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3/23/2018 1:29 PM
Steven D. Grierson
CLERK OF THE COURT

MORRIS LAW CENTER
SARAH A. MORRIS, ESQ.
Nevada Bar No. 8461
sarah@morrislawcenter.com
TIMOTHY A. WISEMAN, ESQ.
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5450 W. Sahara Ave. Suite 330
Las Vegas, NV 89146
Telephone: (702) 850-7798
Facsimile: (702) 850-7998
Attorneys for Premier One Holdings, Inc.

Electronically Filed
Mar 30 2018 03:31 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT

CLARK COUNTY, NEVADA

BAYVIEW LOAN SERVICING, LLC, Plaintiff, vs. NEVADA ASSOCIATION SERVICES, INC.; HILLPOINTE PARK MAINTENANCE DISTRICT; PREMIER ONE HOLDINGS, INC.; DOE INDIVIDUALS I-X, inclusive, and ROE CORPORATIONS I-X, inclusive, Defendants.	Case No.: A-16-735303-C Dept. No.: XXXI
AND ALL RELATED MATTERS.	

NOTICE OF APPEAL

. . .

. . .

. . .

Docket 75476 Document 2018-12374

Case Number: A-16-735303-C

NOTICE is hereby given that the Defendant, Premier One Holdings, Inc. appeals to the Supreme Court of Nevada from the Notice of Entry of Findings of Fact and Conclusions of Law filed on February 21, 2018, and from all orders and rulings merged into that final Order.

Dated this 23rd day of March, 2018.

MORRIS LAW CENTER

By: _____

Sarah A. Morris, Esq.
Nevada Bar No. 8461
Timothy A. Wiseman, Esq.
Nevada Bar No. 13786
5450 W. Sahara Ave. Suite 330
Las Vegas, NV 89146
Telephone: (702) 850-7798
Fax: (702) 850-7998
Attorneys for Premier One Holdings, Inc.

MORRIS LAW CENTER
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **NOTICE OF APPEAL** by the method indicated:

_____ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

_____ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the email addresses set forth below and/or included on the Court's Service List for the above-referenced case.

_____ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below.

_____ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

_____ **BY PERSONAL DELIVERY:** by causing personal delivery via messenger service of the document(s) listed above to the person(s) at the address(es) set forth below.

__X__ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

and addressed to the following:

Boyack Orme & Anthony
Sherri Tyrrell marcia@boyacklaw.com
Mike Van Luven mike@boyacklaw.com

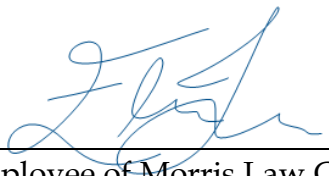
Akerman LLP
Darren T. Brenner Darren.brenner@akerman.com
Natalie L. Winslow natalie.winslow@akerman.com
Akerman Las Vegas akermanlas@akerman.com
Allen Stephens allen.stephens@akerman.com

Alessi & Koenig
A&K eserve eserve@alessikoenig.com

MORRIS LAW CENTER
ATTORNEYS AT LAW

Hong & Hong, APLC
Debbie Batesel dbhonglaw@hotmail.com
Joseph Y. Hong yosuphonglaw@gmail.com

Dated this 23rd day of March, 2018.



An employee of Morris Law Center

MORRIS LAW CENTER
ATTORNEYS AT LAW

Electronically Filed
3/23/2018 1:29 PM
Steven D. Grierson
CLERK OF THE COURT

MORRIS LAW CENTER
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Las Vegas, NV 89146
Telephone: (702) 850-7798
Facsimile: (702) 850-7998
Attorneys for Premier One Holdings

DISTRICT COURT

CLARK COUNTY, NEVADA

BAYVIEW LOAN SERVICING, LLC, Plaintiff, vs. NEVADA ASSOCIATION SERVICES, INC.; HILLPOINTE PARK MAINTENANCE DISTRICT; PREMIER ONE HOLDINGS, INC.; DOE INDIVIDUALS I-X, inclusive, and ROE CORPORATIONS I-X, inclusive, Defendants.	Case No.: A-16-735303-C Dept. No.: XXXI
AND ALL RELATED MATTERS.	

CASE APPEAL STATEMENT

1. APPELLANT FILING THIS CASE APPEAL STATEMENT:

Defendant, Premier One Holdings, Inc.

2. JUDGE ISSUING THE JUDGMENT OR ORDER APPEALED FROM:

The Honorable Judge Joanna S. Kishner.

3. ALL PARTIES TO THE PROCEEDING IN THE DISTRICT COURT:

Defendant and Counter Claimant: Premier One Holdings, Inc.

MORRIS LAW CENTER ATTORNEYS AT LAW

Plaintiff and Counter Defendant: Bayview Loan Servicing, LLC

Defendant: Hillpointe Park Maintenance District

Defendant: Nevada Association Services, Inc.

4. ALL PARTIES TO THE APPEAL:

Appellant: Premier One Holdings, Inc.

Respondent: Bayview Loan Servicing, LLC

5. NAME OF COUNSEL AND WHOM THEY REPRESENT:

Counsel for Appellant Premier One Holdings, Inc.:[1]
MORRIS LAW CENTER
SARAH A. MORRIS, ESQ.
Nevada Bar No. 8461
sarah@morrislawcenter.com
TIMOTHY A. WISEMAN, ESQ.
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tim@morrislawcenter.com
5450 W. Sahara Ave. Suite 330
Las Vegas, NV 89146
Telephone: (702) 850-7798
Facsimile: (702) 850-7998

Counsel for Respondent Bayview Loan Servicing, LLC:
AKERMAN LLP
DARREN T. BRENNER, ESQ.
Nevada Bar No. 8386
darren.brenner@akerman.com
NATALIE L. WINSLOW, ESQ.
Nevada Bar No. 12125
natalie.winslow@akerman.com
1160 Town Center Drive, Suite 330
Las Vegas, Nevada 89144
Tel: (702) 634-5000
Fax: (702) 380-8572

. . .

. . .

[1] Appellant had been represented by Hong & Hong, APLC before the District Court.

MORRIS LAW CENTER
ATTORNEYS AT LAW

Respondents were represented in the district court by the above listed attorneys, and upon information and belief, will also be represented by the same attorneys on appeal.

6. WHETHER APPELLANT WAS REPRESENTED BY APPOINTED OR RETAINED COUNSEL IN THE DISTRICT COURT:

Appellant was represented by retained counsel in the Eighth Judicial District Court Action.

7. RETAINED COUNSEL ON APPEAL:

Appellant is represented by retained counsel, Morris Law Center, on appeal.

8. WHETHER APPELLANT WAS GRANTED LEAVE TO PROCEED IN FORMA PAUPERIS, AND THE DATE OF ENTRY OF THE DISTRICT COURT ORDER GRANTING SUCH LEAVE:

Appellant has not moved for leave to file an appeal in forma pauperis.

9. INDICATE THE DATE THE PROCEEDINGS COMMENCED IN THE DISTRICT COURT:

The Complaint in this matter was filed with the Eighth Judicial District Court on April 19, 2016.

10. PROVIDE A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND RESULT:

This is an appeal from a quiet title action after an HOA foreclosure sale. This case centered on the whether an alleged tender redeemed the super-priority portion of an HOA lien.

11. PREVIOUS APPEAL OR WRIT PROCEEDING:

There are no previous appeals or writ proceedings.

12. CHILD CUSTODY:

This appeal does not involve child custody or visitation.

. . .

MORRIS LAW CENTER
ATTORNEYS AT LAW

13. POSSIBILITY OF SETTLEMENT:

Settlement is unlikely, but Appellant is prepared to negotiate in good faith.

Dated this 23rd day of March, 2018

MORRIS LAW CENTER

By: _____

MORRIS LAW CENTER
SARAH A. MORRIS, ESQ.
Nevada Bar No. 8461
sarah@morrislawcenter.com
TIMOTHY A. WISEMAN, ESQ.
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tim@morrislawcenter.com
5450 W. Sahara Ave. Suite 330
Las Vegas, NV 89146
Telephone: (702) 850-7798
Facsimile: (702) 850-7998
Attorneys for Defendant/Appellant

MORRIS LAW CENTER
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **CASE APPEAL STATEMENT** by the method indicated:

_____ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. pursuant to EDCR Rule 7.26(a). A printed transmission record is attached to the file copy of this document(s).

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and addressed to the following:

Boyack Orme & Taylor
Sherri Tyrrell marcia@boyacklaw.com
Mike Van Luven mike@boyacklaw.com

Akerman LLP
Darren T. Brenner darren.brenner@akerman.com
Natalie L. Winslow natalie.winslow@akerman.com
Akerman LV Office akermanlas@akerman.com
Allen Stephens allen.stephens@akerman.com

Alessi and Koenig
A&K eserve eserve@allesikoenig.com

MORRIS LAW CENTER ATTORNEYS AT LAW

Hong & Hong, APLC
Joseph Y. Hong yosuphonglaw@gmail.com
Debbie Batesel dbhonglaw@hotmail.com

Dated this 23rd day of March, 2018

An employee of Morris Law Center

MORRIS LAW CENTER
ATTORNEYS AT LAW

DEPARTMENT 31

CASE SUMMARY

CASE NO. A-16-735303-C

Bayview Loan Servicing LLC, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna S.**
Nevada Association Services Inc, Defendant(s)	§	Filed on:	**04/19/2016**
	§	Cross-Reference Case Number:	**A735303**
	§		

CASE INFORMATION

Statistical Closures
03/02/2018 Other Manner of Disposition

Case Type: **Other Real Property**

Case Flags: **Appealed to Supreme Court**
Arbitration Exemption Granted

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-16-735303-C
Court	Department 31
Date Assigned	04/19/2016
Judicial Officer	Kishner, Joanna S.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Bayview Loan Servicing LLC**	**Brenner, Darren T.** *Retained* 702-634-5000(W)
Defendant	**Hillpointe Park Maintenance District**	**Van Luven, Michael L.** *Retained* 702-562-3415(W)
	Nevada Association Services Inc	
	Premier One Holdings Inc	**Morris, Sarah A..** *Retained* 702-850-7798(W)
Counter Claimant	**Premier One Holdings Inc**	**Morris, Sarah A..** *Retained* 702-850-7798(W)
Counter Defendant	**Bayview Loan Servicing LLC**	**Brenner, Darren T.** *Retained* 702-634-5000(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

04/19/2016 Complaint
Filed By: Counter Defendant Bayview Loan Servicing LLC
Complaint

04/20/2016 Lis Pendens
Filed By: Counter Defendant Bayview Loan Servicing LLC
Lis Pendens

05/09/2016 Affidavit of Service
Filed By: Counter Defendant Bayview Loan Servicing LLC
Party Served: Defendant Nevada Association Services Inc
Affidavit Of Service - Nevada Association Services Inc

05/12/2016	Initial Appearance Fee Disclosure Filed By: Defendant Hillpointe Park Maintenance District *Initial Appearance Fee Disclosure (NRS Chapter 19)*
05/12/2016	Answer to Complaint Filed by: Defendant Hillpointe Park Maintenance District *Hillpointe Park Maintenance District's Answer to the Complaint*
05/14/2016	Affidavit of Service Filed By: Counter Defendant Bayview Loan Servicing LLC *Affidavit Of Service*
05/14/2016	Affidavit of Service Filed By: Counter Defendant Bayview Loan Servicing LLC *Affidavit Of Service*
05/14/2016	Affidavit of Service Filed By: Counter Defendant Bayview Loan Servicing LLC *Affidavit Of Service*
08/12/2016	Arbitration File *Arbitration File*
08/15/2016	Commissioners Decision on Request for Exemption - Granted *Commissioner's Decision on Request for Exemption - Granted*
10/13/2016	Joint Case Conference Report Filed By: Counter Defendant Bayview Loan Servicing LLC *Joint Case Conference Report*
10/31/2016	Joint Case Conference Report Filed By: Counter Defendant Bayview Loan Servicing LLC *Joint Case Conference Report*
12/06/2016	Scheduling Order *Scheduling Order*
01/04/2017	Three Day Notice of Intent to Default Filed by: Counter Defendant Bayview Loan Servicing LLC *Three Day Notice Of Intent To Take Default On Defendants Premier one Holdings, Inc. And Nevada Association Services, Inc.*
02/27/2017	Order Setting Civil Non-Jury Trial *Order Setting Civil Non-Jury Trial, Pre-Trial Conference, Calendar Call, And Status Check*
03/14/2017	Answer and Counterclaim Filed By: Counter Claimant Premier One Holdings Inc *Premier One Holdings, Inc.'s Answer To Complaint And Counterclaim*
04/07/2017	Answer to Counterclaim Filed By: Counter Defendant Bayview Loan Servicing LLC *Answer To Premier One Holdings, Inc.'s Counterclaims*

05/25/2017	Substitution of Attorney Filed by: Defendant Hillpointe Park Maintenance District *Substitution of Counsel*
10/17/2017	**Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Status Check*
10/18/2017	Application for Entry of Default Filed By: Counter Defendant Bayview Loan Servicing LLC *Application for Entry of Default*
10/26/2017	Default Filed By: Counter Defendant Bayview Loan Servicing LLC *Default - NAS*
10/31/2017	Notice Filed By: Counter Defendant Bayview Loan Servicing LLC *Notice of Completion of NRED Mediation*
11/01/2017	Notice of Entry of Default Party: Counter Defendant Bayview Loan Servicing LLC *Notice Of Entry Of Default Against Nevada Association Services, Inc.*
11/01/2017	Motion for Summary Judgment Filed By: Counter Defendant Bayview Loan Servicing LLC *Motion for Summary Judgment*
11/13/2017	Opposition to Motion For Summary Judgment Filed By: Defendant Hillpointe Park Maintenance District *Defendant Hillpointe Park Maintenance District's Opposition to Plaintiff's Motion for Summary Judgment*
11/17/2017	Notice of Change of Address Filed By: Counter Defendant Bayview Loan Servicing LLC *Notice Of Change Of Address*
11/28/2017	Reply in Support Filed By: Counter Defendant Bayview Loan Servicing LLC *Reply In Support Of Motion For Summary Judgment*
12/05/2017	**Motion for Summary Judgment** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) *Motion for Summary Judgment*
12/07/2017	**Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
12/11/2017	Pre-Trial Disclosure Party: Defendant Hillpointe Park Maintenance District *Defendant Hillpointe Park Maintenance District's Pre Trial Disclosures*
12/12/2017	Pre-Trial Disclosure Party: Counter Claimant Premier One Holdings Inc *Defendant/Counterclaimant's Pre-Trial Disclosures*

12/12/2017	Notice Filed By: Counter Defendant Bayview Loan Servicing LLC *Notice of 2.67 Conference*
12/13/2017	Amended Order Setting Civil Non-Jury Trial *Amended Order Setting Civil Non-Jury Trial*
12/19/2017	*CANCELED* **Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - Superseding Order*
01/08/2018	*CANCELED* **Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Vacated - Superseding Order*
01/16/2018	Pre-trial Memorandum Filed by: Counter Defendant Bayview Loan Servicing LLC *Individual Pretrial Memorandum*
01/16/2018	Pre-trial Memorandum Filed by: Defendant Hillpointe Park Maintenance District *Pre Trial Memorandum*
01/16/2018	Joinder Filed By: Counter Claimant Premier One Holdings Inc *Premier One Holdings, Inc. s Joinder To Bayview Loan Servicing, LLC s Pretrial Memorandum*
01/23/2018	**Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
01/24/2018	Stipulation Filed by: Counter Defendant Bayview Loan Servicing LLC *Stipulated Trial Facts*
01/25/2018	Trial Brief Filed By: Counter Defendant Bayview Loan Servicing LLC *Trial Brief*
01/29/2018	**Bench Trial** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
02/16/2018	**Decision** (3:00 AM) (Judicial Officer: Kishner, Joanna S.) *Decision on Bench Trial 1/29/18*
02/20/2018	**Judgment** (Judicial Officer: Kishner, Joanna S.) Debtors: Premier One Holdings Inc (Defendant) Creditors: Bayview Loan Servicing LLC (Plaintiff) Judgment: 02/20/2018, Docketed: 02/20/2018 Comment: Certain Claims
02/20/2018	Findings of Fact, Conclusions of Law and Judgment *Findings of Fact, Conclusions of Law and Judgment*
02/21/2018	Notice of Entry of Decision and Order Filed By: Counter Defendant Bayview Loan Servicing LLC *Noticeof Entry of Findings of Fact and Conclusions of Law*
02/27/2018	Memorandum of Costs and Disbursements

	Filed By: Counter Defendant Bayview Loan Servicing LLC *Bayview Loan Servicing, LLC's Memorandum of Costs*
03/02/2018	Order to Statistically Close Case *Civil Order to Statistically Close Case*
03/14/2018	**Order of Dismissal** (Judicial Officer: Kishner, Joanna S.) Debtors: Nevada Association Services Inc (Defendant) Creditors: Bayview Loan Servicing LLC (Plaintiff) Judgment: 03/14/2018, Docketed: 03/15/2018
03/14/2018	Stipulation and Order Filed by: Counter Defendant Bayview Loan Servicing LLC *Stipulation and Order to Dismiss Claims Against Nevada Association Services, Inc.*
03/16/2018	Notice of Entry of Stipulation and Order Filed By: Counter Defendant Bayview Loan Servicing LLC *Notice of Entry of Stipulation and Order Dismissing Claims Against Nevada Association Services, Inc.*
03/23/2018	Substitution of Attorney Filed by: Counter Claimant Premier One Holdings Inc *Substitution of Attorney*
03/23/2018	Notice of Appeal Filed By: Counter Claimant Premier One Holdings Inc *Notice of Appeal*
03/23/2018	Case Appeal Statement Filed By: Counter Claimant Premier One Holdings Inc *Case Appeal Statement*

DATE	FINANCIAL INFORMATION	
	Defendant Hillpointe Park Maintenance District	
	Total Charges	223.00
	Total Payments and Credits	223.00
	Balance Due as of 3/28/2018	**0.00**
	Counter Claimant Premier One Holdings Inc	
	Total Charges	247.00
	Total Payments and Credits	247.00
	Balance Due as of 3/28/2018	**0.00**
	Counter Defendant Bayview Loan Servicing LLC	
	Total Charges	476.00
	Total Payments and Credits	476.00
	Balance Due as of 3/28/2018	**0.00**
	Counter Claimant Premier One Holdings Inc	
	Appeal Bond Balance as of 3/28/2018	**500.00**

DISTRICT COURT CIVIL COVER SHEET A-16-735303-C

County, Nevada

Case No. XXXI

(Assigned by Clerk's Office)

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Bayview Loan Servicing, LLC	Nevada Association Services, Inc.; Hillpointe Park Maintenance District; Premier One Holdings, Inc.
Attorney (name/address/phone):	Attorney (name/address/phone):
Darren T. Brenner, Esq. & Natalie L. Winslow, Esq.	N/A
1160 Town Center Drive, Suite 330	
Las Vegas, Nevada 89144	
(702) 634-5000	

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property

Landlord/Tenant
- ☐ Unlawful Detainer
- ☐ Other Landlord/Tenant

Title to Property
- ☐ Judicial Foreclosure
- ☐ Other Title to Property

Other Real Property
- ☐ Condemnation/Eminent Domain
- ■ Other Real Property

Torts

Negligence
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

Malpractice
- ☐ Medical/Dental
- ☐ Legal
- ☐ Accounting
- ☐ Other Malpractice

Other Torts
- ☐ Product Liability
- ☐ Intentional Misconduct
- ☐ Employment Tort
- ☐ Insurance Tort
- ☐ Other Tort

Probate

Probate *(select case type and estate value)*
- ☐ Summary Administration
- ☐ General Administration
- ☐ Special Administration
- ☐ Set Aside
- ☐ Trust/Conservatorship
- ☐ Other Probate

Estate Value
- ☐ Over $200,000
- ☐ Between $100,000 and $200,000
- ☐ Under $100,000 or Unknown
- ☐ Under $2,500

Construction Defect & Contract

Construction Defect
- ☐ Chapter 40
- ☐ Other Construction Defect

Contract Case
- ☐ Uniform Commercial Code
- ☐ Building and Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Collection of Accounts
- ☐ Employment Contract
- ☐ Other Contract

Judicial Review/Appeal

Judicial Review
- ☐ Foreclosure Mediation Case
- ☐ Petition to Seal Records
- ☐ Mental Competency

Nevada State Agency Appeal
- ☐ Department of Motor Vehicle
- ☐ Worker's Compensation
- ☐ Other Nevada State Agency

Appeal Other
- ☐ Appeal from Lower Court
- ☐ Other Judicial Review/Appeal

Civil Writ

Civil Writ
- ☐ Writ of Habeas Corpus
- ☐ Writ of Mandamus
- ☐ Writ of Quo Warrant
- ☐ Writ of Prohibition
- ☐ Other Civil Writ

Other Civil Filing

Other Civil Filing
- ☐ Compromise of Minor's Claim
- ☐ Foreign Judgment
- ☐ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

4.19.2016
Date

/s/ Natalie L. Winslow, Esq.
Signature of initiating party or representative

See other side for family-related case filings.

Electronically Filed
2/20/2018 9:21 AM
Steven D. Grierson
CLERK OF THE COURT

FFCL

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BAYVIEW LOAN SERVICING, LLC,

Plaintiff,

vs.

NEVADA ASSOCIATION SERVICES, INC.; HILLPOINTE PARK MAINTENANCE DISTRICT; PREMIER ONE HOLDINGS, INC.; DOE INDIVIDUALS I-X, inclusive, and ROE CORPORATIONS I-X, inclusive,

Defendants.

PREMIER ONE HOLDINGS, INC.,

Counterclaimant,

v.

BAYVIEW LOAN SERVICING, LLC; DOES I through X and ROE BUSINESS ENTITIES I through X, inclusive,

Counter-Defendants.

Case No.: A-16-735303-C

Dept. No.: XXXI

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. On October 15, 1999, Michael O'Rourke and Denise O'Rourke purchased property located at 1712 Montavo Avenue, Henderson, Nevada 89074 from Henry Olfert and Sharlene Olfert. Stipulated Facts.

2. On June 26, 2007, Richard Luke Austin and Stephanie Elizabeth Austin (**borrowers**) purchased the property from the O'Rourkes with a $298,500.00 loan through Centralbanc Mortgage Corporation. Ex. 2.

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

3. Centralbanc secured the borrowers' purchase through a Deed of Trust recorded against the property on June 29, 2007, as Instrument no. 20070629-0004921, recorded with the Clark County Recorder. Ex. 2.

4. The Deed of Trust was assigned to Bank of America, N.A. on May 24, 2012. The assignment was recorded with the Clark County Recorder's office on May 29, 2012, as Instrument no. 201205290000639. Ex. 9.

5. The Deed of Trust was assigned to Bayview on April 9, 2014. The assignment was recorded with the Clark County Recorder's office on April 21, 2014, as Instrument no. 20140421-0001777. Ex. 15.

6. The property is located within the HOA and is subject to the HOA's Covenants, Conditions, and Restrictions (**CC&Rs**) recorded January 25, 1991. Ex. 17.

7. The CC&Rs provide that "[t]he lien of the assessments, including interest and costs (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot." Ex. 17 at § 4.07. The CC&Rs also provide that "Sale or transfer or any Lot shall not affect the assessment lien." *Id.*

8. The CC&Rs provide that upon written request of an eligible mortgage holder, the mortgage holder is entitled to written notice of the delinquency in an owner's assessments which remains uncured for a period of sixty (60) days. Ex. 17 at § 10.03(b).

9. The CC&Rs provide that a mortgagee is entitled to inspection of the HOA's books, records, and financial statements. Ex. 17 at § 10.04.

10. The CC&Rs provide that "[a] breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat, or render invalid the lien, charges, or encumbrance of any first Mortgage made for value which may then exist on any Lot. . . . Ex. 17 at § 10.05.

11. The CC&Rs provide:

> By acceptance of a deed, lease or document of conveyance, or acquiring any ownership interest in any of the real property included within this Declaration, each person binds such person **and such person's heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendment hereto.** In addition, each such person by so doing hereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby and **evidences such person's intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration, as amended, shall run with the land and be binding on all subsequent and future owners, lessees, grantees, purchasers, assignees and transferees of property subject to this Declaration**.

Ex. 17 at § 12.05 (emphasis added).

12. On February 8, 2011, the HOA hired Nevada Association Services, Inc. (**NAS**) to provide debt collection and foreclosure services on its behalf. Ex. 22 at BLS000222.

13. The HOA executed a consent and authorization on February 8, 2011. Ex. 22 at BLS000222.

14. On April 30, 2012, NAS, on behalf of the HOA, recorded a Notice of Delinquent Assessment Lien, as Instrument no. 201204300003858, with the Clark County Recorder. The Notice reflected that $2,626.50 was due as of April 25, 2012. Ex. 8.

15. The Notice of Delinquent Assessment Lien was sent to the borrowers, but no other interested party, including the Deed of Trust beneficiary. Stipulated Facts.

16. NAS, on behalf of the HOA, recorded a Notice of Default and Election to Sell under homeowner's association lien on July 6, 2012, as Instrument no. 201207060003201, with the Clark County Recorder. The Notice

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

reflected that $2,263.00 was due as of June 13, 2012. Ex. 10.

17. NAS, on behalf of the HOA, recorded a Notice of Rescission of the Notice of Default recorded on July 24, 2012, as Instrument no. 201207240003219, with the Clark County Recorder. Ex. 11.

18. NAS, on behalf of the HOA, recorded a Notice of Default and Election to Sell under the homeowner's association lien on July 24, 2012, as Instrument no. 201207240003220, with the Clark County Recorder. The Notice reflected that $2,543.70 was due as of July 18, 2012. Ex. 12.

19. The Notice of Default was sent to Bank of America, amongst others. Stipulated Facts.

20. On August 23, 2012, Miles, Bauer, Bergstrom & Winters, LLP, on behalf of then-Deed of Trust beneficiary Mortgage Electronic Registration Systems, Inc. as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP, sent a letter to NAS and the HOA asking for the status of the HOA lien foreclosure sale, if any. A true and correct copy of the letter is found at Ex. 18, BLS000145-BLS000146.

21. In the letter, Miles Bauer requested the amount of nine months of common assessments pre-dating the Notice of Default. Miles Bauer also offered to pay the HOA the entire superpriority lien. Ex. 18, BLS000145-BLS000146

22. NAS received the August 23, 2012, letter from Miles Bauer. Stipulated Facts.

23. NAS refused to provide any information regarding the outstanding assessments in response to the August 23, 2013, letter from Miles Bauer. Stipulated Facts.

24. Miles Bauer located a statement of account from NAS for a different property in the HOA, which it used to determine a good faith payoff estimate of the superpriority lien. A true and correct copy of the payoff is found at Ex. 18,

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BLS000148-BLS000149.

25. The payoff indicated that the HOA charged quarterly assessments of $92.25. Ex. 18, BLS000148-BLS000149.

26. The payoff indicated that the total assessments due to the HOA were $461.25. Ex. 18, BLS000148-BLS000149.

27. On September 13, 2012, Miles Bauer sent a check to NAS for $897.18 to satisfy the superpriority lien, plus additional amounts representing an estimate of reasonable costs. A true and correct copy of the letter and check is found at Ex. 18, BLS000151-BLS000153.

28. NAS received the September 13, 2012, letter from Miles Bauer. Stipulated Facts.

29. NAS received the $897.18 check from Miles Bauer. Stipulated Facts.

30. NAS refused the check from Miles Bauer. NAS did so without explanation and without requesting Miles Bauer to issue a check in a different amount. Stipulated Facts.

31. On June 13, 2013, the HOA executed an authorization to publish non-judicial foreclosure sale. The authorization pertained solely to NAS' provision of services with respect to the borrowers' account, including foreclosing against the property. Ex. 22 at BLS000399.

32. NAS, on behalf of the HOA, recorded a Notice of Foreclosure sale on July 31, 2013, as Instrument no. 201307310003849, with the Clark County Recorder. The Notice reflected that $4,049.08 was due. Ex. 13.

33. The Notice of Foreclosure sale was sent to Bank of America, amongst others. Stipulated Facts.

34. On August 14, 2013, the HOA's community management company Nevada Community Management, LLC directed NAS to proceed with the sale,

but to "pull back if not sold." Ex. 22 at BLS000437.

35. NAS, on behalf of the HOA, foreclosed on the property on August 23, 2013. NAS sold the property to Premier for $19,000.00. Ex. 14.

36. The fair market value of the property, as contemplated by *Shadow Wood* and *Shadow Canyon* at the time of the HOA foreclosure sale, was $154,000.00. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1116 (Nev. 2016); *Nationstar Mtg., LLC v. Saticoy Bay Series 2227 Shadow Canyon* (*Saticoy Bay 2227*), 133 Nev. Adv. Op. 91, slip op. at 2 (2017). Stipulated Facts.

37. The amount due on the borrowers' loan, minus costs and fees, is $470,473.25 as of January 23, 2018. Stipulated Facts.

CONCLUSIONS OF LAW

A. Burdens and Presumptions

1. Under Nevada law, certain presumptions are made pursuant to NRS 47.250, which provides in relevant part that there are disputable presumptions "that a person intends the ordinary consequences of that person's voluntary act," and "that the ordinary course of business has been followed." NRS 47.250(2), (18)(c).

2. "A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995). "These presumptions impose on the party, against whom it [sic] is directed, the burden of proving that the nonexistence of the presumed fact is more probable than its existence." *Id.*

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3. The Court, when doing an equitable analysis, determines if the person claiming to be a bona fide purchaser has met his/her/its burden of proof as to that issue. *Bailey v. Butner*, 64 Nev. 1, 14-15, 176 P.2d 226 (1947); *Berge v. Fredericks*, 95 Nev. 183, 187, 591 P.2d 246, 247 (1970); *Hewitt v. Glaser Lane & Livestock Co.*, 97 Nev. 207, 208, 626 P.2d 268, 268-69 (1981).

B. Agency

4. NAS was the HOA's agent for collection of assessments and enforcement of liens. As NAS' principal, the HOA is bound by NAS' conduct while NAS is acting in the course of its agency and is liable for those acts within the scope of NAS' authority. *See, e.g., Nev. Nat. Bank v. Gold Star Meat Co., Inc.*, 89 Nev. 427, 429, 514 P.2d 651, 653 (1973).

5. The HOA hired NAS to enforce its assessments and liens, and that is what NAS did. NAS was acting within the scope of its authority in all of its conduct in this case.

C. The HOA's Superpriority Lien

6. NRS 116.3116(1) (2012)[1] gives a homeowner's association a lien on its homeowners' residences for construction penalties, assessments, and fines. NRS 116.3116(2) elevates the priority of the association's lien over other liens, with some exceptions including one for a first security interest recorded before the assessments became delinquent.

7. NRS 116.3116(2) further provides that an association's lien is prior

[1] The statute was extensively amended in 2015. All statutory citations, unless otherwise noted, refer to the version of the statute in effect in 2012-2013.

to such a first security interest "to the extent of the assessments for common expenses [i.e., HOA dues] based on the periodic budget . . . which would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce the lien."

8. The testimony and documentation provided by NAS and the HOA regarding the lien show that the lien on the subject property included assessments which would have become due during the nine months prior to institution of an action to enforce the lien. Thus, the lien that was foreclosed on included a superpriority component and had priority over the senior Deed of Trust unless it was satisfied prior to the sale.

D. BANA's Presale Tender Redeemed the Deed of Trust

9. BANA paid in excess of the superpriority portion of the HOA's lien on September 13, 2012. Ex. 18. The payment was received by NAS and rejected by NAS because NAS believed that additional amounts were due as part of the superpriority lien. NAS' rejection was consistent with its ordinary course of business in 2012 of rejecting payments from Miles Bauer if the payments contained less than nine months of assessments, collection costs, and fees.

10. In the present case, there was no evidence presented or any stipulated facts that the payment was to be viewed as conditional. While Mr. Yergensen, who was the prior counsel for NAS but was not at NAS at the time the letter was sent, testified that NAS rejected the Miles Bauer letters if they contained terms NAS did not agree with. He, however, did not set forth what event or contingency was the basis for the rejection. A statement is "unconditional" if it is not limited by a condition; if it does not depend on an

uncertain event or contingency; if it is absolute. *See Unconditional*, Black's Law Dictionary (14th ed. 2014). The Miles Bauer letter does not make payment of the superpriority amount dependent on an uncertain or contingent event, nor does it require the HOA or NAS to waive any rights. It merely delineates that the payment made by Miles Bauer satisfied the superpriority portion of the HOA's lien which was an accurate statement of the law at the time. The Miles Bauer letter contains no language that depends on an uncertain event or contingency. *Cf. U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC*, No. 3:15-cv-00241-RCJ-WGC, 2016 WL 4473427, at *6 (D. Nev. Aug. 24, 2016) (no reasonable juror could interpret a similar tender made by Miles Bauer on behalf of U.S. Bank as conditional).

11. Plaintiff and the HOA asserted that the letter was conditional. Neither, however, presented any evidence that even if the Court were to interpret the language in the Miles Bauer letter as conditional, there were any inappropriate conditions set forth in the letter. Instead, to the extent the letter could be viewed as requiring NAS and the HOA to agree not to pursue any claims for the presently due unpaid assessments; that was a condition upon which BANA had a right to insist. BANA, in the present case, was a lienholder and not the owner of the property. The only sums that BANA, as a lienholder under the facts presented to the Court in this case, could be responsible for paying to protect its Deed of Trust was the amount of the unpaid assessments. There were no other superpriority portions asserted regarding the property at issue. An obligor has a right to know the amount of an obligation; and, in this case, the HOA's bylaws gave BANA the right to request the amount of the lien and to request an inspection of the HOA's books and records. The Miles Bauer

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letter constituted a request under the bylaws, which neither the HOA nor NAS had a right to ignore.

12. Further, the Nevada Supreme Court has confirmed that the only portion of the HOA's lien at issue in this case that is prior to the first Deed of Trust's interest is that amount for nine months of assessments only. *Horizons at Seven Hills Homeowners Assoc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35 (Apr. 28, 2016). As the Supreme Court held, "Taking into consideration the legislative intent, the statute's text, and statutory construction principles, we conclude the superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure." *Id.* at p. 13.

13. In the context of real estate liens, a lienholder may redeem, having the property's title restored free and clear of an encumbrance, if it satisfies the obligation prior to foreclosure. *McCall v. Carlson*, 63 Nev. 390, 411-12, 172 P.2d 171, 181-82 (1946). *See also* 59A C.J.S. *Mortgages* § 1362 (2010) ("Redemption is the realization of the right to have the property's title restored free and clear of an encumbrance by satisfaction of the mortgage obligation. Redemption signifies the process of cancelling and annulling a defeasible title, such as that created by a mortgage, by paying the debt or by fulfilling other conditions."); 55 Am. Jur. 2d *Mortgages* § 787 (2010).

14. It is of no consequence that in this case BANA paid in excess of the superpriority amount. The payment of the superpriority amount of nine months of assessments, without more, satisfied the superpriority lien. BANA paid portions of the sub-priority lien when the law was in flux; as to what amounts comprised

the superpriority lien does not change the effect of the nine months of assessments to satisfy the superpriority lien.

15. BANA's tender redeemed the superpriority component of the lien by operation of law. As the tender redeemed the super priority component, the HOA could only foreclose on the remaining portion of the lien that did not eviscerate the first Deed of Trust.

E. The Balance of Equities Favors Bayview Loan Servicing

16. Given the tender by operation of law meant the superpriority portion of the loan was redeemed, the Court need not address the alternative equity argument. Nevertheless, as an alternative ruling the Court finds that Bayview Loan Servicing's first Deed of Trust was not extinguished as a matter of equity. In an equity analysis, the Court determines whether the party asserting bona fide purchaser status has met their burden. The Court also looks at the price paid as well as if there was fraud oppression and/or unfairness related to the foreclosure sale.

17. In the present case, Premier One asserts that it was a bona fide purchaser. As the party invoking the doctrine, Premier One holds the burden of proof to establish it is a bona fide purchaser.

18. A subsequent purchaser is bona fide under common-law principles if it takes property "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." *Shadow Wood Homeowners Assoc. v. New York Community Bancorp.*, 366 P.3d 1105, 1115 (Nev. 2016) (citing *Bailey v. Butner*, 64 Nev. 1, 19, 176

P.2d 226, 234 (1947). *see also, Nationstar Mortgage LLC, v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91 (Nov. 22, 2017) Under Nevada law, "[c]onstructive notice is that which is imparted to a person upon strictly legal inference of matters which he necessarily ought to know, or which, by the exercise of ordinary diligence, he might know." *Id.* (quoting *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 471 P.2d 666, 668 (Nev. 1970)).

19. In considering whether a party asserting it is a bona fide purchaser can meet that burden, the Court takes into consideration that party's duty of inquiry before purchasing the property at issue. *Berge v. Fredericks*, 591 P.2d 246, 249 (Nev. 1979). The *Berge* Court explained that this duty arises:

> when the circumstances are such that a purchaser is in possession of facts which would lead a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights. He is said **to have constructive notice of their existence** whether he does or does not make the investigation. The authorities are unanimous in holding **that he has notice of whatever the search would disclose**.

Berge, 95 Nev. at 189 (emphasis added). The Nevada Supreme Court has clarified that "[a] recital in an instrument of record charges subsequent purchasers with notice of all material facts which an inquiry suggested by that recital would have disclosed." *Allison Steel*, 86 Nev. at 498. "When **anything** appears in" an instrument of record "sufficient to put a prudent man on inquiry which if prosecuted with ordinary diligence would lead to actual knowledge of some right or title in conflict with the title he is about to purchase, it is his duty to make inquiry, and if he does not do so he is chargeable with actual knowledge of what the inquiry would have disclosed." *Id.*

20. In this case, the recorded Deed of Trust has a Planned Unit Development Rider containing the following provision, which put Premier One on inquiry notice of BANA's superpriority tender:

> If Borrower does not pay [HOA] dues and assessments when due, Lender may pay them.

Ex. 2 at BLS000044. This provision in the publicly-recorded Deed of Trust put Premier One on inquiry notice that BANA could pay off a lien which had priority over the Deed of Trust—like the HOA's superpriority lien here. Premier One was also on notice of the HOA's CC&Rs, as they were recorded. . Ex. 16.

21. The bona fide purchaser doctrine is "a shield to protect, and not a sword to attack." *Oliver v. Piatt*, 44 U.S. 333, 333 n.1 (1845). In the present case, fully taking consideration into the evidence presented, even assuming Premier One could assert that it presented evidence that it was a bona fide purchaser, the fact that there was a tender of proceeds in excess of the amount owed to redeem a superpriority lien, combined with the low purchase price, results in the equities balancing in favor of Bayview Loan Servicing. See, e.g. *Shadow Wood Homeowners Assoc. v. New York Community Bancorp.*, 366 P.3d 1105, 1115 (Nev. 2016) ; *Nationstar Mortgage LLC, v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91 (Nov. 22, 2017).

G. Bayview's Claims as to Premier One are Meritorious

22. Bayview asserts the following claims as to Premier One: Quiet Title/Declaratory Judgment and Injunctive Relief. For the reasons stated above, Bayview is entitled to Judgment in its favor on the Declaratory Relief portion of its first cause of action--to wit: that Premier One's ownership of the property is

subject to Bayview's Deed of Trust. As Injunctive Relief is a remedy and not a cause of action, the Court need not address the issue. Even if injunctive relief were a cause of action, there is no relief requested; and thus, injunctive relief is not at issue.

H. Premier One's Claims as to Bayview Fail, and Bayview has Met its Burden on its Affirmative Defenses

23. Premier One asserts the following claims as to Bayview: Quiet Title and Cancellation of Instruments. For the reasons stated above, Premier One has not proved that it is entitled to relief as to the Quiet Title claim. There is no claim for relief under Nevada law for "cancellation of instruments," and to the extent this claim seeks to extinguish Bayview's Deed of Trust, the claim fails for the reasons stated above.

24. An affirmative defense raises a matter which is beyond the limits of the Plaintiff's prima facie case. *Pierce Lathing Co. v. ISEC, Inc.*, 114 Nev. 291, 295, 956 P.2d 93, 96 (1998). The party asserting an affirmative defense bears the burden of proof. *Nev. Ass'n Servs, Inc. v. Eighth Judicial Dist. Court*, 130 Nev. ___, 338 PO.3d 1250, 1254 (2014).

25. Since Premier One failed to meet the burden of proving its claims, the Court need not reach Bayview's affirmative defenses.

I. Bayview's Claims against the HOA are Moot as they were pled in the Alternative

26. As Bayview prevailed on its claims against Premier One, its claims against the HOA are moot as they were pled in the alternative. Similarly, Bayview's claims against the HOA indirectly as a result of NAS' actions are also

moot. *See, e.g., Nev. Nat. Bank v. Gold Star Meat Co., Inc.*, 89 Nev. 427, 429, 514 P.2d 651, 653 (1973).

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that BAYVIEW LOAN SERVICING LLC.'S Deed of Trust was not extinguished by the foreclosure sale conducted by the NAS on behalf of the HOA, HILLPOINTE PARK MAINTENANCE DISTRICT.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that title to the property located at 1712 Montavo Avenue, Henderson, Nevada 89074, is vested to PREMIER ONE HOLDINGS, INC., and that such interest is subject to BAYVIEW LOAN SERVICING, LLC.'S Deed of Trust.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that BAYVIEW LOAN SERVICING, LLC'S Deed of Trust, remains a valid lien encumbering the property.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Judgment is entered in favor of BAYVIEW LOAN SERVICING, LLC. and against PREMIER ONE HOLDINGS, INC. on its Declaratory Relief claim. BAYVIEW LOAN SERVICING, LLC.'S request for Injunctive Relief is MOOT.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Judgment is entered against PREMIER ONE HOLDINGS, INC., on its Declaratory Relief/Quiet Title Claim.

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IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that given BAYVIEW LOAN SERVICING, LLC. has prevailed on having its first Deed of Trust preserved, BAYVIEW LOAN SERVICING, LLC.'S claims against the HOA, HILLPOINTE PARK MAINTENANCE DISTRICT, are moot as BAYVIEW LOAN SERVICING set forth that it pled its claims against the HOA in the alternative.

COUNSEL FOR BAYVIEW LOAN SERVICING, LLC. IS DIRECTED TO PROVIDE PROMPT WRITTEN NOTICE OF ENTRY OF ORDER HEREOF.

DATED this 16th day of February, 2018.

HON. JOANNA S. KISHNER
DISTRICT JUDGE

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

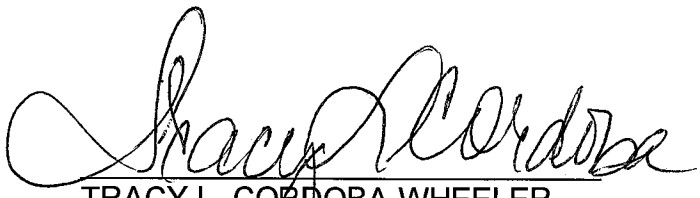
CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below, as a courtesy not comprising formal written notice of entry, via one or more of the following manners: Email, Facsimile, U.S. mail, Electronic Service (E-Service) if the Attorney/Party has signed up as required, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

DARREN T. BRENNER, ESQ.
NATALIE L. WINSLOW, ESQ.
AKERMAN, LLP.

JOSEPH Y. HONG, ESQ.
HONG & HONG, APLC

MICHAEL L. VAN LUVEN, ESQ.
BOYACK, ORME & ANTHONY



TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

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Attorneys for Bayview Loan Servicing, LLC

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BAYVIEW LOAN SERVICING, LLC,

Plaintiff,

vs.

NEVADA ASSOCIATION SERVICES, INC.; HILLPOINTE PARK MAINTENANCE DISTRICT; PREMIER ONE HOLDINGS, INC.; DOE INDIVIDUALS I-X, inclusive, and ROE CORPORATIONS I-X, inclusive,

Defendants.

PREMIER ONE HOLDINGS, INC.,

Counterclaimant,

v.

BAYVIEW LOAN SERVICING, LLC; DOES I through X and ROE BUSINESS ENTITIES I through X, inclusive,

Counterdefendants.

Case No.: A-16-735303-C

Dept: XXXI

NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

AKERMAN LLP
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TEL.: (702) 634-5000 – FAX: (702) 380-8572

Case Number: A-16-735303-C

TO: ALL PARTIES OF RECORD AND THEIR COUNSEL:

PLEASE TAKE NOTICE that the Findings of Fact and Conclusions of Law was entered on February 20, 2018, a copy of which is attached hereto.

DATED this 21st day of February, 2018.

AKERMAN LLP

/s/ Natalie L. Winslow, Esq.
DARREN T. BRENNER, ESQ.
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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 February, 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 AND CONCLUSIONS OF LAW**, 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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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

BAYVIEW LOAN SERVICING, LLC,

Plaintiff,

vs.

NEVADA ASSOCIATION SERVICES, INC.; HILLPOINTE PARK MAINTENANCE DISTRICT; PREMIER ONE HOLDINGS, INC.; DOE INDIVIDUALS I-X, inclusive, and ROE CORPORATIONS I-X, inclusive,

Defendants.

PREMIER ONE HOLDINGS, INC.,

Counterclaimant,

v.

BAYVIEW LOAN SERVICING, LLC; DOES I through X and ROE BUSINESS ENTITIES I through X, inclusive,

Counter-Defendants.

Case No.: A-16-735303-C

Dept. No.: XXXI

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

1. On October 15, 1999, Michael O'Rourke and Denise O'Rourke purchased property located at 1712 Montavo Avenue, Henderson, Nevada 89074 from Henry Olfert and Sharlene Olfert. Stipulated Facts.

2. On June 26, 2007, Richard Luke Austin and Stephanie Elizabeth Austin (**borrowers**) purchased the property from the O'Rourkes with a $298,500.00 loan through Centralbanc Mortgage Corporation. Ex. 2.

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3. Centralbanc secured the borrowers' purchase through a Deed of Trust recorded against the property on June 29, 2007, as Instrument no. 20070629-0004921, recorded with the Clark County Recorder. Ex. 2.

4. The Deed of Trust was assigned to Bank of America, N.A. on May 24, 2012. The assignment was recorded with the Clark County Recorder's office on May 29, 2012, as Instrument no. 201205290000639. Ex. 9.

5. The Deed of Trust was assigned to Bayview on April 9, 2014. The assignment was recorded with the Clark County Recorder's office on April 21, 2014, as Instrument no. 20140421-0001777. Ex. 15.

6. The property is located within the HOA and is subject to the HOA's Covenants, Conditions, and Restrictions (**CC&Rs**) recorded January 25, 1991. Ex. 17.

7. The CC&Rs provide that "[t]he lien of the assessments, including interest and costs (including attorneys' fees), provided for herein shall be subordinate to the lien of any first Mortgage upon any Lot." Ex. 17 at § 4.07. The CC&Rs also provide that "Sale or transfer or any Lot shall not affect the assessment lien." *Id.*

8. The CC&Rs provide that upon written request of an eligible mortgage holder, the mortgage holder is entitled to written notice of the delinquency in an owner's assessments which remains uncured for a period of sixty (60) days. Ex. 17 at § 10.03(b).

9. The CC&Rs provide that a mortgagee is entitled to inspection of the HOA's books, records, and financial statements. Ex. 17 at § 10.04.

10. The CC&Rs provide that "[a] breach by an Owner of any of the covenants, conditions and restrictions contained herein shall not affect, impair, defeat, or render invalid the lien, charges, or encumbrance of any first Mortgage made for value which may then exist on any Lot. . . . Ex. 17 at § 10.05.

11. The CC&Rs provide:

> By acceptance of a deed, lease or document of conveyance, or acquiring any ownership interest in any of the real property included within this Declaration, each person binds such person **and such person's heirs, personal representatives, successors, transferees and assigns to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendment hereto.** In addition, each such person by so doing hereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby and **evidences such person's intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration, as amended, shall run with the land and be binding on all subsequent and future owners, lessees, grantees, purchasers, assignees and transferees of property subject to this Declaration**.

Ex. 17 at § 12.05 (emphasis added).

12. On February 8, 2011, the HOA hired Nevada Association Services, Inc. (**NAS**) to provide debt collection and foreclosure services on its behalf. Ex. 22 at BLS000222.

13. The HOA executed a consent and authorization on February 8, 2011. Ex. 22 at BLS000222.

14. On April 30, 2012, NAS, on behalf of the HOA, recorded a Notice of Delinquent Assessment Lien, as Instrument no. 201204300003858, with the Clark County Recorder. The Notice reflected that $2,626.50 was due as of April 25, 2012. Ex. 8.

15. The Notice of Delinquent Assessment Lien was sent to the borrowers, but no other interested party, including the Deed of Trust beneficiary. Stipulated Facts.

16. NAS, on behalf of the HOA, recorded a Notice of Default and Election to Sell under homeowner's association lien on July 6, 2012, as Instrument no. 201207060003201, with the Clark County Recorder. The Notice

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reflected that $2,263.00 was due as of June 13, 2012. Ex. 10.

17. NAS, on behalf of the HOA, recorded a Notice of Rescission of the Notice of Default recorded on July 24, 2012, as Instrument no. 201207240003219, with the Clark County Recorder. Ex. 11.

18. NAS, on behalf of the HOA, recorded a Notice of Default and Election to Sell under the homeowner's association lien on July 24, 2012, as Instrument no. 201207240003220, with the Clark County Recorder. The Notice reflected that $2,543.70 was due as of July 18, 2012. Ex. 12.

19. The Notice of Default was sent to Bank of America, amongst others. Stipulated Facts.

20. On August 23, 2012, Miles, Bauer, Bergstrom & Winters, LLP, on behalf of then-Deed of Trust beneficiary Mortgage Electronic Registration Systems, Inc. as nominee for Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP, sent a letter to NAS and the HOA asking for the status of the HOA lien foreclosure sale, if any. A true and correct copy of the letter is found at Ex. 18, BLS000145-BLS000146.

21. In the letter, Miles Bauer requested the amount of nine months of common assessments pre-dating the Notice of Default. Miles Bauer also offered to pay the HOA the entire superpriority lien. Ex. 18, BLS000145-BLS000146

22. NAS received the August 23, 2012, letter from Miles Bauer. Stipulated Facts.

23. NAS refused to provide any information regarding the outstanding assessments in response to the August 23, 2013, letter from Miles Bauer. Stipulated Facts.

24. Miles Bauer located a statement of account from NAS for a different property in the HOA, which it used to determine a good faith payoff estimate of the superpriority lien. A true and correct copy of the payoff is found at Ex. 18,

JOANNA S. KISHNER
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BLS000148-BLS000149.

25. The payoff indicated that the HOA charged quarterly assessments of $92.25. Ex. 18, BLS000148-BLS000149.

26. The payoff indicated that the total assessments due to the HOA were $461.25. Ex. 18, BLS000148-BLS000149.

27. On September 13, 2012, Miles Bauer sent a check to NAS for $897.18 to satisfy the superpriority lien, plus additional amounts representing an estimate of reasonable costs. A true and correct copy of the letter and check is found at Ex. 18, BLS000151-BLS000153.

28. NAS received the September 13, 2012, letter from Miles Bauer. Stipulated Facts.

29. NAS received the $897.18 check from Miles Bauer. Stipulated Facts.

30. NAS refused the check from Miles Bauer. NAS did so without explanation and without requesting Miles Bauer to issue a check in a different amount. Stipulated Facts.

31. On June 13, 2013, the HOA executed an authorization to publish non-judicial foreclosure sale. The authorization pertained solely to NAS' provision of services with respect to the borrowers' account, including foreclosing against the property. Ex. 22 at BLS000399.

32. NAS, on behalf of the HOA, recorded a Notice of Foreclosure sale on July 31, 2013, as Instrument no. 201307310003849, with the Clark County Recorder. The Notice reflected that $4,049.08 was due. Ex. 13.

33. The Notice of Foreclosure sale was sent to Bank of America, amongst others. Stipulated Facts.

34. On August 14, 2013, the HOA's community management company Nevada Community Management, LLC directed NAS to proceed with the sale,

but to "pull back if not sold." Ex. 22 at BLS000437.

35. NAS, on behalf of the HOA, foreclosed on the property on August 23, 2013. NAS sold the property to Premier for $19,000.00. Ex. 14.

36. The fair market value of the property, as contemplated by *Shadow Wood* and *Shadow Canyon* at the time of the HOA foreclosure sale, was $154,000.00. *Shadow Wood Homeowners Ass'n v. New York Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1116 (Nev. 2016); *Nationstar Mtg., LLC v. Saticoy Bay Series 2227 Shadow Canyon* (*Saticoy Bay 2227*), 133 Nev. Adv. Op. 91, slip op. at 2 (2017). Stipulated Facts.

37. The amount due on the borrowers' loan, minus costs and fees, is $470,473.25 as of January 23, 2018. Stipulated Facts.

CONCLUSIONS OF LAW

A. Burdens and Presumptions

1. Under Nevada law, certain presumptions are made pursuant to NRS 47.250, which provides in relevant part that there are disputable presumptions "that a person intends the ordinary consequences of that person's voluntary act," and "that the ordinary course of business has been followed." NRS 47.250(2), (18)(c).

2. "A presumption not only fixes the burden of going forward with evidence, but it also shifts the burden of proof." *Yeager v. Harrah's Club, Inc.*, 111 Nev. 830, 834, 897 P.2d 1093, 1095 (1995). "These presumptions impose on the party, against whom it [sic] is directed, the burden of proving that the nonexistence of the presumed fact is more probable than its existence." *Id.*

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3. The Court, when doing an equitable analysis, determines if the person claiming to be a bona fide purchaser has met his/her/its burden of proof as to that issue. *Bailey v. Butner*, 64 Nev. 1, 14-15, 176 P.2d 226 (1947); *Berge v. Fredericks*, 95 Nev. 183, 187, 591 P.2d 246, 247 (1970); *Hewitt v. Glaser Lane & Livestock Co.*, 97 Nev. 207, 208, 626 P.2d 268, 268-69 (1981).

B. Agency

4. NAS was the HOA's agent for collection of assessments and enforcement of liens. As NAS' principal, the HOA is bound by NAS' conduct while NAS is acting in the course of its agency and is liable for those acts within the scope of NAS' authority. *See, e.g., Nev. Nat. Bank v. Gold Star Meat Co., Inc.*, 89 Nev. 427, 429, 514 P.2d 651, 653 (1973).

5. The HOA hired NAS to enforce its assessments and liens, and that is what NAS did. NAS was acting within the scope of its authority in all of its conduct in this case.

C. The HOA's Superpriority Lien

6. NRS 116.3116(1) (2012)[1] gives a homeowner's association a lien on its homeowners' residences for construction penalties, assessments, and fines. NRS 116.3116(2) elevates the priority of the association's lien over other liens, with some exceptions including one for a first security interest recorded before the assessments became delinquent.

7. NRS 116.3116(2) further provides that an association's lien is prior

[1] The statute was extensively amended in 2015. All statutory citations, unless otherwise noted, refer to the version of the statute in effect in 2012-2013.

to such a first security interest "to the extent of the assessments for common expenses [i.e., HOA dues] based on the periodic budget . . . which would have become due in the absence of acceleration during the nine months immediately preceding institution of an action to enforce the lien."

8. The testimony and documentation provided by NAS and the HOA regarding the lien show that the lien on the subject property included assessments which would have become due during the nine months prior to institution of an action to enforce the lien. Thus, the lien that was foreclosed on included a superpriority component and had priority over the senior Deed of Trust unless it was satisfied prior to the sale.

D. BANA's Presale Tender Redeemed the Deed of Trust

9. BANA paid in excess of the superpriority portion of the HOA's lien on September 13, 2012. Ex. 18. The payment was received by NAS and rejected by NAS because NAS believed that additional amounts were due as part of the superpriority lien. NAS' rejection was consistent with its ordinary course of business in 2012 of rejecting payments from Miles Bauer if the payments contained less than nine months of assessments, collection costs, and fees.

10. In the present case, there was no evidence presented or any stipulated facts that the payment was to be viewed as conditional. While Mr. Yergensen, who was the prior counsel for NAS but was not at NAS at the time the letter was sent, testified that NAS rejected the Miles Bauer letters if they contained terms NAS did not agree with. He, however, did not set forth what event or contingency was the basis for the rejection. A statement is "unconditional" if it is not limited by a condition; if it does not depend on an

uncertain event or contingency; if it is absolute. *See Unconditional*, Black's Law Dictionary (14th ed. 2014). The Miles Bauer letter does not make payment of the superpriority amount dependent on an uncertain or contingent event, nor does it require the HOA or NAS to waive any rights. It merely delineates that the payment made by Miles Bauer satisfied the superpriority portion of the HOA's lien which was an accurate statement of the law at the time. The Miles Bauer letter contains no language that depends on an uncertain event or contingency. *Cf. U.S. Bank, N.A. v. SFR Invs. Pool 1, LLC*, No. 3:15-cv-00241-RCJ-WGC, 2016 WL 4473427, at *6 (D. Nev. Aug. 24, 2016) (no reasonable juror could interpret a similar tender made by Miles Bauer on behalf of U.S. Bank as conditional).

11. Plaintiff and the HOA asserted that the letter was conditional. Neither, however, presented any evidence that even if the Court were to interpret the language in the Miles Bauer letter as conditional, there were any inappropriate conditions set forth in the letter. Instead, to the extent the letter could be viewed as requiring NAS and the HOA to agree not to pursue any claims for the presently due unpaid assessments; that was a condition upon which BANA had a right to insist. BANA, in the present case, was a lienholder and not the owner of the property. The only sums that BANA, as a lienholder under the facts presented to the Court in this case, could be responsible for paying to protect its Deed of Trust was the amount of the unpaid assessments. There were no other superpriority portions asserted regarding the property at issue. An obligor has a right to know the amount of an obligation; and, in this case, the HOA's bylaws gave BANA the right to request the amount of the lien and to request an inspection of the HOA's books and records. The Miles Bauer

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letter constituted a request under the bylaws, which neither the HOA nor NAS had a right to ignore.

12. Further, the Nevada Supreme Court has confirmed that the only portion of the HOA's lien at issue in this case that is prior to the first Deed of Trust's interest is that amount for nine months of assessments only. *Horizons at Seven Hills Homeowners Assoc. v. Ikon Holdings, LLC*, 132 Nev. Adv. Op. 35 (Apr. 28, 2016). As the Supreme Court held, "Taking into consideration the legislative intent, the statute's text, and statutory construction principles, we conclude the superpriority lien granted by NRS 116.3116(2) does not include an amount for collection fees and foreclosure costs incurred; rather it is limited to an amount equal to the common expense assessments due during the nine months before foreclosure." *Id.* at p. 13.

13. In the context of real estate liens, a lienholder may redeem, having the property's title restored free and clear of an encumbrance, if it satisfies the obligation prior to foreclosure. *McCall v. Carlson*, 63 Nev. 390, 411-12, 172 P.2d 171, 181-82 (1946). *See also* 59A C.J.S. *Mortgages* § 1362 (2010) ("Redemption is the realization of the right to have the property's title restored free and clear of an encumbrance by satisfaction of the mortgage obligation. Redemption signifies the process of cancelling and annulling a defeasible title, such as that created by a mortgage, by paying the debt or by fulfilling other conditions."); 55 Am. Jur. 2d *Mortgages* § 787 (2010).

14. It is of no consequence that in this case BANA paid in excess of the superpriority amount. The payment of the superpriority amount of nine months of assessments, without more, satisfied the superpriority lien. BANA paid portions of the sub-priority lien when the law was in flux; as to what amounts comprised

the superpriority lien does not change the effect of the nine months of assessments to satisfy the superpriority lien.

15. BANA's tender redeemed the superpriority component of the lien by operation of law. As the tender redeemed the super priority component, the HOA could only foreclose on the remaining portion of the lien that did not eviscerate the first Deed of Trust.

E. The Balance of Equities Favors Bayview Loan Servicing

16. Given the tender by operation of law meant the superpriority portion of the loan was redeemed, the Court need not address the alternative equity argument. Nevertheless, as an alternative ruling the Court finds that Bayview Loan Servicing's first Deed of Trust was not extinguished as a matter of equity. In an equity analysis, the Court determines whether the party asserting bona fide purchaser status has met their burden. The Court also looks at the price paid as well as if there was fraud oppression and/or unfairness related to the foreclosure sale.

17. In the present case, Premier One asserts that it was a bona fide purchaser. As the party invoking the doctrine, Premier One holds the burden of proof to establish it is a bona fide purchaser.

18. A subsequent purchaser is bona fide under common-law principles if it takes property "for a valuable consideration and without notice of the prior equity, and without notice of facts which upon diligent inquiry would be indicated and from which notice would be imputed to him, if he failed to make such inquiry." *Shadow Wood Homeowners Assoc. v. New York Community Bancorp.*, 366 P.3d 1105, 1115 (Nev. 2016) (citing *Bailey v. Butner*, 64 Nev. 1, 19, 176

P.2d 226, 234 (1947). *see also, Nationstar Mortgage LLC, v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91 (Nov. 22, 2017) Under Nevada law, "[c]onstructive notice is that which is imparted to a person upon strictly legal inference of matters which he necessarily ought to know, or which, by the exercise of ordinary diligence, he might know." *Id.* (quoting *Allison Steel Mfg. Co. v. Bentonite, Inc.*, 471 P.2d 666, 668 (Nev. 1970)).

19. In considering whether a party asserting it is a bona fide purchaser can meet that burden, the Court takes into consideration that party's duty of inquiry before purchasing the property at issue. *Berge v. Fredericks*, 591 P.2d 246, 249 (Nev. 1979). The *Berge* Court explained that this duty arises:

> when the circumstances are such that a purchaser is in possession of facts which would lead a reasonable man in his position to make an investigation that would advise him of the existence of prior unrecorded rights. He is said **to have constructive notice of their existence** whether he does or does not make the investigation. The authorities are unanimous in holding **that he has notice of whatever the search would disclose**.

Berge, 95 Nev. at 189 (emphasis added). The Nevada Supreme Court has clarified that "[a] recital in an instrument of record charges subsequent purchasers with notice of all material facts which an inquiry suggested by that recital would have disclosed." *Allison Steel*, 86 Nev. at 498. "When **anything** appears in" an instrument of record "sufficient to put a prudent man on inquiry which if prosecuted with ordinary diligence would lead to actual knowledge of some right or title in conflict with the title he is about to purchase, it is his duty to make inquiry, and if he does not do so he is chargeable with actual knowledge of what the inquiry would have disclosed." *Id.*

20. In this case, the recorded Deed of Trust has a Planned Unit Development Rider containing the following provision, which put Premier One on inquiry notice of BANA's superpriority tender:

> If Borrower does not pay [HOA] dues and assessments when due, Lender may pay them.

Ex. 2 at BLS000044. This provision in the publicly-recorded Deed of Trust put Premier One on inquiry notice that BANA could pay off a lien which had priority over the Deed of Trust—like the HOA's superpriority lien here. Premier One was also on notice of the HOA's CC&Rs, as they were recorded. . Ex. 16.

21. The bona fide purchaser doctrine is "a shield to protect, and not a sword to attack." *Oliver v. Piatt*, 44 U.S. 333, 333 n.1 (1845). In the present case, fully taking consideration into the evidence presented, even assuming Premier One could assert that it presented evidence that it was a bona fide purchaser, the fact that there was a tender of proceeds in excess of the amount owed to redeem a superpriority lien, combined with the low purchase price, results in the equities balancing in favor of Bayview Loan Servicing. See, e.g. *Shadow Wood Homeowners Assoc. v. New York Community Bancorp.*, 366 P.3d 1105, 1115 (Nev. 2016) ; *Nationstar Mortgage LLC, v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91 (Nov. 22, 2017).

G. Bayview's Claims as to Premier One are Meritorious

22. Bayview asserts the following claims as to Premier One: Quiet Title/Declaratory Judgment and Injunctive Relief. For the reasons stated above, Bayview is entitled to Judgment in its favor on the Declaratory Relief portion of its first cause of action--to wit: that Premier One's ownership of the property is

subject to Bayview's Deed of Trust. As Injunctive Relief is a remedy and not a cause of action, the Court need not address the issue. Even if injunctive relief were a cause of action, there is no relief requested; and thus, injunctive relief is not at issue.

H. Premier One's Claims as to Bayview Fail, and Bayview has Met its Burden on its Affirmative Defenses

23. Premier One asserts the following claims as to Bayview: Quiet Title and Cancellation of Instruments. For the reasons stated above, Premier One has not proved that it is entitled to relief as to the Quiet Title claim. There is no claim for relief under Nevada law for "cancellation of instruments," and to the extent this claim seeks to extinguish Bayview's Deed of Trust, the claim fails for the reasons stated above.

24. An affirmative defense raises a matter which is beyond the limits of the Plaintiff's prima facie case. *Pierce Lathing Co. v. ISEC, Inc.*, 114 Nev. 291, 295, 956 P.2d 93, 96 (1998). The party asserting an affirmative defense bears the burden of proof. *Nev. Ass'n Servs, Inc. v. Eighth Judicial Dist. Court*, 130 Nev. ___, 338 PO.3d 1250, 1254 (2014).

25. Since Premier One failed to meet the burden of proving its claims, the Court need not reach Bayview's affirmative defenses.

I. Bayview's Claims against the HOA are Moot as they were pled in the Alternative

26. As Bayview prevailed on its claims against Premier One, its claims against the HOA are moot as they were pled in the alternative. Similarly, Bayview's claims against the HOA indirectly as a result of NAS' actions are also

moot. *See, e.g., Nev. Nat. Bank v. Gold Star Meat Co., Inc.*, 89 Nev. 427, 429, 514 P.2d 651, 653 (1973).

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that BAYVIEW LOAN SERVICING LLC.'S Deed of Trust was not extinguished by the foreclosure sale conducted by the NAS on behalf of the HOA, HILLPOINTE PARK MAINTENANCE DISTRICT.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that title to the property located at 1712 Montavo Avenue, Henderson, Nevada 89074, is vested to PREMIER ONE HOLDINGS, INC., and that such interest is subject to BAYVIEW LOAN SERVICING, LLC.'S Deed of Trust.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that BAYVIEW LOAN SERVICING, LLC'S Deed of Trust, remains a valid lien encumbering the property.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Judgment is entered in favor of BAYVIEW LOAN SERVICING, LLC. and against PREMIER ONE HOLDINGS, INC. on its Declaratory Relief claim. BAYVIEW LOAN SERVICING, LLC.'S request for Injunctive Relief is MOOT.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Judgment is entered against PREMIER ONE HOLDINGS, INC., on its Declaratory Relief/Quiet Title Claim.

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DISTRICT JUDGE
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LAS VEGAS, NEVADA 89155

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that given BAYVIEW LOAN SERVICING, LLC. has prevailed on having its first Deed of Trust preserved, BAYVIEW LOAN SERVICING, LLC.'S claims against the HOA, HILLPOINTE PARK MAINTENANCE DISTRICT, are moot as BAYVIEW LOAN SERVICING set forth that it pled its claims against the HOA in the alternative.

COUNSEL FOR BAYVIEW LOAN SERVICING, LLC. IS DIRECTED TO PROVIDE PROMPT WRITTEN NOTICE OF ENTRY OF ORDER HEREOF.

DATED this 16th day of February, 2018.

HON. JOANNA S. KISHNER
DISTRICT JUDGE

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DISTRICT JUDGE
DEPARTMENT XXXI
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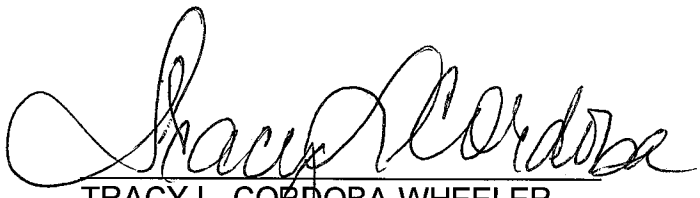
CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of this Order was provided to all counsel, and/or parties listed below, as a courtesy not comprising formal written notice of entry, via one or more of the following manners: Email, Facsimile, U.S. mail, Electronic Service (E-Service) if the Attorney/Party has signed up as required, and/or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

DARREN T. BRENNER, ESQ.
NATALIE L. WINSLOW, ESQ.
AKERMAN, LLP.

JOSEPH Y. HONG, ESQ.
HONG & HONG, APLC

MICHAEL L. VAN LUVEN, ESQ.
BOYACK, ORME & ANTHONY



TRACY L. CORDOBA-WHEELER
Judicial Executive Assistant

JOANNA S. KISHNER
DISTRICT JUDGE
DEPARTMENT XXXI
LAS VEGAS, NEVADA 89155

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Real Property	**COURT MINUTES**	**October 17, 2017**

A-16-735303-C Bayview Loan Servicing LLC, Plaintiff(s)
vs.
Nevada Association Services Inc, Defendant(s)

October 17, 2017 **9:00 AM** **Status Check**

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

COURT CLERK: Natalie Ortega

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Hong, Joseph Y.	Attorney
Winslow, Natalie L	Attorney

JOURNAL ENTRIES

- Ms. Winslow advised discovery closed; however, due to issues with the deponents there were two depositions that did not occur. Further, the parties agreed and submitted a stipulation to take the two depositions outside the close of discovery. The parties were waiting for the Discovery Commissioner to issue an order. Furthermore, the case was set for trial in January. Court noted the absence of counsel from the Boyack Firm on behalf of the Homeowner's Association. Court would need to evaluate whether there was good cause for the non-appearance the Boyack Firm, Mr. Van Luven and determine if an order to show cause would issue. Additionally, status check was complete only as to the parties present in Court; not as to the Homeowner's Association (HOA). COURT ORDERED, trial date STANDS.

CLERK'S NOTE: A copy of this minute order was electronically served by Courtroom Clerk, Natalie Ortega, to all registered parties for Odyssey File & Serve and placed in the attorney folder(s) of: Darren T. Brenner, Esq., Natalie Winslow, Esq., Joseph Y. Hong, Esq., and Michael L. Van Luven, Esq. ndo10/18/17

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Real Property	**COURT MINUTES**	**December 05, 2017**

A-16-735303-C Bayview Loan Servicing LLC, Plaintiff(s)
vs.
Nevada Association Services Inc, Defendant(s)

December 05, 2017 **9:30 AM** **Motion for Summary Judgment**

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

COURT CLERK: Aja Brown

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Ariel Stern, Esq., present on behalf of the Plaintiff. Kelley K. Blatnik, Esq., on behalf of the Defendant, Hillpointe Park Maintenance District, also present.

Ms. Blatnik stated the Lender withdrew the Motion. Mr. Stern confirmed the representations of Ms. Blatnik. COURT ORDERED, Motion WITHDRAWN.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Real Property **COURT MINUTES** **December 07, 2017**

A-16-735303-C Bayview Loan Servicing LLC, Plaintiff(s)
vs.
Nevada Association Services Inc, Defendant(s)

December 07, 2017 **10:15 AM** **Pre Trial Conference**

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

COURT CLERK:
Aja Brown

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Brenner, Darren T.	Attorney
Van Luven, Michael L.	Attorney

JOURNAL ENTRIES

- William Habdas, Esq., on behalf of Bayview Loan Servicing LLC, also present.

Court noted the absence of Mr. Hong. Mr. Brenner stated he had received an E-mail from Mr. Hong indicating he would not be present due to personal reasons; however, Mr. Hong did give his consent to proceed with resetting of the trial. Mr. Brenner further stated he anticipates the trial to last 1 day. Upon Court's inquiry, Mr. Brenner indicated he was unsure if Alessi and Nevada Association Services Inc were still in the case. MATTER TRAILED for Mr. Brenner to attempt to get clarification as to whether to NAS and Alessi are in the case.

MATTER RECALLED. All parties present as before. Mr. Brenner advised Alessi appeared for the HOA originally. Subsequently, counsel substituted in the case in May 2017. Mr. Brenner stated NAS was defaulted on October 26, 2017 and Notice of Entry of Default was done on November 1, 2017; therefore, the parties need to do a Default Judgement. Upon Court's inquiry, Mr. Brenner confirmed the Default Judgment would be completed prior to the commencement of trial. Colloquy regarding dates the parties are available for trial. Court directed parties to determine what date they prefer for

trial and advise.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Real Property **COURT MINUTES** **January 23, 2018**

A-16-735303-C Bayview Loan Servicing LLC, Plaintiff(s)
vs.
Nevada Association Services Inc, Defendant(s)

January 23, 2018 **9:00 AM** **Calendar Call**

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

COURT CLERK: April Watkins

RECORDER: Sandra Harrell

REPORTER:

PARTIES PRESENT:

Hong, Joseph Y.	Attorney
Van Luven, Michael L.	Attorney
Winslow, Natalie L	Attorney

JOURNAL ENTRIES

- Court noted pretrial memorandums have been received by the bank, HOA, have premier's joinder to Pltf's pretrial memorandum and inquired as to exhibits. Ms. Winslow stated all exhibits are stipulated to which were discussed at 2/67 back in December. Court noted HOA's pretrial memorandum did not say all exhibits are stipulated to. Mr. Van Luven stated there is not an issue on exhibits, had to prepare on short notice, directed staff to prepare one and could not get an agreement from Pltf. Ms. Winslow stated they were stipulated to for all purposes. Mr. Van Luven concurred. Ms. Winslow stated they are joint exhibits. Colloquy regarding witnesses. Ms. Winslow stated there was a discussion at the 2.67 about Mr. Hong calling corporate representative, Michael Ring, not in memorandum, did not receive any report and no objection as to Mr. Hong calling him as a witness. Mr. Van Luven stated he has no objection as well. Ms. Winslow stated if Mr. Hong is going to call someone else, counsel will need to know. Colloquy regarding exhibit #21. Ms. Winslow stated he does not know about objection, parties spoke at 2/67 about stipulating to all exhibits and advised one day for trial with stipulated exhibits. Statement by Mr. Van Luven. Further, Ms. Winslow advised parties are working on stipulated facts, also request to bifurcate claims against HOA and if there is a resolution of Pltf. and Mr. Hong's clients, may take care of HOA. Court noted bifurcation is not before this Court. Upon Court's inquiry, Ms. Winslow stated no depositions will be used and Mr.

Van Luven also stated no depositions will be used. Court noted two (2) full court days, ORDERED, findings of fact and conclusions of law to be submitted by 4:00 p.m. the Wednesday before.

MATTER RECALLED:

Court inquired as to exhibit #21 and the objection by Premier. Mr. Hong stated exhibit #21 is the deposition of Mr. Stone in other case and will stipulate to exhibit #21. Court noted pretrial memorandum has eight (8) to nine (9) witnesses and Premier listed Mr. Ring as well. Mr. Hong stated Mr. Ring and after stipulation of facts done, will have a maximum of two (2) witnesses. Ms. Winslow stated depending on the stipulated facts, two (2) to three (3) witnesses. Further, Ms. Winslow requested to submit findings of fact and conclusions of law by tomorrow. COURT ORDERED, request GRANTED. Findings of fact and conclusions of law to be filed, courtesy copies to counsel and the Court.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Real Property	**COURT MINUTES**	**February 16, 2018**

A-16-735303-C Bayview Loan Servicing LLC, Plaintiff(s)
vs.
Nevada Association Services Inc, Defendant(s)

February 16, 2018	**3:00 AM**	**Decision**	**Decision and Order Filed Separately**

HEARD BY: Kishner, Joanna S. **COURTROOM:** Chambers

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

Hearing Event Resulted – Decision Made; Decision and Order Filed Separately. hu

JOINT TRIAL EXHIBIT INDEX

JOINT TRIAL EXHIBITS **CASE NO:** A735303

BAYVIEW LOAN SERVICING, LLC **vs.** **NEVADA ASSOCIATION SERVICES, INC.**

#	DESCRIPTION	DATE OFFERED	OBJECTION	DATE ADMITTED
1	Grant Bargain Sale Deed, BLS000017 – BLS000022	1-29-18	Stip	1-29-18
2	Deed of Trust, BLS000023 – BLS000047			
3	Notice of Delinquent Assessment Lien, BLS000049			
4	Notice of Default and Election to Sell Under Homeowners Association Lien, BLS000050 – BLS000051			
5	Notice of Rescission, BLS000053			
6	Notice of Rescission, BLS000055			
7	Release of Notice Delinquent Assessment Lien, BLS000056			
8	Notice of Delinquent Assessment Lien, BLS000057			
9	Assignment of Deed of Trust, BLS000058 – BLS000059			
10	Notice of Default and Election to Sell Under Homeowners Association Lien, BLS000060 – BLS000061			
11	Notice of Rescission, BLS000062			
12	Notice of Default and Election to Sell Under Homeowners Association Lien, BLS000063 – BLS000064			
13	Notice of Foreclosure Sale, BLS000067 – BLS000068			
14	Foreclosure Deed, BLS000069 – BLS000071			
15	Assignment of Deed of Trust, BLS000076 – BLS000077			
16	Request for Notice – Pursuant to NRS 116.31168 and NRS 107.090, BLS000081 – BLS000083			
17	Declaration of Covenants, Conditions and Restrictions and Grant of Easements for Hillpointe Park Maintenance District, BLS000085 – BLS000140			
18	Miles, Bergstrom & Winters, LLP Affidavit, BLS000141 – BLS000155			
19	Miles, Bergstrom & Winters LLP Borrower Letter Affidavit, BLS000156 – BLS000162			
20	Letter from Nevada Association Services, Inc., BLS000163 – BLS000164			
21	Deposition of David Stone in Bank of America, N.A. v. One Queensridge Place Homeowner's Association, Inc., Case Number 2:13-CV-01221-GMN-NJK, BLS000165 – BLS000219			
22	Affidavit of Custodian of Records and documents from Nevada Association Services, Inc. received in response to Subpoena Duces Tecum, BLS000220 – BLS000470			
23	Title Policy, BLS000471 – BLS000484	1-29-18	Stip	1-29-18

24	Payoff, BLS000485 – BLS000486	1-29-18	Stip	1-29-18
25	Promissory Note, BLS000487 – BLS000492	↓	↓	↓
26	HOA Bylaws, HP000057 – HP000081			
27	HOA Articles, HP000082 – HP000098			
28	Matthew Lubawy's Expert Report, LUBAWY0001-LUBAWY0027			
29	HOA Collection File, HP000099 – HP000372	1-29-18	Stip	1-29-18

Certification of Copy

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

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

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

BAYVIEW LOAN SERVICING, LLC,

Plaintiff(s),

vs.

NEVADA ASSOCIATION SERVICES, INC.; HILLPOINTE PARK MAINTENANCE DISTRICT; PREMIER ONE HOLDINGS, INC.,

Defendant(s),

Case No: A-16-735303-C

Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 28 day of March 2018.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk

THE FACE OF THIS DOCUMENT HAS A RED BACKGROUND ON WHITE PAPER AND ORIGINAL DOCUMENT SECURITY SCREEN AND ARTIFICIAL WATERMARK ON BACK WITH PADLOCK SECURITY ICON.

MORRIS LAW CENTER
ATTORNEYS AT LAW
5450 W. Sahara Ave., Suite 330 • Las Vegas, NV 89146
Opertaing Account

BANK OF NEVADA
2700 W. Saharah Ave
Las Vegas, NV 89102

3188

03/23/2018

PAY TO THE ORDER OF Clerk of the Court

$ **250.00

DOLLARS

Two hundred fifty and 00/100**********

Clerk of the Court

MEMO Filing Fee for A735303

AUTHORIZED SIGNATURE

Security features included. Details on back.

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