN TRUST.
21 Dated 8/22/08
22 Cross-Claimant,
23 vs.
24 OPPORTUNITY HOMES, LLC, THOMAS
25 LUCAS, Manager,
26 Counter-Defendant.
27
28 NONA TOBIN, an individual, and Trustee
of the GORDON B. HANSEN TRUST.
Dated 8/22/08
Cross-Claimant,
vs.
YUEN K. LEE, an Individual, d/b/a
Manager, F. BONDURANT, LLC,
Counter-Defendant.

Lipson Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

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NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Please take notice that the Findings of Fact, Conclusions of Law and Order was filed with this court on the 22nd day of November, 2019, a copy of which is hereto attached as Exhibit "A".

Dated this 22nd day of November, 2019.

LIPSON NEILSON P.C.

/s/ DAVID OCHOA

BY: _____
KALEB ANDERSON, ESQ. (NV Bar No. 7582)
DAVID T. OCHOA, ESQ. (NV Bar No. 10414)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
*Attorneys for Defendant SUN CITY ANTHEM
COMMUNITY ASSOCIATION*

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of November, 2019, service of the foregoing
NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
to the Clerk's Office using the Odyssey E-File & Serve System for filing and transmittal
to the following Odyssey E-File & Serve registrants:

Melanie D Morgan, Esq.
Donna Wittig, Esq.
AKERMAN LLP
1635 Village Center Circle Ste. 200
Las Vegas, NV 89134

Attorneys for Defendants

Joseph Y. Hong, Esq.
HONG & HONG
1980 Festival Plaza Dr., Suite 650
Las Vegas, NV 89135

Attorneys for Plaintiff

David R. Koch
Steven B. Scow
KOCH & SCOW LLC
11500 S. Eastern Ave. Suite 210
Henderson, NV 89052

*Attorneys for Cross-Defendant Red Rock
Financial Services, LLC*

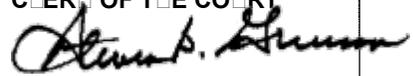
Joe Coppedge, Esq.
Michael R. Mushkin & Associates, P.C.
4475 S. Pecos Road
Las Vegas, NV 89121

*Attorney for Nona Tobin an individual and
Trustee of the Gordon B. Hansen Trust,
dated 8/22/25*

/s/ Juan Cerezo

An Employee of LIPSON NEILSON P.C.

EXHIBIT “A”



1 LIPSON NEILSON, P.C.
2 KALEB D. ANDERSON, ESQ.
3 Nevada Bar No. 7582
4 DAVID T. OCHOA, ESQ.
5 Nevada Bar No. 10414
6 9900 Covington Cross Drive, Suite 120
7 Las Vegas, Nevada 89144
8 (702) 382-1500 - Telephone
9 (702) 382-1512 - Facsimile
10 kanderson@lipsonneilson.com
11 dochoa@lipsonneilson.com
12 *Attorneys for Cross-Defendant*
13 *Sun City Anthem Community Association*

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DISTRICT COURT
CLARK COUNTY, NEVADA

10 JOEL STOKES and SANDRA F.
11 STOKES, as trustees of the JIMI JACK
12 IRREVOCABLE TRUST,

13 Plaintiffs,

14 vs.

15 BANK OF AMERICA, N.A.,

16 Defendant.

17 NATIONSTAR MORTGAGE, LLC

18 Counter-Claimant,

19 vs.

20 JIMI JACK IRREVOCABLE TRUST,

21 Counter-Defendant.

22
23 NONA TOBIN, Trustee of the GORDON
24 B. HANSEN TRUST. Dated 8/22/08

25 Counter-Claimant,

26 vs.

27 JOEL A. STOKES and SANDRA F.
28 STOKES, as trustees of the JIMI JACK
IRREVOCABLE TRUST, SUN CITY
ANTHEM COMMUNITY ASSOCIATION.

CASE NO.: A-15-720032-C

Dept. XXXI

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

Lipson, Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

1 INC., YUEN K. LEE, an Individual, d/b/a/
2 Manager, F. BONDURANT, LLC, and
DOES 1-10, and ROE CORPORATIONS
1-10, inclusive,

3
4 Counter-Defendants,

5
6 On September 3, 2019, the Court heard and considered the following Motions:

7 (1) Nona Tobin's Motion for a New Trial Per Rule 54(B) and RULE
8 59(1)(A)(B)(C)(F) ("Motion for New Trial");

9 (2) Nona Tobin's Motion to Dismiss Pursuant to NRS 38.310(2) ("Motion to
10 Dismiss");

11 (3) Counterdefendants' Response to Nona Tobin's Motion for New Trial and
12 Motion to Dismiss and Countermotion to Strike from the Record the Rogue
13 Motions and for Attorney's Fees and Costs Pursuant to EDCR Rule 7.6(b)(1)
14 and/or (3);

15 (4) Sun City Anthem Community Association's Joinder to Counterdefendants'
16 Response and Sun City Anthem Community Association's Countermotion to
17 Strike Notice of Lis Pendens, for a Vexatious Litigant Order, and for Attorney's
18 Fees Pursuant to NRS 18.010 and EDCR 7.6.

19 Non Party Nona Tobin appeared on her own behalf; Joseph Hong, Esq. appeared
20 for Counterdefendants Joel A Stokes and Sandra F. Stokes, as Trustees of the Jimijack
21 Irrevocable Trust, Yuen K Lee and F. Dondurant, LLC; Kaleb Anderson, Esq. appeared
22 for Sun City Anthem Community Association; and Donna Wittig, Esq. appeared for
23 Nationstar Mortgage, LLC.

24 Being fully briefed, and the Court having considered the Motions, Oppositions,
25 and Replies, and being fully advised in the premises, finds as follows:

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FINDINGS OF FACT

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1. Nona Tobin, an individual, is not, and has never been, a party to this case.
2. Nona Tobin's involvement in this case is limited to her role as trustee of the GORDON B. HANSEN TRUST Dated 8/22/08.
3. Nona Tobin, as Trustee of the GORDON B. HANSEN TRUST Dated 8/22/08 is represented in this matter by Joe Coppedge Esq.
4. Despite pronouncements from this Court regarding Nona Tobin's status as a non-party in this matter, all parties to the case have perpetuated confusion as to Nona Tobin's status as a party by continuing to make reference to Nona Tobin, as an individual, as a party to the case.
5. Although this Court orally granted a Motion to Withdraw by Attorney Coppedge, no final Order was filed. Pursuant to *Division of Child and Family Services, Dept. of Human Resources, State of Nevada v. Eighth Judicial District Court ex rel. County of Clark*, 120 Nev. 445, 92 P.3d 1239 (2004), the oral pronouncement of the Court is ineffectual without a written, signed, and filed order.
6. On July 23, 2019, Nona Tobin, as Trustee of the GORDON B. HANSEN TRUST Dated 8/22/08 filed a Notice of Appeal.
7. On July 22, 2019, Nona Tobin, as an individual, filed a Motion for a New Trial Per Rule 54(B) and RULE 59(1)(A)(B)(C)(F).
8. On July 29, 2019, Nona Tobin, as an individual, filed a Motion to Dismiss Pursuant to NRS 38.310(2).
9. On August 7, 2019, Nona Tobin, as an individual, filed a Notice of Lis Pendens.

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CONCLUSIONS OF LAW

1. Because she is not now, nor has she ever been, as party to this case, Nona Tobin is not authorized to file anything with this court in her individual capacity.
2. The only way Nona Tobin is involved in this matter is in her capacity as Trustee of the GORDON B. HANSEN TRUST Dated 8/22/08. In this capacity, she is represented by attorney Joe Coppedge, Esq..
3. Because she is not a party to the case, all documents filed with this Court by Nona Tobin as an individual, are rogue documents and are stricken from the record. This includes both the Motion to Dismiss and Motion for New Trial (and all oppositions or replies) and the Notice of Lis Pendens.
4. In addition to being stricken as rogue documents, the Motion to Dismiss and Motion for a New Trial denied under NRCP 62.1, as there is no relief possible given the pending appeal *and the lack of authority provided.* ^{basis for}
5. Counterdefendants have requested attorney's fees from Nona Tobin as part of their response to the Motion to Dismiss and Motion for a New Trial. Because ^{the} the Court has no jurisdiction over Nona Tobin as an individual, ~~no jurisdiction over her.~~ ^{the} this Court has ~~no jurisdiction over her.~~ ^{no jurisdiction over her.} *basis upon which fees could be assessed Agt her.*
6. Further, all parties to the case have contributed to the confusion regarding Nona Tobin's (as an individual) status in the case, so this Court finds no basis for an award of attorney's fees.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that non-party Nona Tobin's Motion for a New Trial Per Rule 54(B) and RULE 59(1)(A)(B)(C)(F) is stricken from the Record as a rogue document.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that non-party Nona Tobin's Motion to Dismiss Pursuant to NRS 38.310(2) is stricken from the Record as a rogue document.

Lipson, Neilson P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

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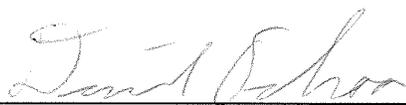
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Motion to expunge the lis pendens is GRANTED.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Counter defendants' Requests for Attorney's fees are denied without prejudice.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Counterdefendant Sun City Anthem Community Association's Counter Motion to have Nona Tobin deemed a vexation litigant is denied *without prejudice.*

Dated this 20 day of ~~October~~, 2019.
November


JOANNA S. KISHNER
HONORABLE JOANNA KISHNER

Submitted by:
LIPSON NEILSON, P.C.
By: 
Kaleb D. Anderson, Esq. (Bar No. 7582)
David T. Ochoa, Esq. (Bar No. 10414)
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Cross-Defendant
Sun City Anthem Community Association

1 Approved as to form and content

2 Dated this ____ day of October, 2019

3 **AKERMAN, LLP**

4

5 By: Signature waived
6 Melanie D. Morgan, Esq. (Bar No. 8215)
7 1635 Village Center Circle Ste. 200
Las Vegas, NV 89134

8 *Attorneys for Defendants*

9

Dated this 29th day of October, 2019

HONG & HONG

By: s/ Joseph Hong
Joseph Y. Hong, Esq. (Bar No: 5995)
1980 Festival Plaza Dr., Suite 650
Las Vegas, NV 89135

*Attorney for Plaintiff/Counterdefendant
Jimijack Irrevocable Trust*

10 Dated this ____ day of October, 2019

11 **MUSHKIN CICA COPPEDGE**

12

13 By: Declined to sign
14 Joe Coppedge, Esq. (Bar No. 4954)
15 4495 S. Pecos Rd.
Las Vegas, NV 89121

16 *Attorney for Nona Tobin*

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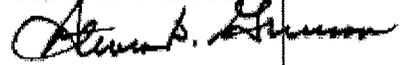
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EXHIBIT 4

**Motion to Substitute Real Party In Interest
and to Withdraw as Counsel of Record for
Counterclaimant Nona Tobin On Order
Shortening Time
(Filed May 23, 2019)**

EXHIBIT 4



1 MICHAEL R. MUSHKIN, ESQ.
Nevada Bar No. 2421
2 L. JOE COPPEDGE, ESQ.
Nevada Bar No. 4954
3 MUSHKIN CICA COPPEDGE
4 4495 South Pecos Road
Las Vegas, Nevada 89121
5 Telephone: 702-454-3333
Fax: 702-386-4979
6 michael@mccnvlaw.com
7 jcoppedge@mccnvlaw.com

8 *Attorneys for Nona Tobin, an individual and*
9 *as Trustee of the Gordon B. Hansen Trust*

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

12 JOEL A. STOKES and SANDRA F.
13 STOKES, as trustee of the JIMI JACK
IRREVOCABLE TRUST,

14 Plaintiffs,
15 vs.

16 BANK OF AMERICA, N.A.;

17 Defendant.

18 NATIONSTAR MORTGAGE, LLC,

19 Counter-Claimant,

20 vs.

21 JIMI JACK IRREVOCABLE TRUST,

22 Counter-Defendant.

23
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25 CAPTION CONTINUES BELOW
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Case No.: A-15-720032-C
Consolidated with: A-16-730078-C

Department: XXXI

Hearing Requested

**MOTION TO SUBSTITUTE REAL
PARTY IN INTEREST AND TO
WITHDRAW AS COUNSEL OF
RECORD FOR COUNTERCLAIMANT
NONA TOBIN ON ORDER
SHORTENING TIME**

DEPARTMENT XXXI
NOTICE OF HEARING
DATE 5/29/19 TIME 0830 am
APPROVED BY JG

MAY 17 19 PM 04:10

1 NONA TOBIN, an individual, and Trustee
2 of the GORDON B. HANSEN TRUST.
3 Dated 8/22/08

4 Counter-Claimant,

5 vs.

6 JOEL A. STOKES and SANDRA F.
7 STOKES, as trustees of the JIMI JACK
8 IRREVOCABLE TRUST, SUN CITY
9 ANTHEM COMMUNITY ASSOCIATION,
10 INC., YUEN K. LEE, an Individual, d/b/a
11 Manager, F. BONDURANT, LLC, DOES 1-
12 10, AND ROE CORPORATIONS 1-10,
13 inclusive,

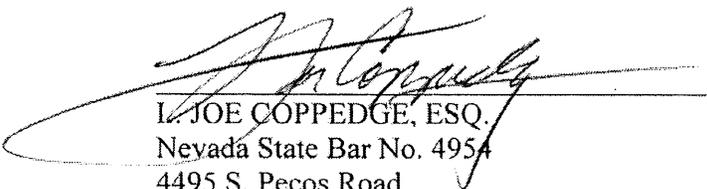
14 Counter-Defendants.

15 **MOTION TO SUBSTITUTE REAL PARTY IN INTEREST AND TO WITHDRAW AS**
16 **COUNSEL OF RECORD FOR COUNTERCLAIMANT NONA TOBIN**
17 **ON ORDER SHORTENING TIME**

18 The law firm of Mushkin Cica Coppedge, by and through their undersigned counsel,
19 hereby move this Honorable Court for an Order substituting Nona Tobin, as an individual, as
20 the real party in interest for Nona Tobin, as Trustee of the Gordon B. Hansen Trust dated
21 9/22/08 (the "Trust") for all purposes in the action. and upon such substitution, allowing the law
22 firm of Mushkin Cica Coppedge to withdraw as counsel of record for Counterclaimant Nona
23 Tobin (the "Client"). This Motion is made and based upon the pleadings and papers of file
24 herein, the Memorandum of Points and Authorities, the Declaration of Counsel, and any oral
25 argument which may be deemed necessary by the Court upon the hearing of the instant Motion.

26 DATED this 17 day of May, 2019

27 MUSHKIN • CICA • COPPEDGE

28 
JOE COPPEDGE, ESQ.
Nevada State Bar No. 4954
4495 S. Pecos Road
Las Vegas, Nevada 89121

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ORDER SHORTENING TIME

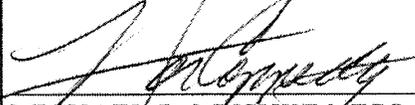
With good cause appearing therefore:

IT IS HEREBY ORDERED that the foregoing **Motion To Substitute Real Party In Interest And To Withdraw As Counsel Of Record For Counterclaimant Nona Tobin On Order Shortening Time** shall be heard in the above-entitled proceeding on the 29 day of May, 2019, at 8:30 a.m., in Department ~~XXIV~~ of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89101.

DATED this ____ day of May, 2019.


JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully Submitted By:
MUSHKIN · CICA · COPPEDGE


MICHAEL R. MUSHKIN, ESQ.
Nevada State Bar No. 2421
L. JOE COPPEDGE, ESQ.
Nevada State Bar No. 4954
4495 South Pecos Road
Las Vegas, NV 89121

Motion must be filed/served by: 5/23/19 ^{personally} by 3 p.m.
Opposition must be filed/served by: 5/24/19 by 5 pm
Reply must be filed/served by: _____
Please provide courtesy copies to Chambers upon filing.

DECLARATION OF COUNSEL

Declarant, upon penalty of perjury, states as follows:

1. I am an attorney licensed to practice law in the State of Nevada and I am an attorney at Mushkin Cica Coppedge, which currently represents Counterclaimant Nona Tobin, as an individual and as Trustee of the Gordon B. Hansen Trust dated 8/22/08 (the "Client"), Eighth District Court Case No. A-15-720032-C Consolidated with A-16-730078-C;
2. I have personal knowledge of the following matters and believe that the

1 following assertions are true to the best of my knowledge and belief;

2 3. I am advised and understand by Ms. Tobin that acting in her capacity as sole
3 Trustee of the Gordon B. Hansen Trust dated 8/22/08 (the "Trust"), she recorded a deed
4 transferring all the Trust's interest in the subject property to Nona Tobin, an individual, and that
5 she then closed the Trust.

6 4. In this case, Counterclaimant Nona Tobin has requested that the law firm of
7 Mushkin Cica Coppedge withdraw from her representation, so she can appear pro se for the
8 remainder of this case;

9 5. I believe good cause for withdrawal exists;

10 6. I believe that withdrawal may be accomplished without material adverse effect
11 on the interests of the Client and withdrawal will not result in any delay of trial or hearing of
12 any other matter will result if this Motion is granted as Ms. Tobin as has advised the
13 undersigned that she is prepared to proceed with the calendar call on May 23, 2019, the hearing
14 on the Motion for Reconsideration scheduled for May 30, 2019 and the trial scheduled for June
15 5 and 6, 2019;

16 7. There is insufficient time to have this matter heard in the ordinary course. As a
17 result, Declarant respectfully requests that the Court set an expedited hearing on Motion to
18 Withdraw as Counsel of Record for Counterclaimant Nona Tobin on Order Shortening Time on
19 a shortened time basis prior to May 23, 2019 the date set for Calendar Call, as Counterclaimant
20 Nona Tobin wishes to proceed pro se;

21 8. For the reasons stated above, I believe that the law firm of Mushkin Cica
22 Coppedge should be permitted to withdraw as counsel of record for the Client and removed
23 from any further responsibilities in this case;

24 9. It is my intent to have the Client served with a copy of this motion as soon as it is
25 filed and calendared for hearing at their last known address; and

26 10. The Client may also be served with notice of further proceedings at her last
27 known address of 2664 Olivia Heights Avenue, Henderson, Nevada 89052 the Client's last
28 known telephone number is 702-465-2199, and the Client's last known email address is

1 nonatobin@gmail.com.

2 Declarant states under penalty of perjury that the foregoing is true and correct.

3 Dated this 17 day of May, 2019.

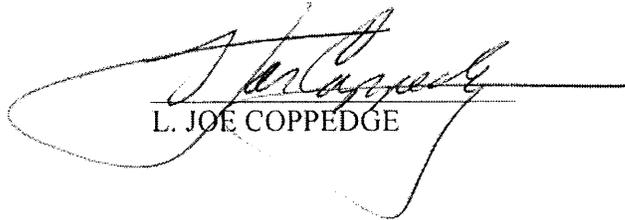
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L. JOE COPPEDGE

POINTS AND AUTHORITIES

9

A. Nona Tobin, as an individual should be substituted as the real party in interest for Nona Tobin, as Trustee for all purposes.

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Under NRCP 17, "An action must be prosecuted in the name of the real party in interest." As set forth in the Declaration of L. Joe Coppedge above, Ms. Tobin, acting in her capacity as sole Trustee of the Gordon B. Hansen Trust dated 8/22/08 (the "Trust"), recorded a deed transferring all the Trust's interest in the subject property to Nona Tobin, an individual, and then closed the Trust. Ms. Tobin, as an individual, is the real party in interest and this action should be prosecuted in her name only. As a result, Ms. Tobin, as an individual, should be substituted for Nona Tobin, as Trustee for all purposes in this case.

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B. The law firm of Mushkin Cica Coppedge should be allowed to withdraw.

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Rule 7.40 of the Eighth Judicial District Court Rules provides that when an attorney has appeared in an action on behalf of a party, the attorney may withdraw from representing that party only upon order of the court, granted upon written motion. Rule 7.40 provides, in pertinent part:

23

Appearances; substitutions; withdrawal or change of attorney.

24

* * *

25

(b) Counsel in any case may be changed only:

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* * *

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(2) When no attorney has been retained to replace the attorney withdrawing, by order of the court, granted upon written motion, and

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(i) If the application is made by the attorney, the attorney must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and the telephone number, or last known telephone number, at which the client may be reached and the attorney must serve a copy of the application upon the client and all other parties to the action or their attorneys, or

* * *

(c) No application for withdrawal or substitution may be granted if a delay of the trial or of the hearing of any other matter in the case would result.

Rule 1.16 of the Nevada Rules of Professional Conduct further provides, in pertinent part:

NRPC 1.16. Declining or Terminating Representation.

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

* * *

(3) The lawyer is discharged.

* * *

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) Withdrawal can be accomplished without material adverse effect on the interests of the client;

* * *

(7) Other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

In this case, Nona Tobin, as an individual, has requested that the law firm of Mushkin

1 Cica Coppedge withdraw so she can proceed pro se for the remainder of this case. As a result,
2 good cause for the withdrawal exists.

3 In meeting the aforementioned requirements, counsel will serve the Client and opposing
4 counsel with a copy of this Motion. Counsel has included in the attached affidavit the address at
5 which the Client may be served with notice of all further proceedings in this case. The client's
6 last known address, phone number and email address have also been provided. Having complied
7 with Rule 7.40 of the Eighth Judicial District Court Rules, Rule 1.16 of the Nevada Rules of
8 Professional Conduct, and because of the reasons set forth in the attached Declaration of
9 Counsel, both L. Joe Coppedge, Esq. and the law firm of Mushkin Cica Coppedge request that
10 this Court enter its Order withdrawing them as attorneys of record for Counterclaimant Nona
11 Tobin.

12 No delay of trial or of the hearing of any other matter will result if this Motion is
13 granted.

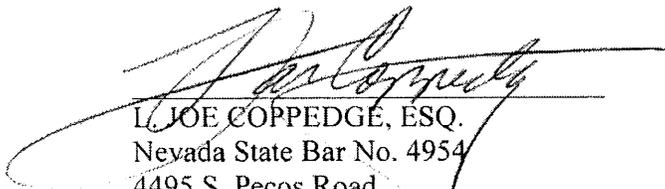
14 WHEREFORE, for the reasons set forth above and in the attached Declaration of
15 Counsel, L. Joe Coppedge, Esq. and the law firm of Mushkin Cica Coppedge respectfully
16 request that:

17 1. This Court enter an order allowing Michael R. Mushkin, L. Joe Coppedge and
18 the law firm of Mushkin Cica Coppedge to withdraw as counsel of record for Counterclaimant
19 Nona Tobin; and further that

20 2. The names of Michael R. Mushkin, L. Joe Coppedge and the law firm of
21 Mushkin Cica Coppedge, their business address, and email addresses be removed from the
22 service list in this case as a representative of Counterclaimant Nona Tobin.

23 DATED this 17 day of May, 2019

24 MUSHKIN • CICA • COPPEDGE

25 
26 L. JOE COPPEDGE, ESQ.
27 Nevada State Bar No. 4954
28 4495 S. Pecos Road
Las Vegas, Nevada 89121

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Motion to Substitute Real Party in Interest and To Withdraw as Counsel of Record for Counterclaimant Nona Tobin On Order Shortening Time** was submitted electronically for filing and/or service with the Eighth Judicial District Court on this ____ day of May, 2019. Electronic service of the foregoing document shall be upon all parties listed on the Odyssey eFileNV service contact list:

An Employee of
MUSHKIN CICA COPPEDGE

1 MICHAEL R. MUSHKIN, ESQ.
Nevada Bar No. 2421
2 L. JOE COPPEDGE, ESQ.
Nevada Bar No. 4954
3 MUSHKIN CICA COPPEDGE
4 4495 South Pecos Road
Las Vegas, Nevada 89121
5 Telephone: 702-454-3333
Fax: 702-386-4979
6 michael@mccnvlaw.com
7 jcoppedge@mccnvlaw.com

8 *Attorneys for Nona Tobin, an individual and*
9 *as Trustee of the Gordon B. Hansen Trust*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 JOEL A. STOKES and SANDRA F.
13 STOKES, as trustee of the JIMIACK
IRREVOCABLE TRUST,

14 Plaintiffs,
15 vs.

16 BANK OF AMERICA, N.A.;

17 Defendant.

18
19 NATIONSTAR MORTGAGE, LLC,

20 Counter-Claimant,

21 vs.

22 JIMIACK IRREVOCABLE TRUST,

23 Counter-Defendant.
24

25 CAPTION CONTINUES BELOW
26
27
28

Case No.: A-15-720032-C
Consolidated with: A-16-730078-C

Department: XXXI

RECEIPT OF COPY

1 NONA TOBIN, an individual, and Trustee
2 of the GORDON B. HANSEN TRUST.
3 Dated 8/22/08

4 Counter-Claimant,

5 vs.

6 JOEL A. STOKES and SANDRA F.
7 STOKES, as trustees of the JIMI JACK
8 IRREVOCABLE TRUST, SUN CITY
9 ANTHEM COMMUNITY ASSOCIATION,
10 INC., YUEN K. LEE, an Individual, d/b/a
11 Manager, F. BONDURANT, LLC, DOES 1-
12 10, AND ROE CORPORATIONS 1-10,
13 inclusive,

14 Counter-Defendants.

15 **RECEIPT OF COPY**

16 RECEIPT OF COPY of Motion to Substitute Real Party in Interest and To Withdraw as
17 Counsel of Record for Counterclaimant Nona Tobin On Order Shortening Time is hereby
18 acknowledged this 23rd day of May, 2019, at 2:18 pm.

19 AKERMAN, LLP

20 
21 MELANIE D. MORGAN, ESQ.

22 Nevada State Bar No. 8215

23 THERA A. COOPER, ESQ.

24 Nevada State Bar No. 13468

25 1635 Village Center Circle, Suite 200

26 Las Vegas, NV 89134

EXHIBIT 5

**Court Minutes
(All Pending Motions; May 29, 2019)**

EXHIBIT 5

REGISTER OF ACTIONS

CASE NO. A-15-720032-C

Joel Stokes, Plaintiff(s) vs. Bank of America NA, Defendant(s)

§
§
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§

Case Type: **Other Title to Property**
Date Filed: **06/16/2015**
Location: **Department 31**
Cross-Reference Case Number: **A720032**
Supreme Court No.: **79295**

RELATED CASE INFORMATION

Related Cases

A-16-730078-C (Companion Case)

PARTY INFORMATION

Counter Claimant	Gordon B. Hansen Trust Dated 8/22/08	Lead Attorneys
Counter Claimant	Nationstar Mortgage, LLC	Melanie D. Morgan <i>Retained</i> 702-634-5000(W)
Counter Claimant	Tobin, Nona	Pro Se
Counter Defendant	Stokes, Joel A	Joseph Y. Hong <i>Retained</i> 702-870-1777(W)
Counter Defendant	Stokes, Sandra F	Joseph Y. Hong <i>Retained</i> 702-870-1777(W)
Cross Claimant	Gordon B. Hansen Trust Dated 8/22/08	
Cross Claimant	Tobin, Nona	Pro Se
Cross Defendant	Lee, Yuen K.	
Cross Defendant	Sun City Anthem Community Association Inc	David A. Clark <i>Retained</i> 7023822200(W)
Defendant	Bank of America NA	Dana J. Nitz <i>Retained</i> 702-475-7964(W)
Defendant	Sun City Anthem Community Association Inc	David A. Clark <i>Retained</i> 7023822200(W)

Plaintiff JimiJack Irrevocable Trust**Joseph Y. Hong**
Retained
702-870-1777(W)

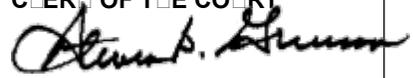
EVENTS & ORDERS OF THE COURT

05/29/2019 **All Pending Motions** (8:30 AM) (Judicial Officer Kishner, Joanna S.)
*All Pending Motions (5/29/2019)***Minutes**

05/29/2019 8:30 AM

- Mr. Mushkin not present. Court stated a call was received in Chambers that one of the parties was stuck in traffic this morning. Court TRAILED and RECALLED matter at 8:30 A.M. Upon Court's inquiry, the parties in Court confirmed not receiving any updates from opposing counsel. Mr. Hong requested to go forward with the hearing. Court TRAILED matter to call another case on Calendar. CASE RECALLED. Mr. Mushkin present in Court. CROSS-CLAIMANT NONA TOBIN'S MOTION FOR RECONSIDERATION Court addressed preliminary matters, history of the case, and the Motion. COURT ORDERED, any representation about Nona Tobin being an individual party in the case is STRICKEN. Court also addressed the order issued in April, 2019. Court noted the name of the trust is unclear, and both of the names of the trusts on the captions of various pleadings list different numbers. Arguments by counsel. COURT ORDERED, Motion DENIED. MOTION TO SUBSTITUTE REAL PARTY IN INTEREST AND TO WITHDRAW AS COUNSEL OF RECORD FOR COUNTERCLAIMANT NONA TOBIN ON ORDER SHORTENING TIME At request of counsel, COURT ORDERED, Motion TAKEN OFF CALENDAR. Mr. Ochoa to prepare the order.

[Parties Present](#)[Return to Register of Actions](#)



1 **REPLY**
2 AARON R. MAURICE, ESQ.
3 Nevada Bar No. 6412
4 BRITTANY WOOD, ESQ.
5 Nevada Bar No. 7562
6 ELIZABETH E. ARONSON, ESQ.
7 Nevada Bar No. 14472

8 **MAURICE WOOD**
9 9525 Hillwood Drive, Suite 140
10 Las Vegas, Nevada 89134
11 Telephone: (702) 463-7616
12 Facsimile: (702) 463-6224
13 E-Mail: amaurice@mauricewood.com
14 bwood@mauricewood.com
15 earonson@mauricewood.com

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

21 **DISTRICT COURT**
22 **CLARK COUNTY, NEVADA**

23 * * *

24 NONA TOBIN, an individual,
25 Plaintiff,

26 vs.

27 BRIAN CHIESTI, an individual; DEBORA
28 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

**BRIAN AND DEBORA CHIESI AND
QUICKEN LOANS, LLC'S REPLY
TO PLAINTIFF'S OPPOSITION TO
MOTION TO DISMISS AND
JOINDERS THERETO**

Hearing Date: August 11, 2020

Hearing Time: 8:30 a.m.

COME NOW, Defendants, Brian Chiesi and Debora Chiesi (collectively, "Chiesis"), erroneously sued as Brian Chiesti and Debora Chiesti, and Quicken Loans Inc., n/k/a Quicken Loans, LLC (together with the Chiesis, "Chiesi Defendants"), by and through their attorneys of record, MAURICE WOOD, and hereby file their Reply to Plaintiff's Opposition to Motion to Dismiss and Joinders Thereto.

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

1 This Reply is made and based on the Points & Authorities herein, any pleadings on file
2 with the Court and any oral argument which this Court may choose to entertain.

3 **POINTS AND AUTHORITIES**

4 **I.**

5 **INTRODUCTION**

6 On July 6, 2019, the Chiesi Defendants filed their Joinder (“Chiesi Defendants’ Motion”)
7 to Red Rock Financial Services’ Motion to Dismiss Plaintiffs’ Amended Complaint (collectively,
8 “the Motions”).¹ As demonstrated in the Motions, Plaintiff’s Amended Complaint is part of a
9 continuing pattern of harassing and vexatious litigation that has been ongoing for the last six years
10 involving a title dispute following an NRS Chapter 116 HOA Foreclosure. After Tobin failed to
11 set aside the HOA Foreclosure in the Quiet Title Litigation in her capacity as trustee of the Gordon
12 B. Hansen Trust, Tobin filed this new action, in her *individual capacity*, asserting the same claims
13 and raising the same legal issues that were previously adjudicated in the Quiet Title Litigation.

14 As set forth in the Chiesi Defendants’ Motion, the Quitclaim Deed to Tobin constitutes a
15 “wild” deed (i.e., a deed outside the chain of title (see Snow v. Pioneer Title Ins. Co., 84 Nev. 480,
16 444 P.2d 125 (Nev. 1968))) because the Gordon B. Hansen Trust’s interest in the Property had
17 already been extinguished by the valid HOA Foreclosure conducted nearly three years prior to the
18 March 28, 2017 Quitclaim Deed to Tobin. Moreover, there is no question that Tobin, in her
19 individual capacity, is in privity with the Gordon B. Hansen Trust as the Quitclaim Deed to Tobin
20 purports to transfer any interest the Gordon B. Hansen Trust had in the Property to Tobin,
21 individually. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481, 215 P.3d 709, 718 (Nev.
22 2009)(A person is in privity with another if the person acquired an interest in the subject matter
23 affected by the judgment through one of the parties such as by inheritance, succession, or
24 purchase). Finally, the Quitclaim Deed was signed by Tobin, in her capacity as trustee, and
25 claimed an exemption from real property transfer tax as a transfer to or from a trust for no
26 consideration. Because Tobin’s Amended Complaint is based on the same claims and issues that

27 _____
28 ¹ Capitalized terms herein shall include the same definitions used in the Chiesi Defendants’ Motion.

1 were decided in the Quiet Title Litigation and Tobin’s Amended Complaint involves the same
2 parties *or the parties’ privies*, Tobin’s claims are barred by issue preclusion and claim preclusion.

3 On July 20, 2020, Tobin filed her Opposition to the Motions. Tobin’s Opposition focused
4 on the arguments advanced in Red Rock’s Motion and made no attempt to address the arguments
5 advanced by the Chiesi Defendants’ Motion. Specifically, Tobin’s Opposition asserts that because
6 the Amended Complaint includes “allegations occurring after the end of the prior lawsuit” (i.e.,
7 the transfer of title to the Property to the Chiesi Defendants) and “the parties are not the same” as
8 the parties involved in the Quiet Title Litigation, issue and claim preclusion would not preclude
9 Tobin from having this Court reconsider the title dispute that was previously resolved in the Quiet
10 Title Litigation. See Tobin’s Opposition, p.6, ll.8-9; 25-26.

11 As will be demonstrated below, the problem with Tobin’s Opposition is that it completely
12 fails to address the fact that Tobin is in privity to the Gordon B. Hansen Trust and the Chiesi
13 Defendants are in privity with the Jimijack Trust – both of whom were parties to the Quiet Title
14 Litigation. The Nevada Supreme Court has made clear that issue preclusion and claim preclusion
15 apply if the party against whom the judgment is asserted, was “a party *or in privity with a party* to
16 the prior litigation.” See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713
17 (Nev. 2008). As set forth in the Chiesi Defendants’ Motion, and as will be demonstrated below,
18 Tobin’s claims are barred by issue preclusion and claim preclusion as both doctrines act to bar
19 further claims by parties *or their privies* based on claims that were or could have been raised in
20 the initial case. Accordingly, Tobin’s Amended Complaint should be dismissed with prejudice
21 and this Court should award Defendants their attorney’s fees pursuant to NRS 18.010(2)(b) to
22 deter Tobin from her ongoing pattern of vexatious litigation.

23 **II.**

24 **ARGUMENT**

25 **A. Tobin’s Opposition completely ignores that the privity element is met in this case.**

26 As set forth in the Chiesi Defendants’ Motion, in 2008, the Nevada Supreme Court clarified
27 Nevada law regarding *res judicata* and collateral estoppel, adopting the modern terminology of
28 claim and issue preclusion respectively, and establishing separate tests for each. See Five Star

1 Capital Corp. v. Ruby, 124 Nev. 1048, 194 P.3d 709 (Nev. 2008). The Five Star Court set forth a
2 three-part test for determining whether claim preclusion should apply: (1) the parties *or their*
3 *privies* are the same; (2) the final judgment is valid; and (3) the subsequent action is based on the
4 same claims or any part of them that were or could have been brought in the first case. Id. at 1054,
5 194 P.3d at 713. With respect to issue preclusion, the Five Star Court set forth a four-part test: (1)
6 the issue decided in the prior litigation must be identical to the issue presented in the current action;
7 (2) the initial ruling must have been on the merits and have become final; (3) the party against
8 whom the judgment is asserted must have been a party *or in privity with a party* to the prior
9 litigation; and (4) the issue was actually and necessarily litigated. Id. Under both tests, the Nevada
10 Supreme Court recognizes that issue preclusion and claim preclusion apply to the parties to the
11 prior litigation *and to parties in privity* with a party to the prior litigation.

12 This case presents a perfect example of why the Nevada Supreme Court would extend issue
13 preclusion and claim preclusion to a party's privities. For years, Nevada Courts were flooded with
14 quiet title disputes arising in connection with NRS Chapter 116 Foreclosures like the Quiet Title
15 Litigation involved in this case. For nearly a decade, judges in Nevada have been attempting to
16 move thousands of such cases through their already over-burdened dockets. If this Court simply
17 ignored the fact that issue preclusion and claim preclusion apply to parties *in privity* with a party
18 to prior litigation, any party who litigated an NRS Chapter 116 quiet title claim that wished to
19 challenge such a sale a second time (perhaps with the sole hope of obtaining a nuisance cost-of-
20 defense settlement), could simply record a wild deed for no consideration to a new entity, trust, or
21 person, just like Tobin did here. Ignoring the privity elements announced by the Five Star Court
22 would defeat the public policy in support of the doctrines of issue and claim preclusion and could
23 overwhelm the courts in Nevada with a second flood of quiet title claims seeking do-overs.

24 Tobin's Opposition advances a position that would have this Court ignore binding Nevada
25 Supreme Court precedent and completely re-write the doctrines of issue and claim preclusion.
26 Here, there can be no question that Tobin, in her individual capacity, is in privity with the Gordon
27 B. Hansen Trust. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481, 215 P.3d 709, 718 (Nev.
28 2009)(A person is in privity with another if the person acquired an interest in the subject matter

1 affected by the judgment through one of the parties such as by inheritance, succession, or purchase)
2 see also Restatement (Second) of Judgments, § 41(1)(a)(a beneficiary of a trust or estate is bound
3 by a judgment in which the trustee participated in the action). Although the Quitclaim Deed to
4 Tobin was recorded outside the chain of title (see Snow v. Pioneer Title Ins. Co., 84 Nev. 480, 444
5 P.2d 125 (Nev. 1968)), Tobin is nonetheless bound by the final judgment entered against the
6 Gordon B. Hansen Trust. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481, 215 P.3d 709, 718
7 (Nev. 2009).

8 Tobin's assertion that she "did not have a full and fair opportunity to litigate her individual
9 claims to the subject property" (see Opposition, p.7, ll.7-8), ignores the fact that it was *Tobin's*
10 *own trial testimony* that proved fatal to her claims in the Quiet Title Litigation. As set forth in the
11 Chiesi Defendants' Motion, Judge Kishner conducted a bench trial to resolve the Counterclaims
12 asserted by the Hansen Trust in the Answer and Counterclaim. See RJN Exhibit 14, n.1. Following
13 the bench trial, Judge Kishner entered judgment in favor of the Jimijack. Specifically, Judge
14 Kishner found that the Counterclaims failed based on Tobin's trial testimony in which she
15 acknowledged the house had been subject to multiple short sales, the Trust was in default with the
16 lender and the HOA, and Tobin had received the Notice of Foreclosure Sale. Id. at Conclusion of
17 Law No. 5. In this regard, Tobin's assertion that: "Fairness requires [Tobin] have her day in court"
18 is belied by the fact that it was Tobin's trial testimony that proved fatal to her claims.

19 By filing a second complaint regarding the same transaction that was involved in the Quiet
20 Title Litigation, Tobin is impermissibly attempting to have this Court substitute its judgment for
21 that of Judge Kishner – and worse the Nevada Supreme Court's review of the Quiet Title
22 Litigation. Tobin's Amended Complaint goes against the public policy reasons supporting claim
23 preclusion which is founded upon the "public policy of limiting litigation by preventing a party
24 who had one full and fair opportunity to litigate an issue from again drawing it into controversy."
25 Bower v. Harrah's Laughlin, Inc., 125 Nev. 37, 215 P.3d 709, 718 (Nev. 2009). Tobin has already
26 caused several of the Defendants to this action to needlessly incur thousands of dollars in attorney's
27 fees defending against the frivolously filed Quiet Title Litigation. Now, Tobin also forces new
28 innocent purchasers to defend against her frivolous claims. This is precisely the type of case that

1 the doctrines of issue preclusion and claim preclusion are designed to prevent. Accordingly, this
2 Court should find that Tobin's Complaint is barred by the doctrines of issue and claim preclusion
3 and dismiss Tobin's Amended Complaint with prejudice.

4 **B. This Court should award the Chiesi Defendants their attorney's fees incurred in**
5 **defense of Tobin's frivolous claims.**

6 As set forth in the Chiesi Defendants' Motion, Plaintiff's Amended Complaint is the latest
7 in a pattern of harassing and vexatious litigation. Unless this Court imposes sanctions against
8 Tobin by requiring Tobin to reimburse the Chiesi Defendants for their attorney's fees and costs,
9 Tobin will continue to abuse the legal system by filing further frivolous and vexatious claims that
10 overburden the limited judicial resources of this Court, thereby hindering the timely resolution of
11 meritorious claims and increasing the costs of engaging in business and providing professional
12 services to the public. Tobin's Opposition made no attempt to address the Chiesi Defendants'
13 request for attorney's fees. As a result, Tobin's Opposition may be deemed an acknowledgment
14 of the merits of the Chiesi Defendants' Motion. See EDCR 2.20(e) (Failure of the opposing party
15 to serve and file written opposition may be construed as an admission that the motion is
16 meritorious).

17 Accordingly, this Court should award the Chiesi Defendants their reasonable attorney's
18 fees and costs incurred in the defense of Tobin's claims pursuant to NRS 18.010(2)(b).

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III.

CONCLUSION

As demonstrated above and as previously determined by Judge Kishner, Tobin’s claims find no support in fact or law. Accordingly, Tobin’s Amended Complaint should be dismissed, with prejudice, and this Court should award the Chiesi Defendants their attorney’s fees pursuant to NRS 18.010(2)(b) to deter Tobin from continuing her pattern of vexatious litigation.

DATED this 3rd day of August, 2020.

MAURICE WOOD

By /s/Brittany Wood

AARON R. MAURICE, ESQ.
Nevada Bar No. 006412
BRITTANY WOOD, ESQ.
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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

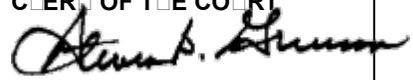
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Maurice Wood, and that on the 3rd day of August, 2020, I caused to be served a true and correct copy of the foregoing **BRIAN AND DEBORA CHIESI AND QUICKEN LOANS LLC'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS AND JOINDERS THERETO** 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



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12 *Attorneys for Defendant*
13 *Red Rock Financial Services*

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 NONA TOBIN, an individual,
17
18 Plaintiff,
19
20 vs.

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

21 BRIAN CHIESTI, an individual; DEBORA
22 CHIESTI, an individual; QUICKEN
23 LOANS IN.; JOEL A. STOKES, an
24 individual; JOEL A . STOKES AND
25 SANDRA STOKES as Trustees of
26 JIMI JACK IRREVOCABLE TRUST;
27 JIMI JACK IRREVOCABLE TRUST;
28 NATIONAL MORTGAGE LLC; RED
ROCK FINANCIAL SERVICES,

**DEFENDANT RED ROCK FINANCIAL
SERVICES' REPLY IN SUPPORT OF
ITS MOTION TO DISMISS
COMPLAINT PURSUANT TO NRCP
12(b)(5) and (6)**

Defendants.

Defendant Red Rock Financial Services ("Red Rock") replies in support of its motion pursuant to NRCP 12(b)(5) and (6) for dismissal of all claims for relief asserted against it in Nona Tobin's ("Plaintiff") pending Complaint.

///

1 **I. INTRODUCTION**

2 Tobin's opposition attempts to paint this suit as her one and only opportunity to
3 have her day in court. But in reality, her opposition makes it disturbingly clear that her
4 suit is nothing but a blatant attempt to skirt previous holdings against her and
5 completely retry all of her failed claims. Tobin confirmed that she originally brought
6 claims as the trustee of the Gordon B. Hansen Revocable Trust claiming that the Trust
7 owned the Property and had standing to sue. After losing those claims on the merits, she
8 now turns around and conveniently claims that, guess what, it was not the Trust that
9 owned the Property and had standing to sue: instead, it was she individually who owned
10 the Property and had standing. She is now essentially arguing that the entire previous
11 case was really just a ruse and should be set aside so that she can relitigate her claims
12 wearing a different hat. Such an about-face borders on fraud and should not be tolerated.

13 Luckily, Nevada law prevents such inexcusable gamesmanship, which Tobin's
14 opposition ignores. As Red Rock anticipated, Tobin largely attempts to dodge the
15 doctrine of nonmutual claim preclusion by arguing that the Trust brought the previous
16 suit and not her individually. In so arguing, she outright ignores the arguments of the
17 motion to dismiss (and every joinder to the motion) that claim preclusion prevents
18 subsequent suits not just by the exact same party to a previous action, *but those in*
19 *privity* to the party, and Tobin the individual is certainly in privity with Tobin the
20 trustee. Tobin also attempts to dodge the application of judicial estoppel through the
21 same arguments, even though that doctrine also applies to parties *and those in privity to*
22 *those parties*. While Tobin is permitted to assert different claims and defenses, she is not
23 permitted to bring suit claiming to hold title as a trustee, lose, and then bring nearly the
24 same suit claiming to hold title as an individual.

25 For those reasons, and because her claims are improper on the merits, Tobin's
26 Amended Complaint should be dismissed with prejudice.

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1 **II. ARGUMENT**

2 **A. No Party Prevented Tobin From Previously Filing Suit in Her Individual**
3 **Capacity**

4 As a preliminary matter, it must be noted that Tobin's current narrative that the
5 parties to the previous action blocked Tobin from filing suit in her individual capacity in
6 that action is completely belied by the very exhibits Tobin attaches to her opposition.
7 Tobin's opposition attempts to push a narrative where she continually attempted to
8 insert herself in the previous litigation and was continually stiff-armed by the parties (as
9 well as, apparently, both the district court and the Nevada Supreme Court), so her only
10 recourse was to file the present case. This is not what happened.

11 Contrary to Tobin's assertions in her opposition, she, as an individual, never
12 attempted to file any pleadings to appear in the previous action. While she asserts that
13 she obtained an order to intervene in the previous action, (see Opposition at 3:10-14), it is
14 clear from a review of the order that Tobin, **as trustee of the revocable trust**, was allowed
15 to intervene, not Tobin the individual. (See, Exhibit 1 of Tobin's Opposition). Thereafter,
16 Tobin, **as trustee**, filed her cross-claims wherein she alleged that the Trust owned the
17 Property. (See, Exhibit 1 to Red Rock's Motion to Dismiss).

18 After Tobin, as trustee, lost her claims on summary judgment and at trial, and
19 after her counsel received an oral order granting a motion to withdraw, Tobin,
20 representing herself, began filing a number of motions in her individual capacity. This
21 caused some confusion with the court (and appears to continue to confuse Tobin), but the
22 court finally determined that Tobin as an individual had never appeared in the action
23 and that all of her motions were rogue filings. (See Exhibit 3 of Tobin's opposition).

24 Tobin's failure to participate in the previous action in her individual capacity is
25 nobody's fault but her own. If she had claims to assert she could have properly
26 intervened as the Trust did. In fact, it appears that she did not intervene in her individual
27 capacity specifically because she was alleging that the Trust held title to the Property, at
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1 least until the Trust lost its suit. Her attempts to now paint herself as a victim that has
2 never had her day in court because of the actions of Sun City Anthem Community
3 Association (the "HOA"), Red Rock, and the other parties to this case is inaccurate and
4 dishonest.

5 **B. Nonmutual Claim Preclusion Prevents Tobin's Claims**

6 **1. Claim Preclusion Prevents Subsequent Actions by Parties or Their**
7 **Privities**

8 Tobin first and primarily argues in her opposition that claim preclusion does not
9 apply to her case because she brought the previous case as a trustee and is bringing the
10 current case as an individual. Red Rock anticipated this argument and already addressed
11 it by pointing out that claim preclusion applies when "the parties *or their privities* are the
12 same in the instant lawsuit as they were in the previous lawsuit." *Weddell v. Sharp*, 350
13 P.3d 80, 85 (Nev. 2015) (emphasis added). Tobin the trustee is surely in privity with
14 Tobin the individual. This was the central argument not only of Red Rock's motion, but
15 of all of the joinders to the motion. Tobin deals with the argument by ignoring it entirely.
16 She does even mention the word, "privity" in her opposition.

17 Privity is commonly seen as a "flexible concept dependent on the particular
18 relationship between the parties in each individual set of cases." *Tahoe-Sierra Preservation*
19 *Council, Inc. v. Tahoe Regl. Plan. Agency*, 322 F.3d 1064, 1081-82 (9th Cir. 2003). "Courts
20 have recognized that a non-party may be bound if a party is so closely aligned with its
21 interests as to be its 'virtual representative.'" *Schoenleber v. Harrah's Laughlin, Inc.*, 423 F.
22 Supp. 2d 1109, 1112 (D. Nev. 2006)(quoting *U.S. v. ITT Rayonier*, 627 F.2d 996, 1003 (9th
23 Cir.1980)). There can be no doubt that Tobin is in privity with herself. Her interests are
24 exactly the same as an individual as they were as a trustee, which was to preserve title or
25 obtain damages from an alleged wrongful foreclosure. In fact, both Tobin the trustee and
26 Tobin the individual claim to have held the same exact interest in the Property.

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1 Claim preclusion prevents subsequent actions by privies specifically to prevent
2 the types of games Tobin is now playing. The doctrine does not overlook clever parties
3 that attempt to avoid final outcomes by slightly altering their legal identity. This is
4 especially true when the same exact individual is bringing suit. Tobin should not be
5 permitted to bring suit claiming that the Trust owned the Property, switch the Property
6 to her own name after bringing suit without telling anybody, continue to prosecute her
7 action as a trustee, and then bring suit again in her individual capacity after losing as a
8 trustee. She is in privity with herself and her claims are precluded.

9 **2. Tobin's Claims Are Identical to Her Claims in the Previous Suit**

10 Tobin also claims that claim preclusion does not apply here, because there are
11 many different facts at issue including allegations occurring after the end of the prior
12 lawsuit. (*See* Opposition at 6:7-10). Tobin does not, however, clarify what these so-called
13 new facts and allegations are, nor does she explain what possible new allegations could
14 occur after the prior suit that would have affected the propriety of a foreclosure sale that
15 took place years prior. This is because there are no new facts or allegations, at least
16 nothing that Tobin could not have asserted in her previous suit.

17 There is no doubt that Tobin's claims are identical in both cases. This is clear from
18 a review of Tobin's previous cross-claims, attached as Exhibit 1 to Red Rock's motion, in
19 conjunction with her current Amended Complaint. Tobin's opposition to the HOA's
20 motion for summary judgment also describes the claims in the prior suit, which match
21 the claims in the present matter. It is clear that Tobin vigorously argued in her previous
22 suit that the foreclosure conducted by Red Rock was improper on multiple grounds. She
23 went into great detail on a large variety of arguments involving Red Rock, and she lost
24 that suit. The claims she is bringing now are the same; she is alleging that the foreclosure
25 Red Rock conducted was improper. But the previous court has already held that the
26 foreclosure sale was proper.

1 It is possible, of course, that when the Court delves into Tobin's current Amended
2 Complaint it might find that Tobin has some slightly new theories against Red Rock and
3 the other parties, but that is certainly not sufficient to prevent claim preclusion since the
4 doctrine precludes any actions on the same claims *or any part of them that were or could*
5 *have been brought in the first action.* *Weddell*, 350 P.3d at 85. Tobin is not playing a board
6 game. She does not get to lose her suit, change her strategy, and restart the game. No
7 matter how the Court looks at it, Tobin's claims are fully precluded.

8 **C. Tobin is Judicially Estopped and Legally Prevented from Asserting that**
9 **She Was the Owner of the Property**

10 Tobin cannot now assert that she, as an individual, is the owner of the Property for
11 a host of reasons. There can be no mistaking Tobin's actions and prior arguments on this
12 point. In January 2017, Tobin brought cross-claims asserting that the foreclosure of the
13 Property was improper, wherein she alleged that the Trust was the title holder to the
14 Property at the time of the foreclosure in 2014. (See, Exhibit 1 to Red Rock's Motion.) In
15 February 2019, the HOA filed summary judgment and Tobin opposed, acting the whole
16 time as though the Trust was the title holder of the Property and that the Trust had
17 standing to sue. (See, Exhibit 3 to Red Rock's Motion). Tobin even signed an affidavit at
18 that time stating that she was bringing her claims as the trustee of the Trust. Then, Tobin
19 went through a whole trial where she presented the entire time that the Trust was the
20 owner of the Property and she had standing to sue as the trustee. (See, Exhibit 6 to Red
21 Rock's Motion). Now, in her opposition, she suddenly asserts that, no, the Trust did not
22 own the Property. In March 2017, after the Trust had already brought suit through her,
23 title in the Property changed into her hands individually. (See Opposition at 9:1-4.)
24 Therefore, she suggests now that she had standing to sue, not the Trust.

25 There are, of course, several problems with these new claims of ownership. The
26 first problem, obviously, was that Red Rock foreclosed on the Trust's interest in the
27 Property back in 2014. There was no title to switch into Tobin's name in March 2017. The
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1 2014 foreclosure was enforceable at the time it occurred, and it was sustained by the
2 previous court. Tobin cannot argue that the Trust switched title to Tobin's name after the
3 Trust's interest in the Property was destroyed.

4 Moreover, judicial estoppel applies here. Tobin attempts to dodge the doctrine by
5 arguing, again, that she as an individual was not a party to the previous suit and the
6 doctrine, therefore, cannot apply. But judicial estoppel is not quite so rigid of a doctrine
7 as Tobin would like to believe. As with claim preclusion, the doctrine of judicial estoppel
8 applies not just to parties to a previous suit, but to their privities as well. *See, e.g., Milton*
9 *H. Greene Archives, Inc. v. Marilyn Monroe LLC*, 692 F.3d 983, 996 (9th Cir. 2012) (quoting
10 *Wash. Mut. Inc. v. United States*, 636 F.3d 1207, 1216 (9th Cir.2011)) ("We apply other
11 estoppel doctrines, like collateral estoppel, 'not only against actual parties to prior
12 litigation, but also against a party that is in privity to a party in a previous litigation.'").
13 Because judicial estoppel is intended to protect courts, those courts should be
14 "particularly mindful that the '[i]dentity of parties is not a mere matter of form, but of
15 substance. Parties nominally the same may be, in legal effect, different; and parties
16 nominally different may be, in legal effect, the same.'" *Id.* (quoting *Chicago, Rock Island &*
17 *Pac. Ry. Co. v. Schendel*, 270 U.S. 611, 620, 46 S.Ct. 420, 70 L.Ed. 757 (1926)).

18 Here, Tobin, the person, stated *under oath* that the Trust owned the Property. She
19 held that position through summary judgment and through an entire trial on the merits.
20 She is not allowed now to change that stance and claim it was a different entity that took
21 the original stance. Although Tobin the trustee and Tobin the individual have different
22 hats, they are nominally the same and should be treated as such.

23 Tobin also argues that judicial estoppel should not apply because NRCP 8(d)(3)
24 allows parties to make inconsistent claims and defenses. This argument misses the entire
25 point of the doctrine of judicial estoppel which is that judicial estoppel *only applies after*
26 *a party has been successful in asserting a prior position*. When she was first bringing her
27 claims, Tobin was permitted to assert opposing claims and defenses regarding
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1 ownership. When, however, she argued that the Trust owned the Property and tried the
2 entire case as though the Trust had standing to sue, and when she lost on all of her
3 claims, she was done. She had her day in court and judicial estoppel bars her attempts to
4 wiggle out of her loss.

5 Judicial estoppel was designed to “guard the judiciary’s integrity,” and it should
6 apply when a party’s inconsistent position “arises from intentional wrongdoing or an
7 attempt to obtain an unfair advantage.” *Matter of Frei Irrevocable Tr. Dated October 29,*
8 *1996*, 390 P.3d 646, 651–52 (Nev. 2017). Tobin’s attempt to gain an unfair advantage here
9 is abundantly clear, and the Court should apply the doctrine to prevent her from
10 bringing another suit.

11 **D. Tobin’s Unjust Enrichment Claim is Improper**

12 Tobin suggests that the statute of limitations on her unjust enrichment claim has
13 not run because of the “same arguments about [Tobin] not being a plaintiff in the earlier
14 case.” (*See* Opposition at 9:14.) Tobin does not elaborate on the theory, but Red Rock is
15 unable to decipher the reasoning, and the Court should disregard the argument.

16 Tobin makes another suggestion pertaining to unjust enrichment in regards to the
17 excess proceeds from the foreclosure sale. In fact, it appears as though her entire claim is
18 now based only on the excess proceeds. Red Rock could counter Tobin’s argument, but
19 there is no need. The only reason the excess proceeds have not been interpled already is
20 due to Tobin’s actions in continually challenging the validity of the foreclosure sale. As
21 Red Rock explained in its motion, it claims no interest in those proceeds and there is not
22 a judicable controversy between Tobin and Red Rock on the issue. While Red Rock
23 agrees that the excess proceeds must be properly allocated through appropriate
24 litigation, they should be allocated through an interpleader action, not an unjust
25 enrichment claim against Red Rock.

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1 **E. Tobin Confirms That Red Rock is Not a Proper Party to the Quiet Title**
2 **Claim**

3 Tobin suggests that Red Rock is a proper party to the quiet title claim, but only
4 because Red Rock retained the excess proceeds of the foreclosure sale and facilitated the
5 foreclosure. (Opposition, at 10:15-19.) These are not proper reasons to bring Red Rock
6 into a quiet title action. As Red Rock argued in its motion, it cannot be a proper party to
7 the quiet title claim because it has no interest in the Property, and there is no controversy
8 between Red Rock and Tobin regarding title to the Property. Red Rock facilitated the
9 foreclosure, but it has no interest in the Property and no reason to litigate who should
10 now hold title. Tobin’s failure to address Red Rock’s argument is a tacit admission that
11 Red Rock is not a proper party to the claim.

12 Tobin finally suggests that Red Rock cannot now argue both that it was a
13 necessary party to the previous action and that the quiet title claim is improper against
14 Red Rock. Red Rock can argue both that a quiet title claim is improper against it and also
15 that even if the claim was proper, it should have been brought in the previous action.
16 Those two arguments are not improperly incompatible or contradictory. Moreover, Tobin
17 asserted several other claims for damages against the HOA in the previous action and
18 asserts other claims for damages against Red Rock in this action based on the same
19 allegations. Red Rock was a necessary party to the previous claims for damages even if it
20 never was a proper party to the quiet title claim.

21 **III. CONCLUSION**

22 For all of the above reasons, the Court should grant Red Rock’s motion to dismiss
23 and dismiss Red Rock from the case with prejudice.

24 DATED: August 3, 2020.

KOCH & SCOW, LLC

/s/Steven B. Scow

Steven B. Scow, Esq.

Attorney for Red Rock Financial Services, LLC

CERTIFICATE OF SERVICE

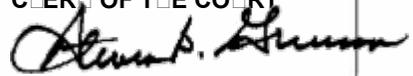
I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. I certify that on August 3, 2020, I caused the foregoing document entitled: DEFENDANT RED ROCK FINANCIAL SERVICES' MOTION TO DISMISS COMPLAINT PURSUANT TO NRCPP 12(b)(5) to be served as follows:

- [X] Pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in in the mail; and /or;
[] by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Henderson, Nevada; and /or
[] Pursuant to EDCR 7.26, to be sent via facsimile; and /or
[] hand-delivered to the attorney(s) listed below at the address indicated below;
[] to be delivered overnight via an overnight delivery service in lieu of delivery by mail to the addressee (s); and or:
[] by electronic mailing to:

Vincenette Caruana jwtlaw@ymail.com
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Executed on August 3, 2020 at Henderson, Nevada.

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



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11 *JOEL A. STOKES AND SANDRA*
12 *STOKES, AS TRUSTEES OF THE*
13 *JIMI JACK IRREVOCABLE TRUST,*
14 *AND JIMI JACK 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 JIMI JACK IRREVOCABLE TRUST; JIMI JACK
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,

22 **Defendants.**

**JOEL A. STOKES, JOEL A. STOKES
AND SANDRA STOKES, AS
TRUSTEES OF THE JIMI JACK
IRREVOCABLE TRUST, AND
JIMI JACK 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)**

25 COME NOW, Defendants, Joel A. Stokes, Joel A. Stokes and Sandra Stokes, as trustees of
26 the Jimijack Irrevocable Trust, and Jimijack Irrevocable Trust (collectively "Jimijack"), by and
27 through their attorney of record, Joseph Y. Hong, Esq., and hereby submit their Reply in Support
28

1 of Defendant, Red Rock Financial Services' ("Red Rock"), Motion to Dismiss First Amended
2 Complaint, filed on June 23, 2020, and additionally move for attorney's fees and costs pursuant to
3 E.D.C.R. Rule 7.60(b)(1) and/or (3).

4 This Reply is based on the following points and authorities, all pleadings and papers filed
5 in this action and the previous action, case # A-15-720032-C, the attached declaration, and any
6 argument of counsel at the time of hearing.
7

8 DATED this 3rd day of August, 2020.

9 HONG & HONG LAW OFFICE

10
11 /s/ Joseph Y. Hong

12 JOSEPH Y. HONG, ESQ.

13 State Bar No. 005995

14 1980 Festival Plaza Drive, Suite 650

15 Las Vegas, Nevada 89135

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

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. SUMMARY OF REPLY**

19 Jimijack filed its Joinder to Red Rock's Motion to Dismiss wherein the Joinder contained
20 additional arguments specific to Jimijack, as well as a request for reimbursement of Jimijack's
21 attorney's fees and costs pursuant to E.D.C.R. Rule 7.60(b)(1) and/or (3). As the Court will
22 glean from Plaintiff, Nona Tobin's ("Tobin"), Opposition to Red Rock's Motion to Dismiss, it is
23 **completely silent** as to the additional arguments raised by Jimijack. Specifically, Tobin's
24 Opposition fails to address the **absolute undisputed fact that Tobin cannot, in any possible**
25 **manner, maintain any claims against Jimijack or even the current owners, Brian and Debora**
26 **Chiesti, and Quicken Loans, the company that provided the loan to Brian and Debora Chiesti for**
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1 their purchase of the Subject Property from Jimijack, if Tobin cannot void the underlying HOA
2 foreclosure sale that was conducted in August 2014. There are no ifs, ands or buts about it.
3 Tobin's Opposition is also **completely silent** as to Jimijack's request for attorney's fees and
4 costs pursuant to E.D.C.R. Rule 7.60(b)(1) and/or (3) and, therefore, attorney's fees and costs in
5 the amount of **\$3,165.00** should be awarded to Jimijack pursuant to E.D.C.R. Rule 2.20(e).
6

7 Notwithstanding the above, Red Rock's Motion to Dismiss and Jimijack's Joinder to
8 same **must be granted as a matter of Nevada law pursuant to the doctrine of res judicata.**

9 **II. ARGUMENT**

10 **A. The Doctrine of Res Judicata Absolutely Bars the Claims Against Jimijack and** 11 **Mandates, as a Matter of Nevada Law, for the Dismissal of this Action in its** 12 **Entirety With Prejudice**

13 As previously submitted, the analysis is very simple. In this present action, Tobin is
14 seeking to void the HOA foreclosure sale for the Subject Property that was conducted in August
15 2014 by challenging the validity of same wherein all of Tobin's claims against all the named
16 defendants are based on the HOA foreclosure sale. Tobin, as the trustee of the Gordon B.
17 Hansen Trust dated 8/22/08 ("Gordon Hansen Trust"), was seeking the very same relief in the
18 previous litigation. This is absolutely undisputed. Tobin's Opposition to Red Rock's Motion to
19 Dismiss focuses on one singular misplaced argument: that Tobin, individually, was not a party
20 to the previous litigation. **So what?!** As the doctrine of res judicata confirms, claim and issue
21 preclusion apply to a same party from the previous litigation or a party in **privity.**¹ It is
22 undisputed that Tobin, individually, is in direct **privity** with the Gordon Hansen Trust pursuant
23 to the Gordon Hansen Trust, through Tobin, as its trustee, allegedly having conveyed whatever
24 interest it had in the Subject Property--- even though any and all such interest was extinguished
25 at the time of the HOA foreclosure sale--- to Tobin, individually. Thus, because Tobin,
26
27

28 ¹ Without precluding subsequent actions by those in privity, a party can theoretically transfer its interest to another wherein litigation can be perpetual and never ending with subsequent transfers over and over and over again.

1 individually, is in absolute direct **privity** with the Gordon Hansen Trust, any and all claims as
2 alleged against Jimijack in the present action are **absolutely barred** by the doctrine of res judicata
3 as a matter of Nevada law. There are no ifs, ands or buts about it.
4

5 **B. Jimijack is Entitled to be Reimbursed its Attorney’s Fees and Costs Related to**
6 **Tobin’s Frivolous and Unwarranted First Amended Complaint Pursuant to EDCR**
7 **Rule 7.60(b)(1) and/or (3)**

8 As previously submitted, there is no more a fitting situation than the present for the
9 application of EDCR Rule 7.60(b)(1) and/or (3). As previously submitted, this is now Tobin’s
10 *second* attempt to skirt the doctrine of res judicata. Not only did Tobin participate in the
11 previous litigation as the trustee for the Gordon Hansen Trust and, therefore, was clearly aware
12 of the outcome –since an appeal to the Nevada Supreme Court was filed by her as trustee of the
13 Gordon Hansen Trust---, Tobin was absolutely aware that she is in direct **privity** with the
14 Gordon Hansen Trust even if her allegation that she is the party in interest is taken as true.
15 Tobin’s frivolous First Amended Complaint has unnecessarily multiplied these proceedings,
16 wasted the judicial resources of this Court, and has forced Jimijack to incur additional attorney’s
17 fees and costs. Jimijack, therefore, should be reimbursed its attorney’s fees and costs related to
18 Tobin’s First Amended Complaint in the amount of **\$3,165.00** pursuant to EDCR Rule 7.60(b)(1)
19 and/or (3). *See Declaration of Counsel that was previously attached to Jimijack’s Joinder as*
20 *Exhibit “B.”* Tobin’s Opposition is completely silent as to Jimijack being entitled to be
21 reimbursed its attorney’s fees and costs and, therefore, said silence should be construed as a non-
22 opposition pursuant to E.D.C.R. Rule 2.20 (e).
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III. CONCLUSION

Based on the foregoing and Jimijack’s previously filed Joinder to Red Rock’s Motion to Dismiss, Tobin’s First Amended Complaint **must be dismissed with prejudice as a matter of Nevada law, and the corresponding lis pendens expunged.** Jimijack further submits that it should be reimbursed its attorney’s fees and costs in the amount of **\$3,165.00** pursuant to E.D.C.R. Rule 7.60(b)(1) and/or (3).

DATED this 3rd day of August, 2020.

HONG & HONG LAW OFFICE

/s/ Joseph Y. Hong

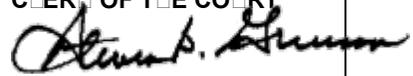
JOSEPH Y. HONG, ESQ.
State Bar No. 005995
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135
*Attorney for Joel A. Stokes, Joel A. Stokes
and Sandra Stokes, as trustees of the
Jimijack Irrevocable Trust, and Jimijack
Irrevocable Trust*

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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 3rd day of August, 2020, I served a true and correct copy of the foregoing **JOEL A. STOKES, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST, AND JIMIACK 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)** by electronic transmission through the Eighth Judicial District Court EFP system (Odyssey eFileNV) pursuant to NEFCR 9 upon each party in this case who is registered as an electronic case filing user with the Clerk.

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



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DISTRICT COURT
CLARK COUNTY, NEVADA

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7 NONA TOBIN,

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Plaintiff,

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vs.

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JOEL STOKES,

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Defendant.

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BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE

13

AUGUST 11, 2020

14

RECORDER'S TRANSCRIPT OF HEARING RE

15

***DEFENDANT RED ROCK FINANCIAL SERVICES, LLC'S MOTION TO DISMISS
COMPLAINT PURSUANT TO NRCP 12(b)(5) and (6) / NATIONSTAR'S JOINDER
TO DEFENDANT RED ROCK FINANCIAL SERVICES MOTION TO DISMISS FIRST
AMENDED COMPLAINT***

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APPEARANCES:

19

For the Plaintiff:

JOHN W. THOMSON, ESQ.

20

Via Video Conference

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For the Defendant:

JOSEPH Y HONG, ESQ.

22

Via Video Conference

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For Nationstar Mortgage:

DONNA WITTIG, ESQ.

24

Via Video Conference

25

For Red Rock Financial:

BRODY R. WIGHT, ESQ.

Via Video Conference

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 TUESDAY, AUGUST 11, 2020 AT 9:29 A.M.

2
3 THE COURT: Okay. Good morning, counsel. I'm calling the case of Tobin
4 versus Stokes, case number A19-799890-C. Would you announce your
5 appearances for the record and let's go ahead and start with Plaintiff's counsel?

6 MR. THOMSON: Good morning, Your Honor. John Thomsom appearing for
7 the Plaintiff, Nona Tobin. My number is 5802.

8 THE COURT: Okay. Ms. Stokes counsel.

9 MR. HONG: Yes. Good morning, Your Honor. Joseph Hong for the Stokes
10 [indecipherable].

11 THE COURT: Okay. And then it looks like we have Nationstar and Red Rock
12 Financial Services.

13 MS. WITTIG: Good morning. Donna Wittig on behalf of Nationstar Mortgage.

14 THE COURT: Red Rock. Is Red Rock counsel on? Well, it's Red Rock
15 Financial Services Motion to Dismiss. I'm just wondering who is gonna be arguing
16 that.

17 MR. HONG: Your Honor, this is Joseph Hong for the Stokes. Red Rock
18 counsel contacted me because they're having some technical difficulties it seems
19 like.

20 THE COURT: Okay. We haven't seen that message.

21 MR. HONG: They said they emailed your law clerk also. The reason they
22 called me to say, hey, are we still going forward and I said yes, we're just on hold
23 because the Judge [indecipherable] cases -- other cases called so I'm not
24 understanding why they're on the line. They should be but I'll let them right now that
25 -- [indecipherable] a few minutes ago.

1 MR. WIGHT: And this is Brody Wight with Red Rock. [indecipherable].

2 THE COURT: Oh, you got on. Okay. Cool.

3 MR. WIGHT: I did get on. I got -- I got on -- some wrong meeting for a
4 minute. I don't know what happened but now I'm on.

5 THE COURT: Okay. Well, it's your motion to dismiss. Oh, okay. And we got
6 Brittany Wood for Quicken Loans, right?

7 MS. WOOD: As well as Brian Chiesi, Your Honor.

8 THE COURT: Okay. Could you spell that name, please?

9 MS. WOOD: It's misspelled in the caption but it's correctly spelled C-h-i-e-s-i.

10 THE COURT: Okay. Very good. Okay. Well, let's go ahead and hear from
11 you, Mr. Wight.

12 MR. WIGHT: All right. And for the record, again this is Brody Wight on behalf
13 of Red Rock Financial services. I don't have much to say, Your Honor. I think our
14 motion is pretty self-explanatory in that this is -- in effect this is just an intent at
15 gamesmanship. This is Nona Tobin's attempt to re-try her case once again. I
16 mean, it's clearly [indecipherable]. You went through the -- an entire case, motion
17 for summary judgment that she lost at trial, that she lost -- that whole case was
18 about whether or not Red Rock -- Red Rock wrongfully foreclosed on the property or
19 improperly foreclosed on the property and the Court in the previous case held that
20 Red Rock didn't do it but now this is her turning around and filing it again. And
21 [indecipherable] opposition she made it clear that she's simply relying on the false
22 premise that claim preclusion doesn't apply here because the trust wasn't the party
23 beforehand, we are the party [indecipherable] -- or that Nona Tobin is the party now
24 an individual. But, as the Court read that argument doesn't fly, if the claim
25 preclusion doesn't just apply to the exact parties, it applies to the party in the first

1 case. So, Nona Tobin and the trustee to the trust, Nona Tobin and individual are in
2 purview with each other. They can't -- they can't just switch paths and grant -- and
3 go through this whole process over again. It doesn't allow it. The doctrine
4 [indecipherable] doesn't allow it and with that we'd rest off of that.

5 THE COURT: Okay.

6 MR. WIGHT: Unless Your Honor has any questions.

7 THE COURT: No. And there's folks that joined in this motion. Does anybody
8 would -- like to speak before I talk with the Plaintiff's attorney? No? Okay. I'd like
9 to speak with the Plaintiff's attorney then. Mr. Thomson.

10 MR. THOMSON: Good morning, Your Honor.

11 MR. HONG: Your Honor -- I missed that.

12 THE COURT: Okay. Mr. Hong.

13 MR. HONG: Yes. I'm sorry, Your Honor. Did the Court say something? I
14 missed that as well.

15 THE COURT: I just said anybody -- I said there's a bunch of joinders in that
16 motion, does anybody want to speak in support of that motion?

17 MR. HONG: Oh, yes, Your Honor, I would. Joseph Hong for the Stokes
18 parties.

19 THE COURT: Okay. Go ahead.

20 MR. HONG: Yes. Thank you, Your Honor.

21 Your Honor, counsel for Red Rock stated correctly that being here and
22 the opposition from Plaintiffs makes it very clear the singular argument
23 [indecipherable] is that Ms. Tobin was not -- individually was not a party to the
24 previous litigation before Judge Kishner. Well, that's fine and dandy, Judge. We
25 really do not dispute but as the Court is aware res judicata absolutely applies to

1 those in privity and she is absolutely in privity with the trust. There's just no
2 [indecipherable]. Even if everything he says true where the trust allegedly conveyed
3 the property to her via a quit claim deed, whatever. Even if [indecipherable] that's
4 fine, she's in privity and she can't get away from res judicata. There's just no way
5 around that, Your Honor. And this is -- for my client this is -- [indecipherable] Your
6 Honor, the third time this is happening now with Ms. Tobin and pursuant to my
7 client's countermotion under EDCR 7.601(d)(1) and/or (3) we respectfully request
8 reimbursement of attorney's fees and costs in the amount of \$3,165.00, Your Honor.
9 There's just no basis whatsoever for this complaint to have been brought.

10 And again, EDCR 7.60 there's a standard [indecipherable]. We don't
11 have to send a safe harbor letter or whatnot, it's as long as the other side has an
12 opportunity to be heard which they have. And by the way, she did not at all oppose
13 the countermotion, she [indecipherable]. So, respectfully Red Rock's Motion to
14 Dismiss that my client [indecipherable] must be granted because this is absolutely
15 res judicata and we request the reimbursement of my client's fees and costs related
16 to this complaint. Thank you, Your Honor.

17 THE COURT: Okay. Anybody else that's joined in the motion would like to
18 speak?

19 MS. WOOD: Your Honor, I would just add -- this is Brittany on behalf of the
20 Chiesi's and their lender Quicken Loans. I'll just add one thing, Your Honor. In the
21 inherent case it was a little more complicated as to whether or not there was privity
22 there and we're dealing with a negligence case. In a property case privity is not a
23 difficult concept. Not until then -- not until then [indecipherable] a trustee signs the
24 quit claim deed transferring the property to [indecipherable] and in real property
25 that's a textbook example of privity. And I would also add that the type of deed that

1 she chose to transfer the property is [indecipherable]. There are no statutory
2 warranties that accompany a quit claim deed, it's simply a matter of any interest that
3 the trust had would be transferred to Tobin as an individual and the Court already
4 determined that the trust had no interest in the property. So, she's bound by that
5 both by claim preclusion, issue preclusion and the type of deed itself it transfers --
6 that purports to transfer the property because there was nothing to transfer, Your
7 Honor. And then the Chiesi's have also filed a request for their attorney's fees as
8 well, Your Honor.

9 THE COURT: And how much is that?

10 MS. WOOD: It's closer to seventy-five hundred dollars, Your Honor. And the
11 reason for that my clients were not involved in that underlying litigation so there was
12 quite a bit of review that went into looking -- what happened in the prior litigation
13 before filing our motion.

14 THE COURT: Okay.

15 MS. WOOD: And we also did compare the request for judicial notice as part
16 of our motion, Your Honor.

17 THE COURT: Okay. And let's talk with Mr. Thomson.

18 MR. THOMSON: Good morning, Your Honor. John Thomson. We can't
19 paint this motion in broad strokes as they've done; there are details that matter here.
20 First of all, issuing claim preclusion they don't apply if the party hasn't had a full and
21 fair opportunity to litigate. That's in the Thompson case that I've cited. Ms. Tobin
22 thought she was a party, the other parties thought she was a party and they treated
23 her like a party. The filed documents and even a motion was heard on April 7, 2017.
24 The HOA filed a motion to dismiss Tobin as an individual which was denied. Two
25 years later it was finally put in an order on the eve of trial on 9-20-2019. So, we

1 have this situation where everyone thinks she's a party, they think her rights are
2 being litigated. It is true that the trust transferred its interest in the property to Nona
3 Tobin on March 28,2017 and that none of the parties brought her in as an individual.
4 Now, whether they thought she was I think that was correct. I think they thought she
5 was but then at the eve of trial she's put out of the litigation and -- and now you can't
6 say that she had a full and fair opportunity to litigate. Her rights have never been
7 adjudicated. The appellate court said that -- that she was not a party to the
8 underlying litigation and so you have a catch 22. Oh, we don't have to hear her
9 arguments, they're all rogue documents, she filed the motion for summary judgment
10 as an individual, she filed these motions during trial, all of these things don't have to
11 be heard because she's not a party. And then when she brings an action to enforce
12 those very same rights against different parties. Red Rock for example is not a
13 party in the prior suit, Joel Stokes was not a party, the Chiesi's were not a party,
14 Quicken Loans was not a party. So, this transfer from the trust to her as an
15 individual has never been adjudicated and it goes directly to the first amended
16 complaint that's been filed here. You can't say on the one hand she's not a party,
17 we're not gonna listen to her, we're not gonna argue, we're not getting into the
18 neighbor as a party even though the whole world was on notice on March 28,2017
19 when she received this interest from the trust as an individual. No one thought to
20 bring her in or to verify so that it would be res judicata, so it would be claim
21 preclusion.

22 In addition, there's a very substantial issue. In 2014 when this sale took
23 place there's a substantial amount of money, tens of thousands, \$68,000 I believe
24 that were excess proceeds. Now, the statute is very clear that those excess
25 proceeds should go (a) either to the trust if think that trust is a proper party or if Red

1 Rock thinks that Nona Tobin is because of the March 28, 2017 deed transfer from
2 the trust then the excess proceeds go there. There was even a representation, Your
3 Honor, that the funds had been interpleaded and to this day we still don't have those
4 funds nor do we know where they are. Now, in the briefing it says -- the -- Red Rock
5 party says that, oh well, the proper place is to interplead. Well, it's been five years,
6 okay? That's not proper. So, just on that issue alone, you know, the money was not
7 transferred and we believe that that was wrongfully done -- not done. That omission
8 makes this complaint also valid. So, different parties. No full and fair opportunity to
9 litigate as an individual in the prior suit and different facts. There's different things
10 that happened. This March 28th deed was never addressed in the other case. She
11 tried to do it.

12 So, Your Honor, we're -- to enforce the rights that's why we filed this
13 complaint and here we are.

14 THE COURT: Okay. Mr. Wight.

15 MR WIGHT: Yeah. I mean, we just need to over a little bit how wrong I was
16 in -- in reference to, like, what happened in the last case. I mean, Mr. Thomson
17 talked as though, you know, Tobin just never had a day in court. Like there was this
18 transfer of the property that was heard on March 28th and [indecipherable] and that
19 Tobin was never able to try her claims and that's not what happened. What
20 happened was that Tobin brought her claims as a trustee. She went through an
21 entire trial where she asserted that the trust owned the property. She was the party
22 there. She was the -- she was the one behind the wheel arguing and it wasn't until
23 she lost at summary judgment, it wasn't until she lost at trial, it wasn't until her
24 attorney withdrew from the case at least [indecipherable] an oral motion to withdraw
25 was granted that she turned around and said, oh, guess what? It wasn't the trust

1 that owned the property, it was me individually. There was a transfer of the deed in
2 March which by the way that could not be heard because she had no deed on the
3 trust, the property didn't foreclose on it [indecipherable] March 28th during the middle
4 of all this litigation and so now we have to turn around and re-do all of this and that
5 -- she does not have the opportunity to do that.

6 She -- Mr. Thomson argued that she didn't have her day in court
7 because, you know, we didn't allow her [indecipherable]. That's not anybody's fault
8 but hers. She was involved in that other action because she chose not to intervene;
9 she chose to pursue her claims as the trustee not as herself individually. That was
10 her choice. And when she chose to go through the trial as the trustee not as an
11 individual she is now precluded under claim preclusion, under judicial estoppel,
12 under a number of doctrines from now turning around and saying, oh no, it wasn't
13 them, it was me individually, let's go this all again. She can't do that; she can't have
14 two days in court. She can't bring Red Rock or the HOA to court twice, retry this
15 case and see if the foreclosure was improper or not because a court has already
16 held it was proper after summary judgment at trial.

17 In regards to the excess proceeds. Your Honor, the only reason Red
18 Rock has not inner pled those excess proceeds is because Ms. Tobin
19 [indecipherable] the foreclosure sale and Red Rock did not interplead any excess
20 funds if there's a chance that a foreclosure sale can be overturned. So, when Mr.
21 Thomson says, oh, it's been five years and the -- and the proceeds have not been
22 inner pled. It's been five years because Ms. Tobin keeps challenging the process.
23 As soon as -- as soon as we have the final word that the process was proper Red
24 Rock will inner plead those funds. Red Rock claims no interest in those funds, it
25 wants to get those funds off [indecipherable] as soon as possible but he needs to do

1 it in a legally permissible way. And that way is not through an unjust enrichment
2 claim against Red Rock because there are other parties that may have an interest in
3 all or a portion of those proceeds and we need to -- we need to divest ourselves of
4 those proceeds in the proper manner which is an interpleader action. And with that I
5 rest.

6 THE COURT: Okay. Mr. Hong, did you want to say something?

7 MR. HONG: Yes, Your Honor, I would.

8 Again, I apologize [indecipherable] being repetitive. But I
9 [indecipherable]. Again, there is no [indecipherable] of a case that represents res
10 judicata than this case, Your Honor.

11 In terms of counsel for Ms. Tobin arguing [indecipherable] she didn't get
12 her fair day in court. I guess -- I don't even understand that argument because there
13 was a summary judgment in favor of the HOA and then my client went to a full blown
14 trial with the trust and the Court issued and I think in their moving papers Ms. Tobin
15 cannot get any relief from my client nor the current owners, nor Quicken Loans
16 unless the HOA sale is void. That's the only way that can happen. And she can
17 only void the sale by saying the same arguments that were raised in front of Judge
18 Kishner at the time of summary judgment and the trial. By the way, which are both
19 being appealed by the trust as we speak. So, that case is on appeal and yet Ms.
20 Tobin files this frivolous, secondary action. Identical. And counsel informed Ms.
21 Tobin to say something about an interpleader. I just looked up the amended
22 complaint, Your Honor. There's not one iota referenced of interpleading funds. So,
23 this whole thing about, well, she should get funds. Well, great, it's not even pled.
24 It's not even pled in the amended complaint.

25 So, this whole argument and trying to [indecipherable] that the issue is

1 it's not gonna work. Your Honor, again, respectfully my client absolutely is entitled
2 to attorney's fees and costs related to this third attempt now to adjudicate the very
3 same issues that were adjudicated by Judge Kishner and it's \$3,165.00 pursuant to
4 my declaration [indecipherable] that outline the hours actually expended and the
5 anticipated which is this hearing today.

6 THE COURT: Okay. Ms. Wood.

7 MS. WOOD: Just briefly, Your Honor.

8 There has been no explanation as to how Ms. Tobin is not in privity with
9 the trust. It's defined in the Harris case as this: "To be in privity the person must
10 have acquired an interest in the subject matter affected by the judgment for one of
11 the parties as by inheritance, succession or purchase." And the Harris case also
12 cites the restatement [indecipherable] and judgment, Section 41 Subsection 1 which
13 specifically states that a beneficiary of the trust, which Ms. Tobin is, is bound by a
14 judgment in which the trustee participated in the action. Ms. Tobin participated in
15 the prior action as the trustee of the trust and as a beneficiary of the trust she is
16 bound by that judgment. There's just been no explanation as to how that's not met
17 in this case, Your Honor.

18 The second thing that I would point out -- and we brought this up in our
19 reply [indecipherable] Your Honor is think about what they're asking this Court to do
20 in this case. I don't know how many quiet title cases you have involving NRS
21 Chapter 116 foreclosures but I know that the District Court was inundated with them.
22 And what they're asking this Court to do is to allow the parties to participate in that
23 litigation whether it went to summary judgment or trial to just quit claim your interest
24 to some other entity or if they had an entity to themselves [indecipherable]
25 consideration and then to re-try the entire case. Can you imagine what that would

1 do to the courts if that were allowed? That is what claim preclusion and issue
2 preclusion don't allow. There's a public policy reason for that, Your Honor.

3 And then the last thing that I would address. My clients have no
4 interest in the excess funds but I just suggest -- that the suggestion that Ms. Tobin
5 has a claim to those it's unrealistic because at the time the property was sold there's
6 no question from Ms. Tobin's own testimony that at trial -- again, she testified at trial,
7 confirmed that she was in default not just on one loan but on two loans at the time.
8 So, any excess proceeds would go to those lenders and not Ms. Tobin.

9 THE COURT: Okay. All right. Counsel, I've reviewed everything and I even
10 scrolled through the prior case -- by the way, it would be very helpful to have full
11 captions on these so it could -- so we can follow the parties. But in any event,
12 Judge Kishner apparently didn't require that, I do in my court.

13 But in any event, Mr. Thomson, it appears to me that Ms. Tobin is
14 looking for a do-over and she had her opportunity as the trustee. She also it looks
15 like participated individually in the prior case as well and it went to trial, it was a four
16 year case, it's on appeal now. So, I think she -- her -- she needs to conclude
17 whatever she needs to do in that other case. But I think she's had her day in court
18 so I am granting Red Rock Financial Services Motion to Dismiss. And I will look at
19 the issues relating to the attorney's fees. I'm gonna do that under advisement,
20 okay?

21 So, Mr. Wight, will you go ahead and prepare the order?

22 MR. WIGHT: Yeah. I'll prepare the order and circulate it.

23 THE COURT: All right. That'd be perfect. And I'd like you all to review it to
24 make sure that you approve it as to form and content, not that you necessarily agree
25 with me, Mr. Thomson, but that you at least agree that that was what happened at

1 the court hearing, all right? Thank you.

2 [Proceedings concluded at 9:53 a.m.]

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8 ATTEST: I do hereby certify that I have truly and correctly transcribed the
9 audio/video recording in the above-entitled case to the best of my ability.

10



NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572

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

5 **NONA TOBIN, an individual,**
6
7 **Plaintiff,**

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

8 **Vs.**

9 **BRIAN CHIESTI, an individual;**
10 **DEBORA CHIESTI, an individual;**
11 **QUICKEN LOANS INC.; JOEL A.**
12 **STOKES, an individual; JOEL A.**
13 **STOKES and SANDRA STOKES, as**
14 **Trustees of JIMI JACK IRREVOCABLE**
15 **TRUST; JIMI JACK IRREVOCABLE**
16 **TRUST; NATIONSTAIR MORTGAGE**
17 **LLC; RED ROCK FINANCIAL**
18 **SERVICES; DOES I through X, inclusive;**
19 **and ROE CORPORATIONS I through V,**
20 **inclusive,**

21 **Defendants.**

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

26 This matter, concerning the Motion for Attorney's Fees and Costs filed by JOEL A.
27 STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE
28 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.

1 County, Nevada with JUDGE SUSAN JOHNSON presiding; Plaintiff NONA TOBIN appeared by
2 and through her attorney, JOHN W. THOMSON, ESQ.; Defendants BRIAN CHIESI and DEBORA
3 CHIESI appeared in *pro se*; Defendants JOEL A. STOKES, JOEL A STOKES AND SANDRA
4 STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST and JIMIACK
5 IRREVOCABLE TRUST appeared by and through their attorney, JOSEPH Y HONG, ESQ. of the
6 law firm, HONG & HONG LAW OFFICE; Defendant RED ROCK FINANCIAL SERVICES
7 appeared by and through its attorney, BRODY R. WIGHT, ESQ. of the law firm, KOCH & SCOW;
8 Defendant NATIONSTAR MORTGAGE, LLC appeared by and through its attorney, DONNA
9 WITTIG, ESQ. of the law firm, AKERMAN; and Defendant QUICKEN LOANS INC. appeared by
10 and through its attorney, BRITTANY WOOD, ESQ. of the law firm, MAURICE WOOD. Having
11 reviewed the papers and pleadings on file herein, heard oral arguments of the lawyers and taken this
12 matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:
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14

15 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

16 1. On June 16, 2015, Defendants JOEL A. STOKES, JOEL A. STOKES AND
17 SANDRA STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST filed their
18 Complaint against BANK OF AMERICA² and SUN CITY ANTHEM COMMUNITY
19 ASSOCIATION, INC., seeking, *inter alia*, to quiet title to their residence, 2763 White Sage,
20 Henderson, Nevada 89052. *See Stokes v. Bank of America*, Case No. A-15-720032-C, filed in
21 Department XXXI, Eighth Judicial District Court, in and for Clark County, Nevada.
22 Subsequently, on May 17, 2016, NATIONSTAR MORTGAGE, LLC intervened, and filed
23 its Counter-Claim against, *inter alia*, JIMIACK IRREVOCABLE TRUST.³ Further, a
24
25

26 _____
27 ²NATIONSTAR MORTGAGE, LLC thereafter was permitted to intervene in that it was BANK OF
28 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
4 JACK 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,
26

27
28 _____
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.
8

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 JIMI JACK
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

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)

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

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17 Akerman LLP

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18 Andrea Eshenbaugh - Legal Assistant

aeshenbaugh@kochscow.com

19 Donna Wittig

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20 Daniel Scow

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21 JOSEPH HONG

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23 MELANIE MORGAN

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24 JOSEPH HONG

yosuphonglaw@gmail.com

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26
27
28

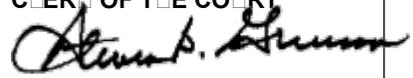
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JOSEPH HONG	YOSUPHONGLAW@GMAIL.COM
MELANIE MORGAN	MELANIE.MORGAN@AKERMAN.COM
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STEVEN SCOW	sscow@kochscow.com
John Thomson	johnwthomson@ymail.com
Vincenette Caruana	jwtlaw@ymail.com
Brittany Wood	bwood@mauricewood.com

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 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 **MAFC**
AARON R. MAURICE, ESQ.
2 Nevada Bar No. 6412
BRITTANY WOOD, ESQ.
3 Nevada Bar No. 7562
ELIZABETH E. ARONSON, ESQ.
4 Nevada Bar No. 14472

MAURICE WOOD
5 9525 Hillwood Drive, Suite 140
Las Vegas, Nevada 89134
6 Telephone: (702) 463-7616
Facsimile: (702) 463-6224
7 E-Mail: amaurice@mauricewood.com
bwood@mauricewood.com
8 earonson@mauricewood.com

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

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 * * *

15 NONA TOBIN, an individual,
Plaintiff,

16 vs.

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

CASE NO. A-19-799890-C

DEPT NO. 22

**MOTION FOR ATTORNEY'S FEES
AND COSTS**

HEARING DATE REQUESTED

23 COME NOW, Defendants, Brian Chiesi and Debora Chiesi (collectively, "Chiesis"),
24 erroneously sued as Brian Chiesti and Debora Chiesti, and Quicken Loans Inc., n/k/a Quicken
25 Loans, LLC (together with the Chiesis, "Chiesi Defendants"), by and through their attorneys of
26 record, MAURICE WOOD, and hereby file their Motion for Attorney's Fees and Costs.

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

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A. This Court should award the Chiesi Defendants their attorney’s fees incurred in defense of Tobin’s frivolous claims.

When a claim is brought or maintained without reasonable ground, NRS 18.010(2)(b) allows the Court to award the prevailing party its attorney’s fees incurred in defending against the groundless claims. NRS 18.010(2)(b) provides:

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

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

(emphasis added).

The Nevada Supreme Court has interpreted NRS 18.010(2)(b) to require the trial court to determine whether a party had reasonable grounds for its claims or defenses. See Bergman v. Boyce, 109 Nev. 670, 856 P.2d 560 (Nev. 1993)(finding that the trial court abused its discretion in denying defendant’s motion for attorney’s fees where some of plaintiff’s claims were groundless). A claim is groundless if the claim is not supported by any credible evidence. Id. at 675, 856 P.2d at 563.

Here, as set forth in the Chiesi Defendant’s Motion to Dismiss Plaintiff’s Amended Complaint, Tobin’s Amended Complaint is the latest in a pattern of harassing and vexatious litigation. Although Judge Kishner previously denied the parties’ request for sanctions, the Court did so “without prejudice.” Unless this Court imposes sanctions against Tobin by requiring Tobin to reimburse the Chiesi Defendants for their attorney’s fees, Tobin will continue to abuse the legal

1 system by filing further frivolous and vexatious claims that overburden the limited judicial
2 resources of this Court, thereby hindering the timely resolution of meritorious claims and
3 increasing the costs of engaging in business and providing professional services to the public. This
4 is precisely the type of case the Nevada Legislature sought to deter by enacting NRS 18.010(2)(b).
5 Accordingly, this Court should award the Chiesi Defendants their reasonable attorney's fees.

6 The determination of the reasonableness of fees is within the discretion of the trial judge.
7 See Parodi v. Budetti, 115 Nev. 236, 242 n.4, 984 P.2d 172, n.4 (1999). However, the following
8 factors must be considered when determining the reasonable value of an attorney's services: (1)
9 the qualities of the advocate: her ability, her training, education, experience, professional standing
10 and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time
11 and skill required, the responsibility imposed and the prominence and character of the parties
12 where they affect the importance of the litigation; (3) the work actually performed by the lawyer:
13 the skill, time and attention given to the work; (4) the result: whether the attorney was successful
14 and what benefits were derived. See Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455
15 P.2d 31 (1969). As to costs, the Supreme Court of Nevada has held that costs must be actual,
16 reasonable and properly documented to be recoverable. See Bobby Berosini, Ltd. v. People for
17 the Ethical Treatment of Animals, 114 Nev. 1348, 971 P.2d 383 (1998).

18 In the instant matter, the fees charged are commensurate with the attorney's extensive
19 experience in commercial litigation and consistent with customary billing rates within the Southern
20 Nevada legal community. The Chiesi Defendants have been represented by Brittany Wood of
21 Maurice Wood. Ms. Wood have been practicing law in Nevada for twenty years and has extensive
22 experience in title litigation. See Declaration of Brittany Wood, attached hereto as Exhibit 1.

23 With regard to the work performed, a significant portion of attorney's fees were incurred
24 as a result of: (1) the extensive filings in the prior action and its appeal to which the Chiesi
25 Defendants were not parties, thus requiring significant document review by Ms. Wood; (2) the
26 extensive title history set forth in the Request for Judicial Notice filed by the Chiesi Defendants
27 which was filed to establish the privity of the parties to this action to the parties named in the prior
28 action. See, e.g., Billing Statements, attached hereto as Exhibit 2. It is respectfully submitted that

1 the Billing Statements incorporated herein and the result achieved by the Chiesi Defendant's
2 counsel (i.e., defeating Plaintiff's claims against the Chiesi Defendants) demonstrates the character
3 of the work performed and its importance to this case. Moreover, the costs incurred were actual,
4 reasonable, and properly documented. See Memorandum of Costs, attached hereto as Exhibit 3.
5 Accordingly, this Court should award the Chiesi Defendants \$9,480 in attorney's fees and \$308.99
6 in costs.

7 DATED this 16th day of September, 2020.

8 MAURICE WOOD

9
10 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

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15 Attorneys for Defendants,
16 BRIAN CHIESI AND DEBORA CHIESI,
17 erroneously sued as Brian Chiesti and Debora
18 Chiesti, and QUICKEN LOANS INC., n/k/a
19 QUICKEN LOANS LLC
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25
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MAURICE WOOD
9525 Hillwood Drive, Suite 140
Las Vegas, Nevada 89134
Tel: (702) 463-7616 Fax: (702) 463-6224

CERTIFICATE OF SERVICE

1
2 I hereby certify that I am an employee of Maurice Wood, and that on the 16th day of
3 September, 2020, I caused to be served a true and correct copy of the foregoing **MOTION FOR**
4 **ATTORNEY’S FEES AND COSTS** in the following manner:

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

9
10 /s/ Brittany Wood
An Employee of MAURICE WOOD

EXHIBIT 1

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

1 AARON R. MAURICE, ESQ.
Nevada Bar No. 6412
2 BRITTANY WOOD, ESQ.
Nevada Bar No. 7562
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8
9 Attorneys for Defendants,
BRIAN CHIESI AND DEBORA CHIESI,
erroneously sued as Brian Chiesti and Debora
10 Chiesti, and QUICKEN LOANS INC. n/k/a
QUICKEN LOANS, LLC

11
12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 * * *

14 NONA TOBIN, an individual,
15 Plaintiff,

16 vs.

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

22 Defendants.

CASE NO. A-19-799890-C

DEPT NO. 22

**DECLARATION OF BRITTANY
WOOD IN SUPPORT OF MOTION
FOR ATTORNEY'S FEES AND
COSTS**

23 BRITTANY WOOD declares under penalty of perjury as follows:

24 1. I am counsel of record for Brian Chiesi and Debora Chiesi (collectively, "Chiesis"),
25 erroneously sued as Brian Chiesti and Debora Chiesti, and Quicken Loans Inc., n/k/a Quicken
26 Loans, LLC (together with the Chiesis, "Chiesi Defendants") in above-referenced action. I am
27 over the age of 18, have personal knowledge of the matters set forth herein, unless otherwise stated,
28 and am competent to testify to the same if called upon to do so.

EXHIBIT 2

Maurice Wood

9525 Hillwood Drive #140
Las Vegas, NV 89134

INVOICE

Invoice # 135
Date: 07/01/2020
Due On: 07/31/2020

[REDACTED]

Chiesi

File No. 10595-5; [REDACTED]

Date	Attorney	Notes	Quantity	Rate	Total
06/18/2020	BW	Commence analyzing documents provided by Company to identify additional documents needed to formulate strategy	1.40	\$300.00	\$420.00
06/18/2020	BW	Draft correspondence to Plaintiff's counsel re: requesting an extension	0.10	\$300.00	\$30.00
06/18/2020	BW	Telephone conference with owners re: [REDACTED]	0.50	\$300.00	\$150.00
06/19/2020	BW	Commence analyzing documents in 2015 Quiet Title Litigation and Appeal to formulate recommended action to respond to Complaint	3.40	\$300.00	\$1,020.00
06/19/2020	BW	Analyze filings in 2015 Appeal and discuss same with Company	0.70	\$300.00	\$210.00
06/22/2020	BW	Legal research re: issue and claim preclusion to support motion to dismiss amended complaint	1.20	\$300.00	\$360.00
06/22/2020	BW	Commence drafting argument section of claim preclusion in motion to dismiss	0.40	\$300.00	\$120.00
06/25/2020	BW	Receipt, review and respond to correspondence from Company re: Answer	0.10	\$300.00	\$30.00
06/25/2020	BW	Telephone conference with Plaintiff's counsel's office re: non response to extension; draft follow up e-mail to counsel re: requesting confirmation of requested extension and advising of further retention on behalf of lender	0.10	\$300.00	\$30.00
06/25/2020	BW	Receipt of confirmation of extension; update Company and owners re: same	0.10	\$300.00	\$30.00
06/26/2020	BW	Receipt of correspondence from owners [REDACTED]	0.40	\$300.00	\$120.00

[REDACTED]					
06/29/2020	BW	Commence drafting statement of facts in support of motion to dismiss	2.40	\$300.00	\$720.00
06/29/2020	BW	Draft Introduction to Motion to Dismiss	0.70	\$300.00	\$210.00
06/30/2020	BW	Continue drafting statement of facts in support of motion to dismiss	1.90	\$300.00	\$570.00
06/30/2020	BW	Finish drafting argument section of motion to dismiss	1.70	\$300.00	\$510.00
06/30/2020	BW	Draft motion for attorneys fees	0.70	\$300.00	\$210.00
Quantity Subtotal					15.0
Quantity Total					15.0
Subtotal					\$4,740.00
Total					\$4,740.00
Payment 07/21/2020					-\$4,740.00
Balance Opening					\$0.00

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
225	10/02/2020	\$1,473.50	\$0.00	\$1,473.50

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
135	07/31/2020	\$4,740.00	\$4,740.00	\$0.00
Outstanding Balance				\$1,473.50
Total Amount Outstanding				\$1,473.50

Please make all amounts payable to: Maurice Wood

Please pay within 30 days.

Maurice Wood

9525 Hillwood Drive #140
Las Vegas, NV 89134

INVOICE

Invoice # 171
Date: 08/03/2020
Due On: 09/02/2020

[REDACTED]

Chiesi

File No. 10595-5; [REDACTED]

Services

Date	Attorney	Notes	Quantity	Rate	Total
07/01/2020	BW	Analyze public records and draft Request for Judicial Notice	1.20	\$300.00	\$360.00
07/02/2020	BW	Receipt, review and respond to [REDACTED] [REDACTED]; [REDACTED]	0.20	\$300.00	\$60.00
07/06/2020	BW	Telephone conference with Company to discuss [REDACTED] [REDACTED]	1.00	\$300.00	\$300.00
07/06/2020	BW	Draft Initial Appearance Fee Disclosure and finalize motion to dismiss and request for judicial notice for filing	0.30	\$300.00	\$90.00
07/06/2020	BW	Receipt, review and respond to correspondence from owners' re: [REDACTED]	0.20	\$300.00	\$60.00
07/06/2020	BW	Review and respond to questions from [REDACTED] [REDACTED]	0.20	\$300.00	\$60.00
07/07/2020	BW	[REDACTED]	0.40	\$300.00	\$120.00
07/10/2020	BW	Receipt review and respond to correspondence from Plaintiff's counsel and various other parties regarding request to continue hearing on motion to dismiss	0.20	\$300.00	\$60.00
07/10/2020	BW	Review and respond to correspondence from lender re: [REDACTED]	0.10	\$300.00	\$30.00
07/13/2020	BW	Review and respond to correspondence from Plaintiff's counsel re: proposed stipulation	0.10	\$300.00	\$30.00
07/13/2020	BW	Draft updates to insureds and company re: [REDACTED]	0.20	\$300.00	\$60.00

		[REDACTED]	[REDACTED]			
07/21/2020	BW	Review Plaintiff's Opposition to Motion to Dismiss	0.20	\$300.00	\$60.00	
07/21/2020	BW	Draft correspondence to lender and Company re: filed Opposition	0.10	\$300.00	\$30.00	
07/28/2020	BW	Analyze authority cited in Plaintiff's Opposition to Motion to Dismiss in preparation of drafting Reply	0.80	\$300.00	\$240.00	
07/28/2020	BW	Draft introduction to Reply to Motion to Dismiss	1.20	\$300.00	\$360.00	
07/28/2020	BW	Draft argument section in Reply to Opposition to Motion to Dismiss	3.90	\$300.00	\$1,170.00	
07/28/2020	BW	Draft correspondence to Company and lender re: [REDACTED]	0.10	\$300.00	\$30.00	
07/29/2020	BW	Receipt of correspondence from lender [REDACTED]	0.20	\$300.00	\$60.00	
07/30/2020	BW	Review and respond to correspondence from Company re: [REDACTED]	0.10	\$300.00	\$30.00	
07/31/2020	BW	Review and respond to correspondence from owners re: [REDACTED]	0.20	\$300.00	\$60.00	

Quantity Subtotal 10.9
Services Subtotal \$3,270.00

Expenses

Type	Date	Notes	Quantity	Rate	Total
Expense	07/06/2020	Clark County Electronic File & Serve Fee: Filing Fee for Motion to Dismiss	1.00	\$3.50	\$3.50
Expense	07/06/2020	Clark County Electronic File & Serve Fee: Filing Fee for Request for Judicial Notice	1.00	\$3.50	\$3.50
Expense	07/06/2020	Filing Fee: Initial Appearance Fee Disclosure (3 defendants)	1.00	\$294.99	\$294.99

Expenses Subtotal \$301.99
Quantity Total 10.9
Subtotal \$3,571.99
Total \$3,571.99
Payment (08/24/2020) -\$3,571.99

Balance Owing \$0.00

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
225	10/02/2020	\$1,473.50	\$0.00	\$1,473.50

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
171	09/02/2020	\$3,571.99	\$3,571.99	\$0.00

Outstanding Balance \$1,473.50
Total Amount Outstanding \$1,473.50

Please make all amounts payable to: Maurice Wood

Please pay within 30 days.

Maurice Wood

9525 Hillwood Drive #140
Las Vegas, NV 89134

INVOICE

Invoice # 225
Date: 09/02/2020
Due On: 10/02/2020

[REDACTED]

Chiesi

File No. 10595-5; [REDACTED]

Services

Date	Attorney	Notes	Quantity	Rate	Total
08/01/2020	BW	Review and respond to correspondence from owner re: [REDACTED]	0.20	\$300.00	\$60.00
08/03/2020	BW	Receipt of correspondence from Company [REDACTED]; finalize reply for service on parties	0.20	\$300.00	\$60.00
08/03/2020	BW	Draft correspondence to Company, owner and lender with filed Reply	0.10	\$300.00	\$30.00
08/03/2020	BW	Receipt and review Red Rock's Reply to Plaintiff's Opposition to Motion to Dismiss	0.20	\$300.00	\$60.00
08/04/2020	BW	Receipt and review Jimijack Reply in Support	0.20	\$300.00	\$60.00
08/05/2020	BW	Receipt, review and respond to order from Court re: contact information for upcoming hearing	0.20	\$300.00	\$60.00
08/10/2020	BW	Analyze briefs and case law from briefs to draft outline of initial argument for hearing	1.80	\$300.00	\$540.00
08/11/2020	BW	Attend hearing on Motion to Dismiss	1.60	\$300.00	\$480.00
08/11/2020	BW	Draft update to insureds and Company re: [REDACTED]	0.10	\$300.00	\$30.00
08/11/2020	BW	Receipt and review correspondence from owner re: [REDACTED]	0.10	\$300.00	\$30.00
08/12/2020	BW	Receipt, review, and respond to correspondence from [REDACTED]	0.10	\$300.00	\$30.00
08/13/2020	BW	Receipt of correspondence from lender [REDACTED]	0.10	\$300.00	\$30.00
Quantity Subtotal					4.9

Services Subtotal \$1,470.00

Expenses

Type	Date	Notes	Quantity	Rate	Total
Expense	08/03/2020	Clark County Electronic File & Serve Fee: Reply to Opposition to Motion to Dismiss	1.00	\$3.50	\$3.50
Expenses Subtotal					\$3.50
Quantity Total					4.9
Subtotal					\$1,473.50
Total					\$1,473.50

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
225	10/02/2020	\$1,473.50	\$0.00	\$1,473.50
Outstanding Balance				\$1,473.50
Total Amount Outstanding				\$1,473.50

Please make all amounts payable to: Maurice Wood

Please pay within 30 days.

EXHIBIT 3

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

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MEMC
AARON R. MAURICE, ESQ.
Nevada Bar No. 6412
BRITTANY WOOD, ESQ.
Nevada Bar No. 7562
ELIZABETH E. ARONSON, ESQ.
Nevada Bar No. 14472

MAURICE WOOD
9525 Hillwood Drive, Suite 140
Las Vegas, Nevada 89134
Telephone: (702) 463-7616
Facsimile: (702) 463-6224
E-Mail: amaurice@mauricewood.com
bwood@mauricewood.com
earonson@mauricewood.com

Attorneys for Defendants,
BRIAN CHIESI AND DEBORA CHIESI,
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

**MEMORANDUM OF COSTS &
DISBURSEMENTS**

Filing Fees.....\$ 308.99

- Motion to Dismiss: \$3.50
- Request for Judicial Notice: \$3.50
- Initial Appearance Fee Disclosure (3 defendants): \$294.99
- Reply to Opposition to Motion to Dismiss: \$3.50
- Motion for Attorney’s Fees: \$3.50

MAURICE WOOD

9525 Hillwood Drive, Suite 140

Las Vegas, Nevada 89134

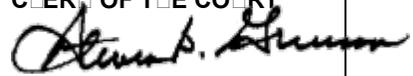
Tel: (702) 463-7616 Fax: (702) 463-6224

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I, Brittany Wood, state that I am the attorney for the Chiesi Defendants in the above-referenced matter. I have personal knowledge of the above costs and disbursements expended; the items contained in the above memorandum are true and correct to the best of my knowledge and belief; and said disbursements have been necessarily incurred and paid in this action.

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

/s/ Brittany Wood
BRITTANY WOOD



1 JOHN W. THOMSON, ESQ.
2 Nevada Bar No. 5802
3 THOMSON LAW PC
4 2450 St. Rose Parkway, Suite 120
5 Henderson, NV 89074
6 (702) 478-8282 Telephone
7 (702) 541-9500 Facsimile
8 Email: johnwthomson@ymail.com
9 Attorney for Plaintiff Nona Tobin

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 NONA TOBIN, an Individual

10 Plaintiff,

11 vs.

12
13 BRIAN CHIESI, an individual; DEBORA
14 CHIESI, an individual; QUICKEN LOANS
15 INC.; JOEL A. STOKES, an individual;
16 JOEL A. STOKES and SANDRA STOKES
17 as Trustees of JIMI JACK IRREVOCABLE
18 TRUST; JIMI JACK IRREVOCABLE
19 TRUST; NATIONSTAR MORTGAGE LLC;
20 RED ROCK FINANCIAL SERVICES;
21 DOES I through X inclusive; and ROE
22 CORPORATIONS I through V, inclusive

23 Defendants.

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

**OPPOSITION TO CHIESI AND
QUICKEN LOANS MOTION FOR
ATTORNEY FEES AND COSTS**

Hearing Date: October 29, 2020
Hearing Time:

21 Comes now, Plaintiff NONA TOBIN, AN INDIVIDUAL, (hereinafter "Plaintiff" or
22 "Tobin"), by and through her attorney of record, Thomson Law PC, through attorney John W.
23 Thomson, Esq., and hereby submits her Opposition to the Chiesi defendants and defendant
24 Quicken Loans (hereinafter "defendants") Motion for Attorney Fees and Costs.

25
26 This motion is based on the attached Memorandum of Points and Authorities, the
27
28

1 pleadings and papers on file in this case, and any oral arguments made at the time of hearing on
2 this matter.

3 Dated this 8th day of October, 2020.

4
5 THOMSON LAW PC

6 */s/ John W. Thomson*

7 JOHN W. THOMSON, ESQ.

8 Nevada Bar No. 5802

9 2450 St. Rose Parkway, Suite 120

10 Henderson, Nevada 89074

11 *Attorney for Plaintiff Nona Tobin*

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **INTRODUCTION**

14 Defendants seek almost \$10,000 in attorney fees and costs for filing a simple joinder to a
15 motion to dismiss and a misleading Request for Judicial Notice (RFJN) of 17 public documents.
16 Anything other than a simple one-paragraph joinder was unnecessary because Red Rock had
17 already made the arguments upon which the defendants prevailed. The amount claimed for fees
18 for filing a joinder is excessive. The heavy lifting was done by Red Rock and a joinder doesn't
19 required 30 hours of work.
20

21 The basis for the Motion to order Tobin pay attorney fees and costs is NRS 18.010(2)(b);
22 that the claims were brought or maintained without reasonable grounds. Although the Court
23 granted the Motion to Dismiss on the basis of Claim Preclusion, the claim for attorney fees and
24 costs should not be granted because plaintiff did not bring the claims to harass a party and had
25 reasonable grounds to bring the claims. Nona's status as an individual in the prior lawsuit was
26 not clear. The prior Court did not rule that Nona's individual claims were extinguished, just that
27 she wasn't properly before the Court as an individual. The inconsistent rulings caused Nona to
28

1 file this lawsuit to make sure that all of her individual rights were not lost. Only after they were
2 brought before this Court was her status in the Court's viewpoint made clear.

3 Further, there were two recorded Lis Pendens on the property when the Defendants
4 recorded their interest in the property on 12/27/19. The Chiesi and Quicken Loans defendants
5 were not parties in the prior lawsuit. At the very least, plaintiff had the right to have her
6 individual rights declared vis a vie these new defendants.
7

8 FACTS

9 The Chiesi defendants and Quicken Loans defendant are asking for their attorney fees
10 and costs in the amount of almost \$10,000.00 for filing a joinder to a Motion to Dismiss. There
11 was no communication by the defendants to plaintiff when the lawsuit was filed about the suit
12 lacking merit. There was no communication as to why they did not pursue a claim against the
13 title insurance which would be the usual and customary business practice.
14

15 In looking at the record from the prior case, it is clear that Nona's rights as an individual
16 were in question. Not wanting to waive any of her rights, the present lawsuit was filed to have
17 the Court declare, one way or the other, that her individual rights were either ruled upon or that
18 she had claims that could be pursued. If the Court had ruled that some of her claims still exist,
19 then those claims would have been lost if she hadn't brought them.
20

21 Two separate Notices of Lis Pendens recorded and filed on August 14, 2019 by Nona
22 personally. The first (instrument number 20190814-00003583, attached as **EXHIBIT 1**)
23 provided public notice of both her appeal as an individual and her separate appeal as the GBHT
24 trustee, and the second Lis Pendens (instrument number 20190814-00003583, attached as
25 **EXHIBIT 2**) related to the instant case. These were recorded pro se on 8/14/19, were not
26 extinguished before the Chiesi's and Quicken Loans recorded their interests in the subject
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1 property on December 27, 2019, were on the record on July 6, 2020 when the Chiesi/Quicken
2 Request For Judicial notice was filed without including them, and both Lis pendens are still on
3 the record today. Tobin had the right to ask the Court to declare her status individually.

4
5 The Chiesi defendants, and their lender, defendant Quicken Loans, took their recorded
6 interest in the property knowing that the title was contested, and chose to file a suspect RFJN
7 instead of filing a claim for title insurance to be made whole. The Chiesi Defendants could have
8 included the entire title history for the subject property, but did not. Instead, the Court got a
9 skewed version of the recorded history of the title, which the Court didn't rely on to grant the
10 Motion to Dismiss. The work spent on the RFJN was unnecessary and shouldn't be awarded.

11
12 Nona vigorously attempted to have her individual claims and arguments heard in District
13 Court Case No. A-15-720032-C (hereinafter "prior litigation"), but the defendants in lock step
14 opposed her inclusion even more energetically. Nona asserted her claims as an individual
15 instead of as the trustee of a trust because the trust was closed on 3/28/17. The Court even
16 granted Nona the right to intervene as an individual on Jan. 11, 2017. Causing confusion and
17 compelling Nona to file the present action so as to not lose her rights, the District Court in the
18 prior litigation, after three and half years, suddenly did not recognize Nona Tobin an individual
19 as a party to the litigation but only in her capacity as trustee of the Gordon B. Hansen Trust.
20

21 This ruling was essentially confirmed in the present case. But until and unless Nona
22 brought the present lawsuit as an individual, her rights and claims were ambiguous. Defendants
23 could have argued, if the appeal on behalf of the trust and in her capacity as trustee proves
24 successful, that Nona as an individual has waived her rights. This lawsuit, and the appeal filed by
25 Nona as an individual, were necessary to clear up the ambiguity about her rights to the property
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1 and excess proceeds as an individual. This lawsuit had merit and purpose, was not brought to
2 harass, and is based on reasonable grounds.

3 The prior Court found that “all parties to the case have perpetuated confusion as to Nona
4 Tobin’s status as a party by continuing to make reference to Nona Tobin, as an individual, as a
5 party to the case.” (see the 11/22/19 Notice of Findings of Fact, Conclusions of Law and Order
6 entered by the District Court in the prior litigation, page 3, paragraph 4). The defendants, who
7 caused the confusion about her status as an individual, cannot now recover attorney fees and
8 costs when Nona filed a lawsuit to clear up the confusion and attempt to preserve her claims.
9

10 It is undisputed now that the court has ruled on the complaint filed, that Nona, as an
11 individual, was not a party plaintiff to the underlying litigation, and that Red Rock, Joel Stokes
12 as an individual, the Chiesi’s and Quicken Loans were not defendant parties to the underlying
13 litigation. Nona’s rights as an individual had to be asserted in this action to get the Court’s
14 declaration and clarification.
15

16 Chiesi/Quicken never explained why a joinder, including a deceptive RFJN, was
17 warranted and not merely a form of harassment. Chiesi/Quicken have a readily available remedy
18 if Tobin prevails from title insurance allegedly issued by Driggs Title Company in escrow
19 number 19-11-120779JHChiesi/Quicken did not explain how allowing Tobin’s case to be heard
20 on its merits is prejudicial to them in any way. If the Court had declared that Nona’s individual
21 rights in the property were reinstated, the Chiesi/Quicken defendants would be made whole
22 through the title insurance that issued a policy even though the title history is complex and
23 unsure; especially with two Lis Pendens recorded at the time of the Chiesi closing.
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1 **LEGAL ARGUMENT**

2 In February of 2020, the Nevada Court of Appeals ruled that the District Court had
3 abused its discretion in awarding attorney’s fees under NRS 18.010(2)(b) after the plaintiff’s
4 complaint was dismissed because of equitable estoppel. "Although a district court has discretion
5 to award attorney fees under NRS 18.010(2)(b), there must be evidence supporting the district
6 court’s finding that the claim or defense was unreasonable or brought to harass." *Id.* at 580-81,
7 427 P.3d at 113 (quoting *Bower v. Harrah’s Laughlin Inc.*, 125 Nev. 470, 493, 215 P.3d 709,
8 726 (2009)). For a claim to be frivolous or groundless under NRS 18.010(2)(b), there cannot be
9 any credible evidence to support it. *Id.* at 580, 427 P.3d at 113 (citing *Semenza v. Caughlin*
10 *Crafted Homes* , 111 Nev. 1089, 1095, 901 P.2d 684, 687-88 (1995)). *Baclet v. Baclet (In re*
11 *Estate of Baclet)*, 458 P.3d 427 (Table) (Nev. App. 2020).

12
13
14 In our case, there is no evidence that Nona’s claims were unreasonable or brought to
15 harass. Quite the opposite; Nona’s claims were necessarily brought to clarify her status and
16 rights to the real estate as individual. The Court ruled that all of her rights as an individual derive
17 from her status as Trustee of the Hansen Trust. On remand, should Nona prevail on the pending
18 appeal, there will be no confusion about Nona’s rights and the claims she can and cannot bring;
19 but it is because of this lawsuit that this will be possible. Clarification mandated this suit be
20 brought. That was Nona’s intent, not to harass.

21
22 In addition, there is credible evidence to support Nona’s First Amended Complaint. The
23 Opposition Brief outlines the confusion brought about by the parties themselves as whether or
24 not Nona, as an individual, was a party to the prior litigation. If she was, or should have been,
25 then her individual rights were still not adjudicated as her claims were never heard on their
26 merits. Because of the late ruling by the previous court that Nona wasn’t a party, even though
27
28

1 everyone considered her a party as an individual, all of Nona's evidence and her motions were
2 stricken from the record. At a minimum, clarification was necessary. If she wasn't a party, then
3 her rights to assert a quiet title claim pursuant to NRS 40.010 continued and would have been
4 lost if she didn't assert them in this lawsuit.

5
6 All parties in the prior proceedings were on notice since March 28, 2017 that Nona Tobin
7 had recorded a deed on March 28, 2017 transferring all title claims of the Gordon B. Hansen
8 Trust, dated 8/22/08, to herself as an individual in order to close the insolvent trust so she could
9 pursue her claims as a Pro Se party; the Tobin deed was included in the RFJN.

10
11 Two separate Lis Pendens were filed and recorded by Nona as an individual and were not
12 extinguished. They were in place when the Chiesi's and Quicken Loans recorded their interest in
13 the property.

14 Because those transactions purporting to give them right to the property, to Nona's
15 detriment, took place after the recorded Lis Pendens, Nona had the right and obligation to name
16 them in the suit. She was entitled to name them as defendants, who were not in the prior lawsuit
17 and whose actions took place after the prior litigation, and seek a declaration from the Court
18 about their rights verses her rights as an individual. The new party defendants should not have
19 been dismissed from the present lawsuit because if Nona, as trustee, prevails on appeal, the
20 Chiesi Defendants and Quicken have not had their rights to the property adjudicated. The Court
21 could have stayed the present action, instead of dismissing it, pending the results of the appeal,
22 particularly as to the Chiesi/Quicken defendants. This is another reason why the motion for fees
23 should fail; Nona brought this action in good faith against new parties with alleged new rights
24 acquired after the conclusion of the prior lawsuit. Nona recorded the Lis Pendens to put the
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1 world on notice that if the Trust prevailed on appeal, that the subject property would be have
2 questionable title.

3 Nona's claims were brought with reasonable grounds because the District Court at first
4 allowed her to appear in the prior suit as an individual and only later reversed her inclusion.
5 Importantly, the Court did not rule that Nona as an individual did not have any claims to the real
6 property and it did not rule that Nona's claims were dismissed from being brought at a later. The
7 Order simply stated that she was not a proper party before the Court (after allowing her to appear
8 as an individual for years). Nona as an individual appealed the rulings to the Nevada Supreme
9 Court because she did not want to waive her rights. The Nevada Supreme Court also did not rule
10 that Nona had no rights in the property as an individual, only that she was not properly before the
11 court. It was logical for Nona to bring the current lawsuit as an individual, not wanting to waive
12 her rights. Because of the confusion, she had a right to ask the court to declare her status as an
13 individual regarding the title to the subject property, and pursuant to NRS 30.030¹

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26 ¹ **NRS 30.030 Scope.** Courts of record within their respective jurisdictions shall have power to declare rights,
27 status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be
28 open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either
affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment
or decree.

1 and NRS 30.130² , this court has a duty to provide it. Not wanting to risk that her
2 individual rights would be lost if she didn't raise the claims, Nona filed the lawsuit. Until the
3 Motion to Dismiss had been heard by the Court, there was real and very confusing and
4 ambiguous rulings about Nona's status as an individual. The Motion to Dismiss clarifies her
5 disputed status due to the prior court's inconsistent rulings and treatment of Nona as an
6 individual. To award attorney's fees to the defendants, when Nona had the right to clarify her
7 status as an individual in the litigation, would be unjust and contradict the reason for NRS
8 18.010(2)(b).
9

10 The Motion to Dismiss, by procedure, before any defenses had been raised, was granted.
11 No communication was forthcoming from defendants about their concerns with the Amended
12 Complaint before spending 30 hours on research and preparing a joinder. These defendants
13 simply filed a joinder to the Motion to Dismiss when they had an alternative remedy and Nona
14 Tobin's route to recovery would be further obstructed by their actions.
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26 ² **NRS 30.130 Parties.** When declaratory relief is sought, all persons shall be made parties who have or claim
27 any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not
28 parties to the proceeding

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CONCLUSION

The Motion for Attorney Fees and Costs should be denied. The Chiesi's and Quicken Loans were not parties to the prior litigation and Nona's rights as an individual were in question until her claims were asserted.

Dated this 8th day of October, 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

1 **CERTIFICATE OF SERVICE**

2

3 I hereby certify that on the 8th day of October 2020, the foregoing **OPPOSITION TO**

4 **CHIESI AND QUICKEN LOANS MOTION FOR ATTORNEY FEES AND COSTS**

5 was served via Electronic Service through the Eighth Judicial District Court’s Odyssey E-File

6 and Serve System:

7

8

9 By: /s/ Annette Cooper

10 An employee of Thomson Law PC

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EXHIBIT 1

Inst #: 20190814-0003084

Fees: \$40.00

08/14/2019 03:16:12 PM

Receipt #: 3903247

Requestor:

NONA TOBIN

Recorded By: KVHO Pgs: 39

DEBBIE CONWAY

CLARK COUNTY RECORDER

Src: FRONT COUNTER

Ofc: MAIN OFFICE

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 191-13-811-052

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/ownr.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

NOTICE OF LIS PENDENS

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

NONA TOBIN

RETURN TO: Name NONA TOBIN

Address 2664 OLIVIA HEIGHTS AVE.

City/State/Zip HENDERSON NV 89052

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

To print this document properly, do not use page scaling.

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EXHIBIT 2

Inst #: 20190814-0003083
Fees: \$40.00
08/14/2019 03:16:12 PM
Receipt #: 3803247
Requestor:
NONA TOBIN
Recorded By: KVHO Pgs: 7
DEBBIE CONWAY
CLARK COUNTY RECORDER
Src: FRONT COUNTER
Ofc: MAIN OFFICE

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 191-13-811-052

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)

TITLE OF DOCUMENT
(DO NOT Abbreviate)

NOTICE OF LIS PENDENS

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

NONA TOBIN

RETURN TO: Name NONA TOBIN

Address 2664 OLIVIA HEIGHTS AVE.

City/State/Zip HENDERSON NV 89052

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name _____

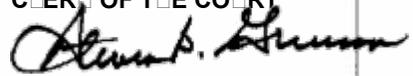
Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

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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:

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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.

1 OGM

3 DISTRICT COURT

4 CLARK COUNTY, NEVADA

5 NONA TOBIN, an individual,
6
7 Plaintiff,

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

8 Vs.

9 BRIAN CHIESTI, an individual;
10 DEBORA CHIESTI, an individual;
11 QUICKEN LOANS INC.; JOEL A.
12 STOKES, an individual; JOEL A.
13 STOKES and SANDRA STOKES, as
14 Trustees of JIMI JACK IRREVOCABLE
15 TRUST; JIMI JACK IRREVOCABLE
16 TRUST; NATIONSTAIR MORTGAGE
17 LLC; RED ROCK FINANCIAL
18 SERVICES; DOES I through X, inclusive;
19 and ROE CORPORATIONS I through V,
20 inclusive,

21 Defendants.

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

26 This matter, concerning the Motion for Attorney's Fees and Costs filed by JOEL A.
27 STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS TRUSTEES OF THE
28 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.

1 County, Nevada with JUDGE SUSAN JOHNSON presiding; Plaintiff NONA TOBIN appeared by
2 and through her attorney, JOHN W. THOMSON, ESQ.; Defendants BRIAN CHIESI and DEBORA
3 CHIESI appeared in *pro se*; Defendants JOEL A. STOKES, JOEL A STOKES AND SANDRA
4 STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST and JIMIACK
5 IRREVOCABLE TRUST appeared by and through their attorney, JOSEPH Y HONG, ESQ. of the
6 law firm, HONG & HONG LAW OFFICE; Defendant RED ROCK FINANCIAL SERVICES
7 appeared by and through its attorney, BRODY R. WIGHT, ESQ. of the law firm, KOCH & SCOW;
8 Defendant NATIONSTAR MORTGAGE, LLC appeared by and through its attorney, DONNA
9 WITTIG, ESQ. of the law firm, AKERMAN; and Defendant QUICKEN LOANS INC. appeared by
10 and through its attorney, BRITTANY WOOD, ESQ. of the law firm, MAURICE WOOD. Having
11 reviewed the papers and pleadings on file herein, heard oral arguments of the lawyers and taken this
12 matter under advisement, this Court makes the following Findings of Fact and Conclusions of Law:
13
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15 **FINDINGS OF FACT AND PROCEDURAL HISTORY**

16 1. On June 16, 2015, Defendants JOEL A. STOKES, JOEL A. STOKES AND
17 SANDRA STOKES, AS TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST filed their
18 Complaint against BANK OF AMERICA² and SUN CITY ANTHEM COMMUNITY
19 ASSOCIATION, INC., seeking, *inter alia*, to quiet title to their residence, 2763 White Sage,
20 Henderson, Nevada 89052. See Stokes v. Bank of America, Case No. A-15-720032-C, filed in
21 Department XXXI, Eighth Judicial District Court, in and for Clark County, Nevada.
22 Subsequently, on May 17, 2016, NATIONSTAR MORTGAGE, LLC intervened, and filed
23 its Counter-Claim against, *inter alia*, JIMIACK IRREVOCABLE TRUST.³ Further, a
24
25

26 _____
27 ²NATIONSTAR MORTGAGE, LLC thereafter was permitted to intervene in that it was BANK OF
28 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,
26

27
28 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.
8

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 JIMI JACK
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.

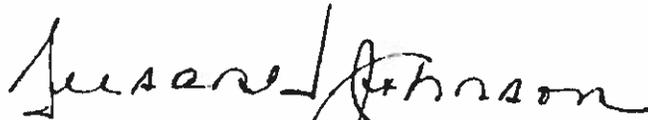
1 It resulted in MR. STOKES, individually, JOEL A. STOKES AND SANDRA STOKES, AS
2 TRUSTEES OF THE JIMIACK IRREVOCABLE TRUST and JIMIACK IRREVOCABLE
3 TRUST unnecessarily incurring attorney's fees and costs in the instant matter.

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

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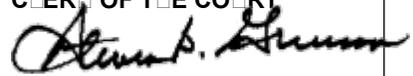
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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 9/8/2020

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



1 **REPLY**
2 AARON R. MAURICE, ESQ.
3 Nevada Bar No. 6412
4 BRITTANY WOOD, ESQ.
5 Nevada Bar No. 7562
6 ELIZABETH E. ARONSON, ESQ.
7 Nevada Bar No. 14472

8 **MAURICE WOOD**
9 9525 Hillwood Drive, Suite 140
10 Las Vegas, Nevada 89134
11 Telephone: (702) 463-7616
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14 bwood@mauricewood.com
15 earonson@mauricewood.com

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

21 **DISTRICT COURT**
22 **CLARK COUNTY, NEVADA**

23 * * *

24 NONA TOBIN, an individual,
25 Plaintiff,

26 vs.

27 BRIAN CHIESTI, an individual; DEBORA
28 CHIESTI, an individual; QUICKEN LOANS
INC.; JOEL A. STOKES, an individual;
SANDRA STOKES as Trustees of JIMI
JACK IRREVOCABLE TRUST; JIMI
JACK IRREVOCABLE TRUST; NATION
STAR 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

**REPLY TO PLAINTIFF'S
OPPOSITION TO THE CHIESI
DEFENDANTS' MOTION FOR
ATTORNEY'S FEES AND COSTS**

COME NOW, Defendants, Brian Chiesi and Debora Chiesi (collectively, "Chiesis"), erroneously sued as Brian Chiesti and Debora Chiesti, and Quicken Loans Inc., n/k/a Quicken Loans, LLC (together with the Chiesis, "Chiesi Defendants"), by and through their attorneys of record, MAURICE WOOD, and hereby file their Reply to Plaintiff's Opposition to the Chiesi Defendants' Motion for Attorney's Fees and Costs.

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

I.

INTRODUCTION

On September 16, 2020, the Chiesi Defendants filed a Motion for Attorney’s Fees and Costs pursuant to NRS 18.010(2)(b) (“Motion for Fees”). The Chiesi Defendants’ Motion for Fees was a renewal of the request made by the Chiesi Defendants in their initial appearance in this matter. The Motion for Fees was supported by a Brunzel declaration, the redacted billing statements of the Chiesi Defendants’ counsel, and a memorandum of costs.

As set forth in the Motion for Fees, the Chiesi Defendants incurred \$9,480 in attorney’s fees and \$308.99 in costs defending against Tobin’s frivolous claims. The billing statements confirm that a significant portion of counsel’s time was dedicated to analyzing: (1) the substantial docket from the 2015 Quiet Title Litigation and the appeal from the same; (2) documents related to the Chiesi Defendants’ purchase and encumbrance of the Property; and (3) various public records necessary to draft a detailed statement of facts related to the chain of title and a Request for Judicial Notice in support of the same to establish the privity of the parties to this action to the parties participating in the 2015 Quiet Title Litigation. The billing statements also confirm that the Chiesi Defendants’ counsel began drafting a Motion to Dismiss *before any other party had appeared in this action*.¹ Finally, the Chiesi Defendants *drafted and filed* a Reply brief before any other party filed a Reply brief in this matter. As shown from the billing statements, the qualities of the advocate, the character of the work performed, the attention and time devoted to the same, and the result achieved in this action demonstrate that the fees requested were reasonable. See Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (Nev. 1969).

On October 8, 2020, Tobin filed an Opposition to the Motion for Fees. Despite the fact that this Court has *already* entered an order in this matter finding: “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”, Tobin’s Opposition asserts that because the Chiesi Defendants were not parties to the prior lawsuit, at the very least, Tobin “had a

¹ The fact that the Chiesi Defendants’ initial appearance in this matter was entitled a “Joinder” to Red Rock’s Motion rather than a standalone Motion to Dismiss was a product of the fact that immediately before the Chiesi Defendants’ counsel went to file the Motion, counsel discovered that a similar motion had been filed by a prior appearing party.

1 right to have her individual rights declared vis a vie [sic] these new defendants.” See Opposition,
2 p.3, ll.6-7.

3 Tobin’s Opposition once again completely ignores the fact that Tobin is in privity to the
4 Gordon B. Hansen Trust and the Chiesi Defendants are in privity with the Jimijack Trust – both
5 of whom were parties to the 2015 Quiet Title Litigation.² Because issue preclusion and claim
6 preclusion apply if the party against whom the judgment is asserted, was “a party *or in privity with*
7 *a party* to the prior litigation”, see Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d
8 709, 713 (Nev. 2008), Tobin’s argument is without merit. Moreover, Tobin’s argument highlights
9 why the Chiesi Defendants devoted significant time and attention in their prior briefing to
10 addressing the privity issue for this Court rather than solely relying on “a simple one-paragraph
11 joinder” to Red Rock’s Motion (as Tobin’s Opposition asserts the Chiesi Defendants should have
12 responded to Tobin’s Amended Complaint).³ See Opposition, p.2, l.16.

13 As set forth in the Chiesi Defendants’ Motion and as will be demonstrated below, this is
14 precisely the type of case the Nevada Legislature sought to deter by enacting NRS 18.010(2)(b).
15 Accordingly, this Court should award the Chiesi Defendants their reasonable attorney’s fees and
16 costs.

17 II.

18 ARGUMENT

19 **A. This Court has already found that Tobin’s claims in this action were a multiplication** 20 **of the prior litigation, precluded by virtue of principles of claim and issue preclusion** 21 **and thus were brought without reasonable ground.**

22 Tobin’s Opposition dedicates multiple pages trying to justify why Tobin, as an individual,
23 was justified in filing this action “to clarify her status and rights to the real estate as [sic]

24 ² In Tobin’s Opposition to the Motion to Dismiss and Joinders Thereto, Tobin likewise argued that because the
25 Amended Complaint includes “allegations occurring after the end of the prior lawsuit” (i.e., the transfer of title to the
26 Property to the Chiesi Defendants) and “the parties are not the same” as the parties involved in the 2015 Quiet Title
27 Litigation, issue and claim preclusion would not preclude Tobin from having this Court reconsider the title dispute
28 that was previously resolved in the 2015 Quiet Title Litigation. See Tobin’s Opposition to Motion to Dismiss, p.6,
ll.8-9; 25-26.

³ The other parties in this action were parties to the 2015 Quiet Title Litigation. As such, the briefing by the other
parties did not need to develop the issue of privity. Nor did counsel for those parties need to dedicate time becoming
familiar with the extensive docket from the 2015 Quiet Title Litigation as they were already familiar with the same.

1 individual.” See Opposition, p.6, ll.16. Tobin’s Opposition suffers the same fatal flaw as her
2 Opposition to the Motion to Dismiss, particularly as it relates to the Chiesi Defendants – it
3 completely ignores the issue of privity.

4 There can be no question that Tobin, in her individual capacity, is in privity with the
5 Gordon B. Hansen Trust. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481, 215 P.3d 709, 718
6 (Nev. 2009)(A person is in privity with another if the person acquired an interest in the subject
7 matter affected by the judgment through one of the parties such as by inheritance, succession, or
8 purchase) see also Restatement (Second) of Judgments, § 41(1)(a)(a beneficiary of a trust or estate
9 is bound by a judgment in which the trustee participated in the action). Although the Quitclaim
10 Deed to Tobin is a “wild deed” recorded outside the chain of title because the Gordon B. Hansen
11 Trust’s interest in the Property had already been extinguished by the valid HOA Foreclosure
12 conducted nearly three years prior the Quitclaim Deed to Tobin (see Snow v. Pioneer Title Ins.
13 Co., 84 Nev. 480, 444 P.2d 125 (Nev. 1968)), Tobin is nonetheless bound by the final judgment
14 entered against the Gordon B. Hansen Trust, as any interest Tobin acquired in the Property (which
15 was none), Tobin acquired directly from the Gordon B. Hansen Trust. Bower v. Harrah's Laughlin,
16 Inc., 125 Nev. 470, 481, 215 P.3d 709, 718 (Nev. 2009). Moreover, the very reason the Chiesi
17 Defendants’ Joinder to the Motion to Dismiss and Request for Judicial Notice in support of the
18 same included a detailed factual recitation of the chain of title leading up to the Chiesi Defendants’
19 acquisition of their interest in the Property was to establish that the Chiesi Defendants are likewise
20 in privity with the parties to the 2015 Quiet Title Litigation.

21 As such, because Tobin’s Amended Complaint is based on the same claims and issues that
22 were decided in the 2015 Quiet Title Litigation and Tobin’s Amended Complaint involves the
23 same parties *or the parties’ privies*, Tobin’s claims are barred by issue preclusion and claim
24 preclusion. See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (Nev.
25 2008) (issue preclusion and claim preclusion apply if the party against whom the judgment is
26 asserted, was a party *or in privity with a party* to the prior litigation.).

27 It bears repeating that this case presents a perfect example of why the Nevada Supreme
28 Court would extend issue preclusion and claim preclusion to a party’s privities. For more than a

1 decade now, Nevada Courts have been flooded with quiet title disputes arising in connection with
2 NRS Chapter 116 Foreclosures like the 2015 Quiet Title Litigation involved in this case. This
3 Court, and countless other judges in this state, have been attempting to move thousands of such
4 cases through their already over-burdened dockets. If this Court adopted the argument advanced
5 by Tobin's Opposition, by ignoring the fact that issue preclusion and claim preclusion apply to
6 parties *in privity with a party to prior litigation*, any party who litigated an NRS Chapter 116 quiet
7 title claim who wished to challenge such a sale a second time (perhaps with the sole hope of
8 obtaining a nuisance cost-of-defense settlement⁴), could simply record a wild deed for no
9 consideration to a new entity, trust, or person, just like Tobin did here. Conduct such as Tobin's
10 here would defeat the public policy in support of the doctrines of issue and claim preclusion and
11 could overwhelm the courts in Nevada with a second flood of quiet title claims seeking do-overs.
12 Awarding the Chiesi Defendants their attorney's fees and costs in this action would further the
13 Legislative intent of NRS 18.010(2)(b), by punishing and deterring frivolous and vexatious claims,
14 and discouraging other dissatisfied NRS Chapter 116 quiet title litigants from following a similar
15 pattern. Tobin's repeated, impermissible references to the Chiesi Defendants' title insurance in
16 her Opposition confirms that this action was nothing more than an attempted shakedown for a
17 nuisance settlement.⁵

18 Unless this Court imposes sanctions against Tobin by requiring Tobin to reimburse the
19 Chiesi Defendants for their attorney's fees, Tobin will continue to abuse the legal system by filing
20 further frivolous and vexatious claims that overburden the limited judicial resources of this Court,
21 thereby hindering the timely resolution of meritorious claims and increasing the costs of engaging

22 _____
23 ⁴ Throughout Tobin's Opposition, Tobin impermissibly argues that this Court should decline to award the Chiesi
24 Defendants their attorney's fees because the Chiesi Defendants could have pursued "a claim against the[ir] title
25 insurance." See Opposition p.3, ll.14; see also Opposition, p.4, ll.7; p.5, ll.19-25 (asserting the Chiesi Defendants
26 should have filed "a claim for title insurance to be made whole" rather than choosing to defend against Tobin's
27 specious action).

28 ⁵ Under Nevada law, there is a per se rule barring the admission of collateral source payments for any purpose. Proctor
v. Castelletti, 112 Nev. 88, 911 P.2d 853, 854 (Nev. 1996). Obviously, the source from whom payments to the Chiesi
Defendants' counsel were made should have no impact on whether this Court uses its discretion to award attorney's
fees and costs pursuant to NRS 18.010(2)(b). When insurers are forced to defend against frivolous actions such as
this one, it too increases the costs of engaging in business in this state by forcing insurers to charge higher premiums
to the Nevada public. Moreover, overburdening limited judicial resources of this Court occurs regardless of whether
an insurer or an individual is paying to defend against a frivolous claim.

MAURICE WOOD
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in business and providing professional services to the public. This is precisely the type of case the Nevada Legislature sought to deter by enacting NRS 18.010(2)(b).

Accordingly, this Court should award the Chiesi Defendants \$9,480 in attorney's fees and \$308.99 in costs.

DATED this 19th day of October, 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

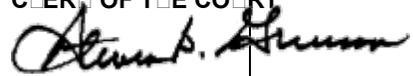
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Maurice Wood, and that on the 19th day of October, 2020, I caused to be served a true and correct copy of the foregoing **REPLY TO PLAINTIFF'S OPPOSITION TO THE CHIESI DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS** 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



1 JOHN W. THOMSON, ESQ.
2 Nevada Bar No. 5802
3 THOMSON LAW PC
4 2450 St. Rose Parkway, Suite 120
5 Henderson, NV 89074
6 (702) 478-8282 Telephone
7 (702) 541-9500 Facsimile
8 Email: johnwthomson@ymail.com
9 Attorney for Plaintiff Nona Tobin

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 NONA TOBIN, an Individual

10 Plaintiff,

11 vs.

12
13 BRIAN CHIESI, an individual; DEBORA
14 CHIESI, an individual; QUICKEN LOANS
15 INC.; JOEL A. STOKES, an individual;
16 JOEL A. STOKES and SANDRA STOKES
17 as Trustees of JIMI JACK IRREVOCABLE
18 TRUST; JIMI JACK IRREVOCABLE
19 TRUST; NATIONSTAR MORTGAGE LLC;
20 RED ROCK FINANCIAL SERVICES;
21 DOES I through X inclusive; and ROE
22 CORPORATIONS I through V, inclusive

23 Defendants.

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

**OPPOSITION TO JOEL A. STOKES
AND SANDRA STOKES, AS
TRUSTEES OF THE JIMI JACK
IRREVOCABLE TRUST AND
JIMI JACK IRREVOCABLE
TRUST'S MOTION TO ENFORCE
ORDER FOR ATTORNEY FEES
AND COSTS AND FOR CONTEMPT
AND ORDER SHORTENING TIME**

**Hearing Date: October 29, 2020
Hearing Time: 9:00 AM**

23 Comes now, Plaintiff NONA TOBIN, AN INDIVIDUAL, (hereinafter "Plaintiff" or
24 "Tobin"), by and through her attorney of record, Thomson Law PC, through attorney John W.
25 Thomson, Esq., and hereby submits her Opposition to the Stokes defendants' (hereinafter
26 "defendants" or "Stokes") Motion to Enforce Order for Attorney's Fees and Costs and For
27
28

1 Contempt and for Attorney's Fees and Costs Pursuant to EDCR Rule 7.60(b)(3) and/or (5) and
2 Order shortening Time.

3 This Opposition is based on the attached Memorandum of Points and Authorities, the
4 pleadings and papers on file in this case, and any oral arguments made at the time of hearing on
5 this matter.
6

7 Dated this 27th day of October, 2020.

8 THOMSON LAW PC

9 */s/ John W. Thomson*

10 JOHN W. THOMSON, ESQ.

11 Nevada Bar No. 5802

12 2450 St. Rose Parkway, Suite 120

13 Henderson, Nevada 89074

14 *Attorney for Plaintiff Nona Tobin*

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **INTRODUCTION**

17 The Stokes Defendants failed to serve the instant Motion on OST and likely did not
18 disclose the Motion's *Ex Parte* nature. The defendants also mislead the Court by not disclosing
19 that they did not prepare and file a Notice of Entry of Order Granting Attorney Fees and Costs
20 until a week before filing the instant Motion. The OST was not necessary. The Order has only
21 been valid since October 8, 2020, not September 6, 2020 as defendants state and their counsel
22 affirms in his declaration.
23

24 The civil contempt statute, NRS 22.010, has not been followed, and Tobin is not
25 purposefully disobeying this Court's order. Tobin has the right to appeal, there is likely a stay in
26 place barring immediate collection, and she has time to file other post-notice-of-entry-of-order
27 motions since the Order was not formally entered until October 8, 2020.
28

1 **FACTS**

2 This Motion was brought apparently *ex-parte* by defendants to enforce by contempt the
3 order granting attorney fees and costs; asking for more attorney’s fees in the process. Tobin
4 disputes that her filing of the Amended Complaint was frivolous or worthy of sanctions in any
5 way, as outlined more fully in her Opposition to the Chiesti defendants’ Motion for Attorney
6 Fees.
7

8 Without it being circulated, the Court, *sua sponte*, prepared and issued an order granting
9 defendants’ motion for attorney fees and costs on September 6, 2020. Although the order
10 contained findings that the *Brunzell* factors had been briefed by defendants, the Stokes’ Joinders
11 to the Motion to Dismiss and Reply, do not contain evidence that all the factors were addressed
12 by defendants. All the *Brunzell* factors have not been addressed in this Motion either.
13

14 Despite representations by defendants to the contrary in the present Motion, defendants
15 have not waited “a month and a half” for Tobin to pay the award of fees under the order.
16 Defendant did not file and serve the notice of entry of the order until October 8, 2020.
17 Defendants waited only one week after the Order was valid before filing the present Motion to
18 Enforce and for Contempt on October 16, 2020.
19

20 The circumstances surrounding the submission, filing and service of the present Motion
21 require examination. The record is clear that the present Motion was never served on the parties.
22 There is no Certificate of Service attached to the Motion. The Motion was evidently submitted
23 to the Court, *ex parte*, and when the order shortening time was granted, the order shortening
24 time was filed and served by the court, which contained the present Motion. The court could not
25 have reviewed, approved, completed the date and time of hearing, signed and served the order
26 shortening time (“OST”) unless it had a copy of the Motion. Therefore, it appears that the
27
28

1 Motion was given to the court prior to the issuance and filing of the OST, yet the Motion is not
2 identified as being *ex parte*. Later that evening, a notice of entry of order for the order
3 shortening time was filed and served. Questions remain as to how and when the Motion was
4 submitted to the court.

5 **LEGAL ARGUMENT**

6
7 **The Motion Was Not Properly Served.**

8 The Motion has not been validly served on the parties as required by NRCP 5. Although
9 the parties received notice of the OST, and therefore the Motion that accompanied it, the
10 procedural rules have not been met. Therefore, the Motion must be refiled, re-noticed and
11 served properly.
12

13 **The Motion to Enforce Order Is Premature.**

14 Tobin’s appeal rights have not expired, there is a stay in place, and the Motion is
15 premature at best. Blatantly missing from defendants’ Motion and Declaration is the date of
16 Notice of Entry of the Order. In addition, there are several misleading statements in which the
17 defendants claim they have been waiting for a month and a half for Tobin to pay the fees and
18 costs ordered, and made demand for payment, when in fact the present Motion was only filed
19 one week after notice of entry of that order was filed. Demand was made weeks before notice of
20 entry of the order was filed and served.
21

22 Notice of entry of an order is required for it to be a valid, enforceable order. Because the
23 defendants didn’t file a Notice of Entry of Order until October 8, 2020. NRCP, Rule 58(e)
24 states: “**Notice of Entry of Judgment.** (1) Within 14 days after entry of a judgment or an
25 order, a party designated by the court under Rule 58(b)(2) must serve written notice of such
26 entry, together with a copy of the judgment or order, upon each party...”.
27
28

1 The Order granting attorney fees was filed on September 6, 2020, but the notice of entry
2 was not filed until October 8, 2020, well after the 14-day mandatory service period. Seven days
3 later, defendants filed the present Motion, which is premature.

4 The rule goes on: “(2) Failure to serve written notice of entry does not affect the
5 validity of the judgment, but the judgment may not be executed upon until notice of its entry is
6 served.” In essence, defendants were trying, improperly, to collect on an Order by sending the
7 demand letter before they had filed and served a notice of entry of order. They also failed to
8 comply with Rule 58 that says it “must serve” the notice of entry within 14 days. In addition,
9 Tobin has 30 days after notice of entry of the order to file an appeal, which time has not yet run.
10 Defendants can execute on the award of fees, but only after 30 days. By not paying the Order
11 granting fees Tobin is not guilty of civil contempt, because they have the right, after 30 days
12 from service of the notice of entry, to “execute” on the award. Nona has not violated an order to
13 pay.
14

15
16 NRCP 62 creates an automatic stay from enforcing the collection on the Order, which is
17 being treated by defendants as a judgment they want to collect upon:
18

19 **“Rule 62. Stay of Proceedings to Enforce a Judgment**

20 **(a) Automatic Stay; Exceptions for Injunctions and Receiverships.**

21 (1) **In General.** Except as stated in this rule, no execution may issue on a judgment,
22 nor may proceedings be taken to enforce it, until 30 days have passed after service of written
23 notice of its entry, unless the court orders otherwise.” NRCP 62(a)(1) is clear that no
24 proceedings to enforce payment may be taken until 30 days have passed.
25
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1 **Defendant's Behavior Does Not Meet the Standards for Contempt Pursuant to NRS**
2 **22.010.**

3 NRS 22.010, entitled "Acts or omissions constituting contempts" reads as follows:

4 The following acts or omissions shall be deemed contempts:

5 Disorderly, contemptuous or insolent behavior toward the judge while the
6 judge is holding court, or engaged in judicial duties at chambers, or toward masters or
7 arbitrators while sitting on a reference or arbitration, or other judicial proceeding. A
8 breach of the peace, boisterous conduct or violent disturbance in the presence of
9 the court, or in its immediate vicinity, tending to interrupt the due course of the
10 trial or other judicial proceeding.

11 1. Disobedience or resistance to any lawful writ, order, rule or
12 process issued by the court or judge at chambers.

13 4. Disobedience of a subpoena duly served, or refusing to be
14 sworn or answer as a witness.

15 5. Rescuing any person or property in the custody of an officer
16 by virtue of an order or process of such court or judge at chambers

17 6. Disobedience of the order or direction of the court made
18 pending the trial of an action, in speaking to or in the presence of a juror
19 concerning an action in which the juror has been impaneled to determine,
20 or in any manner approaching or interfering with such juror with the intent
21 to influence the verdict.

22 NRS 22.010.

23 A plain reading of NRS 22.010, Nevada's civil contempt statute, shows that
24 contempt is an intentional act. Tobin, who is exercising her rights under the rules, has not
25 committed civil contempt. She respects the Court's Order but exhausting her legal remedies
26 and defenses are rights she hasn't waived. Just because she contests premature enforcement of
27 the order, doesn't mean she is guilty of contempt. Tobin's behavior does not meet the standards
28 for contempt laid out in NRS 22.010, and she should not be dragged into Court under threat of
contempt when defendants themselves failed to follow the rules. Here, Tobin is actively
exercising her legal rights and defenses. Moreover, until Tobin has been afforded the
opportunity to have an evidentiary hearing regarding her alleged contempt, then found to

1 have committed contempt, no other remedy pursuant is available.

2 **Tobin Invokes Her Right Pursuant to NRS 22.030(3) to Have a Contempt Hearing**
3 **Heard in Front of a Different District Court Judge.**

4 NRS 22.030(3) Provides in pertinent part: “Except as otherwise provided in this
5 subsection, if a contempt is not committed in the immediate view and presence of the
6 court, the judge of the court in whose contempt the person is alleged to be shall not
7 preside at the trial of the contempt over the objection of the person.” Tobin, by and through
8 undersigned counsel, invokes her right to have any contempt hearing that is granted with
9 regard to alleged violations of the Order before a different District Court judge. Prohibition
10 is available to arrest a district judge’s exercise of contempt powers when NRS 22.030(3)
11 applies and dictates that the contempt proceeding be conducted before a different district
12 judge. *McCormick v. District Court*, 67 Nev. 318, 332, 218 P.2d 939, 945 (1950); *see*
13 *Pengilly* at 571. NRS 22.030(3) applies in the instant matter because the alleged contempt
14 was not committed in the immediate view and presence of the Court.
15
16

17 **The Brunzell Factors Were Not Sufficiently Met By Defendants**

18
19 “If the [Court] determines that attorney fees are warranted, it must [] consider the
20 *Brunzell* factors in determining whether the requested fee amount is reasonable and justified.”
21 *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev., Adv. Op. 31, 416 P. 249, 258
22 (2018).

23 The *Brunzell* factors include: “(1) *the qualities of the advocate*: his ability, his training,
24 education, experience, professional standing and skill; (2) *the character of the work to be done*:
25 its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and
26 the prominence and character of the parties where they affect the importance of the litigation;
27 (3) *the work actually performed by the lawyer*: the skill, time and attention given to the work;
28

1 (4) *the result*: whether the attorney was successful and what benefits were derived. *Gunderson*
2 *v. D.R. Horton, Inc.*, 130 Nev. 67, 81, 319 P.3d 606, 615-16 (2014) (quoting *Brunzell v. Golden*
3 *Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

4 The Court needs to "...demonstrate that it considered the required factors, and the award must
5 be supported by substantial evidence." *Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143
6 (2015).

7 In our case, in the Motion for Fees and the present Motion for Contempt, all of the
8 factors were not addressed in defendants' counsel's declarations. In fact, the invoices, time in
9 practice, competency level, fitness to practice, and other items were not included. Plaintiff has
10 the right, without being asked to pay attorney's fees, to raise defenses and oppose briefing.

11 **Tobin's Attorney Fees And Costs Incurred Defending This Motion Should Be Awarded.**

12 Instead of paying defendants' attorney fees for them filing this premature motion, Tobin
13 should be awarded attorney fees and costs. If defendants had been candid about when the notice
14 of entry was filed and served, likely no OST would have been granted. In addition, Tobin has
15 the right to contest the amount of the fees and to avail herself of her legal remedies without
16 threat of contempt and paying additional fees. Defendants' Motion has needlessly fomented the
17 litigation. According to their own standard, they should pay Nona's fees to defend this Motion.

18 **CONCLUSION**

19 For the foregoing reasons, Tobin respectfully requests that the Court deny the relief sought
20 by Defendants' Motion. Additionally, in the event a contempt hearing is ordered for the facts
21 alleged in the Motion, Tobin unequivocally invokes her rights to object pursuant to NRS
22 22.030(3) and have the hearing held before a different District Court Judge.
23

24 ///

25 ///

26 ///

1 Defendants Stokes' Motion for Attorney Fees and Costs and Order Shortening Time
2 should be denied.

3 Dated this 27th day of October, 2020,

4 THOMSON LAW PC

5 /s/John W. Thomson

6 JOHN W. THOMSON, ESQ.

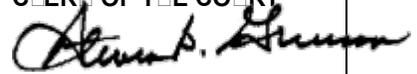
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10 *Attorney for Plaintiff Nona Tobin*

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DISTRICT COURT
CLARK COUNTY, NEVADA

NONA TOBIN,

Plaintiff,

vs.

JOEL STOKES,

Defendant.

CASE NO. A-19-799890-C

DEPT. XXII

BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE
OCTOBER 29, 2020

**RECORDER'S TRANSCRIPT OF HEARING RE
MOTION FOR ATTORNEY'S FEES AND COSTS**

APPEARANCES:

For the Plaintiff:

JOHN THOMSON, ESQ.
Via Video Conference

For the Defendant:

JOSEPH HONG, ESQ.
Via Video Conference

For Brian & Debora Cheisi; Quicken Loans:

BRITTANY WOOD, ESQ.
Via Video Conference

RECORDED BY: NORMA RAMIREZ, COURT RECORDER

1 THURSDAY, OCTOBER 29, 2020 AT 9:50 A.M.

2
3 THE COURT: Okay. I'm calling the case of Tobin versus Stokes, case
4 number A19-799890-C. Would counsel who is present please identify yourselves
5 for the record and let's part with Plaintiff's counsel?

6 MR. THOMSON: Good morning, Your Honor. John Thomson for the Plaintiff.

7 THE COURT: Okay. And Mr. Hong.

8 MR. HONG: Yes. Good morning, Your Honor. Joseph Hong for the Stokes
9 Defendants.

10 THE COURT: Okay. And Miss Wood.

11 MS. WOOD: Good morning, Your Honor. Brittany Wood on behalf of the
12 Chiesi Defendants, Brian and Debora Chiesi and Quicken Loans.

13 THE COURT: Okay. Are there any other parties here? Okay. This is
14 Defendant's Motion for Attorney's Fees and Costs. Oh, I'm sorry, is there
15 somebody else here? No. We got everybody?

16 MR. THOMSON: Your Honor, my client, Ms. Tobin, was also on the call.

17 THE COURT: Okay. Thank you.

18 MR. THOMSON: This is John Thomson.

19 THE COURT: Okay. This is Defendant's Motion for Attorney's Fees and
20 Costs. I'm listening.

21 MS. WOOD: Good morning, Your Honor. Brittany Wood. The Motion for
22 Attorney's Fees was supported by a Brunzell declaration and redacted billing
23 statements along with a memorandum of costs and the billing statements confirm
24 that I spent 31.6 billable hours most of which was dedicated to analyzing a
25 substantial docket from the 2015 quiet title action as well as the public record and

1 the appeal documents and then of course my client's purchase documents. Ms.
2 Tobin's opposition asserts really two main arguments. The first is that the 31.6
3 billable hours were excessive and the argument there is that anything more than a
4 simple one paragraph joinder to Red Rock's motion was unnecessary. And the
5 second argument is that this Court's prior finding that Tobin's claims were brought
6 without reasonable grounds can apply to the Chiesi Defendants.

7 Respectfully, Your Honor, Tobin's opposition that the fees requested
8 were reasonable, it's apparent that Ms. Tobin is likely to appeal this Court's finding
9 that the claims are barred by claim preclusion and issue preclusion and the problem
10 for my clients is that unlike the other parties they weren't a party to the 2015
11 litigation. So, it was necessary for us to establish privity of title both for Ms. Tobin
12 and as well for the Chiesi Defendants and so a substantial portion of the time was
13 dedicated to that. And the opposition also shows the problem that Ms. Tobin still
14 doesn't understand that the privity issue, particularly as it relates to the Chiesi
15 Defendants, is what establishes that there's issue preclusion and claim preclusion
16 as to these parties as well and for that reason we couldn't simply just join into Red
17 Rock's motion because those things weren't established in it. And for that reason
18 that the 31.6 hours were reasonable and necessary and should be awarded for
19 attorney's fees in the amount of \$9,480.00 and costs in the amount of \$308.99.

20 THE COURT: Okay. Mr. Hong, do you have a dog in this race?

21 MR. HONG: No, I don't. I don't.

22 THE COURT: Okay. Mr. Thomson.

23 MR. THOMSON: Good morning, Your Honor. So, I believe it's been well
24 briefed, however, to get attorney's fees under NRS 18.010 you have to show that
25 there's no evidence that the claim was brought with reasonable grounds and we've

1 outlined the basis why it was reasonable both now and also based on the prior
2 record. So, I mean, first you hit that threshold. There has to be no evidence that the
3 amended complaint was reasonable, it was reasonable. In light of everything that
4 has happened to Ms. Tobin in the prior case she's had -- she -- the parties and the
5 Judge treated her as an individual party for three and a half years and at the very
6 end of the case the Judge said, no, you're not a party as an individual. Now, I know
7 Your Honor in hindsight has said, well, that order says that there's privity between
8 her as a trustee and her as an individual but that was certainly not the case. She
9 did not want to waive her rights to lose those claims as an individual. The deed in
10 2017 to this property was transferred from the trust to her as an individual so all the
11 parties in the prior litigation knew since 2017 that she claimed and actually had a
12 recorded individual property interest in the property since 2017. So, it's problematic
13 to say that she doesn't have a right to ask this Court after the Court of Appeals said,
14 no, you don't have any rights in the property as an individual based on what
15 happened in that prior District Court case. She has a right to bring before this Court
16 an action for declaratory relief. The only damages that she sought were regarding
17 the excess proceeds, Your Honor, and she has a right to ask for a declaration as to
18 her standing as an individual vis-à-vis this deed. Now, that's evidence that she has
19 a claim that's valid. She didn't bring this claim to harass anyone, she didn't bring the
20 second amended complaint to foam at litigation, she brought it to clarify her rights as
21 an individual in the property which she had a right to do. So, that's the first bar that
22 she has to jump through. If that's not met than no attorney's fees are proper at all.

23 Then we get to whether or not 31.6 hours to file a joinder. The
24 argument doesn't make sense because they say, well, we had to spend 31.6 hours
25 of attorney time because we weren't in the prior case and yet they're joining to a

1 motion by attorneys that were in the prior case. And then the argument was made
2 this morning and in the briefs by the Chiesi Defendants that they needed to spend
3 most of that time to go through the chain of title and to ensure that. Well, that's why
4 we have title and escrow officers. Those folks can do it much cheaper than an
5 attorney. Back in the old days before we had those maybe sixty years ago we
6 would have go down to the courthouse. I'm old enough to remember doing title
7 searches and having to go down to -- sorry, to the County Recorder's Office and
8 actually search out a chain of title. Things are changed since that time and it's no
9 longer necessary for an attorney to do that.

10 So, if Your Honor finds that there's no evidence that Ms. Tobin had a
11 right to bring a declaratory relief action to clarify her right as an individual vis-à-vis
12 the deed then we argue that the hours spent and hours claimed are extremely
13 excessive.

14 THE COURT: Okay. Ms. Wood.

15 MS. WOOD: Yes. Again, Your Honor, it goes back to the issue of the not
16 understanding privity and specifically the importance of privity as it relates to Tobin
17 as an individual and as it relates to the Chiesi Defendants. An argument has been
18 made that Tobin doesn't have -- is not in privity to the trust and that's simply wrong.
19 The restatement [indecipherable] of judgments Section 41(1)(a) states: "That a
20 beneficiary of a trust or estate is bound by a judgment in which the trustee
21 participated in the action." There's no question that Ms. Tobin participated in the
22 prior action as the trustee so she's bound by that judgment. And in addition, in
23 Bower versus Harrah's it states: "That a person is in privity with another if the
24 person acquired an interest in the subject matter affected by the judgment through
25 one of the parties such as by inheritance, succession, or purchase." Here the

1 property was transferred from the trust to Ms. Tobin via a wild deed because the
2 trust interest had already been extinguished by the HOA sale but nonetheless it was
3 a transfer of whatever interest they had which is what a quit claim deed says,
4 whatever interest they had if any, and in this case it was none and so she's clearly in
5 privity. And again, that is why the time was spent setting out all of that factual
6 information, preparing a request for judicial notice so that when this does go on
7 appeal, and it seems clear that it will, all of that record will be before the Nevada
8 Supreme Court or the Court of Appeals so that they can review that and say, yes,
9 they were in privity. And this Court has already found that the claims were brought
10 without reasonable grounds because it's barred by issue preclusion and claim
11 preclusion. So, that's already been established.

12 And again, as for the number of hours, you'll see that the majority of the
13 time was spent before anyone had filed a motion in this matter so there wasn't
14 anything to join in at that time. The motion was drafted before I even realized
15 someone had filed a motion in this matter and when I saw that there was a hearing
16 date we changed what was a motion to dismiss that would have been filed on its
17 own into a joinder so that we could have the same hearing date rather than having
18 multiple hearing dates which would have just further increased the costs. So, again,
19 respectfully I would say that the hours spent were reasonable, that the result
20 achieved justified the amount that we've requested in attorney's fees.

21 THE COURT: Okay. Counsel, I would have to agree, I've gone down this
22 road previously, I've already made my decision, now I need to look at -- I mean, I've
23 already made a decision that on behalf of the Stokes Defendants that these were
24 brought without reasonable grounds. I'm gonna need to review the attorney's fees
25 which I have not had a chance to do and I apologize to you for that. This week I've

1 been in a full week bench trial so I have not had a chance to actually go through the
2 itemization but I'm gonna go through it and consider them in light of the Brunzell
3 factors. So, give me just a little time to do that and I will do that. I'm gonna take it
4 under advisement.

5 MS. WOOD: Thank you, Your Honor.

6 THE COURT: All right. Thank you.

7 [Proceedings concluded at 10:01 a.m.]

8 * * * * *

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15 ATTEST: I do hereby certify that I have truly and correctly transcribed the
16 audio/video recording in the above-entitled case to the best of my ability.

17



18

NORMA RAMIREZ
Court Recorder
District Court Dept. XXII
702 671-0572

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