

EXHIBIT 1

EXHIBIT 1

DISTRICT COURT CIVIL COVER SHEET A - 1 5 - 7 1 5 5 3 2 - C

Clark County Nevada

Case No. _____

(Assigned by Clerk's Office)

V I I I

I. Party Information

Plaintiff(s) (name/address/phone):

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

Attorney (name/address/phone):

ROGER P. CROTEAU & ASSOCIATES, LTD.

9120 W. POST ROAD, SUITE 100

LAS VEGAS, NEVADA 89148

(702) 254-7775

Defendant(s) (name/address/phone):

JAMES R. BLAHA, an individual; BAC HOME LOANS SERVICING, LP, a Texas limited partnership; RECONTRUST COMPANY, NA, a Texas corporation; JOSE PEREZ, JR., an individual; EZ PROPERTIES, LLC, a Nevada limited liability company; K & L BAXTER FAMILY LIMITED PARTNERSHIP, a Nevada limited partnership; FCH FUNDING, INC., an unknown corporate entity; DOE individuals I through XX; and ROE CORPORATIONS I through XX,

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)**Civil Case Filing Types**

Real Property	Torts	
Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input checked="" type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ		Other Civil Filing
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant	<input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

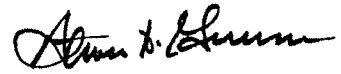
Business Court Filings should be filed using the Business Court civil coversheet

March 19, 2015

Date

/s/ Timothy E. Rhoda

Sig nature of initiating party or representative



CLERK OF THE COURT

1 **COMP**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 9120 West Post Road, Suite 100
8 Las Vegas, Nevada 89148
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiff,)

vs.)

JAMES R. BLAHA, an individual; BANK OF)
AMERICA, NA, a National Banking)
Association, as successor by merger to BAC)
HOME LOANS SERVICING, LP;)
RECONTRUST COMPANY NA, a Texas)
corporation; JOSE PEREZ, JR. an individual;)
EZ PROPERTIES, LLC, a Nevada limited)
liability company; K&L BAXTER FAMILY)
LIMITED PARTNERSHIP, a Nevada limited)
partnership; FCH FUNDING, INC, an unknown)
corporate entity; DOE individuals I through)
XX; and ROE CORPORATIONS I through)
XX,)

Defendants.)

Case No. A-15-715532-C
Dept. No. VIII

**ARBITRATION EXEMPTION
CLAIMED: (1) TITLE TO REAL
PROPERTY; (2) DECLARATORY
RELIEF**

COMPLAINT

COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through
its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby complains and alleges
as follows:

PARTIES

1. At all times relevant to this matter, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, was and is a Nevada limited liability company, authorized to do business and doing business in the County of Clark, State of Nevada.
2. Upon information and belief, at all times relevant to this matter, Defendant, BANK OF AMERICA, NA, ("*BANA*"), successor by merger to BAC HOME LOANS SERVICING, LP ("*BAC Home Loans*"), was and is and doing business in the County of Clark, State of Nevada.
3. Upon information and belief, at all times relevant to this matter, Defendant, RECONTRUST COMPANY NA ("*Recontrust*"), was and is a Texas corporation, authorized to do business and doing business in the County of Clark, State of Nevada.
4. Upon information and belief, at all times relevant to this matter, Defendant, JOSE PEREZ, JR. was and is an individual and resident of the County of Clark, State of Nevada.
5. Upon information and belief, at all times relevant to this matter, Defendant, EZ PROPERTIES, LLC ("*EZ Properties*"), was and is a Nevada limited liability company, authorized and doing business in the County of Clark, State of Nevada.
6. Upon information and belief, at all times relevant to this matter, Defendant, K & L BAXTER FAMILY LIMITED PARTNERSHIP (*Baxter Family Partnership*), was and is a Nevada limited partnership, authorized and doing business in the County of Clark, State of Nevada.
7. Upon information and belief, at all times relevant to this matter, Defendant, JAMES R. BLAHA, was and is an individual and resident of the County of Clark, State of Nevada.
8. Upon information and belief, at all times relevant to this matter, Defendant, FCH FUNDING, INC. ("*FCH Funding*"), was and is an unknown corporate entity, doing business in the County of Clark, State of Nevada.
9. Plaintiff is unaware of the true names and capacities whether individuals, corporations, associates, or otherwise of Defendants DOES I through X and ROE Corporations I

1 through X, inclusive, and therefore sues these Defendants by such fictitious names.

2 Plaintiff is informed and believes and thereupon alleges that the Defendants, and each of
3 them, are in some manner responsible and liable for the acts and damages alleged in this
4 Complaint. Plaintiff will seek leave of this Court to amend this Complaint to allege the
5 true names and capacities of the DOES and ROE CORPORATIONS Defendants when
6 the true names of the DOES and ROE CORPORATIONS Defendants are ascertained.

7 **GENERAL ALLEGATIONS**

8 10. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
9 through 9 hereof as if set forth fully herein.

10 11. On or about June 8, 2004, a Declaration was recorded in the Official Records of the Clark
11 County Recorder as instrument number 200406080002308, thereby creating Nevada
12 Trails II Community Association (*the "HOA"*) and perfecting a lien in favor of the HOA
13 on all real property located within the common interest community it governed, including
14 but not limited to that real property commonly known as 7639 Turquoise Stone Court,
15 Las Vegas, Nevada 89113, Assessor Parcel No. 176-10-213-042 (*the "Property"*).

16 12. The lien having been recorded prior to any other liens is first in right and first in time as
17 to all other interests recorded after the Declaration with the exception of liens for real
18 estate taxes and other governmental assessments.

19 13. N.R.S. Chapter 116 provides that the lien perfected by the Declaration is subordinate to a
20 "first security interest on the unit recorded before the date on which the assessment
21 sought to be enforced became delinquent."

22 14. While this statutory subordination applies to the majority of the lien perfected by the
23 Declaration, pursuant to N.R.S. 116.3116(2)(c), it does not subordinate the lien to two
24 specific charges incurred under it.

25 15. The charges which are specifically NOT subordinated to the first security interest include:
26 (1) any charges incurred by the association on a unit pursuant to N.R.S. 116.310312 and;
27 (2) that portion of the assessments for common expenses based on the periodic budget
28 adopted by the association pursuant to N.R.S. 116.3115 which would have become due in

1 the absence of acceleration during the 9 months immediately preceding institution of an
2 action to enforce the lien.

3 16. On or about March 23, 2006, Defendant, JOSE PEREZ, JR. ("*Former Owner*"), acquired
4 title to and ownership of the Property.

5 17. Between approximately March 23, 2006, and April 13, 2011, Former Owner held title to
6 and ownership of the Property either jointly or in an individual capacity.

7 18. Upon information and belief, Former Owner obtained one or more mortgages and/or lines
8 of credit secured by the Property.

9 19. On or about March 28, 2007, Countrywide FSB recorded a deed of trust against the
10 Property in the Official Records of the Clark County Recorder as Instrument No.
11 200703280002128 ("*First Deed of Trust*").

12 20. Upon information and belief, BAC Home Loans subsequently became the holder and/or
13 owner of the First Deed of Trust through an assignment recorded in the Official Records
14 of the Clark County Recorder on or about April 4, 2011 as Instrument No.
15 201104040003342.

16 21. The Property is and was subject to certain Covenants, Conditions and Restrictions
17 ("*CC&Rs*") of HOA.

18 22. By virtue of his ownership of the Property, Former Owner was a member of the HOA and
19 accordingly was obligated to pay HOA assessments pursuant to the terms of the CC&Rs.

20 23. At some point in time during his ownership of the Property, Former Owner failed to pay
21 the HOA assessments related to the Property.

22 24. As a result of the failure of Former Owner to pay the HOA assessments, HOA recorded a
23 Notice of Delinquent Assessment Lien ("*HOA Lien*") with the Office of the Recorder of
24 Clark County, Nevada.

25 25. Thereafter, HOA recorded a Notice of Default and Election to Sell with the Office of the
26 Recorder of Clark County, Nevada.

27 26. Upon information and belief, the Notice of Default and Election to Sell was served upon
28 the Former Owner, as well as all interested parties holding a security interest in the

- 1 Property.
- 2 27. After the expiration of 90 days from the recording and mailing of the Notice of Default,
- 3 HOA caused a Notice of Trustee's Sale to be recorded with the Office of the Recorder of
- 4 Clark County, Nevada.
- 5 28. Upon information and belief, the Notice of Trustee's Sale was served upon the Former
- 6 Owner, as well as all interested parties holding a security interest in the Property.
- 7 29. On or about April 12, 2011, HOA caused a foreclosure sale ("*HOA Foreclosure Sale*") to
- 8 be conducted pursuant to the powers conferred by the Nevada Revised Statutes 116.3116,
- 9 116.31162, 116.31163 and 116.31164; the CC&Rs; the Notice of Delinquent Assessment
- 10 Lien; and the Notice of Default and Election to Sell.
- 11 30. Plaintiff purchased the Property by successfully bidding at the HOA Foreclosure Sale in
- 12 accordance with N.R.S. 116.3116, et seq.
- 13 31. On or about April 13, 2011, a Trustee's Deed Upon Sale ("*HOA Foreclosure Deed*") was
- 14 recorded in the Official Records of the Clark County Recorder as Instrument No.
- 15 201104130000979, vesting title to the Property in the Plaintiff.
- 16 32. The HOA Foreclosure Sale complied with all requirements of law, including but not
- 17 limited to, the recording and mailing of copies of the Notice of Delinquent Assessment
- 18 and Notice of Default, and the recording, posting and publication of the Notice of Sale.
- 19 33. Upon information and belief, Defendants had actual and/or constructive notice of the
- 20 HOA foreclosure proceedings.
- 21 34. N.R.S. 116.3116(2) provides that an HOA Lien has priority over all other liens and
- 22 encumbrances except:
- 23 (a) Liens and encumbrances recorded before the recordation of the declaration
- 24 and, in a cooperative, liens and encumbrances which the association creates,
- 25 assumes or takes subject to;
- 26 (b) A first security interest on the unit recorded before the date on which the
- 27 assessment sought to be enforced became delinquent or, in a cooperative, the first
- 28 security interest encumbering only the unit's owner's interest and perfected before
- the date on which the assessment sought to be enforced became delinquent; and
- (c) Liens for real estate taxes and other governmental assessments or charges
- against the unit or cooperative.
35. N.R.S. 116.3116(2) further provides that a portion of the HOA Lien has priority over

even a first security interest in the Property, stating as follows:

The lien is also prior to all security interests described in paragraph (b) to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312 and to the extent of the assessments for common expenses based on the periodic budget adopted by the association pursuant to NRS 116.3115 which would have become due in the absence of acceleration during the 9 months immediately preceding institution of an action to enforce the lien[.]

36. Upon information and belief, the HOA incurred charges within the 9 months immediately preceding the initiation of the HOA foreclosure action that constituted super priority amounts.
37. Upon information and belief, no party still claiming an interest in the Property recorded a lien or encumbrance prior to the declaration creating the HOA.
38. Upon information and belief, Plaintiff's bid at the HOA Foreclosure Sale was equal to or in excess of the amount necessary to satisfy the costs of sale and the super-priority portion of the HOA Lien.
39. Upon information and belief, the HOA or its agent distributed or should have distributed any excess funds to lien holders in order of priority pursuant to N.R.S. 116.3114(c).
40. Upon information and belief, Defendants had actual and/or constructive notice of the requirement to pay assessments to the HOA and of the HOA Lien.
41. Upon information and belief, prior to the HOA Foreclosure Sale, BAC Home Loans had not assigned the First Deed of Trust to the Secretary of Housing and Urban Development ("*HUD*"), the Federal National Mortgage Association ("*FNMA*"), the Federal Home Loan Mortgage Corporation ("*Freddie Mac*") or any governmental agency or instrumentality.
42. Upon information and belief, at the time of the HOA Foreclosure Sale, neither the United States nor any of its agencies or instrumentalities possessed any interest in the First Deed of Trust or the Property.
43. Upon information and belief, prior to the HOA Foreclosure Sale, no individual or entity paid the full amount of delinquent assessments described in the Notice of Default.
44. Upon information and belief, prior to the HOA Foreclosure Sale, no individual or entity

1 paid the super priority portion of the delinquent assessments described in the Notice of
2 Default.

3 45. Upon information and belief, Defendants had actual and/or constructive notice of the
4 super priority portion of the HOA Lien.

5 46. Upon information and belief, BAC Home Loans knew or should have known that any
6 security interest that it may have possessed pursuant to the First Deed of Trust would be
7 extinguished through foreclosure if it failed to cure the super-priority portion of the HOA
8 Lien representing 9 months of assessments for common expenses based upon the periodic
9 budget adopted by the HOA which would have become due in the absence of acceleration
10 for the relevant time period.

11 47. Pursuant to N.R.S. 116.31166, the HOA Foreclosure Sale vested title in Plaintiff “without
12 equity or right of redemption.”

13 48. Pursuant to N.R.S. 116.31166, the HOA Foreclosure Deed is conclusive against the
14 Property’s “former owner, his or her heirs and assigns, and all other persons.”

15 49. Former Owner’s ownership interest in the Property was extinguished by the foreclosure
16 of the HOA Lien.

17 50. BAC Home Loan’s security interest in the Property, if any, was extinguished by the
18 foreclosure of the HOA Lien and the First Deed of Trust was rendered null, void and
19 unenforceable.

20 51. Any other existing security interests in the Property, if any, were likewise extinguished by
21 the foreclosure of the HOA Lien and rendered null, void and unenforceable.

22 52. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became
23 the sole owner of all right, title and interest in the Property free and clear of any
24 encumbrances of the Defendants.

25 53. On or about April 14, 2011, BANA and/or Recontrust caused a Notice of Default and
26 Election to Sell to be recorded in the Official Records of the Clark County Recorder as
27 Instrument No. 201104140003343.

28 54. On or about August 9, 2011, BANA and/or Recontrust caused a Notice of Trustee’s Sale

1 to be recorded in the Official Records of the Clark County Recorder as Instrument No.
2 201108090003456.

3 55. On or about August 29, 2011, Recontrust purported to conduct a foreclosure sale ("*Bank*
4 *Foreclosure Sale*") based upon the First Deed of Trust.

5 56. EZ Properties purported to purchase the Property at the Bank Foreclosure Sale and on
6 September 19, 2011, a Trustee's Deed Upon Sale Nevada to be recorded in the Official
7 Records of the Clark County Recorder as Instrument No. 201109190002647.

8 57. Upon information and belief, EZ Properties purchased the Property at the alleged
9 September 19, 2011 Bank Foreclosure Sale with the aid of a mortgage from the Baxter
10 Family Partnership.

11 58. On or about September 19, 2011, the Baxter Family Partnership recorded a deed of trust
12 against the Property in the Official Records of the Clark County Recorder as Instrument
13 No. 201109190002648. ("*Baxter Family Partnership Deed of Trust*").

14 59. On or about September 30, 2011, EZ Properties purported to transfer the Property to
15 James R. Blaha by deed recorded in the Official Records of the Clark County Recorder as
16 Instrument No. 201109300001615.

17 60. Upon information and belief, James R. Blaha purchased the Property from EZ Properties
18 with the aid of a mortgage loan from FCH Funding.

19 61. On or about December 30, 2011, FCH Funding recorded a deed of trust against the
20 Property in the Official Records of the Clark County Recorder as Instrument No.
21 201112300003312 ("*FCH Funding Deed of Trust*").

22 62. In the matter of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d
23 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014), the Nevada Supreme Court
24 resolved a split that previously existed in the state and federal courts of the State of
25 Nevada regarding the force, effect and interpretation of N.R.S. §116.3116.

26 63. In doing so, the Nevada Supreme Court clarified that the statute provides a homeowners
27 association a true super-priority lien over real property that can and does extinguish a first
28 deed of trust when non-judicially foreclosed. *Id.*

1 64. In *SFR Investments*, the Nevada Supreme Court also recognized that a foreclosure deed
2 “reciting compliance with notice provisions of NRS 116.31162 through NRS 116.31168
3 ‘is conclusive’ as to the recitals ‘against the unit’s former owner, his or her heirs and
4 assigns and all other persons.’” *See id.* at 3 (citing NRS 116.3116(2)).

5 65. Moreover, under Nevada law, the Association foreclosure sale and the resulting
6 foreclosure deed are both presumed valid. NRS 47.250(16)-(18) (stating that disputable
7 presumptions exist “that the law has been obeyed”; “that a trustee or other person, whose
8 duty it was to convey real property to a particular person, has actually conveyed to that
9 person, when such presumption is necessary to perfect the title of such person or a
10 successor in interest”; “that private transactions have been fair and regular”; and “that the
11 ordinary course of business has been followed.”).

12 66. Based upon the foregoing, the Bank Foreclosure Sale and all subsequent transfers related
13 to the Property were and are invalid, void and unenforceable.

14 **FIRST CAUSE OF ACTION**

15 **(Quiet Title against all Defendants)**

16 67. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
17 through 66 hereof as if set forth fully herein.

18 68. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure
19 Sale for good and valuable consideration.

20 69. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became
21 the sole owner of all right, title and interest in the Property free and clear of any
22 encumbrances of the Defendants.

23 70. Because the HOA Foreclosure Sale extinguished the First Deed of Trust, BAC Home
24 Loans and Recontrust possessed no right to conduct a Trustee’s Sale based upon the First
25 Deed of Trust.

26 71. The sale of the Property to EZ Properties and all subsequent transfers of the Property
27 were and are null, void and of no effect.

28 72. Any and all deeds of trust subsequently recorded against the Property and any

1 assignments thereof are unauthorized, null, void and unenforceable, including the Baxter
2 Family Partnership and FCH Funding Deeds of Trust.

3 73. Plaintiff remains the sole owner of the Property free and clear of any and all
4 encumbrances.

5 74. One or more of the Defendants may claim some right, title and/or interest in the Property.

6 75. A justiciable controversy exists regarding the right, title and interest held by Plaintiff and
7 Defendants in the Property.

8 76. The interests of Plaintiff and Defendants are adverse in this justiciable controversy.

9 77. The Plaintiff has a legally protectible interest in the Property.

10 78. The controversy between Plaintiff and Defendants is ripe for judicial determination.

11 79. This Court should enter an Order which determines all and every claim, estate or interest
12 of the parties in the Property.

13 80. The Plaintiff is entitled to a declaratory judgment finding that: (1) Plaintiff is the title
14 owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable; (3) the
15 HOA Foreclosure Sale extinguished the applicable Defendants' ownership and security
16 interests in the Property; (4) the subsequent transfers of the Property were null, void and
17 of no effect; and (5) Plaintiff's rights and interest in the Property are superior to any
18 interest claimed by the Defendants.

19 81. Title to the Property should be quieted solely in the name of Plaintiff.

20 82. As a direct and proximate result of the actions of the Defendants, it has become necessary
21 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
22 Claim.

23 83. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
24 Procedure as further facts become known.

25 **SECOND CAUSE OF ACTION**

26 **(Unjust Enrichment against BANA [BAC Home Loans], Recontrust and EZ Properties)**

27 84. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
28 through 83 hereof as if set forth fully herein.

- 1 85. Plaintiff expended significant funds and resources in connection with the acquisition and
2 maintenance of the Property.
- 3 86. In the event that the Plaintiff does not maintain sole and exclusive title to and possession
4 of the Property, the Defendants will obtain substantial benefits from the funds and
5 resources expended by the Plaintiff.
- 6 87. Upon information and belief, Defendants sold the Property for significant monetary gain.
- 7 88. All proceeds received by the Defendants from the sale of the Property rightfully belong to
8 the Plaintiff as the rightful owner of the Property.
- 9 89. It would be unjust for the Defendants to accept and retain such benefits without
10 compensating Plaintiff for the value of the benefits which they received.
- 11 90. As a direct and proximate result of the actions of the Defendants, it has become necessary
12 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
13 Claim.
- 14 91. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
15 Procedure as further facts become known.

16 **THIRD CAUSE OF ACTION**

17 **(Equitable Mortgage against all Defendants)**

- 18 92. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through
19 91 hereof as if set forth fully herein.
- 20 93. Plaintiff has expended significant funds and resources in connection with the acquisition
21 and maintenance of the Property.
- 22 94. In the event that the Plaintiff does not maintain sole and exclusive title to and possession
23 of the Property, the Defendants will obtain substantial benefits from the funds and
24 resources expended by the Plaintiff.
- 25 95. Upon information and belief, Defendants sold the Property for significant monetary gain.
- 26 96. All proceeds received by the Defendants from the sale of the Property rightfully belong to
27 the Plaintiff as the rightful owner of the Property.
- 28 97. It would be unjust for the Defendants to accept and retain such benefits without

1 compensating Plaintiff for the value of the benefits which they received.

2 98. In the event that the Plaintiff does not maintain sole and exclusive title to and possession
3 of the Property, the existence of an equitable mortgage is essential to the effectuation of
4 justice and to protect the interests of Plaintiff.

5 99. In the event that Plaintiff is divested of title to the Property for any reason, an equitable
6 mortgage should be imposed against the Property in favor of Plaintiff to secure the
7 payment of all sums rightfully owed to the Plaintiff in connection with the Property.

8 100. As a direct and proximate result of the actions of the Defendants, it has become necessary
9 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
10 Claim.

11 101. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
12 Procedure as further facts become known.

13 **FOURTH CAUSE OF ACTION**

14 **(Slander of Title against all Defendants)**

15 102. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
16 through 101 hereof as if set forth fully herein.

17 103. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure
18 Sale.

19 104. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became
20 the sole owner of all right, title and interest in the Property free and clear of any
21 encumbrances of the Defendants.

22 105. On or about April 14, 2011, BAC Home Loans and/or Recontrust caused a Notice of
23 Default and Election to Sell to be recorded in the Official Records of the Clark County
24 Recorder as Instrument No. 201104140003343.

25 106. On or about August 9, 2011, BAC Home Loans and/or Recontrust caused a Notice of
26 Trustee's Sale to be recorded in the Official Records of the Clark County Recorder as
27 Instrument No. 201108090003456.

28 107. On or about September 19, 2011, a Trustee's Deed Upon Sale ("*Bank Foreclosure*

1 despite their knowledge that the First Deed of Trust was void and unenforceable.

2 118. Defendants exercised dominion and control over the property of Plaintiff to the exclusion
3 of Plaintiff's rights in said property by purportedly selling the Property pursuant to the
4 extinguished First Trust Deed.

5 119. Defendants have received and maintained control of monies that rightfully belong to the
6 Plaintiff.

7 120. The actions of the Defendants were done with the intent to cause Plaintiff harm, or in
8 conscious disregard for Plaintiff's rights, or were done with conscious disregard for the
9 consequences of their actions, and were therefore done with either express or implied
10 malice.

11 121. As a direct and proximate result of the actions of the Defendants, it has become necessary
12 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
13 Claim.

14 122. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
15 Procedure as further facts become known.

16 **SIXTH CAUSE OF ACTION**

17 **(Equitable Relief – Wrongful Foreclosure)**

18 123. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
19 through 122 hereof as if set forth fully herein.

20 124. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure
21 Sale in exchange for good and valuable consideration.

22 125. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became
23 the sole owner of all right, title and interest in the Property free and clear of any
24 encumbrances of the Defendants.

25 126. The purported foreclosure sale based upon the First Deed of Trust was invalid and
26 ineffective because the First Deed of Trust was extinguished by virtue of the HOA
27 Foreclosure Sale.

28 127. At the time that BAC Home Loans and/or Recontrust purportedly foreclosed upon the

1 First Deed of Trust, BAC Home Loans lacked any valid security interest in the Property
2 and therefore lacked any right or power to foreclose.

3 128. The purported foreclosure sale by BAC Home Loans and/or Recontrust was wrongful and
4 void.

5 129. As a direct and proximate result of the actions of the Defendants, it has become necessary
6 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
7 Claim.

8 130. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
9 Procedure as further facts become known.

10 **SEVENTH CAUSE OF ACTION**

11 **(Equitable Relief - Rescission)**

12 131. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through
13 130 hereof as if set forth fully herein.

14 132. Plaintiff properly acquired title and ownership of the Property at the HOA Foreclosure
15 Sale in exchange for good and valuable consideration.

16 133. By virtue of its purchase of the Property at the HOA Foreclosure Sale, Plaintiff became
17 the sole owner of all right, title and interest in the Property free and clear of any
18 encumbrances of the Defendants.

19 134. The purported foreclosure sale based upon the First Deed of Trust was invalid and
20 ineffective because the First Deed of Trust was extinguished by virtue of the HOA
21 Foreclosure Sale.

22 135. At the time that BAC Home Loans and/or Recontrust purportedly foreclosed upon the
23 First Deed of Trust, BAC Home Loans lacked any valid security interest in the Property
24 and therefore lacked any right or power to foreclose.

25 136. It would be unjust for the Defendants to receive the benefit of the foreclosure sale.

26 137. The purported foreclosure sale of the Property based upon the First Deed of Trust should
27 be rescinded and the parties should be returned to the positions they held prior to the
28 conveyance.

1 138. As a direct and proximate result of the actions of the Defendants, it has become necessary
2 for Plaintiff to retain the services of an attorney to protect its rights and prosecute this
3 Claim.

4 139. Plaintiff reserves the right to amend this Complaint under the Nevada Rules of Civil
5 Procedure as further facts become known.

6 WHEREFORE, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, prays for
7 judgment as follows:

- 8 A. On its First Cause of Action, for an Order which determines all and every claim,
9 estate or interest of the parties in the Property, finding that: (1) Plaintiff is the title
10 owner of the Property; (2) the HOA Foreclosure Deed is valid and enforceable;
11 (3) the HOA Foreclosure Sale extinguished the applicable Defendants' ownership
12 and security interests in the Property; (4) the subsequent transfers of the Property
13 were null, void and of no effect; and (5) Plaintiff's rights and interest in the
14 Property are superior to any interest claimed by the Defendants.
- 15 B. On its Second Cause of Action, for general and special damages in excess of Ten
16 Thousand Dollars (\$10,000.00);
- 17 C. On its Third Cause of Action, in the event that Plaintiff is divested of title to the
18 Property for any reason, for the imposition of an equitable mortgage against the
19 Property in favor of Plaintiff to secure the payment of all sums rightfully owed to
20 the Plaintiff associated with the Property;
- 21 D. On its Fourth Cause of Action, for general and special damages in excess of Ten
22 Thousand Dollars (\$10,000.00) and for exemplary or punitive damages in an
23 amount sufficient to deter Defendants and others from engaging in similar
24 conduct, said amount to adequately express social outrage over Defendants'
25 wrongful actions;
- 26 E. On its Fifth Cause of Action, for general and special damages in excess of Ten
27 Thousand Dollars (\$10,000.00) and for exemplary or punitive damages in an
28 amount sufficient to deter Defendants and others from engaging in similar

1 conduct, said amount to adequately express social outrage over Defendants'
2 wrongful actions;

3 F. On its Sixth Cause of Action, for an Order declaring the sale of the Property to be
4 void;

5 G. On its Seventh Cause of Action, for an Order rescinding and setting aside the sale
6 of the Property based upon the Court's equitable power of rescission;

7 H. For costs and attorneys' fees incurred in bringing this action; and

8 I. For such other and further relief as this Court may deem meet and proper.

9 DATED this 18th day of March, 2015.

10 ROGER P. CROTEAU & ASSOCIATES, LTD.

11
12 /s/ Timothy E. Rhoda

13 ROGER P. CROTEAU, ESQ.

14 Nevada Bar No. 4958

15 TIMOTHY E. RHODA, ESQ.

16 Nevada Bar No. 7878

17 9120 West Post Road, Suite 100

18 Las Vegas, Nevada 89148

19 (702) 254-7775

20 *Attorney for Plaintiff*

21 LAS VEGAS DEVELOPMENT GROUP, LLC
22
23
24
25
26
27
28

1 **IAFD**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 9120 West Post Road, Suite 100
8 Las Vegas, Nevada 89148
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

14
15 DISTRICT COURT
16 CLARK COUNTY, NEVADA

17 ***

18 LAS VEGAS DEVELOPMENT GROUP, LLC,)
19 a Nevada limited liability company,)

20 Plaintiff,)

Case No.
Dept. No.

21 vs.)

22 JAMES R. BLAHA, an individual; BANK OF)
23 AMERICA, NA, a National Banking)
24 Association, as successor by merger to BAC)
25 HOME LOANS SERVICING, LP;)
26 RECONTRUST COMPANY NA, a Texas)
27 corporation; JOSE PEREZ, JR. an individual;)
28 EZ PROPERTIES, LLC, a Nevada limited)
liability company; K&L BAXTER FAMILY)
LIMITED PARTNERSHIP, a Nevada limited)
partnership; FCH FUNDING, INC, an unknown)
corporate entity; DOE individuals I through)
XX; and ROE CORPORATIONS I through)
XX,)

Defendants.)

**ARBITRATION EXEMPTION
CLAIMED: (1) TITLE TO REAL
PROPERTY; (2) DECLARATORY
RELIEF**

29 **INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)**

30 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for

31 //

32 //

33 //

parties appearing in the above entitled action as indicated below:

<u>LAS VEGAS DEVELOPMENT GROUP, LLC</u>	<u>\$ 270.00</u>
TOTAL REMITTED:	\$ 270.00

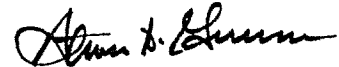
DATED this 19th day of March, 2015.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

EXHIBIT 2

EXHIBIT 2



CLERK OF THE COURT

1 **FFCL**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendants

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 * * *

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

14 Plaintiff,

15 vs.

16 JAMES R. BLAHA, an individual; BANK OF
17 AMERICA, NA, a National Banking
18 Association, as successor by merger to BAC
HOME LOANS SERVICING, LP;
19 RECONTRUST COMPANY NA, a Texas
corporation; JOSE PEREZ, JR. an individual;
20 EZ PROPERTIES, LLC, a Nevada limited
liability company; K&L BAXTER FAMILY
21 LIMITED PARTNERSHIP, a Nevada limited
partnership; FCH FUNDING, INC., an
22 unknown corporate entity; DOE individuals I
through XX; and ROE CORPORATIONS I
through XX,

23 Defendants.

CASE NO. A-15-715532-C

DEPT NO. XXX

**ORDER GRANTING JAMES R.
BLAHA AND NOBLE HOME
LOANS, INC.'S MOTION FOR
SUMMARY JUDGMENT AND ALL
JOINDERS THERETO**

25 James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and,
26 Defendants Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP,
27 and Recontrust Company, NA's (collectively "BANA Defendants") and Defendants EZ
28 Properties, LLC and K&L Baxter Limited Partnership's (collectively "EZ Defendants") Joinders

1 thereto having come on for hearing on the 13th day of September 2016, James R. Blaha and
2 Noble Home Loans, Inc. (collectively the "Blaha Defendants") having appeared through their
3 attorney of record, Aaron R. Maurice, of the law firm of Kolesar & Leatham; Plaintiff, Las
4 Vegas Development Group, LLC ("LVDG"), having appeared through its attorney of record,
5 Roger P. Croteau, of the law firm of Roger P. Croteau & Assoc., Ltd.; the BANA Defendants
6 having appeared through their attorney of record, William S. Habdas, of the law firm of
7 Akerman, LLP; and the EZ Defendants having appeared through their attorney of record, Amy
8 Wilson, of the Law Offices of Kevin R. Hansen; the Court having reviewed the papers and
9 pleadings on file herein and having carefully considered the same; the Court having heard the
10 oral arguments of counsel; the Court being fully advised in the premises, and good cause
11 appearing therefore:

12 I.

13 **UNDISPUTED MATERIAL FACTS**

14 1. On March 28, 2007, a deed of trust ("Perez Deed of Trust") was recorded
15 securing a home loan in the amount of \$456,000 on property commonly known as 7639
16 Turquoise Stone Ct., Las Vegas, NV 89113, APN 176-10-213-042 ("Property"), showing Jose
17 Perez Jr. as the borrower; Countrywide Bank, FSB ("Countrywide") as the lender; Recontrust
18 Company, N.A. ("Recontrust") as the trustee; and Mortgage Electric Registration Systems, Inc.
19 ("MERS") as the beneficiary of record, acting solely as nominee for Countrywide and its
20 successors and assigns.

21 2. Three years later, on April 12, 2010, the Nevada Trails II Homeowners
22 Association ("Nevada Trails") recorded a Notice of Delinquent Assessment Lien against the
23 Property, asserting a delinquency in the amount of \$908.

24 3. The Notice of Delinquent Assessment Lien failed to identify the amount, if any,
25 of an alleged super-priority lien.

26 4. On July 23, 2010, Nevada Trails recorded a Notice of Default and Election to Sell
27 Under Notice of Delinquent Assessment Lien, asserting a delinquency in the amount of \$1,917.

1 5. The Notice of Default failed to identify the amount, if any, of an alleged super-
2 priority lien.

3 6. On September 16, 2010, counsel for BAC Home Loans Servicing ("BAC") sent
4 correspondence to Absolute Collection Services, LLC in response to the Notice of Default and
5 Election to Sell Under Notice of Delinquent Assessment Lien.

6 7. The correspondence acknowledged:

7 [A] portion of your HOA lien is arguably senior to BAC's first deed
8 of trust, specifically the nine months of assessments for common
9 expenses incurred before the date of your notice of delinquent
10 assessment dated July 21, 2010. . . . It is unclear, based on the
11 information known to date, what amount the nine months' of
12 common assessments pre-dating the NOD actually are. That
13 amount, whatever it is, is the amount BAC should be required to
14 rightfully pay to fully discharge its obligations to the HOA per NRS
15 116.3102 and my client hereby offers to pay that sum upon
16 presentation of adequate proof of the same by the HOA.

17 Please let me know what the status of any HOA lien foreclosure
18 sale is, if any. My client does not want these issues to be further
19 exacerbated by the wrongful HOA sale that and it is my client's
20 goal and intent to have the issues resolved as soon as possible.
21 Please refrain from taking any further action to enforce the HOA
22 lien until my client and the HOA have had an opportunity to speak
23 to attempt to fully resolve all issues.

24 8. Absolute Collection Services, LLC responded to the September 16, 2010
25 correspondence, rejecting BAC's assertion that it was entitled to tender a nine-month priority
26 payment before a foreclosure by BAC, stating, in relevant part:

27 I am making you aware that it is our view that without the action of
28 foreclosure, a 9 month Statement of Account is not valid. At this
time, I respectfully request that you submit the Trustees Deed
Upon Sale showing your client's possession of the property and the
date that it occurred. At that time, we will provide a 9 month super
priority lien Statement of Account.

As discussed, any Statement of Account from us will show the
entire amount owed. We intend to proceed on the above-
mentioned account up to and including foreclosure. All such
notifications have been and will be sent to all interested parties.
We recognized your client's position as the first mortgage
company as the senior lien holder. Should you provide us with a
recorded Notice of Default or Notice of Sale, we will hold our
action so your client may proceed.

1 9. On October 27, 2010, Perez filed a Chapter 7 Bankruptcy as Case Number 10-
2 30260-lbr.

3 10. On October 28, 2010, in violation of the automatic stay, Nevada Trails recorded a
4 Notice of Trustee's Sale, asserting a delinquency in the amount of \$2,989.

5 11. The Notice of Trustee's Sale failed to identify the amount, if any, of an alleged
6 super-priority lien.

7 12. On February 28, 2011, Nevada Trails recorded a second Notice of Trustee's Sale,
8 asserting a delinquency in the amount of \$4,446.

9 13. The Notice of Trustee's Sale failed to identify the amount, if any, of an alleged
10 super-priority lien.

11 14. The Notice of Trustee's Sale also failed to account for any discharge of the debt
12 pursuant to the Perez bankruptcy.

13 15. On April 12, 2011, LVDG purchased the Property at a foreclosure sale conducted
14 under the authority granted by NRS Chapter 116 ("HOA Foreclosure Sale") for \$5,200.01.

15 16. On April 14, 2011, a Corporation Assignment of Deed of Trust was recorded
16 reflecting that the Perez Deed of Trust had been assigned to BAC Home Loans Servicing, LP
17 formerly known as Countrywide Home Loans Servicing LP.

18 17. On April 14, 2011, the trustee of the Perez Deed of Trust recorded a Notice of
19 Default and Election to Sell Under Deed of Trust.

20 18. On April 20, 2011, a Release of Lien was recorded, rescinding the Notice of
21 Delinquent Assessment Lien recorded on April 12, 2010.

22 19. On August 9, 2011, a State of Nevada Foreclosure Mediation Program Certificate
23 was recorded, authorizing the beneficiary of the Perez Deed of Trust to proceed with the
24 foreclosure.

25 20. On August 9, 2011, a Notice of Trustee's Sale was recorded, noticing a sale of the
26 Property for August 29, 2011.

1 21. On August 29, 2011, the trustee of the Perez Deed of Trust sold the Property at a
2 public auction conducted under the authority granted by NRS Chapter 107 (the "Deed of Trust
3 Foreclosure Sale").

4 22. On September 19, 2011, a Trustee's Deed upon Sale was recorded reflecting that
5 EZ Properties, LLC ("EZ") had purchased the Property at the NRS Chapter 107 Deed of Trust
6 Foreclosure Sale for \$151,300.

7 23. On September 30, 2011, James R. Blaha ("Blaha") purchased the Property from
8 EZ for \$208,000.

9 24. Three months later, Blaha obtained a loan in the amount of \$162,000 from Noble
10 Home Loans, Inc., formerly known as FCH Funding, Inc. The loan was secured by the Property.

11 25. Blaha has been the record title holder of the Property since September 30, 2011.

12 26. During the five months in which title to the Property was vested in the name of
13 LVDG, LVDG spent no money improving the Property.

14 27. Rather, LVDG only spent \$257 maintaining the Property – paying one power bill
15 and four HOA assessments. With regard to these expenses, LVDG testified as follows:

16 Q. It looks like there's one entry for NV Energy and that was
17 on June 3rd, 2011. Do you see that?

18 A. Okay.

19 Q For \$32?

20 A. Right.

21 Q. Any understanding as to why there are no entries for water,
22 sewer, any of the other normal and customary expenses that would
23 go with property ownership?

24 A. No, not for sure. The – typically the electric was the first thing
25 you needed to get in there if you were going to look at a property
26 and keep the air conditioner on or whatever. I mean, that's the first
27 bill we turned on is Nevada Energy, and then maybe water if we
28 needed to. But not knowing what we did with this property, I can't
tell you why we did – we didn't go – I mean, we may have looked
at this property and it took too much work or too much money or
in a foreclosure. I don't know.

27 Q. Right.

28 A. I don't know.

1 Q. But you don't see anything here reflecting that any property
2 taxes were paid or sewer fees or garbage. Correct?

3 A. No.

4 Q. According to my math, it looks like \$257 total was spent by
5 Las Vegas Development Group, other than legal fees, in
6 connection with this property. Do you agree with that?

6 A. Yep. That looks right.

7 28. LVDG never purchased homeowner's insurance for the Property.

8 29. In the 2010 to 2011 time-period, LVDG would frequently sell properties
9 purchased at HOA foreclosures to lenders that asserted an interest in the property for double the
10 amount LVDG had paid at the HOA foreclosure sale.

11 30. During the 2010 to 2011 time-period, LVDG determined that the cost of
12 establishing free and clear title to all of the properties purchased by LVDG at HOA foreclosure
13 sales was too expensive

14 31. LVDG purchased approximately 200 properties at HOA foreclosure sales. As
15 such, LVDG elected to walk away from some of its investments rather than litigate with the
16 secured lenders. Specifically, LVDG testified:

17 Well, at the early stage we really looked at the huge cost of
18 litigation and didn't know where we stand. I mean, we felt we
19 were right but we didn't know where the answer was going to be,
20 and it was a big giant we were fighting and we weren't deciding
21 which way we were going. What we tried at first – the first thing is
22 let's see if we can get them to either stop or buy us out and move
23 on, and the last thing was just let it go. I mean, at some point
24 litigation costs got so expensive that we, at that stage, walked away
25 from it.

22 32. With regard to the Property in this litigation, LVDG did not take any steps to try
23 to enjoin BANA from foreclosing on the Perez Deed of Trust.

24 33. Similarly, prior to filing this action, LVDG took no action to attempt to set aside
25 the NRS Chapter 107 Deed of Trust Foreclosure Sale.

26 34. Moreover, LVDG took no steps to prevent EZ from encumbering or selling the
27 Property following its purchase at the NRS Chapter 107 Deed of Trust Foreclosure Sale.
28

1 35. Similarly, LVDG took no action to prevent Blaha from taking title to the
2 Property.

3 36. LVDG also took no action to prevent Blaha from obtaining financing secured by
4 the Property.

5 37. After the NRS Chapter 107 Deed of Trust Foreclosure, LVDG stopped paying the
6 HOA association fees.

7 38. As to the reason why LVDG stopped paying association fees, LVDG testified:

8 Q. Do you know why the Las Vegas Development Group stopped
9 paying association fees in August of 2011 with respect to the
property?

10 A. I assume because there is a disputed owner and the HOA takes
11 the dues from the recorded owner, and the recorder showed the
12 recorded owner to be somebody different. I don't know if they
even would have accepted it.

13 39. In 2011, LVDG was aware that there was a dispute with respect to the issue of
14 whether an HOA foreclosure sale could extinguish a prior recorded deed of trust. For this
15 reason, LVDG retained legal counsel to send correspondence to beneficiaries of deeds of trust
16 secured by real property that LVDG purchased at NRS Chapter 116 foreclosure sales.

17 40. By 2012, LVDG was represented by legal counsel in Nevada retained to actively
18 defend LVDG's title to real property purchased by LVDG at NRS Chapter 116 foreclosure sales.

19 41. When asked to explain why LVDG waited until March 19, 2015, to take any
20 action to challenge the NRS Chapter 107 Deed of Trust Foreclosure Sale, LVDG testified as
21 follows:

22 Q. The question is: Why did Las Vegas Development Group wait
23 more than three years after all of the events that it seeks to – or all
the conveyances that it seeks to set aside to bring this lawsuit?

24 A. I don't know what to say. He's telling me not to answer, so...

25 Q. I don't think he's telling you not to answer this question.

26 MR. CROTEAU: Whatever. Answer it. It doesn't matter. None of
27 this matters. Answer it.

28 A. We dealt with properties that we were in the process of buying
or being foreclosed on. That's stuff that had already happened

1 before we got attorneys involved. We were – we had our hands
2 full taking care of that, and we came back to this knowing it was
3 always here when we had more time with our attorneys.

4 42. Despite the fact that Blaha has been the record title holder of the Property since
5 September 30, 2011, on March 19, 2015 – 1,298 days after the Deed of Trust Foreclosure Sale –
6 LVDG filed a Complaint seeking to rescind the NRS Chapter 107 Deed of Trust Foreclosure
7 Sale.

8 43. The following day, LVDG recorded a Lis Pendens.

9 44. In its Complaint, LVDG claims that the NRS Chapter 107 Deed of Trust
10 Foreclosure Sale was void because the HOA Foreclosure Sale extinguished the Perez Deed of
11 Trust.

12 45. LVDG's Complaint offers no explanation as to why LVDG took no steps to stop
13 the NRS Chapter 107 Deed of Trust Foreclosure Sale or why, immediately thereafter, LVDG did
14 not take steps to have the NRS Chapter 107 Deed of Trust Foreclosure Sale set aside within the
15 90 day period provided by NRS 107.080(5)-(6).

16 II.

17 STANDARD OF REVIEW

18 1. NRC 56(c) provides that summary judgment shall be granted when, after a
19 review of the record viewed in the light most favorable to the non-moving party, there are no
20 remaining genuine issues of material fact and the moving party is entitled to judgment as a
21 matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). "A
22 genuine issue of material fact is one where the evidence is such that a reasonable jury could
23 return a verdict for the non-moving party." Posadas v. City of Reno, 109 Nev. 448, 452, 851
24 P.2d 438, 441 (1993).

25 2. In determining whether summary judgment is appropriate, the Court applies a
26 burden-shifting analysis. Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602-03,
27 172 P.3d 131, 134 (2007). If – as in the present case – "the nonmoving party will bear the
28 burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of

1 production by either (1) submitting evidence that negates an essential element of the nonmoving
2 party's claim, or (2) pointing out that there is an absence of evidence to support the nonmoving
3 party's case." Id. (internal quotations omitted).

4 3. If the moving party satisfies its burden, the burden then shifts to the nonmoving
5 party who "must transcend the pleadings and, by affidavit or other admissible evidence,
6 introduce specific facts that show a genuine issue of material fact." Id. The evidence submitted
7 by the nonmoving party must be relevant and admissible, and he or she "is not entitled to build a
8 case on the gossamer threads of whimsy, speculation and conjecture." Collins v. Union Fed.
9 Sav. & Loan Ass'n, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) (internal quotations omitted).

10 III.

11 CONCLUSIONS OF LAW

12 1. LVDG's Complaint seeks to set aside the NRS Chapter 107 Deed of Trust
13 Foreclosure Sale that took place on August 29, 2011, and all subsequent transfers of the Property
14 – including Blaha's September 30, 2011 purchase of the Property.

15 2. LVDG's Complaint asserts five causes of action against the Blaha Defendants: (1)
16 Quiet Title; (2) Equitable Mortgage; (3) Slander of Title; (4) Equitable Relief – Wrongful
17 Foreclosure; and (5) Equitable Relief – Rescission. Each cause of action is premised upon the
18 allegation that the HOA Foreclosure Sale extinguished the Perez Deed of Trust such that the
19 NRS Chapter 107 Deed of Trust Foreclosure Sale and all subsequent transfers in the Property
20 should be set aside by this Court. For this reason, the statute of limitation imposed by NRS
21 107.080(5) applies to each of LVDG's claims.

22 3. Additionally, LVDG's slander of title claim is barred by the two-year statute of
23 limitation imposed by NRS 11.190(4)(c) as LVDG waited 1,298 days from the NRS Chapter 107
24 Deed of Trust Foreclosure Sale to file its Complaint. See Spilsbury v. U.S. Specialty Ins. Co.,
25 2015 WL 476228, 2:14-cv-00820-GMN-GWF (D. Nev. Feb. 4, 2015) (Nevada's statute of
26 limitation for slander of title is two years).

27 4. The Nevada Supreme Court has acknowledged the public policy considerations
28 that form the basis for any statute of limitation. See Winn v. Sunrise Hosp. & Medical Center,

1 128 Nev. Adv. Op. 23, ___, 277 P.3d 458, 465 (Nev. 2012). Specifically, the Nevada Supreme
2 Court has recognized that limitation periods imposed by the Legislature are meant to “provide a
3 concrete time frame within which a plaintiff must file a lawsuit and after which a defendant is
4 afforded a level of security.” Id. (citing Peterson v. Bruen, 106 Nev. 271, 274, 792 P.2d 18, 19
5 (Nev. 1990)). In this regard, statutes of limitation “stimulate activity, punish negligence and
6 promote repose by giving security and stability to human affairs.” Id.

7 5. NRS 107.080(5)-(6) creates a statute of limitations for challenging a nonjudicial
8 foreclosure sale. NRS 107.080(5) has been amended several times in recent years. The
9 applicable version of NRS 107.080(5) in this case stated in relevant part:

10 Every sale made under the provisions of this section and other
11 sections of this chapter vests in the purchaser the title of the
12 grantor and any successors in interest without equity or right of
redemption. A sale made pursuant to this section **may**¹ be declared
void by any court of competent jurisdiction in the county where the
sale took place if:

- 13 (a) The trustee or other person authorized to make the sale
14 does not substantially comply with the provisions of this
section or any applicable provision of NRS 107.086 and
107.087;
15 (b) Except as otherwise provided in subsection 6, an action is
16 commenced in the county where the sale took place within
90 days² after the date of the sale; and
17 (c) A notice of lis pendens providing notice of the pendency of
the action is recorded in the office of the county recorder of
the county where the sale took place within **30 days**³ after
18 commencement of the action.

19 (Emphasis added to highlight statutory changes).

20 6. A foreclosure sale terminates all other legal and equitable interests in the land.
21 Charmicor, Inc. v. Bradshaw Fin. Co., 92 Nev. 310, 313, 550 P.2d 413 (Nev. 1976)(legal
22 interest); McCall v. Carlson, 63 Nev. 390, 406–07, 172 P.2d 171 (Nev. 1946)(equitable interest).

23 _____
24 ¹ NRS 107.080(5) was amended to change “may” to “must,” effective October 1, 2011. 2011 Nev. Stat., ch. 81,
A.B. 284, § 5 at 334. The October 1, 2011 amendment only applies “to a notice of default and election to sell which
25 is recorded on or after July 1, 2011.” See A.B. 284. Here, the version of NRS 107.080(5) using the word “may”
applies because the Notice of Default and Election to Sell Pursuant to the Deed of Trust was recorded on April 14,
2011.

26 ² NRS 107.080(5)(b) was amended to change the 90 days to 45 days, effective October 1, 2013. 2013 Nev. Stat., ch.
403, SB 321, § 5 at 2197.

27 ³ NRS 107.080(5)(c) was amended to change the 30 days to 15 days, effective October 1, 2013. 2013 Nev. Stat., ch.
28 403, SB 321, § 5 at 2197.

1 As such, once the sale is completed, title vests in the purchaser without equity or right of
2 redemption. See 107.080(5); see also Michniak v. Argent Mortg. Co., LLC, 2012 WL 6588912
3 (unpublished)(Nev. Dec. 14, 2012).

4 7. A party cannot challenge a nonjudicial foreclosure sale outside of the time limits
5 provided in NRS 107.080(5)-(6). See Bldg. Energetix Corp. v. EHE, LP, 129 Nev. Adv. Op. 6,
6 294 P.3d 1228, 1234 (2013) (“NRS 107.080(5)(a)-(c) and NRS 107.080(6) enumerate the limited
7 instances in which a nonjudicial foreclosure sale may be made void”); Kim v. Kearney, 838 F.
8 Supp. 2d 1077 (D. Nev. 2012) (dismissing plaintiff’s quiet title complaint because plaintiff failed
9 to file an action to set aside the sale within ninety days of the date of sale), aff’d, ___ Fed. Appx.
10 ___, 2013 WL 6172290 (9th Cir. Nov. 26, 2013); Michniak v. Argent Mortg. Co., LLC, 2012 WL
11 6588912 (Nev. December 14, 2012) (“The title set forth in the trustee’s deed upon sale was
12 conclusive and beyond challenge once the time period set forth in NRS 107.080 had lapsed. The
13 trustee’s deed upon sale conclusively vested title in the purchaser, and as a matter of law
14 appellant’s claim for quiet title based on wrongful foreclosure fails.”); Chattem v. BAC Home
15 Loan Servicing LP, No. 2:11-CV-01727-KJD, 2012 WL 4795663 (D. Nev. Oct. 9, 2012)
16 (dismissing action to set aside foreclosure sale where action was commenced 109 days after the
17 foreclosure sale in violation of NRS 107.080(5)); Guertin v. OneWest Bank, FSB, 2:11-CV-
18 1531 JCM, 2012 WL 3133736 (D. Nev. July 31, 2012) (dismissing claims for statutorily
19 defective foreclosure and quiet title where action was not brought within ninety days of sale);
20 Willis v. Federal Nat. Mortg. Ass’n, 512 Fed. Appx. 723, 2013 WL 1150755 (9th Cir. 2013)
21 (upholding the district court’s dismissal of plaintiffs’ quiet title claim because plaintiffs did not
22 allege facts showing that they were not in default when defendants initiated non-judicial
23 foreclosure proceedings and further holding that, to the extent the plaintiffs sought to allege a
24 claim for wrongful foreclosure, the district court properly determined that this claim would have
25 been time-barred by the ninety day statute of limitation imposed by NRS 107.080(5)(b));
26 Haischer v. Mortgage Elec. Registration Sys., Inc., 2012 WL 4194076, at *4 (D. Nev. Sept. 17,
27 2012) (dismissing plaintiff’s wrongful foreclosure claim because the plaintiff failed to file an
28 action to set aside the sale within the time constraints imposed by NRS 107.080(5)-(6)).

1 8. Thus, both the Ninth Circuit and the Nevada Supreme Court have recognized that
2 a party seeking to set aside a sale conducted pursuant to NRS Chapter 107 cannot simply choose
3 to plead its claims in such a way as to avoid having to comply with the provisions of NRS
4 107.080(5)-(6).

5 9. In rendering their decisions, both courts furthered the legislative intent behind
6 NRS 107.080(5)-(6), which was enacted to encourage the free transferability of title following
7 foreclosure sales. See Legislative History for S.B. 217 (2007) and S.B. 483 (2007)(incorporating
8 the revision to NRS Chapter 107 proposed by S.B. 217).

9 10. The 2007 amendment to NRS Chapter 107 was enacted to bring clarity to the
10 statute's provision with respect to actions brought to set aside foreclosure sales to once again
11 encourage the free transferability of title to real property following a foreclosure sale conducted
12 pursuant to NRS Chapter 107.

13 11. Here, the NRS Chapter 107 Deed of Trust Foreclosure Sale that LVDG seeks to
14 set aside was conducted on August 29, 2011. LVDG admitted that it stopped paying HOA
15 assessments on the Property in August of 2011, because of the NRS Chapter 107 Foreclosure
16 Sale. However, LVDG failed to take any action to set aside the sale until March 19, 2015 – 1,298
17 days after the NRS Chapter 107 Deed of Trust Foreclosure Sale.

18 12. Instead of taking action to protect any interest LVDG may have had in the
19 Property, LVDG elected to do nothing for years. During the three-and-a-half-year period in
20 which LVDG failed to take any action to protect its interest in the Property, the Property was
21 sold twice – once at the NRS Chapter 107 Deed of Trust Foreclosure Sale and then again on
22 September 30, 2011, to Blaha.

23 13. LVDG – who had purchased approximately 200 other properties through
24 foreclosure sales – had both the knowledge and ability to take the legal action necessary to
25 protect its \$5,200.01 investment. However, instead of complying with NRS 107.080(5)-(6) –
26 which would have prevented the Blaha Defendants from facing the potential risk of losing their
27 substantial investment in the Property – LVDG did nothing for years.
28

1 14. The public policy considerations that formed the basis for the Legislature's
2 enactment of NRS 107.080(5)-(6) simply do not allow LVDG to be rewarded for its failure to
3 take any action to protect its interest in the Property.

4 15. By enacting NRS 107.080(5)-(6), the Nevada Legislature expressed its intent to
5 promote the transferability of title following foreclosure sales conducted under NRS Chapter 107
6 to "provide a concrete time frame within which a plaintiff must file a lawsuit and after which a
7 defendant is afforded a level of security." See Winn v. Sunrise Hosp. & Medical Center, 128
8 Nev. Adv. Op. 23, ___, 277 P.3d 458, 465 (Nev. 2012)(citing Peterson v. Bruen, 106 Nev. 271,
9 274, 792 P.2d 18, 19 (Nev. 1990)). This public policy expression by the Nevada Legislature was
10 designed to promote the recovery of Nevada's failing real estate market following the
11 devastating foreclosure crisis by allowing new market participants (such as the LVDG) to
12 purchase properties which other property owners had either willingly abandoned or, out of the
13 extreme distress caused by our country's financial crisis, were no longer able to afford.

14 16. Here, LVDG has failed to "transcend the pleadings and, by affidavit or other
15 admissible evidence, introduce specific facts that show" that LVDG filed its Complaint within
16 120 days of first learning about the NRS Chapter 107 Deed of Trust Foreclosure Sale. Cuzze,
17 123 Nev. at 602-03, 172 P.3d at 134. Accordingly, LVDG's claims are time-barred under NRS
18 107.080(5)-(6).

19 17. Based on the above findings, the Court need not address the other legal arguments
20 raised in the Blaha Defendants' Motion for Summary Judgment.

21 18. In addition, as this ruling is dispositive of the entire case, all other pending
22 motions are now moot.

23 **NOW THEREFORE:**


24 **SUMMARY JUDGMENT IS HEREBY ENTERED** in favor of the Defendants and
25 against the Plaintiff. This Court hereby finds that Plaintiff's Complaint is time-barred by NRS
26 107.080(5)-(6).

27 **IT IS FURTHER ORDERED** that, pursuant to NRS 14.017, the Notice of Pendency of
28 Action recorded by Plaintiff against the Property commonly known as 7639 Turquoise Stone Ct.,

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 Las Vegas, NV 89113, APN 176-10-213-042, in the Office of the Clark County Recorder as
2 Instrument Number 201503200001999 is hereby cancelled and expunged. Said cancellation has
3 the same effect as an expungement of the original notice.

4 DATED this 5th day of October, 2016.

5
6 
DISTRICT COURT JUDGE

7 Submitted by:
8 KOLESAR & LEATHAM

9 By /s/ Brittany Wood
10 AARON R. MAURICE, ESQ.
11 Nevada Bar No. 006412
12 BRITTANY WOOD, ESQ.
13 Nevada Bar No. 007562
14 400 South Rampart Boulevard, Suite 400
15 Las Vegas, Nevada 89145
16 Attorneys for Defendants JAMES R. BLAHA
17 and NOBLE HOME LOANS, INC.
18 formerly known as FCH FUNDING, INC.

19 Approved as to form:
20 LAW OFFICES OF KEVIN R. HANSEN

21 /s/ Amy Wilson
22 KEVIN R. HANSEN, ESQ.
23 Nevada Bar No. 6336
24 AMY WILSON, ESQ.
25 Nevada Bar No. 13421
26 5440 West Sahara Ave., Suite 206
27 Las Vegas, Nevada 89146
28 Attorney for Defendants
EZ PROPERTIES, LLC & K&L
BAXTER FAMILY LIMITED
PARTNERSHIP

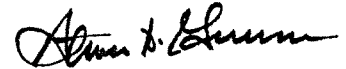
Approved as to form:
AKERMAN, LLP

/s/ William S. Habdas
DARREN BRENNER, ESQ.
Nevada Bar No. 8386
WILLIAM S. HABDAS, ESQ.
Nevada Bar No. 13138
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorney for Defendants
BANK OF AMERICA, N.A. and
RECONTRUST COMPANY, N.A.

Submitted over the objection of:
ROGER P. CROTEAU & ASSOC., LTD.
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP

EXHIBIT 3

EXHIBIT 3



CLERK OF THE COURT

1 **NEOJ**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendants,

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 * * *

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

15 Plaintiff,

16 vs.

17 JAMES R. BLAHA, an individual; BANK OF
18 AMERICA, NA, a National Banking
Association, as successor by merger to BAC
HOME LOANS SERVICING, LP;
19 RECONTRUST COMPANY NA, a Texas
corporation; JOSE PEREZ, JR. an individual;
20 EZ PROPERTIES, LLC, a Nevada limited
liability company; K&L BAXTER FAMILY
LIMITED PARTNERSHIP, a Nevada limited
21 partnership; FCH FUNDING, INC., an
unknown corporate entity; DOE individuals I
22 through XX; and ROE CORPORATIONS I
through XX,

23 Defendants.
24

CASE NO. A-15-715532-C

DEPT NO. XXX

NOTICE OF ENTRY OF ORDER

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
TEL: (702) 362-7800 / FAX: (702) 362-9472

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DATED this 5th day of October, 2016.

By

400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
TEL: (702) 362-7800 / FAX: (702) 362-9444

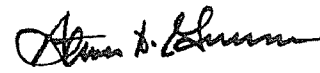
KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
TEL: (702) 362-7800 / FAX: (702) 362-9472

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 5th day of October, 2016, I caused to be served a true and correct copy of foregoing NOTICE OF ENTRY OF ORDER in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.


An Employee of KOLESAR & LEATHAM



CLERK OF THE COURT

1 **FFCL**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendants

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 * * *

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

15 Plaintiff,

16 vs.

17 JAMES R. BLAHA, an individual; BANK OF
18 AMERICA, NA, a National Banking
19 Association, as successor by merger to BAC
20 HOME LOANS SERVICING, LP;
21 RECONTRUST COMPANY NA, a Texas
22 corporation; JOSE PEREZ, JR. an individual;
23 EZ PROPERTIES, LLC, a Nevada limited
24 liability company; K&L BAXTER FAMILY
25 LIMITED PARTNERSHIP, a Nevada limited
26 partnership; FCH FUNDING, INC., an
27 unknown corporate entity; DOE individuals I
28 through XX; and ROE CORPORATIONS I
through XX,

Defendants.

CASE NO. A-15-715532-C

DEPT NO. XXX

**ORDER GRANTING JAMES R.
BLAHA AND NOBLE HOME
LOANS, INC.'S MOTION FOR
SUMMARY JUDGMENT AND ALL
JOINDERS THERETO**

James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and,
Defendants Bank of America, N.A., as successor by merger to BAC Home Loans Servicing, LP,
and Recontrust Company, NA's (collectively "BANA Defendants") and Defendants EZ
Properties, LLC and K&L Baxter Limited Partnership's (collectively "EZ Defendants") Joinders

1 thereto having come on for hearing on the 13th day of September 2016, James R. Blaha and
2 Noble Home Loans, Inc. (collectively the "Blaha Defendants") having appeared through their
3 attorney of record, Aaron R. Maurice, of the law firm of Kolesar & Leatham; Plaintiff, Las
4 Vegas Development Group, LLC ("LVDG"), having appeared through its attorney of record,
5 Roger P. Croteau, of the law firm of Roger P. Croteau & Assoc., Ltd.; the BANA Defendants
6 having appeared through their attorney of record, William S. Habdas, of the law firm of
7 Akerman, LLP; and the EZ Defendants having appeared through their attorney of record, Amy
8 Wilson, of the Law Offices of Kevin R. Hansen; the Court having reviewed the papers and
9 pleadings on file herein and having carefully considered the same; the Court having heard the
10 oral arguments of counsel; the Court being fully advised in the premises, and good cause
11 appearing therefore:

12 I.

13 **UNDISPUTED MATERIAL FACTS**

14 1. On March 28, 2007, a deed of trust ("Perez Deed of Trust") was recorded
15 securing a home loan in the amount of \$456,000 on property commonly known as 7639
16 Turquoise Stone Ct., Las Vegas, NV 89113, APN 176-10-213-042 ("Property"), showing Jose
17 Perez Jr. as the borrower; Countrywide Bank, FSB ("Countrywide") as the lender; Recontrust
18 Company, N.A. ("Recontrust") as the trustee; and Mortgage Electric Registration Systems, Inc.
19 ("MERS") as the beneficiary of record, acting solely as nominee for Countrywide and its
20 successors and assigns.

21 2. Three years later, on April 12, 2010, the Nevada Trails II Homeowners
22 Association ("Nevada Trails") recorded a Notice of Delinquent Assessment Lien against the
23 Property, asserting a delinquency in the amount of \$908.

24 3. The Notice of Delinquent Assessment Lien failed to identify the amount, if any,
25 of an alleged super-priority lien.

26 4. On July 23, 2010, Nevada Trails recorded a Notice of Default and Election to Sell
27 Under Notice of Delinquent Assessment Lien, asserting a delinquency in the amount of \$1,917.
28

1 5. The Notice of Default failed to identify the amount, if any, of an alleged super-
2 priority lien.

3 6. On September 16, 2010, counsel for BAC Home Loans Servicing ("BAC") sent
4 correspondence to Absolute Collection Services, LLC in response to the Notice of Default and
5 Election to Sell Under Notice of Delinquent Assessment Lien.

6 7. The correspondence acknowledged:

7 [A] portion of your HOA lien is arguably senior to BAC's first deed
8 of trust, specifically the nine months of assessments for common
9 expenses incurred before the date of your notice of delinquent
10 assessment dated July 21, 2010. . . . It is unclear, based on the
11 information known to date, what amount the nine months' of
12 common assessments pre-dating the NOD actually are. That
13 amount, whatever it is, is the amount BAC should be required to
14 rightfully pay to fully discharge its obligations to the HOA per NRS
15 116.3102 and my client hereby offers to pay that sum upon
16 presentation of adequate proof of the same by the HOA.

17 Please let me know what the status of any HOA lien foreclosure
18 sale is, if any. My client does not want these issues to be further
19 exacerbated by the wrongful HOA sale that and it is my client's
20 goal and intent to have the issues resolved as soon as possible.
21 Please refrain from taking any further action to enforce the HOA
22 lien until my client and the HOA have had an opportunity to speak
23 to attempt to fully resolve all issues.

24 8. Absolute Collection Services, LLC responded to the September 16, 2010
25 correspondence, rejecting BAC's assertion that it was entitled to tender a nine-month priority
26 payment before a foreclosure by BAC, stating, in relevant part:

27 I am making you aware that it is our view that without the action of
28 foreclosure, a 9 month Statement of Account is not valid. At this
time, I respectfully request that you submit the Trustees Deed
Upon Sale showing your client's possession of the property and the
date that it occurred. At that time, we will provide a 9 month super
priority lien Statement of Account.

As discussed, any Statement of Account from us will show the
entire amount owed. We intend to proceed on the above-
mentioned account up to and including foreclosure. All such
notifications have been and will be sent to all interested parties.
We recognized your client's position as the first mortgage
company as the senior lien holder. Should you provide us with a
recorded Notice of Default or Notice of Sale, we will hold our
action so your client may proceed.

1 9. On October 27, 2010, Perez filed a Chapter 7 Bankruptcy as Case Number 10-
2 30260-lbr.

3 10. On October 28, 2010, in violation of the automatic stay, Nevada Trails recorded a
4 Notice of Trustee's Sale, asserting a delinquency in the amount of \$2,989.

5 11. The Notice of Trustee's Sale failed to identify the amount, if any, of an alleged
6 super-priority lien.

7 12. On February 28, 2011, Nevada Trails recorded a second Notice of Trustee's Sale,
8 asserting a delinquency in the amount of \$4,446.

9 13. The Notice of Trustee's Sale failed to identify the amount, if any, of an alleged
10 super-priority lien.

11 14. The Notice of Trustee's Sale also failed to account for any discharge of the debt
12 pursuant to the Perez bankruptcy.

13 15. On April 12, 2011, LVDG purchased the Property at a foreclosure sale conducted
14 under the authority granted by NRS Chapter 116 ("HOA Foreclosure Sale") for \$5,200.01.

15 16. On April 14, 2011, a Corporation Assignment of Deed of Trust was recorded
16 reflecting that the Perez Deed of Trust had been assigned to BAC Home Loans Servicing, LP
17 formerly known as Countrywide Home Loans Servicing LP.

18 17. On April 14, 2011, the trustee of the Perez Deed of Trust recorded a Notice of
19 Default and Election to Sell Under Deed of Trust.

20 18. On April 20, 2011, a Release of Lien was recorded, rescinding the Notice of
21 Delinquent Assessment Lien recorded on April 12, 2010.

22 19. On August 9, 2011, a State of Nevada Foreclosure Mediation Program Certificate
23 was recorded, authorizing the beneficiary of the Perez Deed of Trust to proceed with the
24 foreclosure.

25 20. On August 9, 2011, a Notice of Trustee's Sale was recorded, noticing a sale of the
26 Property for August 29, 2011.

1 21. On August 29, 2011, the trustee of the Perez Deed of Trust sold the Property at a
2 public auction conducted under the authority granted by NRS Chapter 107 (the "Deed of Trust
3 Foreclosure Sale").

4 22. On September 19, 2011, a Trustee's Deed upon Sale was recorded reflecting that
5 EZ Properties, LLC ("EZ") had purchased the Property at the NRS Chapter 107 Deed of Trust
6 Foreclosure Sale for \$151,300.

7 23. On September 30, 2011, James R. Blaha ("Blaha") purchased the Property from
8 EZ for \$208,000.

9 24. Three months later, Blaha obtained a loan in the amount of \$162,000 from Noble
10 Home Loans, Inc., formerly known as FCH Funding, Inc. The loan was secured by the Property.

11 25. Blaha has been the record title holder of the Property since September 30, 2011.

12 26. During the five months in which title to the Property was vested in the name of
13 LVDG, LVDG spent no money improving the Property.

14 27. Rather, LVDG only spent \$257 maintaining the Property – paying one power bill
15 and four HOA assessments. With regard to these expenses, LVDG testified as follows:

16 Q. It looks like there's one entry for NV Energy and that was
17 on June 3rd, 2011. Do you see that?

18 A. Okay.

19 Q For \$32?

20 A. Right.

21 Q. Any understanding as to why there are no entries for water,
22 sewer, any of the other normal and customary expenses that would
23 go with property ownership?

24 A. No, not for sure. The – typically the electric was the first thing
25 you needed to get in there if you were going to look at a property
26 and keep the air conditioner on or whatever. I mean, that's the first
27 bill we turned on is Nevada Energy, and then maybe water if we
28 needed to. But not knowing what we did with this property, I can't
tell you why we did – we didn't go – I mean, we may have looked
at this property and it took too much work or too much money or
in a foreclosure. I don't know.

27 Q. Right.

28 A. I don't know.

1 Q. But you don't see anything here reflecting that any property
2 taxes were paid or sewer fees or garbage. Correct?

3 A. No.

4 Q. According to my math, it looks like \$257 total was spent by
5 Las Vegas Development Group, other than legal fees, in
6 connection with this property. Do you agree with that?

7 A. Yep. That looks right.

8 28. LVDG never purchased homeowner's insurance for the Property.

9 29. In the 2010 to 2011 time-period, LVDG would frequently sell properties
10 purchased at HOA foreclosures to lenders that asserted an interest in the property for double the
11 amount LVDG had paid at the HOA foreclosure sale.

12 30. During the 2010 to 2011 time-period, LVDG determined that the cost of
13 establishing free and clear title to all of the properties purchased by LVDG at HOA foreclosure
14 sales was too expensive

15 31. LVDG purchased approximately 200 properties at HOA foreclosure sales. As
16 such, LVDG elected to walk away from some of its investments rather than litigate with the
17 secured lenders. Specifically, LVDG testified:

18 Well, at the early stage we really looked at the huge cost of
19 litigation and didn't know where we stand. I mean, we felt we
20 were right but we didn't know where the answer was going to be,
21 and it was a big giant we were fighting and we weren't deciding
22 which way we were going. What we tried at first – the first thing is
23 let's see if we can get them to either stop or buy us out and move
24 on, and the last thing was just let it go. I mean, at some point
25 litigation costs got so expensive that we, at that stage, walked away
26 from it.

27 32. With regard to the Property in this litigation, LVDG did not take any steps to try
28 to enjoin BANA from foreclosing on the Perez Deed of Trust.

33. Similarly, prior to filing this action, LVDG took no action to attempt to set aside
the NRS Chapter 107 Deed of Trust Foreclosure Sale.

34. Moreover, LVDG took no steps to prevent EZ from encumbering or selling the
Property following its purchase at the NRS Chapter 107 Deed of Trust Foreclosure Sale.

1 35. Similarly, LVDG took no action to prevent Blaha from taking title to the
2 Property.

3 36. LVDG also took no action to prevent Blaha from obtaining financing secured by
4 the Property.

5 37. After the NRS Chapter 107 Deed of Trust Foreclosure, LVDG stopped paying the
6 HOA association fees.

7 38. As to the reason why LVDG stopped paying association fees, LVDG testified:

8 Q. Do you know why the Las Vegas Development Group stopped
9 paying association fees in August of 2011 with respect to the
property?

10 A. I assume because there is a disputed owner and the HOA takes
11 the dues from the recorded owner, and the recorder showed the
12 recorded owner to be somebody different. I don't know if they
even would have accepted it.

13 39. In 2011, LVDG was aware that there was a dispute with respect to the issue of
14 whether an HOA foreclosure sale could extinguish a prior recorded deed of trust. For this
15 reason, LVDG retained legal counsel to send correspondence to beneficiaries of deeds of trust
16 secured by real property that LVDG purchased at NRS Chapter 116 foreclosure sales.

17 40. By 2012, LVDG was represented by legal counsel in Nevada retained to actively
18 defend LVDG's title to real property purchased by LVDG at NRS Chapter 116 foreclosure sales.

19 41. When asked to explain why LVDG waited until March 19, 2015, to take any
20 action to challenge the NRS Chapter 107 Deed of Trust Foreclosure Sale, LVDG testified as
21 follows:

22 Q. The question is: Why did Las Vegas Development Group wait
23 more than three years after all of the events that it seeks to – or all
the conveyances that it seeks to set aside to bring this lawsuit?

24 A. I don't know what to say. He's telling me not to answer, so...

25 Q. I don't think he's telling you not to answer this question.

26 MR. CROTEAU: Whatever. Answer it. It doesn't matter. None of
27 this matters. Answer it.

28 A. We dealt with properties that we were in the process of buying
or being foreclosed on. That's stuff that had already happened

1 before we got attorneys involved. We were – we had our hands
2 full taking care of that, and we came back to this knowing it was
3 always here when we had more time with our attorneys.

4 42. Despite the fact that Blaha has been the record title holder of the Property since
5 September 30, 2011, on March 19, 2015 – 1,298 days after the Deed of Trust Foreclosure Sale –
6 LVDG filed a Complaint seeking to rescind the NRS Chapter 107 Deed of Trust Foreclosure
7 Sale.

8 43. The following day, LVDG recorded a Lis Pendens.

9 44. In its Complaint, LVDG claims that the NRS Chapter 107 Deed of Trust
10 Foreclosure Sale was void because the HOA Foreclosure Sale extinguished the Perez Deed of
11 Trust.

12 45. LVDG's Complaint offers no explanation as to why LVDG took no steps to stop
13 the NRS Chapter 107 Deed of Trust Foreclosure Sale or why, immediately thereafter, LVDG did
14 not take steps to have the NRS Chapter 107 Deed of Trust Foreclosure Sale set aside within the
15 90 day period provided by NRS 107.080(5)-(6).

16 II.

17 STANDARD OF REVIEW

18 1. NRCP 56(c) provides that summary judgment shall be granted when, after a
19 review of the record viewed in the light most favorable to the non-moving party, there are no
20 remaining genuine issues of material fact and the moving party is entitled to judgment as a
21 matter of law. Wood v. Safeway, Inc., 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). "A
22 genuine issue of material fact is one where the evidence is such that a reasonable jury could
23 return a verdict for the non-moving party." Posadas v. City of Reno, 109 Nev. 448, 452, 851
24 P.2d 438, 441 (1993).

25 2. In determining whether summary judgment is appropriate, the Court applies a
26 burden-shifting analysis. Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602-03,
27 172 P.3d 131, 134 (2007). If – as in the present case – "the nonmoving party will bear the
28 burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of

1 production by either (1) submitting evidence that negates an essential element of the nonmoving
2 party's claim, or (2) pointing out that there is an absence of evidence to support the nonmoving
3 party's case." Id. (internal quotations omitted).

4 3. If the moving party satisfies its burden, the burden then shifts to the nonmoving
5 party who "must transcend the pleadings and, by affidavit or other admissible evidence,
6 introduce specific facts that show a genuine issue of material fact." Id. The evidence submitted
7 by the nonmoving party must be relevant and admissible, and he or she "is not entitled to build a
8 case on the gossamer threads of whimsy, speculation and conjecture." Collins v. Union Fed.
9 Sav. & Loan Ass'n, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983) (internal quotations omitted).

10 III.

11 CONCLUSIONS OF LAW

12 1. LVDG's Complaint seeks to set aside the NRS Chapter 107 Deed of Trust
13 Foreclosure Sale that took place on August 29, 2011, and all subsequent transfers of the Property
14 – including Blaha's September 30, 2011 purchase of the Property.

15 2. LVDG's Complaint asserts five causes of action against the Blaha Defendants: (1)
16 Quiet Title; (2) Equitable Mortgage; (3) Slander of Title; (4) Equitable Relief – Wrongful
17 Foreclosure; and (5) Equitable Relief – Rescission. Each cause of action is premised upon the
18 allegation that the HOA Foreclosure Sale extinguished the Perez Deed of Trust such that the
19 NRS Chapter 107 Deed of Trust Foreclosure Sale and all subsequent transfers in the Property
20 should be set aside by this Court. For this reason, the statute of limitation imposed by NRS
21 107.080(5) applies to each of LVDG's claims.

22 3. Additionally, LVDG's slander of title claim is barred by the two-year statute of
23 limitation imposed by NRS 11.190(4)(c) as LVDG waited 1,298 days from the NRS Chapter 107
24 Deed of Trust Foreclosure Sale to file its Complaint. See Spilsbury v. U.S. Specialty Ins. Co.,
25 2015 WL 476228, 2:14-cv-00820-GMN-GWF (D. Nev. Feb. 4, 2015) (Nevada's statute of
26 limitation for slander of title is two years).

27 4. The Nevada Supreme Court has acknowledged the public policy considerations
28 that form the basis for any statute of limitation. See Winn v. Sunrise Hosp. & Medical Center,

1 128 Nev. Adv. Op. 23, ___, 277 P.3d 458, 465 (Nev. 2012). Specifically, the Nevada Supreme
2 Court has recognized that limitation periods imposed by the Legislature are meant to "provide a
3 concrete time frame within which a plaintiff must file a lawsuit and after which a defendant is
4 afforded a level of security." Id. (citing Peterson v. Bruen, 106 Nev. 271, 274, 792 P.2d 18, 19
5 (Nev. 1990)). In this regard, statutes of limitation "stimulate activity, punish negligence and
6 promote repose by giving security and stability to human affairs." Id.

7 5. NRS 107.080(5)-(6) creates a statute of limitations for challenging a nonjudicial
8 foreclosure sale. NRS 107.080(5) has been amended several times in recent years. The
9 applicable version of NRS 107.080(5) in this case stated in relevant part:

10 Every sale made under the provisions of this section and other
11 sections of this chapter vests in the purchaser the title of the
12 grantor and any successors in interest without equity or right of
redemption. A sale made pursuant to this section **may**¹ be declared
void by any court of competent jurisdiction in the county where the
sale took place if:

- 13 (a) The trustee or other person authorized to make the sale
14 does not substantially comply with the provisions of this
section or any applicable provision of NRS 107.086 and
107.087;
15 (b) Except as otherwise provided in subsection 6, an action is
16 commenced in the county where the sale took place within
90 days² after the date of the sale; and
17 (c) A notice of lis pendens providing notice of the pendency of
the action is recorded in the office of the county recorder of
18 the county where the sale took place within **30 days**³ after
commencement of the action.

19 (Emphasis added to highlight statutory changes).

20 6. A foreclosure sale terminates all other legal and equitable interests in the land.
21 Charmicor, Inc. v. Bradshaw Fin. Co., 92 Nev. 310, 313, 550 P.2d 413 (Nev. 1976)(legal
22 interest); McCall v. Carlson, 63 Nev. 390, 406-07, 172 P.2d 171 (Nev. 1946)(equitable interest).

23 _____
24 ¹ NRS 107.080(5) was amended to change "may" to "must," effective October 1, 2011. 2011 Nev. Stat., ch. 81,
A.B. 284, § 5 at 334. The October 1, 2011 amendment only applies "to a notice of default and election to sell which
25 is recorded on or after July 1, 2011." See A.B. 284. Here, the version of NRS 107.080(5) using the word "may"
applies because the Notice of Default and Election to Sell Pursuant to the Deed of Trust was recorded on April 14,
2011.

26 ² NRS 107.080(5)(b) was amended to change the 90 days to 45 days, effective October 1, 2013. 2013 Nev. Stat., ch.
403, SB 321, § 5 at 2197.

27 ³ NRS 107.080(5)(c) was amended to change the 30 days to 15 days, effective October 1, 2013. 2013 Nev. Stat., ch.
28 403, SB 321, § 5 at 2197.

1 As such, once the sale is completed, title vests in the purchaser without equity or right of
2 redemption. See 107.080(5); see also Michniak v. Argent Mortg. Co., LLC, 2012 WL 6588912
3 (unpublished)(Nev. Dec. 14, 2012).

4 7. A party cannot challenge a nonjudicial foreclosure sale outside of the time limits
5 provided in NRS 107.080(5)-(6). See Bldg. Energetix Corp. v. EHE, LP, 129 Nev. Adv. Op. 6,
6 294 P.3d 1228, 1234 (2013) ("NRS 107.080(5)(a)-(c) and NRS 107.080(6) enumerate the limited
7 instances in which a nonjudicial foreclosure sale may be made void"); Kim v. Kearney, 838 F.
8 Supp. 2d 1077 (D. Nev. 2012) (dismissing plaintiff's quiet title complaint because plaintiff failed
9 to file an action to set aside the sale within ninety days of the date of sale), aff'd, ____ Fed. Appx.
10 ____, 2013 WL 6172290 (9th Cir. Nov. 26, 2013); Michniak v. Argent Mortg. Co., LLC, 2012 WL
11 6588912 (Nev. December 14, 2012) ("The title set forth in the trustee's deed upon sale was
12 conclusive and beyond challenge once the time period set forth in NRS 107.080 had lapsed. The
13 trustee's deed upon sale conclusively vested title in the purchaser, and as a matter of law
14 appellant's claim for quiet title based on wrongful foreclosure fails."); Chattem v. BAC Home
15 Loan Servicing LP, No. 2:11-CV-01727-KJD, 2012 WL 4795663 (D. Nev. Oct. 9, 2012)
16 (dismissing action to set aside foreclosure sale where action was commenced 109 days after the
17 foreclosure sale in violation of NRS 107.080(5)); Guertin v. OneWest Bank, FSB, 2:11-CV-
18 1531 JCM, 2012 WL 3133736 (D. Nev. July 31, 2012) (dismissing claims for statutorily
19 defective foreclosure and quiet title where action was not brought within ninety days of sale);
20 Willis v. Federal Nat. Mortg. Ass'n, 512 Fed. Appx. 723, 2013 WL 1150755 (9th Cir. 2013)
21 (upholding the district court's dismissal of plaintiffs' quiet title claim because plaintiffs did not
22 allege facts showing that they were not in default when defendants initiated non-judicial
23 foreclosure proceedings and further holding that, to the extent the plaintiffs sought to allege a
24 claim for wrongful foreclosure, the district court properly determined that this claim would have
25 been time-barred by the ninety day statute of limitation imposed by NRS 107.080(5)(b));
26 Haischer v. Mortgage Elec. Registration Sys., Inc., 2012 WL 4194076, at *4 (D. Nev. Sept. 17,
27 2012) (dismissing plaintiff's wrongful foreclosure claim because the plaintiff failed to file an
28 action to set aside the sale within the time constraints imposed by NRS 107.080(5)-(6)).

1 8. Thus, both the Ninth Circuit and the Nevada Supreme Court have recognized that
2 a party seeking to set aside a sale conducted pursuant to NRS Chapter 107 cannot simply choose
3 to plead its claims in such a way as to avoid having to comply with the provisions of NRS
4 107.080(5)-(6).

5 9. In rendering their decisions, both courts furthered the legislative intent behind
6 NRS 107.080(5)-(6), which was enacted to encourage the free transferability of title following
7 foreclosure sales. See Legislative History for S.B. 217 (2007) and S.B. 483 (2007)(incorporating
8 the revision to NRS Chapter 107 proposed by S.B. 217).

9 10. The 2007 amendment to NRS Chapter 107 was enacted to bring clarity to the
10 statute's provision with respect to actions brought to set aside foreclosure sales to once again
11 encourage the free transferability of title to real property following a foreclosure sale conducted
12 pursuant to NRS Chapter 107.

13 11. Here, the NRS Chapter 107 Deed of Trust Foreclosure Sale that LVDG seeks to
14 set aside was conducted on August 29, 2011. LVDG admitted that it stopped paying HOA
15 assessments on the Property in August of 2011, because of the NRS Chapter 107 Foreclosure
16 Sale. However, LVDG failed to take any action to set aside the sale until March 19, 2015 – 1,298
17 days after the NRS Chapter 107 Deed of Trust Foreclosure Sale.

18 12. Instead of taking action to protect any interest LVDG may have had in the
19 Property, LVDG elected to do nothing for years. During the three-and-a-half-year period in
20 which LVDG failed to take any action to protect its interest in the Property, the Property was
21 sold twice – once at the NRS Chapter 107 Deed of Trust Foreclosure Sale and then again on
22 September 30, 2011, to Blaha.

23 13. LVDG – who had purchased approximately 200 other properties through
24 foreclosure sales – had both the knowledge and ability to take the legal action necessary to
25 protect its \$5,200.01 investment. However, instead of complying with NRS 107.080(5)-(6) –
26 which would have prevented the Blaha Defendants from facing the potential risk of losing their
27 substantial investment in the Property – LVDG did nothing for years.

1 14. The public policy considerations that formed the basis for the Legislature's
2 enactment of NRS 107.080(5)-(6) simply do not allow LVDG to be rewarded for its failure to
3 take any action to protect its interest in the Property.

4 15. By enacting NRS 107.080(5)-(6), the Nevada Legislature expressed its intent to
5 promote the transferability of title following foreclosure sales conducted under NRS Chapter 107
6 to "provide a concrete time frame within which a plaintiff must file a lawsuit and after which a
7 defendant is afforded a level of security." See Winn v. Sunrise Hosp. & Medical Center, 128
8 Nev. Adv. Op. 23, ___, 277 P.3d 458, 465 (Nev. 2012)(citing Peterson v. Bruen, 106 Nev. 271,
9 274, 792 P.2d 18, 19 (Nev. 1990)). This public policy expression by the Nevada Legislature was
10 designed to promote the recovery of Nevada's failing real estate market following the
11 devastating foreclosure crisis by allowing new market participants (such as the LVDG) to
12 purchase properties which other property owners had either willingly abandoned or, out of the
13 extreme distress caused by our country's financial crisis, were no longer able to afford.

14 16. Here, LVDG has failed to "transcend the pleadings and, by affidavit or other
15 admissible evidence, introduce specific facts that show" that LVDG filed its Complaint within
16 120 days of first learning about the NRS Chapter 107 Deed of Trust Foreclosure Sale. Cuzze,
17 123 Nev. at 602-03, 172 P.3d at 134. Accordingly, LVDG's claims are time-barred under NRS
18 107.080(5)-(6).

19 17. Based on the above findings, the Court need not address the other legal arguments
20 raised in the Blaha Defendants' Motion for Summary Judgment.

21 18. In addition, as this ruling is dispositive of the entire case, all other pending
22 motions are now moot.

23 **NOW THEREFORE:**

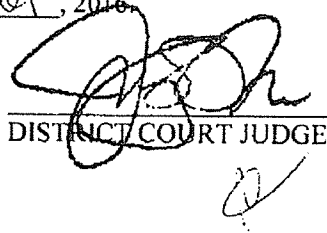
24 **SUMMARY JUDGMENT IS HEREBY ENTERED** in favor of the Defendants and
25 against the Plaintiff. This Court hereby finds that Plaintiff's Complaint is time-barred by NRS
26 107.080(5)-(6).

27 **IT IS FURTHER ORDERED** that, pursuant to NRS 14.017, the Notice of Pendency of
28 Action recorded by Plaintiff against the Property commonly known as 7639 Turquoise Stone Ct.,

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

Las Vegas, NV 89113, APN 176-10-213-042, in the Office of the Clark County Recorder as Instrument Number 201503200001999 is hereby cancelled and expunged. Said cancellation has the same effect as an expungement of the original notice.

DATED this 5th day of October, 2016.


DISTRICT COURT JUDGE

Submitted by:
KOLESAR & LEATHAM

By /s/ Brittany Wood
AARON R. MAURICE, ESQ.
Nevada Bar No. 006412
BRITTANY WOOD, ESQ.
Nevada Bar No. 007562
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Attorneys for Defendants JAMES R. BLAHA
and NOBLE HOME LOANS, INC.
formerly known as FCH FUNDING, INC.

Approved as to form:
LAW OFFICES OF KEVIN R. HANSEN

Approved as to form:
AKERMAN, LLP

/s/ Amy Wilson
KEVIN R. HANSEN, ESQ.
Nevada Bar No. 6336
AMY WILSON, ESQ.
Nevada Bar No. 13421
5440 West Sahara Ave., Suite 206
Las Vegas, Nevada 89146
Attorney for Defendants
EZ PROPERTIES, LLC & K&L
BAXTER FAMILY LIMITED
PARTNERSHIP

/s/ William S. Habdas
DARREN BRENNER, ESQ.
Nevada Bar No. 8386
WILLIAM S. HABDAS, ESQ.
Nevada Bar No. 13138
1160 Town Center Drive, Suite 330
Las Vegas, NV 89144
Attorney for Defendants
BANK OF AMERICA, N.A. and
RECONTRUST COMPANY, N.A.

Submitted over the objection of:
ROGER P. CROTEAU & ASSOC., LTD.
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP

EXHIBIT 4

EXHIBIT 4


CLERK OF THE COURT

1 **MOT**
2 ROGER P. CROTEAU, ESQ.
3 Nevada Bar No. 4958
4 TIMOTHY E. RHODA, ESQ.
5 Nevada Bar No. 7878
6 ROGER P. CROTEAU & ASSOCIATES, LTD.
7 9120 West Post Road, Suite 100
8 Las Vegas, Nevada 89148
9 (702) 254-7775
10 (702) 228-7719 (facsimile)
11 croteaulaw@croteaulaw.com
12 *Attorney for Plaintiff*
13 **LAS VEGAS DEVELOPMENT GROUP, LLC**

DISTRICT COURT
CLARK COUNTY, NEVADA

11 LAS VEGAS DEVELOPMENT GROUP, LLC,)
12 a Nevada limited liability company,)
13)
14 Plaintiff,)
15 vs.)
16)
17 JAMES R. BLAHA, an individual; BANK OF)
18 AMERICA, NA, a National Banking)
19 Association, as successor by merger to BAC)
20 HOME LOANS SERVICING, LP;)
21 RECONTRUST COMPANY NA, a Texas)
22 corporation; JOSE PEREZ, JR. an individual;)
23 EZ PROPERTIES, LLC, a Nevada limited)
24 liability company; K&L BAXTER FAMILY)
25 LIMITED PARTNERSHIP, a Nevada limited)
26 partnership; FCH FUNDING, INC, an unknown)
27 corporate entity; DOE individuals I through)
28 XX; and ROE CORPORATIONS I through)
29 XX,)
30 Defendants.)

Case No. A-15-715532-C
Dept. No. XXX

MOTION TO ALTER OR AMEND JUDGMENT; FOR
RECONSIDERATION; AND FOR CLARIFICATION

COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through
its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its Motion to
Alter or Amend Judgment; for Reconsideration; and for Clarification. This Motion relates to this

1 Court's Order Granting James R. Blaha and Noble Home Loan, Inc.'s Motion for Summary
2 Judgment and all Joinders thereto dated October 5, 2016. This Motion is based upon the
3 attached Memorandum of Points and Authorities, N.R.C.P. 59, all papers and pleadings on file
4 herein, and on those facts adduced by the Court at the hearing of this matter.

5 DATED this 11th day of October, 2016.

6 ROGER P. CROTEAU & ASSOCIATES, LTD.

7
8 /s/ Timothy E. Rhoda
9 ROGER P. CROTEAU, ESQ.
10 Nevada Bar No. 4958
11 TIMOTHY E. RHODA, ESQ.
12 Nevada Bar No. 7878
13 9120 West Post Road, Suite 100
14 Las Vegas, Nevada 89148
15 (702) 254-7775
16 *Attorney for Plaintiff*
17 LAS VEGAS DEVELOPMENT GROUP, LLC

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **STATEMENT OF THE FACTS**

20 At issue herein is real property commonly known as 7639 Turquoise Stone Court, Las
21 Vegas, Nevada 89113, Assessor Parcel No. 176-10-213-042 (*the "Property"*). Bank of
22 America, N.A. ("*BANA*") formerly held a deed of trust recorded against the Property in the
23 Official Records of the Clark County Recorder as Instrument No. 200703280002128 ("*First*
24 *Deed of Trust*"). Plaintiff is the rightful owner of the Property, having purchased all right, title
25 and interest in it at an HOA Foreclosure Sale dated April 12, 2011. Pursuant to N.R.S.
26 §116.3116 *et seq.* as interpreted by the Nevada Supreme Court in the matter of *SFR Investments*
27 *Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408, 2014 WL 4656471 (Adv. Op. No.
28 75, Sept. 18, 2014), the HOA Foreclosure Sale served to extinguish the then-existing First Deed
of Trust pursuant to Nevada law, rendering it null and void.

Notwithstanding the extinguishment of its security interest, BANA purported to foreclose
upon the Property on August 29, 2011. Defendant, EZ Properties, LLC ("*EZ Properties*")
purported to purchase the Property at BANA's foreclosure sale. Thereafter, on or about

1 September 30, 2011, EZ Properties purported to transfer the Property to James R. Blaha
2 (“Blaha”). However, because BANA possessed no valid security interest upon which to
3 foreclose, its foreclosure sale was void and ineffective. It naturally follows that any and all
4 subsequent transfers of the Property were also void and that Plaintiff remains the rightful owner
5 of the Property.

6 On August 9, 2016, Defendants, James Blaha and Noble Home Loans, Inc., filed a
7 Motion for Summary Judgment (“Blaha MSJ”) herein. The Blaha MSJ specifically provided as
8 follows:

9 To limit this Court’s burden in considering the legal arguments advanced in this
10 Motion, the Blaha Defendants have refrained from addressing any of the defects
with regard to the HOA Sale under state law unrelated to the untimeliness of the
Complaint.

11 Blaha MSJ, p. 4, fn. 2. The Plaintiff relied upon this statement and, in fact, in its Opposition
12 specifically stated as follows:

13 Although the Defendants recite certain factual allegations and attach certain
14 exhibits that appear to be directed towards such arguments, they expressly state
15 that their Motion is limited to the issues related to the purported untimeliness of
the Plaintiff’s Complaint. As a result, the collateral issues will not be discussed
herein.

16 Opposition to Blaha MSJ, p. 9, ll. 20-23.

17 On August 16, 2016, Defendants, EZ Properties and K&L Baxter Family Limited
18 Partnership filed a Joinder to the Blaha MSJ. On the same date, BANA and Reconstruct
19 Company filed a Joinder. Plaintiff filed its Opposition on August 26, 2016, and Blaha and
20 Noble Home Loans filed its Reply on September 6, 2016. The matter thereafter proceeded to
21 hearing on September 13, 2016.

22 At the hearing dated September 6, 2016, this Court determined that the then-existing 90
23 day limitation of NRS 107.080(5) for challenging a non-judicial foreclosure sale was applicable
24 to this action and that because the Plaintiff failed to file suit within 90 days, its action is time-
25 barred. The Court very specifically stated that because it found as such, that it was unnecessary
26 to reach any other arguments contained in the Blaha MSJ.

27 Subsequent to the hearing, on September 14, 2016, Defendant’s counsel, Brittany Wood,
28

1 emailed a proposed Order to Plaintiff's counsel. See Exhibit 1, attached hereto and incorporated
2 herein by reference. On September 20, 2016, Plaintiff's counsel responded to Ms. Wood as
3 follows:

4 I object to all of the legal analysis that Weiss never even addressed. He actually
5 stated that he did not need to reach any of the collateral issues as he found that the
6 six month statute of limitation of 107 applied. All of your collateral legal
determinations were not reached by the Judge, please redact the order consistent
with the Judge's limited determination. Thank you.

7 See Exhibit 1. On September 21, 2016, Ms. Wood responded in part as follows:

8 Counsel for the BANA Defendants and the EZ Defendants have already provided
9 their consent. As it appears that we will be unable to agree to the form, our office
will submit the proposed findings to the court for consideration, noting your
objection.

10 See Exhibit 1, attached hereto and incorporated herein by reference. Defendant's counsel
11 thereafter submitted the Order on the same date, simply noting on the signature block that the
12 Order was submitted over the objection of Plaintiff's counsel. No effort whatsoever was made to
13 negotiate the terms of the Order. On September 30, 2016, Plaintiff's counsel faxed a letter to the
14 Court advising of the dispute and requesting a teleconference or hearing. See Exhibit 2, attached
15 hereto and incorporated herein by reference. This letter was thereafter hand-delivered to the
16 Court on October 3, 2016. On October 5, 2016, the Court entered the Order in the form
17 submitted by the Defendants.

18 LEGAL ARGUMENT

19 A. STATEMENT OF THE LAW REGARDING AMENDMENT OF ORDERS AND 20 THE REHEARING OF MOTIONS

21 When there is a reasonable probability that the court may have reached an erroneous
22 conclusion, reconsideration and rehearing of a motion is proper and may include re-argument.
23 *Geller v. McCowan*, 64 Nev. 106, 178 P.2d 380 (1947). When a motion has been denied and a
24 further hearing is sought, the proper procedure is to ask leave to renew the motion or to receive a
25 rehearing. *Murphy v. Murphy*, 64 Nev. 440, 183 P.2d 632 (1947). The primary purpose of a
26 petition for rehearing is to inform the court that it has overlooked an important argument or fact
27 or misread or misunderstood a statute, case or fact in the record. See *In re Ross*, 99 Nev. 657,
28

1 668 P.2d 1089 (1983). In a concise and non-argumentative matter, such a petition should direct
2 attention to some controlling matter which the court has overlooked or misapprehended. *Id.*

3 E.D.C.R. 2.24 provides as follows:

4 (a) No motions once heard and disposed of may be renewed in the same cause, nor
5 may the same matters therein embraced be reheard, unless by leave of the court
granted upon motion therefor, after notice of such motion to the adverse parties.

6 (b) A party seeking reconsideration of a ruling of the court, other than any order
7 which may be addressed by motion pursuant to N.R.C.P. 50(b), 52(b), 59 or 60,
must file a motion for such relief within 10 days after service of written notice of
8 the order or judgment unless the time is shortened or enlarged by order. A motion
for rehearing or reconsideration must be served, noticed, filed and heard as is any
9 other motion. A motion for reconsideration does not toll the 30-day period for
filing a notice of appeal from a final order or judgment.

10 (c) If a motion for rehearing is granted, the court may make a final disposition of
11 the cause without reargument or may reset it for reargument or resubmission or
may make such other orders as are deemed appropriate under the circumstances of
the particular case.

12 Similarly, N.R.C.P. 59 provides in pertinent part as follow:

13 **(e) Motion to Alter or Amend a Judgment.** A motion to alter or amend the
14 judgment shall be filed no later than 10 days after service of written notice of
entry of the judgment. [As amended; effective January 1, 2005.]

15 Rule 59(e) provides an opportunity, within a limited time, to seek correction at the trial
16 court level of an erroneous order or judgment, thereby initially avoiding the time and expense of
17 an appeal. *Chiara v. Belaustegui*, 86 Nev. 856, 859, 477 P.2d 857 (1970). Rule 59(e) provides
18 the remedy that, where the issues have been litigated and resolved, a motion may be made to alter
19 or amend a judgment.

20 In this case, the Court appears to have overlooked important arguments and/or
21 misunderstood the law and facts in the record. Specifically, the Court ignored the fact that the
22 entirety of BANA's foreclosure proceedings were based upon a void security interest. As a
23 result, the foreclosure of such interest could not have effected a change of title. In addition, the
24 Order that has been entered includes numerous findings of fact and conclusions of law that were
25 not addressed at the hearing of the Motion and were therefore not adjudicated. As a result, the
26 Court should alter, amend or clarify its Orders.

1 **B. STATEMENT OF THE LAW REGARDING SUMMARY JUDGMENT**

2 For purposes of this Motion, the Court was required to view the evidence in the light of
3 most favorable to the non-moving party. *Lipps v. Southern Nevada Paving*, 116 Nev. 497, 498
4 (2000). Thus, the Court was required to view the evidence in the light most favorable to the
5 Plaintiff. This required that the Court assume that the HOA Foreclosure Sale was properly
6 conducted and that it thus extinguished the First Deed of Trust as a matter of law.

7 **C. THE COURT IGNORED THE FACT THAT THE FIRST DEED OF TRUST WAS**
8 **EXTINGUISHED AS A MATTER OF LAW AND THUS VOID**

9 As discussed in Plaintiff's Opposition, an absolute nullity such as a void deed will not
10 constitute color of title, and the Statute of Limitations will not run in favor of a person under it.
11 *Nesbitt v. De Lamar's Nev. Gold Mining Co.*, 24 Nev. 273 (Nev. 1898)(Citations omitted).
12 Furthermore, a void deed will not connect a grantee with grantor's possession, nor will it
13 constitute the basis of an action. *Id.* There can be no valid correction or confirmation of a void
14 deed. 23 Am. Jur. 2d, Deeds, §287 (1965); 26 C.J.S., Deeds, §31 (1956). A void deed is invalid
15 in law for any purpose whatsoever, such as a deed to effectuate a prohibited transaction" 23 Am.
16 Jur.2d, Deeds, §137. A void deed cannot be the foundation of a good title and a bona fide
17 purchaser for value acquires no rights under it. *Marlenee v. Brown*, 21 Cal. 2d 668, 677 (Cal.
18 1943). A void deed cannot pass title even in favor of an innocent purchaser or a bona fide
19 encumbrancer for value. *First Interstate Bank v. First Wyoming Bank*, 762 P.2d 379, 382 (Wyo.
20 1988). Obviously, any deed that is based upon an invalid foreclosure of an extinguished deed of
21 trust is necessarily void.

22 In this case, the Court ignored the fact that the First Deed of Trust was voided by the
23 HOA Foreclosure Sale. As a result, it was simply impossible for the bank to conduct a valid
24 foreclosure sale based upon this security interest. Likewise, the Court ignored the fact that the
25 resulting deed in favor of EZ Properties was void. Because the Bank Foreclosure Sale was void
26 ab initio, no statute of limitations commenced running at any point in time. The void bank
27 foreclosure sale was invalid for all purposes. Quite simply, a change of title was never validly
28 effected.

1 This Court's Order effectively finds that a party may fraudulently record an invalid
2 security interest against another's real property and then proceed to foreclosure. If the property
3 owner does not complain of the invalid and fraudulent foreclosure, this Court has found that the
4 foreclosure sale based upon the fraudulent security interest shall nevertheless be valid and
5 binding against this party. This constitutes a clear error of law and the Court should thus
6 reconsider its decision. To the extent that the Court declines to reconsider its decision, it must at
7 least alter or amend its Order to comport with its actual findings at the time of the hearing.

8 **D. THE ORDER SETS FORTH VARIOUS FINDINGS THAT WERE NOT**
9 **ADDRESSED AT THE TIME OF THE HEARING AND THAT ARE**
10 **IRRELEVANT TO THE COURT'S DECISION**

11 Pursuant to its terms, the Motion at issue herein was limited in scope to the untimeliness
12 of Plaintiff's Complaint. The Motion itself states as much and the Plaintiff relied upon this
13 statement in preparing its Opposition, specifically not addressing various issues. At the hearing
14 of the matter, the Court expressly stated that it was not ruling upon the issues other than the
15 statute of limitations. This included the issues of laches and equitable estoppel. Nonetheless, the
16 Order drafted by the Defendants and submitted to the Court over the Plaintiff's objection
17 includes numerous findings which were not addressed and which are irrelevant.

18 Among the material facts which were not addressed and which are irrelevant to the
19 Court's finding regarding the statute of limitations are the following:

- 20 3. The Notice of Delinquent Assessment Lien failed to identify the amount, if
any, of an alleged super-priority lien.
- 21 5. The Notice of Default failed to identify the amount, if any, of an alleged
22 super-priority lien.
- 23 6. On September 16, 2010, counsel for BAC Home Loans Servicing
24 ("BAC") sent correspondence to Absolute Collection Services, LLC in
response to the Notice of Default and Election to Sell Under Notice of
Delinquent Assessment Lien.
- 25 7. The correspondence acknowledged . . .
- 26 8. Absolute Collection Services, LLC responded to the September 16, 2010
27 correspondence, rejecting BAC's assertion that it was entitled to tender a
28 nine-month priority payment before foreclosure by BAC, stating, in
relevant part: . . .

9. On October 27, 2010, Perez filed a Chapter 7 Bankruptcy as Case Number 10-30260-lbr.
10. On October 28, 2010, in violation of the automatic stay, Nevada Trails recorded a Notice of Trustee's Sale, asserting a delinquency in the amount of \$2,989.
11. The Notice of Trustee's Sale failed to identify the amount, if any, of an alleged super-priority lien.
12. On February 28, 2011, Nevada Trails recorded a second Notice of Trustee's Sale, asserting a delinquency in the amount of \$4,446.
13. The Notice of Trustee's Sale failed to identify the amount, if any, of an alleged super-priority lien.
14. The Notice of Trustee's Sale also failed to account for any discharge of the debt pursuant to the Perez bankruptcy.
18. On April 20, 2011, a Release of Lien was recorded, rescinding the Notice of Delinquent Assessment Lien recorded on April 12, 2010.
26. During the five months in which title to the Property was vested in the name of LVDG, LVDG spent no money improving the Property.
27. Rather, LVDG only spent \$257 maintaining the Property – paying one power bill and four HOA assessments. With regard to these expenses, LVDG testified as follows: . . .
28. LVDG never purchased homeowner's insurance for the Property.
29. In the 2010 to 2011 time-period, LVDG would frequently sell properties purchased at HOA foreclosures to lenders that asserted an interest in the property for double the amount LVDG had paid at the HOA foreclosure sale.
30. During the 2010 to 2011 time-period, LVDG determined that the cost of establishing free and clear title to all of the properties purchased by LVDG at HOA foreclosure sales was too expensive.
31. LVDG purchased approximately 200 properties at HOA foreclosure sales. As such, LVDG elected to walk away from some of its investments rather than litigate with the secured lenders. Specifically, LVDG testified: . . .
32. With regard to the Property in this litigation, LVDG did not take any steps to try to enjoin BANA from foreclosing on the Perez Deed of Trust.
33. Moreover, LVDG took no steps to prevent EZ from encumbering or selling the Property following its purchase at the NRS Chapter 107 Deed of Trust Foreclosure Sale.
35. Similarly, LVDG took no action to prevent Blaha from taking title to the Property.
36. LVDG also took no action to prevent Blaha from obtaining financing

secured by the Property.

37. After the NRS Chapter 107 Deed of Trust Foreclosure, LVDG stopped paying the HOA association fees.

38. As to the reason why LVDG stopped paying association fees, LVDG testified: . . .

39. In 2011, LVDG was aware that there was a dispute with respect to the issue of whether an HOA foreclosure sale could extinguish a prior recorded deed of trust. For this reason, LVDG retained legal counsel to send correspondence to beneficiaries of deeds of trust secured by real property that LVDG purchased at NRS Chapter 116 foreclosure sales.

40. By 2012, LVDG was represented by legal counsel in Nevada retained to actively defend LVDG's title to real property purchased by LVDG at NRS Chapter 116 foreclosure sales.

41. When asked to explain why LVDG waited until March 19, 2015, to take any action to challenge the NRS Chapter 107 Deed of Trust Foreclosure Sale, LVDG testified as follows: . . .

45. LVDG's Complaint offers no explanation as to why LVDG took no steps to stop the NRS Chapter 107 Deed of Trust Foreclosure Sale or why, immediately thereafter, LVDG did not take steps to have the NRS Chapter 107 Deed of Trust Foreclosure Sale set aside within the 90 day period provided by NRS 107.080(5)-(6).

None of these factual findings are relevant to this Court's limited determination that the Plaintiff's Complaint was barred by the time limitation of N.R.S. 107.080. As a result, they should not become the law of the case. If anything, the majority of the factual findings included by the Defendant are directed towards its claims related to laches or equitable estoppel – issues that this Court expressly found that it did not need to address.

This Court's finding was limited to a determination that the then-existing 90 day limitation of NRS 107.080(5) for challenging a non-judicial foreclosure sale was applicable to this action and that because the Plaintiff failed to file suit within 90 days, its action is time-barred. The Court very specifically stated that because it found as such, it was unnecessary to reach any other arguments contained in the Blaha MSJ. This included the arguments related to laches and equitable estoppel. The Court certainly did not make any findings that the HOA Foreclosure Sale was invalid. Under such circumstances, all of the factual circumstances that may have occurred or not occurred prior to the Bank Foreclosure Sale are simply irrelevant.

The instant Order goes far beyond the findings that this Court made at the time of the

1 subject hearing. If not amended, the irrelevant findings that are presently included in the Order
2 will convolute this matter on appeal. Moreover, on remand, the Defendants will certainly argue
3 that the findings constitute the law of the case. This is clearly inappropriate because the Plaintiff
4 did not address the majority of the claimed facts in reliance upon the Defendant's express
5 statement that its Motion was limited to the untimeliness of the Plaintiff's Complaint. The Order
6 must be amended to exclude all findings of fact that are irrelevant to the Court's findings and
7 upon which its ultimate determination that the Plaintiff's claims are barred by N.R.S. 107.080
8 was necessarily not based.

9 **E. THE ORDER ALSO INCLUDES CONCLUSIONS OF LAW WHICH ARE**
10 **INAPPROPRIATE**

11 In addition to the numerous factual findings that are inappropriately included in the
12 Order, certain conclusions of law are likewise inappropriate based upon the Court's limited
13 finding. These include the following:

- 14 11. Here, the NRS Chapter 107 Deed of Trust Foreclosure Sale that LVDG
15 seeks to set aside was conducted on August 29, 2011. LVDG admitted
16 that it stopped paying HOA assessments on the Property in August of
17 2011, because of the NRS Chapter 107 Foreclosure Sale. However,
18 LVDG failed to take any action to set aside the sale until March 19, 2015 –
19 1,298 days after the NRS Chapter 107 Deed of Trust Foreclosure Sale.
- 20 12. Instead of taking action to protect any interest LVDG may have had in the
21 Property, LVDG elected to do nothing for years. During the three-and-a-
22 half-year period in which LVDG failed to take any action to protect its
23 interest in the Property, the Property was sold twice – once at the NRS
24 Chapter 107 Deed of Trust Foreclosure Sale and then again on September
25 30, 2011, to Blaha.
- 26 13. LVDG – who had purchased approximately 200 other properties through
27 foreclosure sales – had both the knowledge and ability to take legal action
28 necessary to protect its \$5,200.01 investment. However, instead of
complying with NRS 107.080(5)-(6) which would have prevented the
Blaha Defendants from facing the potential risk of losing their substantial
investment in the Property – LVDG did nothing for years.
- 14 14. The public policy considerations that formed the basis for the Legislature's
15 enactment of NRS 107.080(5)-(6) simply do not allow LVDG to be
16 rewarded for its failure to take any action to protect its interest in the
17 Property.

18 Each of these conclusions of law are at least partly inappropriate in that they are directed towards
19 Defendants' claims related to laches and/or equitable estoppel – issues that were not reached by

1 the Court. Moreover, each of the conclusions are erroneous in that they ignore the fact that the
2 Bank Foreclosure Sale was void as a matter of law. Each conclusion of law should be amended
3 to comport with this Court's limited decision.

4 **F. THE DEFENDANT NEVER MOVED TO CANCEL OR EXPUNGE PLAINTIFF'S**
5 **LIS PENDENS**

6 As an afterthought, the Defendants included in the Order a provision providing that the
7 Plaintiff's Lis Pendens that was recorded against the Property in association with this action shall
8 be canceled and expunged. This is the case despite the fact that the Defendant's Motion did not
9 even mention the Lis Pendens. Because the Lis Pendens was not even mentioned, the Plaintiff
10 obviously had no opportunity to argue whether or not it should be canceled and/or expunged
11 pending appeal. Under such circumstances, it was inappropriate for such relief to be included in
12 the Order.

13 Unless the Court reconsiders and reverses its Order as requested above, the Order will be
14 appealed. In the event that the Property is transferred or sold pending the resolution of the
15 appeal, additional innocent parties may be caused to suffer damages. If necessary, the Plaintiff
16 will seek relief staying the transfer or sale of the Property from the Nevada Supreme Court.
17 However, because the Defendants did not even request relief related to the Lis Pendens in its
18 Motion, it is wholly inappropriate for such relief to have been granted.

19 **CONCLUSION**

20 For the reasons set forth herein, this Court should alter or amend, reconsider and/or
21 clarify its Orders entered herein on October 5, 2016. Said Order misinterprets both the facts and
22 the law of this case. Most importantly, the Court ignored the fact that the security interest upon
23 which BANA foreclosed was void as a matter of law. Finding that the foreclosure of such a void
24 security interest was nonetheless valid and effective because the Plaintiff did not object – at any
25 point in time – is contrary to the law. It is simply impossible for a void transaction to result in a
26 valid transfer of title.

27 In the event that the Court is not inclined to reconsider its Order, the Order must at least
28 be amended to comport with the Court's findings and ruling at the hearing. This requires the

1 removal of the various findings of fact and conclusions of law that were and are irrelevant to the
2 Court's ruling and which the Court did not reach pursuant to its decision. In addition, the Order
3 must be amended to remove reference to the Plaintiff's Lis Pendens. The Defendant did not even
4 request any form of relief in its Motion related to said Lis Pendens. It is not appropriate for the
5 Order to grant relief which was neither requested nor for which any argument was had.

6 DATED this 11th day of October, 2016.

7 ROGER P. CROTEAU & ASSOCIATES, LTD.

8
9 /s/ Timothy E. Rhoda
10 ROGER P. CROTEAU, ESQ.

11 Nevada Bar No. 4958

12 TIMOTHY E. RHODA, ESQ.

13 Nevada Bar No. 7878

14 9120 West Post Road, Suite 100

15 Las Vegas, Nevada 89148

16 (702) 254-7775

17 *Attorney for Plaintiff*

18 **LAS VEGAS DEVELOPMENT GROUP, LLC**
19
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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD. and that on the 11th day of October, 2016, I caused a true and correct copy of the foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Eighth Judicial District Court's Odyssey e-file and serve system.

Akerman LLP

Contact

Akerman Las Vegas Office

Darren T. Brenner, Esq.

William S. Habdas, Esq.

Email

akermanlas@akerman.com

darren.brenner@akerman.com

William.Habdas@akerman.com

Kolesar and Leatham

Contact

Aaron R. Maurice

Brittany Wood

Susan A. Owens

Email

amaurice@klnevada.com

bwood@klnevada.com

sowens@klnevada.com

Law Offices of Kevin R Hansen

Contact

Kevin R. Hanesn, Esq

Email

kevin@kevinrhansen.com

The Law Offices of Kevin R Hansen

Contact

Gabriela Mercado, Paralegal

Email

gabriela@kevinrhansen.com

— VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

— VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated on the service list below.

— VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda

An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.

EXHIBIT 1

EXHIBIT 1

Tim Rhoda

From: Brittany Wood <bwood@klnevada.com>
Sent: Friday, September 30, 2016 11:07 AM
To: Roger Croteau
Cc: Tim Rhoda
Subject: RE: Las Vegas Development Group v. Blaha - A715532 (7639 Turquoise Stone)

As stated previously, Judge Wiese agreed with the arguments that were advanced in the Motion for Summary Judgment related to the statute of limitations defense. The proposed order only included the legal authority that was cited in support of the statute of limitation argument. In addition, Conclusion of Law No. 17 specifically states that "the Court need not address the other legal arguments raised in the Blaha Defendants' Motion for Summary Judgment." As I advised on September 2, 2016, Counsel for the BANA Defendants and the EZ Defendants provided their consent to the order. Because we were unable to agree to the form, our office submitted the proposed findings to the court for consideration, noting your objection.

Brittany Wood, Esq.
Shareholder



ATTORNEYS AT LAW

P: 702.362.7800 F: 702.362.9472
Web: www.klnevada.com Bio: [Attorney Bio](#)
400 S. Rampart Blvd. | Suite 400 | Las Vegas | NV 89145

This communication (including any attachments) is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, any use of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately.

From: Roger Croteau [mailto:rcroteau@croteaulaw.com]
Sent: Friday, September 30, 2016 10:54 AM
To: Brittany Wood
Cc: Tim Rhoda
Subject: RE: Las Vegas Development Group v. Blaha - A715532 (7639 Turquoise Stone)

Brittany:

My objections are to the entire premise of the Order. The Judge did not decide the issues that the Order provides, it is really that simple. He specifically stated that he need not address any other issue as the SOL argument was dispositive of the entire case. So if you wish me to redact all of the language contrary to the foregoing, I will but I consider it busy work as I am not negotiating word usage or other changes.

Thank you

Roger

From: Brittany Wood [mailto:bwood@knevada.com]
Sent: Wednesday, September 21, 2016 2:10 PM
To: Roger Croteau <rcroteau@croteaulaw.com>
Cc: Tim Rhoda <tim@croteaulaw.com>; amy@kevinrhansen.com; william.habdas@akerman.com
Subject: RE: Las Vegas Development Group v. Blaha - A715532 (7639 Turquoise Stone)

Roger:

The order was provided to your office in Word to allow you to make proposed redline changes. Your generic objection to the findings is not supported by the record. Judge Wiese agreed with the arguments that were advanced in the Motion for Summary Judgment related to the statute of limitations defense. The proposed order includes the legal authority that was cited in support of those arguments. As Judge Wiese agreed to grant the Motion for Summary Judgment on that basis, it is clear that he read and agreed with the authority cited by the Blaha Defendants.

In addition, conclusions of law are limited to the statute of limitations defense so I cannot determine which of the proposed conclusions of law you believe raise "collateral" issues. Conclusion of Law No. 17 specifically states that "the Court need not address the other legal arguments raised in the Blaha Defendants' Motion for Summary Judgment."

Counsel for the BANA Defendants and the EZ Defendants have already provided their consent. As it appears that we will be unable to agree to the form, our office will submit the proposed findings to the court for consideration, noting your objection.

Brittany Wood, Esq.
Shareholder



ATTORNEYS AT LAW

P: 702.362.7800 F: 702.362.9472
Web: www.knevada.com Bio: [Attorney Bio](#)
400 S. Rampart Blvd. | Suite 400 | Las Vegas | NV 89145

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From: Roger Croteau [mailto:rcroteau@croteaulaw.com]
Sent: Tuesday, September 20, 2016 5:28 PM
To: Brittany Wood
Cc: Tim Rhoda
Subject: RE: Las Vegas Development Group v. Blaha - A715532 (7639 Turquoise Stone)

Brittany:

I object to all of the legal analysis that Weiss never even addressed. He actually stated that he did not need to reach any of the collateral issues as he found that the six month statute of limitation of 107 applied. All of your collateral legal

determinations were not reached by the Judge, please redact the order consistent with the Judge's limited determination. Thank you.

Roger

From: Tim Rhoda

Sent: Tuesday, September 20, 2016 5:22 PM

To: Roger Croteau <rcroteau@croteaulaw.com>

Subject: FW: Las Vegas Development Group v. Blaha - A715532 (7639 Turquoise Stone)

From: Brittany Wood [<mailto:bwood@knevada.com>]

Sent: Wednesday, September 14, 2016 4:51 PM

To: Tim Rhoda; amy@kevinrhansen.com; william.habdas@akerman.com

Subject: Las Vegas Development Group v. Blaha - A715532 (7639 Turquoise Stone)

This message was sent securely using ZixCorp.

Counsel:

Attached please find the proposed Findings of Fact and Conclusions of Law with respect to the Motion for Summary Judgment in the above-matter.

Please let me know if you approve of the form by September 19, 2016.

Thank you,

Brittany Wood, Esq.

Shareholder



ATTORNEYS AT LAW

P: 702.362.7800 F: 702.362.9472

Web: www.knevada.com Bio: [Attorney Bio](#)

400 S. Rampart Blvd. | Suite 400 | Las Vegas | NV 89145

This communication (including any attachments) is not intended or written to be used, and it cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

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This message was secured by **ZixCorp^(R)**.

EXHIBIT 2

EXHIBIT 2

ROGER P. CROTEAU & ASSOCIATES, LTD.

Roger P. Croteau, Esq.*
Timothy E. Rhoda, Esq.**
Robert Linder, Esq.

A PROFESSIONAL CORPORATION
9120 W. Post Road, Suite 100
Las Vegas, Nevada 89148

Telephone: (702) 254-7775
Facsimile: (702) 228-7719

croteaulaw@croteaulaw.com

Paralegals
Brian Braud
Kristi Hewes
Mindy Keck

Legal Assistants
Shirin Weisman

*Also Licensed in Massachusetts
**Also Licensed in Illinois

September 30, 2016

VIA FACSIMILE (702) 366-1409
AND HAND DELIVERY

The Honorable Jerry A. Wiese II
Regional Justice Center, Dept. 30
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: Las Vegas Development Group, LLC v. James Blaha
Case No. A-15-715532-C

Dear Judge Wiese:

As you know, this office represents the Plaintiff in the above-referenced litigation. I am writing to you regarding the Order related to the hearing of Defendants, James Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment that was held on September 13, 2016. It is my understanding that a proposed Order related to this hearing has been submitted to you over my objection.

Subsequent to the hearing, Defendant's counsel, Brittany Wood, emailed a proposed Order to me on September 14, 2016. On September 20, 2016, I responded to Ms. Wood as follows:

I object to all of the legal analysis that Weiss never even addressed. He actually stated that he did not need to reach any of the collateral issues as he found that the six month statute of limitation of 107 applied. All of your collateral legal determinations were not reached by the Judge, please redact the order consistent with the Judge's limited determination. Thank you.

On September 21, 2016, Ms. Wood responded in part as follows:

Counsel for the BANA Defendants and the EZ Defendants have already provided their consent. As it appears that we will be unable to agree to the form, our office will submit the proposed findings to the court for consideration, noting your objection.

The Honorable Jerry A. Wiese II

Re: *Las Vegas Development Group, LLC v. James Blaha*

September 30, 2016

Page 2

It is my understanding that Ms. Wood's office thereafter submitted the Order on the same date, simply noting on my signature block that the Order was submitted over my objection.

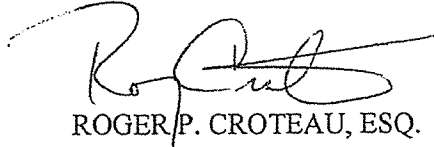
It is my position and belief that the Order that has been submitted for your signature far exceeds the scope of your ruling. Indeed, at the time of the hearing, you very specifically stated that the Court need not address any other issue as the statute of limitation argument was dispositive of the entire case. Under such circumstances, the inclusion of the numerous other matters in the 14-page order are inappropriate. Quite simply, the Court did not address nor rule upon the vast majority of these issues.

I find it to be unfortunate that counsel made no effort whatsoever to amicably resolve the dispute related to this Order before simply submitting her preferred version to the Court. The proposed Order is inappropriate and will confuse the matter upon appeal with numerous issues that were not addressed or ruled upon. I thus respectfully request that the Order be limited to those matters that were, in fact, addressed and ruled upon at the time of the subject hearing.

I wholly respect the Court's ruling on this matter; however, it is imperative that the Order that is ultimately entered accurately reflect such ruling. I prefer to amicably resolve this matter rather than cause the parties to incur the cost and expense of additional motion practice to clarify or amend the Order. If the Court deems it appropriate, I would greatly appreciate the scheduling of a short conference call or hearing to attempt to resolve these issues. Thank you for your time and attention. If you have any questions or need any further information, please do not hesitate to contact this office.

Very truly yours,

ROGER P. CROTEAU
& ASSOCIATES, LTD.



ROGER P. CROTEAU, ESQ.

cc: Brittany Wood (bwood@klnevada.com)
William Habdas (william.habdas@akerman.com)
Amy M. Wilson (amy@kevinhansen.com)

Send Result Report

MFP

FS-C2126MFP



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ROGER P. CRÓTEAU & ASSOCIATES, LTD.

Roger P. Croteau, Esq.*
Timothy E. Rhoda, Esq.**
Robert Linder, Esq.

A PROFESSIONAL CORPORATION
9120 W. Post Road, Suite 100
Las Vegas, Nevada 89148

Telephone: (702) 254-7775
Facsimile: (702) 228-7719

Paralegals
Brian Braud
Kristi Hewes
Mindy Keck

Legal Assistants
Shirley Weisman

*Also Licensed in Massachusetts
**Also Licensed in Illinois

croteaulaw@croteaulaw.com

September 30, 2016

VIA FACSIMILE (702) 366-1409
AND HAND DELIVERY

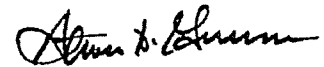
The Honorable Jerry A. Wiese II
Regional Justice Center, Dept. 30
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: Las Vegas Development Group, LLC v. James Blaha

No.	Date and Time	Destination	Times	Type	Result	Resolution/ECH
001	09/30/16 12:00	7023661409	0'00'19"	FAX	OK	200x100 Normal/On

EXHIBIT 5

EXHIBIT 5



CLERK OF THE COURT

1 **ORDD**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendants,

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 * * *

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

14 Plaintiff,

15 vs.

16 JAMES R. BLAHA, an individual; BANK OF
17 AMERICA, NA, a National Banking
18 Association, as successor by merger to BAC
HOME LOANS SERVICING, LP;
19 RECONTRUST COMPANY NA, a Texas
corporation; JOSE PEREZ, JR. an individual;
20 EZ PROPERTIES, LLC, a Nevada limited
liability company; K&L BAXTER FAMILY
21 LIMITED PARTNERSHIP, a Nevada limited
partnership; FCH FUNDING, INC., an
22 unknown corporate entity; DOE individuals I
through XX; and ROE CORPORATIONS I
23 through XX,

24 Defendants.

CASE NO. A-15-715532-C

DEPT NO. XXX

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGMENT; FOR
RECONSIDERATION; AND FOR
CLARIFICATION**

25 Plaintiff Las Vegas Development Group, LLC's Motion to Alter or Amend Judgment;
26 for Reconsideration; and for Clarification having come on for hearing on the 15th day of
27 November, 2016, James R. Blaha and Noble Home Loans, Inc. (collectively the "Blaha
28 Defendants") having appeared through their attorney of record, Aaron R. Maurice, of the law

1 firm of Kolesar & Leatham; Plaintiff, Las Vegas Development Group, LLC ("LVDG"), having
2 appeared through its attorney of record, Roger P. Croteau, of the law firm of Roger P. Croteau &
3 Assoc., Ltd.; the BANA Defendants having appeared through their attorney of record, Melanie
4 D. Morgan, of the law firm of Akerman, LLP; and the EZ Defendants having appeared through
5 their attorney of record, Amy Wilson, of the Law Offices of Kevin R. Hansen; the Court having
6 reviewed the papers and pleadings on file herein and having carefully considered the same; the
7 Court having heard the oral arguments of counsel; the Court being fully advised in the premises,
8 and good cause appearing therefore:

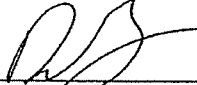
9 IT IS HEREBY ORDERED that Plaintiff's Motion to Alter or Amend Judgment is
10 DENIED.

11 DATED this 28 day of November, 2016.

12 
13 _____
14 DISTRICT COURT JUDGE
15 EB

14 Submitted by:

15 KOLESAR & LEATHAM

16 By 
17 _____
18 AARON R. MAURICE, ESQ.
19 Nevada Bar No. 006412
20 RYAN T. GORMLEY, ESQ.
21 Nevada Bar No. 013494
22 400 South Rampart Boulevard, Suite 400
23 Las Vegas, Nevada 89145

24 Attorneys for Defendants, JAMES R. BLAHA
25 and NOBLE HOME LOANS, INC. formerly
26 known as FCH FUNDING, INC.
27
28

EXHIBIT 6

EXHIBIT 6


CLERK OF THE COURT

1 **NEOJ**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendants,

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 * * *

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

15 Plaintiff,

16 vs.

17 JAMES R. BLAHA, an individual; BANK OF
18 AMERICA, NA, a National Banking
Association, as successor by merger to BAC
19 HOME LOANS SERVICING, LP;
RECONTRUST COMPANY NA, a Texas
20 corporation; JOSE PEREZ, JR. an individual;
EZ PROPERTIES, LLC, a Nevada limited
21 liability company; K&L BAXTER FAMILY
LIMITED PARTNERSHIP, a Nevada limited
22 partnership; FCH FUNDING, INC., an
unknown corporate entity; DOE individuals I
through XX; and ROE CORPORATIONS I
through XX,

23 Defendants.
24
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CASE NO. A-15-715532-C

DEPT NO. XXX

NOTICE OF ENTRY OF ORDER

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
TEL: (702) 362-7800 / FAX: (702) 362-9472

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
TEL: (702) 362-7800 / FAX: (702) 362-9472

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NOTICE OF ENTRY OF ORDER

Please take notice that an Order was entered with the above court on the 30th day of November, 2016, a copy of which is attached hereto.

DATED this 1st day of December, 2016.

KOLESAR & LEATHAM

By Aaron R. Maurice

AARON R. MAURICE, ESQ.

Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

Nevada Bar No. 007562

400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

Attorneys for Defendants,

JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

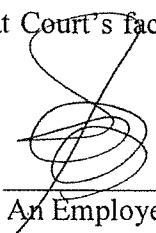
FUNDING, INC.

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CERTIFICATE OF SERVICE

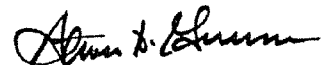
I hereby certify that I am an employee of Kolesar & Leatham, and that on the 1st day of December, 2016, I caused to be served a true and correct copy of foregoing NOTICE OF ENTRY OF ORDER in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities to those parties listed on the Court's Master Service List.



An Employee of KOLESAR & LEATHAM

KOLESAR & LEATHAM
400 S. Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
TEL: (702) 362-7800 / FAX: (702) 362-9472



CLERK OF THE COURT

1 **ORDD**

AARON R. MAURICE, ESQ.

2 Nevada Bar No. 006412

BRITTANY WOOD, ESQ.

3 Nevada Bar No. 007562

KOLESAR & LEATHAM

4 400 South Rampart Boulevard, Suite 400

Las Vegas, Nevada 89145

5 Telephone: (702) 362-7800

Facsimile: (702) 362-9472

6 E-Mail: amaurice@klnevada.com

bwood@klnevada.com

7 Attorneys for Defendants,

8 JAMES R. BLAHA and NOBLE HOME

LOANS, INC. formerly known as FCH

9 FUNDING, INC.

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 * * *

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

14 Plaintiff,

15 vs.

16 JAMES R. BLAHA, an individual; BANK OF
17 AMERICA, NA, a National Banking
18 Association, as successor by merger to BAC
HOME LOANS SERVICING, LP;
19 RECONTRUST COMPANY NA, a Texas
corporation; JOSE PEREZ, JR. an individual;
20 EZ PROPERTIES, LLC, a Nevada limited
liability company; K&L BAXTER FAMILY
21 LIMITED PARTNERSHIP, a Nevada limited
partnership; FCH FUNDING, INC., an
22 unknown corporate entity; DOE individuals I
through XX; and ROE CORPORATIONS I
23 through XX,

24 Defendants.

CASE NO. A-15-715532-C

DEPT NO. XXX

**ORDER DENYING PLAINTIFF'S
MOTION TO ALTER OR AMEND
JUDGMENT; FOR
RECONSIDERATION; AND FOR
CLARIFICATION**

25 Plaintiff Las Vegas Development Group, LLC's Motion to Alter or Amend Judgment;
26 for Reconsideration; and for Clarification having come on for hearing on the 15th day of
27 November, 2016, James R. Blaha and Noble Home Loans, Inc. (collectively the "Blaha
28 Defendants") having appeared through their attorney of record, Aaron R. Maurice, of the law

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 firm of Kolesar & Leatham; Plaintiff, Las Vegas Development Group, LLC ("LVDG"), having
2 appeared through its attorney of record, Roger P. Croteau, of the law firm of Roger P. Croteau &
3 Assoc., Ltd.; the BANA Defendants having appeared through their attorney of record, Melanie
4 D. Morgan, of the law firm of Akerman, LLP; and the EZ Defendants having appeared through
5 their attorney of record, Amy Wilson, of the Law Offices of Kevin R. Hansen; the Court having
6 reviewed the papers and pleadings on file herein and having carefully considered the same; the
7 Court having heard the oral arguments of counsel; the Court being fully advised in the premises,
8 and good cause appearing therefore:

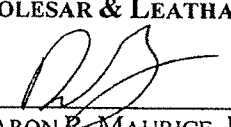
9 IT IS HEREBY ORDERED that Plaintiff's Motion to Alter or Amend Judgment is
10 DENIED.

11 DATED this 28 day of November, 2016.

12
13 
14 DISTRICT COURT JUDGE
15 EB

14 Submitted by:

15 KOLESAR & LEATHAM

16 By 
17 AARON R. MAURICE, ESQ.
18 Nevada Bar No. 006412
19 RYAN T. GORMLEY, ESQ.
20 Nevada Bar No. 013494
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

21 Attorneys for Defendants, JAMES R. BLAHA
22 and NOBLE HOME LOANS, INC. formerly
23 known as FCH FUNDING, INC.
24
25
26
27
28

1 ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
2 TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
3 ROGER P. CROTEAU & ASSOCIATES, LTD.
9120 West Post Road, Suite 100
4 Las Vegas, Nevada 89148
(702) 254-7775
5 (702) 228-7719 (facsimile)
croteaulaw@croteaulaw.com
6 *Attorney for Appellant*
LAS VEGAS DEVELOPMENT GROUP, LLC
7

Electronically Filed
Dec 14 2016 11:03 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

8
9
10 IN THE SUPREME COURT OF THE STATE OF NEVADA
11

12 ***

13 LAS VEGAS DEVELOPMENT GROUP, LLC,)
a Nevada limited liability company,)
14 Appellant,)
15 vs.)
16 JAMES R. BLAHA, an individual; BANK OF)
AMERICA, NA, a National Banking)
17 Association, as successor by merger to BAC)
HOME LOANS SERVICING, LP;)
18 RECONTRUST COMPANY NA, a Texas)
corporation; EZ PROPERTIES, LLC, a Nevada)
19 limited liability company; K&L BAXTER)
FAMILY LIMITED PARTNERSHIP, a Nevada)
20 limited partnership; FCH FUNDING, INC, an)
unknown corporate entity,)
21 Respondents.)

Supreme Court No. 71875

District Court Case No. A-15-715532-C

22 **DOCKETING STATEMENT**
23

24 1. Judicial District: Eighth Department: XXX
County: Clark Judge: The Honorable Jerry A. Wiese II
25 District Court Docket No. A-15-715532-C
26
27
28

1 **2. Attorney filing this docket statement:**

2 Roger P. Croteau, Esq.
3 Timothy E. Rhoda, Esq.
4 Roger P. Croteau & Associates, Ltd.
5 9120 West Post Road, Suite 100
6 Las Vegas, Nevada 89148
7 (702) 254-7775 (telephone)
8 *Attorney for Appellant*
9 *Las Vegas Development Group, LLC*

10 **3. Attorney representing Respondents:**

11 A. JAMES R. BLAHA and NOBLE HOME LOANS f/k/a FCH FUNDING

12 Aaron A. Maurice, Esq.
13 Brittany Wood, Esq.
14 Kolesar & Leatham
15 400 Rampart Boulevard, Suite 400
16 Las Vegas, Nevada 89145
17 (702) 362-7800

18 B. BANK OF AMERICA, NA, as successor by merger to BAC HOME LOANS
19 SERVICING, LP and RECONTRUST COMPANY NA

20 Darren T. Brenner, Esq.
21 William S. Habdas, Esq.
22 Akerman, LLP
23 1160 Town Center Drive, Suite 330
24 Las Vegas, Nevada 89144
25 (702) 634-5000

26 C. EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED
27 PARTNERSHIP

28 Kevin R. Hansen, Esq.
Law Offices of Kevin R. Hansen
5440 West Sahara Avenue, Suite 206
Las Vegas, Nevada 89146
(702) 478-7777

4. Nature of disposition below:

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify) _____ |

- ☐ Grant/denial of injunction ☐ Divorce decree:
☐ Grant/denial of declaratory relief ☐ Original ☐ Modification
☐ Review of agency determination
☐ Other disposition (specify): _____

5. Does this appeal raise issues concerning any of the following:

- ☐ Child custody
☐ Venue
☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal: **None**

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: **None**

8. Nature of action. Briefly describe the nature of the action and the result below:

The action is primarily a quiet title action related to real property that was the subject of a HOA lien foreclosure sale pursuant to NRS Chapter 116. Plaintiff purchased the property at the HOA lien foreclosure sale and asserts that said sale served to extinguish any and all deeds of trust previously secured by the property. Notwithstanding the extinguishment of the deed of trust, the applicable Defendants thereafter caused a foreclosure sale based upon the deed of trust to take place, purportedly selling the property to a third party and divesting the Plaintiff of ownership of the property. Plaintiff contends that because the deed of trust was extinguished as a matter of law, the bank's foreclosure sale and all transfers of the property that occurred thereafter were unauthorized, void and ineffective. As a result, Plaintiff asserts that it remains the owner of the property free and clear of any interests of the Defendants.

On August 9, 2016, Defendants, James Blaha and Noble Home Loans, Inc., filed a Motion for Summary Judgment, asserting that Plaintiff's claims are barred by the statute

of limitations of NRS 107.080(5)-(6). The remaining Defendants joined in said Motion. Plaintiff asserted the statute of limitations is inapplicable because the bank's foreclosure sale was void ab initio and therefore could not have effected any valid change of title as a matter of law. To the extent that any statute of limitations is applicable, the proper statute of limitations is that of NRS 11.080, which specifically provides a party with a period of 5 years from the time that it last held possession in which to recover real property. The instant action was filed within 5 years after the date of the foreclosure of the extinguished deed of trust which purported to divest the Plaintiff of title.

The Motion for Summary Judgment and Joinders were granted by the district court by way of Order dated November 28, 2016, with the district court finding that NRS 107.080(5)-(6) is applicable to this action and that the Plaintiff's claims are therefore time-barred. This is the Order from which Plaintiff appeals. In addition, Appellant appeals from a subsequent Order denying Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary): The primary issue on appeal is what, if any, statute of limitations governs an action to recover real property that was the subject of an unauthorized and void foreclosure sale of an extinguished deed of trust. At issue is whether the district court's application of NRS 107.080(5)-(6) and granting of summary judgment was erroneous as a matter of law. Also at issue is the district court's subsequent refusal to alter or amend, reconsider and/or clarify the Order to comport with the court's findings.
10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised: Although numerous cases dealing with the force and effect of NRS Chapter 116 are pending before this Court, Appellant is unaware of any pending proceedings which raise the same issue raised herein.
11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the

1 state, any state agency, or any officer or employee thereof is not a party to this appeal,
2 have you notified the clerk of this court and the attorney general in accordance with
3 NRAP 44 and NRS 30.130?

4 ☒ N/A ☐ Yes ☐ No If not, explain:

5 The constitutionality of NRS 116.3116 *et seq.* was not a basis upon which summary
6 judgment was granted in this case.

7 **12. Other issues.** Does this appeal involve any of the following issues?

- 8 ☐ Reversal of well-settled Nevada precedent (identify the case(s))
9 ☐ An issue arising under the United States and/or Nevada Constitutions
10 ☒ A substantial issue of first-impression
11 ☐ An issue of public policy
12 ☐ An issue where en banc consideration is necessary to maintain uniformity of this
13 court's decisions
14 ☐ A ballot question

15 If so, explain: The case raises an important question of whether NRS 11.080 or NRS
16 107.080(5)-(6) sets forth the appropriate statute of limitations to be applied under the facts at
17 hand.

18 **13. Trial.** If this action proceeded to trial, how many days did the trial last? N/A
19 Was it a bench or jury trial? N/A

20 **14. Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice
21 recuse him/herself from participation in this appeal? No If so, which Justice?
22 N/A

23
24 **TIMELINESS OF NOTICE OF APPEAL**

25 **15. Date of entry of written judgment or order appealed from:** The Order granting
26 summary judgment was entered on or about October 5, 2016.

27 If no written judgment or order was filed in the district court, explain the basis for seeking
28 appellate review: N/A

1 **16. Date written notice of entry of judgment or order served:** Notice of Entry of the
2 Order granting summary judgment was served on October 5, 2016.

3 Was service by:

4 ☐ Delivery

5 ☒ Mail/electronic/fax

6 **17. If the time for filing the notice of appeal was tolled by a post-judgment motion**
7 **(NRCP 50(b), 52(b), or 59),**

8 (a) Specify the type of motion, the date and method of service of the motion, and date
9 of filing

10 ☐ NRCP 50(b) Date of filing _____

11 ☐ NRCP 52(b) Date of filing _____

12 ☒ NRCP 59 Date of filing: October 11, 2016

13 **Note: Motions made pursuant to NRCP 60 or motions for rehearing or**
14 **reconsideration may toll the time for filing a notice of appeal. See AA Primo**
15 **Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).**

16 (b) Date of entry of written order resolving tolling motion: November 30, 2016

17 (c) Date written notice of entry of order resolving tolling motion was served:

18 December 1, 2016

19 Was service by:

20 ☐ Delivery

21 ☒ Mail/electronic/fax

22 **18. Date notice of appeal was filed:** December 1, 2016

23 If more than one party has appealed from the judgment or order, list the date each notice
24 of appeal was filed and identify by name the party filing the notice of appeal: N/A

25 **19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g.,**
26 **NRAP 4(a) or other** NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The district court's order granting of summary judgment constituted a final judgment appealable pursuant to NRAP 3A(b)(1). The Order resolved the action as to all parties other than one party who had not appeared and who was defaulted.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Plaintiff - LAS VEGAS DEVELOPMENT GROUP, LLC

Defendants - JAMES R. BLAHA and NOBLE HOME LOANS f/k/a FCH FUNDING

Defendants - BANK OF AMERICA, NA, as successor by merger to BAC HOME

LOANS SERVICING, LP and RECONTRUST COMPANY NA

Defendants - EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED

PARTNERSHIP

Defendant - JOSE PEREZ, JR.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or other: Defendant, Jose Perez, Jr. is not a party to this appeal because he had neither appeared nor answered at the time of the Order appealed from. A Default was entered against said Defendant on or about July 8, 2015.

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third party claims, and the date of formal disposition

of each claim. Plaintiff's Complaint is primarily a claim for Quiet Title/Declaratory Relief seeking to recover title to real property. Plaintiff further seeks damages associated with its deprivation of its real property. Plaintiff's claims were disposed at the time that summary judgment was granted.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

N/A

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action

below, even if not at issue on appeal

- Any other order challenged on appeal
- Notices of entry for each attached order

See attached:

Exhibit 1 - Complaint

Exhibit 2 - Order Granting James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and all Joinders Thereto

Exhibit 3 - Notice of Entry of Order Granting James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and all Joinders Thereto

Exhibit 4 - Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification

Exhibit 5 - Order Denying Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification

Exhibit 6 - Notice of Entry of Order Denying Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of appellant: Las Vegas Development Group, LLC

Name of counsel of record: Roger P. Croteau, Esq.

State and county where signed: Clark County, Nevada

DATED this 14th day of December, 2016.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Roger P. Croteau
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
Las Vegas, Nevada 89148
(702) 254-7775
Attorney for Appellant
LAS VEGAS DEVELOPMENT GROUP, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of ROGER P. CROTEAU & ASSOCIATES, LTD.
and that on the 14th day of December, 2016, I caused a true and correct copy of the
foregoing document to be served on all parties as follows:

X VIA ELECTRONIC SERVICE: through the Nevada Supreme Court's eflex e-file and
serve system.

____ VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed envelope with
postage thereon fully prepaid, addressed as indicated on service list below in the United
States mail at Las Vegas, Nevada.

____ VIA FACSIMILE: by causing a true copy thereof to be telecopied to the number indicated
on the service list below.

____ VIA PERSONAL DELIVERY: by causing a true copy hereof to be hand delivered on this
date to the addressee(s) at the address(es) set forth on the service list below.

/s/ Timothy E. Rhoda

An employee of ROGER P. CROTEAU &
ASSOCIATES, LTD.