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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DEUTSCHE BANK NATIONAL TRUST
COMPANY, SOLELY AS TRUSTEE FOR
HARBORVIEW MORTGAGE LOAN
TRUSTMORTGAGE LOAN PASS-
THROUGH CERTIFICATES, SERIES
2005-11,

Case No. 3:16-cv-00632-MMD-VPC

ORDER

Plaintiff,

v.

WINGFIELD SPRINGS COMMUNITY
ASSOCIATION, a Nevada non-profit
corporation; WESTLAND
CONSTRUCTION CORP., a Nevada
corporation; THUNDER PROPERTIES
INC., a Nevada corporation.; DOE
INDIVIDUALS I through X; and ROE
CORPORATIONS 1 through 10,

Defendants.

I. SUMMARY

This case concerns a dispute over the constitutionality of a homeowner association (“HOA”) foreclosure sale. Before the Court is Defendant Thunder Properties, Inc.’s (“Thunder Properties”) Motion to Dismiss for Lack of Subject Matter Jurisdiction (“Motion”). (ECF No. 6.) The Court has reviewed Plaintiff Deutsche Bank National Trust Company’s (“Deutsche Bank”) response (ECF No. 12) and Thunder Properties’ reply (ECF No. 13). For the reasons discussed below, Thunder Properties’ Motion is denied.

II. BACKGROUND

The following facts are taken from the Complaint. (ECF No. 1.)

In May of 2005, Kendall Fielding and Cindi Yakimow (“Borrowers”) borrowed \$244,000.00 to buy a home at 2690 Lawry Drive in Sparks, Nevada (“the Property”). The

1 loan was secured by a Deed of Trust (“DOT”) on the Property. On December 12, 2012,
2 the DOT was assigned to Deutsche Bank.

3 When Borrowers became delinquent on their HOA dues, Defendant Wingfield
4 Springs Community Association (“the HOA”) recorded a lien on the Property and
5 eventually elected to sell the Property pursuant to Nevada’s HOA foreclosure statutes.
6 On May 28, 2013, the HOA purchased the Property at a non-judicial foreclosure sale for
7 \$4,424.71. On January 6, 2014, the HOA conveyed its interest in the Property via
8 quitclaim deed to Defendant Westland Construction Corporation (“Westland”). On
9 February 27, 2014, Westland quitclaimed its interest in the Property to Thunder
10 Properties.

11 Amongst its other claims, Deutsche Bank seeks to quiet title pursuant to 28 U.S.C.
12 § 2201, NRS § 30.010 *et seq.*, and NRS § 40.010, challenging the foreclosure sale as
13 statutorily defective.

14 The Complaint alleges diversity jurisdiction. (ECF No. 1 at 2.) Thunder Properties
15 seeks dismissal for lack of subject matter jurisdiction, arguing that the parties are not
16 diverse because Deutsche Bank and Thunder Properties are citizens of California. (ECF
17 No. 6 at 3.)

18 **III. LEGAL STANDARD**

19 Federal Rule of Civil Procedure 12(b)(1) allows a defendant to seek dismissal of
20 a claim or action for lack of subject matter jurisdiction. Dismissal under Rule 12(b)(1) is
21 appropriate if the complaint fails to allege facts that are sufficient to establish subject
22 matter jurisdiction. *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546
23 F.3d 981, 984-85 (9th Cir. 2008). Subject matter jurisdiction may be met through diversity
24 jurisdiction or federal question jurisdiction. Federal district courts have diversity
25 jurisdiction over lawsuits when the amount in controversy exceeds \$75,000 and the
26 parties are citizens of different states. 28 U.S.C. § 1332(a). By contrast, federal district
27 courts have federal question jurisdiction over “all civil actions arising under the
28 Constitution, laws, or treaties of the United States.” 28 U.S.C. §1331.

1 **IV. DISCUSSION**

2 As noted, Thunder Properties argues that the parties are not diverse for purposes
3 of diversity jurisdiction. (ECF No. 6 at 3.) The Bank counters that this Court may maintain
4 jurisdiction based on federal question jurisdiction, 28 U.S.C. § 1331. (ECF No. 12 at 4-
5 7.)

6 Federal district courts have federal question jurisdiction under the “well-pleaded
7 complaint rule” only when a properly pleaded complaint asserts a federal question on its
8 face. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Because Deutsche Bank has
9 alleged that the “opt-in” provision of NRS § 116.3116 is unconstitutional under the due
10 process clause of the Fifth and Fourteenth Amendments of the United States
11 Constitution (see ECF No. 1 at 7), thereby making the HOA sale unlawful, this Court
12 must maintain § 1331 jurisdiction over this litigation. See *Lowe v. Manhattan Beach City*
13 *Sch. Dist.*, 222 F.2d 258, 259–60 (9th Cir. 1955); see also *Bell v. Hood*, 327 U.S. 678,
14 681–82 (1946).

15 **V. CONCLUSION**

16 The Court notes that the parties made several arguments and cited to several
17 cases not discussed above. The Court has reviewed these arguments and cases and
18 determines that they do not warrant discussion as they do not affect the outcome of
19 Thunder Properties’ Motion.

20 It is therefore ordered that Thunder Properties’ Motion to Dismiss for Lack of
21 Subject Matter Jurisdiction (ECF No. 6) is denied.

22 DATED THIS 14th day of August 2017

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25 _____
26 MIRANDA M. DU
27 UNITED STATES DISTRICT JUDGE
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