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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

THE BANK OF NEW YORK MELLON,  
FKA THE BANK OF NEW YORK as  
Trustee for the CERTIFICATEHOLDERS  
CWALT, INC. ALTERNATIVE LOAN  
TRUST 2005-J12 MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES  
2005-J12,

Case No. 2:16-cv-00383-MMD-NJK

ORDER

Plaintiffs,

v.

IMAGINATION NORTH LANDSCAPE  
MAINTENANCE ASSOCIATION; SFR  
INVESTMENTS POOL 1, LLC; and  
ALESSI & KOENIG, LLC,

Defendants.

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SFR INVESTMENTS POOL 1, LLC,

Counter/Cross Claimant,

v.

BANK OF NEW YORK MELLON, FKA  
THE BANK OF NEW YORK as Trustee  
for the CERTIFICATEHOLDERS CWALT,  
INC. ALTERNATIVE LOAN TRUST 2005-  
J12 MORTGAGE PASS-THROUGH  
CERTIFICATES SERIES 2005-J12;  
BANK OF AMERICA, N.A.; and JULIE A.  
CHRISTENSEN, an individual,

Counter/Cross Defendants.

1 JULIE CHRISTENSEN,  
2 Counter/Cross Claimant,  
3 v.  
4 BANK OF NEW YORK MELLON, FKA  
5 THE BANK OF NEW YORK as Trustee  
6 for CERTIFICATE HOLDERS CWALT,  
7 INC. ALTERNATIVE LOAN TRUST 2005-  
8 J12 MORTGAGE PASS-THROUGH  
9 CERTIFICATES SERIES 2005-J12;  
10 ALESSI & KOENIG, LLC, a Nevada  
11 Limited Liability Company; IMAGINATION  
12 NORTH LANDSCAPE MAINTENANCE  
13 ASSOCIATION, a Domestic Non-Profit  
14 Cooperation Corporation; SFR  
15 INVESTMENT POOLS 1, LLC, a Nevada  
16 Limited Liability Company; BANK OF  
17 AMERICA, N.A.; DOES 1-10; and ROES  
18 1- 10,  
19 Counter/Cross Defendants.

14 **I. SUMMARY**

15 This dispute arises from the foreclosure sale of property to satisfy a homeowners'  
16 association lien. Before the Court are the following motions: (1) Plaintiff Bank of New York  
17 Mellon's ("BONY") motion for reconsideration (ECF No. 141); (2) BONY's motion for  
18 summary judgment (ECF No. 144); (3) Defendant Imagination North Landscape  
19 Maintenance Association's ("HOA") motion for summary judgment (ECF Nos. 149, 154  
20 (errata)); and (4) Defendant SFR Investments Pool 1, LLC's ("SFR") motion for summary  
21 judgment (ECF No. 152). The Court has reviewed the responses (ECF Nos. 142, 158,  
22 159, 160) and replies (ECF Nos. 157, 161, 162) thereto. For the following reasons, the  
23 Court denies BONY's motion for reconsideration and grants the three motions for  
24 summary judgment.

25 **II. BACKGROUND**

26 The following facts are undisputed unless otherwise indicated.

27 Julie Christensen ("Borrower") purchased real property ("Property") located within  
28 the HOA at 3136 Extravagant Avenue, North Las Vegas, Nevada 89031 on July 18, 2005.

1 (ECF No. 144-1 at 2-4, 16.) The Borrower financed the purchase with a \$223,992 loan  
2 (“Loan”) evidenced by a note (“Note”) and secured by a first deed of trust (“DOT”) on the  
3 Property. (Id. at 2.) The DOT was assigned to BONY in May 2011. (ECF No. 144-2 at 2.)

4 The HOA recorded the following notices through its agent Alessi & Koenig, LLC  
5 (“Alessi”): (1) notice of delinquent assessment on June 3, 2011 (ECF No. 144-4 at 2); (2)  
6 notice of default and election to sell on August 29, 2011 (ECF No. 144-5 at 2); and (3)  
7 notice of trustee’s sale on March 20, 2012 (ECF No. 144-6 at 2).

8 The HOA foreclosed on the Property and sold it to SFR in July 2012 (“HOA Sale”)  
9 for \$3,300. (ECF No. 144-12 at 2.)

10 The Court previously resolved BONY and SFR’s claims and counterclaims. (See  
11 ECF No. 136 at 9-10.) But most of the Borrower’s counterclaims and crossclaims remain  
12 pending before the Court: (1) violation of the Fair Debt Collection Practices Act  
13 (“FDCPA”), 15 U.S.C. § 1692 et seq., against Alessi and the HOA; (2) wrongful  
14 foreclosure against Alessi and the HOA; (3) violation of Nevada Unfair Trade Practices  
15 Act (“NUPTA”), NRS § 598A.060(1)(a)(12), against Alessi, the HOA, and SFR; (4) false  
16 representation against Alessi, the HOA, and BONY; (5) breach of contract against the  
17 HOA; (6) crimes against property under NRS Chapter 205 against all Defendants; (7)  
18 negligence against Alessi, the HOA, Bank of America, N.A. (“BANA”), and BONY; (8)  
19 breach of contract/fiduciary duty against BANA and BONY; (9) slander of title/quiet title  
20 against Alessi, BONY, the HOA;<sup>1</sup> and (10) intentional infliction of emotional distress  
21 (“IIED”) against Alessi and the HOA. (ECF No. 34 at 14-28.)

### 22 **III. BONY’S MOTION FOR RECONSIDERATION (ECF NO. 141)**

#### 23 **A. Legal Standard**

24 A motion to reconsider must set forth “some valid reason why the court should  
25 reconsider its prior decision” and set “forth facts or law of a strongly convincing nature to  
26 persuade the court to reverse its prior decision.” *Frasure v. United States*, 256 F. Supp.

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<sup>1</sup>The Court previously granted summary judgment in favor of SFR on this claim.  
(ECF No. 136 at 9-10.)

1 2d 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court “(1) is  
2 presented with newly discovered evidence, (2) committed clear error or the initial decision  
3 was manifestly unjust, or (3) if there is an intervening change in controlling law.” Sch. Dist.  
4 No. 1J v. AC&S, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993). “A motion for reconsideration is  
5 not an avenue to re-litigate the same issues and arguments upon which the court already  
6 has ruled.” Brown v. Kinross Gold, U.S.A., 378 F. Supp. 2d 1280, 1288 (D. Nev. 2005).

## 7 **B. Discussion**

8 BONY first argues that it is entitled to reconsideration because the Nevada  
9 Supreme Court recently affirmed a lower court’s decision that a limited purpose  
10 association’s foreclosure sale did not extinguish the deed of trust connected to the  
11 property. (ECF No. 141 at 4-6 (citing Saticoy Bay LLC Series 4500 Pac. Sun v. Lakeview  
12 Loan Servicing, LLC (“Pacific Sun”), 441 P.3d 81 (Nev. 2019)).) But Pacific Sun has  
13 nothing to do with waiver. This Court found that BONY waived its arguments based on  
14 the HOA’s status as a limited purpose association. (ECF No. 136 at 5-8.) Accordingly, the  
15 Court rejects BONY’s first argument.

16 BONY next argues that it is entitled to reconsideration because SFR failed to meet  
17 its burden of establishing that the HOA foreclosed a superpriority lien. (ECF No. 141 at  
18 2.) But BONY relies exclusively on the HOA’s status as a limited purpose association.  
19 (See *id.* at 6-11.) BONY waived this argument. (ECF No. 136 at 5-8.) Accordingly, the  
20 Court rejects BONY’s second argument and denies BONY’s motion for reconsideration.

## 21 **IV. BONY’S MOTION FOR SUMMARY JUDGMENT (ECF NO. 144)**

22 The Borrower asserts the following counterclaims against BONY: (1) false  
23 representation; (2) crimes against property under NRS Chapter 205; (3) negligence; (4)  
24 breach of contract/fiduciary duty; and (5) slander of title/quiet title.<sup>2</sup> (ECF No. 34 at 18,  
25 21-22, 24, 26.) BONY argues that it is entitled to summary judgment because these

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26  
27 <sup>2</sup>BONY argues that the Borrower does not claim a violation of NRS Chapter 205  
28 against BONY based on the lack of supporting allegations in the counterclaim. (ECF No.  
144 at 9.) To the extent that the Borrower intended to assert this claim against BONY, it  
is dismissed as time-barred. See *infra* Section VI(F).

1 counterclaims are premised on a duty that BONY did not have—a duty to cure the  
2 Borrower’s HOA payment default. (ECF No. 144 at 5-9.) The Borrower has not cited any  
3 authority or adduced any evidence to show that BONY owed her a duty to cure her HOA  
4 payment default. (See ECF No. 160 at 5-6.) Accordingly, the Court grants summary  
5 judgment in favor of BONY on the Borrower’s counterclaims, except for the claim under  
6 NRS Chapter 205, which is dismissed as time-barred. See *infra* Section VI(F).

7 **V. CLAIMS AGAINST BANA**

8 The Borrower asserts the following claims against BANA: (1) crimes against  
9 property under NRS Chapter 205; (2) negligence; and (3) breach of contract. (See ECF  
10 No. 34 at 14-28.) The Court dismisses the first claim against BANA as time-barred. See  
11 *infra* Section VI(F). The Court grants summary judgment in favor of BANA on the second  
12 two claims for the same reasons the Court granted summary judgment in favor of BONY  
13 on these claims.

14 **VI. THE HOA’S MOTION FOR SUMMARY JUDGMENT (ECF NO. 149)**

15 The Borrower asserts the following claims against the HOA: (1) violation of the  
16 FDCPA; (2) wrongful foreclosure; (3) violation of the NUPTA; (4) false representation; (5)  
17 breach of contract; (6) crimes against property under NRS Chapter 205; (7) negligence;  
18 (8) slander of title/quiet title; and (9) IIED. (ECF No. 34 at 14-28.)

19 **A. FDCPA**

20 The HOA argues that the FDCPA claim is time-barred. (ECF No. 149 at 6-7.) The  
21 Borrower does not address this argument. (See ECF No. 160 at 7-9.) The relevant statute  
22 of limitations provides for FDCPA actions to be brought “within one year from the date on  
23 which the violation occurs.” 15 U.S.C. § 1692k(d); see also *Mangum v. Action Collection*  
24 *Serv., Inc.*, 575 F.3d 935, 939 (9th Cir. 2009). Accordingly, the Court dismisses the  
25 Borrower’s FDCPA claim as time-barred.

26 **B. Wrongful Foreclosure**

27 The HOA argues that it is entitled to summary judgment on the Borrower’s wrongful  
28 foreclosure claim because the HOA was permitted to enforce a lien by foreclosure. (ECF

1 No. 149 at 8.) The Borrower argues that the liens were illegal because they exceeded  
2 nine months of assessments and because she tendered payments greater than the  
3 superpriority amount. (ECF No. 160 at 7.) The Borrower's first argument is inconsistent  
4 with the plain language of NRS § 116.3116(1) at the time, which allowed for HOAs to  
5 enforce liens consisting of any delinquent assessments owed plus fees, costs, fines, and  
6 interest. While it is true that the superpriority portion of the lien could only consist of nine  
7 months of assessments and nuisance and maintenance abatement fees, the HOA was  
8 entitled to foreclose on more than just the superpriority amount. See *Bank of Am., N.A. v.*  
9 *SFR Invs. Pool 1, LLC*, 427 P.3d 113, 117 (Nev. 2018), as amended on *denial of reh'g*  
10 (Nov. 13, 2018). The superpriority amount is only relevant to the extent that a tender of  
11 the superpriority amount might have preserved BONY's first deed of trust. Even if the  
12 Borrower tendered the superpriority amount, the HOA still could have foreclosed on the  
13 remainder of the lien. Thus, the Borrower's second argument also is unpersuasive. The  
14 Borrower has argued and shown only that she paid some money toward the superpriority  
15 amount. (See, e.g., ECF No. 34 at 14; ECF No. 34-1 at 67-72.) The Borrower has not  
16 argued or adduced evidence that she paid the lien in full. Accordingly, the Court grants  
17 summary judgment in favor of the HOA on the Borrower's wrongful foreclosure claim.

### 18 **C. NUPTA**

19 The HOA argues that it is entitled to summary judgment on the Borrower's claim  
20 for violation of the NUPTA because "the record shows that the foreclosure sale was  
21 publicly noticed and held, and the sale price was equivalent to the amount owed under  
22 [the HOA's] lien . . . . As such, the sale operated as intended, and the highest bidder  
23 obtained a deed without warranty." (ECF No. 149 at 8-9.) The Borrower argues that the  
24 HOA engaged in bid rigging because the sale price was low (only \$98 more than the  
25 opening bid amount of \$3,202.72), and because the HOA foreclosed on a subpriority lien  
26 rather than a superpriority lien. (ECF No. 160 at 8-9.) A rational trier of fact could not infer  
27 that bid rigging occurred based solely on these allegations. The Borrower's conjecture  
28 and speculation that bid rigging caused the low sale price is insufficient to raise a genuine

1 issue of material fact. And whether the HOA foreclosed on a subpriority lien or  
2 superpriority lien is irrelevant to the issue of bid rigging. Accordingly, the Court grants  
3 summary judgment in favor of the HOA on the Borrower's wrongful foreclosure claim.

4 **D. False Representation**

5 The HOA argues that the Borrower's claim for false representation is time-barred  
6 under the three-year statute of limitations for fraud. (ECF No. 149 at 9 (citing NRS §  
7 11.190(3)(d)).) The Borrower does not address this argument. (See ECF No. 160 at 8-9.)  
8 Accordingly, the Court dismisses the Borrower's false representation claim as time-  
9 barred.

10 **E. Breach of Contract**

11 The Borrower claims that the HOA breached the CC&Rs by allowing Alessi to  
12 proceed with foreclosure without the board first voting on such action. (ECF No. 34 at  
13 paragraph 18.) The HOA argues that it is entitled to summary judgment because the  
14 CC&Rs did not obligate the HOA's board to vote before the foreclosure. (ECF No. 149 at  
15 10.) The Borrower does not address this argument to dispute the evidence that the HOA  
16 offered. Accordingly, the Court grants summary judgment in favor of the HOA on its  
17 breach of contract claim.

18 **F. NRS Chapter 205 – Crimes Against Property**

19 The HOA argues that the Borrower's claim for violation of NRS Chapter 205 is  
20 time-barred under the three-year statute of limitations for liability created by statute. (ECF  
21 No. 149 at 10-11 (citing NRS § 11.190(3)(a)).) The Borrower does not address this  
22 argument. (See ECF No. 160 at 8-9.) Accordingly, the Court dismisses the Borrower's  
23 claim for violation of NRS Chapter 205 as time-barred.<sup>3</sup>

24 **G. Negligence and/or Negligence Per Se**

25 The HOA argues that the Borrower's negligence claims are time-barred because  
26 claims for negligence expire after two years. (ECF No. 149 at 11 (citing NRS §  
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28 <sup>3</sup>The Court dismisses this claim as time-barred to the extent it is asserted against  
other Defendants.

1 11.190(4)(e).) The Borrower does not address this argument. (ECF No. 160 at 8-9.)  
2 Accordingly, the Court dismisses the Borrower's negligence claims as time-barred.

3 **H. Slander of Title/Quiet Title**

4 This Court applies a five-year statute of limitations to quiet title claims. See Bank  
5 of Am., N.A. v. Woodcrest Homeowners Ass'n, No. 2:15-cv-01193-MMD-GWF, 2019 WL  
6 1114872, at \*3 (D. Nev. Mar. 11, 2019) (citing NRS § 11.070). Accordingly, the Borrower's  
7 claim is not time-barred as the HOA argues. (See ECF No. 149 at 12.)

8 Nevertheless, the HOA argues that it is entitled to summary judgment because  
9 "nothing in the record indicates that the pre-foreclosure notices contained any false or  
10 disparaging statements, or that [the HOA or Alessi] acted with malice in their recording  
11 against the Property." (Id.) The Borrower does not address this argument or offer any  
12 evidence to create a genuine issue of material fact. (ECF No. 160 at 9.) Accordingly, the  
13 Court grants summary judgment in favor of the HOA on the Borrower's claim for slander  
14 of title/quiet title.

15 **I. IIED**

16 The HOA argues that it is entitled to summary judgment on the Borrower's IIED  
17 claim because it "is premised on the same allegations concerning the payment plan and  
18 inappropriate lien amounts that are unsubstantiated by the record and the law." (ECF No.  
19 149 at 12.) The Borrower does not address this argument. (ECF No. 160 at 8-9.)  
20 Accordingly, the Court grants summary judgment in favor of the HOA on the Borrower's  
21 IIED claim.

22 In sum, the Court grants summary judgment in favor of the HOA on the Borrower's  
23 claims for wrongful foreclosure, violation of the NUPTA, breach of contract, slander of  
24 title/quiet title, and IIED. The Court dismisses the claims for violation of the FDCPA, false  
25 representation, crimes against property under NRS Chapter 205, and negligence as time-  
26 barred.

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1 **VII. CLAIMS AGAINST ALESSI**

2 The Borrower asserts the following claims against Alessi: (1) violation of the  
3 FDCPA; (2) wrongful foreclosure; (3) violation of the NUPTA; (4) false representation; (5)  
4 crimes against property under NRS Chapter 205; (6) negligence; (7) slander of title/quiet  
5 title; and (8) IIED. (See ECF No. 34 at 14-28.) Alessi filed a notice of bankruptcy in this  
6 case. (ECF No. 72.) The notice indicates that the automatic stay has been lifted. (Id. at  
7 1-2.) The reasoning for granting summary judgment in favor of the HOA on the claims for  
8 wrongful foreclosure, violation of the NUPTA, slander of title/quiet title, and IIED apply  
9 with equal force to the claims against Alessi. Accordingly, the Court grants summary  
10 judgment in favor of Alessi on these claims. The reasoning for dismissing the claims  
11 against the HOA for violation of the FDCPA, false representation, crimes against property  
12 under NRS Chapter 205, and negligence also apply with equal force to the claims against  
13 Alessi. Accordingly, the Court dismisses these claims against Alessi as time-barred.

14 **VIII. SFR'S MOTION FOR SUMMARY JUDGMENT (ECF NO. 152)**

15 The Borrower asserts the following claims against SFR: (1) violation of the NUPTA;  
16 (2) crimes against property under NRS Ch. 205; and (3) slander of title/quiet title. (ECF  
17 No. 34 at 14-28.) The Court already granted summary judgment in favor of SFR on the  
18 Borrower's third counterclaim (ECF No. 136 at 9-10), and the Court dismisses the second  
19 claim as time-barred, see supra Section VI(F). The Court grants summary judgment in  
20 favor of SFR on the Borrower's NUPTA claim for the same reasons described above, see  
21 supra Section VI(C).

22 **IX. CONCLUSION**

23 The Court notes that the parties made several arguments and cited to several  
24 cases not discussed above. The Court has reviewed these arguments and cases and  
25 determines that they do not warrant discussion as they do not affect the outcome of the  
26 motions before the Court.

27 It is therefore ordered that BONY's motion for reconsideration (ECF No. 141) is  
28 denied.

1           It is further ordered that BONY’s motion for summary judgment (ECF No. 144) is  
2 granted. The Court grants summary judgment in favor of BONY on the Borrower’s  
3 counterclaims. To the extent that the Borrower intended to claim a violation of NRS  
4 Chapter 205 against BONY, that claim is dismissed as time-barred.

5           It is further ordered that summary judgment is granted in favor of BANA on the  
6 Borrower’s claims for negligence and breach of contract. The Court dismisses the  
7 Borrower’s claim against BANA for crimes against property under NRS Chapter 205 as  
8 time-barred.

9           It is further ordered that the HOA’s motion for summary judgment (ECF No. 149)  
10 is granted. The Court grants summary judgment in favor of the HOA on the Borrower’s  
11 crossclaims for wrongful foreclosure, violation of the NUPTA, breach of contract, slander  
12 of title/quiet title, and IIED. The Court dismisses the claims against the HOA for violation  
13 of the FDCPA, false representation, crimes against property under NRS Chapter 205, and  
14 negligence as time-barred.

15           It is further ordered that summary judgment is granted in favor of Alessi on the  
16 Borrower’s claims for wrongful foreclosure, violation of the NUPTA, slander of title/quiet  
17 title, and IIED. The Court dismisses the claims against Alessi for violation of the FDCPA,  
18 false representation, crimes against property under NRS Chapter 205, and negligence as  
19 time-barred.

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It is further ordered that SFR's motion for summary judgment (ECF No. 152) is granted. The Court grants summary judgment in favor of SFR on the Borrower's crossclaim for violation of the NUPTA. The Court dismisses the claim for violation of NRS Chapter 205 as time-barred.

The Clerk of the Court is instructed to enter judgment accordingly and close this case.

DATED THIS 24<sup>th</sup> day of September 2019.

  
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MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE