

MAURICE WUTSCHER LLP
Patrick J. Kane (*Pro Hac Vice*)
440 Stevens Avenue, Suite 200
Solana Beach, California 92075
Phone No.: (858) 381-7860
Email: pkane@mauricewutscher.com

*Attorney for Plaintiff/Counter-Defendant,
PROF-2013-M4 Legal Title Trust IV, by
U.S. Bank National Association, as Legal
Title Trustee*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PROF-2013-M4 LEGAL TITLE TRUST IV,)
BY U.S. BANK NATIONAL)
ASSOCIATION, AS LEGAL TITLE)
TRUSTEE,)

Plaintiff,)

v.)

SPINNAKER POINT AVENUE TRUST;)
RIVER GLIDER AVENUE TRUST;)
SATICOY BAY, LLC SERIES 5982)
SPINNAKER POINT AVENUE;)
MOUNTAIN GATE AT SUNRISE)
MOUNTAIN HOMEOWNERS')
ASSOCIATION; ABSOLUTE)
COLLECTION SERVICES, LLC,)

Defendant.)

SATICOY BAY, LLC SERIES 5982)
SPINNAKER POINT AVENUE,)

Counterclaimant,)

vs.)

PROF-2013-M4 LEGAL TITLE TRUST IV,)
BY U.S. BANK NATIONAL)
ASSOCIATION, AS LEGAL TITLE)
TRUSTEE,)

Counter-Defendant)

Case No.: 2:17-cv-00445-APG-VCF

**STIPULATION AND ORDER TO
CONTINUE TRIAL**

**[THIRD REQUEST TO CONTINUE
TRIAL]**

**Current Trial Date: March 27, 2023
Trial Calendar Call: March 7, 2023
Proposed New Trial Date: June 27, 2023**

1 IT IS HEREBY STIPULATED Plaintiff/Counter-Defendant, PROF-2013-M4-Legal Title
2 Trust IV, by U.S. Bank National Association, (“Trustee”), Defendant Mountain Gate at Sunrise
3 Mountain Homeowners’ Association (“Mountain Gate”), Defendants and Counterclaimants
4 Saticoy Bay, LLC Series 5982 and Spinnaker Point Avenue (“Defendants”) (collectively, the
5 “Parties”), by their attorneys, hereby submit the following Stipulation and Order to Continue the
6 March 27, 2023 by ninety days (90) pursuant to LR IA 6-1 and LR 7-1. This is the Parties’ third
7 request to continue the currently scheduled trial date and is submitted in good faith and not
8 intended to cause any delay to this Court.

9 **RECITALS**

10 WHEREAS, Trustee’s predecessor-in-interest filed the instant action on February 9, 2017.
11 *See* Dkt. 1.

12 WHEREAS, on April 12, 2017, the instant action was stayed (the “Stay”). *See* Dkt. 21.

13 WHEREAS, on August 10, 2017, this Court lifted the Stay. *See* Dkt. 26.

14 WHEREAS, on August 22, 2017 Trustee’s predecessor-in-interest filed an Amended
15 Complaint asserting the following claims: (1) quiet title; (2) declaratory relief; (3) permanent and
16 preliminary injunction; and (5) unjust enrichment (the “FAC”). *See* Dkt. 27.

17 WHEREAS, on October 10, 2019, Defendants filed their Answer and Affirmative
18 Defenses to the FAC and filed the following counterclaims against the Trustee: (1) quiet title; and
19 (2) declaratory relief. *See* Dkt. 49.

20 WHEREAS, on October 10, 2019, Defendants renewed their previously filed Motion to
21 Dismiss. *See* Dkt. 50.

22 WHEREAS, on April 20, 2020, the Parties filed a “Stipulation for Extension of Time Re:
23 Discovery,” which this Court granted on April 20, 2020. *See* Dkt. 69-70.

24 WHEREAS, on August 10, 2020, this Court granted Second Motion to Dismiss in part
25 dismissing all of the FAC’s causes of action with the exception of Trustee’s unjust enrichment
26 claim. *See*, Dkt. 76.

27 WHEREAS, on September 7, 2020, Trustee filed a motion for reconsideration requesting
28 this Court reconsider its Order on Defendants’ Motion to Dismiss based upon changes in

1 applicable case law that occurred after Defendants’ Motion to Dismiss was fully briefed. *See*
2 Dkt. at 80.

3 WHEREAS, on March 3, 2021, the Court denied Trustee’s Motion for Reconsideration.
4 *See* Dkt. at 85.

5 WHEREAS, on May 4, 2021, this Court set this matter for a bench trial on March 14,
6 2022 while separately setting this matter for a March 8, 2022 calendar call. *See* Dkt. 90.

7 WHEREAS, on August 31, 2021, the Parties attended a mandatory settlement conference
8 before the Honorable Magistrate Elayna J. Yochah. *See* Dkt. 90.

9 WHEREAS, the Parties did not reach a settlement due to the pending statute of limitation
10 question raised by the Ninth Circuit Court of Appeals, which was certified to the Nevada Supreme
11 Court captioned as *U.S. Bank v. Thunder Props., Inc.*, Supreme Court Case No. 8112 (“*Thunder*
12 *Props*”). Because the outcome in *Thunder Props* would likely bear upon the application of the
13 statute of limitation in this case. *See* Dkt. 98.

14 WHEREAS, on August 31, 2021, the Honorable Magistrate Elayna J. Yochah issued an
15 Order: (1) continuing the settlement conference to date after the Nevada Supreme Court issued
16 its opinion in *Thunder Props*; and (2) instructing the Parties to file a joint status report within ten
17 days of a decision in *Thunder Props* being issued while separately requesting the Parties submit
18 three dates of availability to attend a second settlement conference. *See* Dkt. 98.

19 WHEREAS, on February 2, 2022, the Nevada Supreme Court issued its Opinion in
20 *Thunder Props* holding that: (1) “declaratory relief actions are not categorically exempt from
21 statutes of limitations under *City of Fernley v. Nevada Department of Taxation*, 366 P.3d 699
22 (Nev. 2016)”; (2) NRS 11.220’s four year “catch all” statute of limitations applies to actions
23 seeking to determine the validity of a lien under NRS 40.010; and (3) the four-year statute of
24 limitations begins to run when “the titleholder affirmatively repudiates the lien, which does not
25 necessarily happen at the foreclosure sale.” *See* Dkt. 101

26 WHEREAS, on February 10, 2022, the Parties filed their Joint Status Report outlining the
27 holding of the *Thunder Props* decisions and providing the following dates to attend a second
28 settlement conference: (1) March 4, 2022; (2) March 9, 2022; or (3) April 8, 2022. *See* Dkt. 101.

1 WHEREAS, Honorable Magistrate Elayna J. Yochah scheduled the continued settlement
2 conference for May 31, 2022.

3 WHEREAS, Trustee’s counsel contracted COVID-19 and could not attend the settlement
4 conference as a result so the settlement conference was reset for August 11, 2022 at 9:00 a.m.

5 WHEREAS, the Parties attended the August 11, 2022 settlement conference and while
6 the matter did not settle, the Parties believe they made progress towards reaching a settlement.

7 WHEREAS, Trustee previously filed a Motion to Reconsider the Court’s Order granting
8 Defendants’ Motion to Dismiss in light of the *Thunder Props*’ holding concerning what triggers
9 the applicable statute of limitation (“Motion to Reconsider”). *See*, Dkt. 104.

10 WHEREAS, on August 12, 2022, the parties submitted a Stipulation to Continue Trial,
11 which this Court granted, and trial was continued to March 27, 2023. *See* Dkt. 123-124.

12 WHEREAS, on August 22, 2022, Trustee’s Motion to Reconsider was granted in full. *See*
13 Dkt. a 125.

14 WHEREAS, on September 9, 2022, Trustee filed a Motion to Amend the Scheduling
15 Order to allow Trustee to leave file its Motion For Summary Judgment (“Motion to Amend”),
16 which this Court granted on September 29, 2022. *See*, Dkt at 127, 130.

17 WHEREAS, on November 1, 2022, Trustee filed its Motion for Summary Judgment as to
18 the First Amended Complaint and Defendants’ Counterclaim (“Motion for Summary Judgment”).
19 *See*, Dkt. 131.

20 WHEREAS, Trustee’s Motion for Summary Judgment is fully briefed and currently
21 pending.

22 WHEREAS, the Parties cannot move forward until Trustee’s Motion for Summary
23 Judgment is ruled upon as the pleadings will remain unsettled until a ruling is received.

24 WHEREAS, trial is currently scheduled for March 27, 2023.

25 WHEREAS, the parties have been diligent in attempting to bring this matter to a
26 conclusion, including settlement discussions and conducting discovery.

27 WHEREAS, the Parties need additional time to complete settlement discussions, prepare
28 for trial, and for the Court to rule on Trustee’s Motion for Summary Judgment so the parties can

1 narrow down the issues in this litigation before moving forward with trial preparation and any
2 settlement discussions that may arise after the Court’s ruling on Trustee’s Motion for Summary
3 Judgment.

4 WHEREAS, the Parties agree that, subject to this Court’s approval, the March 27, 2023
5 trial date should be continued for at least ninety days (90) or to a date convenient for this Court
6 to allow the Parties additional time continue their good faith attempts to settle this litigation and
7 prepare for trial, if necessary, after the parties obtain a ruling on Trustee’s Motion for Summary
8 Judgment.

9 ***Agreement***

10 **NOW THEREFORE, IT IS HEREBY STIPULATED** by and between the Parties to
11 this litigation as follows:

12 1. The March 27, 2023 trial date be continued for at least ninety days (90), or to a
13 date convenient to this Court.

14 Dated: February 21, 2023

MAURICE WUTSCHER LLP

15 */s/ Patrick J. Kane*
16 _____
17 Patrick J. Kane (*Pro Hac Vice*)
18 440 Stevens Avenue, Suite 200
19 Solana Beach, California 92075
20 Phone No.: (858) 381-7860
21 Email: pkane@mauricewutscher.com

*Attorneys for Plaintiff/Counter-Defendant,
PROF-2013-M4 Legal Title Trust IV, by
U.S. Bank National Association, as Legal
Title Trustee*

22 Dated: February 21, 2023

**BOYACK ORME ANTHONY &
MCKIEVER**

23 */s/ Patrick Orme*
24 _____
25 Patrick A. Orne
26 7432 W. Sahara Ave.
27 Las Vegas, Nevada 89117
28 Phone No.: (702) 562-3415
Email: Patrick@boyacklaw.com

*Attorneys for Defendant,
MOUNTAIN GATE AT SUNRISE*

MOUNTAIN HOMEOWNERS'
ASSOCIATION

Dated: February 21, 2023

ROGER P. CROTEAU &
ASSOCIATES

/s/ Christopher L. Benner
Christopher L. Benner
2810 Charleston Boulevard, No. H-75
Las Vegas, Nevada 89102
Phone No.: (702) 254-7775
Email: chris@croteaulaw.com

*Attorneys for Defendant and
Counterclaimants,*

SPINNAKER POINT AVENUE TRUST,
RIVER GLIDER AVENUE TRUST, and
SATICOY BAY, LLC SERIES 5982
SPINNAKER POINT AVENUE

Signature Attestation

I hereby attest under the penalty of perjury that on February 21, 2023, counsel for defendants approved this Stipulation and gave me permission to electronically sign this Stipulation on his behalf.

/s/ Patrick J. Kane
Patrick Kane

IT IS ORDERED that the bench trial scheduled for March 27, 2023 is vacated and continued to June 26, 2023 at 9:00 a.m. The March 21, 2023 calendar call is vacated and continued to June 20, 2023 at 9:00 a.m. in Las Vegas courtroom 6C.

IT IS SO ORDERED:

Dated: February 22, 2023


ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE