

APN# 1318-03-111-014



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Order Granting Preliminary Injunction

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Affidavit of Death – NRS 440.380(1)(A) & NRS 40.525(5)

Judgment – NRS 17.150(4)

Military Discharge – NRS 419.020(2)

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1 CASE NO.: 18-CV-0289

2 DEPT. NO.: I

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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR DOUGLAS COUNTY

9 ANTHONY DENUNZIO,  
10 individually and in his  
11 capacity as successor  
12 Trustee of THE MARVIN AND  
13 LINDA DENUNZIO LIVING TRUST,

ORDER GRANTING PRELIMINARY  
INJUNCTION

14 Plaintiff,

15 v.

16 NATIONAL DEFAULT SERVICING  
17 CORPORATION, an Arizona  
18 corporation, registered to  
19 do business in Nevada;  
20 LIBERTY HOME EQUITY  
21 SOLUTIONS, INC., a  
22 California corporation,  
23 registered to do business in  
24 Nevada,

25 Defendants.

26 Having duly considered Plaintiff Anthony DeNunzio's  
27 application for preliminary injunction at the hearing on February  
28 4, 2018, at 10:00 a.m., pursuant to NRCP 65(b) and NRS 107.080,  
and GOOD CAUSE EXISTING, NOW, THEREFORE, THE COURT HEREBY GRANTS  
THE PRELIMINARY INJUNCTION PROHIBITING ANY FORECLOSURE SALE BY  
DEFENDANTS ABSENT FURTHER ORDER OF THIS COURT.

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30 ///

1 This order is based on the following findings of fact: The  
2 evidence showed that if the preliminary injunction were not  
3 granted, then Plaintiff would be irreparably damaged. The  
4 equities sharply balance in Plaintiff's favor. Plaintiff may  
5 lose his home where he, his fiancé, and their infant child,  
6 personally reside. The Lender is adequately protected by  
7 substantial equity stipulated to by defendants.

8 The Court finds that there has been no evidence submitted to  
9 show that the Notice of Default was mailed to the Estate of  
10 Marvin DeNunzio ("Estate"), or to any other party, as required by  
11 NRS 107.080(3).

12 The Court finds that there has been no evidence submitted to  
13 show that notice required by 24 CFR 206.125, as interpreted by  
14 the FHA in Mortgagee Letter 2015-10, was mailed to the Estate.

15 The affidavits of David Winter, admitted into evidence as  
16 Exhibit 1, asserted that the Notice of Default was posted at the  
17 property at least 100 days prior to the sale, as required by NRS  
18 107.087. However, the court found that evidence was not  
19 credible, in light of contradicting witness testimony.

20 Specifically, attached to the affidavits was a sheet of  
21 photographs, admitted separately into evidence as Exhibit 2. At  
22 the bottom of the sheet of photographs is a legend stating that  
23 the photographs were taken by David Winter, that the "Photo Date"  
24 was 6/14/2018 and the "Time" was 6:41 PM. The date and time on  
25 the legend correspond to the statements in David Winter's  
26 affidavits. For example, with respect to the alleged service on  
27 Marvin M. DeNunzio, the affidavit says "I served Marvin M.  
28 DeNunzio [deceased] with a copy of the Danger Notice, with a copy

1 of the Promissory Note attached to it, on 6/14/2018 at  
2 approximately 6:41 PM . . . ." But the hearing testimony showed  
3 that those photos did not fairly and accurately depict the  
4 condition of the house on 6/14/2018.

5 Robert Hallman testified that the cement mixer depicted in  
6 the photograph was not at the property on 6/14/2018. He  
7 testified that he was with Anthony DeNunzio when Mr. DeNunzio  
8 purchased the cement mixer in late August 2018, a time he  
9 specifically recalled since that was the same day that Mr.  
10 DeNunzio's fiancé, Kylie Close, was released from Barton Hospital  
11 following the birth of Damian DeNunzio, the newborn son of Mr.  
12 DeNunzio and Ms. Close. Mr. Hallman testified that he was with  
13 Mr. DeNunzio when he picked up Ms. Close at the hospital and that  
14 they immediately went to pick up the cement mixer.

15 Mr. Hallman also testified that the replacement vinyl  
16 window, shown in one of the photos on Exhibit 2, could not have  
17 been at the property on 6/14/2018, because that window was not  
18 purchased by Anthony until July - a time Mr. Hallman specifically  
19 recalled since it was the day after Mr. Hallman's birthday.

20 Kylie Close testified that she had never seen the Notice of  
21 Default posted at the property, even though she had lived there  
22 the entire time. She testified that the photo in Exhibit 2,  
23 depicts hydrangea blossoms near the front door of the residence,  
24 that were not there on 6/14/2018. She testified that she had  
25 personally picked those blossoms, but that the bushes were not  
26 blooming in June of 2018, and that she was certain that she did  
27 not place them by the front door until, at the very earliest,  
28 August 2018.

1 Plaintiff Anthony DeNunzio's hearing testimony was in accord  
2 with that of Robert Hallman, and Kylie Close. In addition, he  
3 testified to having received a bill of sale from Scott McLeod for  
4 the cement mixer dated 8/28/2018. The bill of sale was admitted  
5 into evidence as Exhibit 6. Also admitted into evidence, as  
6 Exhibit 5, was a photograph of one of the hydrangea bushes  
7 growing at the property. Mr. DeNunzio testified that the photo  
8 was printed in a way that showed the meta-data date recorded by  
9 his iPhone at the time the photo was taken. His photo of the  
10 hydrangea bush was taken 8/26/2018.

11 The court finds the foregoing testimony, regarding the  
12 photographs included with Mr. Winter's affidavits, sharply  
13 undermines the credibility of his affidavits and raises a  
14 substantial concern that the affidavits could be fraudulent. The  
15 above findings are preliminary, and may be revised if evidence at  
16 trial establishes the veracity of Winter's affidavits.

17 In view of the evidence presented, the Court finds that GOOD  
18 CAUSE APPEARS FOR GRANTING THE MOTION.

19 NOW, THEREFORE, IT IS ORDERED THAT ANY FORECLOSURE SALE OF  
20 1096 DEER CLIFF DRIVE, ZEPHYR COVE, NV 89448, APN  
21 1318-03-111-014, IS ENJOINED, UNTIL OTHERWISE ORDERED BY THIS  
22 COURT.

23 IT IS FURTHER ORDERED THAT DEFENDANTS, IF THEY SO CHOOSE,  
24 MAY MAKE EFFORTS TO CORRECT ANY DEFICIENCIES IN FORECLOSURE  
25 NOTICING ALLEGED BY THE COMPLAINT, AND IN THE MOTION FOR  
26 PRELIMINARY INJUNCTION, BUT ANY FORECLOSURE SALE OF THE PROPERTY  
27 BY DEFENDANTS IS ENJOINED, ABSENT FURTHER ORDER OF THIS COURT.

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1 The parties having stipulated on the record that there is  
2 sufficient equity to protect the interests of Defendants, no bond  
3 shall be required.

4 Dated: February 7, 2019

[Signature]  
District Judge

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28 The document to which this certificate is attached is a  
full, true and correct copy of the original in file and of  
record in my office.

DATE February 7, 2019

BOBBIE R. WILLIAMS Clerk of Court  
of the State of Nevada, in and for the County of Douglas,

By [Signature] Deputy