

Assessor's Parcel Number: 1219-04-001-017

Recording Requested By:

Name: K Buxman Cooper Castle Law Firm

Address: 919 18th St. Ste. 2201

City/State/Zip Denver, CO 80202

Real Property Transfer Tax:

\$ _____

DOC # 824305
05/28/2013 01:46PM Deputy: AR
OFFICIAL RECORD
Requested By:
Cooper Castle Law Firm- Ne'
Douglas County - NV
Karen Ellison - Recorder
Page: 1 of 18 Fee: \$31.00
BK-513 PG-6988 RPTT: 0.00



Order of Dismissal

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

This cover page must be typed or legibly hand printed.

<input checked="" type="checkbox"/> FILED	<input type="checkbox"/> RECEIVED
<input type="checkbox"/> ENTERED	<input type="checkbox"/> SERVED ON
COUNSEL/PARTIES OF RECORD	
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>JUL 17 2012</p> </div>	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MARK TRAVIS WYMAN, KRISTA MICHELLE)
WYMAN,)

Plaintiffs,)

vs.)

FIRST MAGNUS FINANCIAL)
CORPORATION; GMAC MORTGAGE, LLC;)
DEUTSCHE BANK TRUST COMPANY)
AMERICAS; RESIDENTIAL FUNDING)
COMPANY, LLC; EXECUTIVE TRUSTEE)
SERVICES, LLC;)
FANNIE MAE/FREDDIE MAC; CEREBRUS)
CAPITAL MANAGEMENT; LSI TITLE CO.,)
INC.; DEPARTMENT OF TREASURY a/k/a)
INTERNATIONAL MONETARY FUND,)

Defendants.)

3:12-cv-00007-ECR-WGC

Order

This case arises out of a quiet title action alleging that Defendants wrongfully foreclosed on Plaintiffs' home.

I. Factual and Procedural Background

On or about September 6, 2006, Plaintiffs executed a Deed of Trust with regard to the real property located at 196 Taylor Creek Road, Gardnerville, NV 89406 to secure a loan in the amount of



1 \$1,000,000.00. (Deed of Trust¹ (#30-1).) The Deed of Trust was
2 recorded on September 11, 2006 as document #0684234, and names
3 Defendant First Magnus Financial Corporation as the lender, Western
4 Title Company Inc. as the trustee, and Mortgage Electronic
5 Registration Systems, Inc. ("MERS") as the beneficiary and nominee
6 of the lender. (Id.) The Deed of Trust allows the lender to
7 appoint a substitute trustee and provides that "MERS holds only
8 legal title to the interests granted by Borrower in this Security
9 Instrument," but has the right to foreclose and sell the property as
10 a nominee of the lender. (Id.)

11 On June 11, 2011, MERS substituted Defendant Executive Trustee
12 Services, LLC ("ETS") as the trustee under the Deed of Trust,
13 memorialized by a Substitution of Trustee recorded on June 16, 2011
14 as document #765318. (Substitution of Trustee (#30-3).) Also on
15 June 16, 2011, Defendant ETS recorded a Notice of Breach and Default
16 and of Election to Cause Sell [sic] of Real Property Under Deed of
17 Trust as document #765319. (Notice of Default (#30-4).)

18

19 ¹ Defendants Deutsche, ETS, GMAC, and RFC and Defendant FNMA have
20 requested that the Court take judicial notice of relevant publicly
21 recorded documents, copies of which are filed in support of their
22 respective Motions to Dismiss (## 5, 28). This Court takes judicial
23 notice of these public records. See Disabled Rights Action Comm. v.
24 Las Vegas Events, Inc., 375 F.3d 861, 866 n.1 (9th Cir. 2004) (holding
25 that the court may take judicial notice of the records of state
26 agencies and other undisputed matters of public record under Fed. R.
27 Evid. 201). Importantly, "[a] court may . . . consider certain
28 materials - documents attached to the complaint, documents
incorporated by reference in the complaint, or matters of judicial
notice - without converting the motion to dismiss into a motion for
summary judgment." United States v. Ritchie, 342 F.3d 903, 908 (9th
Cir. 2003). The Court therefore considers the judicially notice
documents without converting the Motions to Dismiss (## 5, 28) to
motions for summary judgment.

28

2

BK 513
PG-6990

1 On February 15, 2011, MERS executed an Assignment of Deed of
2 Trust, assigning the beneficial interest in the Deed of Trust and
3 the underlying note to Defendant Deutsche Bank Trust Company
4 Americas ("Deutsche"). (Assignment of Deed of Trust (#30-5).) The
5 Assignment was recorded on February 18, 2011 as document #778756.
6 (Id.)

7 Defendant ETS, as trustee under the Deed of Trust, recorded a
8 second Notice of Breach and Default and of Election to Cause Sell
9 [sic] of Real Property Under Deed of Trust as document #779886 on
10 March 14, 2011. (Second Notice of Default (#30-8).)

11 On or about August 3, 2011, the State of Nevada Foreclosure
12 Mediation Program issued a Certificate, recorded on November 7, 2011
13 as document #792196, noting that Plaintiffs failed to attend and/or
14 produce the necessary forms at the Foreclosure Mediation Conference
15 and authorizing the beneficiary to proceed with the foreclosure
16 process. (Certificate (#30-9).)

17 On November 16, 2011, Defendant ETS recorded a Notice of
18 Trustee's Sale, setting the sale date for December 21, 2011.
19 (Notice of Sale (#30-10).)

20 Plaintiffs subsequently filed a quiet title complaint (#1-1) in
21 the Ninth District Court of the State of Nevada in and for the
22 County of Douglas (the "State Court") on December 19, 2011.
23 Defendants Residential Funding Company ("RFC"), ETS, GMAC Mortgage,
24 LLC ("GMAC"), and Deutsche removed the action to this Court on
25 January 5, 2012, invoking the Court's federal question jurisdiction.
26 (Pet. Removal (#1).)

27
28



1 On January 12, 2012, Defendants RFC, ETS, GMAC, and Deutsche
2 filed a Motion to Dismiss (#5). On January 26, 2012 Defendant LSI
3 Title Co., Inc. ("LSI") and Defendant Fannie Mae/Freddie Mac
4 ("FNMA") joined (## 13, 16) the motion. Plaintiffs responded (#10)
5 on January 24, 2012, and the moving Defendants replied (#19) on
6 February 1, 2012.

7 On January 24, 2012, Plaintiffs filed a Motion to Remand (#9).
8 Defendant FNMA responded (#22) on February 7, 2012, and Defendants
9 RFC, ETS, GMAC and Deutsche responded (#23) on February 8, 2012.

10 Plaintiffs filed a Motion to Strike (#24) Defendant LSI's
11 joinder (#13) to the Motion to Dismiss (#5) on February 8, 2012.
12 Defendant LSI responded (#26) on February 9, 2012.

13 On February 8, 2012, Plaintiffs filed a Motion for Summary
14 Judgment (#25). Defendant FNMA responded (#31) on February 27,
15 2012. Additionally, on March 1, 2012, Defendants RFC, ETS, GMAC,
16 and Deutsche filed their Response (#39), which was joined by
17 Defendants Cerebrus Capital Management ("Cerebrus"), LSI, and FNMA
18 (## 40, 41, 42). Plaintiffs filed their Reply (#44) on March 7,
19 2012.

20 On February 17, 2012, Defendant FNMA filed a Motion to Dismiss
21 (#28). Plaintiffs responded (#33) on February 29, 2012. Defendant
22 Cerebrus joined (#43) FNMA's Motion to Dismiss (#28) on March 7,
23 2012. FNMA replied (#45) on March 9, 2012. FNMA filed a Motion for
24 Hearing (#62) regarding its Motion to Dismiss (#28) on May 30, 2012.

25
26
27
28



1 On February 29, 2012, Plaintiffs filed a Motion to Strike (#34)
2 which the Court construes as an additional motion to remand.
3 Defendant FNMA responded. (#47) on March 13, 2012.

4 On April 30, 2012, we found that federal question jurisdiction
5 does not exist and ordered (#56) Defendants to submit evidence of
6 the citizenship of the parties in order to determine whether the
7 Court may exercise diversity jurisdiction over the matter.

8

9 II. Plaintiffs' Motions to Remand (## 9, 34)

10 A. Legal Standard

11 Under the federal removal statute, 28 U.S.C. § 1441(a),
12 any civil action brought in a State court of which the
13 district courts of the United States have original
14 jurisdiction, may be removed by the defendant or the
15 defendants, to the district court of the United States for
16 the district and division embracing the place where such
17 action is pending.

18 A district court has original jurisdiction over civil actions where
19 the suit is between citizens of different states and the amount in
20 controversy, exclusive of interest and costs, exceeds \$75,000.00.
21 28 U.S.C. § 1332(a). If a defendant has improperly removed a case
22 over which the federal court lacks diversity jurisdiction, the
23 federal court shall remand the case to state court. 28 U.S.C. §
24 1447(c). However, the district court should deny a motion to remand
25 to state court if the case was properly removed to federal court.
26 Carpenters S. Cal. Admin. Corp. v. Majestic Hous., 743 F.2d 1341,
27 1343 (9th Cir. 1984). The removing party bears the burden of
28 establishing federal jurisdiction. Calif. ex rel Lockyer v. Dynegy,
Inc., 375 F.3d 831, 839 (9th Cir. 2004). Removal statutes are to be

28

5



BK 513
PG-6993

1 strictly construed, and any doubts as to the right of removal must
2 be resolved in favor of remanding to state court. Durham v.
3 Lockheed Martin Corp., 445 F.3d 1247, 1252 (9th Cir. 2006).

4 **B. Discussion**

5 The Court finds on the basis of the pleaded facts in the
6 Petition for Removal (#1) and the additional submitted evidence of
7 citizenship that the parties are completely diverse because none of
8 the Defendants are citizens of the state of Nevada. Furthermore,
9 Plaintiffs do not contend that any Defendant is a citizen of Nevada
10 or that the parties are not otherwise completely diverse.

11 However, Plaintiffs dispute in their Motion for Summary
12 Judgment (#25) that the amount in controversy exceeds \$75,000 as
13 required by 28 U.S.C. § 1332. Where a defendant removes a state
14 action on the basis of diversity jurisdiction, the defendant must
15 either: (1) demonstrate that it is facially evident from the
16 plaintiff's complaint that the plaintiff seeks in excess of \$75,000,
17 or (2) prove, by a preponderance of the evidence, that the amount in
18 controversy meets the jurisdictional threshold: Valdez v. Allstate
19 Ins. Col., 372 F.3d 1115 (9th Cir. 2004). In this case, it is clear
20 from the face of the complaint and the judicially noticed documents
21 that the amount in controversy exceeds \$75,000. While Plaintiffs do
22 not seek damages, they do seek a declaration that the promissory
23 note is fully discharged and that the Deed of Trust is null and
24 void. (Compl. at 20 (#1-1).) The Deed of Trust (#30-1), which is
25 also attached to Plaintiffs' complaint (see Compl. Ex. A), secures a
26 loan in the amount of \$1,000,000. Thus, not only it is "facially

27

28



1 evident" from the complaint that this requirement is met, but the
2 Deed of Trust establishes that the amount in controversy exceeds
3 \$75,000 by a preponderance of the evidence.

4 Plaintiffs' remaining objections to the Court's exercise of
5 jurisdiction are generally without merit, as they cite to the
6 Federal Rules of Evidence and local rules governing appearances
7 before this Court. Plaintiffs' Motions to Remand (## 9, 34) must
8 therefore be denied.

9

10 **III. Defendants' Motions to Dismiss (## 5, 28)**

11 **A. Legal Standard**

12 Courts engage in a two-step analysis in ruling on a motion to
13 dismiss. Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009); Bell Atl. Corp.
14 v. Twombly, 550 U.S. 544 (2007). First, courts accept only non-
15 conclusory allegations as true. Iqbal, 129 S. Ct. at 1949.

16 "Threadbare recitals of the elements of a cause of action, supported
17 by mere conclusory statements, do not suffice." Id. (citing Twombly,
18 550 U.S. at 555). Federal Rule of Civil Procedure 8 "demands more
19 than an unadorned, the-defendant-unlawfully-harmed-me accusation."

20 Id. Federal Rule of Civil Procedure 8 "does not unlock the doors of
21 discovery for a plaintiff armed with nothing more than conclusions."
22 Id. at 1950. The Court must draw all reasonable inferences in favor
23 of the plaintiff. See Mohamed v. Jeppesen Dataplan, Inc., 579 F.3d
24 943, 949 (9th Cir. 2009).

25 After accepting as true all non-conclusory allegations and
26 drawing all reasonable inferences in favor of the plaintiff, the
27

28



1 Court must then determine whether the complaint "states a plausible
2 claim for relief." Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550
3 U.S. at 555). "A claim has facial plausibility when the plaintiff
4 pleads factual content that allows the court to draw the reasonable
5 inference that the defendant is liable for the misconduct alleged."
6 Id. at 1949 (citing Twombly, 550 U.S. at 556). This plausibility
7 standard "is not akin to a 'probability requirement,' but it asks
8 for more than a sheer possibility that a defendant has acted
9 unlawfully." Id. A complaint that "pleads facts that are 'merely
10 consistent with' a defendant's liability... 'stops short of the line
11 between possibility and plausibility of 'entitlement to relief.'"
12 Id. (quoting Twombly, 550 U.S. at 557)..

13 **B. Discussion**

14 1. Quiet Title

15 Plaintiffs' complaint seeks to quiet title in Plaintiffs'
16 names. Under Nevada law, a quiet title action may be brought by a
17 party who claims an adverse interest in the subject property. NEV.
18 REV. STAT. § 40.010. "In a quiet title action, the burden of proof
19 rests with the plaintiff to prove good title in himself." Breliant
20 v. Preferred Equities Corp., 918 P.2d 314, 318 (Nev. 1996)
21 (citations omitted). When an adverse claim exists, the party
22 seeking to have another party's right to property extinguished must
23 overcome the "presumption in favor of the record titleholder." Id.
24 (citing Biasa v. Leavitt, 692 P.2d 1301, 1304 (Nev. 1985)).
25 Finally, an action to quiet title requires a plaintiff to allege
26 that he has paid any debt owed on the property. Scarberry v. Fid.

27

28



1 Mortg. of N.Y., No. 2:12-cv-00128-KJD-CWH, 2012 WL 2522812, at *5
2 (D. Nev. June 29, 2012) (citing Ferguson v. Avelo Mortg., LLC, No.
3 B223447, 2011 WL 2139143, at *2 (Cal.App.2d June 1, 2011)); see also
4 Gomez v. Countrywide Bank, FSB, No. 2:09-cv-01489-RCJ-LRL, 2009 WL
5 3617650, at *6 (D. Nev. Oct. 26, 2009) (holding that a plaintiff may
6 not quiet title in himself where he does not allege that he is not
7 in default).

8 Plaintiffs have not alleged that they have paid the debt owed
9 on the property. The claim must therefore be dismissed. See Rivera
10 v. Recontrust Co., N.A., No. 2:11-CV-01695-KJD-PAL, 2012 WL 2190710,
11 at *4 (D. Nev. June 14, 2012) ("Plaintiff claims an adverse interest
12 in the Property but has not alleged an absence of default, and has
13 failed to show that she has satisfied all encumbrances against the
14 Property. . . . Accordingly, the claim for quiet title fails.").
15 Moreover, it is undisputed that Plaintiffs have defaulted on the
16 loan. Accordingly, Plaintiffs' quiet title action must be
17 dismissed. See Anderson v. Deutsche Bank Nat'l Trust Co., No. 2:10-
18 CV-1443 JCM (PAL), 2010 WL 4386958, at *5 (D. Nev. Oct. 29, 2010)
19 ("Plaintiff's claim must be dismissed because plaintiff has not done
20 equity; it is undisputed that plaintiff defaulted on his loan.
21 Accordingly, the [quiet title] action is dismissed."). Furthermore,
22 the Court dismisses the action with prejudice as leave to amend
23 pursuant to Federal Rule of Civil Procedure 15(a) would prove
24 futile.

25
26
27
28



1 2. Wrongful Foreclosure

2 Although the complaint (#1-1) does not make it explicit,
3 Plaintiffs' allegations may be construed to assert a cause of action
4 for wrongful foreclosure under Nevada law. Specifically, it appears
5 that Plaintiffs claim that Defendants do not have authority to
6 foreclose because the securitization of the note and the Deed of
7 Trust have discharged Plaintiffs' obligations and because Defendants
8 are not the holders in due course of the note. (See Compl. ¶ 11
9 (#1-1).) Plaintiffs further claim that Defendants do not have
10 authority to foreclose where the note is "split" from the Deed of
11 Trust. (Id.) Finally, Plaintiffs claim that there is no evidence
12 of transfer of ownership from the original lender to the party now
13 seeking to foreclosure. (Id. ¶ 24.)

14 The Nevada Supreme Court has yet to address the split note
15 issue. See Leyva v. Nat'l Default Servicing Corp., 255 P.3d 1275
16 (Nev. 2011) ("Since the documents . . . did not establish transfer
17 of either the mortgage or the note, we express no opinion on the
18 issue addressed in the Restatement (Third) of Property Mortgages
19 section 5.4 concerning the effect on the mortgage of the note having
20 been transferred or the reverse."). However, courts in this
21 District and others have repeatedly rejected the theory advanced by
22 Plaintiffs that securitization somehow splits a note from a deed of
23 trust and renders either a nullity or otherwise discharges a
24 grantee's obligations. See, e.g., Parker v. GreenPoint Mortg.
25 Funding, Inc., No. 3:11-cv-00039-ECR-RAM, 2011 WL 5248171, at *4 (D.
26 Nev. Nov. 1, 2011) (rejecting Plaintiff's "splitting the note

27

28



1 theory"); Manderville v. Litton Loan Servicing, No. 2:10-cv-01696,
2 2011 WL 2149105, at *2 (D. Nev. May 31, 2011) ("As plaintiff is
3 basing her quiet title claim on the 'split the note' theory, which
4 has been rejected by many courts with regards to nonjudicial
5 foreclosures such as this, it cannot survive."); Birkland v. Silver
6 State Fin. Servs., Inc., No. 2:10-cv-00035, 2010 WL 3419372, at *2
7 (D. Nev. Aug. 25, 2010) (holding that the plaintiff is "incorrect"
8 in "claiming that the securitization - or placement of her note/loan
9 on the secondary market - makes it impossible to identify which
10 parties have purchased an interest in the note, and that the deed of
11 trust 'is split from the note and is unenforceable.'"). See also
12 Horvath v. Bank of N.Y., N.A., 641 F.3d 617, 624 (4th Cir. 2011)
13 ("If . . . the transfer of a note splits it from the deed of trust,
14 . . . there would be little reason for notes to exist in the first
15 place. One of the defining features of notes is their
16 transferability, . . . but on [plaintiff]'s view, transferring a
17 note would strip it from the security that gives it value and render
18 the note largely worthless. This cannot be - and is not - the
19 law."); Commonwealth Prop. Advocates v. Mortg. Elec. Registration
20 Sys., Inc., No. 2:11-CV-214 TS, 2011 WL 1897826, at *2 (D. Utah May
21 18, 2011) ("[A]s any assignment of the note necessarily carries with
22 it the deed of trust securing the property, the Court has found that
23 such a 'split-note' scenario is untenable."). The Court will
24 therefore again reject the theory that the securitization of a note
25 somehow voids Plaintiffs' obligations.

26
27
28



1 Moreover, Plaintiffs cannot establish a cause of action for
2 wrongful foreclosure where they have defaulted on the loan:

3 [A]n action for the tort of wrongful foreclosure will lie
4 [only] if the trustor or mortgagor can establish that at
5 the time the power of sale was exercised or the
6 foreclosure occurred, no breach of condition or failure of
7 performance existed on the mortgagor's or trustor's part
8 which would have authorized the foreclosure or exercise of
9 the power of sale.

10 Collins v. Union Fed. Sav. & Loan Ass'n, 662 P.2d 610, 623 (Nev.
11 1983). Therefore, "[t]he material issue of fact in a wrongful
12 foreclosure claim is whether the trustor was in default when the
13 power of sale was exercised." Id. Here, Plaintiffs' claim fails
14 because they cannot allege that there were not in default on their
15 loan obligations when foreclosure proceedings were initiated, nor
16 that they made any attempt to cure the default.

17 Finally, the judicially noticed documents evidence a
18 procedurally proper non-judicial foreclosure in accord with Nev.
19 Rev. Stat. § 107.080. For the foregoing reasons, Plaintiffs cannot
20 establish a claim for wrongful foreclosure. Moreover, because the
21 Court finds that leave to amend would prove futile, the claim will
22 be dismissed with prejudice.

23 **IV. Plaintiffs' Motion to Strike (#24)**

24 Plaintiffs' Motion to Strike and Objection to Joinder to Motion
25 to Dismiss (#24) is a largely incoherent dissertation on "Canons of
26 Ecclesiastical [sic] Law known collectively as Canonum De Lex
27 Ecclesium." (Mot. Strike at 1 (#24).) In the second half of the
28 forty-page motion, Plaintiffs have copied excerpts of the local



1 rules governing practice before this Court, the Federal Rules of
2 Evidence governing hearsay, and Federal Rule of Civil Procedure 19
3 governing required joinder of parties. The motion also contains the
4 same argument, addressed above, that the Court lacks subject matter
5 jurisdiction. Plaintiffs have therefore provided no basis to strike
6 Defendant LSI's Joinder (#13) to Deutsche, ETS, GMAC, and RFC's
7 Motion to Dismiss (#5). Moreover, given that Plaintiffs'
8 substantive claims in their complaint (#1-1) have no merit, striking
9 LSI's Joinder (#13) would have little practical effect on this case.
10 Accordingly, Plaintiffs' Motion to Strike (#24) will be denied.

11
12 **V. Plaintiffs' Motion for Summary Judgment (#25)**

13 **A. Summary Judgment Standard**

14 Summary judgment allows courts to avoid unnecessary trials
15 where no material factual dispute exists. Nw. Motorcycle Ass'n v.
16 U.S. Dep't of Agric., 18 F.3d 1468, 1471 (9th Cir. 1994). The court
17 must view the evidence and the inferences arising therefrom in the
18 light most favorable to the nonmoving party, Bagdadi v. Nazar, 84
19 F.3d 1194, 1197 (9th Cir. 1996), and should award summary judgment
20 where no genuine issues of material fact remain in dispute and the
21 moving party is entitled to judgment as a matter of law. FED. R.
22 Civ. P. 56(c). Judgment as a matter of law is appropriate where
23 there is no legally sufficient evidentiary basis for a reasonable
24 jury to find for the nonmoving party. FED. R. Civ. P. 50(a). Where
25 reasonable minds could differ on the material facts at issue,
26 however, summary judgment should not be granted. Warren v. City of



1 Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), cert. denied, 516 U.S.
2 1171 (1996).

3 The moving party bears the burden of informing the court of the
4 basis for its motion, together with evidence demonstrating the
5 absence of any genuine issue of material fact. Celotex Corp. v.
6 Catrett, 477 U.S. 317, 323 (1986). Once the moving party has met
7 its burden, the party opposing the motion may not rest upon mere
8 allegations or denials in the pleadings, but must set forth specific
9 facts showing that there exists a genuine issue for trial. Anderson
10 v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). Although the
11 parties may submit evidence in an inadmissible form--namely,
12 depositions, admissions, interrogatory answers, and affidavits--only
13 evidence which might be admissible at trial may be considered by a
14 trial court in ruling on a motion for summary judgment. FED. R. CIV.
15 P. 56(c); Beyene v. Coleman Sec. Servs., Inc., 854 F.2d 1179, 1181
16 (9th Cir. 1988).

17 In deciding whether to grant summary judgment, a court must
18 take three necessary steps: (1) it must determine whether a fact is
19 material; (2) it must determine whether there exists a genuine issue
20 for the trier of fact, as determined by the documents submitted to
21 the court; and (3) it must consider that evidence in light of the
22 appropriate standard of proof. Anderson, 477 U.S. at 248. Summary
23 judgment is not proper if material factual issues exist for trial.
24 B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260, 1264 (9th Cir.
25 1999). As to materiality, only disputes over facts that might
26 affect the outcome of the suit under the governing law will properly

27
28



1 preclude the entry of summary judgment. Disputes over irrelevant or
2 unnecessary facts should not be considered. Id. Where there is a
3 complete failure of proof on an essential element of the nonmoving
4 party's case, all other facts become immaterial, and the moving
5 party is entitled to judgment as a matter of law. Celotex, 477 U.S.
6 at 323. Summary judgment is not a disfavored procedural shortcut,
7 but rather an integral part of the federal rules as a whole. Id.

8 **B. Discussion**

9 Plaintiffs' Motion for Summary Judgment (#25) argues that
10 Plaintiffs are entitled to judgment as a matter of law because
11 Defendants have not presented evidence of an injury in fact to
12 establish Constitutional standing, Defendants have not presented
13 evidence to establish a genuine issue of material fact, and
14 Defendants lack Constitutional standing. (Mot. Summ. J. at 2-5, 10-
15 12 (#25).) The Motion (#25) also contains arguments that the Court
16 lacks subject matter jurisdiction, which the Court addresses above.

17 Plaintiffs' argument that Defendants have not and cannot
18 establish standing is misapplied. The authorities on standing, as
19 cited by Plaintiffs, make clear that it is a plaintiff's burden to
20 establish the three elements of standing because "they are not mere
21 pleading requirements but rather an indispensable part of the
22 plaintiff's case." Lujan v. Defenders of Wildlife, 504 U.S. 555,
23 561 (1992). The cases cited by Plaintiff establish that Article III
24 standing requires that (1) "the plaintiff must have suffered an
25 'injury in fact'" that (2) is "fairly traceable to the challenged
26 action of the defendant," and (3) that plaintiff's injury will be

27

28



1 "redressed by a favorable decision." Id. at 560-561 (citations
2 omitted) (emphasis added). Thus, Plaintiffs' argument that
3 Defendants cannot show that they have suffered an injury in fact is
4 completely unavailing.

5 Moreover, because Plaintiffs' claims fail as a matter of law
6 and must be dismissed, Plaintiffs cannot establish that they are
7 entitled to summary judgment, nor have they produced any evidence
8 establishing the absence of a genuine issue of material fact, as is
9 their burden. Celotex, 477 U.S. at 323. Accordingly, Plaintiffs'
10 Motion for Summary Judgment (#25) must be denied.

11
12 VI. Conclusion

13 The Court may properly exercise jurisdiction because the
14 parties are completely diverse and the amount in controversy exceeds
15 \$75,000. The judicially noticed documents establish that Defendants
16 have properly initiated a non-judicial foreclosure in compliance
17 with Nev. Rev. Stat. § 107.080 after Plaintiffs defaulted on their
18 mortgage loan. Plaintiffs' quiet title action therefore fails as a
19 matter of law and must be dismissed with prejudice, and Plaintiffs
20 are not entitled to judgment as a matter of law.

21
22 IT IS, THEREFORE, HEREBY ORDERED that Plaintiffs' Motions to
23 Remand (## 9, 34) are DENIED.

24 IT IS FURTHER ORDERED that Defendants' Motions to Dismiss (##
25 5, 28) are GRANTED. The complaint (#1-1) is DISMISSED with
26 prejudice.

27
28



