IN THE SUPREME COURT OF NEVADA

LAS VEGAS DEVELOPMENT GROUP, LLC, a Nevada limited liability company,

Appellant,

vs.

BANK OF AMERICA, N.A.,

Respondent.

Case No. 65083

District Court: A-12-654840-C

APPEAL

From the Eighth Judicial District Court,

The Honorable Stefany A. Miley, District Judge

District Court Case No. A-12-654840-C

APPELLANT'S OPENING BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Las Vegas Development Group, LLC is a private limited liability company with no publically held corporation owning 10% or more of its stock.

Appellant, Las Vegas Development Group, LLC is represented by Roger P. Croteau, Timothy E. Rhoda, and Peter E. Dunkley, of Roger P. Croteau & Associates, Ltd.

JURISDICTIONAL STATEMENT

This is an appeal from the October 10, 2013 Order granting Respondent Bank Of America, N.A.'s Motion to Dismiss ("Order Granting MTD"; Appellant's Appendix ("AA"), 281), and the January 23, 2014 Order denying Appellant Las Vegas Development Group, LLC's Motion for Reconsideration ("Order Denying Reconsideration"; AA378).

Notice of entry of the Order Granting MTD was filed on October 10, 2013 (AA383); Notice of entry of the Order Denying Reconsideration was filed on January 27, 2014 (AA389). As to BANA, the Order Granting MTD was certified pursuant to NRCP 54(b) and therefore appealable under NRAP 3A(b)(1).

Appellant timely filed a Notice of Appeal on February 21, 2014 (AA381).

STATEMENT OF ISSUES FOR REVIEW

1. Whether a foreclosure of an HOA's Lien for Assessments under NRS 116.3116 extinguishes a first security interest.

2. Whether the district court's dismissal of LVDG's second amended complaint was proper when LVDG had sufficiently pled a cause of action for quiet title.

STATEMENT OF THE CASE

The Court is familiar with the nature of this appeal: the application of NRS 116 in the context of competing nonjudicial foreclosure sales. Appellant, Las Vegas Development Group, LLC ("*LVDG*") was the successful bidder and purchased real property at a duly noticed homeowners' association ("*HOA*") foreclosure sale ("*HOA Lien Foreclosure Sale*"). After LVDG purchased the property, Bank of America, N.A. ("*BANA*") caused to be recorded a Notice of Trustee's Sale, setting a trustee's sale date of the real property purportedly encumbered by a deed of trust purported held by BANA.

LVDG filed a second amended complaint on August 1, 2013, seeking declaratory relief regarding the status of BANA's claimed interest in the property, and requesting that the district court quiet title to the property in favor of LVDG.

BANA filed a Motion to Dismiss on August 15, 2013, which was heard by the district court on September 9, 2013.

The district court granted BANA's Motion to Dismiss; the Order Granting MTD was filed on October 10, 2013. LVDG sought reconsideration of the district court's order, which was also denied on January 23, 2014.

LVDG appealed.

I. FACTUAL BACKGROUND

1. The district court litigation concerned real property located at 6279 Downpour, Las Vegas, Nevada (the "Property"), Assessor's Parcel Number ("APN"): 140-34-413-075 (the "*Property*"). Complaint ("*Compl.*") at ¶ 5 (AA001).

2. In 1991, the Nevada legislature adopted the Uniform Common-Interest Ownership Act ("UCIOA") codified as NRS Chapter 116.[1]

3. The UCIOA provides that upon recordation of the CC&Rs, the HOA has a perfected lien (the "*HOA Lien*") and that "no further recordation of any claim of lien for assessment under this section is required." NRS 116.3116 (5).

4. On or about March 12, 2004, the HOA recorded a Declaration ("*CC&Rs*") *see* CC&Rs (Motion to Dismiss, at Exhibit M, AA088).

5. On June 22, 2006, four years after the CC&Rs were recorded, and fifteen years after the UCIOA was adopted by the Nevada legislature, Genevieve Uniza-Enriquez ("*Borrower*") granted a deed of trust (the "*Deed of Trust*") in favor of Utah Financial, Inc. (Motion to Dismiss, at Exhibit A, AA027).

[1] The Court may take judicial notice of facts that are public record and from reliable sources. *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009); NRS 47.130(2)(a)-(b).

6. The Deed of Trust states that Borrower "shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this [Deed of Trust]…" (Deed of Trust p. 5, ¶4; AA031).

7. The Borrower failed to pay the HOA's monthly assessments which resulted in a Notice of Delinquent Assessment being recorded on April 1, 2010 (Notice of Delinquent Assessment, Motion to Dismiss at Exhibit I; AA073).

8. The Borrower apparently also defaulted under the Deed of Trust and a Notice of Default/ Election to Sell Under Deed of Trust ("Notice of Breach") was recorded on June 25, 2010. (Motion to Dismiss, at Exhibit C; AA053.)

9. Borrower failed to cure the HOA delinquency which resulted in a Notice of Default and Election to Sell under Notice of Delinquent Assessment being recorded on July 14, 2010 (Notice of Default, Motion to Dismiss, at Exhibit J; AA076).

10. The Borrower failed to cure the delinquency which resulted in a HOA's Notice of Trustee's Sale being recorded on January 11, 2010 (HOA's Notice of Trustee's Sale, Motion to Dismiss at Exhibit K; AA080).

11. The HOA Lien Foreclosure Sale was set for January 11, 2011. (*Id.*) The HOA's Notice of Trustee's Sale referenced both the CC&Rs and the Notice of Delinquent Assessment. (*Id.*)

12. On March 30, 2011, the Notice of Breach under the Deed of Trust was rescinded (Motion to Dismiss, at Exhibit E; AA058).

13. On April 5, 2011, a new Notice of Default/Election to Sell Under Deed of Trust was recorded (Motion to Dismiss, at Exhibit F; AA061).

14. On April 12, 2011, the Property was sold in a public auction to the highest bidder, LVDG, (Trustee's Deed Upon Sale, Motion to Dismiss, at Exhibit L, AA083). The resulting Trustee's Deed Upon Sale was duly recorded on April 13, 2011. (*Id.*)

15. The Trustee's Deed Upon Sale provides recitals which are "conclusive proof of the matters recited" namely that the HOA Lien Foreclosure Sale complied with NRS 116 and the CC&Rs. (Trustee's Deed Upon Sale, AA083.)

16. By virtue of NRS 116, and the recording of the CC&Rs, and the recording of the foreclosure notices, respondent BANA's predecessors-in-interest had actual or constructive notice of the HOA Lien and the HOA Lien Foreclosure Sale. (*See* Notice of Delinquency (AA073), the Notice of Default (AA076), and the HOA Notice of Trustee's Sale (AA080).

17. On December 29, 2011, a Nevada Notice of Trustee's Sale was recorded which referenced the Deed of Trust (Motion to Dismiss, at Exhibit H, AA066).

18. On April 12, 2012, a second Nevada Notice of Trustee's Sale was recorded, which again referenced the Deed of Trust (*Id.*, at AA068).

19. On July 25, 2012, a third Nevada Notice of Trustee's Sale was recorded, which also referenced the Deed of Trust (*Id*., at AA070).

II. PROCEDURAL HISTORY

1. On January 17, 2012 LVDG filed the Complaint. (AA001.)

2. On February 27, 2012, BANA filed a motion to dismiss. (*See* Register of Actions.)

3. On April 10, 2012, the motion to dismiss was denied. (*See* Register of Actions).

4. On April 12, 2012, BANA answered. (AA008).

5. On August 25, 2012, BANA filed a motion for summary judgment. (*See* Register of Actions.)

6. On September 14, 2012, LVDG moved to amend the Complaint, which was granted on October 16, 2012. (*See* Register of Actions.)

7. On November 13, 2012, BANA withdrew its pending motion for summary judgment. (*See* Register of Actions.)

8. On August 1, 2013, LVDG filed a second[2] amended complaint. (AA004).

[2] The proposed First Amended Complaint attached to LVDG's September 14, 2012 motion to amend, was never filed, and after a change in counsel for LVDG, required yet another amendment which resulted in the Second Amended Complaint, to which BANA stipulated, and which was filed.

9. On August 15, 2013, BANA filed the Motion to Dismiss (AA012).

10. On August 28, 2013, LVDG filed an Opposition to the Motion to Dismiss (AA177).

11. On September 17, 2013, the district court heard the Motion to Dismiss, and granted the Motion to Dismiss (AA281); Notice of Entry of the Order was filed on October 10, 2013 (AA383).

12. On October 18, 2013, LVDG filed the Motion for Reconsideration (AA285); BANA opposed on November 4, 2013 (AA**).

13. On December 17, 2013, the district court heard, and denied LVDG's Motion for Reconsideration (AA353), notice of entry of the Order was filed on January 27, 2014. (AA389).

14. On February 21, 2014, LVDG appealed. (AA381).

III. SUMMARY OF THE ARGUMENTS

The district court erred when it granted BANA's Motion to Dismiss by finding that "the plain language of NRS 116.3116 demonstrates that the super priority lien attaches once a lender forecloses under a first deed of trust." (Order Granting Motion to Dismiss, 3:17-18; AA283). Thus, the main issue, statutory interpretation, is a pure question of law: whether, NRS 116.3116 requires the foreclosure of a first deed of trust prior to the elevation of the HOA's lien to super-priority status. However, the position is illogical because the only way any lien

survives any foreclosure is if the lien has priority over the foreclosed upon security interest.

Because the language of NRS 116 is unambiguous, the HOA Lien has priority over the Deed of Trust, and the Deed of Trust was extinguished as a matter of law by the HOA Lien Foreclosure Sale.

In 1991, the Nevada legislature adopted the UCIOA. Nevada did so to ensure that HOAs have a means to collect assessments, the critical life blood of the HOAs, so that the HOAs could continue to provide services on behalf of the homeowners, and which also *benefits the lenders*, whose loans are secured by liens which encumber properties subject to the CC&Rs. Because the UCIOA confers super-priority of an assessment lien over a first security interest, a lender has an incentive to pay the assessment lien, as a lender would for a tax lien, in order to preserve the deed of trust and keep the HOA funded. Keeping the HOA funded benefits lenders by protecting the properties which are encumbered by their deeds of trust.

The Nevada Legislature considered the UCIOA three additional times, in 2009, 2011, and in 2013, in the midst of the foreclosure crisis in Nevada, and in each session, did not substantively alter the priority provisions of NRS 116.3116 (2). In fact, the priority provision was virtually endorsed by the Nevada Legislature in 2013 when, instead of altering the "exception to the exception"

super-priority subsection, the legislature added a new subsection which expressly provides for the creation of an escrow account to ensure that the assessments for common expenses are paid, in a manner consistent with other obligations which have priority over first deeds of trust. (NRS 116.3116(3)).

In this case, BANA's predecessor, made the loan secured by the Deed of Trust well after Nevada adopted the UCIOA in 1991, and well after the CC&Rs were recorded in 2004. Accordingly, BANA's predecessor had, at a minimum, record notice of the super-priority of the HOA's assessment lien. And according to the Nevada Legislature in 1991, and as reconsidered again in 2009, and again in 2011, and again in 2013, pursuant to NRS 116.3116 (2), the HOA's assessment lien had priority over the Deed of Trust, which was extinguished by the HOA Lien Foreclosure Sale.

Applying NRS 116 as it is written, LVDG's Second Amended Complaint stated a claim for quiet title. The district court erred when it granted BANA's Motion to Dismiss, and then denied LVDG's Motion for Reconsideration, which provided additional support for the unambiguous meaning of NRS 116.

IV. ARGUMENT

A. STANDARD OF REVIEW

This Court reviews *de novo* an order granting a motion to dismiss for failure to state a claim, applying a rigorous standard, accepting the plaintiff's factual

allegations as true and drawing every intendment in favor of the non-moving party. *Pack v. LaTourette*, 128 Nev. ___, ___, 277 P.3d 1246, 1248 (2012). Liberal pleading standards apply equally to declaratory relief and other civil claims. *See Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 846, 858 P.2d 1258, 1260-61 (1993). "[A] complaint should be dismissed only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle him to relief." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

Likewise, when the issue is purely a question of law, such as in cases where statutory construction is at issue, the review is also *de novo*. *Boulder Oaks Cmty. Ass'n v. B & J Andrews Enters., LLC*, 125 Nev. 397, 403, 215 P.3d 27, 31, 125 Nev. Adv. Rep. 33 (Nev. 2009).

Because the Motion for Reconsideration was filed and decided prior to the notice of appeal, the court may consider arguments within the Motion for Reconsideration. *See, e.g., Arnold v. Kip*, 123 Nev. 410, 417, 168 P.3d 1050, 1054, 2007 Nev. LEXIS 52, 12, 123 Nev. Adv. Rep. 41 (Nev. 2007) (Supreme Court considered arguments raised in a motion for reconsideration while deciding an appeal).

B. THE DISTRICT COURT ERRED BY GRANTING BANA'S MOTION TO DISMISS AND DENYING LVDG'S RECONSIDERATION BECAUSE THERE IS NO AUTHORITY REQUIRING A FIRST DEED OF TRUST FORECLOSURE BEFORE THE HOA LIEN ASCENDS TO SUPER PRIORITY STATUS.

This Court should reverse the district court's granting of the Motion to Dismiss because the plain language of NRS 116.3116 is unambiguous and applying the statute as it is written results in extinguishment of the Deed of Trust and LVDG's success on its quiet title claim. As this Court has said:

> [Q]uiet title does not require any particular elements, but "each party must plead and prove his or her own claim to the property in question" and a "plaintiff's right to relief therefore depends on superiority of title." *Yokeno v. Mafnas*, 973 F.2d 803, 808 (9th Cir. 1992); *see also Hodges Transp., Inc. v. Nevada*, 562 F. Supp. 521, 522 (D. Nev. 1983).

Chapman v. Deutsche Bank Nat'l Trust Co., 302 P.3d 1103, 1106 (Nev. 2013) In light of the plain language of the statute and the effect of the HOA Lien Foreclosure Sale on the Deed of Trust, LVDG had established a cause of action for quiet title, "beyond a doubt." *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008).

1. The District Court Should Have Started With the Unambiguous Plain Language Which Provides that the HOA Assessment Lien has Priority over First Security Interests.

Statutory interpretation begins with the plain language of the statute, and "[w]hen the language of a statute is plain and unambiguous, a court should give

that language its ordinary meaning and not go behind it." *City Counsel of Reno v. Reno Newspapers*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989); *see Carson–Tahoe Hosp. v. Bldg. & Constr. Trades*, 122 Nev. 218, 220, 128 P.3d 1065, 1066-10677 (2006) **(**courts should not look further if the words have definite and ordinary meaning or it is clear the meaning was not intended); *City of Reno v.Bldg. & Constr. Trades*, 127 Nev. ——, ——, 251 P.3d 718, 722 (2011) **(**"When a statute uses words that have a definite and plain meaning, the words will retain that meaning unless it clearly appears that the Legislature did not intend such a meaning.")**.**

This Court's *de novo* review of the statute should begin with the plain language of the statute. Nevada adopted the UCIOA in 1991. The HOA recorded the CC&Rs in 2004 (*See* CC&Rs, AA088), essentially placing the entire borrowing and lending world on record notice that the HOA's Lien for assessments has priority over first security interests. The Nevada Legislature revisited NRS 116.3116 in 2009, and in 2011, and in 2013, and did not alter the priority provisions of the Nevada's version of the UCIOA. The plain language provides for the HOA's Lien to have priority over first security interests.

The pertinent portions of the statute are:

> A lien under this section is prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recordation of the declaration and, in a cooperative, liens and encumbrances which the association creates, assumes or takes subject to; *(b) A first security interest*

> *on the unit recorded before the date on which the assessment sought to be enforced became delinquent* or, ….and (c) Liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.
>
> *The lien is also prior to all security interests described in paragraph* (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding *institution of an action* to enforce the lien, ….

NRS 116.3116(2) (emphasis added). Thus, a literal reading of the statute establishes that the "lien is also prior to all security interests described in paragraph (b) [first security interests]. The language is clear; applying the statute literally does not support the district court's conclusion that the Deed of Trust was not extinguished by the HOA Lien Foreclosure Sale. *City Counsel of Reno v. Reno Newspapers*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989).

2. Foreclosure of the HOA Assessment Lien Extinguishes All Junior Interests.

It is axiomatic that the foreclosure of a superior security interest in real property extinguishes all junior interests. *See* NRS 116.1108; *Citibank Nevada, N.A. v.Wood*, 104 Nev. 93, 94, 753 P.2d 341, 341-42 (1988) (following senior lien holder's foreclosure sale, junior lienholder loses security in property but retains right to claim an interest in the sale proceeds); *Erikson Construction Co. v. Nevada Nat. Bank*, 89Nev. 350, 352, 513 P.2d 1236, 1238 (1973); *see also* Restatement (Third) of Property (Mortgages)(1996), §7.1("A valid foreclosure of a [lien]

terminates all interests in the foreclosed real estate that are junior to the [lien] being foreclosed and whose holders are properly joined or notified under applicable law.").

The HOA's Lien, not the Deed of Trust was first in time and is therefore first in right. Pursuant to NRS 116.3116(5) an association has a statutory lien against a unit owner's real property for delinquent assessments upon the recordation of the CC&Rs, not the recordation of the Notice of Delinquent Assessments. *See* NRS 116.3116(5) (recording the CC&Rs "constitutes record notice and perfection of the lien").

Accordingly, the Legislature made clear that there were only two possibilities under real property law when a homeowners' association foreclosed: (1) if the foreclosed lien did not include any unpaid super-priority amounts, it would be junior to a first security interest under NRS 116.3116 and would not extinguish a first security interest; or (2), when the foreclosed lien included a super-priority portion, the exception to the exception under NRS 116.3116(2) would apply and the lien would have superior priority and would extinguish even a first security interest. According to the plain language, there are no other options for a payment priority or a triggering preceding foreclosure of the first security interest.

3. There is no authority for the position that a HOA Lien obtains its super-priority only after the "trigger" of a first security interest foreclosure.

The Court's Order granting BANA's Motion to Dismiss concludes that "the super priority lien attaches once a lender forecloses under a first deed of trust" and "the limited priority afforded by NRS 116.3116(2) is triggered when the holder of a first deed of trust …forecloses on the property." (Order Granting MTD, AA**.)

However, the district court misapprehends the concept of priority because, lien law demands that "attachment" must precede "perfection" and in this case, the HOA's Lien was perfected upon the recordation of the CC&Rs. NRS 116.3116(5) (recording of declaration is "perfection of the lien.") *See also, May v. G.M.B., Inc.*, 105 Nev. 446, 450 n.1, 778 P.2d 424, 426, 1989 Nev. LEXIS 249, 7, 10 U.C.C. Rep. Serv. 2d (Callaghan) 1407 (Nev. 1989)("A security interest is perfected when it has attached and when all of the applicable steps required for perfection…")

A "lien can only legally exist when perfected in the manner prescribed by the statute creating it" *Leventhal v. Black & LoBello*, 305 P.3d 907, 911, 2013 Nev. LEXIS 61, 12, 129 Nev. Adv. Rep. 50, 2013 WL 3480313 (Nev. 2013) (*quoting Tonopah Lumber Co. v. Nev. Amusement Co.*, 30 Nev. 445, 455, 97 P. 636, 639 (1908)). In other words, a lien cannot be perfected if it is not attached.

In this case, NRS 116.3116(5) provides that the HOA Lien was perfected in 2004 when the CC&Rs were recorded. Accordingly, the HOA Lien was fully

"attached" and perfected at that time. (AA088.) The Deed of Trust was not recorded until June of 2006 (AA027). Therefore, under the well-established law of real property and priority, the HOA's Lien has priority over a first security interest, and the foreclosure of the HOA Lien extinguished all junior interests, including the Deed of Trust.

The Court should reverse the district court's conclusion that the HOA Lien requires a trigger of a first security interest foreclosure to achieve super-priority.

4. Equity weighs in favor of Quieting Title to the Property in favor of LVDG.

In is axiomatic that equity requires clean hands. *See Smith v. Smith*, 68 Nev. 10, 20, 226 P.2d 279, 284, 1951 Nev. LEXIS 61, 15 (Nev. 1951) ("[H]e who seeks equity must do equity, and must come into court with clean hands."). There are multiple points in time when BANA or BANA's predecessors could have avoided the loss of the Deed of Trust. At *any* time prior to the HOA Lien Foreclosure Sale, BANA or its predecessors could have paid the past due assessments to protect the Deed of Trust. On the day of the HOA Lien Foreclosure Sale, BANA could have appeared at the public auction, and protectively bid to preserve the Deed of Trust. Instead of taking action, however, BANA chose inaction. BANA cannot, though its own inaction, cause a specific and avoidable result and then complain at the result.

As stated by this Court more than 100 year ago:

> Ignorance of the law or bad advice of counsel is no ground for relief against the consequences of her own illegal act and contract…. A mistake of law, where the party knows the facts but is ignorant of the consequences, is no ground for relief, and money paid under such mistake cannot be recovered back.

Adams v. Smith, 19 Nev. 259, 266, 9 P. 337, 338, 338, 10 P. 353, 1886 Nev. LEXIS 2, 7-8 (Nev. 1886).

In this case, the party with clean hands is LVDG. LVDG appeared at the publically noticed HOA Lien Foreclosure Sale and was the high bidder. (Trustee's Deed Upon Sale, AA083.) Through the Trustee's Deed Upon Sale, LVDG acquired title to the Property. (*Id.*) Neither BANA nor the district court disputes that fact. However, BANA claims that LVDG acquired the Property subject to the Deed of Trust.

Additionally, there is no basis for the Court to set aside or otherwise defeat the HOA Lien Foreclosure based solely on the purchase price even if perceived as inequitable. *See, e.g., Brunzell v. Woodbury,* 85 Nev. 29, 32, 449 P.2d 158, 159, 1969 Nev. LEXIS 473, 3 (Nev. 1969) ("inadequacy of price, however gross, is not in itself a sufficient ground for setting aside a trustee's sale legally made…") (citations omitted).

For the statute to work, an HOA Lien must extinguish a deed of trust. For example, a house with a $5000.00 HOA super-priority lien, a $100,000.00 deed of trust, and a fair market value of $70,000.00, has ZERO chance of being purchased

at an HOA's lien foreclosure sale, unless the statute applies as it is written. No foreclosure purchaser would buy a $100,000.00 obligation on a $70,000.00 house. Refusing to apply the statute as it is written subverts the purpose of the statute and ensures that there are no foreclosure purchasers because no person or entity would agree to be saddled with a $100,000.00 obligation on a house worth $70,000.00.

As written, NRS 116 provides that what *should* happen at an HOA foreclosure sale of a $5000.00 lien, on a $70,000.00 house, with a $100,000.00 deed of trust, is either: (1) the holder of the deed of trust protects its deed of trust and pays the HOA lien, or (2) the home is sold, extinguishing the deed of trust, and the surplus proceeds distributed to junior lien holders, including the holder of the deed of trust pursuant to NRS 116.31164(3)(c). *Each* these two pathways address the HOA's immediate assessments shortfall, which was why the UCIOA was drafted in the first place, to ensure HOAs could collect their assessments.

What is patently obvious from the legislative history of NRS 116, going back to 1991, and again in the recent sessions of 2009, 2011, and 2013, the Legislature has had multiple opportunities to consider and change the priority provisions of NRS 116.3116, but did not. Instead, the Legislature added a subsection enabling lenders to escrow HOA assessment payments, to permit an additional safeguard of deeds of trust. NRS 116.3116(3) (2013). The actions of

the Legislature, not altering the priority, speak louder than the arguments of Respondent.

BANA should not be excused from the consequences of its own inaction, at the expense of the HOA, especially when the legislative intent is clear, and the lenders have multiple opportunities to protect deeds of trust, and any perceived inequity is the direct result of a lender's decision to do nothing in the face of the multiple opportunities to protect the deed of trust.

The district court should be reversed to avoid rewarding a lender's inaction by creating superfluous protection for the lenders, a protection which the lenders could have afforded themselves by reading the statute which applied at the time the lender made the loan, accepted the deed of trust, and had presumably read and evaluated the recorded CC&Rs.

V. CONCLUSION

Based on the foregoing, the district court erred in Granting the Motion to Disimss LVDG's Complaint, which sufficiently stated declaratory relief/quiet title claim. Accordingly, this Court should reverse the district court's order and remand with instructions regarding the application of NRS 116.3116, in particular that the HOA Lien Foreclosure Sale extinguished the Deed of Trust.

DATED this 9th Day of September, 2014.

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 with 14 point, double spaced Times New Roman font.

2. I further certify that this brief complies with the page-or type-volume limitations of NRAP 32(a)(7) because, excluding the pares of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 5400 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 9th Day of September, 2014.

ROGER P. CROTEAU & ASSOCIATES, LTD.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the _9th day of September, 2014. Electronic service of the foregoing Appellant's Opening Brief and Appellant's Appendix shall be made in accordance with the Master Service List as follows:

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