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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 WELLS FARGO BANK, N.A.,

7 Plaintiff,

8 v.

9 VEGAS PROPERTY SERVICES, INC., et
al.,

10 Defendants.

11 VEGAS PROPERTY SERVICES, INC.,

12 Counter Claimant,

13 v.

14 R GLEN WOODS, AS TRUSTEE OF
WATSON 2005 TRUST, et al.,

15 Counter Defendants.

Case No. 2:17-cv-01463-MMD-PAL

ORDER

16
17 **I. SUMMARY**

18 This dispute arises from a homeowners' association foreclosure sale. Before the
19 Court is Defendant Spanish Trail Master Association's (the "HOA") motion to dismiss the
20 claims Plaintiff Wells Fargo Bank, N.A. asserted against the HOA in its amended complaint
21 ("Motion").¹ (ECF No. 68.) As further explained below, the Court will grant in part, and deny
22 in part, the HOA's Motion—dismissing all but Plaintiff's quiet title claim against the HOA.

23 **II. RELEVANT FACTS**

24 The following facts are taken from the operative complaint. (ECF No. 65.) In
25 December 2006, R. Glen Woods, and his successors, as Trustee of the Watson 2005
26 Trust under agreement dated March 15, 2005, and Jeannie Watson, an unmarried woman
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28 ¹The Court has reviewed Plaintiff's response (ECF No. 75). Despite the Court
having granted an extension of time to reply (ECF No. 83), the HOA did not file a reply.

1 (collectively, "Borrowers") obtained a loan ("Loan") in the amount of \$380,000.00
2 evidenced by a note and secured by a deed of trust ("DOT") on real property located at
3 7617 Boca Raton Drive, Las Vegas, Nevada 89113, APN 163-27-114-036 ("the Property").
4 (Id. at 2, 3.) Plaintiff owns the Loan and DOT as the successor-in-interest to the original
5 lender. (Id. at 3-4.) Borrowers failed to pay homeowners' association dues.

6 Therefore, on June 12, 2013, the HOA, acting through its agent, Defendant Nevada
7 Association Services, Inc. ("NAS"), recorded a notice of delinquent assessment lien
8 regarding the outstanding homeowners' association dues. (Id. at 4.) On June 21, 2013,
9 the HOA, again acting through its agent NAS, recorded a notice of default and election to
10 sell to satisfy the delinquent assessment lien. (Id.) The HOA then recorded a notice of
11 foreclosure sale, which listed the amount due to the HOA as \$34,763.53. (Id.) Defendant
12 Vegas Property Services, Inc. ("VPS") purchased the property at the foreclosure sale (the
13 "HOA Sale") for \$55,000 on July 25, 2014. (Id.)

14 Plaintiff asserts five claims against the HOA: (1) declaratory relief under the takings
15 clause of the Fifth Amendment to the U.S. Constitution; (2) declaratory relief under the
16 due process clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution; (3)
17 wrongful foreclosure; (4) breach of NRS § 116.1113, et seq.; and (5) quiet title. (Id. at 6-
18 11.) Not directly relevant here, Plaintiff also asserts an unjust enrichment claim against
19 VPS. (Id. at 11.)

20 **III. LEGAL STANDARD**

21 A court may dismiss a plaintiff's complaint for "failure to state a claim upon which
22 relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide
23 "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.
24 R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8
25 does not require detailed factual allegations, it demands more than "labels and
26 conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v.*
27 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). "Factual allegations
28 must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to

1 survive a motion to dismiss, a complaint must contain sufficient factual matter to “state a
2 claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550
3 U.S. at 570).

4 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to
5 apply when considering motions to dismiss. First, a district court must accept as true all
6 well-pleaded factual allegations in the complaint; however, legal conclusions are not
7 entitled to the assumption of truth. See *id.* at 678. Mere recitals of the elements of a cause
8 of action, supported only by conclusory statements, do not suffice. See *id.* at 678. Second,
9 a district court must consider whether the factual allegations in the complaint allege a
10 plausible claim for relief. See *id.* at 679. A claim is facially plausible when the plaintiff’s
11 complaint alleges facts that allow a court to draw a reasonable inference that the
12 defendant is liable for the alleged misconduct. See *id.* at 678. Where the complaint does
13 not permit the court to infer more than the mere possibility of misconduct, the complaint
14 has “alleged—but it has not show[n]—that the pleader is entitled to relief.” *Id.* at 679
15 (alteration in original) (internal quotation marks omitted). That is insufficient. When the
16 claims in a complaint have not crossed the line from conceivable to plausible, the
17 complaint must be dismissed. See *Twombly*, 550 U.S. at 570.

18 **IV. DISCUSSION**

19 The HOA has moved to dismiss all five of the claims Plaintiff asserts against it.
20 (ECF No. 68.) The Court is persuaded by some of the HOA’s arguments, but not others.
21 The Court structures its discussion below to map to Plaintiff’s claims asserted against the
22 HOA. However, the Court first addresses below the HOA’s unpersuasive statute of
23 limitations argument.

24 **A. Statute of Limitations**

25 The HOA moves to dismiss Plaintiff’s third and fourth causes of action—wrongful
26 foreclosure and violation of NRS 116.1113, et seq.—as time barred under the applicable
27 statute of limitations. (ECF No. 68 at 6-8.) Plaintiff counters in relevant part that these
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1 claims are not time-barred because they relate back to the filing of Plaintiff's original
2 complaint, which was timely filed. (ECF No. 75 at 17-18.) The Court agrees with Plaintiff.

3 This Court has held—and continues to hold—that a cause of action accrues at the
4 time of the foreclosure sale in homeowner's association foreclosure cases like this one.
5 See, e.g., *Goldsmith Enterprises, LLC v. U.S. Bank, N.A.*, No. 2:15-cv-00991-MMD-PAL,
6 2017 WL 4172266, at *3 (D. Nev. Sept. 20, 2017). Here, Plaintiff's causes of action
7 accrued when the HOA Sale took place, on July 25, 2014. (ECF No. 65 at 4.) Further,
8 claims based on duties imposed by statute must be brought within three years. See NRS
9 § 11.190(3)(a). Accordingly, Plaintiff's fourth claim—for breach of the duty of good faith
10 imposed by NRS § 116.1113—is subject to this statute of limitations. See *Nationstar*
11 *Mortg., LLC v. Amber Hills Homeowners Ass'n*, No. 2:15-cv-01433-APG-CWH, 2016 WL
12 1298108, at *5 (D. Nev. March 31, 2016). Similarly, Plaintiff's third claim—for wrongful
13 foreclosure—is also subject to this statute of limitations because the claim challenges the
14 HOA's authority to conduct the foreclosure under NRS chapter 116. See *id.* Thus, these
15 two causes of action are subject to a three-year statute of limitations that runs from the
16 date of the HOA Sale on July 25, 2014.

17 Plaintiff's original complaint was accordingly timely filed. (ECF No. 1 (filed May 22,
18 2017).) Even the HOA does not dispute that Plaintiff's original complaint was timely filed
19 as regards these two claims, because Plaintiff initially filed suit within three years of the
20 HOA Sale. (ECF No. 68 at 8.) But the Court dismissed that complaint as to these two
21 claims (ECF No. 53), and Plaintiff did not file its amended complaint reasserting these two
22 claims until after Plaintiff went through the required mediation process, on October 24,
23 2018 (ECF No. 65).² Thus, the HOA argues, these two claims are time-barred. (ECF No.
24 68 at 8.) Plaintiff counters these claims relate back to the date the original complaint was
25 filed under Fed. R. Civ. P. 15(c)(1)(B), and are therefore not-time barred. (ECF No. 75 at
26 17-18.) Plaintiff argues this rule applies because the amended complaint asserts the same

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28 ²This case was stayed for part of that time. (ECF Nos. 53, 56.)

1 two causes of action as asserted in the original complaint, and they rely on nearly identical
2 facts and circumstances. (Id. at 18.)

3 In relevant part, an amendment to a pleading relates back to the date of the original
4 pleading when “the amendment asserts a claim or defense that arose out of the conduct,
5 transaction, or occurrence set out—or attempted to be set out—in the original pleading[.]”
6 Fed. R. Civ. P. 15(c)(1)(B). “Thus, relation back is allowed when the original pleading
7 adequately put the defendant on notice of the facts which ultimately underlie the new
8 claim.” *Diggs v. Las Vegas Metro. Police Dep’t*, Case No. 2:09-cv-02339-RLH, 2013 WL
9 6097224, at *2 (D. Nev. Nov. 20, 2013).

10 Here, Plaintiff’s wrongful foreclosure and violation of NRS 116.1113, et seq. claims
11 relate back to the date Plaintiff filed its original complaint because they are identical to the
12 claims asserted in that complaint, and therefore necessarily rely on the same facts as the
13 claims the Court previously dismissed for failure to first complete Nevada’s required
14 mediation process. Because they are virtually identical, these two claims as included in
15 Plaintiff’s original complaint put the HOA on notice of the facts that underlie these claims
16 as included in Plaintiff’s amended complaint. See id. And the HOA does not dispute that
17 these claims were timely as of the filing of the original complaint. (ECF No. 68 at 8.) The
18 Court therefore finds Plaintiff’s wrongful foreclosure and violation of NRS 116.1113, et
19 seq. claims relate back to Plaintiff’s original complaint, and will thus deny the HOA’s Motion
20 to the extent it is based on the statute of limitations.

21 **B. Declaratory Relief Under the Takings Clause of the Fifth Amendment**

22 The HOA argues in relevant part that Plaintiff’s takings clause claim must be
23 dismissed because neither the HOA Sale conducted pursuant to NRS § 116.1113 nor the
24 statute itself constitute a taking. (ECF No. 68 at 4-5.) The Court agrees. To the extent
25 Plaintiff’s DOT was extinguished by the HOA Sale—though the Court does not decide that
26 issue here—it was not a governmental taking. See, e.g., *Wells Fargo Bank, N.A. v. SFR*
27 *Investments Pool 1, LLC*, Case No. 3:15-cv-00240-MMD-CBC, 2019 WL 470901, at *3 (D.
28 Nev. Feb. 6, 2019) (finding as such in the summary judgment context and citing other

1 cases that did as well). The Court will therefore grant the HOA's Motion as to Plaintiff's
2 first cause of action, and dismiss that claim against the HOA with prejudice, as amendment
3 would be futile.

4 **C. Declaratory Relief Under the Due Process Clauses of the Fifth and**
5 **Fourteenth Amendments**

6 The HOA also argues in relevant part that Plaintiff's due process claim fails as a
7 matter of law because the arguments it embodies have been rejected by the Nevada
8 Supreme Court. (ECF No. 68 at 5-6.) The Court again agrees with the HOA. The
9 arguments underlying Plaintiff's due process clause claim have been soundly rejected by
10 both the Nevada Supreme Court and the Ninth Circuit. See, e.g., *The Bank of New York*
11 *Mellon, f/k/a The Bank of New York, as Trustee for the Certificateholders of Cwalt, Inc.*
12 *Alternative Loan Trust 2006-OC9, Mortgage Passthrough Certificates, Series 2006-OC9*
13 *v. Log Cabin Manor Homeowners Association, et al.*, 362 F. Supp. 3d 930, 935-37 (D.
14 Nev. 2019) (currently on appeal); see also *Bank of Am., N.A. v. Arlington W. Twilight*
15 *Homeowners Ass'n*, 920 F.3d 620, 623-24 (9th Cir. 2019). The Court will therefore grant
16 the HOA's Motion as to Plaintiff's second cause of action, and dismiss that claim against
17 the HOA with prejudice, as amendment would be futile.

18 **D. Wrongful Foreclosure and Breach of NRS § 116.1113**

19 The HOA further argues both of these claims fail as a matter of law. (ECF No. 68
20 at 8-11.) The Court generally agrees with the HOA, but not for exactly the same reasons
21 the HOA provides in its Motion. The Court addresses the HOA's Motion as to Plaintiff's
22 third and fourth claims together because Plaintiff's allegations and arguments opposing
23 dismissal are similar as to both claims. With respect to both claims, Plaintiff essentially
24 alleges that the HOA's foreclosure on the Property at the HOA sale was wrongful. (ECF
25 No. 65 at 8-10.) Further, in opposing the HOA's Motion regarding these two claims,
26 Plaintiff's arguments are the same, and appear to be that Plaintiff discharged the HOA's
27 superpriority lien on the Property by tendering the superpriority amount, so the post-tender
28 HOA Sale was wrongful and not in good faith. (See ECF No. 75 at 19 ("That violation

1 includes, but is not limited to, the HOA's conduct in dealing with Wells Fargo relating to
2 the foreclosure and Wells Fargo's efforts to pay off the superpriority lien. Those specific
3 facts will be set out as this case progresses, but for now the pleading that the sale was
4 conducted based on fraud, oppression, or unfairness is sufficient to state a cause of action
5 for wrongful foreclosure."); see also *id.* at 20 ("As the HOA is aware, since they disclosed
6 the documents that support the claim, the HOA, through its agent, refused to allow Wells
7 Fargo to satisfy the superpriority lien, necessitating a TRO filing by Wells Fargo before the
8 foreclosure.").

9 However, there are no factual allegations going to tender in Plaintiff's operative
10 complaint. (ECF No. 65.) Thus, to the extent facts exist that would support such
11 allegations, they are useless to Plaintiff in opposing the HOA's Motion as to Plaintiff's third
12 and fourth causes of action. Further, to the extent both of these claims are based on the
13 purported constitutional violations asserted in Plaintiff's first and second causes of action
14 (see, e.g., *id.* at 8), as explained above, those purported constitutional violations fail as a
15 matter of law and thus do not help Plaintiff survive dismissal as to these two claims. In
16 addition, the Court is persuaded by the HOA's argument (ECF No. 68 at 10-11) that
17 Plaintiff's allegations regarding the Property's low sale price at the HOA Sale go to
18 Plaintiff's quiet title claim, not its third and fourth claims. See *Shadow Wood HOA v. N.Y.*
19 *Cnty. Bancorp.*, 366 P.3d 1105, 1112 (Nev. 2016) (holding that courts retain equitable
20 power to set aside homeowners' association foreclosure sales in quiet title actions under
21 certain circumstances).

22 Plaintiff fails to state a claim for either wrongful foreclosure or a violation of NRS
23 116.1113, et seq. The Court will therefore grant the HOA's Motion as to these two claims,
24 and will dismiss them without prejudice.

25 **E. Quiet Title**

26 The HOA also argues Plaintiff's fifth cause of action for quiet title should be
27 dismissed against it because Plaintiff failed to name the legal owner of the Property
28 (purportedly a necessary and indispensable party) as a defendant, and failed to make

1 several critical allegations, including that Plaintiff paid all debts owed on the property and
2 that Plaintiff foreclosed on the prior homeowner. (ECF No. 68 at 11-13.) The Court is
3 unpersuaded by the HOA's arguments as to Plaintiff's quiet title claim.

4 First, the HOA's contention that Plaintiff failed to name the legal owner of the
5 Property does not appear to be correct. Plaintiff alleges that VPS purchased the Property
6 at the HOA Sale. (ECF No. 65 at 4.) Presumably, VPS has remained the legal owner of
7 the Property, and the HOA has offered no evidence to the contrary. (See ECF No. 68 at
8 11-13.) Plaintiff named VPS as a party and asserts its quiet title claim against VPS. (ECF
9 No. 65 at 1, 10-11.) The Court thus rejects the HOA's failure to name a necessary party
10 argument.

11 Further, Plaintiff need not allege that it paid all debts on the Property or that it
12 foreclosed on the Property to state a claim. In Nevada, a quiet title action "may be brought
13 by any person against another who claims an estate or interest in real property, adverse
14 to the person bringing the action, for the purpose of determining such adverse claim." NRS
15 § 40.010. "A plea to quiet title does not require any particular elements, but 'each party
16 must plead and prove his or her own claim to the property in question' and a 'plaintiff's
17 right to relief therefore depends on superiority of title.'" *Chapman v. Deutsche Bank Nat'l*
18 *Tr. Co.*, 302 P.3d 1103, 1106 (Nev. 2013) (quoting *Yokeno v. Mafnas*, 973 F.2d 803, 808
19 (9th Cir. 1992)). And in general, a number of courts in Nevada, including the Nevada
20 Supreme Court, have entertained quiet title actions substantially similar to this one. See,
21 e.g., *Shadow Wood*, 366 P.3d 1105; *Bank of N.Y. Mellon v. Legends Maint. Corp.*, No.
22 2:16-cv-02567-MMD-GWF, 2017 WL 3813904, at *2-3 (D. Nev. Aug. 31, 2017). In sum,
23 the Court will deny the HOA's Motion as to Plaintiff's fifth cause of action for quiet title.

24 **V. CONCLUSION**

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

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It is therefore ordered that the HOA's motion to dismiss (ECF No. 68) is granted in part and denied in part. It is granted with respect to Plaintiff's first through fourth causes of action. It is denied with respect to Plaintiff's fifth cause of action.

DATED THIS 1st day of May 2019.



MIRANDA M. DU
UNITED STATES DISTRICT JUDGE