

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CHRISTIANA TRUST, et al.,	Plaintiff(s),
v.	
SFR INVESTMENTS POOL 1, LLC, et al.,	Defendant(s).

Case No. 2:16-CV-1226 JCM (GWF)

ORDER

Presently before the court is plaintiff Christiana Trust, a division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as trustee of ARLP Trust 2’s (“Christiana Trust”) motion for summary judgment. (ECF No. 49). Defendants Mandolin Homeowners Association (the “HOA”) (ECF No. 59) and SFR Investments Pool 1, LLC (“SFR”) (ECF No. 60) filed their responses, to which Christiana Trust replied (ECF Nos. 62, 64).

Also before the court is SFR’s motion for summary judgment. (ECF No. 51). The HOA (ECF No. 57) and Christiana Trust (ECF No. 58) filed responses, to which SFR replied (ECF No. 66).

Also before the court is the HOA’s motion for summary judgment. (ECF No. 52). Christiana Trust filed a response (ECF No. 56), to which the HOA replied (ECF No. 65).

I. Facts

This case involves a dispute over real property located at 7604 Brisa Del Mar Avenue, Las Vegas, Nevada 89179 (the “property”).

On April 11, 2007, the Flaherty Trust obtained a loan from Bank of America, N.A. (“BANA”) in the amount of \$219,173.00 to purchase the property, which was secured by a deed of trust recorded on April 12, 2007. (ECF No. 1 at 4–5).

James C. Mahan
U.S. District Judge

1 On February 18, 2011, defendant Nevada Association Services, Inc. (“NAS”), acting on
2 behalf of the HOA, recorded a notice of delinquent assessment lien, stating an amount due of
3 \$1,036.00. (ECF No. 1 at 5). On April 11, 2011, NAS recorded a notice of default and election
4 to sell to satisfy the delinquent assessment lien, stating an amount due of \$2,088.90. (ECF No. 1
5 at 6). On December 17, 2012, NAS recorded a notice of trustee’s sale, stating an amount due of
6 \$6,389.57. (ECF No. 1 at 6–7).

7 On January 11, 2013, SFR purchased the property at the foreclosure sale for \$9,000.00.
8 (ECF No. 1 at 7). A trustee’s deed upon sale in favor of SFR was recorded on September 9, 2013.
9 (ECF No. 1 at 6).

10 After the foreclosure sale extinguished the deed of trust, it was assigned to Christiana Trust
11 via an assignment of deed of trust recorded May 23, 2014. (ECF No. 1 at 5).

12 On June 2, 2016, Christiana Trust filed the underlying complaint against SFR, the HOA,
13 NAS, and Michael Flaherty as trustee of the Andrew M. Flaherty Living Trust dated August 12,
14 1994, alleging four causes of action: (1) quiet title/declaratory judgment against all defendants; (2)
15 breach of NRS 116.1113 against NAS and the HOA; (3) wrongful foreclosure against NAS and
16 the HOA; and (4) unjust enrichment against SFR, the HOA, and NAS. (ECF No. 1).

17 On February 17, 2017, this court dismissed Christiana Trust’s second and third causes of
18 action. (ECF No. 41). Christiana Trust voluntarily withdrew its fourth cause of action, which was
19 also dismissed on February 17, 2017. (ECF No. 41). Thus, Christiana Trust’s quiet
20 title/declaratory relief claim remains.

21 On that same date, SFR filed a counter/crossclaim for quiet title and injunctive relief. (ECF
22 No. 42).

23 In the instant motions, Christiana Trust, SFR, and the HOA all move for summary
24 judgment in their favor. (ECF Nos. 49, 51, 52). The court will address each as it sees fit.

25 **II. Legal Standard**

26 The Federal Rules of Civil Procedure allow summary judgment when the pleadings,
27 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,
28 show that “there is no genuine dispute as to any material fact and the movant is entitled to a

1 judgment as a matter of law.” Fed. R. Civ. P. 56(a). A principal purpose of summary judgment is
2 “to isolate and dispose of factually unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317,
3 323–24 (1986).

4 For purposes of summary judgment, disputed factual issues should be construed in favor
5 of the non-moving party. *Lujan v. Nat’l Wildlife Fed.*, 497 U.S. 871, 888 (1990). However, to be
6 entitled to a denial of summary judgment, the nonmoving party must “set forth specific facts
7 showing that there is a genuine issue for trial.” *Id.*

8 In determining summary judgment, a court applies a burden-shifting analysis. The moving
9 party must first satisfy its initial burden. “When the party moving for summary judgment would
10 bear the burden of proof at trial, it must come forward with evidence which would entitle it to a
11 directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has
12 the initial burden of establishing the absence of a genuine issue of fact on each issue material to
13 its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000)
14 (citations omitted).

15 By contrast, when the nonmoving party bears the burden of proving the claim or defense,
16 the moving party can meet its burden in two ways: (1) by presenting evidence to negate an essential
17 element of the non-moving party’s case; or (2) by demonstrating that the nonmoving party failed
18 to make a showing sufficient to establish an element essential to that party’s case on which that
19 party will bear the burden of proof at trial. See *Celotex Corp.*, 477 U.S. at 323–24. If the moving
20 party fails to meet its initial burden, summary judgment must be denied and the court need not
21 consider the nonmoving party’s evidence. See *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–
22 60 (1970).

23 If the moving party satisfies its initial burden, the burden then shifts to the opposing party
24 to establish that a genuine issue of material fact exists. See *Matsushita Elec. Indus. Co. v. Zenith*
25 *Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute, the
26 opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient
27 that “the claimed factual dispute be shown to require a jury or judge to resolve the parties’ differing
28

1 versions of the truth at trial.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626,
2 631 (9th Cir. 1987).

3 In other words, the nonmoving party cannot avoid summary judgment by relying solely on
4 conclusory allegations that are unsupported by factual data. See *Taylor v. List*, 880 F.2d 1040,
5 1045 (9th Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
6 pleadings and set forth specific facts by producing competent evidence that shows a genuine issue
7 for trial. See *Celotex*, 477 U.S. at 324.

8 At summary judgment, a court’s function is not to weigh the evidence and determine the
9 truth, but to determine whether there is a genuine issue for trial. See *Anderson v. Liberty Lobby,*
10 *Inc.*, 477 U.S. 242, 249 (1986). The evidence of the nonmovant is “to be believed, and all
11 justifiable inferences are to be drawn in his favor.” *Id.* at 255. But if the evidence of the
12 nonmoving party is merely colorable or is not significantly probative, summary judgment may be
13 granted. See *id.* at 249–50.

14 **III. Discussion**

15 As an initial matter, claim (2) of SFR’s counter/crossclaim (ECF No. 42) will be dismissed
16 without prejudice as the court follows the well-settled rule in that a claim for “injunctive relief”
17 standing alone is not a cause of action. See, e.g., *In re Wal-Mart Wage & Hour Emp’t Practices*
18 *Litig.*, 490 F. Supp. 2d 1091, 1130 (D. Nev. 2007); *Tillman v. Quality Loan Serv. Corp.*, No. 2:12-
19 CV-346 JCM RJJ, 2012 WL 1279939, at *3 (D. Nev. Apr. 13, 2012) (finding that “injunctive relief
20 is a remedy, not an independent cause of action”); *Jensen v. Quality Loan Serv. Corp.*, 702 F.
21 Supp. 2d 1183, 1201 (E.D. Cal. 2010) (“A request for injunctive relief by itself does not state a
22 cause of action.”).

23 Further, the court takes judicial notice of the following recorded documents: the first deed
24 of trust (ECF No. 50, exh. B); the assignments of deed of trust (ECF No. 50, exhs. W, X); the
25 notice of delinquent assessment (ECF No. 50, exh. K); the notice of default and election to sell
26 (ECF No. 50, Exh. M); the notice of trustee’s sale (ECF No. 50, exh. P); and the trustee’s deed
27 upon sale (ECF No. 50, exh. A). See, e.g., *United States v. Corinthian Colls.*, 655 F.3d 984,
28 998–99 (9th Cir. 2011) (holding that a court may take judicial notice of public records if the facts

1 noticed are not subject to reasonable dispute); *Intri-Plex Tech v. Crest Grp., Inc.*, 499 F.3d 1048,
2 1052 (9th Cir. 2007).

3 In SFR’s motion, it contends that summary judgment in its favor is proper because, inter
4 alia, the foreclosure sale extinguished Christiana Trust’s deed of trust pursuant to NRS 116.3116
5 and SFR Investments. (ECF No. 51). SFR further contends that the foreclosure sale should not be
6 set aside because Christiana Trust has not shown fraud, unfairness, or oppression as outlined in
7 *Shadow Wood Homeowners Assoc. v. N.Y. Cmty. Bancorp., Inc.*, 366 P.3d 1105 (Nev. 2016)
8 (“Shadow Wood”). (ECF No. 37). The court agrees.

9 Under Nevada law, “[a]n action may be brought by any person against another who claims
10 an estate or interest in real property, adverse to the person bringing the action for the purpose of
11 determining such adverse claim.” Nev. Rev. Stat. § 40.010. “A plea to quiet title does not require
12 any particular elements, but each party must plead and prove his or her own claim to the property
13 in question and a plaintiff’s right to relief therefore depends on superiority of title.” *Chapman v.*
14 *Deutsche Bank Nat’l Trust Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (citations and internal quotation
15 marks omitted). Therefore, for claimant to succeed on its quiet title action, it needs to show that
16 its claim to the property is superior to all others. See *Breliant v. Preferred Equities Corp.*, 918
17 P.2d 314, 318 (Nev. 1996) (“In a quiet title action, the burden of proof rests with the plaintiff to
18 prove good title in himself.”).

19 Section 116.3116(1) of the NRS gives an HOA a lien on its homeowners’ residences for
20 unpaid assessments and fines. Nev. Rev. Stat. § 116.3116(1). Moreover, NRS 116.3116(2) gives
21 priority to that HOA lien over all other liens and encumbrances with limited exceptions—such as
22 “[a] first security interest on the unit recorded before the date on which the assessment sought to
23 be enforced became delinquent.” Nev. Rev. Stat. § 116.3116(2)(b).

24 The statute then carves out a partial exception to subparagraph (2)(b)’s exception for first
25 security interests. See Nev. Rev. Stat. § 116.3116(2). In *SFR Investment Pool 1 v. U.S. Bank*, the
26 Nevada Supreme Court provided the following explanation:

27 As to first deeds of trust, NRS 116.3116(2) thus splits an HOA lien into two pieces,
28 a superpriority piece and a subpriority piece. The superpriority piece, consisting of
the last nine months of unpaid HOA dues and maintenance and nuisance-abatement

1 charges, is “prior to” a first deed of trust. The subpriority piece, consisting of all
2 other HOA fees or assessments, is subordinate to a first deed of trust.
3 334 P.3d 408, 411 (Nev. 2014) (“SFR Investments”).

4 Chapter 116 of the Nevada Revised Statutes permits an HOA to enforce its superpriority
5 lien by nonjudicial foreclosure sale. *Id.* at 415. Thus, “NRS 116.3116(2) provides an HOA a true
6 superpriority lien, proper foreclosure of which will extinguish a first deed of trust.” *Id.* at 419; see
7 also Nev. Rev. Stat. § 116.31162(1) (providing that “the association may foreclose its lien by sale”
8 upon compliance with the statutory notice and timing rules).

9 Subsection (1) of NRS 116.31166 provides that the recitals in a deed made pursuant to
10 NRS 116.31164 of the following are conclusive proof of the matters recited:

- 11 (a) Default, the mailing of the notice of delinquent assessment, and the recording
12 of the notice of default and election to sell;
13 (b) The elapsing of the 90 days; and
14 (c) The giving of notice of sale[.]

15 Nev. Rev. Stat. § 116.31166(1)(a)–(c).¹ “The ‘conclusive’ recitals concern default, notice, and
16 publication of the [notice of sale], all statutory prerequisites to a valid HOA lien foreclosure sale
17 as stated in NRS 116.31162 through NRS 116.31164, the sections that immediately precede and
18 give context to NRS 116.31166.” *Shadow Wood*, 366 P.3d at 1110.

19 In the present case, the court has taken judicial notice of the trustee’s deed upon sale in
20 favor of SFR (ECF No. 50, exh. A). Based on *Shadow Wood*, the recitals therein are conclusive
21 evidence that the foreclosure lien statutes were complied with—i.e., that the foreclosure sale was
22 proper. See *id.*; see also *Nationstar Mortg., LLC v. SFR Investments Pool 1, LLC*, No. 70653,
23 2017 WL 1423938, at *2 (Nev. App. Apr. 17, 2017) (“And because the recitals were conclusive

24 ¹ The statute further provides as follows:

25 2. Such a deed containing those recitals is conclusive against the unit's
26 former owner, his or her heirs and assigns, and all other persons. The receipt for the
27 purchase money contained in such a deed is sufficient to discharge the purchaser
28 from obligation to see to the proper application of the purchase money.

3. The sale of a unit pursuant to NRS 116.31162, 116.31163 and 116.31164
vests in the purchaser the title of the unit’s owner without equity or right of
redemption.

Nev. Rev. Stat. § 116.31166(2)–(3).

1 evidence, the district court did not err in finding that no genuine issues of material fact remained
2 regarding whether the foreclosure sale was proper and granting summary judgment in favor of
3 SFR.”). Therefore, pursuant to SFR Investments, NRS 116.3116, and the recorded trustee’s deed
4 upon sale in favor of SFR, the foreclosure sale was proper and extinguished the first deed of trust.

5 Notwithstanding, the court retains the equitable authority to consider quiet title actions
6 when a HOA’s foreclosure deed contains statutorily conclusive recitals. See *Shadow Wood*
7 *Homeowners Assoc.*, 366 P.3d at 1112 (“When sitting in equity . . . courts must consider the
8 entirety of the circumstances that bear upon the equities. This includes considering the status and
9 actions of all parties involved, including whether an innocent party may be harmed by granting the
10 desired relief.”). Accordingly, to withstand summary judgment in SFR’s favor, Christiana Trust
11 must raise colorable equitable challenges to the foreclosure sale or set forth evidence
12 demonstrating fraud, unfairness, or oppression.

13 In its motion for summary judgment, Christiana Trust sets forth the following relevant
14 arguments: (1) the foreclosure sale was commercially unreasonable; and (2) the foreclosure was
15 void ab initio because the HOA foreclosure statute was facially unconstitutional pursuant to
16 *Bourne Valley Court Trust v. Wells Fargo Bank, N.A.*, 832 F.3d 1154 (9th Cir. 2016), cert. denied,
17 No. 16-1208, 2017 WL 1300223 (U.S. June 26, 2017) (“*Bourne Valley*”). (ECF No. 49).

18 While the court will analyze Christiana Trust’s equitable challenges regarding its quiet
19 title, the court notes that the failure to utilize legal remedies makes granting equitable remedies
20 unlikely. See *Las Vegas Valley Water Dist. v. Curtis Park Manor Water Users Ass’n*, 646 P.2d
21 549, 551 (Nev. 1982) (declining to allow equitable relief because an adequate remedy existed at
22 law). Simply ignoring legal remedies does not open the door to equitable relief.

23 **A. Commercial Reasonability**

24 Christiana Trust argues that the foreclosure is invalid because it was commercially
25 unreasonable. (ECF No. 49 at 10–17). In particular, Christiana Trust contends that in accordance
26 with the Nevada Supreme Court, in *Shadow Wood*, “[a] sale is commercially unreasonable where
27 the purchase price [is] grossly inadequate as a matter of law and there [is] an element of fraud,
28 oppression or unfairness that cause[s] the grossly inadequate sale price.” (ECF No. 49 at 10). In

1 support, Christiana Trust quotes a parenthetical explanation, which quotes the Restatement, and
2 attempts to pass it off as the court’s holding in Shadow Wood. See (ECF No. 49 at 11).

3 NRS 116.3116 codifies the Uniform Common Interest Ownership Act (“UCIOA”) in
4 Nevada. See Nev. Rev. Stat. § 116.001 (“This chapter may be cited as the Uniform Common-
5 Interest Ownership Act”); see also SFR Investments, 334 P.3d at 410. Numerous courts have
6 interpreted the UCIOA and NRS 116.3116 as imposing a commercial reasonableness standard on
7 foreclosure of association liens.²

8 In Shadow Wood, the Nevada Supreme Court held that an HOA’s foreclosure sale may be
9 set aside under a court’s equitable powers notwithstanding any recitals on the foreclosure deed
10 where there is a “grossly inadequate” sales price and “fraud, unfairness, or oppression.” 366 P.3d
11 at 1110; see also Nationstar Mortg., LLC v. SFR Invs. Pool 1, LLC, 184 F. Supp. 3d 853, 857–58
12 (D. Nev. 2016). In other words, “demonstrating that an association sold a property at its
13 foreclosure sale for an inadequate price is not enough to set aside that sale; there must also be a
14 showing of fraud, unfairness, or oppression.” *Id.* at 1112; see also Long v. Towne, 639 P.2d 528,
15 530 (Nev. 1982) (“Mere inadequacy of price is not sufficient to justify setting aside a foreclosure
16 sale, absent a showing of fraud, unfairness or oppression.” (citing Golden v. Tomiyasu, 387 P.2d
17 989, 995 (Nev. 1963) (stating that, while a power-of-sale foreclosure may not be set aside for mere
18 inadequacy of price, it may be if the price is grossly inadequate and there is “in addition proof of
19 some element of fraud, unfairness, or oppression as accounts for and brings about the inadequacy
20 of price” (internal quotation omitted)))).

21
22 ² See, e.g., Bayview Loan Servicing, LLC v. Alessi & Koenig, LLC, 962 F. Supp. 2d 1222, 1229
23 (D. Nev. 2013) (“[T]he sale for \$10,000 of a Property that was worth \$176,000 in 2004, and which
24 was probably worth somewhat more than half as much when sold at the foreclosure sale, raises
25 serious doubts as to commercial reasonableness.”); SFR Investments, 334 P.3d at 418 n.6 (noting
26 bank’s argument that purchase at association foreclosure sale was not commercially reasonable);
27 Thunder Props., Inc. v. Wood, No. 3:14-cv-00068-RCJ-WGC, 2014 WL 6608836, at *2 (D. Nev.
28 Nov. 19, 2014) (concluding that purchase price of “less than 2% of the amounts of the deed of
trust” established commercial unreasonableness “almost conclusively”); Rainbow Bend
Homeowners Ass’n v. Wilder, No. 3:13-cv-00007-RCJ-VPC, 2014 WL 132439, at *2 (D. Nev.
Jan. 10, 2014) (deciding case on other grounds but noting that “the purchase of a residential
property free and clear of all encumbrances for the price of delinquent HOA dues would raise
grave doubts as to the commercial reasonableness of the sale under Nevada law”); *Will v. Mill
Condo. Owners’ Ass’n*, 848 A.2d 336, 340 (Vt. 2004) (discussing commercial reasonableness
standard and concluding that “the UCIOA does provide for this additional layer of protection”).

1 Despite Christiana Trust’s assertion to the contrary, the Shadow Wood court did not adopt
2 the restatement. In fact, nothing in Shadow Wood suggests that the Nevada Supreme Court’s
3 adopted, or had the intention to adopt, the restatement. Compare Shadow Wood, 366 P.3d at 1112–
4 13 (citing the restatement as secondary authority to warrant use of the 20% threshold test for
5 grossly inadequate sales price), with St. James Village, Inc. v. Cunningham, 210 P.3d 190, 213
6 (Nev. 2009) (explicitly adopting § 4.8 of the Restatement in specific circumstances); Foster v.
7 Costco Wholesale Corp., 291 P.3d 150, 153 (Nev. 2012) (“[W]e adopt the rule set forth in the
8 Restatement (Third) of Torts: Physical and Emotional Harm section 51.”); Cucinotta v. Deloitte &
9 Touche, LLP, 302 P.3d 1099, 1102 (Nev. 2013) (affirmatively adopting the Restatement (Second)
10 of Torts section 592A). Because Nevada courts have not adopted the relevant section(s) of the
11 restatement at issue here, the Long test, which requires a showing of fraud, unfairness, or
12 oppression in addition to a grossly inadequate sale price to set aside a foreclosure sale, controls.
13 See 639 P.2d at 530.

14 Nevada has not clearly defined what constitutes “unfairness” in determining commercial
15 reasonableness. The few Nevada cases that have discussed commercial reasonableness state,
16 “every aspect of the disposition, including the method, manner, time, place, and terms, must be
17 commercially reasonable.” Levers v. Rio King Land & Inv. Co., 560 P.2d 917, 920 (Nev. 1977).
18 This includes “quality of the publicity, the price obtained at the auction, [and] the number of
19 bidders in attendance.” Dennison v. Allen Grp. Leasing Corp., 871 P.2d 288, 291 (Nev. 1994)
20 (citing Savage Constr. v. Challenge–Cook, 714 P.2d 573, 574 (Nev. 1986)).

21 Christiana Trust overlooks the reality of the foreclosure process. The amount of the lien—
22 not the fair market value of the property—is what typically sets the sales price. Further, Christiana
23 Trust fails to set forth sufficient evidence to show fraud, unfairness, or oppression so as to justify
24 the setting aside of the foreclosure sale.

25 Accordingly, Christiana Trust’s commercial reasonability argument fails as a matter of
26 law as it failed to set forth evidence of fraud, unfairness, or oppression. See, e.g., Nationstar
27 Mortg., LLC, No. 70653, 2017 WL 1423938, at *3 n.2 (“Sale price alone, however, is never
28 enough to demonstrate that the sale was commercially unreasonable; rather, the party

1 challenging the sale must also make a showing of fraud, unfairness, or oppression that brought
2 about the low sale price.”).

3 **B. Due Process**

4 Christiana Trust contends that the HOA lien statute is unconstitutional. (ECF No. 49 at
5 17–20). In particular, Christiana Trust asserts that the notice scheme of NRS Chapter 116
6 facially violates the due process clause; therefore, the foreclosure sale is invalid. (ECF No. 49 at
7 17–20).

8 “Standing to sue is a doctrine rooted in the traditional understanding of a case or
9 controversy” that “limits the category of litigants empowered to maintain a lawsuit in federal court
10 to seek redress for a legal wrong.” *Spokeo, Inc. v. Robins*, --- U.S. ----, ----, 136 S. Ct. 1540, 1547
11 (2016). To establish Article III standing, a burden which plaintiff bears, “[t]he plaintiff must have
12 (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant,
13 and (3) that is likely to be redressed by a favorable judicial decision.” *Id.* (applying the traditional
14 standing test from *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). To establish an
15 injury in fact, a plaintiff must demonstrate that it suffered “an invasion of a legally protected
16 interest” that is “concrete and particularized” and “actual or imminent, not conjectural or
17 hypothetical.” *Lujan*, 504 U.S. at 560 (internal quotation marks omitted).

18 “[T]he Due Process Clause protects only against deprivation of existing interests in life,
19 liberty, or property.” *Serra v. Lappin*, 600 F.3d 1191, 1196 (9th Cir. 2010); see also, e.g., *Spears*
20 *v. Spears*, 596 P.2d 210, 212 (Nev. 1979) (“The rule is well established that one who is not
21 prejudiced by the operation of a statute cannot question its validity.”). To establish a procedural
22 due process claim, a claimant must show “(1) a deprivation of a constitutionally protected liberty
23 or property interest, and (2) a denial of adequate procedural protections.” *Brewster v. Bd. of Educ.*
24 *of Lynwood Unified Sch. Dist.*, 149 F.3d 971, 982 (9th Cir. 1998).

25 Here, Christiana Trust fails on both prongs. Christiana Trust has failed to show that the
26 foreclosure sale deprived it of a constitutionally protected property interest because Christiana
27 Trust had no interest in the property at the time of the foreclosure sale. Specifically, the foreclosure
28 sale took place on January 11, 2013, and Christiana Trust was not assigned the deed of trust until

1 May 23, 2014—after it had already been extinguished by the foreclosure sale. Because Christiana
2 Trust did not have a constitutionally protected interest in the property at the time of the foreclosure
3 sale, Christiana Trust cannot show that it was denied adequate procedural protections.

4 “A first deed of trust holder only has a constitutional grievance if he in fact did not receive
5 reasonable notice of the sale at which his property right[] was extinguished.” *Wells Fargo Bank,*
6 *N.A. v. Sky Vista Homeowners Ass’n*, No. 315CV00390RCJVPC, 2017 WL 1364583, at *4 (D.
7 Nev. Apr. 13, 2017). As Christiana Trust cannot show that it was a holder of the first deed of trust
8 at the time of the foreclosure sale so as to properly assert a constitutional grievance, Christiana
9 Trust’s due process argument fails as a matter of law.

10 Moreover, Christiana Trust has failed to show that *Bourne Valley* is applicable to its case.
11 Despite Christiana Trust’s erroneous interpretation to the contrary, *Bourne Valley* did not hold that
12 the entire foreclosure statute was facially unconstitutional. At issue in *Bourne Valley* was the
13 constitutionality of the “opt-in” provision of NRS Chapter 116, not the statute in its entirety.
14 Specifically, the Ninth Circuit held that NRS 116.3116’s “opt-in” notice scheme, which required
15 a HOA to alert a mortgage lender that it intended to foreclose only if the lender had affirmatively
16 requested notice, facially violated mortgage lenders’ constitutional due process rights. *Bourne*
17 *Valley*, 832 F.3d at 1157–58. As identified in *Bourne Valley*, NRS 116.31163(2)’s “opt-in”
18 provision unconstitutionally shifted the notice burden to holders of the property interest at risk—
19 not NRS Chapter 116 in general. See *id.* at 1158.

20 The holding in *Bourne Valley* provides little support for Christiana Trust as Christiana
21 Trust’s contentions are not predicated on an unconstitutional shift of the notice burden, which
22 required it to “opt in” to receive notice. Christiana Trust does not argue that it/its predecessor-in-
23 interest lacked notice, actual or otherwise, of the event that affected the deed of trust (i.e., the
24 foreclosure sale). Rather, Christiana Trust merely complains about the content of the recorded
25 notices.

26 Furthermore, Christiana Trust confuses constitutionally mandated notice with the notices
27 required to conduct a valid foreclosure sale. Due process does not require actual notice. *Jones v.*
28 *Flowers*, 547 U.S. 220, 226 (2006). Rather, it requires notice “reasonably calculated, under all the

1 circumstances, to apprise interested parties of the pendency of the action and afford them an
2 opportunity to present their objections.” Mullane v. Central Hanover Bank & Trust Co., 339 U.S.
3 306, 314 (1950); see also Bourne Valley, 832 F.3d at 1158.

4 Accordingly, Christiana Trust’s challenge based on due process and Bourne Valley fails as
5 a matter of law, and Christiana Trust’s motion for summary judgment will be denied as it relates
6 to these grounds.

7 **IV. Conclusion**

8 Based on the foregoing, SFR has sufficiently shown that it is entitled to summary judgment
9 (ECF No. 51) on its quiet title claim against Christiana Trust and the Flaherty Living Trust.
10 Pursuant to SFR Investments, NRS Chapter 116, and the trustee’s deed upon sale, the foreclosure
11 sale extinguished the deed of trust. Christiana Trust has failed to raise any genuine issues to
12 preclude summary judgment in SFR’s favor. Therefore, the court will grant SFR’s motion for
13 summary judgment (ECF No. 51).

14 Further, Christiana Trust has failed to set forth a sufficient equitable challenge to the
15 foreclosure sale. Therefore, Christiana Trust’s motion for summary judgment (ECF No. 49) on its
16 quiet title claim against the HOA, NAS, and SFR will be denied. Furthermore, the court will grant
17 the HOA’s motion for summary judgment (ECF No. 52) on Christiana Trust’s quiet title claim.

18 Accordingly,

19 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Christiana Trust’s motion
20 for summary judgment (ECF No. 49) be, and the same hereby is, DENIED.

21 IT IS FURTHER ORDERED that SFR’s motion for summary judgment (ECF No. 51) be,
22 and the same hereby is, GRANTED.

23 IT IS FURTHER ORDERED that the HOA’s motion for summary judgment (ECF No. 52)
24 be, and the same hereby is, GRANTED.

25 IT IS FURTHER ORDERED that claim (2) of SFR’s counter/crossclaim (ECF No. 42) be,
26 and the same hereby is, DISMISSED WITHOUT PREJUDICE.

27 ...

28 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The clerk shall enter judgment accordingly and close the case.

DATED August 2, 2017.


UNITED STATES DISTRICT JUDGE