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IN THE SUPREME COURT OF THE STATE OF NEVADA

PAUL PAWLIK;

Appellant,

vs.

SHAYNG-FENN DENG; LINDA
HSIANG-YU CHIANG DENG,
TRUSTEES OF THE SHYANG-FENN
AND LINDA HSIANG-YU CHIANG
DENG REVOCABLE TRUST DATED
AUGUST 18, 2006; VANETTA
APPLEYARD, TREASURER OF THE
CITY OF LAS VEGAS; AND THE CITY
OF LAS VEGAS, A POLITICAL
SUBDIVISION,

Respondents.

No.: 71055

APPELLANT'S REPLY BRIEF

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NRAP 26.1 DISCLOSURE

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

Appellant Paul Pawlik is an individual, and thus has no parent corporations and has issued no stock.

Walsh, Baker & Rosevear has appeared on behalf of Mr. Pawlik in this case before the district court, and is the only firm which is expected to appear on behalf of Mr. Pawlik before this Court.

Respectfully submitted this 7th day of August, 2017.

/s/ James M. Walsh

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TABLE OF CONTENTS

TABLE OF CONTENTS	i
ARGUMENT	1
A. Standard of review.....	1
B. Respondent Has Failed to Address the Issues of Substantial Compliance, Due Process and Prejudice.....	1
1. Respondent has failed to argue that Respondent was prejudiced by early notice	3
C. Respondent’s Public Policy Argument Creates Confusion	6
CONCLUSION	9
ATTORNEY’S CERTIFICATE OF COMPLIANCE.....	10
CERTIFICATE OF SERVICE	12

ARGUMENT

A. Standard of Review

The issue present in this appeal is purely a question of law, specifically one of statutory construction. The review by this Court is therefore de novo. *Leven v. Frey*, 123 Nev. 399, 402 168 P.3d 712, 713 (2007) (reviewing issues of statutory construction de novo); *see also International Game Tech. v. Dist. Ct.*, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008); *Markowitz v. Saxon Special Servicing*, 129 Nev. Adv. Op. 69, 310 P.3d 569, 572 (2013); *Harris Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 641, 81 P.3d 532, 534 (2003).

B. Respondent Has Failed to Address the Issues of Substantial Compliance, Due Process and Prejudice.

Respondent's Answering brief does not, to any extent, argue that Appellant's compliance with NRS 271.595's notice requirement has prejudiced Respondent or deprived him of due process.

Instead, even if NRS 271.595 contemplates that notice must be given after two years have expired, Appellant Pawlik has substantially complied with the warning purpose of the statute's notice requirement. *See Jones v. Short*, 696 P.2d 665 (Alaska 1985) (deciding that a party "substantially complies" by engaging in conduct that falls short of strict compliance with statutory requirements but

nevertheless affords to the public the same protection as would strict compliance), cited in *Leven*, 168 P.3d at 718, n. 27. As such, Appellant's notice was reasonably calculated to apprise Respondent's that their right to redeem would expire and that Appellant would demand the treasurer to execute a deed in his favor, thus affording to Respondents the same protection as would strict compliance.

In doing so, Appellant's notice was *reasonably calculated under all the circumstances* to apprise Respondents of the pendency of an action affecting their property rights so as to satisfy due process. See *Gonzales-Alpizar v. Griffith*, 130 Nev. Adv. Op. 2, 317 P.3d 820, 827 (2014), quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950); *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 2709, 77 L.Ed.2d 180 (1983); "[W]hether a particular method of notice is reasonable depends on the particular [factual] circumstances." *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 484, 108 S.Ct. 1340, 99 L.Ed.2d 565 (1988).

Here, under all the circumstances, Appellant attempted to perfect notice through both personal service and publication so as to apprise Respondents of an important statutory expiration affecting their rights. Appellant then waited 60 days and made demand upon the treasurer on March 14, 2016. (AA0003, AA0033.) Doing so did not prejudice or negatively impact Respondent Deng's ability to

redeem because Appellant did make demand upon the treasurer until two years had elapsed and after 60 days of notice to Respondent. Rather, Appellant's notice encouraged Respondent Deng to redeem in a timely matter, which he did not do.

1. Respondent has failed to argue that Respondent was prejudiced by early notice.

Respondent's Answering brief does not address, to any extent, whether Respondent Deng was prejudiced by the timing of notice in this case. An analogy may also be drawn to foreclosure situations in this matter.

In similar foreclosure situations, a notice of the default or sale, which contains a factual defect, may be subject to attack only upon a sufficient showing of prejudice resulting from the error to the property owner. See *Anderson v. Heart Federal Sav. & Loan Assn.*, 256 Cal. Rptr. 180 (3d Dist. Cal. 1989); *Miller v. Cote*, 179 Cal. Rptr. 753 (Court of Appeals Cal. 4th Dist. 1989); *Ram v. OneWest Bank, FSB*, 183 Cal. Rptr. 3d 638 (Cal. Ct. App. 2015).

Respondent has argued that *Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428 (Multani I) and *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 86-87 [20 Cal.Rptr.3d 1] are inapplicable to this case because the Court in *Knapp* found that notice was premature. *Knapp*, 123 Cal.App.4th 76 at 94. However, the *Knapp* Court's ruling remained that because the borrower suffered no prejudice

and the notice was served close in time to the end of the three-month buffer zone, the premature service did not invalidate the sale. *Id.*

Indeed, this matter is analogous to the facts of *Knapp*, but distinguishable from the statute at issue. In *Knapp*, California Civil Code Section 2924 explicitly stated that notice of the sale could not be served until after three months of recordation of notice of default had elapsed. Such is not the case in NRS 271.595 because there is no explicit proscription of service before the two years have expired.

Rather, Appellant's service of notice under NRS 271.595 occurred slightly before the two-year period of redemption had run. Even if NRS 271.595 contained an explicit requirement for service after the two year period of redemption, Appellant's service comports with the substantial compliance holding in *Knapp* because Respondent has not shown, in any way, how Respondent Deng's rights were undercut or that he suffered any form of prejudice by receiving notice slightly early. Crucially, Respondent Deng was afforded two years to redeem and sixty days of notice.

Respondent Deng did not attempt to redeem until April 6, 2016, which is about 70 days after the end of the redemption period. (AA0103, AA0146.) Publication of notice in this case also ran until January 27, 2016 and attempted

service began on January 7, 2017. (AA0003, AA0014, AA0020.) Therefore, serving notice on Respondent on January 27, 2016, at the latest, would have presumably resulted in the same late redemption by Respondent Deng.

Under the standard set forth in both *Knapp* and *Multani*, Respondent is complaining of too much notice. On one hand, 60 days from the date of first publication of notice is March, 14, 2016. (AA0020.) This period of warning extends beyond the two year minimum, which ended on January 27, 2016. (JA0010.) On the other hand, if this Court finds that the statute mandates notice only after two years, then it should not matter if notice was served slightly early because of the timing of Respondent's attempted redemption. The result is that Appellant's attempts to serve notice and actual service of notice through publication gave Respondent Deng about an extra 14-20 days of warning, while *also* including an additional 60 days of safety zone that Respondent did not take advantage of.

Here, Respondent Deng had two opportunities to redeem the property. He slept on his rights both times and did not attempt redemption until after the expiration of all periods of time.

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C. Respondent's Public Policy Argument Creates Confusion.

Respondent has argued that “[a] municipality is not supposed to issue a deed until after two years plus the 60-day notice has run. How can a purchaser let the owners know that it is going to ask for a deed until the certificate holder knows the property has not been 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 property.” See Appellee’s Answering Brief, Pg. 11.

Further, “These statutes allow for the purchasers of certificates to essentially take the homes of unwary owners worth hundreds of thousands of dollars, for just a few thousand dollars, free and clear of any and all liens or other claims. 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 an addition to and after the expiration of the 2-year redemption period.” See Appellee’s Answering Brief, Pg. 17.

Appellee’s argument fails here because property owners, under the contemplation of the statute, are not “unwary” to the extent that they receive 60-days’ notice and demand is not made upon the treasurer until after two years have elapsed. NRS 271.595 contains no provision stating that notice can only come after

two years. It makes perfect sense that certificate holders should be allowed to exercise their right to make a demand upon the treasurer as soon as the two year redemption period has run as long as the homeowners have the mandated 60 days of notice of such intent.

Respondent's policy argument still leaves ambiguity in the statute because it does not resolve whether there is a burden to provide notice right at the two year mark, at any point after, or if it is acceptable to allow some overlap before the expiration of the redemption period. The result of Respondent's argument is that the statute is muddled to the point that certificate holders may well not know when they should make demand upon the treasurer in order to protect their own legally recognized interest.

In contrast, Appellant's position is simpler. Homeowners have two years to redeem. Certificate holders may within the last 60 days of the two year period inform the homeowner that the two year period is coming to a close and that the certificate holder intends to make a demand upon the treasurer.

This interpretation allows for homeowners to have the full two years to redeem, as mandated in the statute, and provides them with the required 60-days' notice. Such a reading strikes a proper balance of protecting homeowners and allowing certificate holders to take the actions they are entitled to.

One of the public policy considerations of private property ownership is to create a system that puts real estate to its most productive use. NRS 271.595 exists because sometimes property owners fail to make required payments to municipalities. In those cases, the property is not in its most productive use and the property may eventually be sold at foreclosure. Here, homeowners are given protection in the form of a grace period of two years to redeem, thus potentially returning the property to its best use.

Certificate holders are also parties who wish to return a property to productive use, and are therefore not nefarious parties that want to take property away from unwary homeowners. Rather, Appellant in this case has expressed willingness to do something that Respondent has not been willing to do prior to and throughout the two-year redemption period: pay special assessments to the city of Las Vegas in a timely manner. Payment of special assessments benefits the entire community and creates a more desirable, stable place to live.

Based on the above policy considerations, NRS 271.595 should be read in a balanced way to protect both homeowners and certificate holders so as to efficiently allow for a property to be put into its most productive state while at the same time ensuring that a homeowner has adequate time to redeem and proper notice. This is perfectly accomplished when a certificate holder, working in good

faith, warns a homeowner that the two year period of redemption is about to expire.

CONCLUSION

Pursuant to each argument above, Appellant Pawlik complied with the protective two-year period and perfected proper notice so as to satisfy due process. Respondent has not shown that Respondent Deng suffered any prejudice related to the timing of notice. Public policy considerations militate in favor of allowing notice of expiration to occur within the two year redemption period.

As such, it is respectfully requested that this Court reverse the trial court's Order Granting Defendants' Motion to Dismiss, and in so doing remand with instructions that Appellant's Motion for Writ of Mandamus be granted consistent with this Court's holding.

Respectfully submitted this 7th day of August, 2017.

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ATTORNEY’S CERTIFICATE OF COMPLIANCE FOR
APPELLANT’S REPLY BRIEF

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 in 14 point font and type style Times New Roman.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points, and contains 1,913 words.

I hereby certify that I have read this Reply 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.

Respectfully submitted this 7th day of August, 2017.

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CERTIFICATE OF MAILING

I hereby certify that on the 7th day of August, 2017, I served a true and correct copy of **APPELLANT'S REPLY 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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