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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GOLDSMITH ENTERPRISES, LLC., a
Nevada limited liability company,

Plaintiff,

v.

U.S. BANK, N.A., DOES I through X and
ROE BUSINESS ENTITIES I through X,
inclusive,

Defendants.

Case No. 2:15-cv-00991-MMD-PAL

ORDER

(Def.'s Motion for Summary Judgment -
ECF No. 29)

U.S. BANK, N.A., AS TRUSTEE FOR
HARBORVIEW MORTGAGE LOAN
TRUST 2005-8, MORTGAGE LOAN
PASS-THROUGH CERTIFICATES,
SERIES 2005-8,

Counterclaimant,

v.

GOLDSMITH ENTERPRISES LLC.,

Counterclaim-Defendant.

I. SUMMARY

Before the Court is Defendant/Counterclaimant U.S. Bank, N.A.'s ("U.S. Bank") Motion for Summary Judgment ("Motion"). (ECF No. 29.) The Court has reviewed Plaintiff/Counterclaim-Defendant Goldsmith Enterprises LLC's ("Goldsmith") response (ECF No. 31) and U.S. Bank's reply (ECF No. 32). The Court also heard argument on the Motion on August 23, 2017. (ECF No. 36.)

1 For the reasons set out below, the Motion is granted in part and denied in part.

2 **II. BACKGROUND**

3 The following facts are taken from U.S. Bank’s statement of undisputed facts. (ECF
4 No. 29.)

5 Christine McMahon bought real property within a homeowner association (“HOA”)
6 located at 10616 Mountain Stream Ct., Las Vegas, NV 89129 in 2005. Ms. McMahon
7 financed the purchase through a loan in the amount of \$220,800.00 secured by a deed of
8 trust (“First Deed of Trust”) dated June 2, 2005. MERS assigned the note and First Deed
9 of Trust to U.S. Bank on or about May 17, 2011.

10 Ms. McMahon failed to pay HOA assessments, and the HOA foreclosed on the
11 property pursuant to state statute in a foreclosure auction on June 12, 2012.¹ The HOA
12 purchased the property at the auction for \$4,900.00. The HOA transferred the property to
13 Nevada New Builds, LLC via quitclaim deed dated July 23, 2014 in exchange for
14 \$9,250.52. Nevada New Builds, LLC then transferred the property to Goldsmith via a “deed
15 of sale” dated March 25, 2015 in exchange for \$78,000.00.

16 **III. LEGAL STANDARD**

17 Summary judgment is appropriate when the pleadings, the discovery and
18 disclosure materials on file, and any affidavits “show that there is no genuine issue as to
19 any material fact and that the moving party is entitled to a judgment as a matter of law.”
20 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is genuine “if the evidence is
21 such that a reasonable jury could return a verdict for the nonmoving party,” *Anderson v.*
22 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986), and a dispute is material if it could affect
23 the outcome of the suit under the governing law. *Id.*

24 Summary judgment is not appropriate when “reasonable minds could differ as to
25 the import of the evidence.” *See id.* at 250-51. “The amount of evidence necessary to raise
26 a genuine issue of material fact is [that which is] enough ‘to require a jury or judge to

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28 ¹Goldsmith suggests that the foreclosure auction took place on January 25, 2012.
(ECF No. 31 at 2.) This factual discrepancy is immaterial as discussed in Section IV(C).

1 resolve the parties' differing versions of the truth at trial." *Aydin Corp. v. Loral Corp.*, 718
2 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S.
3 253, 288-89 (1968)). Decisions granting or denying summary judgment are made in light
4 of the purpose of summary judgment: "to avoid unnecessary trials when there is no dispute
5 as to the facts before the court." *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d
6 1468, 1471 (9th Cir. 1994).

7 The moving party bears the burden of showing that there are no genuine issues of
8 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once the
9 moving party satisfies the requirements of Rule 56, the burden shifts to the party resisting
10 the motion to "set forth specific facts showing that there is a genuine issue for trial."
11 *Anderson*, 477 U.S. at 256. In evaluating a summary judgment motion, a court views all
12 facts and draws all inferences in the light most favorable to the nonmoving party. *In re*
13 *Slatkin*, 525 F.3d 805, 810 (9th Cir. 2008). If a party relies on an affidavit or declaration to
14 support or oppose a motion, it "must be made on personal knowledge, set out facts that
15 would be admissible in evidence, and show that the affiant or declarant is competent to
16 testify on the matters stated." Fed. R. Civ. P. 56(c)(4). The nonmoving party "may not rely
17 on denials in the pleadings but must produce specific evidence, through affidavits or
18 admissible discovery material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.*,
19 929 F.2d 1404, 1409 (9th Cir. 1991), and "must do more than simply show that there is
20 some metaphysical doubt as to the material facts." *Orr v. Bank of Am.*, 285 F.3d 764, 783
21 (9th Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574,
22 586 (1986)). "The mere existence of a scintilla of evidence in support of the plaintiff's
23 position will be insufficient" *Anderson*, 477 U.S. at 252.

24 **IV. DISCUSSION**

25 U.S. Bank moves for summary judgment on its quiet title and injunctive relief
26 counterclaims as well as on Goldsmith's quiet title, cancellation of instruments, and
27 injunctive relief claims. (ECF No. 29 at 1.) U.S. Bank argues that the Ninth Circuit Court of
28 Appeals' decision in *Bourne Valley Court Tr. v. Wells Fargo Bank, NA*, 832 F.3d 1154 (9th

1 Cir. 2016), *cert. denied*, 137 S. Ct. 2296 (2017), requires this Court to declare that the
2 HOA foreclosure sale did not extinguish U.S. Bank’s First Deed of Trust because the sale
3 was conducted under an unconstitutional statute. (*Id.* at 8.) Goldsmith argues that *Bourne*
4 *Valley* does not bind this Court (ECF No. 31 at 3); that U.S. Bank lacks standing (*id.* at 4);
5 that U.S. Bank’s counterclaims are time-barred (*id.* at 5); and that U.S. Bank failed to
6 tender (*id.* at 8-10). The Court finds Goldsmith’s arguments unpersuasive.

7 **A. Applicability of *Bourne Valley***

8 U.S. Bank argues that *Bourne Valley* requires this Court to declare that the HOA
9 foreclosure sale did not extinguish U.S. Bank’s First Deed of Trust. In *Bourne Valley*, the
10 Ninth Circuit held that the opt-in notice scheme established in NRS § 116.3116 *et seq.*
11 (the “Statute”)² is facially unconstitutional because it requires a lender with a first position
12 deed of trust to affirmatively request notice of an HOA’s intent to foreclose, violating the
13 lender’s due process rights. 832 F.3d at 1156. The Ninth Circuit made this decision in light
14 of the Nevada Supreme Court’s decision in *SFR Investments Pool 1 v. U.S. Bank*, 334
15 P.3d 408, 412 (Nev. 2014), in which the state supreme court interpreted the Statute to
16 give an HOA a “superpriority” lien on a homeowner’s property for up to nine months of
17 unpaid HOA dues that, when foreclosed upon, extinguished all junior interests in the
18 property. *See Bourne Valley*, 832 F.3d at 1156-57. Thus, the Ninth Circuit found that
19 enactment of the Statute’s opt-in notice scheme “unconstitutionally degraded [the first
20 position lienholder’s] interest” and that but for this scheme the first position lienholder’s
21 rights in the property would not be extinguished. *Id.* at 1160.

22 Goldsmith argues that this Court should follow the Nevada Supreme Court’s—not
23 the Ninth Circuit’s—rulings on the Statute. The Nevada Supreme Court rejected due
24 process challenges to the Statute in two decisions. The first decision, decided before
25 *Bourne Valley*, is *SFR Investments Pool 1 v. U.S. Bank*, 334 P.3d 408, 412 (Nev. 2014).

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27 ²The *Bourne Valley* court referred to NRS § 116.3116 *et seq.* as “the statute.” 832
28 F.3d at 1156. Sections 116.3116 through 116.3117 create the framework by which HOAs
may foreclose on their liens through a nonjudicial sale.

1 There, the Nevada Supreme Court rejected a mortgage lender’s due process challenge to
2 the Statute. *Id.* at 418. The second decision, decided after *Bourne Valley*, is *Saticoy Bay*
3 *LLC Series 350 Durango 104 v. Wells Fargo Home Mortg., a Division of Wells Fargo Bank,*
4 *N.A.*, 388 P.3d 970 (Nev. 2017). There, the Nevada Supreme Court held that the
5 foreclosure procedures under the Statute do not violate first position lienholders’ due
6 process rights under both the Nevada and United States Constitutions. *Id.* at 972-74.

7 Goldsmith’s first argument fails because the Ninth Circuit found that the Statute’s
8 opt-in notice scheme was unconstitutional under the *federal* constitution. *Bourne Valley*,
9 832 F.3d at 1157. This Court is not bound by the Nevada Supreme Court’s holdings to the
10 contrary. See *Watson v. Estelle*, 886 F.2d 1093, 1095 (9th Cir. 1989) (stating that the
11 decision of a state supreme court construing the United States Constitution is not binding
12 on federal courts). Therefore, *Bourne Valley* applies to this Court’s determination of
13 whether the HOA’s foreclosure sale extinguished U.S. Bank’s First Deed of Trust.

14 **B. Standing**

15 Goldsmith further argues that U.S. Bank lacks injury to establish standing because
16 U.S. Bank received actual notice of the HOA’s foreclosure sale. (ECF No. 31 at 4.)
17 Whether U.S. Bank received actual notice, however, is immaterial. “The factual
18 particularities surrounding the foreclosure notices in this case—which would be of
19 paramount importance in an as-applied challenge—cannot save the facially
20 unconstitutional statutory provisions.” *Bank of Am., N.A. v. Regency Vill. Owner’s Ass’n,*
21 *Inc.*, No. 216-cv-00496-GMN-CWH, 2017 WL 3567520, at *3 (D. Nev. Aug. 17, 2017). The
22 Ninth Circuit held that the Statute was unconstitutional on its face, i.e., “in each and every
23 application.” *Id.* Thus, “no conceivable set of circumstances exists under which the
24 provisions would be valid.” *Id.* Even if U.S. Bank received actual notice, it still suffered a
25 deprivation of its constitutional due process rights because the sale proceeded under an
26 unconstitutional statute. This injury is sufficient to ground standing.

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1 **C. Statute of Limitations**

2 Goldsmith further argues that U.S. Bank’s counterclaims are time-barred. (ECF No.
3 31 at 5.) In HOA foreclosure cases such as this, this Court has held that a cause of action
4 accrues at the time of the foreclosure sale. *See, e.g., Bank of Am., N.A. v. Nevada Trails*
5 *II Cmty. Ass’n*, No. 2:16-cv-880-JCM-PAL, 2017 WL 2960521, at *4 (D. Nev. July 11,
6 2017); *Nationstar Mortg., LLC v. Falls at Hidden Canyon Homeowners Ass’n*, No. 2:15-
7 cv-01287-RCJ-NJK, 2017 WL 2587926, at *2 (D. Nev. June 14, 2017). Here, the
8 foreclosure sale took place either on January 25, 2012 (ECF No. 31 at 2) or on June 12,
9 2012 (ECF No. 32 at 8). The statute of limitations for quiet title claims in Nevada is five
10 years. *Scott v. Mortg. Elec. Registration Sys., Inc.*, 605 F. App’x 598, 600 (9th Cir. 2015)
11 (citing NRS §§ 11.070, 11.080). U.S. Bank asserted its counterclaims on June 12, 2015,
12 well within the statute of limitations even if the foreclosure sale took place on January 25,
13 2012. Consequently, U.S. Bank’s counterclaims are not time-barred.

14 **D. Tender**

15 Goldsmith further argues that U.S. Bank failed to tender the HOA’s superpriority
16 lien because U.S. Bank only offered to pay instead of “physically send[ing] and/or
17 deliver[ing] a check to [HOA’s trustee].” (ECF No. 31 at 8.) This is immaterial. Whether
18 U.S. Bank successfully tendered or not, the foreclosure sale violated U.S. Bank’s
19 procedural due process rights. This Court may remedy that injury.

20 **E. Equitable Relief**

21 U.S. Bank requests that this Court hold that the HOA foreclosure sale did not
22 extinguish its First Deed of Trust. (ECF No. 29 at 8.) “At common law, courts possessed
23 inherent equitable power to consider quiet title actions, a power that required no statutory
24 authority.” *Shadow Wood Homeowners Ass’n, Inc. v. N.Y. Cmty. Bancorp, Inc.*, 366 P.3d
25 1105, 1111 (Nev. 2016) (internal citation omitted); *see also Humble Oil & Ref. Co. v. Sun*
26 *Oil Co.*, 191 F.2d 705, 718 (5th Cir. 1951) (An action for quiet title “is a purely equitable
27 proceeding.”). Thus, equitable relief may be granted in defective HOA lien foreclosure
28 sales. *Shadow Wood*, 366 P.3d at 1107 (“We . . . reaffirm that, in an appropriate case, a

1 court can grant equitable relief from a defective HOA lien foreclosure sale.”). Equitable
2 relief powers are broad. *Brown v. Plata*, 563 U.S. 493, 538 (2011) (“the scope of a district
3 court's equitable powers . . . is broad, for breadth and flexibility are inherent in equitable
4 remedies.”) (internal quotation marks and citation omitted). A court granting equitable relief
5 should weigh the equities involved, including equity to the public. *U.S. Bancorp Mortg. Co.*
6 *v. Bonner Mall P’ship*, 513 U.S. 18, 26 (1994) (“As always when federal courts contemplate
7 equitable relief, our holding must also take account of the public interest.”).

8 The Court finds that the most equitable remedy under the circumstances here is to
9 declare that U.S. Bank’s First Deed of Trust still encumbers the property, a holding
10 consistent with U.S. Bank’s requested relief and the ruling in *Bourne Valley*. This remedy
11 is equitable with respect to the parties in this case as well as to the general public. As to
12 U.S. Bank, this declaration remedies the injury it suffered as a result of the unconstitutional
13 opt-in notice scheme, namely the extinguishment of its lien on the property. As to the HOA,
14 this remedy allows the sale to remain intact, thereby ensuring that the delinquent
15 assessments for which the HOA foreclosed upon the property remain satisfied.³ As to
16 Goldsmith, this result is equitable because the purchase of the property entailed a risk that
17 the statutory framework that enabled the HOA to sell the property at such a discounted
18 price would be found to be unconstitutional (as litigation challenging the constitutionality
19 of the opt-in notice scheme in federal and state court had already begun). As to the general
20 public, this remedy is equitable because it preserves market stability. Alternatives such as
21 setting aside the foreclosure sale would create chaos, as both parties agreed at the
22 hearing on August 23.

23 Therefore, the Court resolves Goldsmith’s quiet title claim and U.S. Bank’s quiet
24 title counterclaim in favor of U.S. Bank. The Court denies summary judgment with respect

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27 ³If the Court were to invalidate the sale, the HOA would face the additional difficulty
28 and expense of tracking down Ms. McMahon. Moreover, the HOA would have to foreclose
upon the property once again in order to satisfy the nine months of delinquent
assessments in the event Ms. McMahon declined to cure the default.

1 to Goldsmith's remaining claims and U.S. Bank's remaining counterclaim as those claims
2 are now moot.

3 **V. CONCLUSION**

4 The Court notes that the parties made several arguments and cited to several cases
5 not discussed above. The Court has reviewed these arguments and cases and determines
6 that they do not warrant discussion or reconsideration as they do not affect the outcome
7 of U.S. Bank's Motion.

8 It is therefore ordered the Defendant U.S. Bank's Motion for Summary Judgment
9 (ECF No. 29) is granted in part and denied in part. It is granted with respect to U.S. Bank's
10 quiet title counterclaim and Goldsmith's quiet title claim. The Court finds that the HOA
11 foreclosure sale did not extinguish U.S. Bank's First Deed of Trust, which continues to
12 encumber the property.

13 The Clerk is instructed to enter judgment in favor of U.S. Bank on both its quiet title
14 claim and Goldsmith's quiet title claim.

15 The Clerk is further instructed to close this case.

16 DATED THIS 20th day of September 2017.

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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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