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Tracie K. Lindeman
Clerk of Supreme Court

SUPREME COURT
STATE OF NEVADA

SHADOW WOOD HOMEOWNERS
ASSOCIATION, INC., and GOGO
WAY TRUST,

No. 63180

Appellants,

vs.

NEW YORK COMMUNITY BANK,
Respondent.

MOTION TO ALLOW ORAL ARGUMENT

Defendant/appellant Gogo Way Trust, by and through its attorney, Michael F. Bohn, Esq., moves this court to schedule the above-captioned appeal for oral argument. This motion is based upon the points and authorities contained herein.

POINTS AND AUTHORITIES

Statement of Facts

Plaintiff/respondent, New York Community Bank, filed its complaint in the district court on April 18, 2012 seeking quiet title and declaratory relief that plaintiff NYCB remained the owner of the real property commonly known as 2923 Gogo Way #109, Las Vegas, Nevada following an HOA foreclosure sale held by Shadow Wood

1 Homeowners' Association pursuant to NRS Chapter 116. At the public auction held
2 on February 22, 2012, Gogo Way Trust was the high bidder and paid the bid amount
3 of \$11,018.39 in cash for the property. Gogo Way Trust filed an answer and
4 counterclaim seeking declaratory relief and quiet title determining that title to the
5 property was vested in Gogo Way Trust.

6 The district court granted plaintiff's motion for summary judgment on April 10,
7 2013 and rescinded the foreclosure deed in favor of Gogo Way Trust. Defendants
8 filed their notice of appeal on May 7, 2013, and briefing was completed on February
9 18, 2014.

10 On August 1, 2014, this Court entered its order submitting this case for
11 decision without oral argument pursuant to NRAP 34(f).

12 Argument

13 **The appeal involves substantial issues of first impression relating**
14 **to bona fide purchasers at an HOA foreclosure sale and the effect**
of an attempted cure payment rejected prior to the sale.

15 Although this appeal in part involves the super priority lien rights held by the
16 HOA that survived the deed of trust foreclosure sale at which plaintiff purchased the
17 real property, this case is unlike the multitude of appeals now pending before this
18 Court relating to HOA foreclosure sales under NRS Chapter 116. This case has much
19 broader relevance to all cases involving an HOA foreclosure sale because at the time
20 of the HOA sale in this case, the plaintiff lender was positioned as the owner of the
21 real property and not as the beneficiary of a first deed of trust competing for priority
22 with the HOA's lien rights under NRS 116.3116.

23 The unique posture of the present appeal provides this Court with the
24 opportunity to both establish the rights of a bona fide purchaser at an HOA sale held
25 pursuant to NRS Chapter 116 and define the impact of NRS 116.31166 on a property
26 owner that subsequently claims that an HOA sale was not conducted in good faith
27 and that the property was sold for a "commercially unreasonable price."

28 The present appeal also presents this Court with the opportunity to define the

1 effect of an attempted cure payment that has been rejected by the HOA even though
2 the property owner claims that the amount tendered exceeds the amount owed to the
3 HOA at that time. Although a number of California decisions have ruled on the effect
4 that an attempted cure payment has upon a foreclosure sale under a deed of trust, this
5 Court has not yet determined the effect of a debtor's attempt to tender a cure payment
6 that is rejected by the foreclosing HOA as insufficient.

7 It is respectfully submitted that due to the significance of the issues presented
8 in the instant case, this Court should reconsider its order of August 1, 2014 and
9 schedule the above-captioned appeal for oral argument as provided by NRAP 34.

10 DATED this 5th day of August 2014.

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