

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

GREGORY D. SMITH, an individual, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 CITY OF NORTH LAS VEGAS, NEVADA, a )  
 municipality; NORTH LAS VEGAS CITY )  
 COUNCIL; JEFFREY BARR, city attorney for )  
 the City of North Las Vegas, Nevada, )  
 )  
 Defendants. )

Case No.:

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF**

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Plaintiff, GREGORY D. SMITH (“Plaintiff”), by and through his attorneys, the law office of Wolf, Rifkin, Shapiro, Schulman & Rabkin. LLP complains of Defendants as follows:

**PRELIMINARY STATEMENT**

1. This is an action for declaratory and injunctive relief to enjoin the City of North Las Vegas and its agents from further implementing and carrying out a scheme to condemn and seize privately-owned residential mortgage loans of North Las Vegas homeowners by the use of eminent domain (the “Plan”) in conjunction with its putative agent, Mortgage Resolution Partners (“MRP”). Plaintiff challenges the Plan on multiple grounds: *inter alia*, [1] that it violates the Fifth and Fourteenth Amendments to the United States Constitution as an invalid and unlawful exercise of the power of eminent domain; [2] that it violates Article 1, Section 8 (5) and (6) of the Nevada Constitution as an invalid and unlawful exercise of the power of eminent domain; [3] that it violates the due process clauses of the United States and Nevada Constitutions; [4] that it violates Article 1, Section 22 of the Nevada Constitution, the “PISTOL” provisions curtailing the use of eminent domain; [5] that it violates the Contracts Clause and the Commerce Clause of the United States Constitution; and [6] that it violates Nevada Revised Statutes (“N.R.S.”) 37.009 *et seq.* as an invalid and unlawful exercise of the power of eminent domain.

2. In purpose and effect, the Plan entails official action by the North Las Vegas City Council to contract with MRP, a Delaware for-profit investment firm with its principal place of business in California, to employ the power of eminent domain to condemn and seize privately-owned residential mortgage loans of North Las Vegas homeowners, for the purpose of destroying that intangible property in order to seek to replace each note with a different note arranged by the City and/or MRP and/or a further entity or individual, or to transfer the existing note from its current private owner to a different private owner.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 [federal question jurisdiction] and 1343(3) and (4) [jurisdiction over actions for violations of constitutional and federal rights secured by 42 U.S.C. § 1983], and over Plaintiffs' declaratory relief action under 28 U.S.C. §§ 2201 and 2202.

4. This Court also has supplemental jurisdiction over Plaintiff's pendent state constitutional and statutory law claims under 28 U.S.C. § 1367.

5. Plaintiff is an individual residing in this judicial district, and is a citizen of the State of Nevada.

6. Defendants are either municipalities or agents and officers of municipalities located in this judicial district.

7. Plaintiff's claims arise out of Defendants' activities in this judicial district.

8. Venue is proper in this district under 28 U.S.C. § 1391(b).

### **PARTIES**

9. Plaintiff GREGORY D. SMITH is an individual, a resident of, homeowner in, and taxpayer to the City of North Las Vegas, Nevada. Plaintiff pays taxes to and within the City, including but not limited to property taxes, sales taxes, and other assorted taxes that contribute to the public fisc of the municipality.

10. Defendant CITY OF NORTH LAS VEGAS, NEVADA (the "City"), a municipality, is a political subdivision of the State of Nevada.

11. Defendant NORTH LAS VEGAS CITY COUNCIL (the “City Council”) is the governing body of the CITY OF NORTH LAS VEGAS, NEVADA.

12. Defendant JEFFREY BARR (the “City Attorney”), is city attorney for the City of North Las Vegas, Nevada, its agent and officer, and authorized by the City Council to enter into agreements furthering the Plan on behalf of the City.

**ALLEGATIONS AND FACTS COMMON TO ALL CLAIMS**

13. The City of North Las Vegas has entered into and embarked upon a plan to use the power of eminent domain to condemn and seize privately-owned residential mortgage loans in the City.

14. The City intends to target for seizure mortgages 1) that are performing, i.e. current in their mortgage debt obligations of the homeowner; and 2) where homeowners owe more on their mortgages than the current fair market value of their home, i.e. “underwater” mortgages; and 3) that are owned by private securitization trusts in secondary mortgage market lending portfolios, rather than backed by the federal government through Fannie Mae, Freddie Mac, or the Federal Housing Authority.

15. An example of the functioning of the Plan is a home in North Las Vegas worth \$200,000 in the real estate market today but with a \$300,000 current mortgage balance. The City plans to condemn and seize privately-owned residential mortgage loans and to pay the owner of that note what it believes is just compensation, say, \$150,000 for purposes of the example, from money borrowed from private investors. The City would then purport to accept a short payoff of the mortgage loan originally seized, through a new loan for, say, \$190,000, if such new financing could be found and the homeowner can qualify for same. The City then plans to extinguish the original \$300,000 note it had seized for \$150,000 and to pocket the \$40,000 difference as revenue to the City.

16. There are, by City estimates, approximately 5,000 mortgages in North Las Vegas that qualify and will be targeted for seizure by exercise of the power of eminent domain.

17. On June 19, 2013, the City Council approved a contract (the “Agreement”) between itself and MRP to initiate and carry out the Plan.

18. Preparation for and implementation of the Plan will require expenditure of public funds. Seizing all 5,000 or so of the estimated numbers of mortgage loans targeted by the City, at \$150,000 each, would require the City to borrow more than \$750 million. Such borrowing will entail interest, fees, and servicing costs. Indeed, the loaned monies themselves would represent City funds to be expended on the Plan.

19. The Plan itself and the Agreement entered into by the City with MRP, calls for expenditure of public monies by the City. Out of the \$40,000 of City revenue identified as the outcome of the example described above in Paragraph 15, the City would be required under the Agreement to compensate MRP and its investors for their “facilitation” of the Plan.

20. At its June 19, 2013 meeting, the City Council directed the City Attorney to engage outside legal counsel to advise the City on its conduct of the Plan, and has or will expend public monies for such engagement and retention.

21. The public fisc of the City of North Las Vegas will be depleted and endangered by the unlawful use of public monies expended in pursuit of the Plan, which is an unlawful and invalid exercise of government power under the United States and Nevada Constitutions, and under Nevada statutory law.

### **FIRST CLAIM FOR RELIEF**

#### **Declaratory Relief:**

#### **Fifth and Fourteenth Amendment: Violation of 42 U.S.C. § 1983**

22. Plaintiff hereby re-alleges and incorporates each preceding and succeeding paragraph as though fully set forth herein.

23. The uses to which the City intends to put the seized property—destruction, extinguishment, or direct or indirect transfer to a private party—are not public uses within the meaning of the Fifth Amendment to the United States Constitution, as incorporated for application to states and their political subdivisions by the Fourteenth Amendment, and therefore violate that Amendment.

24. The course of conduct described herein, taken under color of state law, is unlawful, and is

appropriate for declaration by this Court pursuant to federal statute.

25. By virtue of such the City's intention to undertake such unlawful conduct, at the expense of the public fisc of the municipality, Plaintiff is entitled, against all Defendants, to such relief as the Court deems proper, including but not limited to declaratory relief, injunctive relief, and the costs and expenses of this action, including Plaintiff's reasonable attorneys' fees.

### **SECOND CLAIM FOR RELIEF**

#### **Declaratory Relief:** **Violation of Article 1, Section 8 (5) and (6) of the Nevada Constitution**

26. Plaintiff hereby re-alleges and incorporates each preceding and succeeding paragraph as though fully set forth herein.

27. The uses to which the City intends to put the seized property—destruction, extinguishment, or direct or indirect transfer to a private party—are not public uses within the meaning of Article 1, Section 8 (5) and (6) of the Nevada Constitution, and therefore violate those Sections.

28. That the course of conduct described herein, taken under color of state law, is unlawful is appropriate for declaration by this Court.

29. By virtue of the City's intention to undertake such unlawful conduct, at the expense of the public fisc of the municipality, Plaintiff is entitled, against all Defendants, to such relief as the Court deems proper, including but not limited to declaratory relief, injunctive relief, and the costs and expenses of this action, including Plaintiff's reasonable attorneys' fees.

### **THIRD CLAIM FOR RELIEF**

#### **Declaratory Relief:** **Fifth and Fourteenth Amendment, Due Process: Violation of 42 U.S.C. § 1983**

30. Plaintiff hereby re-alleges and incorporates each preceding and succeeding paragraph as though fully set forth herein.

31. The Plan constitutes a facial violation of the due process clause of the Fifth Amendment to the United States Constitution, as incorporated for application to states and their political

subdivisions by the Fourteenth Amendment, and violates same.

32. That the course of conduct described herein, taken under color of state law, is unlawful is appropriate for declaration by this Court pursuant to federal statute.

33. By virtue of the City's intention to undertake such unlawful conduct, at the expense of the public fisc of the municipality, Plaintiff is entitled, against all Defendants, to such relief as the Court deems proper, including but not limited to declaratory relief, injunctive relief, and the costs and expenses of this action, including Plaintiff's reasonable attorneys' fees.

#### **FOURTH CLAIM FOR RELIEF**

##### **Declaratory Relief:** **Violation of Article 1, Section 22 of the Nevada Constitution**

34. Plaintiff hereby re-alleges and incorporates each preceding and succeeding paragraph as though fully set forth herein.

35. The uses to which the City intends to put the seized property—destruction, extinguishment, or direct or indirect transfer to a private party—are not public uses within the meaning of Article 1, Section 22 of the Nevada Constitution, and therefore violate that Section.

36. That the course of conduct described herein, taken under color of state law, is unlawful is appropriate for declaration by this Court.

37. By virtue of the City's intention to undertake such unlawful conduct, at the expense of the public fisc of the municipality, Plaintiff is entitled, against all Defendants, to such relief as the Court deems proper, including but not limited to declaratory relief, injunctive relief, and the costs and expenses of this action, including Plaintiff's reasonable attorneys' fees.

#### **FIFTH CLAIM FOR RELIEF**

##### **Declaratory Relief:** **U.S. Const. Article I, Section 9, Contracts Clause: Violation of 42 U.S.C. § 1983**

38. Plaintiff hereby re-alleges and incorporates each preceding and succeeding paragraph as though fully set forth herein.

39. By interfering with the nature and effect of private contracts, i.e. the mortgage notes

intended by the City to be seized, the Plan constitutes a facial violation of the Contract Clause of the United States Constitution, Article I, Section 9, and therefore violates same.

40. That the course of conduct described herein, taken under color of state law, is unlawful is appropriate for declaration by this Court pursuant to federal statute.

41. By virtue of the City's intention to undertake such unlawful conduct, at the expense of the public fisc of the municipality, Plaintiff is entitled, against all Defendants, to such relief as the Court deems proper, including but not limited to declaratory relief, injunctive relief, and the costs and expenses of this action, including Plaintiff's reasonable attorneys' fees.

### **SIXTH CLAIM FOR RELIEF**

#### **Declaratory Relief:**

#### **U.S. Const. Article I, Section 8, Commerce Clause: Violation of 42 U.S.C. § 1983**

42. Plaintiff hereby re-alleges and incorporates each preceding and succeeding paragraph as though fully set forth herein.

43. The Plan improperly burdens or discriminates against interstate commerce, and thus is invalid pursuant to Commerce Clause of the United States Constitution, Article I, Section 8, and therefore violates same.

44. That the course of conduct described herein, taken under color of state law, is unlawful is appropriate for declaration by this Court pursuant to federal statute.

45. By virtue of the City's intention to undertake such unlawful conduct, at the expense of the public fisc of the municipality, Plaintiff is entitled, against all Defendants, to such relief as the Court deems proper, including but not limited to declaratory relief, injunctive relief, and the costs and expenses of this action, including Plaintiff's reasonable attorneys' fees.

### **SEVENTH CLAIM FOR RELIEF**

#### **Declaratory Relief:**

#### **Violation of Nevada Revised Statutes 37.009 et seq**

46. Plaintiff hereby re-alleges and incorporates each preceding and succeeding paragraph as though fully set forth herein.

47. The uses to which the City intends to put the seized property—destruction, extinguishment, or direct or indirect transfer to a private party—are not public uses, and neither is the particular property sought to be seized under the Plan appropriate for such contemplated seizure, within the meaning of N.R.S. 37.009 *et seq.*, including but not limited to N.R.S. 37.010, 37.020, and 37.030, and therefore violate those statutes.

48. The course of conduct described herein, taken under color of state law is unlawful, and is appropriate for declaration by this Court.

49. By virtue of such the City's intention to undertake such unlawful conduct, at the expense of the public fisc of the municipality, Plaintiff is entitled, against all Defendants, to such relief as the Court deems proper, including but not limited to declaratory relief, injunctive relief, and the costs and expenses of this action, including Plaintiff's reasonable attorneys' fees.

### **EIGHTH CLAIM FOR RELIEF**

#### **Injunctive Relief**

50. Plaintiff hereby re-alleges and incorporates each preceding and succeeding paragraph as though fully set forth herein.

51. Plaintiff has been, and those similarly situated have been, and will be irreparably harmed by the conduct of the City herein described because the unlawful expenditure of public funds and diminishment of the public fisc of the City is *per se* irreparable harm. Plaintiff is entitled to preliminary and permanent injunctive relief, as set forth in the Prayer for Relief herein.

52. By virtue of the City's intention to undertake such unlawful conduct, at the expense of the public fisc of the municipality, Plaintiff is entitled, against all Defendants, to such relief as the Court deems proper, including but not limited to declaratory relief, injunctive relief, and the costs and expenses of this action, including Plaintiff's reasonable attorneys' fees.

**WHEREFORE**, Plaintiff requests the following relief, and prays this Court to:

1. Assume jurisdiction over this action;
2. Issue a declaration that the Plan—



- a) Violates the Fifth and Fourteenth Amendments to the United States Constitution;
  - b) Violates Article 1, Section 8 of the Nevada Constitution;
  - c) Violates the Due Process Clause of the United States Constitution;
  - d) Violates Article 1, Section 22 of the Nevada Constitution;
  - e) Violates the Contract Clause of the United States Constitution;
  - f) Violates the Commerce Clause of the United States Constitution; and
  - g) Violates Chapter 37 of the Nevada Revised Statutes.
3. Enter judgment against Defendants and in favor of Plaintiff on all claims asserted in this Complaint;
4. Issue preliminary and permanent injunctions restraining Defendants, their agents, employees, and successors in office or position from further implementing the Plan;
5. Award to Plaintiff of the costs of suit and attorney fees pursuant to 42 U.S.C. § 1988; and

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