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DISTRICT COURT

CLARK COUNTY, NEVADA

KAL-MOR-USA, LLC, a Nevada Limited Liability Company, Plaintiff, vs. JPMORGAN CHASE BANK, N.A., a foreign corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No.: A-13-677358-C Dept. No.: XXXI

NOTICE OF APPEAL

Notice is hereby given that Plaintiff Kal-Mor-USA, LLC, by and through its attorneys of record, the law firm of Weil & Drage, APC, hereby appeals to the Nevada Supreme Court from the order Granting Defendant Bank of JPMorgan Chase Bank, N.A. Motion for Summary Judgment and denying Kal-Mor-USA, LLC's Motion for Summary Judgment, notice of entry of

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Docket 73400 Document 2017-22483

Case Number: A-13-677358-C

which was provided on or around May 24, 2017. *See* **Exhibit "1"** attached hereto.

DATED this 26th day of June, 2017.

WEIL & DRAGE, APC

/s/ *C. Robert Peterson*
By: _____
NEIL B. DURRANT, ESQ.
C. ROBERT PETERSON, ESQ.
2500 Anthem Village Drive
Henderson, NV 89052
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of June, 2017, service of the foregoing Notice of Appeal was made this date by electronically serving a true and correct copy of the same, through Clark County Odyssey eFileNV, to the following parties:

Kent F. Larsen, Esq.
Chet A. Glover, Esq.
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134
Attorneys for Defendant,
JPMORGAN CHASE BANK, N.A.

/s/ *Lisa Robison*

Lisa Robison, an Employee of
WEIL & DRAGE, APC

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EXHIBIT 1

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5/25/2017 8:26 AM
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JPMorgan Chase Bank, N.A.

DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited liability company Plaintiff, v. JPMORGAN CHASE BANK, N.A.; MTC FINANCIAL, INC. dba TRUSTEE CORPS, a foreign corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive Defendants.	CASE NO: A-13-677358-C DEPT NO: XXXI **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

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Case Number: A-13-677358-C

NOTICE IS HEREBY GIVEN that the attached Findings of Fact, Conclusions of Law, and Judgment were entered by the Court on the 24th day of May, 2017.

Date this 24th day of May, 2017.

SMITH LARSEN & WIXOM

/s/ *Chet A. Glover*
Kent F. Larsen, Esq.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 24, 2017 a true copy of the foregoing **Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment** was sent via electronic means to the following at their last known email addresses, pursuant to EDCR 8.05(a):

Weil & Drage, APC	
Contact	**Email**
Joanna Medina	jmedina@weildrage.com
Lisa Robison	lrobison@weildrage.com
NV E-Files	nvefile@weildrage.com

an employee of Smith Larsen & Wixom

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DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited liability company Plaintiff, v. JPMORGAN CHASE BANK, N.A.; MTC FINANCIAL, INC. dba TRUSTEE CORPS, a foreign corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive Defendants.	CASE NO: A-13-677358-C DEPT NO: 31 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

On April 24, 2017 at 10:00 a.m., the Honorable Joanna S. Kishner heard oral argument regarding Plaintiff KAL-MOR-USA, LLC's ("**Plaintiff**") Motion for Summary Judgment ("**Plaintiff's MSJ**") and JPMorgan Chase Bank, N.A.'s ("**Chase**") Motion for Summary Judgment ("**Chase's MSJ**"). Jason G. Martinez, Esq. appeared for Plaintiff. Chet A. Glover, Esq. appeared for Chase. This Court, having considered Plaintiff's MSJ, Chase's MSJ,

Case Number: A-13-677358-C

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related briefing, having heard the argument presented at the hearing thereof, and for good cause, hereby enters the following:[1]

FINDINGS OF UNDISPUTED FACT

1. The Deed of Trust listing Cleotha and Teresa Lakes as the borrowers ("**Borrowers**"); Stearns Lending, Inc. as the lender ("**Lender**"); and MERS, as beneficiary solely as nominee for Lender and Lender's successors and assigns, was executed on May 1, 2006 and recorded on May 12, 2006. The Deed of Trust, which was executed by the Borrowers along with the promissory Note ("**Note**"), granted Lender a security interest in real property known as 4555 E. Sahara, Bld. 4, #215, Las Vegas, Nevada 89104 (the "**Property**") to secure the repayment of a loan in the original amount of $136,000.00 to the Borrowers (the "**Loan**"). The Deed of Trust states that it is a "NEVADA-Single Family-Fannie Mae/Freddie Mac Uniform Instrument with MERS."

2. Freddie Mac purchased the Loan, which specifically included ownership of the Note and Deed of Trust, on or about November 29, 2006.

3. On January 12, 2012, Red Rock Financial Services ("**RRFS**"), agent for Sahara Mountain Homeowners Association (the "**Association**"), recorded a Lien for Delinquent Assessments the ("**LDA**"). The LDA did not indicate that the Association claimed, or intended to foreclose on, a superpriority lien right.

4. On March 28, 2012, RRFS recorded a Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments (the "**NOD**"). The NOD did not indicate that the Association claimed, or intended to foreclose on, a superpriority lien right.

[1] To the extent any Finding of Fact should be properly designated a Conclusion of Law, it shall be deemed a Conclusion of Law. To the extent any Conclusion of Law should properly be designated a Finding of Fact, it shall be deemed a Finding of Fact.

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5. On June 5, 2012, RRFS sent Chase and others a letter indicating that "[t]he Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder." (the "**RRFS Letter**").

6. On January 4, 2013, the Association entered into a Purchase and Sale Agreement ("**PSA**") with First 100, LLC ("**F100**"). The ostensible purpose of the PSA was for F100 to purchase the right to receive income related to eight properties within the Association, which included the Property. As part of the PSA, F100 paid the Association $1,395.00, which was equal to nine months of assessments.

7. On January 17, 2013, the Association recorded a Notice of Foreclosure Sale Under the Lien for Delinquent Assessments (the "**NFS**"). The NFS did not indicate that the Association claimed, or intended to foreclose on, a superpriority lien right.

8. On February 4, 2013, a Foreclosure Deed Upon Sale (the "**Foreclosure Deed**") was recorded against the Property. The Foreclosure Deed states that the Property was sold on February 2, 2013 to F100 with a purchase price of $2,500.00 (the "**Foreclosure**"). The Foreclosure Deed does not indicate that the Association claimed, or foreclosed on, a superpriority lien right.

9. Freddie Mac maintained its ownership of the Note and Deed of Trust at the time of the Foreclosure on February 2, 2013.

10. On March 4, 2013, a Deed of Sale was recorded. The Deed of Sale states that the Property was sold on February 28, 2013 by F100 to Plaintiff.

11. On March 17, 2010, MERS, as nominee for Lender and Lenders successors and assigns, assigned the Deed of Trust to EMC Mortgage Corporation. The assignment of the Deed of Trust was recorded on April 27, 2010.

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12. EMC Mortgage Corporation subsequently merged with Chase, with Chase becoming the surviving entity.[2]

13. On January 17, 2013, EMC Mortgage LLC f/k/a EMC Mortgage Corporation assigned the Deed of Trust to Chase via Assignment of Deed of Trust, which was recorded on February 11, 2013.

14. At the time of the Foreclosure on February 2, 2013, Chase was the servicer of the Loan for Freddie Mac.

15. At no time did the Federal Housing Finance Agency ("**FHFA**" or the "**Conservator**") consent to the Foreclosure extinguishing or foreclosing Freddie Mac's interest in the Property.

16. The relationship between Chase, as the servicer of the Loan, and Freddie Mac, as owner of the Loan, is governed by Freddie Mac's Single-Family Seller/Servicer Guide ("**Guide**"), a central governing document for Freddie Mac's relationship with servicers nationwide.

17. The Guide provides that, "[a]ll documents in the Mortgage file … and all other documents and records related to the Mortgage of whatever kind or description … will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only."

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[2] *See Oppong-Agyei v. Chase Home Fin., LLC*, 2013 Minn. App. Unpub. LEXIS 610 (Minn. Ct. App. July 8, 2013) ("JP Morgan Chase Bank N.A. … is the successor in interest by merger to Chase and EMC."); *De Souza v. JPMorgan Chase Home Lending Div.*, 608 F. App'x 776, 778 (11th Cir. 2015) ("The mortgage appears to have been sold in 2007 to EMC Mortgage Corp., which later merged with Chase. As a result of the merger, Chase succeeded to EMC Mortgage's interests."); *New-Howard v. JP Morgan Chase Bank N.A.*, 2013 U.S. Dist. LEXIS 164882, at *10 (E.D. Pa. Nov. 18, 2013) ("On April 1, 2011, EMC Mortgage Corporation became a limited liability company - EMC Mortgage LLC. That same day, JPMorgan Chase Bank, N.A., acquired the assets of EMC Mortgage LLC in a merger. For purposes of this action, JPM is a successor in interest to EMC Mortgage LLC, formerly known as EMC Mortgage Corporation.").

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CONCLUSIONS OF LAW

18. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to a judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005).

19. To defeat a motion for summary judgment the non-moving party bears the burden to "do more than simply show that there is some metaphysical doubt" as to the operative facts. *Wood*, 121 Nev. at 732 (citing *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). Moreover, the non-moving party must come forward with specific facts showing a genuine issue exists for trial. *Matsushita*, 475 U.S. at 587; *Wood* 121 P.3d at 1130.

20. When ruling on a motion for summary judgment, the court may take judicial notice of the public records attached to the motion. *See, e.g., Anderson v. County of Nassau*, 297 F. Supp. 2d 540, 544-45 (E.D.N.Y. 2004); *In re Bayside Prison Litig.*, 190 F. Supp. 2d 755, 760 (D. N.J. 2002). The recorded documents attached to Chase's MSJ are referenced in the Complaint and/or are public records of which the Court may, and did, take judicial notice. *See* NRS 47.150; *Lemel v. Smith*, 64 Nev. 545 (1947) ("Judicial notice takes the place of proof and is of equal force."). "Documents accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take acknowledgments are presumed to be authentic." NRS 52.165.

21. Plaintiff's Complaint alleges two claims for relief against Chase – declaratory relief/quiet title and injunctive relief. Summary judgment on all of Plaintiff's claims for relief is appropriate in favor of Chase, because Plaintiff failed to carry its burden of proof. *See*

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Breliant v. Preferred Equities Corp., 112 Nev. 663, 669 (1996) ("In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself.").

Federal Foreclosure Bar

22. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq.*) ("**HERA**"), which established FHFA. FHFA is an independent federal agency with regulatory and oversight authority over Freddie Mac, Federal National Mortgage Association ("**Fannie Mae**"), and the Federal Home Loan Banks.

23. In September 2008, FHFA placed Freddie Mac and Fannie Mae (together, "**the Enterprises**") into conservatorships "for the purpose of reorganizing, rehabilitating, or winding up [their] affairs." 12 U.S.C. § 4617(a)(2).

24. In HERA, Congress granted FHFA an array of powers, privileges, and exemptions from otherwise applicable laws when acting as Conservator. Among these is a section providing that "[n]o property" of FHFA conservatorships "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the "**Federal Foreclosure Bar**").

25. The Federal Foreclosure Bar contains no conditions regarding the timing and effectiveness of its statutory protections. Thus, unless and until FHFA gives its consent, the Federal Foreclosure Bar shall be given full effect, which includes pre-emption of state law. Here, Plaintiff failed to demonstrate that FHFA consented to the extinguishment of the Deed of Trust.

26. Accordingly, the Deed of Trust was not extinguished by the Foreclosure and remains a lien on the Property.

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Subpriority Foreclosure

27. The Foreclosure Deed in the instant case does not specify which portion of the HOA's lien was sold. As such, an analysis of the facts and circumstances surrounding the sale was therefore necessary in order to determine whether the Association possessed, and foreclosed on, a superpriority lien and to determine what interest was sold. *See Laurent v. JP Morgan Chase Bank, N.A.*, 2016 U.S. Dist. LEXIS 43511 at *12-15 (D. Nev. 2016).

28. The actions of the Association and RRFS indicate that, under the totality of the circumstances, a sale of the subpriority lien rights only was conducted. Specifically, neither the LDA, NOD, nor NFS indicate that the Association possessed, or intended to foreclose on, a superpriority lien right. Moreover, the Foreclosure Deed does not indicate that the Association possessed, or foreclosed on, a superpriority lien right. In addition, the RRFS Letter sent to Chase on June 5, 2012, states, "[t]he Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder." Finally, the undisputed testimony of RRFS presented to the Court demonstrates that "[t]here was no instruction from the Association to Red Rock that any sale of the Property was supposed to involve superpriority rights, and Red Rock did not advise the Association that it intended to exercise superpriority rights on behalf of the Association."

29. Plaintiff did not present any admissible evidence to demonstrate that the Association possessed, and foreclosed on, a superpriority lien right, which was Plaintiff's burden. *See Breliant, supra.*

30. As a consequence of the Association's exercise of only a subpriority lien right, F100's purchase of the Property was subject to the Deed of Trust, and F100's conveyance of its interest in the Property to Plaintiff was likewise subject to the Deed of Trust.

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Facial Constitutionality of NRS 116.3116, *et seq.* (the "**Statute**")[3]

31. Chase argued in its MSJ that the Statute is facially unconstitutional because (i) it does not require actual notice to lien holders of an HOA lien unless the lien holder "opts-in," and (ii) it violates the Equal Protection Clause of the United States Constitution by failing to require service of the Notice of Delinquent Assessment on lien holders of record without a rational basis. However, the Court denies Chase's constitutional challenges, pursuant to the holding in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 388 P.3d 970, 971 (Nev. 2017).

32. Chase asserts a number of additional theories in support of Chase's MSJ. In light of the above-analysis, this Court chooses not to address Chase's alternative theories and will grant Chase's MSJ for the reasons stated herein.

33. For the reasons stated above, the Court denies Plaintiff's MSJ and finds that the Deed of Trust survived the Foreclosure and is still a valid and legal lien on the Property.

ORDER AND JUDGMENT

~~**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's MSJ~~ is DENIED without prejudice. JA

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Chase's MSJ is GRANTED. LP

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[3] This refers to the Statute before it was amended in 2015 by S.B. 306.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Chase on all of Plaintiff's claims for relief against Chase.

Dated this 22 day of May, 2017.

DISTRICT JUDGE

Submitted by:	Reviewed by:
SMITH LARSEN & WIXOM	WEIL & DRAGE, APC
Kent F. Larsen, Esq. Nevada Bar No. 3463 Chet A. Glover, Esq. Nevada Bar No. 10054 1935 Village Center Circle Las Vegas, Nevada 89134 Attorneys for Defendant JPMorgan Chase Bank, N.A.	Neil B. Durrant, Esq. Nevada Bar No. 7324 Jason G. Martinez, Esq. Nevada Bar No. 13375 2500 Anthem Village Drive Henderson, NV 89052 Attorneys for Plaintiff KAL-MOR-USA, LLC

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DISTRICT COURT

CLARK COUNTY, NEVADA

KAL-MOR-USA, LLC, a Nevada Limited Liability Company, Plaintiff, vs. JPMORGAN CHASE BANK, N.A., a foreign corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No.: A-13-677358-C Dept. No.: XXXI

CASE APPEAL STATEMENT

Appellant KAL-MOR-USA, LLC ("Kal-Mor"), by and through its attorneys of record, the law firm of Weil & Drage, APC, hereby submits this Case Appeal Statement as follows:

1. **Name of appellant filing this case appeal statement:**

   Kal-Mor-USA, LLC.

2. **Identify the judge issuing the decision, judgment, or order appealed from:**

   District Court Judge Joanna Kishner

3. **Identify each appellant and the name and address of counsel for each appellant:**

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Appellant, Kal-Mor-USA, LLC
Neil B. Durrant, Esq.
C. Robert Peterson, Esq.
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4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):

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Chet A. Glover, Esq.
SMITH LARSEN & WIXOM
Hills Center Business Park
1935 Village Center Circle
Las Vegas, NV 89134
Attorneys for Defendant,
JPMORGAN CHASE BANK, N.A.

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):

All counsel is licensed to practice law in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

Appellant was represented by retained counsel.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

Appellant is represented by retained counsel.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

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Appellant has filed no request for leave to proceed in forma pauperis and, as such, no leave was granted.

9. **Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):**

February 26, 2013.

10. **Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:**

This matter involves real property located at 4555 East Sahara Ave. #215, Las Vegas, Nevada 89104 and bears Assessor's Parcel Number 161-08-111-031 (the "Property") which was acquired by Appellant's predecessor-in-interest pursuant to a sale held under NRS Chapter 116 foreclosing Sahara Mountain Vista Homeowners Association's ("HOA") Lien for Delinquent Assessments. Appellant contends that the HOA's Foreclosure Sale extinguished all junior interests, including Respondents' purported interests, by operation of NRS Chapter 116. Respondent contends that its Deed of Trust was not extinguished by the HOA Foreclosure Sale because, among other things, foreclosure was barred by Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 et. seq.) and also because the HOA and its agents did not intend to foreclose on the superpriority portion of its assessment lien. Appellant filed a Motion for Summary judgment on February 22, 2017 and Respondent filed a Motion for Summary Judgment on February 24, 2017 . An Order Granting Respondent's Motion for Summary Judgment and Denying Appellant's Motion for Summary Judgment was entered and notice of entry was provided on May 24, 2017. Appellant appeals the order granting summary judgment in favor of Respondent and denying Summary Judgment in favor of Appellant.

11. **Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court**

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docket number of the prior proceeding:

This case has not previously been the subject of appeal or original writ proceeding.

12. Indicate whether this appeal involves child custody or visitation:

This appeal does not involve child custody or visitation.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

This appeal does involve the possibility of settlement.

DATED this 26th day of June, 2017.

WEIL & DRAGE, APC

/s/ *C. Robert Peterson*

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of June, 2017, service of the foregoing was made this date by electronically serving a true and correct copy of the same, through Clark County Odyssey eFileNV, to the following parties:

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Attorneys for Defendant,
JPMORGAN CHASE BANK, N.A.

/s/ *Lisa Robison*

Lisa Robison, an Employee of
WEIL & DRAGE, APC

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DEPARTMENT 31

CASE SUMMARY

CASE NO. A-13-677358-C

Kal-Mor-USA, LLC, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna S.**
EMC Mortgage Corporation, Defendant(s)	§	Filed on:	**02/26/2013**
	§	Cross-Reference Case Number:	**A677358**

CASE INFORMATION

Case Type: **Title to Property**
Subtype: **Quiet Title**

Case Flags: **Appealed to Supreme Court**
Automatically Exempt from Arbitration

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-13-677358-C
Court	Department 31
Date Assigned	02/26/2013
Judicial Officer	Kishner, Joanna S.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**First 100 LLC** Removed: 04/04/2013 Inactive	**Ayon, Luis A** *Retained* 702-792-3773(W)
	Kal-Mor-USA, LLC	**Durrant, Neil B.** *Retained* 702-314-1905(W)
Defendant	**EMC Mortgage Corporation**	
	JPMorgan Chase Bank	**Glover, Chet A.** *Retained* 702-252-5002(W)
	MTC Financial Inc Removed: 02/06/2015 Dismissed	**Sullivan, Michael E.** *Retained* 7027862862(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

02/26/2013 — Complaint
Filed By: Plaintiff First 100 LLC
Complaint

02/26/2013 — Initial Appearance Fee Disclosure
Filed By: Plaintiff First 100 LLC
Initial Appearance Fee Disclosure (NRS Chapter 19)

02/26/2013 — Case Opened

04/02/2013 — Affidavit of Service
Filed By: Plaintiff First 100 LLC
Affidavit of Service

04/02/2013	Affidavit of Service Filed By: Plaintiff First 100 LLC *Affidavit of Service*
04/04/2013	Initial Appearance Fee Disclosure Filed By: Plaintiff Kal-Mor-USA, LLC *Initial Appearance Fee Disclosure (NRS Chapter 19)*
04/04/2013	First Amended Complaint Filed By: Plaintiff Kal-Mor-USA, LLC *First Amended Complaint*
04/08/2013	Acceptance of Service Filed By: Plaintiff Kal-Mor-USA, LLC Party Served: Defendant MTC Financial Inc *Acceptance of Service (MTC Financial Inc dba Trustee Corps)*
04/17/2013	Affidavit of Service Filed By: Plaintiff First 100 LLC Party Served: Defendant EMC Mortgage Corporation *Affidavit of Service for EMC Mortgage Corporation*
04/25/2013	Initial Appearance Fee Disclosure Filed By: Defendant MTC Financial Inc *Initial Appearance Fee Disclosure (NRS Chapter 19)*
04/25/2013	Answer to Amended Complaint Filed By: Defendant MTC Financial Inc *Answer to First Amended Complaint by Defendant MTC Financial Inc. dba Trustee Corps*
12/06/2013	Stipulation and Order Filed by: Defendant EMC Mortgage Corporation *Stipulation and Order To: 1) Amend The Caption To Identify The Real Party in Interest; 2) Stay Transfer or Sale of The Subject Property; and 3) Stay Discovery and Litigation*
12/18/2013	Notice of Entry of Order Filed By: Defendant JPMorgan Chase Bank *Notice of Entry of Order*
12/24/2013	Notice of Change of Address Filed By: Plaintiff Kal-Mor-USA, LLC *Notice of Change of Address of Attorney*
05/29/2014	*CANCELED* **Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Law Clerk*
10/28/2014	**Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Pending decision from Supreme Court*
11/14/2014	*CANCELED* **Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Order* *Status Check: Order 10/28/14*
11/20/2014	Order Vacating Filed By: Defendant JPMorgan Chase Bank

Order Vacating Stay of Discovery and Litigation

11/21/2014 Notice of Entry of Order
Filed By: Defendant JPMorgan Chase Bank
Notice of Entry of Order Vacating Stay of Discovery and Litigation

11/21/2014 Answer
Filed By: Defendant JPMorgan Chase Bank
Answer of JPMorgan Chase Bank, N.A.

11/21/2014 Initial Appearance Fee Disclosure
Filed By: Defendant JPMorgan Chase Bank
Initial Appearance Fee Disclosure (NRS Chapter 19)

12/11/2014 Substitution of Attorney
Filed by: Plaintiff Kal-Mor-USA, LLC
Substitution of Attorneys

02/06/2015 Stipulation and Order for Dismissal
Filed by: Plaintiff Kal-Mor-USA, LLC
Stipulation and Order to Dismiss Defendant MTC Financial Inc. dba Trustee Corps

02/06/2015 **Order of Dismissal** (Judicial Officer: Kishner, Joanna S.)
Debtors: MTC Financial Inc (Defendant)
Creditors: Kal-Mor-USA, LLC (Plaintiff)
Judgment: 02/06/2015, Docketed: 04/01/2015

02/09/2015 Notice of Entry of Stipulation & Order for Dismissal
Filed By: Plaintiff Kal-Mor-USA, LLC
Notice of Entry of Order

02/26/2015 Joint Case Conference Report
Filed By: Plaintiff Kal-Mor-USA, LLC
Joint Case Conference Report

03/09/2015 Notice to Appear for Discovery Conference
Notice to Appear for Discovery Conference

03/17/2015 Subpoena Duces Tecum
Filed by: Plaintiff Kal-Mor-USA, LLC
Subpoena Duces Tecum to Custodian of Records for United Legal Services, Inc. and Affidavit of Service

03/24/2015 **Discovery Conference** (9:30 AM) (Judicial Officer: Bulla, Bonnie)

04/21/2015 Scheduling Order
Scheduling Order

05/11/2015 Order Setting Civil Non-Jury Trial
Order Setting Civil Non-Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check

06/11/2015 Stipulation and Order
Filed by: Defendant JPMorgan Chase Bank
Stipulation and Order to Allow Filing of Amended Answer

06/16/2015	Notice of Entry of Order Filed By: Defendant JPMorgan Chase Bank *Notice of Entry of Stipulation and Order to Allow Filing of Amended Answer*
06/17/2015	Amended Answer Filed By: Defendant JPMorgan Chase Bank *First Amended Answer of JPMorgan Chase Bank, N.A.*
05/12/2016	**Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
05/16/2016	Stipulation and Order Filed by: Defendant JPMorgan Chase Bank *Stipulation and Order to Extend Discovery and Continue Trial (First Request)*
05/19/2016	Notice of Entry Filed By: Defendant JPMorgan Chase Bank *Notice of Entry of Stipulation and Order to Extend Discovery and Continue Trial (First Request)*
06/07/2016	Stipulated Protective Order Filed By: Defendant JPMorgan Chase Bank *Stipulated Protective Order*
06/10/2016	Notice of Entry of Order Filed By: Defendant JPMorgan Chase Bank *Notice of Entry of Stipulated Protective Order*
06/16/2016	Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call *Amended Order Setting Civil Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check*
07/01/2016	Motion to Compel Filed By: Defendant JPMorgan Chase Bank *Motion to Compel Attendance at Deposition*
07/26/2016	Stipulation and Order Filed by: Defendant JPMorgan Chase Bank *Stipulation and Order to Extend Discovery and Continue Trial (Second Request)*
07/27/2016	Notice of Entry of Stipulation and Order Filed By: Defendant JPMorgan Chase Bank *Notice of Entry of Stipulation and Order to Extend Discovery and Continue Trial (Second Request)*
07/28/2016	Motion to Seal/Redact Records Filed By: Defendant JPMorgan Chase Bank *Motion to File Records Under Seal*
08/03/2016	*CANCELED* **Motion to Compel** (9:00 AM) (Judicial Officer: Bulla, Bonnie) *Vacated* *JPMorgan Chase Bank, N.A.'s Motion to Compel Attendance at Deposition*
08/04/2016	*CANCELED* **Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Stipulation and Order*

08/30/2016	*CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Stipulation and Order*
08/30/2016	**Motion to Seal/Redact Records** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Defendant JPMorgan Chase's Motion to File Records Under Seal*
09/01/2016	Order Granting Motion Filed By: Defendant JPMorgan Chase Bank *Order Granting Motion to File Records Under Seal*
09/06/2016	*CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Stipulation and Order*
09/08/2016	*CANCELED* **Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Stipulation and Order*
09/08/2016	Notice of Entry of Order Filed By: Defendant JPMorgan Chase Bank *Notice of Entry of Order Granting Motion to File Records Under Seal*
09/14/2016	Order Setting Civil Non-Jury Trial *Amended Order Setting Civil Non-Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check*
10/13/2016	*CANCELED* **Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Stipulation and Order*
11/08/2016	*CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Stipulation and Order*
11/14/2016	*CANCELED* **Jury Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Stipulation and Order*
02/07/2017	**Status Check** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) *Status Check*
02/21/2017	Stipulation and Order Filed by: Defendant JPMorgan Chase Bank *Stipulation and Order to Continue the Dispositive Motion Deadline*
02/22/2017	Motion for Summary Judgment Filed By: Plaintiff Kal-Mor-USA, LLC *Plaintiff's Motion for Summary Judgment*
02/23/2017	Notice of Entry of Stipulation and Order Filed By: Defendant JPMorgan Chase Bank *Notice of Entry of Stipulation and order to Continue the Dispositive Motion Deadline*
02/24/2017	Motion for Summary Judgment Filed By: Defendant JPMorgan Chase Bank *Motion for Summary Judgment*
03/09/2017	Filed Under Seal *Notice of Filing Exhibits 4D and 4E to JPMorgan Chase Bank, N.A.'S Motion For Summary*

	Judgment Under Seal
03/13/2017	Opposition Filed By: Defendant JPMorgan Chase Bank *Opposition to Plaintiff's Motion for Summary Judgment*
03/16/2017	Opposition to Motion For Summary Judgment Filed By: Plaintiff Kal-Mor-USA, LLC *Kal-Mor Opposition to JPMorgan Motion for Summary Judgment*
03/16/2017	**Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.) *Pre Trial Conference*
04/04/2017	*CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Judge*
04/07/2017	Reply in Support Filed By: Defendant JPMorgan Chase Bank *Reply in Support of Motion for Summary Judgment*
04/07/2017	Reply in Support Filed By: Plaintiff Kal-Mor-USA, LLC *Plaintiff's Reply in Support of Its Motion for Summary Judgment*
04/12/2017	Amended Order Setting Civil Non-Jury Trial *Amended Order Setting Civil Non-Jury Trial, Pre-Trial Conference, and Calendar Call*
04/17/2017	*CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - per Judge*
04/18/2017	**Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) **04/18/2017, 04/24/2017** *Defendant JPMorgan Chase Bank, N.A.'s Motion for Summary Judgment*
04/18/2017	**Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) **04/18/2017, 04/24/2017** *Plaintiff's Motion for Summary Judgment*
04/18/2017	**All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
04/24/2017	**All Pending Motions** (10:00 AM) (Judicial Officer: Kishner, Joanna S.)
05/08/2017	Stipulation and Order *Stipulation and Order to Extend Briefing and Continue the Dispositive Motion Hearing*
05/24/2017	**Summary Judgment** (Judicial Officer: Kishner, Joanna S.) Debtors: Kal-Mor-USA, LLC (Plaintiff) Creditors: JPMorgan Chase Bank (Defendant) Judgment: 05/24/2017, Docketed: 05/24/2017
05/24/2017	Findings of Fact, Conclusions of Law and Judgment *Findings of Fact, Conclusions of Law, and Judgment*
05/25/2017	*CANCELED* **Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - Case Closed*

05/25/2017	Notice of Entry of Order *Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment*
06/20/2017	*CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - Case Closed*
06/26/2017	*CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - Case Closed* *Bench Trial #1*
06/26/2017	Notice of Appeal Filed By: Plaintiff Kal-Mor-USA, LLC *Notice of Appeal*
06/26/2017	Case Appeal Statement Filed By: Plaintiff Kal-Mor-USA, LLC *Case Appeal Statement*

CIVIL COVER SHEET

A-13-677358-C

Clark County, Nevada

Case No. _____ XXXI

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
FIRST 100, LLC, a Nevada limited liability company	EMC MORTGAGE CORPORATION, a foreign corporation; MTC FINANCIAL INC. dba TRUSTEE CORPS, a foreign corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive
Attorney (name/address/phone):	Attorney (name/address/phone):
Luis A. Ayon, Esq., MAIER GUTIERREZ AYON, 2500 W. Sahara Avenue, Suite 106, Las Vegas, NV 89102 (702) 629-7900	

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☒ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☒ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence

- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- ☐ **Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - ☐ Other Civil Matters

III. Business Court Requested (Please check applicable category; *for Clark or Washoe Counties only.*)

- ☐ NRS Chapters 78-88
- ☐ Commodities (NRS 90)
- ☐ Securities (NRS 90)
- ☐ Investments (NRS 104 Art. 8)
- ☐ Deceptive Trade Practices (NRS 598)
- ☐ Trademarks (NRS 600A)
- ☐ Enhanced Case Mgmt/Business
- ☐ Other Business Court Matters

February 26, 2013

Date

Signature of initiating party or representative

See other side for family-related case filings.

Electronically Filed
5/24/2017 12:01 PM
Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited liability company Plaintiff, v. JPMORGAN CHASE BANK, N.A.; MTC FINANCIAL, INC. dba TRUSTEE CORPS, a foreign corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive Defendants.	CASE NO: A-13-677358-C DEPT NO: 31 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

On April 24, 2017 at 10:00 a.m., the Honorable Joanna S. Kishner heard oral argument regarding Plaintiff KAL-MOR-USA, LLC's ("**Plaintiff**") Motion for Summary Judgment ("**Plaintiff's MSJ**") and JPMorgan Chase Bank, N.A.'s ("**Chase**") Motion for Summary Judgment ("**Chase's MSJ**"). Jason G. Martinez, Esq. appeared for Plaintiff. Chet A. Glover, Esq. appeared for Chase. This Court, having considered Plaintiff's MSJ, Chase's MSJ,

Case Number: A-13-677358-C

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related briefing, having heard the argument presented at the hearing thereof, and for good cause, hereby enters the following:[1]

FINDINGS OF UNDISPUTED FACT

1. The Deed of Trust listing Cleotha and Teresa Lakes as the borrowers ("**Borrowers**"); Stearns Lending, Inc. as the lender ("**Lender**"); and MERS, as beneficiary solely as nominee for Lender and Lender's successors and assigns, was executed on May 1, 2006 and recorded on May 12, 2006. The Deed of Trust, which was executed by the Borrowers along with the promissory Note ("**Note**"), granted Lender a security interest in real property known as 4555 E. Sahara, Bld. 4, #215, Las Vegas, Nevada 89104 (the "**Property**") to secure the repayment of a loan in the original amount of $136,000.00 to the Borrowers (the "**Loan**"). The Deed of Trust states that it is a "NEVADA-Single Family-Fannie Mae/Freddie Mac Uniform Instrument with MERS."

2. Freddie Mac purchased the Loan, which specifically included ownership of the Note and Deed of Trust, on or about November 29, 2006.

3. On January 12, 2012, Red Rock Financial Services ("**RRFS**"), agent for Sahara Mountain Homeowners Association (the "**Association**"), recorded a Lien for Delinquent Assessments the ("**LDA**"). The LDA did not indicate that the Association claimed, or intended to foreclose on, a superpriority lien right.

4. On March 28, 2012, RRFS recorded a Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments (the "**NOD**"). The NOD did not indicate that the Association claimed, or intended to foreclose on, a superpriority lien right.

[1] To the extent any Finding of Fact should be properly designated a Conclusion of Law, it shall be deemed a Conclusion of Law. To the extent any Conclusion of Law should properly be designated a Finding of Fact, it shall be deemed a Finding of Fact.

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5. On June 5, 2012, RRFS sent Chase and others a letter indicating that "[t]he Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder." (the "**RRFS Letter**").

6. On January 4, 2013, the Association entered into a Purchase and Sale Agreement ("**PSA**") with First 100, LLC ("**F100**"). The ostensible purpose of the PSA was for F100 to purchase the right to receive income related to eight properties within the Association, which included the Property. As part of the PSA, F100 paid the Association $1,395.00, which was equal to nine months of assessments.

7. On January 17, 2013, the Association recorded a Notice of Foreclosure Sale Under the Lien for Delinquent Assessments (the "**NFS**"). The NFS did not indicate that the Association claimed, or intended to foreclose on, a superpriority lien right.

8. On February 4, 2013, a Foreclosure Deed Upon Sale (the "**Foreclosure Deed**") was recorded against the Property. The Foreclosure Deed states that the Property was sold on February 2, 2013 to F100 with a purchase price of $2,500.00 (the "**Foreclosure**"). The Foreclosure Deed does not indicate that the Association claimed, or foreclosed on, a superpriority lien right.

9. Freddie Mac maintained its ownership of the Note and Deed of Trust at the time of the Foreclosure on February 2, 2013.

10. On March 4, 2013, a Deed of Sale was recorded. The Deed of Sale states that the Property was sold on February 28, 2013 by F100 to Plaintiff.

11. On March 17, 2010, MERS, as nominee for Lender and Lenders successors and assigns, assigned the Deed of Trust to EMC Mortgage Corporation. The assignment of the Deed of Trust was recorded on April 27, 2010.

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12. EMC Mortgage Corporation subsequently merged with Chase, with Chase becoming the surviving entity.[2]

13. On January 17, 2013, EMC Mortgage LLC f/k/a EMC Mortgage Corporation assigned the Deed of Trust to Chase via Assignment of Deed of Trust, which was recorded on February 11, 2013.

14. At the time of the Foreclosure on February 2, 2013, Chase was the servicer of the Loan for Freddie Mac.

15. At no time did the Federal Housing Finance Agency ("**FHFA**" or the "**Conservator**") consent to the Foreclosure extinguishing or foreclosing Freddie Mac's interest in the Property.

16. The relationship between Chase, as the servicer of the Loan, and Freddie Mac, as owner of the Loan, is governed by Freddie Mac's Single-Family Seller/Servicer Guide ("**Guide**"), a central governing document for Freddie Mac's relationship with servicers nationwide.

17. The Guide provides that, "[a]ll documents in the Mortgage file … and all other documents and records related to the Mortgage of whatever kind or description … will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only."

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[2] *See Oppong-Agyei v. Chase Home Fin., LLC*, 2013 Minn. App. Unpub. LEXIS 610 (Minn. Ct. App. July 8, 2013) ("JP Morgan Chase Bank N.A. … is the successor in interest by merger to Chase and EMC."); *De Souza v. JPMorgan Chase Home Lending Div.*, 608 F. App'x 776, 778 (11th Cir. 2015) ("The mortgage appears to have been sold in 2007 to EMC Mortgage Corp., which later merged with Chase. As a result of the merger, Chase succeeded to EMC Mortgage's interests."); *New-Howard v. JP Morgan Chase Bank N.A.*, 2013 U.S. Dist. LEXIS 164882, at *10 (E.D. Pa. Nov. 18, 2013) ("On April 1, 2011, EMC Mortgage Corporation became a limited liability company - EMC Mortgage LLC. That same day, JPMorgan Chase Bank, N.A., acquired the assets of EMC Mortgage LLC in a merger. For purposes of this action, JPM is a successor in interest to EMC Mortgage LLC, formerly known as EMC Mortgage Corporation.").

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CONCLUSIONS OF LAW

18. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to a judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005).

19. To defeat a motion for summary judgment the non-moving party bears the burden to "do more than simply show that there is some metaphysical doubt" as to the operative facts. *Wood*, 121 Nev. at 732 (citing *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). Moreover, the non-moving party must come forward with specific facts showing a genuine issue exists for trial. *Matsushita*, 475 U.S. at 587; *Wood* 121 P.3d at 1130.

20. When ruling on a motion for summary judgment, the court may take judicial notice of the public records attached to the motion. *See, e.g., Anderson v. County of Nassau*, 297 F. Supp. 2d 540, 544-45 (E.D.N.Y. 2004); *In re Bayside Prison Litig.*, 190 F. Supp. 2d 755, 760 (D. N.J. 2002). The recorded documents attached to Chase's MSJ are referenced in the Complaint and/or are public records of which the Court may, and did, take judicial notice. *See* NRS 47.150; *Lemel v. Smith*, 64 Nev. 545 (1947) ("Judicial notice takes the place of proof and is of equal force."). "Documents accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take acknowledgments are presumed to be authentic." NRS 52.165.

21. Plaintiff's Complaint alleges two claims for relief against Chase – declaratory relief/quiet title and injunctive relief. Summary judgment on all of Plaintiff's claims for relief is appropriate in favor of Chase, because Plaintiff failed to carry its burden of proof. *See*

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Breliant v. Preferred Equities Corp., 112 Nev. 663, 669 (1996) ("In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself.").

Federal Foreclosure Bar

22. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq.*) ("**HERA**"), which established FHFA. FHFA is an independent federal agency with regulatory and oversight authority over Freddie Mac, Federal National Mortgage Association ("**Fannie Mae**"), and the Federal Home Loan Banks.

23. In September 2008, FHFA placed Freddie Mac and Fannie Mae (together, "**the Enterprises**") into conservatorships "for the purpose of reorganizing, rehabilitating, or winding up [their] affairs." 12 U.S.C. § 4617(a)(2).

24. In HERA, Congress granted FHFA an array of powers, privileges, and exemptions from otherwise applicable laws when acting as Conservator. Among these is a section providing that "[n]o property" of FHFA conservatorships "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the "**Federal Foreclosure Bar**").

25. The Federal Foreclosure Bar contains no conditions regarding the timing and effectiveness of its statutory protections. Thus, unless and until FHFA gives its consent, the Federal Foreclosure Bar shall be given full effect, which includes pre-emption of state law. Here, Plaintiff failed to demonstrate that FHFA consented to the extinguishment of the Deed of Trust.

26. Accordingly, the Deed of Trust was not extinguished by the Foreclosure and remains a lien on the Property.

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Subpriority Foreclosure

27. The Foreclosure Deed in the instant case does not specify which portion of the HOA's lien was sold. As such, an analysis of the facts and circumstances surrounding the sale was therefore necessary in order to determine whether the Association possessed, and foreclosed on, a superpriority lien and to determine what interest was sold. *See Laurent v. JP Morgan Chase Bank, N.A.*, 2016 U.S. Dist. LEXIS 43511 at *12-15 (D. Nev. 2016).

28. The actions of the Association and RRFS indicate that, under the totality of the circumstances, a sale of the subpriority lien rights only was conducted. Specifically, neither the LDA, NOD, nor NFS indicate that the Association possessed, or intended to foreclose on, a superpriority lien right. Moreover, the Foreclosure Deed does not indicate that the Association possessed, or foreclosed on, a superpriority lien right. In addition, the RRFS Letter sent to Chase on June 5, 2012, states, "[t]he Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder." Finally, the undisputed testimony of RRFS presented to the Court demonstrates that "[t]here was no instruction from the Association to Red Rock that any sale of the Property was supposed to involve superpriority rights, and Red Rock did not advise the Association that it intended to exercise superpriority rights on behalf of the Association."

29. Plaintiff did not present any admissible evidence to demonstrate that the Association possessed, and foreclosed on, a superpriority lien right, which was Plaintiff's burden. *See Breliant, supra.*

30. As a consequence of the Association's exercise of only a subpriority lien right, F100's purchase of the Property was subject to the Deed of Trust, and F100's conveyance of its interest in the Property to Plaintiff was likewise subject to the Deed of Trust.

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Facial Constitutionality of NRS 116.3116, *et seq.* (the "**Statute**")[3]

31. Chase argued in its MSJ that the Statute is facially unconstitutional because (i) it does not require actual notice to lien holders of an HOA lien unless the lien holder "opts-in," and (ii) it violates the Equal Protection Clause of the United States Constitution by failing to require service of the Notice of Delinquent Assessment on lien holders of record without a rational basis. However, the Court denies Chase's constitutional challenges, pursuant to the holding in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 388 P.3d 970, 971 (Nev. 2017).

32. Chase asserts a number of additional theories in support of Chase's MSJ. In light of the above-analysis, this Court chooses not to address Chase's alternative theories and will grant Chase's MSJ for the reasons stated herein.

33. For the reasons stated above, the Court denies Plaintiff's MSJ and finds that the Deed of Trust survived the Foreclosure and is still a valid and legal lien on the Property.

ORDER AND JUDGMENT

~~**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's MSJ~~ is DENIED without prejudice. JA

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Chase's MSJ is GRANTED. LA

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[3] This refers to the Statute before it was amended in 2015 by S.B. 306.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Chase on all of Plaintiff's claims for relief against Chase.

Dated this 22 day of May, 2017.

DISTRICT JUDGE

Submitted by:	Reviewed by:
SMITH LARSEN & WIXOM	WEIL & DRAGE, APC
Kent F. Larsen, Esq. Nevada Bar No. 3463 Chet A. Glover, Esq. Nevada Bar No. 10054 1935 Village Center Circle Las Vegas, Nevada 89134 Attorneys for Defendant JPMorgan Chase Bank, N.A.	Neil B. Durrant, Esq. Nevada Bar No. 7324 Jason G. Martinez, Esq. Nevada Bar No. 13375 2500 Anthem Village Drive Henderson, NV 89052 Attorneys for Plaintiff KAL-MOR-USA, LLC

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Electronically Filed
5/25/2017 8:26 AM
Steven D. Grierson
CLERK OF THE COURT

NEOJ
Kent F. Larsen, Esq.
Nevada Bar No. 3463
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JPMorgan Chase Bank, N.A.

DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited liability company Plaintiff, v. JPMORGAN CHASE BANK, N.A.; MTC FINANCIAL, INC. dba TRUSTEE CORPS, a foreign corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive Defendants.	CASE NO: A-13-677358-C DEPT NO: XXXI **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

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Case Number: A-13-677358-C

NOTICE IS HEREBY GIVEN that the attached Findings of Fact, Conclusions of Law, and Judgment were entered by the Court on the 24th day of May, 2017.

Date this 24th day of May, 2017.

SMITH LARSEN & WIXOM

/s/ *Chet A. Glover*
Kent F. Larsen, Esq.
Nevada Bar No. 3463
Chet A. Glover, Esq.
Nevada Bar No. 10054
1935 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Defendant
JPMorgan Chase Bank, N.A.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 24, 2017 a true copy of the foregoing **Notice of Entry of Findings of Fact, Conclusions of Law, and Judgment** was sent via electronic means to the following at their last known email addresses, pursuant to EDCR 8.05(a):

Weil & Drage, APC	
Contact	**Email**
Joanna Medina	jmedina@weildrage.com
Lisa Robison	lrobison@weildrage.com
NV E-Files	nvefile@weildrage.com

an employee of Smith Larsen & Wixom

Electronically Filed
5/24/2017 12:01 PM
Steven D. Grierson
CLERK OF THE COURT

FFCL
Kent F. Larsen, Esq.
Nevada Bar No. 3463
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DISTRICT COURT

CLARK COUNTY NEVADA

KAL-MOR-USA, LLC, a Nevada limited liability company Plaintiff, v. JPMORGAN CHASE BANK, N.A.; MTC FINANCIAL, INC. dba TRUSTEE CORPS, a foreign corporation; DOES I through X; and ROE CORPORATIONS I through X, inclusive Defendants.	CASE NO: A-13-677358-C DEPT NO: 31 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**

On April 24, 2017 at 10:00 a.m., the Honorable Joanna S. Kishner heard oral argument regarding Plaintiff KAL-MOR-USA, LLC's ("**Plaintiff**") Motion for Summary Judgment ("**Plaintiff's MSJ**") and JPMorgan Chase Bank, N.A.'s ("**Chase**") Motion for Summary Judgment ("**Chase's MSJ**"). Jason G. Martinez, Esq. appeared for Plaintiff. Chet A. Glover, Esq. appeared for Chase. This Court, having considered Plaintiff's MSJ, Chase's MSJ,

Case Number: A-13-677358-C

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related briefing, having heard the argument presented at the hearing thereof, and for good cause, hereby enters the following:[1]

FINDINGS OF UNDISPUTED FACT

1. The Deed of Trust listing Cleotha and Teresa Lakes as the borrowers ("**Borrowers**"); Stearns Lending, Inc. as the lender ("**Lender**"); and MERS, as beneficiary solely as nominee for Lender and Lender's successors and assigns, was executed on May 1, 2006 and recorded on May 12, 2006. The Deed of Trust, which was executed by the Borrowers along with the promissory Note ("**Note**"), granted Lender a security interest in real property known as 4555 E. Sahara, Bld. 4, #215, Las Vegas, Nevada 89104 (the "**Property**") to secure the repayment of a loan in the original amount of $136,000.00 to the Borrowers (the "**Loan**"). The Deed of Trust states that it is a "NEVADA-Single Family-Fannie Mae/Freddie Mac Uniform Instrument with MERS."

2. Freddie Mac purchased the Loan, which specifically included ownership of the Note and Deed of Trust, on or about November 29, 2006.

3. On January 12, 2012, Red Rock Financial Services ("**RRFS**"), agent for Sahara Mountain Homeowners Association (the "**Association**"), recorded a Lien for Delinquent Assessments the ("**LDA**"). The LDA did not indicate that the Association claimed, or intended to foreclose on, a superpriority lien right.

4. On March 28, 2012, RRFS recorded a Notice of Default and Election to Sell Pursuant to the Lien for Delinquent Assessments (the "**NOD**"). The NOD did not indicate that the Association claimed, or intended to foreclose on, a superpriority lien right.

[1] To the extent any Finding of Fact should be properly designated a Conclusion of Law, it shall be deemed a Conclusion of Law. To the extent any Conclusion of Law should properly be designated a Finding of Fact, it shall be deemed a Finding of Fact.

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5. On June 5, 2012, RRFS sent Chase and others a letter indicating that "[t]he Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder." (the "**RRFS Letter**").

6. On January 4, 2013, the Association entered into a Purchase and Sale Agreement ("**PSA**") with First 100, LLC ("**F100**"). The ostensible purpose of the PSA was for F100 to purchase the right to receive income related to eight properties within the Association, which included the Property. As part of the PSA, F100 paid the Association $1,395.00, which was equal to nine months of assessments.

7. On January 17, 2013, the Association recorded a Notice of Foreclosure Sale Under the Lien for Delinquent Assessments (the "**NFS**"). The NFS did not indicate that the Association claimed, or intended to foreclose on, a superpriority lien right.

8. On February 4, 2013, a Foreclosure Deed Upon Sale (the "**Foreclosure Deed**") was recorded against the Property. The Foreclosure Deed states that the Property was sold on February 2, 2013 to F100 with a purchase price of $2,500.00 (the "**Foreclosure**"). The Foreclosure Deed does not indicate that the Association claimed, or foreclosed on, a superpriority lien right.

9. Freddie Mac maintained its ownership of the Note and Deed of Trust at the time of the Foreclosure on February 2, 2013.

10. On March 4, 2013, a Deed of Sale was recorded. The Deed of Sale states that the Property was sold on February 28, 2013 by F100 to Plaintiff.

11. On March 17, 2010, MERS, as nominee for Lender and Lenders successors and assigns, assigned the Deed of Trust to EMC Mortgage Corporation. The assignment of the Deed of Trust was recorded on April 27, 2010.

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12. EMC Mortgage Corporation subsequently merged with Chase, with Chase becoming the surviving entity.[2]

13. On January 17, 2013, EMC Mortgage LLC f/k/a EMC Mortgage Corporation assigned the Deed of Trust to Chase via Assignment of Deed of Trust, which was recorded on February 11, 2013.

14. At the time of the Foreclosure on February 2, 2013, Chase was the servicer of the Loan for Freddie Mac.

15. At no time did the Federal Housing Finance Agency ("**FHFA**" or the "**Conservator**") consent to the Foreclosure extinguishing or foreclosing Freddie Mac's interest in the Property.

16. The relationship between Chase, as the servicer of the Loan, and Freddie Mac, as owner of the Loan, is governed by Freddie Mac's Single-Family Seller/Servicer Guide ("**Guide**"), a central governing document for Freddie Mac's relationship with servicers nationwide.

17. The Guide provides that, "[a]ll documents in the Mortgage file … and all other documents and records related to the Mortgage of whatever kind or description … will be, and will remain at all times, the property of Freddie Mac. All of these records and Mortgage data in the possession of the Servicer are retained by the Servicer in a custodial capacity only."

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[2] *See Oppong-Agyei v. Chase Home Fin., LLC*, 2013 Minn. App. Unpub. LEXIS 610 (Minn. Ct. App. July 8, 2013) ("JP Morgan Chase Bank N.A. … is the successor in interest by merger to Chase and EMC."); *De Souza v. JPMorgan Chase Home Lending Div.*, 608 F. App'x 776, 778 (11th Cir. 2015) ("The mortgage appears to have been sold in 2007 to EMC Mortgage Corp., which later merged with Chase. As a result of the merger, Chase succeeded to EMC Mortgage's interests."); *New-Howard v. JP Morgan Chase Bank N.A.*, 2013 U.S. Dist. LEXIS 164882, at *10 (E.D. Pa. Nov. 18, 2013) ("On April 1, 2011, EMC Mortgage Corporation became a limited liability company - EMC Mortgage LLC. That same day, JPMorgan Chase Bank, N.A., acquired the assets of EMC Mortgage LLC in a merger. For purposes of this action, JPM is a successor in interest to EMC Mortgage LLC, formerly known as EMC Mortgage Corporation.").

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CONCLUSIONS OF LAW

18. Summary judgment is appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate "no genuine issue as to any material fact [remains] and the moving party is entitled to a judgment as a matter of law." *See* NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729 (2005).

19. To defeat a motion for summary judgment the non-moving party bears the burden to "do more than simply show that there is some metaphysical doubt" as to the operative facts. *Wood*, 121 Nev. at 732 (citing *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586 (1986)). Moreover, the non-moving party must come forward with specific facts showing a genuine issue exists for trial. *Matsushita*, 475 U.S. at 587; *Wood* 121 P.3d at 1130.

20. When ruling on a motion for summary judgment, the court may take judicial notice of the public records attached to the motion. *See, e.g., Anderson v. County of Nassau*, 297 F. Supp. 2d 540, 544-45 (E.D.N.Y. 2004); *In re Bayside Prison Litig.*, 190 F. Supp. 2d 755, 760 (D. N.J. 2002). The recorded documents attached to Chase's MSJ are referenced in the Complaint and/or are public records of which the Court may, and did, take judicial notice. *See* NRS 47.150; *Lemel v. Smith*, 64 Nev. 545 (1947) ("Judicial notice takes the place of proof and is of equal force."). "Documents accompanied by a certificate of acknowledgment of a notary public or officer authorized by law to take acknowledgments are presumed to be authentic." NRS 52.165.

21. Plaintiff's Complaint alleges two claims for relief against Chase – declaratory relief/quiet title and injunctive relief. Summary judgment on all of Plaintiff's claims for relief is appropriate in favor of Chase, because Plaintiff failed to carry its burden of proof. *See*

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Breliant v. Preferred Equities Corp., 112 Nev. 663, 669 (1996) ("In a quiet title action, the burden of proof rests with the plaintiff to prove good title in himself.").

Federal Foreclosure Bar

22. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654 (codified as 12 U.S.C. § 4511 *et seq.*) ("**HERA**"), which established FHFA. FHFA is an independent federal agency with regulatory and oversight authority over Freddie Mac, Federal National Mortgage Association ("**Fannie Mae**"), and the Federal Home Loan Banks.

23. In September 2008, FHFA placed Freddie Mac and Fannie Mae (together, "**the Enterprises**") into conservatorships "for the purpose of reorganizing, rehabilitating, or winding up [their] affairs." 12 U.S.C. § 4617(a)(2).

24. In HERA, Congress granted FHFA an array of powers, privileges, and exemptions from otherwise applicable laws when acting as Conservator. Among these is a section providing that "[n]o property" of FHFA conservatorships "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the "**Federal Foreclosure Bar**").

25. The Federal Foreclosure Bar contains no conditions regarding the timing and effectiveness of its statutory protections. Thus, unless and until FHFA gives its consent, the Federal Foreclosure Bar shall be given full effect, which includes pre-emption of state law. Here, Plaintiff failed to demonstrate that FHFA consented to the extinguishment of the Deed of Trust.

26. Accordingly, the Deed of Trust was not extinguished by the Foreclosure and remains a lien on the Property.

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Subpriority Foreclosure

27. The Foreclosure Deed in the instant case does not specify which portion of the HOA's lien was sold. As such, an analysis of the facts and circumstances surrounding the sale was therefore necessary in order to determine whether the Association possessed, and foreclosed on, a superpriority lien and to determine what interest was sold. *See Laurent v. JP Morgan Chase Bank, N.A.*, 2016 U.S. Dist. LEXIS 43511 at *12-15 (D. Nev. 2016).

28. The actions of the Association and RRFS indicate that, under the totality of the circumstances, a sale of the subpriority lien rights only was conducted. Specifically, neither the LDA, NOD, nor NFS indicate that the Association possessed, or intended to foreclose on, a superpriority lien right. Moreover, the Foreclosure Deed does not indicate that the Association possessed, or foreclosed on, a superpriority lien right. In addition, the RRFS Letter sent to Chase on June 5, 2012, states, "[t]he Association's Lien for Delinquent Assessments is Junior only to the Senior Lender/Mortgage Holder." Finally, the undisputed testimony of RRFS presented to the Court demonstrates that "[t]here was no instruction from the Association to Red Rock that any sale of the Property was supposed to involve superpriority rights, and Red Rock did not advise the Association that it intended to exercise superpriority rights on behalf of the Association."

29. Plaintiff did not present any admissible evidence to demonstrate that the Association possessed, and foreclosed on, a superpriority lien right, which was Plaintiff's burden. *See Breliant, supra.*

30. As a consequence of the Association's exercise of only a subpriority lien right, F100's purchase of the Property was subject to the Deed of Trust, and F100's conveyance of its interest in the Property to Plaintiff was likewise subject to the Deed of Trust.

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Facial Constitutionality of NRS 116.3116, *et seq.* (the "**Statute**")[3]

31. Chase argued in its MSJ that the Statute is facially unconstitutional because (i) it does not require actual notice to lien holders of an HOA lien unless the lien holder "opts-in," and (ii) it violates the Equal Protection Clause of the United States Constitution by failing to require service of the Notice of Delinquent Assessment on lien holders of record without a rational basis. However, the Court denies Chase's constitutional challenges, pursuant to the holding in *Saticoy Bay LLC Series 350 Durango 104 v. Wells Fargo Home Mortg.*, 388 P.3d 970, 971 (Nev. 2017).

32. Chase asserts a number of additional theories in support of Chase's MSJ. In light of the above-analysis, this Court chooses not to address Chase's alternative theories and will grant Chase's MSJ for the reasons stated herein.

33. For the reasons stated above, the Court denies Plaintiff's MSJ and finds that the Deed of Trust survived the Foreclosure and is still a valid and legal lien on the Property.

ORDER AND JUDGMENT

~~**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Plaintiff's MSJ~~ is DENIED without prejudice. JA

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Chase's MSJ is GRANTED. LP

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[3] This refers to the Statute before it was amended in 2015 by S.B. 306.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that judgment is entered in favor of Chase on all of Plaintiff's claims for relief against Chase.

Dated this 22 day of May, 2017.

DISTRICT JUDGE

Submitted by:	Reviewed by:
SMITH LARSEN & WIXOM	WEIL & DRAGE, APC
Kent F. Larsen, Esq. Nevada Bar No. 3463 Chet A. Glover, Esq. Nevada Bar No. 10054 1935 Village Center Circle Las Vegas, Nevada 89134 Attorneys for Defendant JPMorgan Chase Bank, N.A.	Neil B. Durrant, Esq. Nevada Bar No. 7324 Jason G. Martinez, Esq. Nevada Bar No. 13375 2500 Anthem Village Drive Henderson, NV 89052 Attorneys for Plaintiff KAL-MOR-USA, LLC

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DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	COURT MINUTES	October 28, 2014

A-13-677358-C Kal-Mor-USA, LLC, Plaintiff(s)
vs.
EMC Mortgage Corporation, Defendant(s)

October 28, 2014 **9:00 AM** **Status Check**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Glover, Chet A.	Attorney
Schmidt, Margaret E, ESQ	Attorney

JOURNAL ENTRIES

- PENDING DECISION FROM SUPREME COURT

Mr. Glover states agreement of the parties to lift stay as to litigation and discovery with stay remaining in effect as to transfer and sale of property. Ms. Schmidt states in agreement. COURT ORDERED, Stay LIFTED as to litigation and discovery only, effective this date; Twenty (20) days from Notice of Entry of Order to file responsive pleading. Mr. Glover to prepare the order, circulating to all counsel for approval as to form and content. Matter SET for Status Check regarding receipt of proposed order.

11/14/14 STATUS CHECK: ORDER (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**March 24, 2015**

A-13-677358-C Kal-Mor-USA, LLC, Plaintiff(s)
vs.
EMC Mortgage Corporation, Defendant(s)

March 24, 2015 **9:30 AM** **Discovery Conference**

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Alan Castle

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES PRESENT:

Glover, Chet A.	Attorney
Martinez, Jason G.	Attorney

JOURNAL ENTRIES

- Counsel anticipate 2 - 3 days for trial re: Quiet Title / Declaratory Relief. No settlement conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 4/29/16; adding parties, amended pleadings, and initial expert disclosures DUE 1/29/16; rebuttal expert disclosures DUE 2/29/16; dispositive motions TO BE FILED BY 5/31/16. Scheduling Order will issue.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**May 12, 2016**

A-13-677358-C Kal-Mor-USA, LLC, Plaintiff(s)
vs.
EMC Mortgage Corporation, Defendant(s)

May 12, 2016 **9:00 AM** **Status Check**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Benner, Christopher L.	Attorney
Martinez, Jason G.	Attorney

JOURNAL ENTRIES

- STATUS CHECK

Mr. Benner states stipulation and order pending before the Discovery Commissioner to extend discovery. Mr. Martinez states new parties brought in and given the recent decisions in Ikon and Shadow Wood, need additional discovery, will affect current trial date. Court notes it will be amenable to moving trial to November or December stack. Upon Court's inquiry, both counsel state a mandatory settlement conference would not be helpful at this stage.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**August 30, 2016**

A-13-677358-C Kal-Mor-USA, LLC, Plaintiff(s)
vs.
EMC Mortgage Corporation, Defendant(s)

August 30, 2016 **9:00 AM** **Motion to Seal/Redact Records**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT: Glover, Chet A. Attorney

JOURNAL ENTRIES

- Mr. Glover submitted. COURT ORDERED, Defendant JPMorgan Chase's Motion to File Records Under Seal is GRANTED pursuant to EDCR 2.20 and on the merits. Order presented IN OPEN COURT; will be available for pick-up from Court's outbox by end of day or tomorrow morning.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**February 07, 2017**

A-13-677358-C Kal-Mor-USA, LLC, Plaintiff(s)
vs.
EMC Mortgage Corporation, Defendant(s)

February 07, 2017 **9:30 AM** **Status Check**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Kory Schlitz

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Glover, Chet A.	Attorney
Martinez, Jason G.	Attorney

JOURNAL ENTRIES

- Mr. Glover requested this case be stayed for a brief period, stating the Supreme Court of Nevada is set to hear oral argument in this matter in February and also the 9th Circuit is set to hear two cases as well, and indicated those cases will address all of the hear related issues. Mr. Martinez confirmed the representations. COURT ORDERED, Request DENIED; trial date STANDS.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**March 16, 2017**

A-13-677358-C Kal-Mor-USA, LLC, Plaintiff(s)
vs.
EMC Mortgage Corporation, Defendant(s)

March 16, 2017 **10:15 AM** **Pre Trial Conference**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Glover, Chet A.	Attorney
Martinez, Jason G.	Attorney

JOURNAL ENTRIES

- PRE TRIAL CONFERENCE

Case caption discussed. Counsel state caption will be cleaned up prior to the start of trial. Court notes stipulation received. Discussion. Counsel estimate 4 days for trial. COURT ORDERED, Motion to Continue Trial is GRANTED and Matter SET for Trial; Pre trial memo now due 6/14/17. Court directed counsel to provide new stipulation with new dates. Motions for Summary Judgment are now rescheduled from 3/28/17 to 4/18/17 at 9:30 am.

6/20/17 9:00 AM CALENDAR CALL

6/26/17 9:00 AM BENCH TRIAL

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**April 18, 2017**

A-13-677358-C Kal-Mor-USA, LLC, Plaintiff(s)
vs.
EMC Mortgage Corporation, Defendant(s)

April 18, 2017 **9:30 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 15D

COURT CLERK: Kory Schlitz

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT: Glover, Chet A. Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT... MOTION FOR SUMMARY JUDGMENT...

Mr. Glover indicated he spoke with opposing counsel and parties are requesting this matter be continued. COURT SO ORDERED. Mr. Glover stated he would inform opposing counsel of the date.

CONTINUED TO: 4/24/17 10:00 A.M.

DISTRICT COURT
CLARK COUNTY, NEVADA

Title to Property	**COURT MINUTES**	**April 24, 2017**

A-13-677358-C Kal-Mor-USA, LLC, Plaintiff(s)
vs.
EMC Mortgage Corporation, Defendant(s)

April 24, 2017 **10:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Glover, Chet A.	Attorney
Martinez, Jason G.	Attorney

JOURNAL ENTRIES

- PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT:

Arguments by counsel. Court stated its findings, and ORDERED, Motion DENIED.

DEFENDANT JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT:

Arguments by counsel. Court stated its findings, and ORDERED, Motion GRANTED.

Mr. Glover to prepare the Order, circulating to Mr. Martinez for approval as to form and content in accordance with EDCR 7.21.

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

NEIL B. DURRANT, ESQ.
2500 ANTHEM VILLAGE DR.
HENDERSON, NV 89052

DATE: June 28, 2017
CASE: A-13-677358-C

RE CASE: KAL-MOR-USA, LLC vs. JPMORGAN CHASE BANK, N.A.

NOTICE OF APPEAL FILED: June 26, 2017

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☒ $250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

KAL-MOR-USA, LLC,

Plaintiff(s),

vs.

JPMORGAN CHASE BANK, N.A.,

Defendant(s),

Case No: A-13-677358-C

Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 28 day of June 2017.

Steven D. Grierson, Clerk of the Court

Amanda Hampton, Deputy Clerk