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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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* * *

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PHILIPPE LAURENT,

Case No. 2:15-cv-02495-RFB-GWF

8

Plaintiff,

ORDER

9

v.

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ARTHUR V. BUSH; LORA V. BUSH;
CITIBANK, N.A., AS TRUSTEE FOR THE
REGISTERED HOLDERS OF THE PHHMC
MORTGAGE PASS-THROUGH
CERTIFICATE SERIES 2007-6; PHH
MORTGAGE CORPORATION; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.; DOES 1 through 10, inclusive; ROE
CORPORATIONS 1 through 10, inclusive,

15

Defendants.

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CITIBANK, N.A., AS TRUSTEE FOR THE
REGISTERED HOLDERS OF THE PHHMC
MORTGAGE PASS-THROUGH
CERTIFICATE SERIES 2007-6; PHH
MORTGAGE CORPORATION; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.;

20

Counterclaimants,

21

v.

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PHILIPPE LAURENT,

23

Counterdefendant.

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25

I. INTRODUCTION

26

Before the Court are three motions: Defendants PHH Mortgage Corporation (“PHH”),

27

CitiBank N.A. as Trustee for the Registered Holders of PHHMC Mortgage Pass-Through

28

Certificates 2007-6 (“CitiBank”), and Mortgage Electronic Registration Systems’ (“MERS”)

1 (collectively “Defendants”) motion for summary judgment , Plaintiff Phillippe Laurent’s motion
2 for summary judgment, and Defendants’ motion for leave to file a supplement to its motion for
3 summary judgment. ECF Nos. 69, 73, 84. For the following reasons, the Court denies
4 Defendants’ motions and grants Laurent’s motion.
5

6 **II. PROCEDURAL BACKGROUND**

7 Laurent sued Defendants on November 12, 2015 in state court, asserting a claim for
8 declaratory relief or to quiet title and a claim for a preliminary and permanent injunction. ECF
9 No. 1-1 at 3. Laurent seeks declaratory relief that a property he purchased at a nonjudicial
10 foreclosure sale was not subject to Plaintiffs’ deed of trust. The matter was removed to this
11 Court on December 30, 2015. ECF No. 1. Defendants answered the complaint on January 7,
12 2016 and asserted a counterclaim for unjust enrichment. ECF No. 5. Defendants amended the
13 answer and the counterclaims on August 9, 2016, adding claims for declaratory relief and for
14 quiet title. ECF No. 27.
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16
17 The matter was stayed and all pending motions were denied without prejudice on July 7,
18 2017, pending the Nevada Supreme Court’s decision on the certified question in SFR
19 Investments Pool 1, LLC v. Bank of New York Mellon, 422 P.3d 1248, 1251 (Nev. 2018). ECF
20 No. 58. The stay was lifted on November 21, 2018. ECF No. 66. Defendants now move for
21 summary judgment. ECF No. 69. A response and a reply were filed. ECF Nos. 72, 79. Laurent
22 also moves for summary judgment. ECF No. 73. A response was filed. ECF Nos. 78.
23

24 **III. Undisputed Facts**

25 The Court finds the following facts to be undisputed. On September 4, 2007, Arthur V.
26 Bush and Lora V. Bush purchased property at 2837 Maryland Hills Drive, Henderson, Nevada
27 89052 (the “property”) by obtaining a loan from PHH. The property sits in a neighborhood
28

1 governed by the Bella Vista Homeowners Association (“HOA”), which required the Bushes to
2 pay monthly assessments to the HOA. The loan was secured by a deed of trust that named MERS
3 as the nominee-beneficiary. MERS assigned the deed of trust to CitiBank on June 29, 2012.
4

5 The Bushes fell behind on their HOA assessments. Red Rock Financial Services (“Red
6 Rock”), as the HOA’s agent, recorded a lien for delinquent assessments against the property on
7 March 13, 2012. On May 22, 2012, Red Rock then recorded a notice of default and election to
8 sell pursuant to the lien for delinquent assessments. Red Rock recorded a notice of foreclosure
9 sale, setting a sale date of January 17, 2013, on December 27, 2012. Red Rock recorded the
10 notices pursuant to Chapter 116 of the Nevada Revised Statutes (“NRS”).
11

12 On August 14, 2013, a foreclosure deed was recorded against the property. The
13 foreclosure deed states that Red Rock, as the homeowners’ association’s agent, sold without
14 warranty “all of its rights, title and interest” in the property to Laurent for \$22,700 on May 15,
15 2013.
16

17 **IV. Disputed Facts**

18 The parties dispute only the legal consequences of the facts.

19 **V. LEGAL STANDARD**

20 Summary judgment is appropriate when the pleadings, depositions, answers to
21 interrogatories, and admissions on file, together with the affidavits, if any, show “that there is no
22 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
23 law.” Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322(1986). When
24 considering the propriety of summary judgment, the court views all facts and draws all
25 inferences in the light most favorable to the nonmoving party. Gonzalez v. City of Anaheim,
26 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the nonmoving party
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1 “must do more than simply show that there is some metaphysical doubt as to the material facts
2 Where the record taken as a whole could not lead a rational trier of fact to find for the
3 nonmoving party, there is no genuine issue for trial.” Scott v. Harris, 550 U.S. 372, 380 (2007)
4 (alteration in original) (internal quotation marks omitted). It is improper for the Court to resolve
5 genuine factual disputes or make credibility determinations at the summary judgment stage.
6 Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th Cir. 2017) (citations omitted).
7

8 **VI. DISCUSSION**

9 The Court considers the following issues in turn: (1) whether Defendants have standing
10 to assert a claim for declaratory relief to quiet title in the property; (2) whether Defendants’
11 claims are time-barred; (3) whether NRS Chapter 116, as it existed at the time, violated
12 Defendants’ procedural due process rights on its face; and (4) whether the HOA conveyed only
13 its lien interest, rather than the former homeowners’ title interest, to the property.
14

15 **a. Standing**

16 Laurent first argues that Defendants lacks standing to assert a claim for declaratory relief.
17 The Court disagrees.
18

19 Defendants have standing to bring their cause of action for declaratory relief to quiet title
20 because they assert an interest adverse to Plaintiff in the subject property. See Nev. Rev. Stat §
21 40.010 (“An action may be brought by any person against another who claims an estate or
22 interest in real property, adverse to the person bringing the action, for the purpose of determining
23 such adverse claim.”).
24

25 **b. Statute of Limitations**

26 Laurent next argues that Defendants’ claims are time barred. Laurent argues that the
27
28

1 statute of limitations began to run in 1991—the year in which NRS Chapter 116 was enacted.¹
2 Alternatively, Laurent argues the statute of limitations began to run on September 4, 2007, the
3 date on which the deed of trust was recorded against the property. The Court disagrees.
4

5 The Court find the statute of limitations began to run on the date of the foreclosure sale:
6 May 15, 2013. The Defendants answered Plaintiff’s complaint and asserted a counterclaim for
7 unjust enrichment on January 7, 2016, within three years from the foreclosure sale. The answer
8 and countercomplaint were amended to add counterclaims for quiet title and declaratory relief
9 on August 9, 2016, but the Court finds that the subsequent counterclaims relate back to the
10 original countercomplaint, as the amended countercomplaint adds no new parties and the newly
11 asserted counterclaims for quiet title and declaratory relief stem from the same event: the
12 foreclosure sale on May 15, 2013. Fed. R. Civ. P. 15 (c)(1)(B) (amended pleading may relate
13 back to original pleading when “amendment asserts a claim or defense that arose out of the
14 conduct, transaction, or occurrence set out . . . in the original pleading). Thus, the claims are not
15 time barred. See Bank of New York Mellon v. Mission Del Rey Homeowners Ass’n, No. 2:17-
16 cv-02173-RFB-GWF, 2019 WL 1442182, at *3 (D. Nev. Mar. 31, 2019) (applying a three-year
17 and a four-year statute of limitations to declaratory relief and quiet title claims involving
18 foreclosure sales conducted under NRS Chapter 116).
19
20

21 **c. Due Process**
22

23 The Court now turns to Defendants’ argument that NRS Chapter 116 violates their due
24 process rights facially and as-applied. Defendants raise several grounds for NRS Chapter 116’s
25 unconstitutionality. Defendants first argues that NRS Chapter 116 violated their due process
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27

28 ¹ Although the law was passed in 1991, it did not go into effect until 1992. A.B. 221, 1991
Leg. § 142 (“This act becomes effective on January 1, 1992”).

1 rights under Bourne Valley. Bourne Valley v. Wells Fargo Bank, NA, 832 F.3d 1154 (9th Cir.
2 2016) (holding that NRS Chapter 116 opt-in provisions violate due process on their face).
3 Defendants next argue that NRS Chapter 116 is unconstitutional because two provisions,
4 specifically NRS 116.31162 and NRS 116.31165, allow HOAs to foreclose without notifying a
5 deed of trust beneficiary when the HOA’s lien includes superpriority assessments and without
6 conducting a presale hearing. The Court addresses each of these arguments in turn.
7

8 The Court finds that NRS Chapter 116 does not facially violate the due process rights of
9 the defendants despite the Ninth Circuit’s decision in Bourne Valley, because NRS Chapter 116
10 incorporates the notice requirements of NRS Chapter 107. SFR Invs. Pool 1, LLC v. Bank of
11 New York Mellon, 422 P.3d 1248, 1253 (Nev. 2018). Ninth Circuit construction of state law is
12 only binding to the extent that there is no subsequent indication from the state court that the
13 interpretation was incorrect. Owen By & Through Owen v. United States, 713 F.2d 1461, 1464
14 (9th Cir. 1983). SFR was a subsequent state court decision indicating that the Ninth Circuit’s
15 construction of NRS Chapter 116 was incorrect. The Ninth Circuit has recently confirmed that
16 NRS 116 is not facially unconstitutional for this reason. See Bank of America, N.A. v. Arlington
17 West Twilight Homeowner Association, 920 F.3d 620, 624 (9th Cir. 2019) (“In light of [SFR] . .
18 . we conclude that Nev. Rev. Stat. § 116.3116 et seq is not facially unconstitutional on the basis
19 of an impermissible opt-in notice scheme.”). However, to the extent that Bourne Valley’s finding
20 that NRS Chapter 116 constitutes state action remains good law, the Court shall consider
21 Defendants’ remaining due process arguments.
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25 The Court also finds that NRS Chapter 116 does not violate Defendants’ due process
26 rights for failing to notify the deed of trust beneficiary as to whether or not the HOA lien
27 assessments include the superpriority portions of the lien. As this Court has previously explained
28

1 in CitiMortgage, Inc. v. Help for Homeowners, Inc., due process is not offended by requiring a
2 person with actual, timely knowledge of an event that may affect a right to take steps to preserve
3 that right. No. 2:17-cv-02738-RFB-VCF, 2019 WL 1446960, at * 3 (D. Nev. Mar. 31, 2019)
4 (citing In re Medaglia, 52 F.3d 451, 455 (2d Cir. 1995)). The Court thus rejects Defendants’
5 argument that the versions of NRS 116.31162 and NRS 116.31165 in effect at the time facially
6 violated due process.
7

8 The Court next finds that NRS Chapter 116 did not violate the due process rights of
9 Defendants for failure to require a presale hearing. While it is true that “[o]rdinarily, due process
10 of law requires an opportunity for ‘some kind of hearing’ prior to the deprivation of a significant
11 property interest,” the Ninth Circuit has recognized that a hearing is not always required to
12 satisfy procedural due process. Samson v. City of Bainbridge Island 683 F.3d 1051, 1060 (9th
13 Cir. 2012) (internal citations omitted). The Ninth Circuit explained that “[w]hen the action is
14 legislative in nature, due process is satisfied when the legislative body performs its
15 responsibilities in the normal manner prescribed by law.” Id. at 1060. The Court finds that in
16 passing NRS Chapter 116, and by incorporating the notice provisions of NRS 107, the Nevada
17 legislature was performing its responsibilities in the normal manner prescribed by law. This
18 legislative action created a nonjudicial foreclosure process. The statutory scheme here requires
19 notice to lienholders such as the Defendants here before a foreclosure sale can be commenced.
20 SFR, 422 P.3d at 1253. Such lienholders thus have sufficient notice to be able to seek
21 appropriate judicial intervention in this nonjudicial foreclosure process. See In re Medaglia, 52
22 F.3d at 455 (noting that due process is not offended by requiring a party with sufficient notice to
23 take appropriate action to preserve its property interest). The Court finds that the acceptance of
24 Defendants’ argument would essentially require this Court to redraft Chapter 116 and convert it
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1 from a nonjudicial foreclosure scheme to a judicial foreclosure scheme. The Court declines to
2 engage in such legislative redrafting. The Court finds that the statutory scheme of NRS Chapter
3 116 did not violate Defendants’ due process rights by failing to require a presale hearing.
4

5 Moreover, the Court also reiterates that the Ninth Circuit has analyzed the foreclosure
6 scheme under Chapter 116 and found that it does not violate due process. Arlington West
7 Twilight Homeowner Association, 920 F.3d at 624.

8 **d. Substantial Compliance with NRS 116.31164(3)**

9 Defendants next argue that the foreclosure deed conveyed to Laurent failed to comply
10 with NRS 116.31164(3). The version of NRS 116.31164(3) in effect at the time of the sale
11 stated:
12

13 “After the sale, the person conducting the sale shall: (a) Make, execute and, after payment
14 is made, deliver to the purchaser, or his or her successor or assign, a deed without warranty
15 which conveys to the grantee all title of the unit's owner to the unit; (b) Deliver a copy of
16 the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or
17 his or her successor or assign; and (c) Apply the proceeds of the sale for the following
18 purposes in the [order provided for within the statutory scheme].” NRS 116.31164(3)
(emphasis added).

19 The foreclosure deed in this matter states that the HOA “does hereby grant and convey, but
20 without warranty expressed or implied to [Laurent] . . . all its right, title and interest” to the property
21 to Laurent. Defendants thus argue that because the foreclosure deed did not specify that it conveyed
22 all of the “unit owner’s” rights, rather than its own right, title, and interest, it conveyed only its
23 lien interest in the property.

24 The question for the Court thus becomes whether NRS 116.31164(3) required strict
25 compliance or substantial compliance. When determining whether a provision requires substantial
26 or strict compliance, the Court must “look to the language used and policy and equity
27 considerations.” Saticoy Bay LLC Series 9050 W Warm Springs 2079 v. Nevada Ass’n Servs.,
28

1 444 P.3d 428, 434 (Nev. 2019) (internal citations omitted). As a general rule, the Nevada Supreme
2 Court provides that “time and manner” requirements are strictly construed, while substantial
3 compliance is sufficient for “form and content requirements.” Id. (internal citations omitted).
4 Moreover, substantial compliance “may be sufficient to avoid harsh, unfair, or absurd
5 consequences.” Id. (internal citations and alterations omitted).
6

7 The Nevada Supreme Court has further explained that “time and manner” requirements
8 “refer to when performance must take place and the way in which the deadline must be met.”
9 Pawlik v. Shyang-Fenn Deng, 412 P.3d 68, 73 (Nev. 2018) (internal citations omitted). By
10 contrast, manner and form requirements “dictate who must take action and what information that
11 party is required to provide.” Id. (internal citations omitted). The Court finds that the language of
12 NRS 116.31164(3) was a form and content provision, because it required that the HOA take action
13 and dictated the information that must be included in the deed of trust conveyed to the buyer.
14 Compliance with NRS 116.31164(3)’s content requirements may therefore be satisfied by
15 substantial compliance.
16
17

18 The Court finds that the HOA substantially complied with NRS 116.31164(3)’s
19 requirements. Defendants proffer no evidence that the HOA or Laurent understood the foreclosure
20 deed to be conveying anything less than the title interest of the former homeowner. There are no
21 other “units” at issue or even under consideration. The deed thus could only be referencing the
22 subject property in this case. It would be a harsh and unfair consequence to Laurent to find that
23 the foreclosure deed only conveyed the HOA’s lien interest absent any affirmative indication from
24 the HOA or Laurent that that was their intent and based upon the failure to include in the deed a
25 few words that were not necessary to clarify what property was at issue.
26
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1 Finally, the Court could not locate any specific legislative history that specifically discusses
2 the intent behind the language of the NRS 116.31164(3). But the Court does note that the Nevada
3 legislature states that “[t]he remedies provided by Chapter 116 must be liberally administered to
4 the end that the aggrieved party is put in as good a position as if the other party had fully
5 performed.” Nev. Rev. Stat. § 116.1114. The Court finds that the only reasonable readings as to
6 the aggrieved parties that NRS 116.31164(3) seeks to protect are the HOA and the prospective
7 purchaser, not any of the defendants. This further supports a finding of substantial compliance in
8 this case. Thus, the Court finds that based on the language and intent of the NRS Chapter 116
9 statutory scheme, the HOA, through its agent, substantially complied with NRS 116.31164(3) and
10 properly conveyed the unit owner’s title to Laurent.
11

12
13 **VII. CONCLUSION**

14 **IT IS THEREFORE ORDERED** that [69] motion for summary judgment is DENIED.

15 **IT IS FURTHER ORDERED** that [73] motion for summary judgment is GRANTED.

16 The Court finds in favor of Philippe Laurent on his quiet title claim. The Court thus declares that
17 the foreclosure sale extinguished the first deed of trust and that Philippe Laurent acquired title to
18 the property free and clear of the deed of trust. Because this declaration is dispositive of the matter,
19 the Court dismisses the remaining claims and counterclaims.

20 **IT IS FURTHER ORDERED** that [84] motion for leave to file supplemental briefing is
21 denied as moot.

22 **IT IS FURTHER ORDERED** that the Court of the Clerk is instructed to enter judgment
23 and close this case accordingly.
24

25 DATED: September 29, 2019.

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27 

28 **RICHARD F. BOULWARE, II**
UNITED STATES DISTRICT JUDGE