IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

VILLA LANTE TRUST,

Appellant

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Respondent.

No. 76320

Electronically Filed
Aug 01 2018 09:06 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

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

WARNING

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

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

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

Docket 76320 Document 2018-29485

1. Judicial District 8th Department 31

County Clark Judge Joanna S. Kishner

District Ct. Case No. A-13-682040-C

2. Attorney filing this docketing statement:

Attorney Kerry P. Faughnan, Esq. Telephone 702-301-3096

Firm Law Office of Kerry P. Faughnan

Address PO Box 335361
North Las Vegas, NV 89033

Client(s) Villa Lante Trust

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

3. Attorney(s) representing respondents(s):

Attorney Ariel Stern, Esq. Telephone (702) 634-5000

Firm Akerman LLP

Address 1635 Village Center Circle, Suite 200
Las Vegas, NV 89134

Client(s) Federal National Mortgage Association

Attorney _____ Telephone _____

Firm _____

Address

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

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

5. Does this appeal raise issues concerning any of the following?

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

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

N/A

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

N/A

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

The state court proceeding was an action to quiet title after a HOA foreclosure.
The order appealed from is the May 29, 2018 Order Granting Summary Judgment in favor of Nationstar Mortgage LLC, Notice of Entry filed May 29, 2018.

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

Was the court entitled to grant summary judgment when there were material questions of disputed fact, and should equitable estoppel have been applied in this case.

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

N/A

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

☒ N/A

☐ Yes

☐ No

If not, explain:

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

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

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

☐ A substantial issue of first impression

☐ An issue of public policy

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

☐ A ballot question

If so, explain:

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

This matter is presumptively retained by the Supreme Court as the action does not concern matters presumptively assigned to the Court of Appeals under NRAP 17(b).

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

Was it a bench or jury trial? _____

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

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from May 29, 2018

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

17. Date written notice of entry of judgment or order was served May 29, 2018

Was service by:

☐ Delivery

☒ Mail/electronic/fax

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

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

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

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

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

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

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Jul 2, 2018

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

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

NRAP4(a)(1)

SUBSTANTIVE APPEALABILITY

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

(a)

- ☒ NRAP 3A(b)(1)
- ☐ NRAP 3A(b)(2)
- ☐ NRAP 3A(b)(3)
- ☐ Other (specify)
- ☐ NRS 38.205
- ☐ NRS 233B.150
- ☐ NRS 703.376

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

Appeal after final judgment entered.

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

(a) Parties:

Plaintiff/Counter-Defendant: Villa Lante Trust.
Defendants/Counterclaimant: Federal National Mortgage Association.
Defentaint: Eleonor S. Garcia

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Default Judgement entered on 1/11/2016 against Defendant Eleonor S. Garcia.

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

Quiet Title/Declaratory Relief action by Plaintiff against Federal National Mortgage Association

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

☒ Yes

☐ No

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

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

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

☐ Yes

☐ No

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

☐ Yes

☐ No

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

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

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

VERIFICATION

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

Villa Lante Trust	Kerry P. Faughnan, Esq.
Name of appellant	Name of counsel of record
Jul 31, 2018	/s/ Kerry P. Faughnan
Date	Signature of counsel of record
Clark County Nevada	
State and county where signed	

CERTIFICATE OF SERVICE

I certify that on the 31st day of July , 2018 , I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

[X] By allowing electronic service through the courts ECF system to:
Ariel E. Stern, Esq.
AKERMAN LLP
1635 Village Center Circle, Suite 200
Las Vegas, NV 89134

James A. Kohl, Settlement Judge
3800 Howard Hughes Pkwy Ste 1000
Las Vegas NV 89114

Dated this 31st day of July , 2018

/s/ Kerry P. Faughnan
Signature

Electronically Filed
3/12/2018 9:43 AM
Steven D. Grierson
CLERK OF THE COURT

ACOM
Kerry Faughnan, Esq.
Nevada Bar No.12204
P.O. Box 335361
North Las Vegas, NV 89086
(702) 301-3096
(702) 331-4222- Fax
Kerry.faughnan@gmail.com
Attorney for Plaintiff

EIGHTH JUDICIAL DISTRICT COURT FOR

CLARK COUNTY, NEVADA

VILLA LANTE TRUST Plaintiff, v. ELEONOR S. GARCIA, an individual; FEDERAL NATIONAL MORTGAGE ASSOCIATION; and DOES 1 through 10, inclusive; Defendants.	Case No. A-13-682040-C Dept. No. XXXI **AMENDED COMPLAINT FOR QUIET TITLE AND DECLARATORY RELIEF** **Exempt from Arbitration: Concerns Title to Property**

Plaintiff VILLA LANTE TRUST, by and through its counsel of record, Kerry P. Faughnan, Esq., hereby complains against the above-named Defendants as follows:

PARTIES, JURISDICTION AND VENUE

1. This action relates to the ownership and title of certain real property located in Clark County, Nevada, commonly known as 6022 Villa Lante Ave, Las Vegas, Nevada 89113 (the "Property"). Accordingly, jurisdiction and venue are appropriate in Clark County, Nevada.

2. Plaintiff VILLA LANTE TRUST ("Plaintiff") is a Nevada Trust formed under the laws of the state of Nevada.

3. Upon information and belief, Defendant, Eleonor S. Garcia, was a Nevada resident holding title to the Property prior to a foreclosure sale through which Plaintiff derives its title.

4. Upon information and belief, Defendant Federal National Mortgage Association is the successor in interest to Bank of America, N.A. who was the successor in interest to Full

Case Number: A-13-682040-C

Spectrum Lending, Inc. which held a mortgage against the Property prior to a foreclosure sale through which Plaintiff derives its title.

5. Upon information and belief, Defendant Full Spectrum Lending, Inc. held a mortgage against the Property prior to a foreclosure sale through which Plaintiff derives its title.

6. The true names and capacities of Does 1 through 10 ("Doe Defendants") are currently unknown to Plaintiff, who therefore sues such Doe Defendants by fictitious names. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of each of the Doe Defendants as and when such information is ascertained. (The above-identified defendants, including the Doe Defendants, are referred to collectively herein as "Defendants.")

GENERAL ALLEGATIONS

7. On or about April 26, 2013, LN Management LLC Series 6022 Villa Lante acquired by deed that certain real property commonly known as 6022 Villa Lante Ave., Las Vegas, Nevada 89113 (the "Property") from the 6022 Villa Lante Ave Trust. A true and correct copy of the Quitclaim Deed is attached hereto as Exhibit 1.

8. The 6022 Villa Lante Ave Trust acquired the Property at a properly noticed foreclosure sale in accordance with NRS 116.3116 through 116.31168, inclusive.

9. The Foreclosure Deed conveying the Property to 6022 Villa Lante Ave Trust was recorded on January 15, 2013 with the Clark County Recorder's Office in Book/Instrument Number 201301150002940. A true and correct copy of the Foreclosure Deed is attached hereto as Exhibit 2.

10. Upon information and belief, Defendants may have had an interest in the Property at one time.

11. Upon information and belief, none of the Defendants have a valid interest in the Property subsequent to the foreclosure sale.

12. On or about July 2, 2013, LN Management LLC Series 6022 Villa Lante deeded the property by quitclaim deed recorded with the Clark County Recorder's Office in

Book/Instrument Number 201307020001912 to Zyzzx, a Nevada Corporation. A true and correct copy of the Foreclosure Deed is attached hereto as Exhibit 3.

13. On or about December 2, 2015, Zyzzx, a Nevada Corporation deeded the property by quitclaim deed recorded with the Clark County Recorder's Office in Book/Instrument Number 201512020003431 to Plaintiff.

14. Plaintiff is unable to obtain title insurance on the Property without first quieting claims against all known persons and/or entities claiming legal or equitable interests in the Property.

FIRST CLAIM FOR RELIEF

(Quiet Title)

15. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 11 of this Complaint, as though fully set forth herein.

16. Plaintiff is the rightful owner of the Property by virtue of their Quitclaim Deed.

17. Upon information and belief, none of the Defendants have a valid interest in the Property subsequent to the foreclosure sale.

18. Plaintiff is entitled to a determination from this Court, pursuant to NRS 40.010, that Plaintiff is the rightful owner of the Property and that Defendants, and each of them, have no right, title, or interest in the Property.

19. In the alternative, Plaintiff is entitled to a determination of what remaining interest Defendants have in the Property, an accounting of Defendant's claims, an order of the Court recognizing Plaintiff as the legal owner of the Property, subject to any unextinguished claims, and an order of the Court requiring Defendant(s) to accept payments under the terms of any surviving lien, from Plaintiff.

SECOND CLAIM FOR RELIEF

(Declaratory Relief)

20. Plaintiff repeats and re-alleges each and every allegation contained in paragraphs 1 through 16 of this Complaint, as though fully set forth herein.

21. Plaintiff seeks a declaration from this Court, pursuant to NRS 30.010, that title in the Property is vested in Plaintiff free and clear of all claims of Defendants, and that Defendants herein have no estate, right, title or interest in the Property, and that Defendants are forever enjoined from asserting any estate, title, right, or interest in the Property adverse to Plaintiff.

22. In the alternative, for a determination of what remaining interest Defendants have in the Property, an accounting of Defendant's claims, an order of the Court recognizing Plaintiff as the legal owner of the Property, subject to any unextinguished claims, and an order of the Court requiring Defendant(s) to accept payments under the terms of any surviving lien, from Plaintiff.

WHEREFORE, Plaintiff prays for the following relief:

1. For a determination and declaration that Plaintiff is the rightful holder of title to the Property, free and clear of all claims of the Defendants;

2. In the alternative, for a determination of what remaining interest Defendants have in the Property, an accounting of Defendant's claims, an order of the Court recognizing Plaintiff as the legal owner of the Property, subject to any unextinguished claims, and an order of the Court requiring Defendant(s) to accept payments under the terms of any surviving lien, from Plaintiff;

3. For such other and further relief as this Court may deem just and proper.

DATED March 10, 2018.

/s/ Kerry P. Faughnan__
Kerry P. Faughnan, Esq.
Nevada Bar No. 12204
P.O. Box 335361
North Las Vegas, Nevada 89033
(702) 301-3096
(702) 331-4222- Fax
Kerry.faughnan@gmail.com
Attorney for Plaintiff

EXHIBIT 1

Inst #: 201304260002025
Fees: $18.00 N/C Fee: $0.00
RPTT: $0.00 Ex: #007
04/26/2013 01:40:52 PM
Receipt #: 1591347
Requestor:
LAW OFFICES OF KERRY FAUGHN
Recorded By: SUO Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

A.P.N.: 163-33-613-067

R.P.T.T.: $None-Exempt 7

When Recorded Mail To and Mail Tax Statements To:
LN MANAGEMENT LLC, SERIES 6022 VILLA LANTE
PO Box 36208
Las Vegas NV 89133

(3) -1

QUITCLAIM DEED

FOR NO CONSIDERATION,

6022 VILLA LANTE AVE TRUST do(es) hereby remise, release and forever quitclaim to

LN MANAGEMENT LLC, SERIES 6022 VILLA LANTE

the real property situate in the County of Clark, State of Nevada, described as follows:

Lot Sixty-Seven (67), inclusive, of Sovana, as shown by map thereof on file in Book 103 of Plats, Page 9, in the Office of the County Recorder of Clark County, Nevada.

Subject to:

1. All general and special taxes for the current fiscal year.

2. Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: 4/22/2013

6022 Villa Lante Ave Trust

By: Iyad Haddad, Trustee

STATE OF **NEVADA**)
: **SS.**
COUNTY OF **CLARK**)

On April 25, 2013, before me, a Notary Public, personally appeared Iyad Haddad, known to me to be the person who executed the foregoing, and who acknowledged to me he executed it on behalf of the entity named therein.

Notary Public
(My commission expires: 10/17/2015)

MICHELLE Y. FAUGHNAN
Notary Public-State of Nevada
APPT. NO. 11-5927-1
My App. Expires October 17, 2015

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a) 163-33-613-067
   b) _____
   c) _____
   d) _____

2. Type of Property
   a) ☐ Vacant Land b) ☒ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other _____

FOR RECORDERS OPTIONAL USE
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. Total Value/Sales Price of Property: $ 0
   Deed in Lieu of Foreclosure Only (value of property) ($ _____)
   Transfer Tax Value: $N/A
   Real Property Transfer Tax Due $NONE

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per 375.090, Section: 7
   b. Explain reason for exemption: Transfer from a trust without consideration

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110,that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____ Capacity: Grantor
Signature: _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: 6022 Villa Lante Ave Trust	Print Name: LN Management LLC, Series 6022 Villa Lante
Address: PO Box 36208	Address: PO Box 36208
City: Las Vegas	City: Las Vegas
State: NV Zip: 89133	State: NV Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)
Print Name: Kerry Faughnan, Esq. File Number: _____
Address PO Box 335361
City: North Las Vegas State: NV Zip: 89086

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

EXHIBIT 2

(2)-1

Inst #: 201301150002940
Fees: $17.00 N/C Fee: $0.00
RPTT: $86.70 Ex: #
01/15/2013 03:01:16 PM
Receipt #: 1460118
Requestor:
ALESSI & KOENIG LLC
Recorded By: ANI Pgs: 2
DEBBIE CONWAY
CLARK COUNTY RECORDER

When recorded mail to and
Mail Tax Statements to:
6022 Villa Lante Ave Trust
PO Box 36208
Las Vegas, NV 89133

A.P.N. No.**163-33-613-067** TS No. **30700-6022**

TRUSTEE'S DEED UPON SALE

The Grantee (Buyer) herein was: **6022 Villa Lante Ave Trust**
The Foreclosing Beneficiary herein was: **Sovana Homeowner's Association**
The amount of unpaid debt together with costs: **$3,884.50**
The amount paid by the Grantee (Buyer) at the Trustee's Sale: **$17,000.00**
The Documentary Transfer Tax: **$86.70**
Property address: **6022 VILLA LANTE AVE, LAS VEGAS, NV 89113**
Said property is in [ ] unincorporated area: City of **LAS VEGAS**
Trustor (Former Owner that was foreclosed on): **ELEONOR S GARCIA**

Alessi & Koenig, LLC (herein called Trustee), as the duly appointed Trustee under that certain Notice of Delinquent Assessment Lien, recorded **February 22, 2012** as instrument number **0001077**, in **Clark** County, does hereby grant, without warranty expressed or implied to: **6022 Villa Lante Ave Trust** (Grantee), all its right, title and interest in the property legally described as: **SOVANA LOT 67**, as per map recorded in Book **103**, Pages **9** as shown in the Office of the County Recorder of **Clark** County Nevada.

TRUSTEE STATES THAT:
This conveyance is made pursuant to the powers conferred upon Trustee by NRS 116 et seq., and that certain Notice of Delinquent Assessment Lien, described herein. Default occurred as set forth in a Notice of Default and Election to Sell which was recorded in the office of the recorder of said county. All requirements of law regarding the mailing of copies of notices and the posting and publication of the copies of the Notice of Sale have been complied with. Said property was sold by said Trustee at public auction on **January 9, 2013** at the place indicated on the Notice of Trustee's Sale.

Ryan Kerbow, Esq.
Signature of AUTHORIZED AGENT for **Alessi&Koenig, LLC**

State of Nevada)
County of **Clark**)

SUBSCRIBED and SWORN to before me 01/09, 13

WITNESS my hand and official seal.
(Seal) (Signature)

MARY INDALECIO
Notary Public-State of Nevada
APPT. NO. 12-8340-1
My App. Expires July 12, 2016

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a. 163-33-613-067
   b. _____
   c. _____
   d. _____
2. Type of Property:
   a. ☐ Vacant Land b. ☑ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   ☐ Other

FOR RECORDERS OPTIONAL USE ONLY
Book_____ Page:_____
Date of Recording: _____
Notes:

3.a. Total Value/Sales Price of Property $ 17,000.00
   b. Deed in Lieu of Foreclosure Only (value of property) (_____)
   c. Transfer Tax Value: $ 17,000.00
   d. Real Property Transfer Tax Due $ 86.70

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption per NRS 375.090, Section_____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity: Grantor

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Alessi&Koenig, LLC	Print Name: 6022 Villa Lante Ave Trust
Address: 9500 W Flamingo 205	Address: PO Box 36208
City: Las Vegas	City: Las Vegas
State: NV Zip: 89147	State: NV Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: Alessi&Koenig, LLC	Escrow # N/A Foreclosure
Address: 900 W Flamingo 205	
City: Las Vegas	State: NV Zip: 89147

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

EXHIBIT 3

(3-1

Inst #: 201307020001912
Fees: $18.00 N/C Fee: $0.00
RPTT: $0.00 Ex: #001
07/02/2013 11:59:10 AM
Receipt #: 1678347
Requestor:
LAW OFFICE OF KERRY FAUGHNA
Recorded By: COJ Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

A.P.N.: 163-33-613-067

R.P.T.T.: $None-Exempt 1

When Recorded Mail To and Mail Tax Statements To:
ZYZZX
PO Box 36208
Las Vegas NV 89133

QUITCLAIM DEED

FOR NO CONSIDERATION,

LN MANAGEMENT LLC, SERIES 6022 VILLA LANTE do(es) hereby remise, release and forever quitclaim to

ZYZZX

the real property situate in the County of Clark, State of Nevada, described as follows:

Lot Sixty-Seven (67), inclusive, of Sovana, as shown by map thereof on file in Book 103 of Plats, Page 9, in the Office of the County Recorder of Clark County, Nevada.

Subject to:

1. All general and special taxes for the current fiscal year.

2. Covenants, Conditions, Restrictions, Reservations, Rights, Rights of Way and Easements now of record.

TOGETHER with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: 7/2/2013

LN MANAGEMENT LLC, SERIES 6022
VILLA LANTE

By: David Winter, Manager

STATE OF **NEVADA**)
: **ss.**
COUNTY OF **CLARK**)

On 7/2/2013, before me, a Notary Public, personally appeared David Winter, known to me to be the person who executed the foregoing, and who acknowledged to me he executed it on behalf of the entity named therein.

Notary Public
(My commission expires: 10/17/2015)

MICHELLE Y. FAUGHNAN
Notary Public-State of Nevada
APPT. NO. 11-5927-1
My App. Expires October 17, 2015

STATE OF NEVADA
DECLARATION OF VALUE

1. Assessor Parcel Number(s)
   a) 163-33-613-067
   b) _____
   c) _____
   d) _____

2. Type of Property
   a) ☐ Vacant Land b) ☒ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other _____

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page: _____
Date of Recording: _____
Notes: _____

3. Total Value/Sales Price of Property: $ 0
   Deed in Lieu of Foreclosure Only (value of property) ($ _____)
   Transfer Tax Value: $N/A
   Real Property Transfer Tax Due $NONE

4. **If Exemption Claimed:**
   a. Transfer Tax Exemption, per 375.090, Section: 1
   b. Explain reason for exemption: Transfer from ~~a trust without consideration~~ between business entities w/ identical common ownership

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110,that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: _____ Capacity: Grantor
Signature: _____ Capacity: Grantee

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
LN Management LLC, Series	
Print Name: 6022 Villa Lante	Print Name: ZYZZX
Address: PO Box 36208	Address: PO Box 36208
City: Las Vegas	City: Las Vegas
State: NV Zip: 89133	State: NV Zip: 89133

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Kerry Faughnan, Esq. File Number: _____
Address PO Box 335361
City: North Las Vegas State: NV Zip: 89086

(AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED)

Description: Clark,NV Document-Year.Date.DocID 2013.702.1912 Page: 3 of 3
Order: 7-8 Comment:

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Attorneys for Federal National Mortgage Association

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VILLA LANTE TRUST, Plaintiff, v. ELEONOR S. GARCIA, an individual; FEDERAL NATIONAL MORTGAGE ASSOCIATION, Defendants.	Case No.: A-13-682040-C Dept. No: XXXI **ANSWER AND COUNTERCLAIMS**
FEDERAL NATIONAL MORTGAGE ASSOCIATION, Counterclaimant, vs. VILLA LANTE TRUST, Counterdefendant.	

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Case Number: A-13-682040-C

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Defendant Federal National Mortgage Association (**Fannie Mae**), through undersigned counsel, hereby files its Answer and Counterclaim against Plaintiff Villa Lante Trust (**Villa Lante**). In support, Fannie Mae states as follows:

PARTIES, JURISDICTION AND VENUE

1. Fannie Mae admits this action relates to property commonly known as 6022 Villa Lante Avenue, Las Vegas, Nevada and that jurisdiction and venue are proper.

2. Fannie Mae is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 and, therefore, denies the allegations of Paragraph 2.

3. Admit.

4. Fannie Mae admits to being the successor in interest to Bank of America, N.A., but denies the HOA's foreclosure had any effect on its interest.

5. Fannie Mae admits Full Spectrum held an interest in the deed of trust, but transferred that interest to Bank of America in an assignment recorded before the HOA sale.

6. Fannie Mae is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 and, therefore, denies the allegations of Paragraph 6.

GENERAL ALLEGATIONS

7. Fannie Mae is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 and, therefore, denies the allegations of Paragraph 7.

8. Fannie Mae is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 and, therefore, denies the allegations of Paragraph 8.

9. Fannie Mae admits the foreclosure deed was recorded, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in

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Paragraph 9 and, therefore, denies the remaining allegations of Paragraph 9.

10. Fannie Mae admits that it has had an interest in the property at all relevant times.

11. Denied.

12. Fannie Mae is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 and, therefore, denies the allegations of Paragraph 12.

13. Fannie Mae is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 and, therefore, denies the allegations of Paragraph 14.

14. Fannie Mae is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 and, therefore, denies the allegations of Paragraph 14.

FIRST CAUSE OF ACTION

(Quiet Title)

15. Fannie Mae incorporates and reasserts its responses and defenses to Paragraphs 1 through 14.

16. Paragraph 16 calls for a legal conclusion, so no response is required, but to the extent a response is required, denied.

17. Denied.

18. Paragraph 18 is a request for relief and/or calls for a legal conclusion, so no response is required, but to the extent a response is required, denied.

19. Paragraph 19 is a request for relief and/or calls for a legal conclusion, so no response is required, but to the extent a response is required, denied.

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SECOND CAUSE OF ACTION

(Declaratory Relief)

20. Fannie Mae incorporates and reasserts its responses and defenses to Paragraphs 1 through 19.

21. Paragraph 21 is a request for relief and/or calls for a legal conclusion, so no response is required, but to the extent a response is required, denied.

22. Paragraph 22 is a request for relief and/or calls for a legal conclusion, so no response is required, but to the extent a response is required, denied.

RESPONSE TO PRAYER FOR RELIEF

Fannie Mae denies that plaintiff is entitled to any relief against Fannie Mae as set forth in his prayer for relief, including declaratory relief or quiet title, attorney's fees and costs of suit.

GENERAL DENIAL

Fannie Mae denies any and all allegations not expressly admitted or responded to otherwise.

AFFIRMATIVE DEFENSES

In further response to plaintiff's Complaint, Fannie Mae hereby asserts the following affirmative defenses:

FIRST DEFENSE

The Complaint, and each cause of action thereof, fails to state a claim upon which relief may be granted against Fannie Mae.

SECOND DEFENSE

Plaintiff's Complaint is barred by the applicable statute of limitations.

THIRD DEFENSE

Plaintiff's Complaint is barred by the doctrine of laches.

FOURTH DEFENSE

Plaintiff's Complaint is barred by the doctrine of unclean hands.

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FIFTH DEFENSE

NRS 116.3116 does not support Plaintiff's position it has superior title to the property.

SIXTH DEFENSE

Plaintiff, at all material times, calculated, knew and understood the risks inherent in the situations, actions, omissions, and transactions upon which it now bases its various claims for relief, and with such knowledge, Plaintiff undertook and thereby assumed such risks and is consequently barred from all recovery by such assumption of risk.

SEVENTH DEFENSE

Plaintiff's claim the Senior Deed of Trust was extinguished is barred by the doctrines of tender, estoppel, laches, or waiver.

EIGHTH DEFENSE

12 U.S.C. § 4617(j)(3) precludes an HOA foreclosure sale from extinguishing Fannie Mae's interest in the property and preempts any state law to the contrary.

NINTH DEFENSE

Plaintiff is not a bona fide purchaser for value. Plaintiff purchased the property with actual or constructive notice of the Senior Deed of Trust recorded against the property and the dispute related to the claims in this matter.

TENTH DEFENSE

Plaintiff's claim of title to the property free and clear of the senior deed of trust is barred by the Supremacy Clause of the United States Constitution, the Fourteenth Amendment of the United States Constitution and Article 1, Sec. 8 of the Nevada Constitution.

ELEVENTH DEFENSE

A senior deed of trust beneficiary cannot be deprived of its property interest in violation of the Procedural Due Process Clause of the 14th Amendment of the United States Constitution and Article 1, Section 8 of the Nevada Constitution.

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TWELFTH DEFENSE

Plaintiff's claims are barred, in whole or in part, because it would be unjustly enriched if allowed to recover all or any part of the damages alleged in the counterclaim, if any.

THIRTEENTH DEFENSE

Plaintiff lacks standing to bring some or all of its claims and causes of action.

FOURTEENTH DEFENSE

In addition to the defenses set forth herein, Fannie Mae alleges presently that it has insufficient knowledge or information upon which to form a belief whether it may have additional, as yet unstated, affirmative defenses. Accordingly, Fannie Mae reserves the right to amend this Answer and to assert additional affirmative defenses that may become known to it through further investigation, discovery or otherwise.

PRAYER FOR RELIEF

WHEREFORE, Defendant Fannie Mae prays as follows:

1. That plaintiff take nothing by virtue of the Complaint herein and that this action be dismissed in its entirety;

2. For costs of suit and attorneys' fees herein incurred; and

3. For such other and further relief as this Court may deem just and proper.

II. COUNTERCLAIM

INTRODUCTION

1. This action concerns the parties' rights to real property located at 6022 Villa Lante Ave., Las Vegas, Nevada 89113, APN 163-33-613-067 (the "Property").

2. This counterclaim seeks declaratory judgment and to quiet title. Fannie Mae seeks a declaratory judgment that a homeowner's association ("HOA") foreclosure sale did not extinguish Fannie Mae's deed of trust because a federal statute prevents an HOA foreclosure sale from extinguishing a lien owned by Fannie Mae while Fannie Mae is under the conservatorship of the Federal Housing Finance Agency ("FHFA" or "Conservator").

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3. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 ("HERA"), Pub. L. No. 110–289, 122 Stat. 2654, *codified at* 12 U.S.C. § 4511 *et seq.* HERA includes an array of broad privileges, immunities, and exemptions from otherwise applicable law that facilitate the Conservator's exercise of its statutory powers. Here, 12 U.S.C. § 4617(j)(3) mandates that while Fannie Mae is in conservatorship, none of its property "shall be subject to . . . foreclosure[] . . . without the consent of [FHFA]."

4. A Nevada statute provides HOAs with superpriority liens that HOAs may foreclose to recover up to nine months of delinquent HOA dues. NRS 116.3116(2). The Nevada Supreme Court has held that a foreclosure authorized and properly conducted under NRS 116.3116 can extinguish other interests in the underlying property, including prior recorded deeds of trust. *SFR Invs. Pool 1, LLC v. U.S. Bank, N.A.*, 334 P.3d 408 (Nev. 2014).

5. The Conservator has not consented to the extinguishment of Fannie Mae's interest in any property that has been the subject of an HOA foreclosure sale.

6. Because Section 4617(j)(3) preempts NRS 116.3116, HOA foreclosure sales did not extinguish the Deed of Trust encumbering the subject property, and, therefore the HOA foreclosed subject to that Deed of Trust. *See, e.g., Skylights LLC v. Byron*, 112 F. Supp. 3d 1145, 1152 (D. Nev. 2015) ("[A] straightforward reading of the statutory language bars the HOA's foreclosure in this case from extinguishing the Deed of Trust without FHFA's consent, regardless of the HOA lien's super-priority under state law."); *id.* at 1159 ("The Court finds that 12 U.S.C. § 4617(j)(3) preempts Nevada Revised Statutes § 116.3116 to the extent that a homeowner association's foreclosure of its super-priority lien cannot extinguish a property interest of Fannie Mae or Freddie Mac while those entities are under FHFA's conservatorship.").

PARTIES

7. Fannie Mae is a government-sponsored enterprise chartered by Congress organized and existing under the laws of the United States with its principal office in Washington, D.C. Fannie Mae is deemed a citizen of the District of Columbia for jurisdictional purposes in civil cases.

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12 U.S.C. § 1717(a)(2)(B). Pursuant to its statutory mission, Fannie Mae provides stability and liquidity to the United States housing and mortgage markets by establishing secondary mortgage market facilities for residential mortgages. *See* 12 U.S.C. § 1716.

8. Upon information and belief, Counter-Defendant Villa Lante Trust is a Nevada trust formed under the laws of the State of Nevada. Upon information and belief, the trustee and beneficiaries of Villa Lante Trust are Nevada citizens.

9. Upon information and belief, Sovana Homeowner's Association ("Sovana") is and was at all times relevant hereto a Nevada non-profit corporation doing business in and with its principal place of business in Nevada. Sovana is a citizen of Nevada and no other state.

JURISDICTION AND VENUE

10. The Court has personal jurisdiction over Villa Lante Trust because this lawsuit arises out of and is connected with Villa Lante Trust's purposeful purchase of interests in property sited in Nevada. Moreover, Villa Lante Trust is a Nevada citizen with a principal place of business in Nevada.

11. The pre-litigation dispute resolution process set forth in NRS 38.300 et seq. is not applicable to this action and cannot restrict the jurisdiction of this Court. To the extent any requirement of the statute is applicable to any portion of the claims asserted herein, that requirement has been constructively exhausted and further resort to administrative remedies would be futile because Fannie Mae submitted a demand for mediation to Nevada Real Estate Division ("NRED") on or about November 10, 2016.

GENERAL ALLEGATIONS

A. The Property and the Loan

12. On or about October 26, 2004, Eleanor Garcia ("Borrower") obtained a loan from Full Spectrum Lending, Inc. in the amount of one hundred ninety-thousand dollars ($190,000.00).

13. In connection with the loan transaction, Borrower executed a promissory note ("Note") in favor of Full Spectrum Lending, Inc. and also executed a deed of trust to secure

repayment of the Loan, the note and deed of trust together being "the Loan."

14. The deed of trust was recorded against the Property in the Recorder's Office on November 2, 2004, as Instrument Number 20041102-0003331 (the "Deed of Trust") and showed Eleonor S. Garcia as the borrower, Full Spectrum Lending, Inc. as the lender, and Mortgage Electronic Registration Systems, Inc. ("MERS") as beneficiary solely as nominee for Full Spectrum Lending, Inc. and its successors and assigns.

15. The Property is subject to a declaration of covenants, conditions, and restrictions for Sovana.

16. In November 2004, Fannie Mae acquired ownership of the Loan, including the Note and Deed of Trust.

17. On September 6, 2008, the Director of FHFA, exercising the authority conferred on the Director in HERA, placed Fannie Mae into conservatorship and appointed FHFA as Conservator. In that capacity, FHFA has succeeded to "all rights, titles, powers, and privileges of [Fannie Mae]," including, but not limited to, the authority to bring suits on behalf of and/or for the benefit of Fannie Mae. 12 U.S.C. § 4617(b)(2)(A).

18. On September 19, 2011, as assignment of the Deed of Trust from MERS to Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP (**BANA**) was recorded as Instrument Number 201109190000206. BANA recorded a corrective assignment on August 17, 2015 as Instrument Number 201508117-0002424 to reflect the proper recording information for the Deed of Trust.

19. On August 17, 2015, as assignment of the Deed of Trust from BANA to Fannie Mae was recorded as Instrument Number 20150817-0002425.

20. BANA was the servicer of the Loan for Fannie Mae, and in that capacity was record beneficiary of the Deed of Trust for Fannie Mae on January 9, 2013, at the time of the HOA Foreclosure Sale. BANA was the servicer for Fannie Mae until June 30, 2015.

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B. Fannie Mae's Contract with Its Servicers

21. The relationship between BANA, as the servicer of the Loan, and Fannie Mae, as owner of the Loan, was governed by the Fannie Mae's Single-Family Servicing Guide ("Guide"), a central document for Fannie Mae's relationship with servicers nationwide. Among other things, the Guide provides that Fannie Mae's servicers may act as record beneficiaries for the deeds of trust owned by Fannie Mae and requires that servicers assign these deeds of trust to Fannie Mae upon Fannie Mae's demand. Guide at A1-1-03, F-1-14. The Guide is publicly available on Fannie Mae's website at www.fanniemae.com/content/guide/servicing.

22. While the sections of the Guide have been amended over the course of Fannie Mae's ownership of the Loan, none of these amendments have changed the Guide in a way material to this case. Archived prior versions of the Guide are publicly available at www.fanniemae.com/content/guide/servicing.

23. The Guide provides that:

> The servicer ordinarily appears in the land records as the mortgagee to facilitate performance of the servicer's contractual responsibilities, including (but not limited to) the receipt of legal notices that may impact Fannie Mae's lien, such as notices of foreclosure, tax, and other liens. However, Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its … ownership of the mortgage loan, including recordation of a mortgage assignment, or its legal equivalent, from the servicer to Fannie Mae or its designee. In the event that Fannie Mae determines it necessary to record such an instrument, the servicer must assist Fannie Mae by
>
> -- preparing and recording any required documentation, such as mortgage assignments, powers of attorney, or affidavits; and
>
> -- providing recordation information for the affected mortgage loans.

Guide at A2-1-03.

24. The Guide also provides for a temporary transfer of possession of the note when necessary for servicing:

> In order to ensure that a servicer is able to perform the services and duties incident to the servicing of the mortgage loan, Fannie Mae temporarily gives the servicer possession of the mortgage note whenever the servicer, acting in its own name, represents the interests of Fannie Mae in foreclosure actions, bankruptcy cases, probate proceedings, or other legal proceedings.

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> This temporary transfer of possession occurs automatically and immediately upon the commencement of the servicer's representation, in its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

Guide at A2-1-04.

25. The Guide includes a chapter regarding how and when servicers should pursue foreclosure. *See* Guide at E-3 ("Managing Foreclosure Proceedings").

26. Nevertheless, "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure … possession automatically reverts to Fannie Mae." Guide at A2-1-04.

27. Pursuant to the Guide, a servicer is required to "maintain in the individual mortgage loan file all documents and system records that preserve Fannie Mae's ownership interest in the mortgage loan." Guide at A2-5.1-02.

28. Any servicer retaining documents related to a particular loan, such as a deed of trust, has "no right to possession of these documents and records except under the conditions specified by Fannie Mae." Guide at A2-5.1-01.

C. <u>The HOA Lien and Foreclosure Sale.</u>

29. On or about February 22, 2012, Sovana, through its agent Alessi & Koenig, LLC ("Alessi"), recorded a Notice of Delinquent Assessment Lien. Per the notice, the amount due to Sovana was $778.00. The notice states this amount includes $703.00 for "[c]ollection and/or [a]ttorney fees, assessments, interest, late fees and service charges" and $75.00 for collection costs. A true and correct copy of the lien was recorded in the Recorder's Office as Instrument Number 201202220001077.

30. On or about June 26, 2012, a Notice of Default and Election to Sell was recorded in the Recorder's Office as Instrument Number 201206250001928 ("Notice of Default"). The Notice of Default was submitted by Alessi, on behalf of Sovana, and asserts outstanding amounts owed as of May 16, 2012, in the amount of $1,957.50. The notice does not specify whether it includes dues, interest, fees and collection costs in addition to assessments. The Notice of Default does not specify the superpriority amount claimed by Sovana and fails to describe the "deficiency in payment"

required by NRS 116.31162(1)(b)(1).

31. On December 7, 2012, Sovana, through its agent Alessi, recorded a notice of sale. The trustee's sale was scheduled for January 9, 2013. The notice states the estimated amount due Sovana was $3,282.00, including "total amount of the unpaid balance of the obligation secured by the property . . . and reasonable estimated costs, expenses and advances." A true and correct copy of the notice of sale was recorded in the Recorder's Office as Instrument No. 201212070002302. The notice of sale does not identify the superpriority amount claimed by Sovana and fails to describe the amount necessary to satisfy the lien required by NRS 116.311635(3)(a).

32. On or about January 16, 2013, a Foreclosure Deed was recorded in the Recorder's Office as Instrument Number 201301150002940. The Foreclosure Deed was submitted by Alessi on behalf of Sovana and showed that 6022 Villa Lante Ave Trust purchased the Property for $17,000.00 at the HOA foreclosure sale held on January 9, 2013 ("HOA Foreclosure Sale").

33. At no time did the Conservator consent to the HOA Foreclosure Sale extinguishing or foreclosing Fannie Mae's interest in the Property. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

34. On or about April 28, 2013, a Quitclaim Deed was recorded in the Recorder's Office as Instrument Number 201304260002025. The Quitclaim Deed states that 6022 Villa Lante Ave Trust sold the Property to LN Management LLC, Series 6022 Villa Lante for no consideration.

35. On or about July 2, 2013, a Quitclaim Deed was recorded in the Recorder's Office as Instrument Number 201307020001912. The Quitclaim Deed states that LN Management LLC, Series 6022 Villa Lante sold the Property to ZYZZX for no consideration.

36. On or about December 2, 2015, a Quitclaim Deed was recorded in the Recorder's Office as Instrument Number 20151202-0003431. The Quitclaim Deed states that ZYZZX sold the Property to Villa Lante Trust for no consideration.

37. In none of the recorded documents nor in any notice did Sovana or its agent Alessi

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provide notice of the purported superpriority lien amount, where to pay the amount, how to pay the amount, or the consequences for failure to do so.

38. In none of the recorded documents nor in any notice did Sovana or its agent Alessi specify whether it was foreclosing on the superpriority portion of its lien, if any, or on the sub-priority portion of its lien.

39. In none of the recorded documents nor in any notice did Sovana or its agent Alessi specify the Deed of Trust would be extinguished by the foreclosure.

40. In none of the recorded documents nor in any notice did Sovana or its agent Alessi identify any way by which the beneficiary under the Deed of Trust could satisfy the superpriority portion of Sovana's claimed lien.

41. The deficiencies in the notices notwithstanding, on or about August 16, 2012, after Sovana recorded its Notice of Default, BANA, as then-servicer of the loan, remitted payment to Sovana, through its agent Alessi, to satisfy the superpriority amount owed to Sovana.

42. On July 18, 2012, BANA requested a ledger from Sovana, through its Alessi, identifying the superpriority amount allegedly owed to Sovana. Sovana refused to identify the superpriority amount and instead provided a ledger dated July 31, 2012, identifying the total amount allegedly due.

43. BANA and its counsel were forced to calculate the superpriority amount claimed by Sovana by reference to the July 31, 2012 ledger. Based on the monthly assessment amount identified in the July 31, 2012 ledger, BANA calculated the superpriority amount as $916.83, and tendered that amount to Sovana through its agent Alessi on August 16, 2012. Sovana/Alessi refused BANA's tender, and sold the property at auction on or about January 9, 2013.

44. According to the foreclosure deed, the sale price at the HOA Foreclosure Sale was $17,000.00. Sovana's sale of the Property to 6022 Villa Lante Avenue Trust for less than 10.0% of the value of the unpaid principal balance on the Deed of Trust, and, on information and belief, for a similarly diminutive percentage of the Property's fair market value, is inequitable.

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FIRST CAUSE OF ACTION

(Declaratory Relief Under 12 U.S.C. § 4617(j)(3))

45. Fannie Mae repeats and re-alleges the allegations set forth above.

46. Pursuant to NRS 30.010 et seq., this Court is empowered to declare the rights and legal relations of the parties in this matter, both generally and in relation to the foreclosure sale and the Property.

47. The Deed of Trust is a first secured interest in the Property. At the time of the HOA Foreclosure Sale, Fannie Mae owned the Deed of Trust and BANA was the beneficiary of record in its capacity as servicer for Fannie Mae.

48. FHFA is an agency of the federal government of the United States and is also the Conservator for Fannie Mae.

49. Upon its appointment, the Conservator succeeded by law to all of Fannie Mae's "rights, titles, powers, and privileges." 12 U.S.C. § 4617 (b)(2)(A)(i).

50. During the Conservatorship, "no property of [FHFA] shall be subject to levy, attachment, garnishment, foreclosure or sale without the consent of the [FHFA], nor shall any involuntary lien attach to the property of [FHFA]." 12 U.S.C. § 4617(j)(3).

51. Fannie Mae's secured interest in the Property as owner of the Deed of Trust is property of the FHFA. *See, e.g., Berezovsky v. Moniz,* 869 F.3d 923, 926–37 (9th Cir. 2017); *Skylights v. Byron,* 112 F. Supp. 3d at 1155 ("[T]he property of Fannie Mae effectively becomes the property of FHFA once it assumes the role of conservator, and that property is protected by section 4617(j)'s exemptions.").

52. Applying NRS 116 or other state law in a manner that extinguishes Fannie Mae's first position Deed of Trust violates 12 U.S.C. § 4617(j)(3).

53. 12 U.S.C. § 4617(j)(3) preempts any state law that would permit a foreclosure on a superpriority lien to extinguish a first secured interest of Fannie Mae while it is under FHFA's conservatorship.

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54. FHFA did not consent to any purported extinguishment of Fannie Mae's Deed of Trust. *See* FHFA's Statement on HOA Super-Priority Lien Foreclosures dated Apr. 21, 2015, www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Super-Priority-Lien-Foreclosures.aspx.

55. Pursuant to 12 U.S.C. § 4617(j)(3), the HOA Foreclosure Sale could not extinguish Fannie Mae's first secured interest.

56. Fannie Mae is entitled to a declaration that 12 U.S.C. § 4617(j)(3) preempts any state law that would permit an HOA foreclosure sale to extinguish a first secured interest of Fannie Mae while it is under FHFA's conservatorship.

57. Fannie Mae is entitled to a declaration that the HOA Foreclosure Sale conducted by Sovana did not affect or extinguish the Deed of Trust, which encumbered the Property after the HOA Foreclosure Sale.

58. Fannie Mae has been compelled to retain the undersigned counsel to represent it in this matter and has and will continue to incur attorneys' fees and costs.

SECOND CAUSE OF ACTION

(Quiet Title under 12 U.S.C. § 4617(j)(3))

59. Fannie Mae repeats and re-alleges the allegations set forth above.

60. Pursuant to NRS 40.010, this Court is empowered to declare the rights and legal relations of the parties in this matter, both generally and in relation to the foreclosure sale and the Property.

61. The Deed of Trust is a first secured interest in the Property. At the time of the HOA Foreclosure Sale, Fannie Mae owned the Deed of Trust and BANA was the beneficiary of record in its capacity as servicer for Fannie Mae.

62. Villa Lante Trust claims an interest in the Property through the HOA Foreclosure Sale and Quitclaim Deed that is adverse to Fannie Mae's interests.

63. Fannie Mae's secured interest in the Property is the property of the FHFA.

64. Applying Chapter 116 of the Nevada Revised Statutes or other state law in a manner that extinguishes Fannie Mae's first position Deed of Trust violates 12 U.S.C. § 4617(j)(3).

65. Based on the adverse claims being asserted by the parties, Fannie Mae is entitled to a judicial determination that the Deed of Trust continues to encumber the Property after the HOA Foreclosure Sale.

66. Fannie Mae is entitled to a determination that the HOA Foreclosure Sale did not convey the Property free and clear to of the Deed of Trust to the buyer at the HOA Foreclosure Sale, and thus any interest acquired by Villa Lante Trust through the Quitclaim Deed is subject to Fannie Mae's interest in the Property.

67. Fannie Mae has been compelled to retain the undersigned counsel to represent it in this matter and has and will continue to incur attorneys' fees and costs.

THIRD CAUSE OF ACTION

(Declaratory Judgment)

68. Fannie Mae repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporates the same by reference.

69. Pursuant to NRS 40.010 and NRS 30.040 *et seq.*, this Court is empowered to declare the rights of parties and other legal relations of parties regarding the Property.

70. The HOA Foreclosure Sale did not extinguish the Deed of Trust because the recorded notices, even if they were in fact provided, failed to describe the lien in sufficient detail as required by Nevada law, including, without limitation: whether the deficiency included a "superpriority" component, the amount of the superpriority component, how the superpriority component was calculated, when payment on the superpriority component was required, where payment was to be made or the consequences for failure to pay the superpriority component. Alternatively, the HOA Foreclosure Sale is void.

71. The HOA Foreclosure Sale did not extinguish the Deed of Trust because BANA tendered and satisfied the superpriority amount and Sovana wrongfully rejected the tender.

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Alternatively, the HOA Foreclosure Sale is void.

72. The HOA Foreclosure Sale did not extinguish the Deed of Trust because the sale was commercially unreasonable or otherwise failed to comply with the good faith requirement of NRS 116.1113 in several respects, including, without limitation, the lack of sufficient notice, Sovana's wrongful rejection of the tender, the sale of the Property for a fraction of the loan balance or actual market value of the Property, a foreclosure that was not calculated to promote an equitable sales prices for the Property or to attract proper prospective purchasers, and a foreclosure sale that was designed and/or intended to result in maximum profit for Sovana, and the HOA Foreclosure Sale purchaser without regard to the rights and interest of those who have an interest in the Loan and made the purchase of the Property possible in the first place. Alternatively, the HOA Foreclosure Sale is void.

73. The HOA Foreclosure Sale did not extinguish the Deed of Trust because otherwise the sale would violate Fannie Mae's rights to due process, as a result of Sovana's failure to provide sufficient notice of the superpriority component of Sovana's lien, the manner and method to satisfy it, and the consequences for failing to do so. Alternatively, the HOA Foreclosure Sale is void.

74. The HOA Foreclosure Sale did not extinguish the Deed of Trust because otherwise the sale would violate Fannie Mae's right to due process, as a result of Sovana's improper calculation of the superpriority component, its inclusion of charges that are not part of the superpriority lien under Nevada law, and its rejection of BANA's tender of the superpriority component of the lien. Alternatively, the HOA Foreclosure Sale is void.

75. The HOA Foreclosure Sale did not extinguish the Deed of Trust because Sovana's unequivocal representation the rights of the beneficiary under the Deed of Trust would not be jeopardized by any violation of the obligations imposed by the CC&Rs caused the sales price to be commercially unreasonable.

76. The HOA Foreclosure Sale did not extinguish the Deed of Trust because the HOA Foreclosure Sale purchaser and Villa Lante Trust do not qualify as a bona fide purchaser for value,

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because they were aware of, or should have been aware of, the existence of the Deed of Trust, BANA's satisfaction of the superpriority component of Sovana's lien, and the commercial unreasonableness of the HOA Foreclosure Sale. Alternatively, the HOA Foreclosure Sale is void.

77. Fannie Mae is entitled to a declaration, pursuant to NRS 40.010, that the HOA Foreclosure Sale did not extinguish the Deed of Trust.

78. Fannie Mae was required to retain an attorney to prosecute this action, and is therefore entitled to collect its reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION

(Injunctive Relief Against Villa Lante Trust)

79. Fannie Mae repeats and re-alleges the preceding paragraphs as though fully set forth herein and incorporate the same by reference.

80. Fannie Mae disputes Villa Lante Trust's claim it purchased the Property free and clear of the Deed of Trust.

81. Any sale or transfer of the Property by Villa Lante Trust, prior to a judicial determination concerning the respective rights and interests of the parties to this case, may be rendered invalid if the Deed of Trust still encumbers the Property in first position and was not extinguished by the HOA Foreclosure Sale.

82. Fannie Mae has a substantial likelihood of success on the merits of the complaint, and damages would not adequately compensate for the irreparable harm of the loss of title to a bona fide purchaser or loss of the first position priority status secured by the Property.

83. Fannie Mae has no adequate remedy at law due to the uniqueness of the Property involved in this case and the risk of the loss of the Deed of Trust.

84. Fannie Mae is entitled to a preliminary injunction prohibiting Villa Lante Trust, or its successors, assigns, or agents, from conducting any sale, transfer, or encumbrance of the Property that is claimed to be superior to the Deed of Trust or not subject to the Deed of Trust. Fannie Mae is entitled to a preliminary injunction requiring Villa Lante Trust to pay all taxes, insurance, and

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homeowner's association dues during the pendency of this action.

PRAYER FOR RELIEF

WHEREFORE, Fannie Mae requests a judgment in its favor as follows:

1. A declaration that 12 U.S.C. § 4617(j)(3) preempts any Nevada law that would permit an HOA Foreclosure Sale of a superpriority lien to extinguish the property interest of Fannie Mae while it is under FHFA conservatorship.

2. A declaration that the HOA Foreclosure Sale did not extinguish the Deed of Trust and that it continues as a valid encumbrance against the Property;

3. A declaration that Villa Lante Trust's interest in the Property, if any, is subject to the Deed of Trust;

4. That Fannie Mae be awarded attorneys' fees and costs, plus interest accruing thereon, in its favor at the maximum rate allowed by law; and

5. That the Court award such other and further relief as it may deem appropriate.

DATED this 21st day of March, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 21st day of March, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **ANSWER AND COUNTERCLAIM**, in the following manner:

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

Kerry P. Faughnan, Esq.
Post Office Box 335361
North Las Vegas, Nevada 89033

Attorney for Villa Lante Trust

/s/ Patricia Larsen
An employee of AKERMAN LLP

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VILLA LANTE TRUST,

Plaintiff,

v.

ELEONOR S. GARCIA, an individual; FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Defendants.

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Counterclaimant,

vs.

VILLA LANTE TRUST,

Counterdefendant.

Case No.: A-13-682040-C
Dept. No: XXXI

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

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Federal National Mortgage Association's (**Fannie Mae**) motion for summary judgment on all claims between it and Plaintiff Villa Lante Trust came on for hearing on May 1, 2018. The Court, having considered the motion, Plaintiff's opposition, Fannie Mae's reply, the pleadings and exhibits to the various papers, and having heard arguments from counsel for all parties, now finds and concludes as follows:

FINDINGS OF FACT

A. The Subject Property, Note, and Deed of Trust.

1. In October 2004, Eleanor Garcia obtained a loan in the amount of $190,000 from Full Spectrum Lending, Inc.

2. In connection with the loan transaction, Borrower executed a promissory note (**Note**) and a deed of trust (the **Deed of Trust**) to secure repayment of the loan. The Note and Deed of Trust together are referred to as the **Loan**. The Deed of Trust, which was recorded against 6022 Villa Lante Avenue, Las Vegas, Nevada 89113, APN 163-33-613-067 (**the Property**) in the Clark County Recorder's Office in 2004, as Instrument Number 20041102-0003331, listed Garcia as the borrower (**Borrower**), Full Spectrum Lending, Inc. as the lender (**Lender**), and Mortgage Electronic Registration Systems, Inc. (**MERS**) as beneficiary solely as nominee for Full Spectrum Lending, Inc. and its successors and assigns. **Ex. A** to Fannie Mae's MSJ.[1]

3. In November 2004, Fannie Mae acquired ownership of the Loan, including the Note and Deed of Trust. *See* Declaration of Graham Babin, **Ex. B** ¶ 4, and Ex. A thereto.[2] In September 2008, Federal Housing Finance Agency (**FHFA**) placed Fannie Mae into conservatorship "for the purpose of reorganizing, rehabilitating, or winding up [its] affairs." 12 U.S.C. § 4617(a)(2). Fannie Mae remained in conservatorship and maintained that ownership at the time of the HOA sale on January 9, 2013. *Id.* ¶¶ 7–9.

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[1] All references to exhibits are to those attached to Fannie's Mae's summary judgment motion unless otherwise stated. The bulk of the exhibits are publicly recorded documents, of which the Court takes judicial notice under NRS 47.130 et seq.

[2] The Court finds Fannie Mae's business records to be admissible under NRS 52.260 and 50.135.

4. On September 19, 2011, an assignment of the Deed of Trust from MERS to Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP (**BANA**) was recorded as Clark County Recorder Instrument No. 201109190000206. **Ex. C**. BANA recorded a corrective assignment in August 2015 as Instrument Number 201508117-0002424 to reflect the proper recording information for the Deed of Trust. **Ex. D.** The assignments did not affect Fannie Mae's ownership of the Loan.

5. At the time of the HOA's January 9, 2013 foreclosure sale, BANA was the servicer of Fannie Mae's Loan and, in that capacity, Deed of Trust beneficiary of record. *See* **Ex. B** (Babin Decl.) ¶ 9.

6. On August 17 2015, an assignment of the Deed of Trust from BANA to Fannie Mae was recorded as Instrument No. 20150817-0002425. **Ex. E**.

B. Fannie Mae's contract with its servicers, including BANA.

7. The relationship between Fannie Mae, as owner of the Loan, and BANA, as its servicer of the Loan, was governed by the Guide, a central governing document for Fannie Mae's relationship with servicers nationwide. Among other things, the Guide provides that Fannie Mae's servicers may act as record beneficiaries for the deeds of trust owned by Fannie Mae and requires that servicers assign these deeds of trust to Fannie Mae upon Fannie Mae's demand. *See* **Ex. G**. (Selling Guide at A2-1-01, Servicing Guide F-1-11).

8. The Guide provides that:

> The servicer ordinarily appears in the land records as the mortgagee to facilitate performance of the servicer's contractual responsibilities, including (but not limited to) the receipt of legal notices that may impact Fannie Mae's lien, such as notices of foreclosure, tax, and other liens. However, *Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its ... ownership of the mortgage loan, including recordation of a mortgage assignment, or its legal equivalent, from the servicer to Fannie Mae or its designee.* In the event that Fannie Mae determines it necessary to record such an instrument, the servicer must assist Fannie Mae by
>
> - preparing and recording any required documentation, such as mortgage assignments, powers of attorney, or affidavits; and

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- providing recordation information for the affected mortgage loans.

Ex. G (Guide at § A2-1-03) (emphasis added).

9. The Guide also provides for a temporary transfer of possession of the note when necessary for servicing:

> In order to ensure that a servicer is able to perform the services and duties incident to the servicing of the mortgage loan, Fannie Mae temporarily gives the servicer possession of the mortgage note whenever the servicer, acting in its own name, represents the interests of Fannie Mae in foreclosure actions, bankruptcy cases, probate proceedings, or other legal proceedings.
>
> This temporary transfer of possession occurs automatically and immediately upon the commencement of the servicer's representation, in its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

Ex. G (Guide at § A2-1-04).

10. The Guide also includes a chapter regarding how servicers should manage litigation on behalf of Fannie Mae. *See generally* Guide at E-1 ("Referring Default-Related Legal Matters and Non-Routine Litigation to Law Firms"). Included among the "non-routine" litigation that servicers are obligated to manage on behalf of Fannie Mae is that concerning "[a]ny issue involving Fannie Mae's conservatorship." **Ex. G** (Guide at § E-1.3-01).

11. Nevertheless, "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure . . . possession automatically reverts to Fannie Mae." **Ex. G** (Guide at § A2-1-04).

12. Any servicer retaining documents related to a particular loan, such as a deed of trust, has "no right to possess these documents and records except under the conditions specified by Fannie Mae." **Ex. G** (Guide at § A2-5.1-02).

C. The HOA Lien Foreclosure Sale and Subsequent Transfers of the Property.

12. In February 2012, when borrower became delinquent in HOA dues, Sovana, through its agent Alessi & Koenig, LLC (**Alessi**), recorded a Notice of Delinquent Assessment Lien (**NDAL**). Per the notice, the amount due to Sovana was $778.00. The notice states this amount includes $703.00 for "[c]ollection and/or [a]ttorney fees, assessments, interest, late fees and service charges" and $75.00

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for collection costs. A true and correct copy of the lien was recorded in the Recorder's Office as Instrument Number 201202220001077. **Ex. I**.

14. In June 2012, HOA/Alessi recorded a Notice of Default and Election to Sell with the Recorder's Office as Instrument Number 201206250001928 (**Notice of Default**). The Notice of Default was submitted by Alessi, on behalf of Sovana, and asserts outstanding amounts owed as of May 16, 2012, in the amount of $1,957.50. The notice does not specify whether it includes dues, interest, fees and collection costs in addition to assessments. The Notice of Default does not specify the superpriority amount claimed by Sovana and fails to describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1). **Ex. J.**

15. In December 2012, Sovana, through its agent Alessi, recorded a notice of sale (**NOS**), which set an auction date for January 9, 2013. The notice states the estimated amount due Sovana was $3,282.00, including "total amount of the unpaid balance of the obligation secured by the property . . . and reasonable estimated costs, expenses and advances." The notice of sale was recorded in the Recorder's Office as Instrument No. 201212070002302. The notice of sale does not identify the superpriority amount claimed by Sovana and fails to describe the amount necessary to satisfy the lien required by NRS 116.311635(3)(a). **Ex. K.**

16. On January 15, 2013, a foreclosure deed was recorded against the Property. **Ex. L**. The foreclosure deed states that the Property was sold at auction on January 9, 2013 to Villa Lante Ave. Trust for $17,000.00. *Id.*

17. At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing Fannie Mae's interest in the Property. **Ex. M**, (FHFA's Statement on HOA Superpriority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Superpriority-Lien-Foreclosures.aspx).

18. In April 2013, a Quitclaim Deed was recorded in the Recorder's Office as Instrument Number 201304260002025. The Quitclaim Deed states that 6022 Villa Lante Ave Trust sold the Property to LN Management LLC, Series 6022 Villa Lante for no consideration.

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19. In July 2013, a Quitclaim Deed was recorded in the Recorder's Office as Instrument Number 201307020001912. The Quitclaim Deed states that LN Management LLC, Series 6022 Villa Lante sold the Property to ZYZZX for no consideration.

20. In December 2015, a Quitclaim Deed was recorded in the Recorder's Office as Instrument Number 20151202-0003431. The Quitclaim Deed states that ZYZZX sold the Property to Villa Lante Trust for no consideration.

21. Eddie Haddad is the manager of the Plaintiff.

22. Mr. Haddad has purchased somewhere between 100 and 1,000 properties at HOA foreclosure auctions.

23. Mr. Haddad was aware there was a recorded deed of trust on the property.

CONCLUSIONS OF LAW

Standard of Proof

1. Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c). The Nevada Supreme Court "reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

2. The parties must prove their claims and affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law, "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.").

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3. Nevada law draws no distinction between circumstantial and direct evidence. *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including circumstantial evidence, should be considered...").

4. "A quiet title action . . . is the proper method by which to adjudicate disputed ownership of real property rights." *Howell v. Ricci*, 124 Nev. 1222, 1224, 197 P.3d 1044, 1046 (2008). "An action may be brought by any person against another who claims an estate or interest in real property, adverse to him, for the purpose of determining such adverse claim." NRS 40.010. Plaintiff and Fannie Mae both seek to quiet title.

5. NRS 30.010 et seq. gives courts "power to declare rights, status and other legal relations." Plaintiff and Fannie Mae both seek declaratory relief under that statute.

The Federal Foreclosure Bar preempts NRS 116

6. Pursuant to the 2008 Housing and Economic Recovery Act (**HERA**), Congress granted the FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable the FHFA to carry out its statutory functions when acting as Conservator of Fannie Mae and Freddie Mac (the **Enterprises**). Among these is a broad statutory "exemption" captioned "Property Protection" that provides that when the Enterprises are under the conservatorship of the FHFA, none of their property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the **Federal Foreclosure Bar**).

7. In addition, FHFA succeeded to the property of Fannie Mae. 12 U.S.C. § 4617(b)(2).

8. The Federal Foreclosure Bar preempts NRS 116 *et seq.* (**State Foreclosure Statute**). *See Christine View v. Fannie Mae*, No. 69419, 2018 WL 1448731 (Nev. 2018) (unpublished disposition) and *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

9. Fannie Mae proved it owned the Note and Deed of Trust at the time of the HOA foreclosure sale at issue here and therefore had an interest in the property.

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10. Plaintiff offered no evidence to the contrary and therefore, under the summary judgment standard, failed to create a genuinely disputed issue of fact.

11. In addition, although it was proved that the Loan was not securitized at the time of the HOA foreclosure sale, securitization would have been irrelevant anyway because Fannie Mae remains the legal owner of loans it securitizes because they are placed in trusts for which Fannie Mae is trustee, and a trust is not a separate legal entity that can hold property. Instead, the trustee remains owner of trust property. *See, e.g., Paloian v. LaSalle Bank, N.A.*, 619 F.3d 688, 691 (7th Cir. 2010) ("In American law, a trustee is the legal owner of the trust's assets."); *Millennium Square Residential Ass'n v. 2200 M Street LLC*, 952 F. Supp. 2d 234, 243 (D.D.C. 2013) ("the general rule is that '[a] trust is not an entity distinct from its trustees and capable of legal action on its own behalf, but merely a fiduciary relationship with respect to property.'") (quoting 76 Am Jur. 2d Trusts § 3 (2005); *Lane v. Wells Fargo Bank, N.A.*, 2012 WL 4792914, at *6 (D. Nev. Oct. 8, 2012) ("a traditional common law trust is a legal relationship between legal entities, not a legal entity in-and-of-itself . . . . A trust is not a legal 'person' which can own property").

Plaintiff cannot prove FHFA consented to extinguishment of Deed of Trust

12. Plaintiff bears the burden of proof to establish that FHFA expressly consented to extinguish Fannie Mae's Deed of Trust. Nevada has a policy against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096–97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered."); *see also State v. Haskell*, 14 Nev. 209, 209–10 (1879) (in a forfeiture case, once the defendant establishes good title to the property the burden shifts to the state – "not upon the defendants to prove a negative", *i.e.* that the property was not abandoned or forfeited).

13. The Nevada Supreme Court and Ninth Circuit have not interpreted HERA to permit implied consent. *See, e.g., Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, No. 69419,

2018 WL 1448731 (Nev. 2018) (unpublished disposition); *Berezovsky v. Moniz*, 869 F.3d 923, 929 (9th Cir. 2017).

14. Thus, unless the FHFA does give its consent, the federal protection shall be given full effect, which includes preemption of state law. FHFA's April 21, 2015 statement confirms that there was no such consent here. In the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the Federal Foreclosure Bar.

15. The Federal Foreclosure Bar contains no conditions precedent to effectiveness of its statutory protections. Thus, unless and until FHFA gives its consent, the federal protection "shall" be given full effect, which includes preemption of state law. *SFR Inv. Pool 1, LLC v. Green Tree Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016) (citing 12 U.S.C. § 4617(j)(3)). A contrary interpretation would invert the default rule provided in the statutory text on its head, as if Congress decreed that FHFA's property interests are subject to extinguishment by foreclosure unless FHFA affirmatively declares that it will not grant consent to the extinguishment of a specific property interest. This is not what the statute says, and courts should not rewrite a statute's text. *See Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) (rejecting argument that "would result not [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (quoting *Iselin v. United States*, 270 U. S. 245, 251 (1926))); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others . . . that a legislature says in a statute what it means and means in a statute what it says."). Here, there is no evidence FHFA consented- to extinguishment of the Deed of Trust.

Fannie Mae did not need to be record beneficiary for HERA to apply

16. In addition to preempting the State Foreclosure Statue, the Federal Foreclosure Bar also precludes any application of a state law statute of frauds.

17. Therefore, the Federal Foreclosure Bar defeats Plaintiff's claim that its interest in the Property is free and clear of the Deed of Trust.

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18. BANA was Fannie Mae's contractually authorized servicer of the Loan at the time of the HOA foreclosure sale, and it is common practice for servicers to appear in Nevada courts in litigation concerning loans that they may service but do not own. *Ohfuji Investments, LLC v. Nationstar Mortg., LLC*, No. 72676, 2018 WL 1448729, at *1 (Nev. 2017) (unpublished disposition) (citing *Montierth* as "recognizing that it is an acceptable practice for a servicer to serve as the beneficiary of record for the actual deed of trust beneficiary.").

Fannie Mae's assertion of the Federal Foreclosure Bar was timely

19. In addition to HERA preemption state limitations statutes, Fannie Mae's assertion was timely because Fannie Mae raised the Federal Foreclosure Bar in its answer as an affirmative defense and as the basis of its counterclaims for quiet title and declaratory relief, and Rules 15 and 13 provide that amendments and compulsory counterclaims relate back to the original pleading, which was filed in 2013—the same year as the HOA foreclosure sale at issue here.

20. Thus, Fannie Mae's assertion of the Federal Foreclosure Bar was timely.

The Bona Fide Purchaser doctrine cannot overcome HERA

21. The equitable bona fide purchaser defense is based on state law, which, just like NRS 116, is preempted by the Federal Foreclosure Bar.

22. In addition, the Federal Foreclosure Bar includes no exceptions for equitable doctrines like bona fide purchaser status.

23. Finally, plaintiff bore the burden to prove it was a BFP, but it presented no evidence other than deed recitals to support the claim.

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the January 9, 2013 HOA sale did not extinguish the Deed of Trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Deed of Trust, recorded in the Clark County Recorder's Office as Instrument Number 20041102-0003331, remains a valid, secured encumbrance against the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all persons or entities whom were granted title or an interest in the Property through or after the HOA Sale took such title or interest subject to the obligations secured by the Deed of Trust.

DATED: May 25th, 2018.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully submitted by:
AKERMAN LLP

/s/
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VILLA LANTE TRUST, Plaintiff, v. ELEONOR S. GARCIA, an individual; FEDERAL NATIONAL MORTGAGE ASSOCIATION, Defendants.	Case No.: A-13-682040-C Dept. No: XXXI **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**
FEDERAL NATIONAL MORTGAGE ASSOCIATION, Counterclaimant, vs. VILLA LANTE TRUST, Counterdefendant.	

Case Number: A-13-682040-C

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that a **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT** has been entered by this Court on the 29th day of May, 2018, in the above-captioned matter. A copy of said Order is attached hereto as **Exhibit A.**

Dated: May 29, 2018

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/s/ Rex D. Garner, Esq.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Akerman LLP, and that on this 29th day of May, 2018 and pursuant to NRCP 5, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT**, in the following manner:

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

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/s/ Christine Weiss
An employee of AKERMAN LLP

EXHIBIT A

EXHIBIT A

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

VILLA LANTE TRUST,

Plaintiff,

v.

ELEONOR S. GARCIA, an individual; FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Defendants.

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Counterclaimant,

vs.

VILLA LANTE TRUST,

Counterdefendant.

Case No.: A-13-682040-C
Dept. No: XXXI

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

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Federal National Mortgage Association's (**Fannie Mae**) motion for summary judgment on all claims between it and Plaintiff Villa Lante Trust came on for hearing on May 1, 2018. The Court, having considered the motion, Plaintiff's opposition, Fannie Mae's reply, the pleadings and exhibits to the various papers, and having heard arguments from counsel for all parties, now finds and concludes as follows:

FINDINGS OF FACT

A. The Subject Property, Note, and Deed of Trust.

1. In October 2004, Eleanor Garcia obtained a loan in the amount of $190,000 from Full Spectrum Lending, Inc.

2. In connection with the loan transaction, Borrower executed a promissory note (**Note**) and a deed of trust (the **Deed of Trust**) to secure repayment of the loan. The Note and Deed of Trust together are referred to as the **Loan**. The Deed of Trust, which was recorded against 6022 Villa Lante Avenue, Las Vegas, Nevada 89113, APN 163-33-613-067 (**the Property**) in the Clark County Recorder's Office in 2004, as Instrument Number 20041102-0003331, listed Garcia as the borrower (**Borrower**), Full Spectrum Lending, Inc. as the lender (**Lender**), and Mortgage Electronic Registration Systems, Inc. (**MERS**) as beneficiary solely as nominee for Full Spectrum Lending, Inc. and its successors and assigns. **Ex. A** to Fannie Mae's MSJ.[1]

3. In November 2004, Fannie Mae acquired ownership of the Loan, including the Note and Deed of Trust. *See* Declaration of Graham Babin, **Ex. B** ¶ 4, and Ex. A thereto.[2] In September 2008, Federal Housing Finance Agency (**FHFA**) placed Fannie Mae into conservatorship "for the purpose of reorganizing, rehabilitating, or winding up [its] affairs." 12 U.S.C. § 4617(a)(2). Fannie Mae remained in conservatorship and maintained that ownership at the time of the HOA sale on January 9, 2013. *Id.* ¶¶ 7–9.

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[1] All references to exhibits are to those attached to Fannie's Mae's summary judgment motion unless otherwise stated. The bulk of the exhibits are publicly recorded documents, of which the Court takes judicial notice under NRS 47.130 et seq.

[2] The Court finds Fannie Mae's business records to be admissible under NRS 52.260 and 50.135.

4. On September 19, 2011, an assignment of the Deed of Trust from MERS to Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing LP (**BANA**) was recorded as Clark County Recorder Instrument No. 201109190000206. **Ex. C**. BANA recorded a corrective assignment in August 2015 as Instrument Number 201508117-0002424 to reflect the proper recording information for the Deed of Trust. **Ex. D.** The assignments did not affect Fannie Mae's ownership of the Loan.

5. At the time of the HOA's January 9, 2013 foreclosure sale, BANA was the servicer of Fannie Mae's Loan and, in that capacity, Deed of Trust beneficiary of record. *See* **Ex. B** (Babin Decl.) ¶ 9.

6. On August 17 2015, an assignment of the Deed of Trust from BANA to Fannie Mae was recorded as Instrument No. 20150817-0002425. **Ex. E**.

B. Fannie Mae's contract with its servicers, including BANA.

7. The relationship between Fannie Mae, as owner of the Loan, and BANA, as its servicer of the Loan, was governed by the Guide, a central governing document for Fannie Mae's relationship with servicers nationwide. Among other things, the Guide provides that Fannie Mae's servicers may act as record beneficiaries for the deeds of trust owned by Fannie Mae and requires that servicers assign these deeds of trust to Fannie Mae upon Fannie Mae's demand. *See* **Ex. G**. (Selling Guide at A2-1-01, Servicing Guide F-1-11).

8. The Guide provides that:

> The servicer ordinarily appears in the land records as the mortgagee to facilitate performance of the servicer's contractual responsibilities, including (but not limited to) the receipt of legal notices that may impact Fannie Mae's lien, such as notices of foreclosure, tax, and other liens. However, *Fannie Mae may take any and all action with respect to the mortgage loan it deems necessary to protect its ... ownership of the mortgage loan, including recordation of a mortgage assignment, or its legal equivalent, from the servicer to Fannie Mae or its designee.* In the event that Fannie Mae determines it necessary to record such an instrument, the servicer must assist Fannie Mae by
>
> - preparing and recording any required documentation, such as mortgage assignments, powers of attorney, or affidavits; and

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- providing recordation information for the affected mortgage loans.

Ex. G (Guide at § A2-1-03) (emphasis added).

9. The Guide also provides for a temporary transfer of possession of the note when necessary for servicing:

> In order to ensure that a servicer is able to perform the services and duties incident to the servicing of the mortgage loan, Fannie Mae temporarily gives the servicer possession of the mortgage note whenever the servicer, acting in its own name, represents the interests of Fannie Mae in foreclosure actions, bankruptcy cases, probate proceedings, or other legal proceedings.
>
> This temporary transfer of possession occurs automatically and immediately upon the commencement of the servicer's representation, in its name, of Fannie Mae's interests in the foreclosure, bankruptcy, probate, or other legal proceeding.

Ex. G (Guide at § A2-1-04).

10. The Guide also includes a chapter regarding how servicers should manage litigation on behalf of Fannie Mae. *See generally* Guide at E-1 ("Referring Default-Related Legal Matters and Non-Routine Litigation to Law Firms"). Included among the "non-routine" litigation that servicers are obligated to manage on behalf of Fannie Mae is that concerning "[a]ny issue involving Fannie Mae's conservatorship." **Ex. G** (Guide at § E-1.3-01).

11. Nevertheless, "Fannie Mae is at all times the owner of the mortgage note," and "[a]t the conclusion of the servicer's representation of Fannie Mae's interests in the foreclosure . . . possession automatically reverts to Fannie Mae." **Ex. G** (Guide at § A2-1-04).

12. Any servicer retaining documents related to a particular loan, such as a deed of trust, has "no right to possess these documents and records except under the conditions specified by Fannie Mae." **Ex. G** (Guide at § A2-5.1-02).

C. The HOA Lien Foreclosure Sale and Subsequent Transfers of the Property.

12. In February 2012, when borrower became delinquent in HOA dues, Sovana, through its agent Alessi & Koenig, LLC (**Alessi**), recorded a Notice of Delinquent Assessment Lien (**NDAL**). Per the notice, the amount due to Sovana was $778.00. The notice states this amount includes $703.00 for "[c]ollection and/or [a]ttorney fees, assessments, interest, late fees and service charges" and $75.00

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for collection costs. A true and correct copy of the lien was recorded in the Recorder's Office as Instrument Number 201202220001077. **Ex. I**.

14. In June 2012, HOA/Alessi recorded a Notice of Default and Election to Sell with the Recorder's Office as Instrument Number 201206250001928 (**Notice of Default**). The Notice of Default was submitted by Alessi, on behalf of Sovana, and asserts outstanding amounts owed as of May 16, 2012, in the amount of $1,957.50. The notice does not specify whether it includes dues, interest, fees and collection costs in addition to assessments. The Notice of Default does not specify the superpriority amount claimed by Sovana and fails to describe the "deficiency in payment" required by NRS 116.31162(1)(b)(1). **Ex. J.**

15. In December 2012, Sovana, through its agent Alessi, recorded a notice of sale (**NOS**), which set an auction date for January 9, 2013. The notice states the estimated amount due Sovana was $3,282.00, including "total amount of the unpaid balance of the obligation secured by the property . . . and reasonable estimated costs, expenses and advances." The notice of sale was recorded in the Recorder's Office as Instrument No. 201212070002302. The notice of sale does not identify the superpriority amount claimed by Sovana and fails to describe the amount necessary to satisfy the lien required by NRS 116.311635(3)(a). **Ex. K.**

16. On January 15, 2013, a foreclosure deed was recorded against the Property. **Ex. L**. The foreclosure deed states that the Property was sold at auction on January 9, 2013 to Villa Lante Ave. Trust for $17,000.00. *Id.*

17. At no time did the Conservator consent to the HOA Sale extinguishing or foreclosing Fannie Mae's interest in the Property. **Ex. M**, (FHFA's Statement on HOA Superpriority Lien Foreclosures (Apr. 21, 2015), www.fhfa.gov/Media/PublicAffairs/Pages/Statement-on-HOA-Superpriority-Lien-Foreclosures.aspx).

18. In April 2013, a Quitclaim Deed was recorded in the Recorder's Office as Instrument Number 201304260002025. The Quitclaim Deed states that 6022 Villa Lante Ave Trust sold the Property to LN Management LLC, Series 6022 Villa Lante for no consideration.

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19. In July 2013, a Quitclaim Deed was recorded in the Recorder's Office as Instrument Number 201307020001912. The Quitclaim Deed states that LN Management LLC, Series 6022 Villa Lante sold the Property to ZYZZX for no consideration.

20. In December 2015, a Quitclaim Deed was recorded in the Recorder's Office as Instrument Number 20151202-0003431. The Quitclaim Deed states that ZYZZX sold the Property to Villa Lante Trust for no consideration.

21. Eddie Haddad is the manager of the Plaintiff.

22. Mr. Haddad has purchased somewhere between 100 and 1,000 properties at HOA foreclosure auctions.

23. Mr. Haddad was aware there was a recorded deed of trust on the property.

CONCLUSIONS OF LAW

Standard of Proof

1. Summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c). The Nevada Supreme Court "reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

2. The parties must prove their claims and affirmative defenses by a preponderance of the evidence. *See* Nev. J.I. 2EV.1. Under Nevada law, "[t]he term 'preponderance of the evidence' means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein." Nev. J.I. 2EV.1; *Corbin v. State*, 111 Nev. 378, 892 P.2d 580 (1995) (regarding entrapment, "[p]reponderance of the evidence means such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.").

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3. Nevada law draws no distinction between circumstantial and direct evidence. *Deveroux v. State*, 96 Nev. 388, 391 (1980); Nev. J.I. 2EV.3 ("The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including circumstantial evidence, should be considered...").

4. "A quiet title action . . . is the proper method by which to adjudicate disputed ownership of real property rights." *Howell v. Ricci*, 124 Nev. 1222, 1224, 197 P.3d 1044, 1046 (2008). "An action may be brought by any person against another who claims an estate or interest in real property, adverse to him, for the purpose of determining such adverse claim." NRS 40.010. Plaintiff and Fannie Mae both seek to quiet title.

5. NRS 30.010 et seq. gives courts "power to declare rights, status and other legal relations." Plaintiff and Fannie Mae both seek declaratory relief under that statute.

The Federal Foreclosure Bar preempts NRS 116

6. Pursuant to the 2008 Housing and Economic Recovery Act (**HERA**), Congress granted the FHFA an array of powers, privileges, and exemptions from otherwise applicable laws to enable the FHFA to carry out its statutory functions when acting as Conservator of Fannie Mae and Freddie Mac (the **Enterprises**). Among these is a broad statutory "exemption" captioned "Property Protection" that provides that when the Enterprises are under the conservatorship of the FHFA, none of their property "shall be subject to . . . foreclosure . . . without the consent of [FHFA]." 12 U.S.C. § 4617(j)(3) (the **Federal Foreclosure Bar**).

7. In addition, FHFA succeeded to the property of Fannie Mae. 12 U.S.C. § 4617(b)(2).

8. The Federal Foreclosure Bar preempts NRS 116 *et seq.* (**State Foreclosure Statute**). *See Christine View v. Fannie Mae*, No. 69419, 2018 WL 1448731 (Nev. 2018) (unpublished disposition) and *Berezovsky v. Moniz*, 869 F.3d 923 (9th Cir. 2017).

9. Fannie Mae proved it owned the Note and Deed of Trust at the time of the HOA foreclosure sale at issue here and therefore had an interest in the property.

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10. Plaintiff offered no evidence to the contrary and therefore, under the summary judgment standard, failed to create a genuinely disputed issue of fact.

11. In addition, although it was proved that the Loan was not securitized at the time of the HOA foreclosure sale, securitization would have been irrelevant anyway because Fannie Mae remains the legal owner of loans it securitizes because they are placed in trusts for which Fannie Mae is trustee, and a trust is not a separate legal entity that can hold property. Instead, the trustee remains owner of trust property. *See, e.g., Paloian v. LaSalle Bank, N.A.*, 619 F.3d 688, 691 (7th Cir. 2010) ("In American law, a trustee is the legal owner of the trust's assets."); *Millennium Square Residential Ass'n v. 2200 M Street LLC*, 952 F. Supp. 2d 234, 243 (D.D.C. 2013) ("the general rule is that '[a] trust is not an entity distinct from its trustees and capable of legal action on its own behalf, but merely a fiduciary relationship with respect to property.'") (quoting 76 Am Jur. 2d Trusts § 3 (2005); *Lane v. Wells Fargo Bank, N.A.*, 2012 WL 4792914, at *6 (D. Nev. Oct. 8, 2012) ("a traditional common law trust is a legal relationship between legal entities, not a legal entity in-and-of-itself . . . . A trust is not a legal 'person' which can own property").

Plaintiff cannot prove FHFA consented to extinguishment of Deed of Trust

12. Plaintiff bears the burden of proof to establish that FHFA expressly consented to extinguish Fannie Mae's Deed of Trust. Nevada has a policy against requiring a party to prove a negative, such as proving a lack of consent. *Andrews v. Harley Davidson, Inc.*, 106 Nev. 533, 539, 796 P.2d 1092, 1096–97 (1990) (even where a plaintiff bears the burden of proving his or her strict liability claim, "it is unfair to force the plaintiff consumer to prove a negative, i.e., that the product was not altered."); *see also State v. Haskell*, 14 Nev. 209, 209–10 (1879) (in a forfeiture case, once the defendant establishes good title to the property the burden shifts to the state – "not upon the defendants to prove a negative", *i.e.* that the property was not abandoned or forfeited).

13. The Nevada Supreme Court and Ninth Circuit have not interpreted HERA to permit implied consent. *See, e.g., Saticoy Bay LLC Series 9641 Christine View v. Fannie Mae*, No. 69419,

2018 WL 1448731 (Nev. 2018) (unpublished disposition); *Berezovsky v. Moniz*, 869 F.3d 923, 929 (9th Cir. 2017).

14. Thus, unless the FHFA does give its consent, the federal protection shall be given full effect, which includes preemption of state law. FHFA's April 21, 2015 statement confirms that there was no such consent here. In the absence of express consent, the Court cannot imply FHFA's consent, as doing so would ignore the plain text of the Federal Foreclosure Bar.

15. The Federal Foreclosure Bar contains no conditions precedent to effectiveness of its statutory protections. Thus, unless and until FHFA gives its consent, the federal protection "shall" be given full effect, which includes preemption of state law. *SFR Inv. Pool 1, LLC v. Green Tree Servicing, LLC*, No. A-13-680704 (Nev. Dist. Ct. Nov. 17, 2016) (citing 12 U.S.C. § 4617(j)(3)). A contrary interpretation would invert the default rule provided in the statutory text on its head, as if Congress decreed that FHFA's property interests are subject to extinguishment by foreclosure unless FHFA affirmatively declares that it will not grant consent to the extinguishment of a specific property interest. This is not what the statute says, and courts should not rewrite a statute's text. *See Lamie v. United States Trustee*, 540 U.S. 526, 538 (2004) (rejecting argument that "would result not [in] a construction of [the] statute, but, in effect, an enlargement of it by the court" (quoting *Iselin v. United States*, 270 U. S. 245, 251 (1926))); *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) ("[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others . . . that a legislature says in a statute what it means and means in a statute what it says."). Here, there is no evidence FHFA consented- to extinguishment of the Deed of Trust.

Fannie Mae did not need to be record beneficiary for HERA to apply

16. In addition to preempting the State Foreclosure Statue, the Federal Foreclosure Bar also precludes any application of a state law statute of frauds.

17. Therefore, the Federal Foreclosure Bar defeats Plaintiff's claim that its interest in the Property is free and clear of the Deed of Trust.

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18. BANA was Fannie Mae's contractually authorized servicer of the Loan at the time of the HOA foreclosure sale, and it is common practice for servicers to appear in Nevada courts in litigation concerning loans that they may service but do not own. *Ohfuji Investments, LLC v. Nationstar Mortg., LLC*, No. 72676, 2018 WL 1448729, at *1 (Nev. 2017) (unpublished disposition) (citing *Montierth* as "recognizing that it is an acceptable practice for a servicer to serve as the beneficiary of record for the actual deed of trust beneficiary.").

Fannie Mae's assertion of the Federal Foreclosure Bar was timely

19. In addition to HERA preemption state limitations statutes, Fannie Mae's assertion was timely because Fannie Mae raised the Federal Foreclosure Bar in its answer as an affirmative defense and as the basis of its counterclaims for quiet title and declaratory relief, and Rules 15 and 13 provide that amendments and compulsory counterclaims relate back to the original pleading, which was filed in 2013—the same year as the HOA foreclosure sale at issue here.

20. Thus, Fannie Mae's assertion of the Federal Foreclosure Bar was timely.

The Bona Fide Purchaser doctrine cannot overcome HERA

21. The equitable bona fide purchaser defense is based on state law, which, just like NRS 116, is preempted by the Federal Foreclosure Bar.

22. In addition, the Federal Foreclosure Bar includes no exceptions for equitable doctrines like bona fide purchaser status.

23. Finally, plaintiff bore the burden to prove it was a BFP, but it presented no evidence other than deed recitals to support the claim.

JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the January 9, 2013 HOA sale did not extinguish the Deed of Trust.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Deed of Trust, recorded in the Clark County Recorder's Office as Instrument Number 20041102-0003331, remains a valid, secured encumbrance against the Property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all persons or entities whom were granted title or an interest in the Property through or after the HOA Sale took such title or interest subject to the obligations secured by the Deed of Trust.

DATED: May 25th, 2018.

JOANNA S. KISHNER
DISTRICT COURT JUDGE

Respectfully submitted by:
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