IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF NEVADA, A Nevada Banking Corporation,

Appellant,

vs.

MURRAY PETERSEN, an individual,

Respondent.

Supreme Court Case No.: 66568

D.C. Case No.: A-680012

APPEAL

From the Eighth Judicial District Court
The Honorable Kenneth Cory, District Judge

Respondent's Answering Brief

Richard McKnight, Esq.
The McKnight Law Firm, PLLC
528 S. Casino Center Blvd, #335
Las Vegas, Nevada 89101
Nevada Bar #1313

Attorneys for Respondent Petersen

NRAP 26.1 Disclosure Statement

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 so that the justices of this Court may evaluate possible disqualification or recusal.

The following have an interest in the outcome of this case or are related to entities interested in the case:

Murray Petersen

Red Card, LLC

Bank of Nevada

Elizabeth Olga Petersen

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STATEMENT OF THE ISSUES

Respondent very much disagrees with the Bank's contention that it is a junior lienholder. While the Bank did have a first and second trust deed on the property from inception the Bank combined those two trust deeds when it foreclosed thereby treating the two as one first trust deed. Respondent argued below that the Bank should have complied with NRS 40.455 and filed an application within six months of the foreclosure date.

In the event this Court finds that the Bank is a junior lienholder the Bank failed to comply with the 6 month limitation of NRS 40.639.

Finally the stipulation as to value does not change the result in the lower court.

STATEMENT OF THE CASE

I. Nature of the Case

This appeal arises from a guaranty action brought by Bank of Nevada against Petersen under NRS 40.495. Petersen did not pay upon demand his guaranty agreement with Bank by failing to fully repay a $2,500,000 loan made to Red Card, LLC. (I JA at 008]. Upon default by Red Card the Bank had a receiver appointed over the business and filed an action against Petersen seeking a deficiency judgment in an unspecified amount. (I JA 008]. Bank glosses over the fact that complaint sought an amount in excess of $10,000. and did not and could not go through the math set out in its statement of the case as the stipulation was not entered into until December 13, 2013 six months after foreclosure. The District Court did not conclude that the word "application" in NRS 40.455 means "motion". (III JA at 557-558) as contended by Bank. What the court did say was: "I tend to agree that it does not necessarily require an amendment to the Complaint but, you know, a literal reading of 455 just says an application for a deficiency judgment. That sounds like a motion to me." Be that as it may no "application" of any kind was

filed by Bank until the untimely motion for summary judgment was filed on January 6, 2014 (II JA AA 161-410).

Bank's motion under Rule 59 (IV JA AA 606-662) was filed claiming they were actually a junior lienholder. This was the first time Bank asserted this contention as it did not make such a claim in its motion for summary judgment or its opposition to Petersen's motion for summary judgment (III JA at 434-521) and never argued that NRS 40.4639 applied as it was suing on a junior encumbrance. The complaint alleged in ¶ 36 that NRS 40.495 controlled and never mentioned NRS 40.4639. It was only after the court granted Petersen's motion for summary judgment that Bank contended, in its motion to alter or amend, that the case was governed by NRS 40.4639 as it was a junior lienor.

STATEMENT OF FACTS

There can be no question that the Loan in this case was evidenced by two promissory notes. Both notes were secured by separate deeds of trust encumbering real property commonly known as 8490 Westcliff Dr., Las Vegas, Nevada 89145, upon which Red Card operated a convenience store and gas station (the "Property"). (I JA at 42-61, 63-81). Red Card failed to make the required monthly payments due under the Notes, constituting an event of default. (II JA at 165-166, 296-299]. Petersen, who personally guaranteed Red Card's performance under the Notes, failed to repay the Loan in full as Bank had a receiver appointed over the only source of income available: the convenience store and gas station. This action on guaranty was thereafter commenced before the Bank foreclosed on both notes and trust deeds in one foreclosure sale.

STATEMENT OF STANDARD OF REVIEW

As this court held in *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (Nev., 2005): "This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court. Summary judgment is

appropriate and "shall be rendered forthwith" when the pleadings and other evidence on file demonstrate that no "genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law."

BANK FORECLOSED ON BOTH ITS TRUST DEEDS AS THOUGH THEY WERE ONE AND IS NOT A JUNIOR LIENHOLDER

In the instant action the bank foreclosed on both its first and second trust deed in the same proceeding treating the two notes as one. (JA II AA 376-382), Trustee's Deed upon sale. The Trustee's Deed was recorded in the records of the Clark County Recorder as document 201306190000061 on June 19, 2013 and states at AA376 of the JA:

> WHEREAS, Red Card, LLC ... by Deed of Trust dated March 30, 2011 and recorded on March 31, 2011, in Book 20110331, as Document No. 0064688 and Deed of Trust dated March 30, 2011 and recorded on April 1, 2011, in Book 20110401, as Document number 00060103 in the office of the County Recorder of Clark County, Nevada ... (the "Deed of Trust"), did grant and convey to said Trustee, upon the trusts therein expressed, the property hereinafter described, among other uses and purposes to secure the payment of a certain promissory note and interest according to the terms thereof, and other sums of money advanced, with interest thereon, to which reference is hereby made ....

Clearly both trust deeds held by Appellant were foreclosed upon as stated in the Notice of Breach (II JA AA 285-290) sent by the Bank and as such *Lavi* governs the result in this matter. That Notice of Breach recorded at Book 20111222 as Inst. 0000682 states at page 1, ¶ 1, that Nevada Title Company is the Trustee of both the First and Second trust deeds and that both Note A and Note B are foreclosed upon. Paragraph 3 goes on to state: "Each such non-payment is an event of default under Note A and that certain Promissory Note (Note B), dated March 30, 2011, which was made by Borrower ("Note B" and together with Note A, the "Notes")." Clearly the Bank treated the two notes as one and cannot be heard to claim (and did not argue except upon its motion to alter or amend summary judgment (IV AA 606-662) that it is a sold out junior lienor.

Applying *Lavi v. Eighth Judicial Dist. Court of State ex rel. County of Clark*, 325 P.3d 1265, facts to this case, the chart below shows the similarities:

	Lavi	Petersen
Complaint filed prior to foreclosure	10/13/2009	4/12/2013
Foreclosure	2/11/2010	6/18/2013
No application for deficiency within 6 months NRS 40.455	√	√
No mention of deficiency in complaint	√	√
Foreclosure date		6/18/2013
6 months after filing complaint		10/12/2013
6 months after foreclosure NRS 40.4639		12/18/2013
Motion for summary judgment filed		1/6/2014

Bank's motion for summary judgment (II JA AA 161-410) started out with the statement:

"This is a breach of guaranty action in which Plaintiff is seeking a judgment against Defendant Murray Petersen under NRS 40.495." (II JA AA62). Repeats on p. 3, p. 5, p. 9, p. 10 and 11 of the motion. Bank's Reply to Opposition to Motion for Summary Judgment (III JA AA 434-521) referenced NRS 40.495 repeatedly. It was not until Bank's Motion to Alter or Amend (JA IV AA 606-662) that it argued that Bank argued it was a sold out junior lienor.

Although Petersen may have waived the one-action rule (II JA AA352-361) there is no Nevada case which suggests that the 6 month limitation prescribed by NRS 40.455 can be waived and the waiver in the guarantee at bar (II JA AA267), does not suggest a waiver of the 6 month statute of repose.

Under NRS 40.455(1) a judgment creditor must apply for a deficiency judgment "within 6 months after the date of the foreclosure sale or the trustee's sale ...." An application for a deficiency judgment must be in writing, "set forth in particularity the grounds for the [deficiency] application, set forth the relief sought" and be filed within six months after the foreclosure sale. *Walters v. Eighth Judicial Dist. Court of State ex rel. Cnty. of Clark*, 263 P.3d 231, 232-35 (Nev. 2011). Here the bank has failed to apply for a deficiency within 6 months of foreclosure. *Walters*, supra, set out the proper procedure:

> CBN's motion for summary judgment meets the requirements of NRCP 7(b)(1) as an application because it was made in writing, set forth in particularity the grounds for the application, and set forth the relief sought. Under the clear and unambiguous language of NRS 40.455(1), an application must be made within six months, and CBN's application was well within that time frame. The trustee's sale was conducted on December 8, 2008. The counterclaim and cross-claim were filed April 13, 2009, within six months of the date of the trustee's sale. The district court also found that CBN's motion for summary judgment constituted an application made within six months as required under NRS 40.455(1). Based on this determination, the district court concluded that CBN was not barred from attempting to prove a deficiency.

The complaint in this case did not set out with particularity that a deficiency was sought and the relief sought and the motion for summary judgment although procedurally proper was beyond the six months. Faced with its lateness Bank switched tactics and claimed it was a junior lienor.

BANK COMBINATION OF ITS FIRST AND SECOND TRUST DEEDS AND DICTATES IS NOT A SOLD OUT JUNIOR LIENOR

Bank wiped out its second trust deed upon foreclosure of its first. Bank says "NRS 40.455 does not apply to holders of junior liens in guarantor deficiency actions filed under NRS 40.495, and thus provided no defense to Petersen. Rather, the statute of limitation defense provided in NRS 40.4639 applies to junior lienholders seeking a deficiency judgment against a guarantor under NRS 40.495." Had Bank not foreclosed its second NRS 40.4639 may have governed but even if it did under the facts of this case Bank was too late.

> NRS 40.4639 Period of limitation on commencement of civil action. A civil action not barred by NRS 40.430 or 40.4638 by a person to whom an obligation secured by a junior mortgage or lien on real property is owed to obtain a money judgment against the debtor after a foreclosure sale of the real property or a sale in lieu of a foreclosure sale may only be commenced within 6 months after the date of the foreclosure sale or sale in lieu of a foreclosure.

The foreclosure took place on June 18, 2013 and six months after that date is December 18, 2013. The motion for summary judgment was filed on January 6, 2014 or 6 months, 4 weeks, 1 day later. The complaint initially filed by Bank cannot satisfy the requirement of NRS 40.4639 as it not a deficiency complaint as enunciated in *Walters* and it was filed before foreclosure and cannot not comply with the time limitation of NRS 40.4639 which provides in pertinent part that the action "... may only be commenced within 6 months after the date of the foreclosure sale ...." "'If a statute's language is clear and unambiguous, the Supreme Court will enforce the statute as written." *In re George J.*, 279 P.3d 187, 128 Nev. Adv. Op. No. 32 (Nev. 2012). When the text of a statute is plain and unambiguous, the court should not go beyond that meaning. *City of North Las Vegas v. Warburton,* 262 P.3d 715, 127 Nev. Adv. Op. No. 62 (Nev. 2011). If a statute is clear and unambiguous, the appellate court gives effect to the plain and ordinary meaning of the statute's language, and the appellate court does not resort to the rules of statutory construction. *Western Sur. Co. v. ADCO Credit, Inc.*, 251 P.3d 714, 127 Nev. Adv. Op. No. 8 (Nev. 2011).

Common definitions for after are " later in time than; in succession to; at the close of."

The language of NRS 40.4639 is clear and the Bank cannot convert the language of this section from "after" to "before." Although a first trust deed holder may file suit before foreclosure it does not appear that a junior trust deed is afforded the same right. NRS 40.430 states"That action must be in accordance with the provisions of NRS 40.430 to 40.459, inclusive." The action is the one permitted if

the waiver, permitted by the sevction, is signed.

BANK'S WOUNDS ARE SELF INFLICTED IT CONVERTED ITS JUNIOR TRUST DEED INTO ONE BY THE PROCEDURE IT FOLLOWED

In addition Bank's wounds are self inflicted and it should not be heard to complain. Although we have been unable to find a case where both a 1st and 2nd trust deed were foreclosed simultaneously *Cadlerock Joint Venture, L.P. v. Lobel*, 206 Cal. App. 4th 1531, 1539-40, 143 Cal. Rptr. 3d 96, 102 (2012), as modified (June 21, 2012) does offer some guidance:

> When the entire "value of the security has been lost through no fault of the creditor, the creditor may [immediately] bring a personal action on the debt" despite the one form of action rule. (Graves, supra, 51 Cal.App.4th at p. 611, 59 Cal.Rptr.2d 288, italics added.) Such a creditor "need not go through the idle form of bringing an action for foreclosure before he can have a judgment on the note." (Hibernia S. & L. Soc. v. Thornton (1895) 109 Cal. 427, 429, 42 P. 447.) But this exception to the one form of action rule " 'does not apply if the beneficiary himself is responsible for the loss of security....' " (Ghirardo v. Antonioli (1996) 14 Cal.4th 39, 48, 57 Cal.Rptr.2d 687, 924 P.2d 996.) For instance, a creditor may not unilaterally divest its security interest without the consent of the debtor. (Pacific Valley Bank v. Schwenke (1987) 189 Cal.App.3d 134, 142, 234 Cal.Rptr. 298.) And a junior lienor may not ignore its security and sue on the note merely because it thinks the market value of the property is less than the value of a senior lien on the property. (Giandeini v. Ramirez (1936) 11 Cal.App.2d 469, 470-473, 54 P.2d 91.)

And as reported in *Cadlerok*, supra at 293:

> In *Simon v. Superior Court* (1992) 4 Cal.App.4th 63, 5 Cal.Rptr.2d 428, a bank held both the first and second trust deeds on the property. Having foreclosed on the first, the bank contended it was a sold-out junior lienor on the second and could thus sue directly. The court held that the bank was not a third-party sold-out junior lienholder because it was fully able to protect its secured position. Because the action of the bank in foreclosing on the first trust deed eliminated the security of the second trust deed, the court held that a deficiency action was barred by section 580d. The *Simon* court noted, "Bank was not a third party sold-out junior lienholder as was the case in *Roseleaf.* As the holder of both the first and second liens, Bank was fully able to protect its secured position. It was not required to protect its junior lien from its own foreclosure of the senior lien by the investment of additional funds. Its position of dual lienholder eliminated any possibility that Bank, after foreclosure and sale of the liened property under its first lien, might end up with no interest in the secured property, the principal rationale of the court's decision in *Roseleaf.*" (*Simon v. Superior Court, supra,* 4 Cal.App.4th at p. 72, 5 Cal.Rptr.2d 428.)

Emphases supplied.

N.R.S. 40.495 provides as follows:

> Waiver of rights; separate action to enforce obligation; limitation on amount of judgment; available defenses,
> 3. If the obligee maintains an action to foreclose or otherwise enforce a mortgage or lien and the indebtedness or obligations secured thereby, the guarantor, surety or other obligor may assert any legal or equitable defenses provided pursuant to the provisions of NRS 40.451 to 40.4639, inclusive.

Bank argues at page 9 of its opening brief:

"Where a guarantor deficiency action is already pending, it makes no sense to require a party to "amend" its complaint within six months of a foreclosure to reassert the same claim against the same party under the same facts,..." Although Bank could have amended its complaint it did not. Its initial complaint (I JA AA 001-107) did not satisfy the standards set out by this court in *Walters* reiterated in *Lavi* "Therefore, a complaint filed before the foreclosure sale cannot sufficiently put an obligor on notice that the deed of trust beneficiary intends to seek further recovery from the obligor."

However, Bank did not have to amend its complaint it simply needed to wait until after foreclosure and make an application via a summary judgment within 6 months. This argument is the same argument as made in *Lavi*, supra and should be rejected here as it was in Lavi.

> BB & T's complaint failed to meet the NRS 40.455(1) requirements because it did not particularize its reasons for the deficiency application and it was filed before the foreclosure sale. Further, BB & T's summary judgment motion did not satisfy the NRS 40.455(1) requirements because it was filed 11 months after the foreclosure sale; therefore, it was untimely. Lavi, supra, unpublished at 1.

In *Branch Banking & Trust Co. v. Giordano*, No. 63522, 2015 WL 495881, at 1 (Nev. Feb. 3, 2015) this court noted that BB&T "... failed to amend its complaint or make any application for a deficiency judgment within six months of the trustee's sale." This court held that BB&T's failure to amend its complaint or make and application to the court was fatal to its cause. In direct opposition to the

argument made by Bank this court held in footnote 2 of the opinion:

> We reject BB & T's alternative assertion that it is entitled to amend its complaint to comply with NRS 40.455. Despite BB & T's arguments to the contrary, NRS 40.430 does not incorporate the anti-deficiency statutes into its provisions, and therefore, NRS 40.435(2) is not applicable. Moreover, we do not believe that equity or justice requires an alternative outcome.

The Legislative Counsel's Digest states with regard to Chapter 311, AB 273:

> Sections 3, 3.3 and 5.7 of this bill enact similar provisions to govern deficiency judgments sought by junior lienholders after a foreclosure sale, a trustee's sale .... Section 3 provides that, if the circumstances prohibiting a deficiency judgment after a foreclosure sale or trustee's sale under current law exist with respect to a junior lienholder, the creditor may not bring a civil action to recover the debt owed to it after a foreclosure sale, a trustee's sale or a sale or deed in lieu of a foreclosure sale or trustee's sale.
>
> Existing law authorizes a creditor under an obligation secured by a junior mortgage or deed of trust to bring an action to obtain a personal judgment against the debtor only if the action is commenced within 6 years after the date of the debtor's default. (NRS 11.190) Under sections 3.3 and 5.7 of this bill, if the real property securing such an obligation is the subject of a foreclosure sale, a trustee's sale or a sale or deed in lieu of such a sale, the creditor may bring an action to obtain a personal judgment against the debtor only if the action is brought within 6 months after the foreclosure sale, the trustee's sale or the sale in lieu of a foreclosure sale or trustee's sale.

Section 3.3 is, of course, codified in NRS 40.4639. Bank claims it is only required under 3.3 to file suit within 6 months to comply with current law. Bank did not comply with the 6 month rule as we have seen herein.

Further rationale is provided by *Keever v. Nicholas Beers Co.*, 611 P.2d 1079, 1083, 96 Nev. 509, 514-15 (Nev., 1980):

> The opportunity to sue directly on the obligation afforded to sold out juniors arises from the loss of their liens on the security by operation of the foreclosure or trustee's sale. See Sims v. Grubb, 75 Nev. 173, 336 P.2d 759 (1959). Having thus lost their interests in the security, through no fault of their own, sold out junior lienors are treated as unsecured creditors; they are under no duty to redeem the property or buy it at a judicial sale in order to limit the debtor's loss. The procedure under the statutory scheme, however, contemplates that, in the event that the property has risen in value to the point at which the value of the security is greater than the debts secured, the debtor would have the opportunity to attempt refinancing, in order to buy out the foreclosing lienor, or a junior lienor would have an incentive to purchase the property at the sale (thus buying out the senior) and step

> into the position of the senior lienor, with the opportunity then to foreclose his own lien and acquire the property free of encumbrances. See generally J. Hetland, Calif. Real Estate Secured Transactions ss 6.29-6.33 (CEB ed. 1970).

Here Bank has no one but itself to blame for loss of its "junior trust deed" since, as argued elsewhere herein, it combined its security into one trust deed for its own purposes.

The concept of the creditor being at fault for losing its security is strongly expressed in the California case of *Cadlerock Joint Venture, L.P. v. Lobel*, 206 Cal. App. 4th 1531, 1539-40, 143 Cal. Rptr. 3d 96, 102 (2012), as modified (June 21, 2012):

> When the entire "value of the security has been lost through no fault of the creditor, the creditor may [immediately] bring a personal action on the debt" despite the one form of action rule. (Graves, supra, 51 Cal.App.4th at p. 611, 59 Cal.Rptr.2d 288, italics added.) Such a creditor "need not go through the idle form of bringing an action for foreclosure before he can have a judgment on the note." (Hibernia S. & L. Soc. v. Thornton (1895) 109 Cal. 427, 429, 42 P. 447.) But this exception to the one form of action rule " 'does not apply if the beneficiary himself is responsible for the loss of security....' " (Ghirardo v. Antonioli (1996) 14 Cal.4th 39, 48, 57 Cal.Rptr.2d 687, 924 P.2d 996.) For instance, a creditor may not unilaterally divest its security interest without the consent of the debtor. (Pacific Valley Bank v. Schwenke (1987) 189 Cal.App.3d 134, 142, 234 Cal.Rptr. 298.) And a junior lienor may not ignore its security and sue on the note merely because it thinks the market value of the property is less than the value of a senior lien on the property. (Giandeini v. Ramirez (1936) 11 Cal.App.2d 469, 470-473, 54 P.2d 91.)

Under the facts of this case Bank was a first trust deed holder for the entire amount it was owed and is barred by *Lavi, supra,* from proceeding to collect any deficiency. Even if the court does not adopt that view Bank's position that it is a sold out junior lienor "... would truly exalt form over substance in disregard of reality."

Bank refers to itself as a sold out junior lienor but that is not an apt description at least according to *Bank of America v. Graves*, 59 Cal.Rptr.2d 288, 291, 51 Cal.App.4th 607, 612 (Cal.App. 4 Dist.,1996):

> The term "sold-out junior lienor" refers to the situation in which a senior lienholder forecloses its lien, eliminating the junior lienor's security interest. "A senior foreclosure sale conveys the property free of all junior liens .... Thus, the junior no longer has a lien on the property, and the security has been entirely destroyed. A sold-out junior thus holds security that has 'become valueless' and is permitted to sue directly on the note." (Bernhardt, Cal. Mortgage and Deed of Trust Practice (Cont. Ed. Bar 2d ed. 1990) § 4.8, pp. 193-194.)
>
> The leading texts on real property set forth the same principles. "The prohibition against a deficiency judgment does not apply to the beneficiary of a junior deed of trust whose security has been rendered valueless by a foreclosure sale of the property under a senior encumbrance. After the security has been lost by the foreclosure sale of the senior lien, the junior lienor can sue the debtor directly on the promissory note, which is then considered unsecured." (4 Miller & Starr, Cal. Real Estate (2d ed. 1989) § 9:156, p. 531; see also 3 Witkin, Summary of Cal. Law (9th ed. 1987) Security Transactions in Real Property, § 159, pp. 658-659.)

STIPULATION RE VALUE DOES NOT CHANGE RESULT OF LOWER COURT'S DECISION

Bank argues that the notice concerns in Lavi are wholly inapplicable to the instant case because Petersen stipulated to the Property's fair market value for the purpose of determining

the deficiency amount. The motivation and purpose for stipulating to value is not set out in the stipulation (I JA AA 155-156) and Bank characterization is mere conjecture. Furthermore the Lavi I, Court,2013 WL 3278563 said particular requirements must be met and they are not met here. For instance, the stipulation did not particularize Bank's reasons for a deficiency application: It merely established the Fair Market Value of the property.

Furthermore Bank's attempt to turn a stipulation (I JA AA 155-156) concerning value into a confession of judgment is just bad law. Stipulations are the grease which lubricates the wheels of litigation and a ruling to the end urged by Bank would likely eliminate co-operation between counsel on such matters. It is not hard to imagine attorneys who would not stipulate to anything if such a ruling were made by this court. If Bank thought the stipulation ended the case, as it now argues, why did it make a motion for summary judgment rather than just ask the court

immediately after the signing of the stipulation to enter judgment in its favor? Bank initial summary judgment mentioned the stipulation in passing only. At JA II AA163 it said "Petersen admitted to the following facts in his Answer to the Complaint, his deposition, and in a Stipulation and Order filed in this Court on December 13, 2013..." There after the stipulation was mentioned only for the fact that value was established. The stipulation itself also says "[t]his action will be tried by the Court, and not a jury." If the stipulation was dispositive, as now claimed, why the language concerning trial?

This court held in *Second Baptist Church of Reno v. Mount Zion Baptist Church*, 466 P.2d 212, 217-18, 86 Nev. 164, 172-73 (Nev. 1970):

> Stipulations are of an inestimable value in the administration of justice (Hayes v. State, 252 A.2d 431 (N.H. 1969)), and valid stipulations are controlling and conclusive and both trial and appellate courts are bound to enforce them. Burstein v. United States, 232 F.2d 19 (8 Cir. 1956); Foote v. Maryland Casualty Company, 409 Pa. 307, 186 A.2d 255 (1962); Pierson v. Allen, 409 S.W.2d 127 (Mo.1966); Bearman v. Camatsos, 215 Tenn. 231, 385 S.W.2d 91 (1964); Brookhart v. Haskins, 2 Ohio St.2d 36, 205 N.E.2d 911 (1965). In Garaventa v. Gardella, 63 Nev. 304, 169 P.2d 540 (1946), it was held to be error when the trial judge did not honor the stipulation of the parties where a rule of evidence (the deadman's statute) was waived. (See also, Scott v. Justice's Court of Tahoe Township, 84 Nev. 9, 435 P.2d 747 (1968)).

In short, as regards the question before the court, the stipulation is relevant for only one purpose and that is to show that the parties agreed upon value on a specific date, that the case would be tried to the court rather than a jury and that the action would remain in Department I.

CONCLUSION

Whether Bank's claims are judged by the language in Lavi I or II it is clear that Bank did not make an application within 6 months of foreclosure. Further it is clear that Bank was not a junior lienor as it now contends and even if it was it did ...

...

not comply with the 6 month limitation of NRS 40.4639 and therefore the lower court was correct in denying a recovery.

Respectfully submitted this 8th day of April 2015.

THE MCKNIGHT LAW FIRM, PLLC

By: _____
Richard McKnight, Esq.
Nevada State Bar No. 1313
528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
Attorneys for Respondent Petersen

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This document complies with the type-volume limitation of Fed.R.App.P. 32(a)(7)(B) because:

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Respectfully submitted this 8th day of April 2015.

THE MCKNIGHT LAW FIRM, PLLC

By: _____
Richard McKnight, Esq.
Nevada State Bar No. 1313
528 S. Casino Center Blvd. #335
Las Vegas, Nevada 89101
Attorneys for Respondent Petersen

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of 18 years, and I am not a party to, nor interested in this action. On the 8th day of April 2015, I caused to be served a true and correct copy of the foregoing **RESPONDENT'S ANSWERING BRIEF** upon the following by the method indicated.

[X] ECF SERVICE: **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

/s/ Maureen Marella
An Employee of McKnight Law Firm, PLLC