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IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL PAWLIK,

Appellant,

v.

SHYANG-FENN DENG AND LINDA
HSIANG-YU CHIANG DENG,
TRUSTEES OF THE SHYANG-FENN
AND LINDA HSIANG-YU CHIANG
DENG REVOCABLE TRUST DATED
AUGUST 18, 2006; VANETTA
APPLEYARD, TREASUER OF THE
CITY OF LAS VEGAS; THE CITY OF
LAS VEGAS, a Political subdivision,

Appellees.

No. 71055

APPELLEES' ANSWERING BRIEF

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NRAP 26.1 DISCLOSURES

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.

1. Parent Corporation: None

2. Publicly held company that owns 10% or more of the party's stock: None.

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3. Law Firms who have appeared or are expected to appear for Real Parties in
Interest: Black & LoBello

DATED this 7th day of July 2017.

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Dated August 18, 2006

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STATEMENT OF ISSUES

1. Does NRS 271.595, et seq. require the certificate holder to wait until the 2-year right of redemption expires pursuant to NRS 271.595(1)(b), prior to serving the owner with the 60-day notice pursuant to NRS 271.595(3) and (4).
2. Is a certificate holder's 60-day notice prior to expiration of the 2-year redemption period provided for in NRS 271.595(1)(b) invalid, such that proper notice must be given after the expiration of the 2-year redemption period for such notice to be valid.
3. Does the fact that NRS 271.595 involves the taking of real property require strict interpretation of the relevant statutes regarding notice, such as to not deprive the homeowner of Due Process.

STATEMENT OF CASE

On or about January 27, 2014, the City of Las Vegas Treasurer conducted a sale for the defaulted special assessments that had gone delinquent as a result of the Appellant not paying the special assessments in a timely manner. The Appellant purchased the certificate at that time. (AAA0002)

Pursuant to NRS 271.595(1)(a) a 2-year redemption period exists, which would expire on January 26, 2016, during which period the Appellees could redeem the home.

Pursuant to NRS 271.595(3) and (4), the certificate holder must give an additional 60 days' notice of the certificate holder's intent to demand a deed for the property, giving the homeowner one last chance to redeem the property.

On or about January 7, 2016, the Appellant, as Certificate Holder, prior to the 2-year redemption period expiring, began giving notice to the Appellant. (AA0003).

The Appellant attempted to have the City of Las Vegas issue a deed on or about March 14, 2016, which is approximately 45 days after the end of the 2-year redemption period. (AA0003)

The Appellees found out about the assessment, and sought to pay the assessment. The City of Las Vegas agreed that the notice from the Appellant was improper, and accepted payment in full by the Appellees on April 6, 2016. (AA0103, AA0146).

Appellant filed a verified complaint in this matter on April 6, 2016 ("Complaint") (0001-0035). An Amended Notice of Hearing on Motion and Application for Writ of Mandamus on April 28, 2016 (AA0079).

Counsel for Appellees accepted Service on or about May 23, 2016 (AA0092-0093). A Motion to Dismiss was filed on May 31, 2016 (AA0097-0146) (Errata to correct title was filed June 1, 2016, AA0165-0167), and Return to

Plaintiff's Motion and Application for Writ of Mandamus was filed June 2, 2016 (AA0172 – 0177).

After a court hearing, the district court issued and signed its order on July 11, 2016 (AA0295), granting dismissal of the action, finding that Appellant failed to give proper notice to Appellees. The Order was filed July 13, 2016 (AA0293-0295), and Notice of Entry of Order was Filed on July 20, 2016. (AA00290).

STATEMENT OF FACTS

A. Undisputed Facts From Appellant's Complaint

These facts are taken directly from the Appellant's Complaint which is a *verified complaint* and the relevant portions are undisputed as follows:

“NRS 271.595 grants the owners a 2-year redemption period **and if no redemption is made within said period** the Treasurer, herein Vanetta Appleyard, upon demand of the purchaser and the surrender to the Treasurer of the Certificate of Sale **and after 60 days' notice** to the owners must issue a Deed to the holder of the Certificate.”¹

The Certificate of Sale was issued January 28, 2014, and it states therein that the redemption period commenced on January 27, 2014.²

On January 7, 2016, the Appellant prepared a Notice of Expiration of Redemption Period and of Intent of Owner of Certificate of Sale to Demand Deed

¹ AA0003:1-4

to Real Property.³ Appellant then attempted to serve Appellees, from January 8, 2016, to January 11, 2016.⁴ The Appellant then published the service with the first date of service being January 13, 2016, and the last service of publication being January 27, 2016.⁵

On March 14, 2016, *less than 60 days after the expiration of the 2-year redemption period*, which ended on January 26, 2016,⁶ Appellant attempted to obtain make application for the issuance of a deed.⁷

B. Facts Further Admitted By Appellant

The Appellees (“Owner”) paid all of the fees as calculated by the City of Las Vegas on April 6, 2016.⁸

The Appellant began its 60-day notice on January 7, 2016, prior to the expiration of the 2-year redemption period on January 26, 2016,⁹ and makes no mention of ever trying to correct the improper service, such that a re-notice of the 60-day period was attempted, after the expiration of the 2-year redemption period.

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² AA0010

³ AA0003:8-11

⁴ AA0017-0018

⁵ AA0003:16-18

⁶ AA0279:6

⁷ AA0003:24-27

⁸ AA0103, AA0146, Appellant’s Opening Brief Page 7

ARGUMENT

I. Applicable Law

A. The Nevada Constitution and Applicable Statutes, Generally

Article 1, Section 8(5) of the Nevada Constitution states: “No person shall be deprived of life, liberty, or property, without due process of law.”

In this case we are speaking directly of the deprivation of the Appellees’ real property, and the material requirement for the due process of law.¹⁰

Pursuant to NRS 271.555 and NRS 271.595, et seq. the Appellees are entitled to proper due process and notice of the taking of the home.

B. NRCP 12(B)(5) Standard

A complaint should be dismissed when it fails to "state a claim upon which relief can be granted.”¹¹ Even with all beneficial inferences made on behalf of the non-moving party, dismissal is proper where the allegations are insufficient to establish the elements of the claim for relief. When a party can prove no set of

⁹ AA0003:8-11, Appellant’s Opening Brief, Page 2

¹⁰ See, *J.D. Construction v. IBEX Int’l Group*, 126 Nev. 366, 376, 240 P.3d 1033, 1040 (2010) wherein this Court similarly found that “[a] mechanic's lien is a “taking” in that the property owner is deprived of a significant property interest, which entitles the property owner to federal and state due process. *Connolly Develop., Inc. v. Sp. Ct. of Merced Cty.*, 17 Cal.3d 803, 132 Cal.Rptr. 477, 553 P.2d 637, 644 (1976).”

¹¹ NRCP 12(b)(5).

facts that would entitle him or her to relief in the complaint or claim it should be properly dismissed.¹²

The test for determining whether a claimant's allegations are sufficient is whether (i) they give fair notice of the nature and basis of a legally sufficient claim and the relief requested,¹³ and (ii) the claim for relief is "plausible on its face."¹⁴

This Court has stated that the district courts should accept the allegations in the complaint as true and draw all inferences in Plaintiff's favor.¹⁵ The complaint should be dismissed only if it appears *beyond a doubt* (not beyond a reasonable doubt) that Plaintiff could prove no set of facts, which, if true, would entitle it to relief.¹⁶ To satisfy that test, Plaintiff "must set forth sufficient facts to establish all

¹² *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 32, 62 P.3d 720, 740 (2003) and NRCp 12(b)(5).

¹³ *See, e.g., Ravera v. City of Reno*, 100 Nev. 68, 70, 675 P.2d 407, 408 (Nev. 1984); *Western States Constr. v. Michoff*, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (Nev. 1992).

¹⁴ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 1974 (2007). *See Garcia v. Prudential Ins. Co. of America*, 129 Nev. Adv. Op. 3, 293 P.3d 869, 871 n.2 (Nev. 2013). Nevertheless, Nevada treats cases interpreting the federal rules as persuasive because the state and federal versions of NRCp 12(b) are nearly identical. *See Executive Mgmt. Ltd. v. Ticor Title Ins. Co.* 118 Nev. 46, 53, 38 P.3d 872, 876 (2002). Some examples of Eighth District Court judges applying *Twombly* exist. *See, e.g., Levy v. Funding*, 2010 WL 7460207 (Nev. Dist. Ct. 2010) (unpublished). Here, even under the pre-*Twombly* approach, the Appellant has no valid claim for relief, based upon the facts in the verified complaint.

¹⁵ *Seput v. Lacayo*, 122 Nev. 499, 501, 134 P.3d 733, 734 (2006).

¹⁶ *Blackjack Bonding v. Las Vegas Mun. Ct.*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000). *See also, Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008) footnote 6. "Our prior cases have not been completely consistent in applying the standard of review for failure to state a claim upon

necessary elements of a claim for relief.”¹⁷ “Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief.”¹⁸

Despite the extraordinarily high bar, *the Appellant had (and has) a severe deficiency both factually and legally*. And the district court agreed, interpreting the statute to accord the Appellees’ 60 days’ notice *after* the 2-year redemption period. Further, because the Appellant failed to provide proper notice, and never corrected the notice, the district court properly found in favor of the Appellees.¹⁹

II. Application Of The Law To The Facts

A. Statutes Stating Specific Times Are To Be Strictly Construed

“Generally, when a statute’s language is plain and its meaning clear, the court’s will apply that plain language.”²⁰ “Under certain procedural statutes and rules...failure to strictly comply with time requirements can be fatal to a case.”²¹ “Although statutes allowing for a “reasonable time” to act are subject to

which relief can be granted. The appropriate standard requires a showing beyond a doubt. To the extent that these cases required a showing of proof beyond a reasonable doubt, they are disavowed.”

¹⁷ *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 875, 8 P.3d 837,840 (Nev. 2000) (citations omitted) (emphasis added); *Stockmeier v. Nevada Dep’t of Corr.*, 124 Nev. 30, 183 P.3d 133, 135 (Nev. 2008).

¹⁸ *Hampe v. Foote*, 118 Nev. 405, 408, 47 P.3d 438, 439 (Nev. 2002); *Bergmann v. Boyce*, 109 Nev. 670, 675, 856 P.2d 560, 563 (Nev. 1993).

¹⁹ AA0293-295

²⁰ *Leven v. Frey*, 123 Nev. 399, 403, 168 P.3d 712, 715 (2007) quoting *International Game Tech v. Dist. Ct.*, 122 Nev. 132, 152, 127 P.3d 1088, 1102 (2006).

²¹ *Id.* at 407, 123 P.3d at 717 (cites omitted).

interpretation for substantial compliance, **those with set time limitations are not.**²² This Court has stated unequivocally that requiring strict compliance with specific timing requirements “[i]s consistent with the general tenet that “time and manner” requirements are strictly construed.”²³ In this case, it is especially true, since we are dealing with statutes that govern real property, and real property is unique and the due process to deprive a property owner of their real property is protected by the Nevada Constitution.²⁴

Pursuant to NRS 271.595(1)(a), a property is subject to redemption “[i]f there was a permanent residential dwelling unit or any other significant permanent improvement on the property at the time the sale was held pursuant to NRS 271.555, as determined by the governing body, at any time within 2 years . . . after the date of the certificate of sale”

Then pursuant to NRS 271.595(3), if no redemption is made within the period as determined by NRS 271.595(1)²⁵ **then** the purchaser may surrender the certificate of sale and receive a deed; however, demand for the deed from the treasurer can only occur *after* the holder of the certificate of sale has notified the owners that he will demand the deed therefor.

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²² *Id.* at 407-408, 123 P.3d at 718 (cites omitted) (emphasis added).

²³ *Id.* at 408, 123 P.3d at 718 (cites omitted).

²⁴ Article 1, Section 8(5) of the Nevada Constitution

Pursuant to NRS 271.595(4), *after the redemption period has expired*, then the holder of the certificate must provide the owners 60 days' notice of its intent to take the property, which gives the owners an additional 60 days to redeem the property.

Specifically, NRS 271.595(3) in pertinent part states:

If no redemption is made within the period of redemption as determined pursuant to subsection 1, the treasurer shall, on demand of the purchaser or the purchaser's assigns, and the surrender to the treasurer of the certificate of sale, execute to the purchaser or the purchaser's assigns a deed to the property. No deed may be executed until the holder of the certificate of sale has notified the owners of the property that he or she holds the certificate, and will demand a deed therefor. (emphasis added)

NRS 271.595(4) states in pertinent part:

If redemption is not made within 60 days after the date of service, or the date of the first publication of the notice, as the case may be, the holder of the certificate of sale is entitled to a deed.

Pursuant to the statute, **if no redemption is made within the period**, then the purchaser can make a demand upon the City for a deed (only after the 2-year redemption period has run), but must give the homeowner a 60-day notice. This begs the question, how can a certificate holder give 60 days' notice, until the certificate holder knows whether the owners of the property have redeemed the property within the initial 2-year redemption period. The additional 60-day notice

²⁵ This property is the Appellees' retirement home.

would have no meaning if the certificate holder could provide its notice within the 2-year redemption period. The statutes would be incongruous to be read that way.

By the Appellant's argument, a certificate holder could give 60 days' notice at the beginning of the 2-year redemption period, and then simply ask for the deed at the end of the two years. Following that logic, the 60-day notice would be meaningless.

The Statute's clear language is, (1) the initial period of redemption (two years) runs, (2) the certificate holder notifies the owners that he holds the certificate and will make a demand for the deed (this is the 60 days' notice), and (3) after expiration of 60 days the certificate holder is entitled to the deed, provided that redemption has not been made within this additional 60-day period.

The only reasonable interpretation is that once the 2-year redemption period has lapsed, the certificate holder (i.e. purchaser – Appellant in this matter) must provide the owners with another 60 days to redeem the property. The certificate holder would not know if he can demand the deed until after the two years has run and the owners failed to redeem the property in accordance with NRS 271.595.

In other words, a purchaser of the certificate cannot obtain the right to ask for the deed until *after* the redemption period. Then, and only then, can a certificate holder provide the 60-day notice to the owners of its intent to obtain a deed, giving the owners another 60 days to make redemption.

In this case, the 2-year period ran on January 26, 2016, however, the purchaser began making demand prior to the expiration of the redemption period, beginning January 7, 2016.

The only issue this court needs to address is the timing of the notice by Appellant. The owners, per statute, should have no less than two years and two months (plus time for service) to redeem the property.²⁶

The 60 days' notice by the certificate holder can occur at any time after the two years has run, *but not before*, otherwise, the statute would be without meaning.²⁷ A municipality is not supposed to issue a deed until after two years plus the 60-day notice period has run. How can a purchaser let the owners know that it is going to ask for a deed until the certificate holder knows that the property was not redeemed with the 2-year redemption period? The statute would simply say that the purchaser must provide at least 60 days' notice prior to the end of the redemption period of its intent to take the property.

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²⁶ The 60-day notice could be given the day immediately following the expiration of the 2-year redemption period, however, the Certificate Holder could conceivably wait longer as the statute does not provide a maximum time period after the 2-year redemption period. Further, it takes time for service, so practically speaking, the purchaser redemption period could be more than the 60 days.

²⁷ As a practical matter, this interpretation is the only one that makes sense, because there could be multiple purchasers of several SID payments. No priority exists as to each of the certificate purchasers as compared to the other, and it is the

Instead, the statutes state (and Appellant agrees in its facts in the complaint wherein they state, “and if no redemption is made...and after 60 days; notice”²⁸), that the 60 days’ notice comes *after* the redemption period has run. The first requirement is that the redemption had not occurred during the first two years. The second requirement is that the 60 days’ notice be given after the certificate holder confirms no payment was made during that time.

(1) Wyoming Statute Nearly Identical

Appellant’s foray into substantial compliance is a red herring,²⁹ particularly in light of the Wyoming statute from which the Nevada Statute was derived, and a Wyoming case, which states specifically as to how the statute is to be interpreted.

The wording in the Wyoming Statute Section 15-6-418, in pertinent part, is nearly identical to Nevada’s statute for forfeiture:

(a) Any property sold for an assessment is subject to redemption by the former owner, or his grantee, mortgagee, heir or other representative at any time within two (2) years from the date of the sale, upon the payment to the treasurer for the purchaser of the amount for which the property was sold, with interest at the rate of twelve percent (12%) per year, together with all taxes and special assessments, interest, penalties, costs and other charges thereon paid by the purchaser at or since the sale, with like interest thereon. Unless written notice of taxes

first certificate holder to provide the owners the proper 60-day notice, and then request the deed, that gets it.

²⁸ AA0003:1-4

²⁹ Appellant’s Opening Brief, Page 17-18, 22-23. *See also, Leven*, at 409, 719 and Footnote 31, wherein “...notice is “[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality.” (cite omitted).

and assessments subsequently paid, and the amount thereof, is deposited with the city or town treasurer, property may be redeemed without their inclusion. On any redemption, the treasurer shall give to the redemptioner a certificate of redemption and pay over the amount received to the purchaser of the certificate of sale or his assigns. If property is not redeemed within the period of two (2) years, the treasurer, on demand of the purchaser or his assigns and the surrender to him of the certificate of sale, shall execute a deed for the property to the purchaser or his assigns. No deed may be executed until the holder of the certificate of sale has notified the owners of the property that he holds the certificate and that he will demand a deed therefor. The notice shall be given by personal service upon the owners. If the owners are nonresidents of the state or cannot be found within the state after diligent search, the notice may be given by publication in a newspaper of general circulation within the city or town once a week for three (3) successive weeks. The notice and return thereof, with the affidavit of the person, or in case of a city or town, of the comptroller or clerk, claiming a deed, showing that service was made, shall be filed with the treasurer. If property is not redeemed within sixty (60) days after the date of service, or the date of the first publication of the notice, the holder of the certificate of sale is entitled to a deed. The deed shall be executed only for the property described in the certificate, and after payment of all delinquent taxes and special assessments, or installments and certificates of delinquency or other certificates issued for special or local assessments, whether levied, assessed or issued before or after the issuance of the certificates of sale.

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Even the Appellant admits that the Wyoming Supreme Court, which interpreted the similar statute from which Nevada statutes are derived,³⁰ found that the 60-day window *is in addition* to the 2-year redemption period.³¹

In fact, in *Collier*, what the Appellant calls “dicta”,³² was in fact the final summation of the decision, and a very clear statement of what notice was to be received and when.³³

(2) Idaho Statute Not the Same as Nevada

The Statute that Appellant refers to in its Opening Brief, and the statute that the Appellant wishes this Court to follow, is a different animal completely and has nothing to do with a third party purchasing a certificate or the ability of that third person to take someone else’s real property.

In pertinent part Idaho Statute 50-1745 states:

The treasurer shall, at least one (1) month and not more than three (3) months before the expiration of the time of redemption of any property, serve or cause to be served, a written or printed, or partly written and partly printed notice on the person or persons in the actual possession or occupancy of such land or lots, and shall also, within the same time, serve upon or mail to, the person in whose name the same stands upon the assessment records in the county assessor's office, a copy of said notice; which notice shall state when the

³⁰<https://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1969/SB074,1969.pdf>

³¹ *Collier v. Hilltop Nat. Bank*, 920 P.2d 1241, 1242 (Wyo. 1996) See, Appellant’s Opening Brief, Page 19.

³² *Id.*

³³ *Id.*

delinquency certificate was made, in whose name the property was assessed, the description of the land or lots, the name of the local improvement district for which assessed, the amount of the assessment or instalment, and when the time of redemption will expire. **The treasurer** shall at the same time send a similar notice, by mail, to each mortgagee or other holder of a recorded lien against such land, in each case where such mortgagee or lienholder has previously filed in the office of the treasurer a written request for such notice and paid the fee therefor, which request shall include the name and address of the mortgagee, the name of the reputed owner of the land, a description of the land and the date of the expiration of the mortgage or lien; no notice need be sent after the date of expiration, unless a further request therefor be duly filed.

Clearly this is with regard to the government's (treasurer) notices, not a third party and not with regard to a third party being able to purchase the certificates. The Idaho statute is inapplicable.

B. Appellant's Argument Regarding Notice Is In Derogation Of The Statutes

(1) Notice Prior to End of Redemption Period is a Violation of Public Policy

The argument by Appellant that the 60-day notice may be given during the 2-year redemption period takes away the very basis for an additional 60-day notice and violates public policy. If the purchaser of a certificate can give the notice during a period that the owners are not otherwise responding, and then just simply

waits 60 days as the Appellant argues in his opening brief,³⁴ the entire intention of the 60-day notice is subsumed into the 2 years. It only makes sense that the certificate holder must give the 60 days' notice after the redemption period runs. The entire point of the additional 60 days is to give the property owners one last chance to redeem their home *after* the first two years has run.

The statute states that “[i]f redemption is not made within 60 days after the date of service ... the holder of the certificate of sale is entitled to a deed.”³⁵ Following Appellant’s argument, and the 60 days’ notice is given at the beginning of the 2-year redemption period, the certificate holder would then be entitled to a deed *at that point in time*, and the 60-day notice would be meaningless.

In the event a statute is ambiguous, this Court has stated that it will look at legislative history and then to reason and public policy.³⁶ These statutes are for the taking of real property, and therefore, pursuant to the Nevada constitution, the US

³⁴ Appellant’s Opening Brief, Page 12-14. Ironically, in this case, Appellant did not even wait 60 days after the end of the 2-year redemption period, and applied for the Deed on March 14, 2016 (approximately 45 days after the redemption period ended).

³⁵ NRS 271.595(4), in pertinent part.

³⁶ *State v. Lucero*, 127 Nev. 92, 95-96, 249 P.3d 1226, 1228 (2011) “To interpret an ambiguous statute, we look to the legislative history and construe the statute in a manner that is consistent with reason and public policy. *Great Basin Water Network v. State Eng’r*, 126 Nev. 187, 196, 234 P.3d 912, 918 (2010); *See also Moore v. State*, 122 Nev. 27, 32, 126 P.3d 508, 511 (2006) (looking to legislative history to determine legislative intent behind ambiguous statute); *Robert E.*, 99 Nev. at 445–48, 664 P.2d at 959–61 (looking to legislative history, reason, and public policy to determine legislative intent behind ambiguous statute).”

Constitution³⁷ and public policy regarding due process and the taking of real property, it only makes sense to read the statute in a way that affords the property owners the most protection and notice.

These statutes allow for the purchasers of certificates to essentially take the homes of unwary owners³⁸ worth hundreds of thousands of dollars, for just a few thousand dollars, free and clear of any and all liens or other claims.³⁹ The statutes should be strictly construed, for public policy considerations alone, to protect the homeowners as much as possible and give them every opportunity to redeem their homes.

The only way the statute can be read, reasonably and logically, is if the 60 days' notice is in addition to and after the expiration of the 2-year redemption period.

(2) Appellant's Application Date was Less Than 60 Days after the Expiration of the Redemption Period

According to the facts in their verified complaint, the Appellant made application for the Deed on March 14, 2016. That date is *less* than 60 days after the initial two years right of redemption expiration date, which was January 27, 2016. The Arguments by Appellant that the property owners received "potentially

³⁷ See, *J.D. Construction*, Supra

³⁸ In this case, the Appellees are living out of state in South Carolina, until his retirement and the Appellant was aware of it (AA0003).

³⁹ In this case the Appellant paid just \$1996.62.

too much notice”,⁴⁰ is without merit and belies their own filings with the district court,⁴¹ and exemplifies why the Appellant’s argument as to notice does not make any sense in the scheme of the statutes. Improper notice should invalidate the ability of the Appellant to obtain a deed to the Appellees’ home.⁴²

The Appellant improperly relies on a California case with regard to California Statutes.⁴³ The *Multani* case quotes another case, *Knapp v. Doherty*⁴⁴, wherein the California Supreme Court finds that premature notice gave too much notice. First, in the *Multani* case, the California Supreme Court found that proper notice was not given, under the statutes, and set aside that portion of the judgment. Second, the California Supreme Court ruling in *Knapp*, was being differentiated and is based upon the language in the statutes, which is wholly different than in this case.

The language in the statutes that *Knapp* address was California Code Section 2924 which required notice, “no earlier than” (three months), and Section 2924b, which required “at least” (20 days) notice. Further, the fact in that case indicate the actual sale took place a year after the notice. The California Supreme Court

⁴⁰ Appellant’s Opening Brief, Page 12

⁴¹ AA0001-0035

⁴² *See, Coury v. Whittlesea-Bell Luxury Limousine*, 102 Nev. 302, 306-307, 721 P.2d 375, 378 (1986) where in the order of a commission was invalidated because of improper notice, “non-conforming notice”.

⁴³ *Multani v. Witkin & Neal*, 215 Cal.App.4th 1428, 1452-1453, 155 Cal.Rptr.3d 892, 910-911 (2013).

found in *Knapp*, that although the notice occurred slightly less than three months after Notice of Default was filed, because the Notice of Sale was for 29 days prior to the sale date and the actual ended up being almost a year later, it was not prejudicial.⁴⁵ That is very different and not applicable to the case at bar.

In this case the statute states that the 60 days' notice should have occurred *after* the 2-year redemption period. Not “at least” 60 days *prior* to end of 2-year redemption period. Further, Appellant made request for the deed approximately 45 days after the 2-year redemption period expired. If anything, the Appellees had *too little or no proper notice* at all, and is more akin the *Multani* case wherein the California Supreme Court found improper notice, not the *Knapp* case.

By giving the 60-day notice during the 2-year redemption period, as provided by the City, the certificate holder is depriving the property owners of proper notice and due process.

C. Appellant Should Have Given Proper Re-Notice

In this case, the certificate holder has never given proper notice *after* the redemption period has run. The notice that it did provide was prior to the end of the redemption period and, therefore, should be improper and ineffective.⁴⁶

⁴⁴*Knapp v. Doherty* 123 Cal.App.4th 76, 86-87, 20 Cal.Rptr.3d 1 (2004)

⁴⁵ *Id.*

⁴⁶ *Rios v. Ditegh Financial LLC*, 2017 WL 1328371, Page 1 (Slip Copy 2017), wherein the “...mailing and recording the Notice of Delinquent Assessment Lien [proper notice] were prerequisites for conducting a valid foreclosure sale...”

Because the notice was admittedly given prior to the end of the 2-year period, the Appellant should have properly re-noticed the 60 days. That was never done. The Appellant claims that because Appellant happened to give the notice near the end of the redemption period, some of the 60 days' notice "spilled over" and it created some sort of "safe zone", which does not exist in the statutes.⁴⁷

This waiting period does not somehow correct the improper service. One cannot receive "too much notice", because giving notice prior to the end of the redemption period is no notice at all. The faulty notice is not corrected by the mere passage of time. The district court rightfully found that the notice was improper, and that Appellant should have given proper notice, after the expiration of the 2-year redemption period.⁴⁸

In this case, in order to be effective, the Appellant should have given proper notice, after the redemption period has expired, and should not rely on the improper notice made during the redemption period. It is Appellees' position, and the district court's order, that the certificate holder, has never given proper notice to the owners per statute.⁴⁹

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⁴⁷ Appellant's Opening Brief, Page 15

⁴⁸ AA0294:12-16

⁴⁹ AA0293-AA0295

D. Failure Of Proper Service

Additionally, pursuant to the service processor, after being told by the Owner's son exactly where the Owner was, including the address, the process server, for some reason, continued to try other locations in the area of Las Vegas, rather than send out for service in South Carolina, where she was given an exact address,⁵⁰ but failed to attempt service at that address.

Appellant did state that they mailed a letter to the address (albeit the proof is someone's handwriting on a return to sender card),⁵¹ but claims the letter was returned as undeliverable. Unfortunately, even though the son of the Owner gave the address of the Owner, the Appellant did not try to actually serve the Owner, and has not provided any proof or affidavit for attempting to actually serve the Owner at the known address in South Carolina.

Although, this is really moot given the failure of timely notice, this is another factual failure of compliance with NRS 271.555 requiring service of the owners at a known location.

CONCLUSION

Appellant has failed to comply with the necessary timing of notice in the statutes and, therefore, Appellant's appeal should fail.

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⁵⁰ AA0003:19-23

In this case, the 60 days' notice to the Owner was never properly given. Because the Appellant failed to give a proper 60 days' notice, the Owner's payment for redemption to the City of Las Vegas on April 6, 2016, was made prior to a proper 60-day notice/redemption period by the Appellant. As a result, proper redemption of the home has occurred by Appellees and the district court's order should be affirmed.

DATED this 7th day of July, 2017.

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⁵¹ AA0022-0025

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), as well as the limitations stated in NRAP 32(a)(7), because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font.

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 5847 words.

I further 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 Rule 28(e), 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.

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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.

Respectfully submitted this 7th day of July 2017.

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CERTIFICATE OF MAILING

I hereby certify that on the 7th day of July 2017, I served a true and correct copy of **RESPONDENTS' ANSWERING BRIEF** upon all counsel of record by:

☒ Electronic filing with the Clerk of the Court by using the E-Flex system which will send a notice of electronic filing to the following individuals at the email addresses set forth below.

☒ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada postage paid, following the ordinary course of business practices;

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and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

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