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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

RED ROCK FINANCIAL)
SERVICES,)
)
Plaintiff(s),)
)
vs.)
)
NONA TOBIN,)
)
Defendant(s).)

Case No. A-21-828840-C
Department VIII

BEFORE THE HONORABLE JESSICA K. PETERSON,
DISTRICT COURT JUDGE

THURSDAY, AUGUST 19, 2021

**TRANSCRIPT OF PROCEEDINGS RE:
ALL PENDING MOTIONS
(Via Audio Via BlueJeans)**

(Appearances on page 2.)

RECORDED BY: NANCY MALDONADO, COURT RECORDER

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APPEARANCES:

For the Plaintiff(s):	STEVEN B. SCOW, ESQ.
For the Defendant(s) Wells Fargo, NA:	SCOTT R. LACHMAN, ESQ.
For the Defendant(s) Nona Tobin:	JOHN W. THOMSON, ESQ.

1 **LAS VEGAS, NEVADA, THURSDAY, AUGUST 19, 2021**

2 [Proceeding commenced at 11:24 a.m.]

3
4 THE COURT: Mr. Lachman?

5 MR. LACHMAN: Yes, this --

6 THE COURT: Or, actually, I'm sorry -- Mr. Thomson, are
7 you there?

8 MR. THOMSON: Yes, Your Honor, I'm here.

9 THE COURT: Your client has now emailed my JEA,
10 starting at 8:30 this morning, four sets of exhibits. They have not
11 been filed, and she's simply emailing them. Can you please instruct
12 your client that none of those documents that have been submitted
13 this morning are in front of the Court and will be considered by the
14 Court, and that she is represented by counsel and she should not
15 be --

16 THE COURT CLERK: They're coming from him.

17 THE COURT: Are they coming from you, Mr. Thomson, or
18 are they coming from your client?

19 MR. THOMSON: Your Honor, they're coming from my
20 office, because there -- my understanding is there were 12 binders
21 dropped off.

22 THE COURT: Yes.

23 MR. THOMSON: They're -- all the documents that we've
24 sent over have been filed with the court or they're part of the public
25 record. And both parties have asked for judicial notice. My

1 understanding is that this was going to be an evidentiary hearing
2 today. And for convenience in dealing with an evidentiary hearing
3 by BlueJeans, I felt it would be easier to just submit as if I were in
4 court, I would just simply hand the eight or 10 documents that we
5 intended on covering.

6 So that was my only intent, Your Honor, is to send those
7 to opposing counsel and copy your JEA on that. So my apologies if
8 that protocol was not correct. We did reach out at the beginning of
9 the week to try to understand the protocol. And I also reached out
10 to counsel last night saying that my client, when she was pro se,
11 submitted a bunch of documents, filed them, but some of them
12 were hyperlinks and I know Your Honor received a bunch of
13 binders.

14 So I wasn't sure if they had received those or not, so I
15 reached out to confirm that. And the only -- I got an indication from
16 Scott Lachman's associate or the partner of their firm, and she
17 indicated to me by e-mail that they were prepared to go forward
18 despite the fact that they had not received the same binders that
19 you had received, Your Honor. And I had not heard back from
20 Mr. Scow. So that's my explanation there.

21 THE COURT: Okay. To the extent that the Court had
22 received those binders, the -- everything has been reviewed. But
23 this was not set for an evidentiary hearing. This was set as a
24 Motion for Summary Judgment and Motions to Dismiss.

25 So if the parties want an evidentiary hearing on this, then

1 we need to reset that. So before I go forward with the other case,
2 speak now or forever hold your peace. I'm ready to rule on this
3 today based on the motions that I received. But if the parties want
4 an evidentiary hearing on this, then we need to set it on a date and
5 time that I don't have my regular law and motion calendar, and set
6 it for an evidentiary hearing.

7 MR. THOMSON: Your Honor, Mr. Thomson again.

8 According to the record that I reviewed, and also the
9 stipulation of the parties, it was my understanding that we were
10 doing an evidentiary hearing. And we have no problem continuing
11 a week or two to have that -- make that happen.

12 THE COURT: Mr. Scow, Mr. Lachman, would you like to
13 weigh in?

14 MR. SCOW: Yes, Your Honor. Steven Scow from Red
15 Rock.

16 We did all agree on a date. It was actually a little more
17 painful than it should have been. But we've prepared, we're here.
18 Your Honor, we are prepared to argue. And I don't think that we
19 need to continue this matter any further.

20 THE COURT: Mr. Lachman.

21 MR. LACHMAN: Your Honor, Scott Lachman on behalf of
22 Wells Fargo and Nationstar.

23 I agree with Mr. Scow. Let's move forward with this
24 hearing. All the parties have prepared and we're ready for an
25 adjudication.

1 THE COURT: Okay. That's fine. Like I said, I've got four
2 pages' worth of notes and I'm prepared to go forward. I just
3 wanted to make sure that if you all were wanting to do this as an
4 evidentiary hearing, that was not what was listed on my calendar,
5 because if it would have been listed on my calendar as an
6 evidentiary hearing, it would have been held on a Monday or a
7 Friday or Wednesday afternoon. I wouldn't have --

8 MR. THOMSON: So, Your Honor, if I may. Mr. Thomson
9 here.

10 I'm looking at the joint stipulation and order, and it does
11 say evidentiary hearing. And I also looked at the court minutes, I
12 have them in the Registry of Action. And Your Honor continued the
13 hearing before because of an evidentiary -- because Your Honor
14 wanted to have it heard. Of course, I wasn't there, but I'm just
15 going by the record. And, also, the Notice of Entry of the
16 stipulation and order filed on 7/27. And so that's, again, why we
17 prepared to introduce testimony and to have that evidentiary
18 hearing.

19 MR. SCOW: And, Your Honor, this is Steven Scow for Red
20 Rock. If I can interject.

21 I was at the last hearing, and Ms. Tobin at that time was
22 appearing for herself. And she had requested an evidentiary
23 hearing. She was the only one that requested it. I don't remember
24 that we had any discussion with the other parties, but that was
25 something that the Court had allowed. And in the interim she has

1 now hired counsel.

2 And Mr. Thomson's familiar with this matter and he has
3 been involved with the prior matters involving the exact same
4 claims with the exact same parties, which includes prior appeals.
5 And I'm not personally aware why we would need an evidentiary
6 hearing on any of the matters before Your Honor. I suppose
7 Mr. Thomson could explain that. But I know that before Your Honor
8 is a Motion to Dismiss that my office filed.

9 THE COURT: Right.

10 MR. SCOW: And then the bank defendants -- bank parties
11 joined. So, again, I'm not even certain -- I'm not clear, Your Honor,
12 what an evidentiary hearing would be for.

13 THE COURT: All right. Here's what I'm going to do. I'm
14 just going to leave it on calendar. We can go ahead and argue it.
15 And I recognize that I did sign off on that order. However, for
16 whatever reason, Master Calendar, in their infinite wisdom, decided
17 to list it as just a Motion for Summary Judgment and Motion to
18 Dismiss. And so that's what I had it prepared for for today. But
19 that's fine. We can move forward. I have reviewed everything, so
20 we can move forward.

21 But let me take the other case first. So thank you,
22 gentlemen.

23 MR. THOMSON: Thank you, Your Honor.

24 MR. SCOW: Thank you, Your Honor.

25 [Matter trailed at 11:32 a.m., until 12:32 p.m.]

1 THE COURT: Last but not least. I hope you all were able
2 to work on some other stuff. Thank you for your patience.

3 Calling Red Rock Financial Services versus Nona Tobin,
4 A-828840-C. This is Nona Tobin's Motion for Summary Judgment
5 versus Counter Defendant Red Rock Financial Services and
6 Cross-Defendant Nationstar Mortgage and Wells Fargo, and Motion
7 for Punitive Damages and Sanctions. And it is Defendant Nona
8 Tobin's Amended Motion for an Order to Distribute Interpleaded
9 Proceeds, and Red Rock Financial Services' Motion to Dismiss
10 Counterclaim and Petition for Sanctions, as well as a joinder.

11 To the extent that -- let's do the Motion to Dismiss first.

12 MR. THOMSON: So, Your Honor, I apologize for
13 interrupting the order.

14 Ms. Tobin did file her Motion to Distribute before the
15 other two motions were filed. And so I just want to note for the
16 record that we would argue that she should be able to hear -- you
17 should be able to hear those -- that motion first.

18 The docket says 4/12/21 Motion for Distribution. And
19 then 4/15, Ms. Tobin filed a Motion for Summary Judgment. And
20 then on 4/16, the Motion to Dismiss was filed. That's the order on
21 the docket.

22 THE COURT: I understand, Mr. Thomson. But to the
23 extent that there have been two other lawsuits filed in this case, and
24 we have issues of claim preclusion in this case, I think that the
25 Court's potential decision on some of this may moot out some of

1 the rest of this. But let me just ask.

2 Mr. Scow, Mr. Lachman, would you agree that we still
3 have the issue of the interpled proceeds no matter what?

4 MR. SCOW: Your Honor, this is Steven Scow.

5 And this case was started as an interpleader.

6 THE COURT: Right.

7 MR. SCOW: And so at the end of the day, we will be left
8 with that question. But I think Your Honor's decision to take things
9 out of order does make sense, because Ms. Tobin's motion seeking
10 to have the distribution of those proceeds, that was filed first. But
11 she's also filed claims wherein she is again attacking the validity of
12 the underlying sale that was done back in 2014.

13 THE COURT: Right.

14 MR. SCOW: And so those requests don't work together.
15 So if we're going to ask for funds to be issued, but then still seek to
16 invalidate the sale, I mean, those two arguments just simply don't
17 work.

18 THE COURT: Right.

19 MR. SCOW: It would -- the Court would almost have to
20 wait on their request to distribute the proceeds until after there was
21 a determination on whether or not the validity of the sale was
22 properly heard a few times before.

23 THE COURT: Right. Because if the sale doesn't happen
24 and the sale is somehow unwound, then there are no proceeds,
25 correct?

1 MR. SCOW: Yes, Your Honor. Under the statute NRS 116,
2 the effect of the sale is terminated and so there are no excess
3 proceeds. Exactly right.

4 THE COURT: Okay. So that's the reason why,
5 Mr. Thomson, that we are going to hear the Motion to Dismiss first,
6 because I think that that makes some sense. So the Court is using
7 its discretion to take these out of order.

8 Mr. Scow, are you going to -- who's going to be arguing
9 the Motion to Dismiss?

10 MR. SCOW: Your Honor, we -- my office filed that. I'm
11 planning to argue --

12 THE COURT: Okay.

13 MR. SCOW: -- and Mr. Lachman -- they filed a joinder --

14 THE COURT: Right.

15 MR. SCOW: -- so they may have separate comments.

16 THE COURT: Okay. That's fine. You may proceed.

17 MR. SCOW: All right. And -- well, thank you, Your Honor.

18 And I hope you don't mind, but at the outset, I would just
19 like to ask if Your Honor has any questions. I noted earlier that you
20 had four pages of notes, and I don't want to rehash things that are
21 already clear in your mind. But, therefore, I wanted to see if you
22 had questions for me first.

23 THE COURT: No, I really don't. I mean, to me, it seems
24 like we have a straight-up claim preclusion issue here. And so --
25 well, let me just say this: The Court's original -- do you all just want

1 me to tell you what my inclination was? And then --

2 MR. SCOW: That's fine, Your Honor. I just don't want to
3 ask you to waste time and hear me out if you've already read
4 everything, which I understand you have. So I think it's helpful for
5 the parties if we can hear what your inclination is. That's helpful.

6 THE COURT: Mr. Thomson, do you want to hear my
7 inclinations or do you all want to make argument?

8 MR. THOMSON: Your Honor, I'm prepared to make
9 arguments. Again, this is kind of an unusual situation where all the
10 briefing was done by a pro per defendant in this case and
11 counter-claimant. And yet there are some major problems with
12 some of the arguments.

13 We disagree, first of all, that you can't say, on the one
14 hand, distribute the funds if you're still disputing the sale. So we
15 disagree with that proposition. And the main reason is, is that the
16 statute says you're supposed to distribute the funds after the sale.
17 Six years the whole reason that you have the interpleader statutes
18 is because the funds are distributed.

19 So to make an argument that the funds couldn't be
20 distributed because there were claims and disputed claims to the
21 title and the funds, that's the whole purpose that you have an
22 interpleader action.

23 I don't think we would have all these issues of supposed
24 claim preclusion if the funds had been distributed as was the duty
25 six years ago. So we, you know, these issues were raised and we

1 believe this complaint is even frivolous. The money should have
2 just gone right to our client, because there's no other recorded
3 interest or person under the statute that would take these excess
4 proceeds. We have release of liens from all the people that were
5 named in the complaint as defendants, as interested parties, except
6 for Ms. Tobin. And we have record of request after request,
7 including other lawsuits, that were, in our mind, we've appealed
8 them, because it's wrongfully dismissed, when we asked that the
9 proceeds be distributed in a prior lawsuit, and yet the judge
10 dismissed that case, even though that was a new issue with a
11 current pending matter that had not been resolved.

12 So, again, we have -- there's a lot of problems, we believe,
13 with these prior rulings, and it's not simple enough to just say the
14 claim preclusions, issue preclusion, you know, there's allegations of
15 fraud on the Court. And even just the issue of excess proceeds
16 taking six years is evidence enough of a red flag that Your Honor
17 could, if she so chose to do so, give Ms. Tobin her day in court to
18 finally have evidence presented as to what really happened with
19 this foreclosure sale.

20 So that's my -- sorry, it's not a short yes-or-no answer.
21 But that's my answer to Your Honor's question.

22 THE COURT: All right. Seeing, Mr. Scow, that
23 Mr. Thomson wants to argue, we're going to go ahead and create a
24 record. So make your argument, Mr. Scow.

25 MR. SCOW: Okay. Thank you, Your Honor.

1 As the Court is aware from the briefs and the various
2 dockets and prior matters, there was a foreclosure sale that
3 occurred, this was an HOA foreclosure sale that occurred way back
4 in August of 2014. It was August 15, 2014.

5 And thereafter, much like many of the hundreds, if not
6 thousands and thousands of cases that have been filed in this
7 district, there was a dispute between the purchaser of the property
8 and the lender and the impact of this HOA foreclosure sale,
9 whether -- and the question being whether or not the association's
10 foreclosure sale wiped out the bank's first-position lien.

11 And so that -- while that case was ongoing, Ms. Tobin,
12 who is a party now in this case, she filed and interpleaded into that
13 prior matter in January of 2017.

14 And, Your Honor, when this initial case was first lodged,
15 there's a very significant question about where the excess proceeds
16 go. The excess proceeds have to go in order of priority. And so the
17 issue between the bank and the purchaser at the August 2014
18 foreclosure sale really precludes any distribution, because there's
19 complete uncertainty. And there's uncertainty whether or not the
20 sale would even be upheld. And when Ms. Tobin joined that suit
21 in 2017, she vigorously attacked the merits of the sale and was
22 urging the Court to set that sale aside.

23 There was a motion that was filed for summary judgment
24 by the association and -- on April 17, I believe that was of 2019, the
25 Court found in favor of the association, finding that the foreclosure

1 sale was done properly. And after that finding, there was a full trial
2 on the merits. And it ends up that all other claims were dismissed.
3 And those claims were dismissed in June of 2019. Thereafter,
4 Ms. Tobin, unhappy with that decision, she filed an appeal.

5 And I wanted to note, Your Honor, that this first action
6 where she was involved, Ms. Tobin filed it in her capacity as the
7 trustee of the trust. There was a trust that was the owner of this
8 property initially, and Ms. Tobin was not the owner. So she was
9 bringing this in her capacity as a trustee.

10 So after the full trial, after the dismissal of claims, there
11 was an appeal. I believe that appeal has been resolved with an
12 affirmation of the lower court's decision. Ms. Tobin then, just a few
13 weeks after the first case was dismissed, after the judge made the
14 decision that she did, Ms. Tobin, in her individual capacity, filed a
15 brand new case. And she made the exact same claims against the
16 exact same parties. And that case was dismissed on
17 December 3rd, 2020, based on claim preclusion.

18 And it's important to note that in the first case, Red Rock
19 was not a party to the action and the dispute between the bank and
20 the purchaser. Ms. Tobin did file a motion seeking to bring a
21 third-party complaint against Red Rock, and I believe, Your Honor,
22 even against me personally. And she never did serve that -- those
23 claims.

24 But nonetheless, here we are in Case 2. And, again, this
25 was a few weeks after the first case was dismissed, same claims.

1 We filed a Motion to Dismiss based on claim preclusion. And on
2 December 3rd, 2020, the Court, after hearing arguments, found that
3 nonmutual claim preclusion applied.

4 And the Court applied that doctrine, because we had the
5 same party bringing claims. Ms. Tobin was in privity with herself
6 and her alleged position as trustee of the trust. There was a final
7 judgment in the first action, and the second case is based on the
8 same facts. It's the same claims.

9 And so after the Court dismissed all those claims, this is
10 Case 2, on December 3rd, 2020, Ms. Tobin again appealed. And
11 that appeal is now pending.

12 After the second attempt to invalidate the sale was shut
13 down, then Red Rock, we decided that was the time, then, to
14 interplead the funds so the Court could make a decision on who is
15 entitled to the funds per the statute.

16 And prior to that, there was a dispute, an ongoing dispute
17 that Ms. Tobin is the one that was prosecuting regarding the
18 validity of the sale. Well, as Your Honor's familiar, that interpleader
19 case is the one before you now, and Ms. Tobin is again bringing the
20 exact types of claims against the same parties. And she is again
21 attacking the 2014 sale.

22 And at the same time, I understand she has filed a
23 demand for these proceeds. But there is now the question of
24 whether or not the sale is going to be unwound again, which, Your
25 Honor, we completely disagree with that. And we believe all of her

1 claims, except for her claim -- you know, she may have a claim to
2 those proceeds, but that's for the Court to decide. But we're asking
3 that all of her counterclaims be dismissed.

4 And they should be dismissed, clearly, on claim
5 preclusion. And I hate to say it's claim preclusion on steroids, but it
6 is, because her claims have already been dismissed twice. We've
7 got a final judgment, we've got the same parties, we've got the
8 same claims.

9 And her counsel may try to argue that, hey, there's a lot of
10 other complexities and issues. Well, those complexities were
11 issues that happened in the prior two cases. We've already got two
12 matters and Ms. Tobin has already filed numerous complaints
13 against attorneys, she's filed complaints against the judges, she's
14 filed complaints against everybody. Those rulings have been
15 finalized. The first matter to have been concluded by appeal, the
16 second one is pending appeal. But, obviously, she isn't -- she's not
17 happy with those rulings and so she continues to litigate and wants
18 to litigate these same claims again.

19 And, Your Honor, even if claim preclusion didn't apply,
20 each one of her claims should be dismissed because of the statute
21 of limitations. If the sale happened in August of 2014, the longest
22 statute of limitation we have in the state is six years. And she
23 brought her claims seven years later. So each claim that she's
24 brought, which she has brought before, should be dismissed on the
25 statute of limitations grounds.

1 And if that wasn't enough, Your Honor, we can look at the
2 details of each of her claims. And she's failed to plead -- properly
3 plead each and every one of those claims. So we've got claim
4 preclusion times two. We've got statute of limitations, which is an
5 absolute bar to each of her claims. And we've got a failure to
6 properly plead. And, Your Honor, these claims should be stricken
7 as time-barred.

8 And I do note, again, that the remaining issue should be
9 whether or not Ms. Tobin is entitled to the excess proceeds. And
10 that's something that Red Rock isn't even in the position to opine
11 on, and that's something for the Court to decide. I understand that
12 the other parties even reached out and offered to agree that she
13 would be entitled to the remaining funds, but she's intent on
14 litigating further.

15 So, Your Honor, that's the gist of it. I know you're already
16 familiar with it, and so I'll ask again if you have any questions or
17 anything that you'd like me to clarify, I'm happy to do that.

18 THE COURT: I have one question for you, Mr. Scow. As
19 far as the appeal that's pending, has that been fully briefed in the
20 Supreme Court?

21 MR. SCOW: No, Your Honor. The second case, there
22 have been numerous extensions requested and I believe the
23 opening briefs are going to be due next month. I don't recall the
24 exact date, though. But that case has not been fully briefed. It's
25 limping along.

1 THE COURT: Okay. So I guess my question is: Is it the
2 claims in the second case are exactly the same claims, and those
3 are up on appeal -- I mean --

4 Mr. Thomson, I see you shaking your head, and the Court
5 will note, so that you can stop shaking your head, that there is an
6 additional claim of racketeering in this case. But other than that,
7 the claims are the same. There's one additional cause of action,
8 from what I could see.

9 But I guess my question is, is that if the claims or the
10 majority of claims, I will say, are the same in this case as the ones
11 that are in the second case, then don't we have an issue with the
12 fact that -- I mean, isn't this equivalent to forum shopping at this
13 point?

14 MR. SCOW: Well, Your Honor, it's somewhat similar to
15 forum shopping. I guess in my mind, when I think of forum
16 shopping, I think of filing in a different jurisdiction. This is in the
17 exact same jurisdiction. So, yes, Your Honor, I --

18 THE COURT: I know, but to the extent that she's trying to
19 get a different decision from a different judge, I'm looking at it from
20 that perspective.

21 MR. SCOW: Yes. Yes, I -- and, Your Honor, I agree with
22 that. And that's the whole reason that we have claim preclusion --

23 THE COURT: Right.

24 MR. SCOW: -- so that we don't have to deal with the same
25 claims over and over.

1 THE COURT: Right. All right.

2 MR. SCOW: Thanks.

3 MR. SCOW: Thanks.

4 THE COURT: Let me hear from you, Mr. Thomson.

5 MR. THOMSON: And, Your Honor, the reason I was just
6 shaking my head is it's not true that the statement made by
7 counsel, respectfully, is the exact same claims with the exact same
8 parties. That's not true, the record will show that. I'll either prove
9 to the Court that they're not the exact same claims and they're not
10 the exact same parties.

11 The parties admit there was a claim in the second case for
12 unjust enrichment to distribute the funds. So just on that
13 admission, they're not exactly the same.

14 THE COURT: Well --

15 MR. THOMSON: The second --

16 THE COURT: -- Mr. Thomson --

17 MR. THOMSON: The second --

18 THE COURT: -- let me just say this, because I've outlined.
19 I have all of the four complaints sitting right here that I've looked at.
20 Let me just say that -- and so that you can be assured that I've
21 looked at this.

22 The causes of action in the first case were quiet title and
23 equitable relief, fraudulent reconveyance, unjust enrichment, civil
24 conspiracy, and preliminary and permanent injunction.

25 The causes of action in the second case were quiet title,

1 unjust enrichment, and declaratory relief.

2 In this third case, we have interpleader, unjust
3 enrichment, fraud, and racketeering.

4 So to the extent that unjust enrichment was the same in
5 all three cases, that has been brought. To the extent that you have,
6 and I already mentioned, you have a racketeering claim and you
7 have a fraud claim. So I guess there's two other causes of action
8 that are fraud and racketeering that weren't previously brought.

9 But the equitable relief, to the extent that quiet title and
10 equitable relief in the first case, equitable relief could, in fact, be the
11 interpleader. And I don't think that there's any statement by either
12 Mr. Lachman or Mr. Scow as to the interpleader will stay even if the
13 other causes of action that she has brought would go away.

14 So that's -- I'll just say that going forward.

15 And now you may go ahead, Mr. Thomson.

16 MR. THOMSON: Thank you. Thank you, Your Honor.

17 THE COURT: No problem.

18 MR. THOMSON: It just proved my point, that they're not
19 exactly the same. That's my only point. And Your Honor just made
20 it. There's different claims. Unjust enrichment is a cause of action,
21 but the claim within that was never for the proceeds to be
22 distributed until the second cause – the second action.

23 In addition, Nona Tobin tried to intervene as an individual
24 and assert her individual rights in the first brought case. And she
25 was not even allowed to participate in the trial. So it's really kind of

1 a sham to say that there was a full trial on the merits. People keep
2 saying that and writing that. That she did not participate in should
3 be not even a footnote, it should be in all bold and all caps.

4 To preserve her rights as an individual, not knowing what
5 was going to happen with the first appeal, she filed the second
6 case. Not to harass the parties, not to annoy the courts, not to be a
7 vexatious litigant. She did that because it's very clear from the
8 record in the first case that even though she was allowed to
9 intervene, she participated for months as an individual separate
10 from her capacity as a trustee of the trusts and on the property.
11 She was, at the last minute, excluded due to an ex parte hearing
12 that happened. She was not invited to that hearing, she was told it
13 would not happen. And the parties went ahead with it with the
14 judge. And she was excluded and kicked out of the case as an
15 individual.

16 So, in order, logically, to make sure that her rights were
17 not expired and that she met the statute of limitations, the second
18 lawsuit was filed by her as an individual to litigate her claims. That
19 is the -- that issue, about whether or not she's an individual and
20 whether she was kicked out in the first case, those are appealable
21 issues that are up on appeal and they have not been breached.

22 There's not forum shopping, Your Honor. We've made
23 demand for this money and these claims are compulsory. Her
24 counter claims and -- are compulsory in this action.

25 If we're going to talk about the funds and why they were

1 not distributed, even though there were release of liens, the last
2 release was in 2017, so maybe we don't move back to 2014, but the
3 last disputed lien, besides Nona Tobin, was in 2017. It's a matter of
4 public record, those are recorded releases with the Clark County
5 Recorder's Office. I can give you the dates of when those
6 happened.

7 The -- Wells Fargo released their lien on 3/12/15.
8 Nationstar released their lien and any claim to the money on 6/3/19,
9 and Republic Services released their lien 3/30/17.

10 So that is why Ms. Tobin has brought these claims. She's
11 not shopping for any forum.

12 And, as far as the statute of limitations, fraud,
13 racketeering, and unjust enrichment, this is a different unjust
14 enrichment claim. If we read the facts of -- she did pretty well for a
15 pro se litigant -- if we read the facts of the unjust enrichment, they
16 relate to keeping that money for all of that time. It's a different
17 claim than the prior claim.

18 And, number two, fraud and racketeering, she discovered
19 those -- the facts that would give rise to both of those claims after.
20 And we know that under the discovery rule, that the statute of
21 limitation does not run until the facts, which give rise to the cause
22 of action, are discovered.

23 And so that's why those are there.

24 THE COURT: Well, knew or should have known,
25 Mr. Thomson. It's not just discovered; it's knew or should have

1 known.

2 MR. THOMSON: Understood.

3 THE COURT: So when is your argument that she knew or
4 should have known of those claims?

5 MR. THOMSON: So, Your Honor, after the first claim was
6 dismissed, she was still -- as I stated, still very much concerned that
7 her individual rights were not heard, and that's why she filed the
8 second one. So when the second one was dismissed, that's when
9 she knew or should have known that her claims for fraud,
10 racketeering, and these other claims that she's put in here for
11 cross-claims, that's when those facts arose.

12 Until that time, she was uncertain of her standing before
13 the Court, especially as an individual and sole beneficiary of this
14 trust. And beneficiary is not the same as a trustee. And so her
15 bringing those claims as an individual, as sole beneficiary of the
16 trust that we received not only the excess proceeds, but would then
17 have standing -- which was denied her -- have standing to argue
18 and present evidence at the trial, wasn't allowed that full and fair
19 opportunity to litigate. And again, that's why she brought the
20 second one as an individual.

21 We disagree with that -- the Court's ruling in that case.
22 We believe that there's no theory where an individual who tries to
23 participate in the trial should be barred by claim or issue preclusion
24 from bringing those claims as an individual.

25 So those are the theories, Your Honor. And I know you're

1 well-versed in this. We're just trying to make a record. And Nona
2 did hire me to make these arguments on her behalf. So thank you
3 for allowing that.

4 THE COURT: Not a problem. The question that I have,
5 though, and what's -- here's what's troubling me.

6 And, Mr. Lachman, I'll allow you to make your record in a
7 moment here.

8 But here's what is troubling me, is to the extent that this is
9 up in the court of appeals right now, if the court of appeals makes a
10 decision that the lower court got it wrong, then the -- then you
11 would, essentially, have dual track complaints on claims that arise
12 out of the same issues being handled in two different courtrooms,
13 which I don't think works.

14 And to the extent that the second case was a quiet title,
15 unjust enrichment, and declaratory relief, I mean, I know that we've
16 got this third case that have claims for fraud and racketeering.
17 Whether or not those survive just based on the allegations, I don't --
18 I'm not going to make that decision right now. I'm going to take a
19 look at it again.

20 But to the extent that the other claims are similar as to
21 what's going on in the second case, my inclination on this is to wait
22 and see what the Supreme Court does.

23 So, Mr. Lachman, why don't you weigh in, and then I'm
24 going to ask Mr. Scow. And if you can address that issue as you
25 weigh in on the other issues, Mr. Lachman, I'd appreciate it. But

1 then I'm going to have Mr. Scow weigh in and Mr. Thomson weigh
2 in on what is concerning to the Court right now. Because I don't
3 want to turn this into an even bigger rodeo than it already is.

4 MR. LACHMAN: Yes, Your Honor. Scott Lachman for
5 Wells Fargo and Nationstar for the record.

6 There are actually two appeals that this Court should be
7 aware of. One is the appeal that -- from the second case that
8 Mr. Scow raised. The second is a case involving interpleader funds.
9 And it's a case called *Thornburg*. And it's Case Number 80111.
10 And that's a case in [indiscernible; audio cut out] million dollars of
11 excess proceeds.

12 And in that case, the issue is who is entitled to the funds,
13 the borrower or the bank? And when should the statute be read?
14 Should it be read at the time of the foreclosure sale? Should it be
15 read at the time of the sale? And that appeal is fully briefed,
16 awaiting decision.

17 Like Mr. Scow said, the second -- the appeal from the
18 second action is pending briefing. The opening brief is due
19 August 26. So briefing will likely be done close to the end of the
20 year, if not early in the year.

21 We agree with Mr. Scow that to the extent Ms. Tobin
22 alleges that the sale should be void, whether in the first action,
23 second action, third action, she's not entitled to proceeds if she
24 thinks the sale should be void.

25 THE COURT: Right.

1 MR. LACHMAN: And to the extent that this Court does
2 agree that she is entitled to proceeds, if the sale -- if she believes
3 that the sale is void, then perhaps the Court stays -- orders
4 proceeds to Ms. Tobin, but stays distribution of those proceeds
5 until there is -- until the second case is over.

6 Going to the merits of the Motion to Dismiss, we agree
7 with Mr. Scow and Red Rock that this case is claim precluded. It
8 needs the three factors. There have been two final judgments. The
9 subsequent action is based on the same claims or any part of them
10 that were or could have been brought in the first action. That's the
11 magic language, could have been brought.

12 And then there's also privity between the parties. And to
13 the extent there's not privity under the *Waddell versus Stewart*
14 case, Ms. Tobin has no good reason for failing to include in those
15 first or second actions.

16 What -- the bank's request is that this Court dismiss the
17 cross-claims against the two banks. Certify that judgment is final
18 under 54(b), so that that can be appealed. Because that's -- the
19 cross-claims and counterclaims against Red Rock are completely
20 separate from interpleader. And then stay interpleader action,
21 pending the second case, and perhaps the *Thornburg* appeal.

22 And if this Court -- and then the only other thing I'd like to
23 address is that to the extent that the new fraud racketeering claims
24 are valid, maybe they're valid against Red Rock, perhaps, for things
25 they did with the interpleader money, keeping them in Red Rock's

1 safe for the past six years. But those claims have nothing to do
2 with Nationstar and Wells Fargo, and we've had nothing to do with
3 the interpleader funds over the past six, seven years.

4 So, again, this case is unmeritorious, it should be barred
5 on a claim preclusion, it should be barred by statute of limitations
6 on the merits. This is just a third attempt by Ms. Tobin to continue
7 litigating against the banks.

8 THE COURT: Okay. Mr. Scow, want to weigh in?

9 MR. SCOW: Sure. Your Honor, going to your question
10 about, you know, the impact of the second appeal, if I understood
11 you right, because you asked, you know, what should the Court do,
12 given that second appeal. And the way I think about it is, you know,
13 we've heard arguments from Nona's counsel and he's essentially
14 rearguing Cases 1 and 2. I mean, that's just further proof that we
15 should have claim preclusion here.

16 But, Your Honor, if there was, perhaps, a reversal, and
17 maybe that's what Your Honor is thinking about, what would
18 happen if there's a reversal by the appellate court in Case 2? Well,
19 then that means that the case is remanded and proceedings would
20 continue, and she would have her day in court as part of that action.

21 What shouldn't happen is, well, you know what, that one's
22 pending, we're not sure what's going to happen, so now we're
23 going to file a third action, we're going to bring these same types of
24 claims again. And that's just -- that's not how it works.

25 Your Honor mentioned forum shopping, that's what it is. I

1 mean, these were claims she could have brought before and didn't.
2 And these are claims that aren't properly pled, they're barred by
3 claim preclusion, they're barred by the statute of limitations. And
4 Your Honor properly pointed out, it's when you knew or should
5 have known.

6 And our Supreme Court and -- as well as the federal
7 courts have pointed to the date of the sale as things -- that's when
8 it's going to give party notice -- parties notice of what's going on.
9 Because there's been a sale that would cause you to look at what's
10 happening with this property.

11 And I -- Mr. Thomson brought up the fact that, as he was
12 rearguing case 1, that Ms. Tobin wasn't allowed to appear in her
13 individual capacity. I was only bringing up the fact that she
14 interpled in her capacity as trustee. But she was there in her
15 capacity as trustee, it was still Nona Tobin.

16 So it's -- and it's a difficult position for her, because you're
17 not allowed to keep litigating the same types of claims over and
18 over. And, Your Honor, that's why our motion should be granted.
19 But then I agree with what Mr. Lachman said, we can keep the
20 interpleader aspect of it, because that has to be decided by this
21 Court. That's the purpose of the interpleader.

22 And Ms. Tobin may be entitled to those funds. I don't
23 know. I mean, I can't make that conclusion.

24 Your Honor, any other questions for me? I hope I
25 answered your question.

1 THE COURT: You did. I just -- I guess I would like to know
2 what your thought process is of me simply staying this whole thing
3 until such time as the court of appeals comes back. Because,
4 arguably, that would have been -- if it gets remanded -- so let's just
5 play this out for a second here. If it gets remanded, then to the
6 extent that the fraud and racketeering claims are even viable, and
7 based on the statute of limitations, as well as how they've been
8 pled, I don't know if there's enough to rise to the level of the 9B that
9 you would be required under the fraud allegations. I don't know if
10 there's enough there. I want to take a second look at that.

11 But that being said, arguably, those causes of action -- this
12 whole entire thing could be consolidated into the other case is
13 probably how that would play out if I simply were to stay this and
14 not dismiss it. Because, arguably, then if I do dismiss it, and the
15 other one were to get reversed, she could, at that point, potentially
16 move to amend it in that case. Would you agree with me on that?

17 MR. SCOW: Absolutely agree.

18 THE COURT: Okay.

19 MR. SCOW: Absolutely agree.

20 THE COURT: So maybe what we do for purposes here is
21 we simply stay this whole kit and kaboodle until such time as the
22 court of appeals decides what it's going to do on the second case,
23 other than the cross-claims that have been done against Nationstar
24 and Wells Fargo, as Mr. Lachman indicated. Is that a resolution at
25 this point or do we need -- do I need to take it a step further and

1 make a ruling on this case at this juncture?

2 MR. SCOW: And, I guess, Your Honor, my comment
3 would be on her claims, I think it is proper and, actually,
4 appropriate to make a ruling on those claims. Because if the
5 resulting Case 2 is a reversal and remand, then just like Your Honor
6 said, she can amend it and make these other claims there.

7 THE COURT: Okay.

8 MR. SCOW: But it's procedurally awkward and
9 inappropriate and improper that you would just file successive
10 cases and let's wait and see what happens in another matter.
11 Because an appeal of itself does not impact the Doctrine of Claim
12 Preclusion. And there's still been a final judgment.

13 THE COURT: Right.

14 MR. SCOW: So, yes, it's on appeal. But if there's a
15 reversal, then what happens is that matter comes back to life and
16 the parties then have to litigate. And so Case 2 could be
17 resurrected, and Case 2 would then proceed. That's fine, I
18 acknowledge that could happen.

19 But Case 3, there's no reason to have the same claims
20 here in this matter when they've already been dismissed a couple
21 of times before.

22 And -- except, Your Honor, again, I keep coming back to
23 the interpleader issue. That is the reason this case was brought, so
24 that that issue could be determined. So that one has to remain.
25 And that one could be stayed, depending what happens in Case 2.

1 And that makes sense to me, Your Honor, because, you know,
2 there's a chance that Case 2 is resurrected and there's a reversal.
3 And so then -- now we've got a question again, was the sale valid?
4 That could happen.

5 THE COURT: All right. Mr. Thomson.

6 MR. THOMSON: Yes. I'll just keep it to the -- Your
7 Honor's question about wait and see; is that correct?

8 THE COURT: Yes.

9 MR. THOMSON: Okay. So I envision the situation, if the
10 whole thing is not stayed, including the cross-claims and the
11 counterclaims, where another appeal could be filed, and that would
12 complicate things worse and cause more attorneys' fees to be
13 spent. If this entire action is stayed, you know, without prejudice to
14 all the parties, I don't think there would be any harm to the parties
15 as we wait to see what happens in this second appeal.

16 And so I would say if we're going to stay, let's either stay
17 the whole thing or rule on the whole thing, but don't piecemeal it.
18 Because what do we do with Nona's appealable rights? If she lets
19 them go and then they say we can simply amend the second action
20 to include those claims, there could be some issues there with, you
21 know, finality and not appealing those issues.

22 Since we believe, even though there's been argument
23 made that they're the same claims, we believe they are different
24 claims and that they were discovered after the fact.

25 Just another point on that. Red Rock, who brought this

1 interpleader, was not a party in the first case. So they've only been
2 parties in the second and this one.

3 THE COURT: Which is, I think, the reason why both
4 Mr. Lachman and Mr. Scow are saying, at least -- correct me if I'm
5 wrong, gentlemen -- that -- why the interpleader stays; because
6 they weren't a party to the other lawsuit.

7 MR. THOMSON: Well, they were in the second one,
8 where [indiscernible; audio distortion] that case, second case was
9 dismissed, and that's the one that's on appeal.

10 THE COURT: Okay. Mr. Scow, Mr. Lachman, anything
11 else?

12 MR. LACHMAN: Your Honor, this is Scott Lachman again.

13 And going back to nonmutual claim preclusion under the
14 *Waddell versus Stewart* case, the third factor is whether there's
15 privity. And if Plaintiff can't provide a good reason for failing to
16 include a new defendant in the previous action, she clearly could
17 have included Red Rock in the first action. Claim preclusion
18 applies -- again, I'm going to put that out there, claim preclusion,
19 claim preclusion, claim preclusion. Okay.

20 The final issue that this Court must decide is whether to
21 stay. I believe staying the interpleader portion of this lawsuit is
22 appropriate, given the second appeal. But staying the cross-claims
23 and the counterclaims against Red Rock and the banks is
24 inappropriate. Those claims should be dismissed and the Court
25 should grant 54(b) relief. If Ms. Tobin believes those claims have

1 any merit, go ahead and appeal them. Create a third appeal on
2 claim preclusion. I mean, and perhaps those cases would be
3 consolidated at some point.

4 But those cases [indiscernible; audio distortion] for
5 another year, a year or two, given the backlog at the Nevada
6 Supreme Court and the court of appeals.

7 THE COURT: Well, I guess the only thing that I'm
8 considering, Mr. Lachman, in relation to that is what harm does it
9 do at this juncture to stay everything? Because, listen, if I don't stay
10 it and I rule in your favor, arguably, we're going to have another
11 appeal that's instantly filed and then you're going to have two
12 appeals going at the same time, attorneys spending fees
13 unnecessarily, and potentially different decisions being made.

14 So I guess my thought process is, and trust me, I don't
15 know whether or not this is the right way to go, but I'm just talking
16 this out with you guys. I'm going to issue a written opinion on it.
17 But what harm is there at this juncture to simply stay everything
18 and not continue to run up fees and costs pending the outcome of
19 that second appeal?

20 MR. LACHMAN: Your Honor, again, this is Scott
21 Lachman.

22 The fee -- Ms. Tobin -- I mean, I don't know Ms. Tobin, but
23 I can assume from her prior litigious past that she intends to appeal
24 this third case.

25 THE COURT: Right.

1 MR. LACHMAN: So we're going to have an appeal
2 regardless.

3 Leaving the cross-claims and the counterclaims pending
4 will simply just delay the inevitable. We're going to have an appeal,
5 it's just going to keep these cases on our books for longer than they
6 need to be. The longer these cases stay on the books, I don't know
7 how Mr. Scow and Red Rock, but I can tell you with my bank
8 clients, I have to provide my clients updates every single month.
9 So every month I have to inform my client this case is stayed, this
10 case is stayed. And those fees add up every single month.

11 THE COURT: All right.

12 MR. SCOW: And, Your Honor, if I may.

13 THE COURT: You may.

14 MR. SCOW: That was the similar concern that I was going
15 to bring up, because we have that same issue. And I also wanted to
16 add, you know, this is the reason, what Your Honor just talked
17 about, the confusion in all of these matters and the appeals, that's
18 why we have claim preclusion.

19 THE COURT: Right.

20 MR. SCOW: And so this doesn't happen. It's almost like,
21 my kids were showing me that show, *Loki*. I don't know if you've
22 seen it, but the time continuum. And so we've got the same claims
23 that are tried and then there's an appeal. You've got the same
24 claims that are tried, then there's appeal. It creates this kind of odd
25 time warp and it's odd. Each claim, each case should stand in and

1 of itself. And so if we were going to wait on Case 3 to see what
2 happens in Case 2, I guess we're just putting a pause on what's
3 going to happen. It's inevitable there will be another appeal, that's
4 how she has carried herself on before.

5 And, again, the outcome in Case 2 really shouldn't impact
6 this case at all, because if Case 2 is affirmed, okay. Then Case 3 is
7 reversed, well, then she's free to bring those claims and pursue
8 them as part of Case 2.

9 And so it is possible that then you have multiple appeals
10 happening at the same time, but there's going to be an appeal
11 regardless. And so I hate to reference *Loki*, Your Honor, during my
12 oral arguments, but that's -- you know, that's what happens, we've
13 got this time continuum issue when parties keep bringing the same
14 claims.

15 THE COURT: I guess the only thing that I was thinking
16 about is, you know, to the extent that you would really have claim
17 preclusion potentially, if the Court -- if the Supreme Court said
18 nope, we're affirming, then you really have claim preclusion. It
19 might make the decision here even stronger, I guess, if that's the
20 way that the Court were to go and find that there was claim
21 preclusion. So that's the only thing that I was --

22 MR. SCOW: And, Your Honor, I --

23 THE COURT: That's the only thing I was thinking.

24 MR. SCOW: Yeah. And I appreciate that thought. And
25 there -- I see the reasoning there. The Supreme Court actually

1 commented on that. We cited it in our brief that the appeal and
2 judgment does not negate the judgment's finality for claim
3 preclusion purposes. That was the *Edwards*-- I'm going to
4 mispronounce the last name, but *Edwards v Ghandour* case
5 from 2007.

6 THE COURT: Yeah.

7 MR. SCOW: They just had a -- so, I mean -- but I see
8 exactly what the Court is saying on that and it does strengthen
9 things. But again, if there was a reversal, then we don't even have
10 to worry about Case 3 at all, it should still be dismissed, because
11 now the claim should still be heard as part of Case 2.

12 THE COURT: Part of Case 2. All right.

13 MR. SCOW: Yeah.

14 THE COURT: I'm going to issue a written opinion on this.
15 Anything else from anybody at this juncture?

16 MR. LACHMAN: Your Honor, this is Scott Lachman.

17 So the only other thing that I'm thinking is we've heard
18 here that Ms. Tobin has said that she hasn't had an opportunity to
19 present her case, and that's what they're saying is part of the first
20 case. I believe Ms. Tobin's on the line. Well, so that she has her full
21 day in court, if she has anything to add, with this Court's
22 indulgence, I would submit that Ms. Tobin should -- and, again, if
23 her attorney agrees, if she has anything to add, put it on the record
24 so that we don't have a fourth case or a fifth case.

25 THE COURT: The problem is, Mr. Lachman, she's

1 represented by counsel now. So, technically, unless she's asking to
2 testify as a witness, technically, she can't.

3 Mr. Thomson?

4 MR. THOMSON: I'm sorry, my Internet was breaking up
5 when he was talking and also Your Honor.

6 THE COURT: Okay.

7 MR. THOMSON: What -- I heard Mr. Lachman say that
8 maybe he'd like to hear from Nona Tobin. And then I did not hear
9 Your Honor's reply.

10 THE COURT: Well, what I said was, is to the extent that
11 she's represented by counsel, I don't know if it would be
12 appropriate for her to speak unless she was speaking for the
13 purposes of creating an evidentiary record or was being called as a
14 witness.

15 But, Mr. Thomson, if you want to let your client speak, I
16 will be willing to listen to what she has to say.

17 MR. THOMSON: So, Your Honor, I -- again, going back to
18 our intermission before we started arguing, for purpose of the
19 record, we were under the impression, based on the order and
20 Notice of Entry of order and the record that this would be an
21 evidentiary hearing. We prepared for an evidentiary hearing the
22 best that we could via BlueJeans. We understand there may have
23 been an issue with master calendar.

24 However, unless we're going to put on our full testimony
25 and she wanted to do in the first case, but was denied that

1 opportunity, I don't think it's appropriate to piecemeal.
2 Mr. Lachman can certainly depose her if he'd like or we can discuss
3 that if he wants to get on the record all of her arguments. But she's
4 never had that opportunity.

5 I just want to also say that, you know, here we've said that
6 the likely outcome if the second appeal is remanded is that these
7 two actions would be consolidated. I agree with that.

8 And in response to Your Honor's question about what
9 harm would come from staying the entire matter, the only response
10 that we have is that you keep it on the books. Well, I -- this is
11 my 31st year of practice. I have clients where I have to status the
12 file and report to them. And when I say it's been stayed until this
13 other matter, then my secretary clicks a button and says stayed,
14 stayed, stayed, stayed. It's continued to be stayed. There's no
15 attorney time. It's very negligible.

16 So I like the solution. I think a lot of what Nona has done
17 with the second and also her counterclaims and cross-claims in this
18 action are because she doesn't want to lose out on her rights and
19 she feels like they've never been adjudicated, that she's not had her
20 day in court.

21 And so, you know, if that gets affirmed, then that sends a
22 strong message, the second appeal gets affirmed. If it gets
23 remanded, then we get to litigate, hopefully, finally, all of her
24 individual claims as we set forth.

25 And I wasn't aware of the *Thornburg* case, Your Honor.

1 And so I -- so that also, if it's on the issues and I have no reason to
2 believe that Mr. Lachman is misrepresenting the issues that are
3 there, I mean, then that might also shed some light not only on
4 these counterclaims and cross-claims and the second appeal case,
5 if it's remanded, would also shed light on the issues before the
6 Court relating to interpleader.

7 THE COURT: All right. Anything else from anybody?

8 MR. SCOW: Your Honor, thank you so much for your time
9 today. We know it's been a long morning. So thank you for all
10 your efforts.

11 MR. THOMSON: Thank you.

12 THE COURT: You're welcome.

13 I'm going to go ahead and issue a --

14 Clearly, I'll just say this, Mr. Thomson, just on the basis of
15 the record in and of itself, you know, your motion was a Motion for
16 Summary Judgment. The Court doesn't even need to, I think, even
17 weigh in on the fact that there would be genuine issues of material
18 fact here that would preclude summary judgment.

19 MR. THOMSON: And, Your Honor, I agree that it was
20 likely brought prematurely and by Nona not understanding
21 procedural rules.

22 THE COURT: Okay. So to the extent that the Motions to
23 Dismiss are still live, the Court -- for today, what the Court's going
24 to do, Mr. Thomson, is the Motion for Summary Judgment is going
25 to be denied. The Court finds that, just on the record in and of

1 itself, that there's genuine issues of fact here.

2 But the Court is going to issue a written opinion on the
3 Motion to Dismiss. And I think the parties both agree that even if I
4 were to grant the Motion to Dismiss, that the interpleader stays. So
5 that's -- so what's left for me to issue my written opinion on is
6 going to be the Motion to Dismiss. And I will issue a written
7 opinion on that.

8 Would everybody agree that that's accurate at this
9 juncture?

10 MR. SCOW: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. LACHMAN: Yes, Your Honor.

13 THE COURT: All right. Then matter's taken under
14 advisement and I will issue a written opinion. I will let you all know
15 that I might be -- this one's a little bit meaty, so it's going to take me
16 some time to do. So don't expect it within the next, you know,
17 week or so. It's going to take me a little bit of time to get to it.
18 Okay?

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MR. SCOW: No problem. Thank you so much, Your Honor.

MR. LACHMAN: Yes, Your Honor.

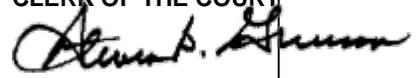
THE COURT: All right. Thank you. Have a good day, gentlemen.

[Proceeding concluded at 1:29 p.m.]

///

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches in the BlueJeans audio/video which resulted in audio distortion and/or audio cutting out completely were experienced and are reflected in the transcript.


Shawna Ortega, CET*562



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TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

RED ROCK FINANCIAL)
SERVICES,)
)
Plaintiff(s),)
)
vs.)
)
NONA TOBIN,)
)
Defendant(s).)

Case No. A-21-828840-C
Department VIII

BEFORE THE HONORABLE JESSICA K. PETERSON,
DISTRICT COURT JUDGE

TUESDAY, NOVEMBER 16, 2021

**TRANSCRIPT OF PROCEEDINGS RE:
DEFENDANT/COUNTERCLAIMANT'S MOTION FOR
RECONSIDERATION
(Via Audio Via BlueJeans)**

(Appearances on page 2.)

RECORDED BY: NANCY MALDONADO, COURT RECORDER

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APPEARANCES:

For the Plaintiff(s): STEVEN B. SCOW, ESQ.

For the Defendant(s) and
Cross-Claimant(s),
Nona Tobin: NONA TOBIN, PRO SE

For the Defendant(s)
Gordon B. Hansen Trust: SUZANNE E. CARVER, ESQ.

For the Defendant(s) and
Cross-Defendant(s),
Nationstar Mortgage LLC
and Wells Fargo, NA: LILITH XARA, ESQ.

1 **LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 16, 2021**

2 [Proceeding commenced at 8:52 a.m.]

3
4 THE COURT CLERK: Red Rock Financial Services versus
5 Nona Tobin.

6 MS. CARVER: Good morning, Your Honor. This is
7 Suzanne Carver, Bar Number 141689 on behalf of Nona Tobin. I
8 was -- I would request that you hear our Motion to Withdraw on an
9 OST basis, as there was no oppositions filed. And Ms. Tobin filed a
10 declaration in support of that on November 14th.

11 THE COURT: Good morning, Mr. Scow. I can see you.

12 Any objection to me dealing with --

13 MR. SCOW: Okay.

14 THE COURT: Any objection to me dealing with the Motion
15 to Withdraw first?

16 MR. SCOW: No, Your Honor.

17 MS. XARA: And good morning Your Honor. I just wanted
18 to make my appearance. Lilith Xara, Bar Number 13138, on behalf
19 of Nationstar and Wells Fargo.

20 THE COURT: Okay. Thank you, Ms. Xara. All right.

21 Any objection, Ms. Xara, to me dealing with the Motion to
22 Withdraw first?

23 MS. XARA: No, Your Honor.

24 THE COURT: All right. Okay. There was no opposition to
25 this. Ms. Tobin is in agreement that she wants to represent herself

1 in pro per. Ms. Carver, your motion will be granted.

2 MS. CARVER: Thank you, Your Honor.

3 Can I submit a motion -- an order to your directly?

4 THE COURT: Yes, you may, to my OIC, and I'll sign off on
5 it.

6 MS. CARVER: Thank you.

7 And then also, Your Honor, I believe Ms. Tobin needs to
8 have more than 15 minutes to discuss the Motion to Reconsider
9 that is on calendar for this morning.

10 THE COURT: Well, I just granted your Motion to
11 Withdraw. So guess what, Ms. Carver? You --

12 MS. CARVER: Okay. Thank you, Your Honor.

13 THE COURT: Yeah. She can make that representation
14 herself.

15 MS. CARVER: Thank you, Your Honor.

16 THE COURT: Thank you.

17 All right. This is Nona Tobin's Motion for Reconsideration
18 of the order that was filed on September 10th, 2021. The Court has
19 read and reviewed the Motion for Reconsideration.

20 Ms. Tobin, you have 15 minutes to argue or I can continue
21 this.

22 MS. TOBIN: Your Honor, this is Nona Tobin. Can you
23 hear me?

24 THE COURT: Yes, I can.

25 MS. TOBIN: Thank you.

1 I would like to continue it until the -- there's a hearing
2 scheduled on I think 16th of December regarding Nationstar's
3 Motion to Strike my motion -- my notice of three-day -- Three-Day
4 Notice of Intent to take their default.

5 And the issue here with the Motion for Reconsideration is
6 that it -- I would like to have leave to amend it to include the
7 grounds of fraud on the Court, Rule 60(d). My issue with the
8 September 10th order is that the Court decided to grant Red Rock's
9 Motion to Dismiss with prejudice without holding the evidentiary
10 hearing that was ordered for that day, on August 19th.

11 THE COURT: Ms. --

12 MS. TOBIN: The --

13 THE COURT: Ms. Tobin?

14 MS. TOBIN: Yes.

15 THE COURT: Ms. Tobin, there was no evidentiary hearing
16 ordered. What the Court did is the Court looked at all of the
17 notebooks that had been submitted and thought it was going to
18 need an evidentiary hearing. The Court, after reviewing the
19 briefing, decided it didn't need an evidentiary hearing. That is up to
20 me to decide and I can make that decision. So if I don't feel that I
21 need an evidentiary hearing to decide the issues, I don't have to
22 hold an evidentiary hearing. And that's exactly what the Court did.

23 MS. TOBIN: The Court --

24 THE COURT: And as far as your Motion for
25 Reconsideration, again, I have reviewed it. Your oral motion this

1 morning to amend your Motion for Reconsideration to add
2 arguments regarding the fraud upon the Court is denied. And I
3 would also note, in going back and looking at the order that I did --

4 And, Mr. Scow, I would like you -- or, actually, Ms. Xara,
5 I'd like you to submit an additional order to this Court.

6 I noted in the motion itself that there had been a joinder
7 filed, but when I did the actual order at the end, the Court noted that
8 I didn't grant the joinder and I should have done that. So I am *sua*
9 *sponte* ordering Ms. Xara to please submit an order granting their
10 joinder, which would then, in effect, Ms. Tobin, make your -- make
11 the Motion to Strike the Three-Day Notice of Intent to Default moot,
12 because you have no basis for the default, because your
13 counterclaims have been dismissed.

14 So if you would like additional time to argue your Motion
15 for Reconsideration, I can do that. I can move everything to
16 the 16th. But it's not because of the fact that there's going to be the
17 Motion to Strike, because that Motion to Strike is, essentially, going
18 to be moot. So that's where we're at at this juncture.

19 MS. TOBIN: Your Honor, you granted their Motion to
20 Dismiss with prejudice and now have added the joinder to dismiss
21 with prejudice the claims against Nationstar and Wells Fargo.

22 THE COURT: Yes, I have.

23 MS. TOBIN: And I would like the Court to consider that
24 the grounds that you used, claims preclusion, time-barred, and --
25 what was the other one -- not properly pled according to the

1 Rule 9(b) standard.

2 THE COURT: I know what I granted --

3 MS. TOBIN: I would like to suggest that had you had the
4 evidentiary hearing that was ordered originally and was scheduled,
5 and I got -- I hired an attorney to handle, you would have known
6 that claims preclusion did not apply, actually, because --

7 THE COURT: Ms. Tobin.

8 MS. TOBIN: -- the first -- yes.

9 THE COURT: Ms. Tobin, do you want 15 minutes to argue
10 your motion today or do you want to reschedule it?

11 MS. TOBIN: I'll argue it right now.

12 THE COURT: All right. You have 15 minutes.

13 MS. TOBIN: Thank you. Okay.

14 The Motion for Dismissal was based on my claims
15 preclusion. And my argument is claims preclusion does not apply,
16 first, because the claims are different, the parties are different, and
17 because there was not a full and fair opportunity to litigate in the
18 original proceedings.

19 In the original proceedings, there were -- Nationstar met
20 with the attorney -- Nationstar's attorney, Melanie Morgan, and the
21 attorney for Jimijack, Joseph Hong, met ex parte with Judge
22 Kishner and pretty much decided the case on their own after
23 serving me notice that this hearing on April 23rd of '19 would not
24 be held. And so my attorney and I did not appear.

25 So at that hearing, they decided that I had never been a

1 party in the case and so that all my pro se filings, including
2 Countermotions for Summary Judgment and that sort of thing,
3 were stricken from the record. So I was not able to appeal that,
4 because the Court just decided that I was not a party.

5 Okay. So in that first proceedings, the Red Rock and Sun
6 City Anthem had supplied false evidence, falsified records to the
7 Court to support a Motion for Summary Judgment -- a partial
8 Motion for Summary Judgment against the quiet title claim of the
9 Gordon B. Hansen Trust. And they did not consider me, as an
10 individual, a party and then I could not appeal it.

11 So I filed -- I attempted everything I could within that first
12 case to get myself back in as a party, get my claims heard, but I was
13 denied. And then I was forced to file the second case.

14 So I filed the second case and it included the quiet title,
15 equitable relief, the unjust enrichment for Red Rock not paying out
16 the excess funds as required, and it also included an abuse of
17 process claim against the attorneys in the first action.

18 Now, when that -- when I hired an attorney to take the
19 case over, he just said just bifurcate the case so that you're just
20 addressing the issue of quiet title and getting the excess proceeds
21 of the sale. And so that's what I did.

22 So the abuse of process and the complaint against the
23 attorneys for the ex parte meeting with the judge and for, basically,
24 lying to the Court, that was set aside for a future time.

25 So that second proceedings, Red Rock filed this

1 completely unwarranted Motion to Dismiss on the grounds of
2 claims preclusion when, in fact, the claims were not the same, they
3 were not previously adjudicated, and Red Rock still had not
4 distributed the proceeds of the sale.

5 And the other issue is that I filed claims against Nationstar
6 in the second proceedings when I had not in the first, because I
7 intended to join Nationstar in the first proceedings to void the sale,
8 and then Nationstar and I would be returned to our respective
9 positions the day before the sale, as if the defective sale had never
10 occurred. And Nationstar then would have to comply with the
11 standards of Chapter 107 as amended by (a)(b) 284 2011, which was
12 Nevada's anti foreclosure fraud law in order to foreclose on me,
13 which they couldn't. And so that's a lie, had complaint against
14 Nationstar in the second, in addition to their fraud on the Court in
15 the first.

16 So now we come to this third action, which I did not file. I
17 was a defendant. And Red Rock filed this seven years after I had
18 made two attempts in civil court and two attempts informally or
19 directly to get those excess proceeds, because I am the only
20 claimant. Nationstar and Wells Fargo have no status. They are
21 judicially estopped from claiming to be owed a debt from the
22 Hansen July 22nd, '04, first deed of trust and from their --
23 Nationstar's repeated conflicting lies about how they acquired their
24 interest. And they don't actually have an interest.

25 And so if the Court had had the evidentiary hearing that I

1 need, and that really is what is necessary to achieve a fair result,
2 then the Court would have seen that the facts of the situation are
3 that Red Rock conducted a fraudulent sale without notice. And then
4 they -- in court, they gave to Sun City Anthem a fraudulent
5 foreclosure file and they provided the same thing to me in response
6 to subpoena, false evidence entered into the court record.

7 And then they -- you know, so they were basically -- they
8 did a fraudulent sale and then they lied to the Court about it to
9 cover it up.

10 Nationstar had no standing to file their quiet title claim,
11 because they were lying about being the beneficiary of the Hansen
12 Deed of Trust. That was extinguished by the August 15th, 2014,
13 HOA sale. Nationstar was the proximate cause of that sale. I sold
14 that property four times and the servicing banks obstructed the
15 sale. These were arm's length fair market value sale. And then
16 Nationstar let Red Rock foreclose on it without Nationstar ever
17 having filed a Notice of Default on the Hansen Deed of Trust when
18 payments stopped, when the borrower died.

19 Now, they're saying -- Nationstar is saying that they get to
20 have the -- let the -- they are stating that the sale was valid to
21 extinguish my rights, the owner's rights, the beneficiary's rights,
22 but were not valid to extinguish Nationstar's rights, because Bank
23 of America's agent, Miles Bauer, turned over to Red Rock the
24 superpriority amount, and Red Rock, without any legal authority,
25 rejected that assessment, those assessment payments.

1 And I'm saying that Nationstar also put in a superpriority
2 payment, which they concealed and they never used. But
3 Nationstar put that in in order to close the sale that I made to MZK
4 Properties on May 8th of '14 for \$367,000 on an auction.com sale
5 that Nationstar would not let escrow close on.

6 And so Nationstar concealed all these material facts about
7 what actually happened, as did Red Rock. Red Rock unfairly
8 rejected three assessment payments that would have cured a
9 default and then proceeded to, without notice, foreclose on our
10 property.

11 And -- so, Your Honor, I am in a situation where the Court
12 is making these decisions based on the misrepresentations of
13 opposing counsel and not by looking at the evidence. And this is
14 the third court that has done that. And making decisions because
15 legal counsel does some things, true, but not ever checking the
16 evidence.

17 Now, there is also --

18 THE COURT: Ms. Tobin.

19 MS. TOBIN: -- the fact that in the first proceedings --

20 THE COURT: Ms. Tobin.

21 MS. TOBIN: -- there was no adjudication of Nationstar's
22 quiet title claim. Nationstar dismissed their quiet title claims
23 without going to trial. And Nationstar and Jimijack made a side
24 deal, without including me as a mandatory necessary party under
25 Rule 19, and they made a side deal and they told Judge Kishner in

1 the first case that this was Jimijack Nationstar side deal that settled
2 all quiet title claims. Well, it didn't settle my quiet title claim. I was
3 there and I -- and they just got the Court to say I was not there, that
4 I was not a party. But I was a necessary party under Rule 19. I have
5 a deed from 2017. I closed the Hansen Trust when it was insolvent
6 in 2017. And everything that these opposing counsels are doing to
7 suppress the evidence and to prevent -- has prevented a fair
8 adjudication of my claims. And I feel that the fraud on the Court is
9 something that needs to be considered.

10 Now, this Court says that the Motion to Dismiss was a
11 responsive pleading, and therefore the -- my Notice of Intent to take
12 default against the banks was not valid. But a Motion to Dismiss,
13 first it was a joinder they did, not their own motion, included a lot of
14 misrepresentations. And that Motion to Dismiss is not a responsive
15 pleading under Rule 15.

16 Rule 15 says that I should have an opportunity to amend
17 according to, you know, if there is a Motion to Dismiss, I should
18 have an opportunity to amend in the course and scope one time --

19 THE COURT: Ms. --

20 MS. TOBIN: -- in the ordinary course.

21 THE COURT: Ms. Tobin.

22 MS. TOBIN: And I --

23 THE COURT: Ms. Tobin. Ms. Tobin.

24 MS. TOBIN: Yes.

25 THE COURT: Rule 15 only applies if the Court grants leave

1 to amend. The Court did not grant leave to amend because it found
2 that it would be futile because these claims are barred by claim
3 preclusion. And your remedy in the other -- you know, you keep on
4 bringing up this first case and the second case, and the Court takes
5 high offense to your allegation that this Court has not looked at the
6 evidence. You submitted numerous, numerous binders. And if
7 there's one thing that everybody knows when they come into this
8 court, this Court reviews evidence. This Court looks at everything
9 that is submitted to it and reviews it. Which is the reason why, after
10 reviewing everything, that the Court did not feel that it was
11 necessary to hold an evidentiary hearing, because these claims are
12 barred by claim preclusion.

13 And if you felt that the decision in the first case was
14 wrong, then your remedy in that case was to file an action on behalf
15 of the Gordon B. Hansen Trust as the trustee of the Gordon B.
16 Hansen Trust and appeal that decision. Your remedy is not to
17 continuously file complaints in different courts and attempt to get
18 different answers.

19 So the reason that the Court did not -- you don't get relief
20 under Rule 15, and Rule 12 provides that if you are going to -- you
21 have to file either an answer or a Motion to Dismiss. They filed a
22 Motion to Dismiss.

23 [Brief interruption.]

24 THE COURT: They filed a Motion to Dismiss and the Court
25 did not grant leave to amend. So you don't get relief under Rule 15.

1 So I wanted to explain that to you.

2 You have three minutes to finish up your argument.

3 MS. TOBIN: Your Honor, my argument is that claims
4 preclusion does not apply when there was not a full and fair
5 opportunity to litigate in the first case. And that the claims are
6 different.

7 In the first case, it was dealing with the issue of the
8 fraudulent nature and -- of the sale. And in the -- in this case, I did
9 not file this in a different court. I was sued. And under Rule 13,
10 there are compulsory counterclaims which have to be made when
11 you -- when you're sued. And so I didn't make those counterclaims.
12 And those counterclaims were referring to the fraud on the Court of
13 Red Rock for putting in false evidence. So the Court's orders were
14 erroneous because they were not based on verified evidence.

15 Now, you looked at the binders that I provided. And one
16 of the things describes the ex parte meeting with Judge Kishner,
17 which is just unbelievable to me that that is found acceptable. It is
18 not acceptable. And it is -- it derailed my case entirely to such an
19 extent that I was not able to appeal or present my rights as an
20 individual in the first case.

21 Now, if you looked at that evidence, you will know that
22 Nationstar is judicially estopped from claiming to be owed a debt,
23 because they repeatedly changed their story about how they
24 acquired this interest. And I can prove, if the Court looks at verified
25 evidence, I can prove that they, Nationstar, did not have any

1 standing and does not in this case.

2 THE COURT: And if --

3 MS. TOBIN: Nationstar and Wells Fargo did not file a
4 claim for those proceeds.

5 THE COURT: Okay. And if they didn't, that's why
6 Mr. Scow and why Red Rock has filed an interpleader action. I think
7 that you misunderstand, Ms. Tobin, what an interpleader action is.

8 MS. TOBIN: No.

9 THE COURT: An interpleader action in its very simplest
10 form is: We're holding onto money and we don't know who it
11 belongs to. So, Court, please bring the parties in and make an
12 adjudication as to who this money belongs to.

13 So to the extent that you're arguing that Wells Fargo and
14 Nationstar are judicially estopped from making a claim to these
15 proceeds, you may be right. But it doesn't give you a right, you're
16 not holding onto funds from them.

17 So just on that basis alone, your counterclaim for
18 interpleader is improper. You're not holding any money for
19 anybody. But they're holding money. This claim is not -- their
20 complaint is only for interpleader to say, Court, please tell us who
21 we give this money to. That is staying alive.

22 The only thing that the Court has done is it has dismissed
23 your counterclaims on the basis that they are precluded. And the
24 Court took a very long time in making that decision. It went back, it
25 reviewed everything. There has been nothing due that has been

1 presented. The arguments contained in the Motion for
2 Reconsideration are the same. Therefore, on that basis, your
3 Motion for Reconsideration is denied.

4 However, the interpleader action remains viable and you
5 can certainly come in here and argue that you are 100 percent
6 entitled to those fees or to the money, the excess proceeds from the
7 foreclosure sale. And if your argument is Nationstar and Wells
8 Fargo don't have any right to those fees, you can still make that
9 argument that you should get all of the excess proceeds.

10 So that's the Court's decision.

11 MS. TOBIN: Your Honor --

12 THE COURT: Mr. Scow, will you please prepare the order.
13 You're on mute, Mr. Scow.

14 MR. SCOW: I'm so sorry. And thank you, Your Honor.
15 We'll prepare an order and run it by everybody before we submit it
16 to you.

17 THE COURT: Okay. All right.

18 [Brief interruption.]

19 THE COURT: All right.

20 MS. TOBIN: Your Honor?

21 MS. XARA: Your Honor, this is Lilith Xara from Akerman
22 on behalf of Wells Fargo and Nationstar.

23 I just wanted to clarify on that order, to clarify that the
24 joinder was granted with the original order to be included. Do you
25 want a full order with all the same stuff in it, or can it refer to the

1 prior order and the grant with joinder that way?

2 THE COURT: You can refer to the prior order and grant it
3 that way. It was, literally, I just noticed it the other day when I was
4 preparing for this case that it was an oversight on my part and I
5 should have granted the joinder.

6 So -- but I do want you to -- because it does moot out the
7 Motion to Strike, because the counterclaims of your joinder was
8 granted, so it moots the Motion to Strike the Notice of Intent to
9 Take Default. Can you include that language, as well?

10 MS. TOBIN: Your Honor?

11 MS. XARA: I will, Your Honor.

12 MS. TOBIN: Your Honor?

13 MS. XARA: Should I circulate that or is that submitted
14 directly to the Court?

15 THE COURT: No. If you could circulate that.

16 And then I want it to be clear, Mr. Scow, in your order
17 from today that the issue as to Nationstar and Wells Fargo's right to
18 these proceeds is, you know, just by dismissing -- I, basically, want
19 it to be clear that simply by dismissing the counterclaims, it doesn't
20 mean that -- and granting their joinder, that it is a done duty, that
21 the interpleader is still open as to all the parties. And everybody
22 will get to argue their arguments on who's rightful to the funds.
23 Does that make sense?

24 MR. SCOW: It does, Your Honor.

25 THE COURT: Okay.

1 MR. SCOW: And we'll make that clear --

2 THE COURT: Yeah.

3 MR. SCOW: -- that the interpleader is still remaining.

4 THE COURT: Okay. If you could just make it a little bit
5 more eloquent than what I just stated, I'd appreciate it.

6 MR. SCOW: Well, no, that was -- you got it. Thank you,
7 Your Honor.

8 THE COURT: Thank you.

9 MS. TOBIN: Your Honor, this is Nona Tobin.

10 May I request that my Motion for the Distribution of the
11 Proceeds be considered?

12 THE COURT: That is part of what the interpleader
13 complaint is about. And so as it pertains to that, Ms. Tobin, I'll need
14 you to file -- has there already been -- well, let me ask this question,
15 because I don't know, I just know what's in front of me as far as that
16 Motion to Strike and what was on for today.

17 Is there already a motion in place for distribution,
18 Mr. Scow, on that?

19 MR. SCOW: No, there's not, Your Honor. There was a --

20 MS. TOBIN: Yes, there is, Your Honor.

21 MR. SCOW: And, Your Honor, there was a motion that
22 Ms. Tobin filed and actually had some conflicting issues there and
23 was opposed. That was part of the hearings that Your Honor heard
24 on September 10th.

25 THE COURT: Okay.

1 MR. SCOW: And I think it would behoove everyone if
2 Ms. Tobin wants to file such a motion, she should probably refile it.
3 I think would be -- the thought of my keeping their order as to what
4 her request is, so that they're on -- the other tentative allegations
5 that were problematic.

6 THE COURT: All right. Ms. Tobin, so to the extent that all
7 of your counterclaims are gone away, as I explained, there's still
8 this interpleader and the excess funds. So I need you to file a
9 Motion for -- and it's going to be exactly this: A Motion for
10 Distribution of the Excess Proceeds. And please list in there the
11 basis, your legal basis as to why you are entitled to that -- those
12 proceeds and nobody else that's contained in this complaint is
13 entitled to those proceeds.

14 So you'll need to make arguments as to why the
15 Gordon B. Hansen Trust is not entitled to it, why Nationstar
16 Mortgage is not entitled to it, why Wells Fargo is not entitled to it.
17 And then Nationstar, Wells Fargo will have an opportunity, since
18 you are the trustee of the trust and nobody else is representing the
19 trust, and I understand that it's been dissolved at this point, but you
20 still need to make that argument.

21 And then the other side will have their opportunity to file
22 any opposition that they may file. They may agree with you, and if
23 they do, then this case will be done.

24 I would hope, Mr. Scow, that now that Ms. Tobin is not --
25 you know, now that she's not represented by counsel, she's

1 representing herself, if maybe there's a way that you guys could get
2 this to a settlement conference and resolve this issue, that would be
3 beneficial to everybody. But if you can't do that, then I will certainly
4 hear the motion.

5 And it sounds like, from her argument, and I don't know if
6 this is the case, Ms. Xara, that neither Nationstar nor Wells Fargo
7 have any interest in these funds. And so, you know, the only other
8 person that I see on here is Republic Services, but I don't know
9 where their standing is on this, as well.

10 So that'll be the Court's ruling for today. The order on
11 your excess funds, because the request for the motion hearing on
12 that, Ms. Tobin, to the extent that it was wrapped up with other
13 stuff, that's not before the Court today. So I need you to refile that.
14 Okay?

15 MS. TOBIN: Okay. Thank you.

16 THE COURT: All right.

17 MR. SCOW: Thank you, Your Honor.

18 THE COURT: Does everybody understand where we're at
19 and what the Court's rulings was? Do we need any clarification?

20 MS. TOBIN: No. It's fine. Thank you.

21 MR. SCOW: No, Your Honor.

22 THE COURT: All right. Mr. Scow, I know that you asked
23 for --

24 MS. XARA: No, Your Honor.

25 THE COURT: -- attorneys' fees under EDCR 18.010. I'm

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going to deny those for today. Okay?

MR. SCOW: That's fine, Your Honor.

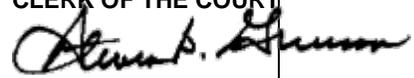
THE COURT: All right. Thank you. Have a good day.

[Proceeding concluded at 9:24 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability. Please note: Technical glitches in the BlueJeans audio/video which resulted in audio distortion and/or audio cutting out completely were experienced and are reflected in the transcript.


Shawna Ortega, CET*562



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

RED ROCK FINANCIAL
SERVICES,

Plaintiff,

vs.

NONA TOBIN,
Defendant.

CASE#: A-21-828840-C
DEPT. VIII

BEFORE THE HONORABLE JESSICA PETERSON, DISTRICT COURT
JUDGE

WEDNESDAY, JANUARY 19, 2022

**RECORDER'S TRANSCRIPT OF VIDEO CONFERENCE HEARING
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiff:	STEVEN B. SCOW, ESQ. KERRY P. FAUGHNAN, ESQ. (via BlueJeans)
For the Defendant: (Wells Fargo, N.A.)	AARON LANCASTER, ESQ. (via BlueJeans)
For the Defendant:	NONA TOBIN, PRO SE (via BlueJeans)

RECORDED BY: NANCY MALDONADO, COURT RECORDER

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11
12
13
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15
16
17
18
19
20
21
22
23
24
25

INDEX

	<u>Page</u>
Motion, denied	12
Counter-motion, denied	12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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Las Vegas, Nevada, Wednesday, January 19, 2022

[Case called at 10:52 a.m.]

THE COURT: Case A828840, Red Rock Financial versus Nona Tobin.

Good morning, Mr. Scow.

Good morning, Mr. Lancaster.

Good morning Ms. Tobin.

MR. SCOW: Good morning, Your Honor.

MS. TOBIN: Good morning.

MR. LANCASTER: Good morning, Your Honor.

THE COURT: All right, we are here on Ms. Tobin's Motion for an Evidentiary Hearing to Set Aside Orders and for Sanctions pursuant to NRCP 6(b)(3) and (d)(3), NR sanction 0102, and EDCR 7.60(1) and (3), and Red Rock Financial Services Opposition to Nona Tobin's motion for an evidentiary hearing to set aside the September 10th 2021 order and November 30th, 2021 order, and Motion for Attorneys' Fees and Costs, and Countermotion for Abuse of Process or a Vexatious Litigant Restrictive Order Against Nona Tobin and for Attorneys' Fees and Costs.

Let me just make a couple of statements before we go into this and before I allow the parties to argue.

Ms. Tobin, the only action that is in front of this Court in Department 8 is the interpleader action. The Court has previously decided that all of your counterclaims that you brought in this action

1 were barred by the Doctrine of Claim Preclusion.

2 You keep asking this Court to make a different decision
3 without any basis in law to do so. I would note that originally that the
4 Court, when it first got this case and was dropped off with a multitude of
5 notebooks, and this was set for my law and motion calendar, that the
6 Court looked at all of those notebooks and went, wow, I'm probably
7 going to need an evidentiary hearing on this. And so, that is the reason
8 why the Court originally thought let's do an evidentiary hearing on this.

9 Once I actually read the motion, and reviewed the case files,
10 and looked at everything, I decided I didn't need an evidentiary hearing,
11 which is the Court's prerogative.

12 It is not the litigant's prerogative to demand an evidentiary
13 hearing. It is the Court's prerogative to decide whether or not they want
14 to have an evidentiary hearing.

15 It is not the same as holding a trial. It is the Court's ability to
16 be able to say I think that we need an evidentiary hearing on this
17 because I need a record, a further record developed.

18 In this particular case, the Court didn't need a further record
19 developed because it took a look at all of the filings and the pleadings
20 and recognized that the counterclaims that you had filed, Ms. Tobin,
21 were barred by claim preclusion. You continuously ask this Court to
22 make a different decision without any basis to do so.

23 In looking at your new motion to reconsideration, you have in
24 paragraph 21 that the Court set, you know, that we -- I failed to allow you
25 to have your evidentiary hearing without hearing your motion to

1 distribute.

2 I didn't need to hear your motion to distribute because that is
3 the same basis as the interpleader action. That is the same basis as
4 what has been filed by the Plaintiff is they are trying to figure out where
5 does this money go. So you're asking this Court for it to rule on
6 something that is in front of it that wasn't necessary for it to rule on.

7 The number -- and in number 25 of your allegations, you say
8 that the order was silent as to the other claims. No, I said all claims, all
9 claims were to be dismissed.

10 And as far as your other allegation that at the last hearing that
11 I only gave you 15 minutes, actually, no, that's incorrect as well. I said
12 that I only had 15 minutes and that or we could continue the hearing.

13 I then let you argue for almost 45 minutes after that. So the
14 allegations that you're making don't change anything. Your remedy, if
15 you don't like this Court's decision, Ms. Tobin, is to file an action with the
16 Supreme Court and appeal my decision. It is not to continuously file
17 motions for reconsideration and to lay out facts that are not involved in
18 this case.

19 This Court cannot review things that happened in 2019 in
20 another court's case. The only thing that's in front of me is Red Rock
21 Financial Services versus Nona Tobin, the counterclaims that you filed in
22 this case, and the basis that I dismissed them was claim preclusion.

23 So, having said all that, Ms. Tobin, it is your motion. This is
24 why I wanted it to go last today because I am going to give you as much
25 time as you want to make your argument. So go ahead.

1 MS. TOBIN: Thank you, Your Honor. I'm going to be a lot
2 briefier than that, partially because I have a very bad cough and I might
3 not be able to talk for very long, but I believe that I have a simple way
4 that could avoid appeal.

5 But I just need to say that the Court needs to understand I did
6 not file this lawsuit. I am not the Plaintiff in this case or in three of the
7 four cases related to this dispute. I was the Plaintiff once.

8 My opponent originally won their lawsuit by cheating. They
9 presented false evidence. They lied in their pleadings. They lied in their
10 motions.

11 They suppressed evidence. And the whole way that they
12 prevailed in the first case was by my claims not being heard and no
13 verified evidence being considered. All the verified evidence that was
14 put into the court record is in my favor.

15 And I'm sorry to burden this Court with the volume of
16 documents that I put in, but I had to put them in to get them into the
17 record in this case in the event that I have to appeal.

18 Because the Plaintiff's preclusion does not apply when there
19 was no full and fair opportunity to litigate in the first instance as in their
20 case there was not.

21 In the first case, the Plaintiff was Jimmy Jack. Jimmy Jack
22 had no admissible evidence of ownership. I challenged it under NRS
23 111.345, but that claim was never heard.

24 Jimmy Jack sued Bank of America, that was a disinterested
25 party, and defaulted. And after they defaulted, and that case was

1 closed, Nationstar became the Plaintiff in a second case against
2 Opportunity Homes, also a disinterested party.

3 Then, Nationstar intervened on the closed Jimmy Jack case
4 and succeeded in prevailing. Both Jimmy Jack and Nationstar
5 succeeded in prevailing without any evidence to support their ownership
6 claims.

7 Nationstar is prove-ably not the owner of the disputed deed of
8 trust. And yet they lied repeatedly to claim that they were and that they
9 were owed a debt that they were not owed.

10 Jimmy Jack and Nationstar made a side deal. They had a ex
11 parte meeting with the judge. They ended up without adjudicating any of
12 their --

13 THE COURT: Ms. Tobin?

14 MS. TOBIN: Yes?

15 THE COURT: I'm going to interrupt you right there. Please
16 do not make unfounded, unprovable, and salacious allegations against
17 another judge.

18 MS. TOBIN: About what? What was -- what?

19 THE COURT: You made an allegation that a judge engaged
20 in ex parte communications.

21 MS. TOBIN: That's totally provable.

22 THE COURT: There is no proof of that. There is no proof of
23 that.

24 MS. TOBIN: Yes, totally, it's on the record.

25 THE COURT: Ms. Tobin --

1 MS. TOBIN: It is totally. --

2 THE COURT: -- there is no proof of that. Ms. Tobin, there is
3 no proof of that.

4 MS. TOBIN: There's no proof if you won't look at it.

5 THE COURT: It is salacious.

6 MS. TOBIN: The proof is the minutes and the transcript of the
7 April 23rd, '19 hearing, where they discussed and decided the case in
8 my absence.

9 THE COURT: That doesn't make it ex parte if you were
10 informed of the hearing and didn't show up.

11 MS. TOBIN: I was not informed. I was informed the hearing
12 was continued to May 7th. And they did it anyway.

13 THE COURT: If it was on the record --

14 MS. TOBIN: I was --

15 THE COURT: -- and you had an opportunity to be there, that
16 is not --

17 MS. TOBIN: No, I did have an opportunity to be there. I did
18 not have an opportunity to be there. I was served notice on April 15th
19 and April 22nd that the hearing was continued to May 7th.

20 THE COURT: Okay.

21 MS. TOBIN: I was served notice not to appear, all right, and
22 so that's the issue.

23 THE COURT: Okay, continue.

24 MS. TOBIN: All right, so they proceeded based on this -- their
25 misrepresentation to the Court that they could decide the title dispute

1 among themselves and the Court let them.

2 The Jimmy Jack, Nationstar settlement was complete fraud.
3 They were neither of them parties to it. They -- it was between nonparty
4 Joel Stokes [phonetic] and Civic Financial Services. And it was used as
5 a way to basically exclude me, a necessary party, from the deal.

6 And then, by convincing the court that I had never been a
7 party, then they removed from me my rights to appeal.

8 So by any standards of professional and ethical conduct,
9 they -- those attorneys acquired that first ruling by means of fraud. And
10 the motion for summary judgment that the HOA filed was based on Red
11 Rock's falsified foreclosure fraud -- file.

12 And it is provable. And all that volume of documents that I
13 submit will prove that. It totally will prove that.

14 Now all of my motions for reconsideration and all of my
15 appeals have simply been to try and get a court, any court, to make a
16 decision based on verified evidence instead of relying on the
17 misrepresentation of opposing counsels.

18 So if the Court today decides, despite all evidence to the
19 contrary, that I have no right to an evidence-based adjudication of my
20 claims, then I will be forced to appeal, to ask the Supreme Court to
21 decide if this Court's refusal to consider the evidence was an abuse of
22 discretion.

23 However, I believe there's a straightforward way to resolve
24 this today. And this Court has the inherent authority to resolve this case
25 and my petition for sanctions completely right now today.

1 In this case, the high road and the [indiscernible] is the same.
2 I'm requesting this Court to order each of my opponents to pay me
3 restitution of the damages that I identified and have sustained in the
4 amount of one and a quarter million and let them appeal it if they don't
5 like it.

6 My opponents' oppositions and countermotion for vexatious
7 litigant order were unsupported by any affidavits. And this Court has the
8 discretion to discount them in their entirety.

9 None of my opponents has ever produced any verified
10 evidence to refute my claims. They have merely staked their entire
11 whole case on saying *res judicata* and that I have no right to make those
12 claims.

13 And given that no one has ever made any responsive pleading
14 to deny my claims, and given that I have -- and that they have never
15 produced any evidence to contradict my verified evidence that they lied
16 to the Court and falsified evidence to cover up criminal activity, you
17 know, I ask the Court to grant me this and end the case right now. And I
18 estimate the chance that they will appeal approaches zero. Thank you.

19 THE COURT: Thank you, Ms. Tobin.

20 Mr. Scow?

21 MR. SCOW: Thank you, Your Honor. I guess Your Honor
22 was presented with a scenario where either -- I don't know if this is
23 chance 7, or 8, or 9, but if it's not granted, the request is granted, then
24 there was going to be another appeal.

25 Or it's troubling to me, Your Honor, that we're facing these

1 issues over and over. And I appreciate the Court's time. We know that
2 you devote a lot of time and energy into this matters.

3 And we very cautiously filed our countermotion to have Ms.
4 Tobin declared a vexatious litigant. And I guess I just want to explain
5 the basis of that or narrow the scope somewhat, because we are not
6 saying, Your Honor, that Ms. Tobin wouldn't still have a claim to the
7 excess proceeds from the foreclosure that happened last decade. So
8 she would be allowed to pursue her claims there.

9 THE COURT: Uh-huh.

10 MR. SCOW: However, she has brought the same claims
11 against the same parties or similar parties seven or eight times and
12 they're being denied every time.

13 I -- and I personally don't like being called a criminal. She's
14 insinuating that everybody on the other side of things is engaged in
15 criminal conduct, including the courts. And it's just not appropriate, Your
16 Honor.

17 And, really, I guess the best evidence of or the best support
18 for a finding of vexatious litigant would be the reply briefs, which were
19 around 2,000 pages.

20 I believe that was the total pagination for the reply to the Red
21 Rock motion and to the Nationstar joinder. That's almost proof and in of
22 itself.

23 But as the Court well knows, there's been proper findings at
24 each level of each of the prior cases dealing with Ms. Tobin. She
25 doesn't like the answer that she's been given, so she's repeatedly

1 attacking those adjudications, but it's been based on the evidence every
2 time.

3 And, Your Honor, I don't have anything else to add, but I'm
4 open to any questions you may have for me.

5 THE COURT: Thank you, Mr. Scow.

6 Mr. Lancaster, do you have any additional to add?

7 MR. LANCASTER: Nothing, Your Honor. Thank you.

8 THE COURT: All right. Declaring somebody a vexatious
9 litigant is a herculean task. I've actually looked into what needs to be
10 done in order to do that.

11 However, the Court finds that the myriad of allegations that
12 are being made by Ms. Tobin in this particular case have already
13 previously been cited. There is no basis for this Court to reconsider its
14 prior decision that her claims in this case are precluded by claim
15 preclusion.

16 If she disagreed with any of the other courts as to what
17 transpired, her role was to appeal those decisions, ask for motions for
18 reconsideration, or take other actions in those other cases. It was not to
19 file counterclaims into this case that are barred by the Doctrine of Claim
20 Preclusion and *res judicata*.

21 The Court is going to deny Ms. Tobin's motion and is going to
22 not grant the countermotion at this time, Mr. Scow, but here's what the
23 Court is going to do.

24 The Court is going to warn Ms. Tobin at this juncture that in
25 the event that she continues to file seriatim motions with this Court, that

1 the Court will have no other choice but to file an order to show cause to
2 declare her a vexatious litigant, and at that time, would entertain the
3 opposition's side for attorneys' fees and costs.

4 Ms. Tobin, your statement to this Court of you would have no
5 other opportunity other than to file an appeal, that's your right. You can
6 do whatever you feel that you need to do to protect your rights, but this
7 Court is not going to grant your motion. It is denied. And there is no
8 reason for the Court to hold an evidentiary hearing.

9 This Court's decision initially that Ms. Tobin's counterclaims
10 were precluded by claim preclusion and *res judicata* was a sound
11 decision.

12 Mr. Scow, I know you've put a lot of effort into this case as
13 well already. What I would like you to do is I would like you to prepare
14 for this Court since I believe you've been involved since the very
15 beginning. Have you not?

16 MR. SCOW: Yes, Your Honor, unfortunately.

17 THE COURT: All right, what I would like you to do is I would
18 like you to prepare an order that covers the procedural history in this
19 case down to minutiae.

20 And I want a very long detailed order and of what transpired
21 all along on this case, and how it ended up in my courtroom, and then,
22 the basis reiterated for my decision on the claims preclusion, all the way
23 up to what I said today regarding why this Court didn't need an
24 evidentiary hearing and the statements that I made today in regards to
25 the counterclaims being precluded.

1 Also include in that order that -- and Ms. Tobin as I said the
2 last time that we were here, the complaint that was filed by Red Rock is
3 an interpleader complaint, which is then essentially in legalese saying
4 we have this pile of money. Who does it go to?

5 And so, you are absolutely free to be a participant in that case
6 and to make the arguments that you made at least in part in this motion
7 that you're the only one that is entitled to those funds.

8 That's absolutely still in front of this Court. And that is
9 appropriate for you to be involved in. So to the extent that that's what's
10 in front of this Court, that is what this Court is going to deal with.

11 Everything else is not before this Court and is not appropriate
12 for this Court to review the decisions. This Court is not a reviewing
13 court.

14 This -- it is not appropriate for this Court to review the
15 decisions that were made in any of the other departments of the 8th
16 Judicial District Court and will not do so.

17 And as it pertains to your counterclaims, as I said and will say
18 again, those claims are barred by claim preclusion and are *res judicata*.
19 So that is the Court's decision today.

20 Mr. Scow, I know that that's probably going to take you a little
21 time to get that order together. You want 30 days?

22 MR. SCOW: 30 days should work, Your Honor. I suppose
23 we'll -- we're fine to circulate that to everybody that's present today.

24 THE COURT: Yes, absolutely.

25 MR. SCOW: Whether or not we get agreement or not, we'll

1 follow the standard procedure.

2 THE COURT: What I'm going to have you do is 30 days
3 circulate it to everybody and then we're going to do -- put this in the
4 order.

5 If it's -- if any comments and/or revisions are not received, 10
6 days, 10 business days after the order has been circulated, the Court
7 will sign the order.

8 MR. SCOW: Okay.

9 THE COURT: All right?

10 MR. SCOW: All right, thank you, Your Honor. We appreciate
11 your time.

12 THE COURT: Thank you, Mr. Scow.

13 Thank you, Ms. Tobin.

14 Thank you, Mr. Faughnan.

15 And thank you, Mr. Lancaster.

16 Have a good day.

17 MR. SCOW: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. LANCASTER: Have a good day.

20 [Proceedings concluded at 11:17 a.m.]

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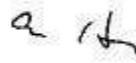
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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Chris Hwang
Transcriber