

CLERK OF THE COURT

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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 OCTAVIO CANO-MARTINEZ, an
12 individual,

13 Plaintiff,

14 vs.

15 HSBC BANK USA, NATIONAL
16 ASSOCIATION AS TRUSTEE FOR
WELLS FARGO ASSET SECURITIES
17 CORPORATION; GREENWOOD
HOMEOWNERS ASSOCIATION; DOE
18 Individuals I through X; ROE
Corporations and Organizations I through
19 X,

Defendants.

CASE NO. A-13-692027-C

DEPT. NO. XXV

**ORDER GRANTING DEFENDANT
HSBC BANK USA'S MOTION FOR
SUMMARY JUDGMENT**

20 **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

21 This matter concerning Defendant HSBC Bank USA's ("HSBC") Motion for Summary
22 Judgment, filed on August 11, 2014 and supplemented on December 1, 2014, came on for hearing
23 on the 14th day of April, 2015 at the hour of 9:00 a.m. before Department XXV of the Eighth
24 Judicial District Court, in and for Clark County, Nevada, with JUDGE KATHLEEN DELANEY
25 presiding; Plaintiff OCTAVIO CANO-MARTINEZ appeared by and through his attorney
26 BRYAN NADDAFI, ESQ. of the LAW OFFICES OF P. STERLING KERR; Defendant
27 GREENWOOD HOMEOWNERS ASSOCIATION appeared by and through its attorney,
28

1 JOSEPH P. HARDY, ESQ. of the law firm GORDON AND REES, LLP; and HSBC BANK
2 USA appeared by and through its attorney, BRADLEY T. AUSTIN, ESQ. of the law firm
3 SNELL & WILMER, LLP. Having reviewed the papers and pleadings on file herein and heard
4 oral arguments of counsel, this Court makes the following Findings of Fact and Conclusions of
5 Law:

6 FINDINGS OF FACT

7
8 1. This lawsuit involves real property located at 670 Rolling Green Drive, Las Vegas,
9 NV 89169, and bearing Assessor's Parcel Number 162-15-214-014 (the "Property"). The
10 Property is located within a common-interest community governed by the Greenwood
11 Homeowners Association ("Association").

12 2. On or about January 18, 2007, Lamon Holloway purchased the Property and
13 executed a First Deed of Trust in the amount of \$171,000.00 with Wells Fargo Bank, N.A.

14 3. On or about July 24, 2012, the Association recorded a Notice of Delinquent
15 Assessment Lien against the Property.

16 4. On or about December 7, 2012, the Association recorded a Notice of Trustee Sale
17 against the Property

18 5. On or about December 20, 2012, Wells Fargo Bank, N.A. assigned the First Deed
19 of Trust to HSBC.

20 6. On or about March 5, 2013, the Association held a non-judicial foreclosure sale
21 and the Property was sold to Mario Zamora-Prado for the total amount of \$6,493.01.

22 7. On or about October 3, 2013, Zamora-Prado quitclaimed the Property to Plaintiff
23 for \$0.00.

24 8. Plaintiff subsequently filed a Complaint with this Court, seeking declaratory relief
25 and quiet title to the Property.

26 9. On April 14, 2015, at the hearing on Defendant's Motion for Summary Judgment,
27 Defendant's counsel argued that ~~that~~ the statute upon which Plaintiff's claims for quiet title and
28 declaratory relief necessarily rely, NRS 116.3116 *et seq.* (the "Statute"), does not satisfy

1 constitutional due process principles. Defendants contend that the Statute is facially
2 unconstitutional because the burden shifting “opt-in” provisions first require lenders to give
3 notice in order to receive notice of the operative steps in the HOA foreclosure process. As such,
4 the Statute does not require the foreclosing party to take reasonable steps to ensure that actual
5 notice is provided to interested parties who are reasonably ascertainable. Plaintiff’s counsel
6 argued that in *SFR Investments Pool 1 v. U.S. Bank*, 130 Nev. Adv. Op. 75, 334 P.3d 408 (2014),
7 *reh’g denied* (Oct. 16, 2014), the Nevada Supreme Court resolved this issue in favor of Plaintiff
8 because the Supreme Court considered, and ruled on, an as-applied constitutional challenge. The
9 crux of this matter hinges upon whether the Statute at issue is facially unconstitutional.

10 CONCLUSIONS OF LAW

11 **THE COURT HEREBY FINDS AS FOLLOWS AS A MATTER OF LAW:**

12 1. The Nevada Supreme Court, in its *SFR v. U.S. Bank* decision, did not address any
13 facial challenge, including the facial challenge to the constitutionality of the Statute raised in the
14 instant Motion for Summary Judgment.

15 2. The Statute violates the Due Process Clauses of the Fifth and Fourteenth
16 Amendments of the United States Constitution because its “opt-in” notice provisions do not
17 mandate that reasonable and affirmative steps be taken to give actual notice to lenders and other
18 holders of recorded security interests prior to a deprivation of their property rights. Because the
19 Statute does not require the foreclosing party to take reasonable steps to ensure that actual notice
20 is provided to interested parties who are reasonably ascertainable (unless the interested party first
21 requests notice) it does not comport with long standing principles of constitutional due process.
22 *See Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799-800, 103 S. Ct. 2706, 2711-12, 77 L.
23 Ed. 2d 180 (1983); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950);
24 *Small Engine Shop, Inc. v. Cascio*, 878 F.2d 883, 893 (5th Cir. 1989).

25 3. The Statute violates the Due Process Clause of the Nevada Constitution for the
26 same reasons as articulated in Paragraph 2. Nevada Const., art. I, sec. 8(5).
27
28

1 4. Moreover, reference to NRS 107.090 does not salvage the federal or state
 2 constitutionality of the Statute because Plaintiff's construction of NRS 107.090 as mandating
 3 notice to lenders before foreclosure would render superfluous the express "opt-in" notice
 4 provisions contained in NRS 116.3116, in violation of rules of statutory construction. *See S.*
 5 *Nevada Homebuilders Ass'n v. Clark County*, 121 Nev. 446, 449, 117 P.3d 171, 173 (2005)
 6 ("When interpreting a statute, this Court must give its terms their plain meaning, considering its
 7 provisions as a whole so as to read them in a way that would not render words or phrases
 8 superfluous or make a provision nugatory.") (internal quotations omitted).

9 5. For these reasons, this Court finds that the Statute is facially unconstitutional in
 10 violation of the Due Process Clauses of both the United States and Nevada Constitutions.

11 Based upon the foregoing Findings of Fact and Conclusions of Law,

12 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Defendant's Motion
 13 for Summary Judgment, filed August 11, 2014, and supplemented on December 1, 2014, is
 14 **GRANTED.**

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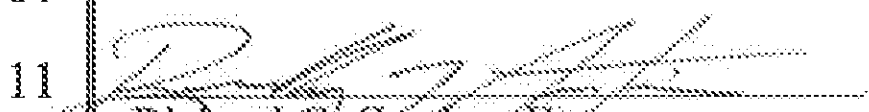
1 IT IS FURTHER ORDERED that because multiple parties are involved, this Court
2 expressly directs the entry of a final judgment with respect to HSBC, but not all defendants,¹
3 pursuant to NRCP 54(b) due to the express determination that there is no just reason for delay.

4 IT IS SO ORDERED.

5
6 DATED: May 7, 2015.


DISTRICT COURT JUDGE

10 Submitted by:

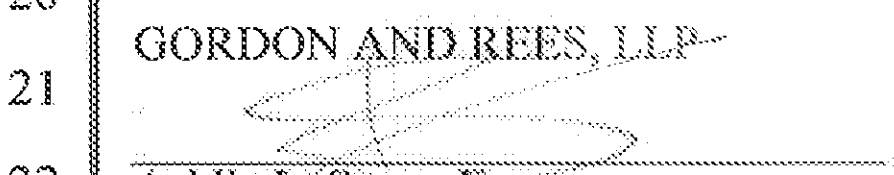
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18 *Attorneys for HSBC Bank USA, National Association
19 as Trustee for Wells Fargo Asset Securities Corporation*

20 DATED May 4, 2015

21 Approved as to form and content:

22 DATED May 4, 2015.

23 GORDON AND REES, LLP
24 
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*Attorney for Greenwood Homeowners
Association*

¹ This Order does not resolve all claims against, or defenses raised by, at least one remaining Defendant because the Court made no specific findings as to the Association nor did the Association join or oppose HSBC's Motion for Summary Judgment. Accordingly, 54(b) certification as to HSBC is appropriate.