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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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NATIONSTAR MORTGAGE, LLC,  
  
Plaintiff,  
  
v.  
  
SAHARA SUNRISE HOMEOWNERS  
ASSOCIATION; RIVER GLIDER  
AVENUE TRUST; DOE INDIVIDUALS I-  
X, inclusive, and ROE CORPORATIONS  
I-X, inclusive,  
  
Defendants.

Case No. 2:15-cv-01597-MMD-NJK  
  
ORDER

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SAHARA SUNRISE HOMEOWNERS  
ASSOCIATION,  
  
Third-Party Plaintiff,  
  
v.  
  
ALESSI & KOENIG LLC; DOES I  
THROUGH X and ROE CORPORATIONS  
XI THROUGH XX,  
  
Third-Party Defendants.

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RIVER GLIDER AVENUE TRUST,  
Counter-Claimant,  
  
v.  
  
NATIONSTAR MORTGAGE, LLC,  
  
Counter-Defendant.

**I. SUMMARY**

This dispute arises from the foreclosure sale (“HOA Sale”) of real property located at 2670 Early Vista St., Las Vegas, NV, 89142 (“Property”) to satisfy a homeowners’ association lien. (See, e.g., ECF No. 1 at 3; ECF No. 90-9 at 2.) Two motions are currently pending before the Court: (1) Plaintiff/Counter-defendant, Nationstar Mortgage, LLC (“Nationstar”) seeks partial summary judgment on its quiet title/declaratory judgment claim

1 and on Defendant/Counterclaimant River Glider Avenue Trust's ("River Glider")  
2 counterclaims for the same relief; and (2) River Glider requests that the Court grant  
3 summary judgment on its counterclaims and *all* of Nationstar's claims.<sup>1</sup> (ECF No. 90 at 1–  
4 2; ECF No. 92 at 19–20, ECF No. 1 at 6–13 (Complaint); ECF No. 11 at 4–5  
5 (counterclaims).) Because the Court finds that the HOA Sale is void, the Court grants  
6 Nationstar's motion for partial summary judgment and denies River Glider's motion for  
7 summary judgment.<sup>2</sup>

## 8 **II. BACKGROUND**

9 The following facts are undisputed unless otherwise indicated.

### 10 **A. Deed of Trust History<sup>3</sup>**

11 Edwin and Ana De Los Reyes financed the purchase of the Property in 2005 with  
12 a \$208,000.00 loan ("Loan") from GMC Mortgage, Inc. ("GMC"). (ECF No. 90-1 at 2–3.)  
13 The Loan was secured by a deed of trust ("DOT") against the Property. (ECF No. 90-1.)  
14 The DOT named Mortgage Electronic Systems, Inc. ("MERS") as the beneficiary and  
15 provided MERS' address. (*Id.* at 3.) MERS assigned the DOT to BAC Home Loans  
16 Servicing, LP ("BACHLS") f/k/a Countrywide Home Loans Servicing, LP in April 2011.  
17 (ECF No. 90-2.) BACHLS merged into and with Bank of America, N.A. ("BANA") effective  
18 July 1, 2011. (ECF No. 90-3.) BANA serviced the Loan until 2013—when servicing

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21 <sup>1</sup>Despite River Glider's request, River Glider lacks standing to seek summary  
22 judgment on "all" claims Nationstar asserts in the Complaint (see ECF No. 1 at 6-13). Two  
23 of the four claims Nationstar asserts—the second and third claims—are solely against the  
HOA (*id.*), and River Glider does not purport to represent the HOA's interests here.

24 <sup>2</sup>In addition to the motions, the Court has considered the respective responses  
25 (ECF Nos. 97, 98) and replies (ECF Nos. 101, 102).

26 <sup>3</sup>The Court takes judicial notice of ECF No. 90-1 through ECF No. 90-10 and ECF  
27 Nos. 90-12, 90-13 and 90-15 as recorded with the Clark County Recorder and matters  
28 within the public record. *See, e.g., Disabled Rights Action Comm. v. Las Vegas Events, Inc.*, 375 F.3d 861, 866 n.1 (9th Cir. 2004) (explaining that a court may take judicial notice of a government agency's records and other undisputed matters of public record under Fed. R. Evid. 201).

1 transferred to Nationstar. (ECF No. 90-4 at 11–12.) BANA also assigned the DOT to  
2 Nationstar in 2013. (ECF No. 90-5.)

3 **B. The De Los Reyeses’ Bankruptcy**

4 The De Los Reyeses filed for bankruptcy in 2009 and obtained discharge in 2013.  
5 (ECF Nos. 90-6, 90-7, 90-8.)<sup>4</sup>

6 **C. HOA Lien and Foreclosure**

7 Sahara Sunrise Homeowners Association (“HOA”), through its trustee Alessi &  
8 Koenig, LLC (“Alessi”), recorded a notice of delinquent lien assessment against the  
9 Property in July 2010. (ECF No. 90-9.) This notice stated that the De Los Reyeses owed  
10 \$995.69. (*Id.*)

11 Alessi obtained a record property information report in November 2010, which  
12 showed the DOT and listed MERS as the current beneficiary and CMG as the Loan lender.  
13 (ECF No. 90-11 at 9.) Alessi recorded a notice of default and election to sell the Property  
14 in December 2010, which noted that the De Los Reyeses owed \$2,264.49. (ECF No. 90-  
15 10.) (*Id.*) Further, the HOA mailed the notice of default only to CMG, the De Los Reyeses,  
16 and Gerald A. Phillips Esq.—the HOA did not mail the notice to MERS. (*Id.* at 12–44 (as  
17 provided per David Alessi, Esq.’s affidavit (*id.* at 2–6)).)<sup>5</sup>

18 Alessi recorded a notice of the HOA Sale against the Property in June 2011 (ECF  
19 No. 90-12) and sold the Property to Early Vista St. Trust (“Early Vista”) for \$5,400 (ECF  
20 No. 90-13; ECF No. 90-11 at 2, 45).

21 Early Vista transferred the Property to River Glider in June 2012. (ECF No. 90-15.)

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24 <sup>4</sup>The documents provide the former homeowner’s last names as “Delos Reyes.”

25 <sup>5</sup>In its motion for summary judgment, River Glider states the HOA mailed the notice  
26 of default to “the former homeowner, to MERS, to [Nationstar’s] predecessor in interest,  
27 and to other interested parties.” (ECF No. 92 at 3.) To support this statement, River Glider  
28 cites to its Exhibit H. (*Id.*; ECF No. 92-9.) However, Exhibit H—consisting of emails to and  
from a senior accountant at Walz Group—lacks any meaningful information to support a  
statement that the notice of default was sent to MERS (*see generally* ECF No. 92-9). Even  
if Exhibit H did provide pertinent information, it would be contrary to the information  
Alessi—the HOA’s trustee—provided with the support of affidavit, as identified *supra* (ECF  
No. 90-11).

1     **III.     LEGAL STANDARD**

2             “The purpose of summary judgment is to avoid unnecessary trials when there is no  
3     dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18  
4     F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings,  
5     the discovery and disclosure materials on file, and any affidavits “show that there is no  
6     genuine issue as to any material fact and that the moving party is entitled to a judgment  
7     as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An issue is  
8     “genuine” if there is a sufficient evidentiary basis on which a reasonable fact-finder could  
9     find for the nonmoving party and a dispute is “material” if it could affect the outcome of the  
10    suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

11            The moving party bears the burden of showing that there are no genuine issues of  
12    material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once the  
13    moving party satisfies Rule 56’s requirements, the burden shifts to the party resisting the  
14    motion to “set forth specific facts showing that there is a genuine issue for trial.” *Anderson*,  
15    477 U.S. at 256. The nonmoving party “may not rely on denials in the pleadings but must  
16    produce specific evidence, through affidavits or admissible discovery material, to show  
17    that the dispute exists,” *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991),  
18    and “must do more than simply show that there is some metaphysical doubt as to the  
19    material facts.” *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting  
20    *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). “The mere  
21    existence of a scintilla of evidence in support of the plaintiff’s position will be insufficient.”  
22    *Anderson*, 477 U.S. at 252. Moreover, a court views all facts and draws all inferences in  
23    the light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fischbach &*  
24    *Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

25     **IV.     DISCUSSION**

26            Nationstar moves for summary judgment on the grounds that (1) the HOA Sale is  
27    void because the HOA failed to comply with the statutory notice requirements of NRS  
28    Chapter 116; (2) the statute governing the HOA Sale—NRS § 116.3116 *et seq.*—is

1 unconstitutional both facially and as applied; (3) the HOA Sale is void because it violated  
2 the automatic bankruptcy stay; and (4) Nationstar is entitled to equitable relief by having  
3 the HOA Sale set aside or reformed under *Nationstar Mortg., LLC v. Saticoy Bay LLC*  
4 *Series 2227 Shadow Canyon* (“*Shadow Canyon*”), 405 P.3d 641, 643, 648 (Nev. 2017) for  
5 unfairness. (ECF No. 90 at 2–3, 6–17.) River Glider opposes each of these arguments  
6 and particularly challenges Nationstar’s standing to assert some of its claims. (See ECF  
7 No. 97.) The Court finds that the dispositive issue is whether the beneficiary of the DOT  
8 was adequately provided statutorily required notice and thus only considers that issue  
9 here. The Court therefore does not address the various other arguments Nationstar raises  
10 in its motion or River Glider’s unrelated arguments.

11 The Court agrees with Nationstar that the relevant DOT beneficiary—MERS—was  
12 not provided proper notice of default and that such failure is sufficient to render the HOA  
13 Sale void here. (See, e.g., ECF No. 90 at 2, 7–8; ECF No.101 at 6.)

14 By NRS § 116.31168’s incorporation of NRS § 107.090’s notice requirement, the  
15 HOA was required to send notices to “all holders of subordinate interests, even when such  
16 persons or entities did not request notice.” *SFR Invs. Pool 1, LLC v. Bank of New York*  
17 *Mellon*, 422 P.3d 1248, 1253 (Nev. 2018); see also NRS § 107.090(3)(b) & (4) (requiring  
18 notice of default *and* notice of sale be mailed to “[e]ach other person with an interest whose  
19 interest or claimed interest is subordinate to the deed of trust”); *West Sunset 2050 Tr. v.*  
20 *Nationstar Mortg., LLC*, 420 P.3d 1032, 1035 (Nev. 2018) (acknowledging a failure to serve  
21 notice of default as *defective* notice). Such persons with interest undoubtedly include the  
22 holder of a first security interest like the DOT here. See, e.g., *SFR Invs. Pool 1, LLC v.*  
23 *U.S. Bank, N.A.*, 334 P.3d 408, 418 (Nev. 2014) (observing that NRS  
24 116.31168 incorporates NRS 107.090, which requires that notices be sent to a deed of  
25 trust beneficiary); see also *Shadow Canyon*, 405 P.3d at n.11.

26 “Compliance with NRS Chapter 116’s provisions with respect to default, notice, and  
27 publication of the notice of sale is a ‘statutory prerequisite [] to a valid HOA lien foreclosure  
28 as stated in NRS [§] 116.31162 through NRS [§] 116.31164.’” *Christiana Trust*, 2018 WL

1 6603643, at \*4 (quoting *Shadow Wood HOA v. N.Y. Cmty. Bancorp.*, 366 P.3d 1105, 1110  
2 (2016)); see also *id.* (collecting cases) (finding that since *Shadow Canyon*, “the Nevada  
3 Supreme Court has confirmed that an HOA’s failure to mail the Chapter 116 notices to  
4 parties entitled to such notice is a sufficient ground for voiding the foreclosure sale and  
5 granting summary judgment in favor of the holder of the senior deed of trust”).

6 Here, Nationstar’s evidence establishes that the HOA failed to properly serve the  
7 notice of default—as noted, the notice of default was not mailed to the then DOT  
8 beneficiary—MERS. (ECF No. 90-11 at 12–44.) Despite this evidence, River Glider  
9 responds, arguing that the notice of default and notice of sale were “mailed to interested  
10 parties.” (ECF No. 97 at 5.) However, the only document River Glider cites in support—  
11 Exhibit J to its motion for summary judgment—provides only notice of the foreclosure sale,  
12 and therefore does not dispose of the notice of default issue. (ECF No. 97 at 5 (citing only  
13 Exhibit J); ECF No. 92-11 (Exhibit J); see also *supra* footnote 4.)

14 Nonetheless, River Glider appears to next contend that despite the failure to mail  
15 the notice of default, Nationstar cannot invalidate the HOA Sale because it has not shown  
16 prejudice. (See ECF No. 97 at 16 (quoting *inter alia West Sunset*, 432 P.3d at 1035).) In  
17 *West Sunset*, the Nevada Supreme Court found that “Nationstar’s failure to allege [or  
18 explain] prejudice resulting from defective notice dooms its claim that the defective notice  
19 invalidates the HOA sale.” *West Sunset*, 432 P.3d at 1035. However, as Nationstar notes,  
20 this case is different. (ECF No. 101 at 6.) Here, Nationstar explains that the HOA’s failure  
21 to properly serve the notice of default deprived BANA of the opportunity to tender  
22 payment—as BANA routinely did prior to notice of a foreclosure sale, during the relevant  
23 time periods—to protect its various deed of trusts from extinguishment. (ECF No. 90 at 2,  
24 10–11; ECF No. 101 at 5, 6.) The Court is persuaded by this argument. River Glider does  
25 not dispute that BANA routinely made such offers of tender during the relevant times.  
26 Instead, River Glider appears to only argue that Nationstar’s explanation is unavailing  
27 because BANA was assigned the DOT after the notice of default was recorded. (ECF No.  
28 97 at 5.) However, River Glider’s argument misses the mark because the DOT was

1 assigned to BANA well before the HOA Sale and thus BANA would have had sufficient  
2 time to make its tender before the HOA Sale if MERS had been sent the statutory required  
3 notice of default.

4 The other cases River Glider cites—*Shadow Canyon*, *Golden v. Tomiyasu*, 387  
5 P.2d 989 (Nev. 1963) and *Schleining v. Cap One, Inc.*, 326 P.3d 4 (Nev. 2014)—do not  
6 undermine a finding that the HOA failed to properly comply with the statutorily required  
7 notice requirements. (See ECF No. 97 at 16–17.) River Glider appears to cite these cases  
8 for the proposition that absent prejudice, *actual* notice of the default amounts to adequate  
9 compliance with Nevada’s notice requirements. (*Id.*) However, here the Court finds  
10 prejudice. Further, unlike in *Schleining*, neither MERS, BANA, nor Nationstar admits to  
11 being “aware of the default.” *Schleining*, 326 P.3d at 6. *Golden* is additionally  
12 distinguishable because the notice at issue there was the notice of foreclosure sale.  
13 *Golden*, 387 P. 2d at 991–92. *Shadow Canyon* is inapposite because the complete failure  
14 to mail a deed of trust was not a noted irregularity *at issue* in that case. See 405 P.3d at  
15 649–51. Nonetheless, the court in *Shadow Canyon* notably stated that “irregularities that  
16 may rise to the level of fraud, unfairness, or oppression include an HOA’s *failure to mail a*  
17 *deed of trust beneficiary the statutorily required notices.*” *Id.* at n.11 (emphasis added).

18 Given these considerations, the Court finds that the HOA’s defective noticing is  
19 sufficient ground to void the HOA Sale to the extent the sale extinguished Nationstar’s  
20 DOT. Accordingly, the Court grants summary judgment to Nationstar on its claim for  
21 declaratory relief/quiet title. The Court declares that the void HOA Sale did not extinguish  
22 the DOT.

23 Because the Court finds that the sale is void and Nationstar is entitled to summary  
24 judgment as noted *supra*, the Court denies River Glider’s motion for summary judgment  
25 (ECF No. 92) on “all” of Nationstar’s claims and particularly Nationstar’s declaratory  
26 relief/quiet title claim (*id.* at 19–20.)

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1 **V. CONCLUSION**

2 The Court notes that the parties made several arguments and cited to several cases  
3 not discussed above. The Court has reviewed these arguments and cases and determines  
4 that they do not warrant discussion as they do not affect the outcome of the motions before  
5 the Court.

6 It is therefore ordered that Nationstar’s motion for partial summary judgment (ECF  
7 No. 90) is granted because the Court finds that the HOA Sale is void for failure to mail the  
8 statutory required notice of default to the then existing deed of trust beneficiary. The Court  
9 therefore declares that the void HOA Sale did not extinguish Nationstar’s DOT. In light of  
10 the Court’s ruling that the HOA Sale is void, all remaining claims seeking alternative relief  
11 are dismissed as moot.

12 It is further ordered that River Glider’s motion for summary judgment (ECF No. 92)  
13 is denied.

14 It is further ordered that the Clerk of Court enter judgment in accordance with this  
15 order and close the case.

16 DATED THIS 14<sup>th</sup> day of March 2019.

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20 MIRANDA M. DU  
21 UNITED STATES DISTRICT JUDGE  
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