IN THE SUPREME COURT OF THE STATE OF NEVADA

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Clerk of Supreme Court

PROPERTY PLUS INVESTMENTS, LLC, a Nevada Limited Liability Corporation;
Appellant

v.

MORTGAGE ELECTRONIC REGISTRATION SYSTEM, an Illinois Corporation; and CHRISTIANA TRUST, A DIVISION OF WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT AS TRUSTEE OF ARLP TRUST 3, IN C/O ALTISOURCE ASSET MANAGEMENT CORPORATION;
Respondents.

CASE NO.: 69072
District Court Case No.: A692200
Appeal from the Eighth Judicial District Court of the State of Nevada
In and For the County of Clark

MORTGAGE ELECTRONIC REGISTRATION SYSTEM, an Illinois Corporation and CHRISTIANA TRUST, A DIVISION OF WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT AS TRUSTEE OF ARLP TRUST 3, IN C/O ALTISOURCE ASSET MANAGEMENT CORPORATION'S ANSWERING BRIEF

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CORPORATE DISCLOSURE STATEMENT

PURSUANT TO NRAP RULE 26.1

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 judges of this court may evaluate possible disqualification or recusal.

Respondent Mortgage Electronic Registration Systems, Inc. ("MERS") is a wholly-owned subsidiary of MERSCORP Holdings, Inc. MERSCORP Holdings, Inc. is owned by Maroon Holding, LLC. Intercontinental Exchange, Inc. is the only publicly-held corporation that individually owns 10% or more of Maroon Holding, LLC.

Respondent, CHRISTIANA TRUST, A DIVISION OF WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT AS TRUSTEE OF ARLP TRUST 3, IN C/O ALTISOURCE ASSET MANAGEMENT CORPORATION ("Christiana Trust") is a division of Wilmington Savings Fund Society, FSB, WSFS Financial Corporation through its principal subsidiary, Wilmington Savings Fund Society, FSB.

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JURISDICTIONAL STATEMENT

This appeal arises from an order denying Appellant, Property Plus Investments, LLC's Motion for Rehearing and Motion to Vacate Summary Judgment, entered on September 30, 2015. The Notice of Entry of the Order was entered on October 8, 2015. Appellant, Property Plus Investments, LLC filed its Notice of Appeal on October 26, 2015. This Court has jurisdiction over this appeal pursuant to Nevada Rule of Appellate Procedure ("NRAP") 3A.

ISSUES PRESENTED FOR REVIEW

1. Did the district court err in granting Respondent, Christiana Trust's Motion for Summary Judgment when it based its decision on undisputed evidence that the super-priority portion of the homeowners association ("HOA") lien was paid prior to the sale?

2. Did the district court err in granting Respondent, Christiana Trust's Motion for Summary Judgment when it based its decision on undisputed evidence that the HOA Notices included pre-petition bankruptcy debt?

STATEMENT OF CASE

This appeal arises out of a dispute concerning real property that was sold at a homeowner's association sale to Appellant, Property Plus Investments, LLC. Respondent, Christiana Trust is the beneficiary of a first deed of trust recorded prior to the homeowner's association sale. Appellant, Property Plus Investments, LLC brought suit on November 25, 2013, alleging causes of action for quiet title, declaratory relief, and preliminary injunction. Respondent, Christiana Trust filed a Motion to Intervene on July 9, 2014, which was ultimately granted, and thereafter filed an Answer on February 10, 2014. Respondent, Christiana Trust moved for summary judgment on March 16, 2015. Appellant, Property Plus Investments, LLC filed an Opposition and Countermotion on April 15, 2016. Respondent, Christiana Trust filed its Reply and opposition on May 27, 2015. The Court granted Respondent, Christiana Trust's Motion on the basis that Respondent, Christiana Trust's predecessor in interest tendered payment to the homeowner's association for the super-priority portion of the homeowner's association lien. The Court further granted Respondent, Christiana Trust's Motion on the basis that the homeowner's association notices referenced pre-petition bankruptcy debt that violated a bankruptcy discharge order. Appellant, Property Plus Investments, LLC moved to reconsider, through a Motion for Rehearing and Motion to Vacate Summary Judgment, on July 30, 2015, and Respondent, Christiana Trust opposed

the Motion. The Court denied the Motion in an Order entered on September 30, 2015. A Notice of Entry on the Order denying the Motion for Rehearing and Motion to Vacate Summary Judgment was entered on October 8, 2015. Appellant, Property Plus Investments, LLC appealed this Order on October 26, 2015.

STATEMENT OF FACTS

On April 27, 2007, Megan R. Sulliban borrowed $215,000 from Bank of America, N.A. to finance her purchase of a residence at 8787 Tom Noon Avenue, No. 101, Las Vegas, Nevada 89178.[1] Sulliban executed a Note in favor of Bank of America, N.A. and a Deed of Trust to secure repayment of the Note. The Deed of Trust was recorded against the title to the property on April 30, 2007, with the Clark County Recorder's Office.[2] On April 7, 2010, the Deed of Trust was assigned to Respondent, Christiana Trust.[3]

Three homeowner's associations exercise control over the Property: (1) Arlington Ranch North Master Association ("Master Association"); (2) Arlington Ranch Landscape Maintenance Association ("Landscape Association"); and (3) High Noon at Arlington Ranch Homeowner's Association. High Noon at Arlington Ranch Homeowner's Association foreclosed on its lien on July 17, 2013.

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1 See Joint Appendix (hereafter "JA") JA0078-82 and 86-100.

2 *Id.*

3 JA0076

Appellant, Property Plus Investments, LLC purchased the Property for $7,500.00 at the July 17, 2013, sale.[4]

Alessi & Koenig, LLC, the sale trustee, recorded a Notice of Delinquent Assessment Lien on April 8, 2010.[5] On July 1, 2010, Alessi & Koenig, LLC recorded a "Notice of Default and Election to Sell under Notice of Delinquent Assessment Lien."[6]

Also in September, the law firm of Miles, Bergstrom & Winters, LLP f/k/a Miles, Bauer, Bergstrom & Winters was retained by Bank of America, N.A., to negotiate with Alessi & Koenig, LLC to protect the deed of trust. Bank of America, N.A. was then the servicer for the loan beneficiary.[7] The only homeowner's association lien of record was the one recorded April 8, 2010.

Miles, Bergstrom & Winters, LLP tendered $522.00 to Alessi & Koenig, LLC to satisfy the super-priority portion of the association's lien. That amount equaled nine months of $58.00 assessments. Alessi & Koenig, LLC rejected payment without explanation.[8] Nonetheless, on August 11, 2011, High Noon at Arlington Ranch Homeowner's Association released the April 8, 2010, Lien.[9]

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4 JA0132
5 JA0465; JA0480
6 *Id.*; JA0481
7 JA0578-595
8 JA0597 (showing returned voided check)
9 *Id.*; JA0299-260; JA0479

On July 20, 2012, the High Noon at Arlington Ranch Homeowner's Association, through its agent Alessi & Koenig, LLC recorded another Notice of Delinquent Assessment (July 20, 2012 Lien), asserting an unpaid debt of $1,887.01 owed by the homeowner.[10] On October 31, 2012, Alessi & Koenig, LLC recorded a Notice of Default and Election to Sell under Homeowners Association Lien, identifying an unpaid debt of $3,190.45 owed by the homeowner.[11]

On December 19, 2012, homeowner and borrower Megan R. Sulliban filed a Voluntary Petition for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Nevada.[12] The Petition listed High Noon at Arlington Ranch Homeowner's Association as a creditor holding a secured claim of $1,877.01 – the same amount reflected in the July 20, 2012, Notice of Delinquent Assessment Lien.[13] Megan R. Sulliban obtained an order for discharge, entered on March 20, 2013.[14]

Notwithstanding the entry of an order discharging Sulliban's pre-petition debt, High Noon at Arlington Ranch Homeowner's Association continued to pursue collection of the same. On June 21, 2013, Alessi & Koenig LLC recorded a Notice of Trustee's Sale for the Property, and setting a sale date of July 17, 2014.

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10 JA0125
11 JA0127; JA0579
12 Supplemental Appendix ("SA") 001-44
13 SA017
14 SA045

The Notice of Trustee's Sale identified Sulliban's unpaid debt as $5,019.80.[15] It is not disputed by either side that this amount included assessments, fees, and costs which had accrued prior to the commencement of Ms. Sulliban's bankruptcy proceeding on December 19, 2012.[16]

STANDARD OF REVIEW

The Nevada Supreme Court reviews the district court's legal conclusions *de novo*. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228 (2008). "[T]his court will affirm the order of the district court if it reached the correct result, albeit for different reasons." *Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987). *Pack v. LaTourette*, 277 P.3d 1246, 1248 (Nev. 2012).

LEGAL ARGUMENT

A. THERE IS NO DISPUTE THAT RESPONDENT, CHRISTIANA TRUST'S PREDECESSOR IN INTEREST TENDERED AN AMOUNT EQUAL TO NINE MONTHS OF ASSESSMENTS TO ALESSI & KOENIG, LLC, AND SO THE COURT FOUND THAT THE TENDER WAS EFFECTIVE TO DISCHARGE THE SUPER-PRIORITY LIEN.

The district court granted summary judgment in favor of Respondent, Christiana Trust based, in part, on Bank of America's tender of $522.00 on September 23, 2010, to the High Noon at Arlington Ranch Homeowner's

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15 JA0129

16 JA0129; JA0247; JA0258-263

Association.[17] Appellant, Property Plus Investments, LLC argues that the district court erred in finding this tender was effective to discharge the super priority lien because the tender was made when the April 8, 2010, Lien was of record, and High Noon at Arlington Ranch Homeowner's Association foreclosed on the July 20, 2012 Lien. Thus, payment of a prior lien did not affect subsequent liens.

The issue on appeal is whether a homeowner's association can defeat a tender and assert a "new" super-priority lien by simply withdrawing its notice of lien and recording a new one. For the reasons discussed, *infra*, a homeowner's association is not entitled to successive super-priority liens under Nevada law and thus the trial court properly ruled that Appellant, Property Plus Investments, LLC took title to the Property subject to Respondent, Christiana Trust's Deed of Trust.

1. A Homeowner's Association is Entitled to One Super-Priority Lien.

Nevada's homeowner association lien rights, found in NRS 116.3116 et seq., were created by reference in part to the Uniform Common Interest Ownership Act ("UCIOA"). As this Court itself recognized, commentary to the UCIOA aids in the interpretation of the statute. *SFR Investments v. U.S. Bank*, 334 P.3d 408, 410 (Nev. 2014).

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[17] JA0340

NRS 116.3116(2)(b) elevates the priority of homeowner association liens over other liens, except for first trust deeds and others not relevant to this appeal. *Id.* However, even the priority of a first deed of trust is subordinate to the "super-priority lien." *Id.* at 410-11. NRS 116.3116(2) defines the super-priority lien as:

> The [association] lien also prior to all security interest described in paragraph (b) to the extent of any [maintenance and nuisance-abatement] charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses [i.e., HOA dues] based on the periodic budge 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 the institution of an action to enforce the lien* unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien. . . Id. (Emphasis added).

The super-priority lien is thus defined by reference to (i) 9 months of assessments, maintenance and nuisance abatement charges, (ii) that accrue in the period "preceding the institution of an action to enforce a lien."[18] The UCIOA's definition of the super-priority lien contains similar language as NRS 116.3116(2).[19]

The Uniform Law Commission has established a Joint Editorial Board for Uniform Real Property Acts, made up of members from the Uniform Law

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[18] There is no contention that maintenance and nuisance abatement charges were included in the HOA lien in this case. Thus, the sole focus is on the nine months of assessments and the institution of the action to enforce the lien.

[19] The distinction relevant to this appeal is that the UCIOA super-priority lien is limited to six months immediately preceding the institution of an action to enforce the lien. *Id.*at 411, fn. 1, citing 1982 UCIOA § 3-116.

Commission which is responsible for monitoring the uniform real property acts including the UCIOA. *Id.* at 413. The Joint Editorial Board released a report (hereinafter the "JEB Report") that addressed the topic of whether an association could take successive actions to claim and enforce a super-priority lien. (See Report of the Joint Editorial Board for Uniform Real Property Acts, "The Six-Month 'Limited Priority Lien' For Association Fees Under the Uniform Common Interest Ownership Act," pgs. 12-13 (June 1, 2013)).[20] In no uncertain terms, the Joint Editorial Board states that a homeowner's association is not entitled to successive super-priority liens:

> [S]ection 3-116I [of the UCIOA] does not (and was not intended to) authorize an association to file successive lien enforcement actions every six months as means to extend the association's limited lien priority. Only one action is necessary to permit the association to enforce its lien, sell the unit/parcel, and deliver clear title; accordingly, successive action would only serve to extend the association's lien priority beyond the six-month period express in section 3-116I.

Consistent with its conclusion that successive actions cannot be filed to extend the super-priority lien amounts, the Joint Editorial Board Report concludes the super-priority lien is a "one-time" lien:

> Section 3-116I [of the UCIOA] provides an association with first lien priority only to the extent of the six months of unpaid common expense assessment that accrued immediately preceding a lien

[20] Available at http://www.uniformlaws.org/shared/docs/jeburpa/2013jun1_JEBURPA_UCIOA%20Lien%20Priority%20Report.pdf (last visited August 22, 2016).

> foreclosure action by either the association or the first mortgage . . . the drafters of UCIOA § 3-116 I did not contemplate the now-common scenario in which the first mortgagee's foreclosure action might remain pending for two years or more. *Id.* at 14; see also *Lake Ridge Condo. Assoc. v. Vegas*, No. NNHCV116021568S (Conn. Super. Ct. June 25, 2012) (holding that the first mortgage paid and satisfied the super-priority lien while its foreclosure action was pending, so the HOA was not entitled to commence a second action two years later to establish another super-priority lien while the first mortgage foreclosure was still pending).

The Nevada Real Estate Division recently issued an advisory opinion on successive lien rights consistent with that expressed by the Joint Editorial Board. The Nevada Real Estate Division concluded the super-priority lien is limited to the period of time specified in the statute: nine months of assessments from the institution of an action to enforce the association's lien. See 13-01 Op. Dep't. of Bus. & Indus., Real Estate Div., p.17 (2012). The triggering event is the mailing of the Notice of Delinquent Assessment. *Id.* at 17-18. "At that point, the immediately preceding 9 months of assessments based on the association's budget determine the amount of the super priority lien." *Id.*

This reasonable interpretation of the plain language of the statute leaves no room for argument that an association may create successive super priority liens, particularly where, as here, the original lien was not satisfied and payment rejected.

2. Permitting Successive Super-Priority Liens Would Deter Payment, Inject Further Uncertainty into the Payment Process, and Encourage Delay in Completing Foreclosure.

Appellant seeks to treat Bank of America's tender of payment as a legal nullity. Plainly this is at odds with the body of case law that treats a rejected tender as effective to discharge the debt for which payment was offered. Further, the lender should not have to wait on the homeowner's association to decide which foreclosure proceeding *it voluntarily commenced* as the one which will result in sale unless paid in full. While an association always has the latitude and discretion to cancel a foreclosure proceeding, it does not have the latitude to ignore the consequences of a lender's tender of payment. As Appellant seeks to interpret the law, a lender is forever at risk of losing its security interest, even if willing to take the legal steps mandated by this Court to protect its rights. In such a scenario, the lender may well wonder if the only plausible response is litigation, whenever a lien is withdrawn. Such an interpretation of the super priority lien right of the association serves no one's interest. Moreover, there is no discernable purpose served by rescinding and restarting the foreclosure process. Pursuant to NRS 116.3116 as relief is afforded only when the foreclosure is completed. Payment or sale are the only two options. Once the association has committed to foreclosing its lien, then the association is also committed to respecting the limitations on the

priority of its lien.

In *Hudson House Condominium Ass'n v. Brooks*, 223 Conn. 610, 611 A.2d 862 (Conn. 1992) the Supreme Court of Connecticut considered a similar scenario. The homeowner's association argued "that because it could, in theory, initiate a foreclosure on delinquent common expense assessments every six months, it could thereby obtain a priority status for all delinquent assessments." *Id.* at 614. The Supreme Court of Connecticut rejected this argument and held that the homeowner's association's super-priority lien was "limited to the common expense assessments that accrued in the six months immediately preceding the commencement of the foreclosure." *Id.* at 616.

3. Rejection of a Tender Discharges for the Super-Priority Lien to the Extent of the Payment.

When rejection of a tender is unjustified, the tender is effective to discharge the lien. *Stone Hollow Ave. Tr. v. Bank of Am., N.A.*, No. 64955, 2016 Nev. Unpub. LEXIS 637, at *1 (Aug. 11, 2016) (citing to *Hohn v. Morrison*, 870 P.2d 513, 516-17 (Colo. App. 1993); *Lanier v. Mandeville Mills*, 183 Ga. 716, 189 S.E. 532, 534-35 (Ga. 1937); *Fed. Disc. Corp. v. Rush*, 269 Mich. 612, 257 N.W. 897, 899 (Mich. 1934); *Segars v. Classen Garage & Serv. Co.*, 1980 OK CIV APP 9, 612 P.2d 293, 295-96 (Okla. Civ. App. 1980); *Reynolds v. Price*, 88 S.C. 525, 71 S.E. 51, 53 (S.C. 1911); *Karnes v. Barton*, 272 S.W. 317, 319 (Tex. Civ. App.

1925); *Hilmes v. Moon*, 168 Wash. 222, 11 P.2d 253, 260 (Wash. 1932); *see also* 59 C.J.S. *Mortgages* § 582 (2016).) In this case, no evidence was proffered as to why Alessi & Koenig, LLC or its principal rejected the tender of payment. The trial court properly concluded that no inference can be drawn that the tender was for the wrong amount and properly concluded the tender discharged the super priority portion of the association's lien.

B. THE ASSOCIATION'S BID AT ITS FORECLOSURE SALE INCLUDED DISCHARGED, PRE-PETITION DEBT THAT VIOLATED THE POST-DISCHARGE INJUNCTION.

1. A Creditor Has Standing to Challenge the Bankruptcy Discharge Violation.

Respondent, Christiana Trust, as a secured creditor, can assert the sale as conducted violated the discharge injunction granted the homeowner. The Ninth Circuit BAP Court has held that Congress intended to confer rights on creditors as parties for whose benefit the automatic stay was promulgated. See, *In re Brooks*, 871 F.2d 89, 90 (9th Cir.1989), affg *Brooks,* 79 B.R. 479 (9th Cir.B.A.P.1987). The same reasoning applies to protecting other creditors from abuse or disregard of the discharge injunction.

The following Courts held that secured creditors can raise challenges outside of the bankruptcy court. In *In re Killmer* 501 B.R. 208 (Bankr. S.D.N.Y. 2013),

Beneficial Home Service Corporation ("Beneficial") held a security interest in the debtor's property. The debtor's property was sold at a tax sale in violation of the automatic stay to a third party purchaser purportedly terminating Beneficial's lien. Beneficial successfully sought to declare the tax sale void. *Id.*

In so holding, the court addressed the standing of a creditor to have a sale declared void:

> The situation that is alleged to have occurred here is the type of scenario that Congress intended to prevent. Since the automatic stay is meant to prevent creditors from racing to the courthouse to the detriment of other creditors, the Court sees no reason why a creditor who has been harmed by a stay violation should not be able to seek redress for its injury. *In re Killmer* 501 B.R. at 212, 2013 WL 6038838, at *3.

A further example is found in *United States v. Miller,* No. CIV.A.5:02-CV-0168-C, 2003 WL 23109906, at *7 (N.D. Tex. Dec. 22, 2003). In the *Miller* case, the United States sought to void a foreclosure sale by filing a declaratory relief complaint in the Federal District Court. The defendant challenged the standing of the United States to invoke the violation of the automatic stay as the basis for challenging the sale. In rejecting the argument, the Court held:

> Less obvious but no less important interests protected by § 362 are those of creditors, who are "clearly intended to benefit from § 362." *Pointer*, 952 F.2d at 86; see also *Pierce*, 272 B.R. at 204 ("The stay is intended to benefit both debtors and creditors"); *Glendenning v. Third Fed. Savs. Bank* (*In re Glendenning*), 243 B.R. 629, 634 (Bankr.E.D.Pa.2000) (noting that protection of creditors' interests is confirmed by fact that automatic stay arises even in face of debtor's dereliction in raising it). Congress intended to

confer rights on creditors as parties for whose benefit the automatic stay was promulgated.

Thus, bankruptcy law is clear; Respondent, Christiana Trust, as a secured creditor has standing to assert a challenge to a violation of a debtor's discharge order.

2. Homeowner Assessments That Accrued Pre-Petition are Dischargeable in Bankruptcy.

The Bankruptcy Code specifically provides for relief to a homeowner from the payment of assessments and fees that accrued prior to filing.[21] 11 U.S.C. §523(a)(16) states:

> **(a)** A discharge under section 727, 1141, 1228 (a), 1228 (b), or 1328 (b) of this title does not discharge an individual debtor from any debt— for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership, in a share of a cooperative corporation, or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot, but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case.

When Sulliban's Chapter 7 bankruptcy was discharged on March 20, 2013, any fees and assessments owing prior the Chapter 7 filing date of December 19, 2012, were discharged as a matter of law.

[21] 11 U.S.C. §523(a)(16).

3. Nevada Law Requires a Homeowners Association's Chapter 116 Notices to Contain Accurate Information about the Deficiency in Payment

NRS 116.311635(2)(3)(a) states that the Notice of Sale must state "The amount necessary to satisfy the lien as of the date of the proposed sale." Alessi & Koenig, LLC's Notice of Trustee's Sale contained an inaccurate recital of the amount necessary to satisfy the lien as of the sale date, as the association failed to acknowledge the pre-petition debt had been discharged through Sulliban's bankruptcy. Indeed, the Notice of Sale identified an amount owed of $5,019.80 and Alessi & Koenig, LLC's accounts ledgers verify that this amount included fees, assessments, and costs which had accrued prior to the commencement of Sulliban's bankruptcy.[22]

Amounts due in foreclosure notices should be accurate. *See Bank-Fund Staff Fed. Credit Union v. Cuellar*, 639 A.2d 561, 563-564 (D.C. 1994); *Broosk v. Rivertown on the Island Homeowner Ass'n*, 2011 Tenn.App. LEXIS 651 (Tenn. Ct. App. Dec. 2011) (setting aside a homeowner's association sale based, in part, on foreclosure notices failing to accurately describe amount owed).

The Notice of Default recorded on October 31, 2012, violates the statute because it does not accurately describe the deficiency in payment after the

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[22] JA0129; JA0247; JA0258-263.

bankruptcy discharge because any fees and costs incurred prior to the December 19, 2012, were discharged by the Sulliban bankruptcy. The homeowner's association was required to record a new Notice of Default post discharge that corrected the amount due and owing. Similarly, the Notice of Sale recorded on June 21, 2013, violates the statute because it does not accurately describe the deficiency in payment after the bankruptcy discharge because any fees and costs incurred prior to December 2012 were discharged by the Sulliban bankruptcy. Based on these facts, the homeowner's association sale is void, statutorily defective, and Respondent, Christiana Trust's Deed of Trust was not extinguished by the homeowner's association sale.

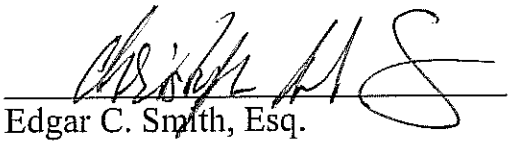
CONCLUSION

Respondent, Christiana Trust respectfully asks that this Court affirm that district court's Order granting summary judgment in its failure. Respondent, Christiana Trust's predecessor paid the super-priority portion of the homeowner's association lien and thus Appellant, Property Plus Investments, LLC's ownership of the Property is subject to Respondent, Christiana Trust's Deed of Trust. Furthermore, the homeowner's association did not simply complete its foreclosure of the April 8, 2010, Lien, as it should have done, but released and filed a new Lien presumably seeking another super-priority payment from Respondent, Christiana Trust. To dissuade such greedy behavior, this Court should hold that a

homeowner's association only gets one super-priority lien and is not afforded a perpetual super-priority lien. Finally, this Court should affirm as the homeowner's association notices that caused the sale where Appellant, Property Plus Investments, LLC obtained title to the Property were legally void as the notices contained pre-petition bankruptcy debt.

DATED this 11 day of October, 2016.

WRIGHT, FINLAY & ZAK, LLP



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CERTIFICATE OF COMPLIANCE

I hereby 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 in 14 point, Times New Roman style. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 3,767 words. 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 11th day of October, 2016.

Christopher A.J. Swift, Esq.

CERTIFICATE OF SERVICE

I certify that I electronically filed on the 11th day of October, 2016, the foregoing **MORTGAGE ELECTRONIC REGISTRATION SYSTEM, an Illinois Corporation and CHRISTIANA TRUST, A DIVISION OF WILMINGTON SAVINGS FUND SOCIETY, FSB, NOT IN ITS INDIVIDUAL CAPACITY BUT AS TRUSTEE OF ARLP TRUST 3, IN C/O ALTISOURCE ASSET MANAGEMENT CORPORATION'S ANSWERING BRIEF** with the Clerk of the Court for the Nevada Supreme Court by using the CM/ECF system. I further certify that all parties of record to this appeal either are registered with the CM/ECF or have consented to electronic service.

[ ] By placing a true copy enclosed in sealed envelope(s) addressed as follows:

[X] (By Electronic Service) Pursuant to CM/ECF System, registration as a CM/ECF user constitutes consent to electronic service through the Court's transmission facilities. The Court's CM/ECF systems sends an e-mail notification of the filing to the parties and counsel of record listed above who are registered with the Court's CM/ECF system.

[X] (Nevada) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

An Employee of Wright Finlay Zak, LLP