

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DEUTSCHE BANK NATIONAL TRUST)
 COMPANY AS TRUSTEE FOR)
 RESIDENTIAL ASSET SECURITIZATION)
 TRUST 2006-A3CB MORTGAGE)
 PASSTHROUGH CERTIFICATES, SERIES)
 2006-C,)
)
)
 Plaintiff,)
)
 vs.)
)
 SFR INVESTMENTS POOL 1, LLC;)
 ALIANTE MASTER ASSOCIATION;)
 NEVADA ASSOCIATION SERVICES, INC.,)
)
)
 Defendants.)
)

Case No.: 2:17-cv-02638-GMN-GWF

ORDER

Pending before the Court is the Motion for Reconsideration, (ECF No. 37), filed by Defendant Aliante Master Association (“HOA”), to which Defendant SFR Investments Pool 1, LLC (“SFR”) filed a Joinder, (ECF No. 47). Plaintiff Deutsche Bank National Trust Company (“Plaintiff”) filed a Response, (ECF No. 44), and HOA filed a Reply, (ECF No. 46). For the reasons discussed below, the Court **GRANTS in part** and **DENIES in part** HOA’s Motion for Reconsideration.

I. BACKGROUND

This case arises from the non-judicial foreclosure on real property located at 6853 Jungle Fowl Street, North Las Vegas, Nevada 89084 (the “Property”). (Compl. ¶ 1, ECF No. 1). In the Complaint, Plaintiff asserts causes of action for: (1) quiet title with a requested remedy of declaratory judgment; (2) declaratory relief under the Fifth Amendment and Fourteenth Amendment; (3) quiet title under the Fifth Amendment and Fourteenth Amendment; (4) injunctive relief; (5) unjust enrichment against Borrower; (6) negligence; (7) negligence per se;

1 (8) breach of contract; (9) misrepresentation; (10) breach of the covenant of good faith and fair
2 dealing; (11) wrongful and defective foreclosure; and (12) unjust enrichment against HOA and
3 NAS. (*Id.*).

4 On November 13, 2017, HOA and SFR moved to dismiss each of Plaintiff's claims as
5 untimely under applicable statutes of limitations for each cause of action. (HOA's Mot. Dismiss
6 ("MTD") 2:16-4:21, ECF No. 11); (SFR's MTD 2:3-10, ECF No. 25). On August 8, 2018, the
7 Court denied HOA and SFR's motions to dismiss, finding that Plaintiff's claims effectively
8 centered on quieting title and therefore were timely asserted under a five-year limitations
9 period. (Order, ECF No. 36). HOA and SFR now request that the Court reconsider its prior
10 Order. (Mot. for Recons., ECF No. 37).

11 **II. LEGAL STANDARD**

12 "[A] motion for reconsideration should not be granted, absent highly unusual
13 circumstances." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (citation omitted).
14 Reconsideration is appropriate where: (1) the court is presented with newly discovered
15 evidence, (2) the court committed clear error or the initial decision was manifestly unjust, or
16 (3) if there is an intervening change in controlling law. *School Dist. No. 1J, Multnomah Cnty v.*
17 *ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

18 **III. DISCUSSION**

19 HOA and SFR seek reconsideration on the Court's prior finding that a five-year
20 limitations period applies to this action. (HOA's Mot. 2:20-24, ECF No. 37); (SFR's Joinder
21 2:4-6:28, ECF No. 47). The Court previously reasoned that the gravamen of Plaintiff's action
22 stemmed in quiet title, and therefore a uniform limitations period was appropriate. As the case
23 has developed, however, it has become clear that Plaintiff seeks to maintain independent
24 theories separate from its quiet title claim. Accordingly, the Court finds reconsideration on the
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1 applicable limitations periods for these individualized claims to be appropriate. The Court
2 addresses the statute of limitations for each cause of action in turn.

3 **A. Statutes of Limitations¹**

4 **i. Quiet Title**

5 As stated in the Court’s prior Order, a five-year limitations period governs Plaintiff’s
6 first and third claims to quiet title.² (Compl. ¶¶ 66–98, ECF No. 1); *see* NRS 11.070;
7 *DEUTSCHE BANK NATIONAL TRUST COMPANY, as Tr. for Saxon Asset Sec. Tr. 2007-3,*
8 *Mortg. Loan Asset Backed Certificates, Series 2007-3, Plaintiff, v. SFR INVESTMENTS POOL*
9 *1, LLC, et al., Defendants.*, No. 2:18–cv–00194–GMN–GWF, 2019 WL 1410887, at *4 (D.
10 Nev. Mar. 28, 2019). Because Plaintiff filed its Complaint less than five years after the
11 foreclosure sale, Plaintiff’s first and third claims for quiet title are timely. (*See* Compl.) (filed
12 October 11, 2017).

13 **ii. Negligence and Negligence Per Se**

14 Plaintiff bases its sixth claim in negligence and its seventh claim in negligence per se.
15 (Compl. ¶¶ 117–133). In Nevada, negligence claims are generally subject to a two-year statute
16 of limitations. *See* NRS 11.190(4)(e). Where a negligence claim arises from alleged statutory
17 violations, courts apply the longer three-year period under NRS 11.190(3)(a), for an “action
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19 ¹ To the extent Plaintiff seeks to lengthen the statutory limitations periods by arguing that it discovered its injury
20 when the Nevada Supreme Court decided *SFR Investments Pool 1, LLC v. U.S. Bank*, 334 P.3d 408 (Nev. 2014),
21 such argument fails. That decision simply clarified the law. *K&P Homes v. Christiana Tr.*, 398 P.3d 292, 294
22 (Nev. 2017) (en banc). Indeed, NRS 116’s statutory language placed lenders on notice of their interests being in
23 jeopardy. *See Mitchell v. State*, 149 P.3d 33, 38 (Nev. 2006) (holding that when a court clarifies the law, the
24 clarification applies retroactively). Therefore, the date of the foreclosure sale is the operative date for purposes
25 of calculating the statute of limitations. *See Saticoy Bay LLC Series 2021 Gray Eagle Way v. JPMorgan Chase*
Bank, N.A., 388 P.3d 226, at 232 (Nev. 2017) (holding that the statute of limitations accrues on the date of the
foreclosure sale).

² The Court need not address statutory limitations periods for Plaintiff’s second claim for declaratory relief and
fourth claim for injunctive relief because they are remedies associated with timely claims, not stand-alone causes
of action. *See Freeto v. Litton Loan Serv., LP*, 3:09–cv–754–LRH–VPC, 2011 WL 112183, at *3 (D. Nev. Jan. 12,
2011) (dismissing claims for declaratory relief and permanent injunction because those remedies may only “be
afforded to a party after he has sufficiently established and proven his claims”).

1 upon a liability created by statute.” *See, e.g., Prof-2013-S3 Legal Title Tr., v. SFR Invs. Pool 1,*
2 *LLC*, No. 2:17-cv-02079-JAD-PAL, 2018 WL 2465177, at *6 (D. Nev. May 31, 2018). Under
3 either a two or three-year limitations period, Plaintiff’s negligence and negligence per se claims
4 are untimely.

5 **iii. Breach of Contract and Breach of the Implied Covenant of Good Faith and**
6 **Fair Dealing**

7 Plaintiff’s eighth claim asserts breach of contract, and Plaintiff’s tenth claim asserts
8 breach of the implied covenant of good faith and fair dealing. These two claims focus on
9 violations of the HOA’s CC&Rs that controlled the Property. (Compl. ¶¶ 134–138, 148–153).
10 NRS 11.190(1)(b) governs these claims because they focus “upon a contract, obligation or
11 liability founded upon an instrument in writing.” *Prof-2013-S3 Legal Title Tr., by U.S. Bank*
12 *Nat’l Ass’n v. SFR Investments Pool 1, LLC*, No. 2:17-cv-02079-JAD-PAL, 2018 WL 2465177,
13 at *7 (D. Nev. May 31, 2018). Consequently, NRS 11.190(1)(b)’s six-year limitations period
14 applies to these claims. Plaintiff’s eighth and tenth claims are thus timely because they arise
15 from the HOA’s foreclosure sale that occurred on March 8, 2013. *Id.*

16 **iv. Misrepresentation**

17 Plaintiff does not specify whether it bases its ninth claim for “misrepresentation” in
18 fraud or negligence. (Compl. ¶¶ 139, 147). The Court therefore looks to “[t]he nature of the
19 claim, not its label” to determine what statute of limitations applies. *Perry v. Terrible Herbst,*
20 *Inc.*, 383 P.3d 257, 260 (Nev. 2016).

21 Plaintiff alleges misrepresentation on the ground that HOA and NAS “failed to exercise
22 reasonable care or competence in communicating the information within the provisions of the
23 CC&Rs or it had an insufficient basis for making [such communication].” (*Id.* ¶¶ 139–147).
24 This “reasonable care” language satisfies one of the required elements for a claim of negligent
25 misrepresentation under Nevada law. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449 (1998).

1 The Court accordingly construes Plaintiff’s misrepresentation claim as one in negligence,
2 subject to, at most, the three-year limitations period in NRS 11.190(3)(d). Plaintiff fourth claim
3 is then time-barred and dismissed.

4 **v. *Unjust Enrichment***

5 Plaintiff’s fifth and twelfth claims are based on unjust enrichment due to benefits
6 allegedly conferred by Plaintiff after the Property’s foreclosure sale. (Compl. ¶¶ 108–116, 165–
7 170). Specifically, Plaintiff’s fifth claim for unjust enrichment alleges that, after the
8 foreclosure sale, Plaintiff paid “taxes, insurance or homeowner’s association assessments,” of
9 which Borrower retained the benefit without compensating Plaintiff. (*Id.* ¶¶ 108–116).
10 Similarly, Plaintiff’s twelfth claim alleges that, “should Plaintiff’s Complaint be unsuccessful
11 in quieting title against Defendants, the HOA and HOA Trustee retained proceeds from the
12 HOA Sale which belonged to Plaintiff.” (*Id.* ¶¶ 165–170).

13 The statute of limitations for an unjust enrichment claim under Nevada law is four years.
14 Nev. Rev. Stat. 11.190(2)(c). Here, Plaintiff provides no specific dates that show when it made
15 payments or incurred charges that create its unjust enrichment claims; nor does Plaintiff state
16 when the named defendants accepted or retained these benefits. Instead, Plaintiff states that
17 these payments or charges arose “from the unlawful HOA sale” on March 8, 2013. (*Id.* ¶¶ 110,
18 166); (Foreclosure Deed, Ex. 7 to Compl., ECF No. 1). Because the only anchor date of March
19 8, 2013, is outside the four-year statute of limitations period, Plaintiff’s unjust enrichment
20 claims are dismissed as untimely.

21 **vi. *Wrongful Foreclosure***

22 Plaintiff’s eleventh claim asserts “wrongful/defective foreclosure” against HOA and
23 NAS. A wrongful foreclosure claim “challenges the authority behind the foreclosure, not the
24 foreclosure act itself.” *McKnight Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555, 559 (Nev.
25 2013). Such a claim may be based on statutory violations or it may be a tort. *Bank of New York*

1 *v. Foothills at MacDonald Ranch Master Ass’n*, 329 F. Supp. 3d 1221, 1234 (D. Nev. 2018).
2 When premised upon statutory violations, a three-year limitations period applies. *See* NRS
3 11.190(3)(a) (“An action upon a liability created by statute, other than a penalty or forfeiture”
4 may only be commenced “[w]ithin 3 years.”); *see Bank of New York Mellon v. Hillcrest at*
5 *Summit Hills Homeowners Ass’n*, No. 2:16-cv-02295-GMN-PAL, 2019 WL 415324, at *3 (D.
6 Nev. Jan. 31, 2019). Conversely, wrongful foreclosure actions sounding in tort are subject to
7 Nevada’s four-year residual limitations period. NRS 11.220; *see Foothills*, 329 F. Supp. 3d at
8 1234 (“[T]he four-year catchall limitation is appropriate for a tortious wrongful foreclosure
9 claim.”); *Bank of New York v. S. Highlands Cmty. Ass’n*, 329 F. Supp. 3d 1208, 1219 (D. Nev.
10 2018) (same).

11 Here, BANA’s “wrongful/defective foreclosure” claim arises from both statutory
12 violations of NRS Chapter 116 and as well as theories independent of that statutory scheme.
13 (Compl. ¶¶ 154–164). Therefore, at most, Plaintiff had to bring its claims within four years of
14 the Property’s March 8, 2013 foreclosure sale. Because Plaintiff filed its Complaint more than
15 four years later, Plaintiff’s eleventh claim is untimely and dismissed with prejudice. Moreover,
16 the Court rejects Plaintiff’s argument that its wrongful foreclosure claim warrants a six-year
17 limitations period based on the claim’s references to violations of the CC&Rs. Because the
18 authority behind the sale here was NRS 116, not the CC&Rs, the CC&Rs do not guide the
19 statute of limitations for this claim. *McKnight Family, L.L.P. v. Adept Mgmt.*, 310 P.3d 555,
20 559 (Nev. 2013); *Bank of New York Mellon v. Tierra De Las Palmas Owners Ass’n*, No. 2:17-
21 cv-02112-JAD-CWH, 2018 WL 2292525, at *3 (D. Nev. May 18, 2018).

22 **B. Pending Dispositive Motions**

23 After HOA filed its Motion for Reconsideration, the parties filed separate Motions for
24 Summary Judgment, (ECF Nos. 53, 55, 56). In light of the Court’s reconsideration now finding
25 several of Plaintiff’s claims untimely, the Court denies the pending Motions for Summary

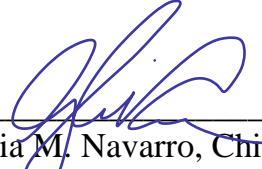
1 Judgment as moot with leave to re-file. Leave to refile permits the parties to tailor their
2 arguments to Plaintiff's remaining claims without pages unnecessarily spent on now-barred
3 causes of action. Additionally, the Court recognizes the recent fluctuations in Nevada law for
4 quiet title actions based on a homeowners' association foreclosure. Thus, in re-filing, the
5 parties are not confined to prior arguments or asserted authorities.

6 **IV. CONCLUSION**

7 **IT IS HEREBY ORDERED** that HOA's Motion for Reconsideration, (ECF No. 37), is
8 **GRANTED in part** and **DENIED in part** pursuant to the foregoing. Plaintiff's fifth, sixth,
9 seventh, ninth, eleventh, and twelfth claims are **DISMISSED with prejudice**.

10 **IT IS FURTHER ORDERED** that the Motions for Summary Judgment, (ECF Nos. 53,
11 55, 56), filed by Plaintiff, HOA, and SFR are **DENIED as moot, without prejudice**.

12 **DATED** this 31 day of March, 2019.

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17 Gloria M. Navarro, Chief Judge
18 United States District Judge
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