IN THE SUPREME COURT OF THE STATE OF NEVADA

***

LAS VEGAS DEVELOPMENT GROUP, LLC, a Nevada limited liability company, Appellant, 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; 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, Respondents.	)	Supreme Court No. 71875

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Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court,

The Honorable Jerry A. Wiese II , District Judge

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

JOINT APPENDIX - VOLUME 6

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Docket 71875 Document 2017-16016

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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. XXX **Date of Hearing: September 13, 2016** **Time of Hearing: 9:00 a.m.**

OPPOSITION TO MOTION TO ADD AFFIRMATIVE DEFENSES AND TO ADD PARTIES AND ASSERT CLAIMS

COMES NOW, Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., and hereby presents its Opposition to Defendant Bank of America N.A.'s Motion to Add Affirmative Defenses and to

Add Parties and Assert Claims. This Opposition is made and based upon the attached memorandum of points and authorities, all pleadings, papers and documents on file herein, and any oral argument that the Court may entertain at the hearing of this matter.

DATED this 30th day of August, 2016.

ROGER P. CROTEAU & ASSOCIATES, LTD.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

At issue herein is real property commonly known as 7639 Turquoise Stone Court, Las Vegas, Nevada 89113, Assessor Parcel No. 176-10-213-042 (*the "Property"*). The Property was the subject of a homeowners association lien foreclosure sale that took place on April 12, 2011 (*"HOA Foreclosure Sale"*). Plaintiff purchased the Property by successfully bidding at the HOA Foreclosure Sale in accordance with N.R.S. 116.3116, *et seq*. On or about April 13, 2011, a Trustee's Deed Upon Sale (*"HOA Foreclosure Deed"*) was recorded in the Official Records of the Clark County Recorder as Instrument No. 201104130000979, vesting title to the Property in the name of Plaintiff.

At the time of the HOA Foreclosure Sale, Bank of America, N.A. (*"BANA"*) held a deed of trust recorded against the Property in the Official Records of the Clark County Recorder as Instrument No. 200703280002128 (*"First Deed of Trust"*). Pursuant to this action, Plaintiff alleges that the HOA Foreclosure Sale served to extinguish the then-existing First Deed of Trust

by operation of law as interpreted by the Nevada Supreme Court in the matter of *SFR Investments Pool I, LLC v. U.S. Bank, N.A.*, 130 Nev. ___, 334 P.3d 408, 2014 WL 4656471 (Adv. Op. No. 75, Sept. 18, 2014). Thus, Plaintiff seeks to quiet title to the Property in its name.

Notwithstanding the extinguishment of its security interest, BANA purported to conduct a foreclosure sale based upon the First Deed of Trust on August 29, 2011 (*"Bank Foreclosure Sale"*). EZ Properties, LLC purported to purchase the Property at the Bank Foreclosure Sale. Thereafter, on or about September 30, 2011, EZ Properties, LLC purported to transfer the Property to Defendant, James Blaha.

By way of the instant Motion, BANA seeks leave to amend its Answer to add certain affirmative defenses and to add parties and assert claims. Specifically, BANA seeks leave to add Nevada Trails II Community Association (*"HOA"*) and Absolute Collection Services, LLC (*"HOA Trustee"*) as third party defendants. Among the claims that BANA seeks to bring against these proposed parties are claims for unjust enrichment, tortious interference with contractual relations, breach of the duty of good faith, and wrongful foreclosure. In addition, BANA desires to add a counterclaim for Quiet Title against the Plaintiff.

Plaintiff does not object to the amendment of BANA's Answer to add affirmative defenses. Such amendments are liberally allowed and will not unduly prejudice the Plaintiff at this point in time. However, Plaintiff does object to the amendment of the Answer to assert a counterclaim and third party claims against the HOA and HOA Trustee. Any such claims are futile because the applicable statutes of limitations have expired.

II.

LEGAL ARGUMENT

1. STATEMENT OF THE LAW REGARDING N.R.C.P. 12(B)(5)

N.R.C.P. 15 provides, as follows:

> (a) *Amendments*. A party may amend the party's pleading once as a matter of course at any time before a responding pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. [Emphasis added.] A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the

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amended pleading, whichever period may be the longer, unless the court otherwise orders.

It is well settled in Nevada "that in the absence of any apparent or declared reason – such as undue delay, bad faith or dilatory motive on the part of the movant – the leave sought should be freely given." *Stephens v. Southern Nevada Music Co.* 89 Nev. 104, 105-106 (1973). This does not, however, mean that a trial judge may not, in a proper case, deny a motion to amend. *Id.* at 105. If that were the intent, leave of court would not be required. *Id.* Courts should be cautious of last-second amendments alleging meritless claims in an attempt to save a case from summary judgment: the proper method to deal with such tactics is to deny leave to amend on grounds of futility. *Soebbing v. Carpet Barn*, 109 Nev. 78, 84 (Nev. 1993)(citing *United States Dev. Corp. v. Peoples Federal Sav. & Loan*, 873 F.2d 731, 736 at n. 4 (4th Cir. 1989).

2. BANA'S PROPOSED ADDITIONAL CAUSES OF ACTION ARE BARRED BY THE APPLICABLE STATUTES OF LIMITATIONS

The HOA Foreclosure Sale at issue herein took place on April 12, 2011, and the HOA Foreclosure Deed was thereafter recorded on April 13, 2011. Thus, well over five years have passed since the HOA Foreclosure Sale took place. To the best of the Plaintiff's knowledge, BANA has taken no actions whatsoever to contest the force and effect of the HOA Foreclosure Sale to date. As such, the statutes of limitations related to each of its proposed causes of action against the HOA and HOA Trustee have expired. Likewise, the proposed counterclaim for quiet title against the Plaintiff is time-barred. Under such circumstances, the amendment of the Answer to include such claims is futile.

Pursuant to NRS 40.010, a quiet title action "may be brought by any person against another who claims an estate or interest in real property, adverse to the person bringing the action, for the purpose of determining such adverse claim." "A claim for declaratory relief is subject to a statute of limitations generally applicable to civil claims." *Zuill v. Shanahan*, 80 F.3d 1366, 1369-70 (9th Cir. 1996); *Levald v. City of Palm Desert*, 998 F.2d 680, 688 (9th Cir. 1993) (noting that statute of limitations applicable to damages action applies equally to claims for declaratory judgment). When a complaint shows on its face that the cause of action is barred by

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the statute of limitations, the burden falls upon the plaintiff to demonstrate that the bar does not exist. *Bank of Nevada v. Friedman*, 82 Nev. 417, 422, 420 P.2d 1, 4 (1966).

> NRS 11.080 provides as follows:
>
> **Seisin within 5 years; when necessary in action for real property.** No action for the recovery of real property, or for the recovery of the possession thereof other than mining claims, shall be maintained, unless it appears that the plaintiff or the plaintiff's ancestor, predecessor or grantor was seized or possessed of the premises in question, within 5 years before the commencement thereof.

Similarly, NRS 11.070 provides as follows:

> **No cause of action effectual unless party or predecessor seized or possessed within 5 years.** No cause of action or defense to an action, founded upon the title to real property, or to rents or to services out of the same, shall be effectual, unless it appears that the person prosecuting the action or making the defense, or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor, or grantor of such person, was seized or possessed of the premises in question within 5 years before the committing of the act in respect to which said action is prosecuted or defense made.

A quiet title claim is subject to the five-year limitations period of NRS § 11.070. *Nationstar Mortg. LLC v. Amber Hills II Homeowners Ass'n*, 2016 U.S. Dist. LEXIS 43592, 9-10 (D. Nev. Mar. 31, 2016).

Like the claims BANA seeks to bring, *Amber Hills II* involved a deed of trust holder's claim that its deed of trust was unaffected by a homeowners association lien foreclosure sale. In *Amber Hills II*, the defendant HOA asserted that the bank's claims were governed by a 3-year statute of limitations because the claims were based upon liability created by statute. *Id.* The United States District Court for the District of Nevada rejected this assertion, holding that the applicable statute of limitations was five years.

In *Amber Hills II*, the District Court held that a deed of trust holder was neither "seized" nor "possessed" of real property by virtue of a deed of trust. *Id.* However, the Court read NRS 40.010 and NRS 11.070 together, finding that "§ 40.010 allows anyone with an interest in the property to sue to determine adverse claims, and § 11.070 provides the corresponding limitations period for such claims." *Id.* at *10. Although the law is not necessarily settled regarding the statute of limitations that applies to cases such as that at bar, it is clear that the 5-year statute adopted in *Amber Hills II* is the lengthiest statute of limitations that can be deemed to apply.

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Because BANA has waited well over 5 years to pursue its claims in this case, its claims are time barred regardless of whether the applicable statute of limitations is deemed to be 3 years or 5 years. BANA has possessed no interest in the Property since its First Deed of Trust was extinguished on April 12, 2011, approximately 5 years and 6 months ago. Thus, BANA's claim for quiet title against the Plaintiff is now barred. Similarly, all of BANA's proposed claims against the HOA and HOA Trustee fail because they are premised upon the same facts and the HOA Foreclosure Sale that took place well over 5 years ago.

Because BANA waited over five years from the date of the HOA Foreclosure Sale to attempt to bring any claims, it is time barred from asserting that any defects existed in the HOA Foreclosure Sale. In short, there is no means by which BANA can now recover its extinguished security interest because of its dilatory conduct. Under such circumstances, its proposed amended claims are futile.

III.

CONCLUSION

The instant Motion must be denied to the extent that BANA seeks to amend its Answer to add claims that are barred by the applicable statutes of limitations. The addition of such claims is futile and would only serve to wrongfully cause the Plaintiff and proposed additional parties to incur cost and expense for no good reason.

DATED this 30th day of August, 2016.

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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 30th day of August, 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.

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____ 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.

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DISTRICT COURT

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* * *

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. XXX **JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

COME NOW, Defendants JAMES R. BLAHA and NOBLE HOME LOANS, INC. formerly known as FCH FUNDING, INC. (collectively "the Blaha Defendants"), by and through their attorneys of record, the law firm of Kolesar & Leatham, and hereby file their Reply to Plaintiff's Opposition to Motion for Summary Judgment.

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This Reply is made and based on the Points and Authorities herein, the exhibits attached hereto, any pleadings on file with the Court and any oral arguments presented at the time of hearing on this matter.

DATED this 6th day of September, 2016.

KOLESAR & LEATHAM

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POINTS AND AUTHORITIES

I.

INTRODUCTION

On March 19, 2015 – 1,298 days after Las Vegas Development Group ("LVDG") lost its record interest in the Property as a result of a Deed of Trust Foreclosure – LVDG filed its Complaint in this action seeking to invalidate James R. Blaha's ("Blaha") record title to the Property. LVDG's Complaint was not only remarkable in its timing (having been filed after LVDG sat back and allowed the Blaha Defendants to expend significant sums purchasing the Property and then maintaining the Property for more than three years), but also in its requested relief. Such is the case as LVDG is asking this Court to apply its equitable powers to set aside the Deed of Trust Foreclosure that took place on August 29, 2011, and all subsequent transfers of the Property – including Blaha's September 30, 2011 purchase of the Property for $208,000 – based on LVDG's claim to have purchased the Property for $5,200.01 at an April 12, 2011 HOA Foreclosure Sale. LVDG's requested relief is neither just, nor equitable.

It is undisputed that LVDG acquired its interest in the Property knowing that its interest would be the subject of litigation and that its interest could potentially be wiped-out by a foreclosure on the Deed of Trust. Despite this, LVDG took no steps to stop the Deed of Trust

Foreclosure or to protect its interest in the Property. Moreover, after learning that the Property had been sold to a third-party purchaser at the Deed of Trust Foreclosure sale, LVDG consciously chose do nothing to protect its interest in the Property – waiting for nearly four years before filing this action. Because of LVDG's inexcusable failure to take any action to protect its interest in the Property, the Property was **sold twice**, for purchase prices that were equivalent to the Property's fair market value at the time of the sales.

On August 9, 2016, the Blaha Defendants filed their Motion to Summary Judgment, demonstrating that LVDG's Complaint – which asks this Court to remove Blaha from title to the property by **rescinding two sales of the property** – fails as a matter of law because: (1) LVDG's claims are barred by the statute of limitation imposed by NRS 107.080(5); (2) LVDG's claims are barred by the doctrine of laches; (3) LVDG's claims are barred by the doctrine of equitable estoppel; and (4) LVDG's Equitable Mortgage claim is unsupported by the factual record in this case.

On August 26, 2016, LVDG filed its Opposition to the Blaha Defendants' Motion for Summary Judgment ("LVDG's Opposition"). LVDG's Opposition asserts that this Court should ignore the more specific statute of limitation imposed by NRS 107.080(5) and instead apply the general statute of limitation imposed by NRS 11.080 based on the "conclusive presumption contained in NRS 116.31166". See LVDG's Opposition, p.8, ll.15. Unfortunately for LVDG, such arguments are contrary to the Nevada Supreme Court's decision in Michniak v. Argent Mortg. Co., LLC, 2012 WL 6588912 (unpublished)(Nev. December 14, 2012) – not to mention multiple federal district court decisions and Ninth Circuit precedent – and Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. Adv. Op. 5, __ P.3d __ (Nev. 2016)(confirming that the "conclusive proof" language of NRS 116.31166 (2013) does not render "such deeds unassailable"). Next, LVDG's Opposition argues that a quiet title action is considered to be one in law, not equity, and therefore, the equitable doctrine of laches cannot apply. Once again, LVDG's argument is directly contradicted by the Nevada Supreme Court's holding in Shadow Wood. Finally, LVDG's Opposition simply concludes – with no legal authority to support its position – that LVDG's Equitable Mortgage is well-founded.

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As will be demonstrated below, LVDG's 1,298-day delay in bringing this action is fatal to LVDG's claims against the Blaha Defendants. The Blaha Defendants are entitled to the protections and security that the Nevada Legislature sought to provide to parties purchasing properties following NRS Chapter 107 foreclosure sales by imposing strict time limits on any party that seeks to set aside the NRS Chapter 107 foreclosure sale. Granting summary judgment with respect to LVDG's time-barred Complaint will allow Blaha to once again enjoy the rights and privileges that accompany home-ownership. No other result would be just or equitable.

II.

ARGUMENT

A. LVDG's claims are barred by the statute of limitations imposed by NRS 107.080(5).

The Nevada Supreme Court has repeatedly acknowledged the public policy considerations that form the basis for any statute of limitation. See Winn v. Sunrise Hosp. & Medical Center, 128 Nev. Adv. Op. 23, __, 277 P.3d 458, 465 (Nev. 2012). Specifically, the Nevada Supreme Court has recognized that limitation periods imposed by the Legislature are meant to "provide a concrete time frame within which a plaintiff must file a lawsuit and after which a defendant is afforded a level of security." Id. (citing Peterson v. Bruen, 106 Nev. 271, 274, 792 P.2d 18, 19 (Nev. 1990)). In this regard, statutes of limitation "stimulate activity, punish negligence and promote repose by giving security and stability to human affairs." Id.

In Nevada, wrongful foreclosure claims or, **any claim that seeks to set aside an NRS Chapter 107 foreclosure must be brought within ninety days from the date of sale.**[1] See Bldg. Energetix Corp. v. EHE, LP, 129 Nev. Adv. Op. 6, 294 P.3d 1228, 1234 (2013)("**NRS 107.080(5)(a)-(c) and NRS 107.080(6) enumerate the limited instances in which a nonjudicial foreclosure sale may be made void**") (emphasis added); Michniak v. Argent Mortg. Co., LLC, 2012 WL 6588912 (unpublished) (Nev. December 14, 2012)("**The title set forth in the trustee's deed upon sale was conclusive and beyond challenge once the time**

[1] 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. All references to NRS Chapter 107 refer to the statute applicable to the Deed of Trust Foreclosure that is the subject of this action (i.e., the 90 day statute).

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period set forth in NRS 107.080 had lapsed. The trustee's deed upon sale conclusively vested title in the purchaser, and as a matter of law appellant's claim for quiet title based on wrongful foreclosure fails.")(emphasis added); Kim v. Kearney, 838 F. Supp. 2d 1077 (D. Nev. 2012) (dismissing plaintiff's quiet title complaint because plaintiff failed to file an action to set aside the sale within ninety days of the date of sale), aff'd, ___ Fed. Appx. ___, 2013 WL 6172290 (9th Cir. Nov. 26, 2013). The Nevada Supreme Court and the Ninth Circuit have both specifically rejected the application of the general statute of limitations imposed by NRS Chapter 11 to quiet title claims which seek to set aside NRS Chapter 107 foreclosures and have instead applied the more specific statute of limitation imposed by NRS 107.080, recognizing that a party seeking to set aside a sale conducted pursuant to NRS Chapter 107 cannot simply choose to plead its claims in such a way as to avoid having to comply with the provisions of NRS 107.080(5).

Here, LVDG's Opposition argues that this Court should ignore the statute of limitation imposed by NRS 107.080(5) because "LVDG does not contest the Bank Foreclosure Sale itself but rather the authority behind the Bank Foreclosure Sale." See LVDG's Opposition, p.10, ll.10-11. Relying on a California case (that has no application to the facts of this case),[2] LVDG's Opposition argues that this Court should refuse to apply the more specific statute of limitation imposed by NRS 107.080(5) and, instead, apply the more general five-year statute of limitation under NRS 11.080. See LVDG's Opposition, p.13, ll.25-26.[3] Notably, LVDG's Opposition

[2] In Secret Valley Land Co. v. Perry, 187 Cal 420, 202 P.449 (Cal. 1921), the California Supreme Court refused to apply the statute of limitations in an **adverse possession** claim because neither of the parties claiming an interest in the land had possession of the property prior to filing the complaint. The Court noted: "Limitation or lapse of time does not perfect a defective record title in the absence of possession." Thus, contrary to the argument advanced in LVDG's Opposition, the California Supreme Court's rejection of the statute of limitation argument in Secret Valley was not "because the sale was void at the outset" (LVDG's Opposition p.12, ll.24-25); rather, the California Supreme Court rejected the claimant's statute of limitation argument because the claimant had not exercised dominion and control over the property prior to filing its adverse possession complaint.

[3] LVDG's Opposition asserts that the Nevada Supreme Court's decision in Nesbitt v. De Lamar's Nev. Gold Mining Co., 24 Nev. 273, 52 P. 609 (Nev. 1898), held that a void deed does not constitute color of title such that the statute of limitations will not run in favor of a person who claims title under a void deed. The Nevada Supreme Court's decision in Nesbitt, issued by the Court 109 years before the Nevada Legislature enacted NRS 107.080(5), has no application to this case and, contrary to LVDG's claim, makes no findings with regard to statutes of limitations in general. Moreover, LVDG's Opposition misrepresents that an argument advanced by the appellant's counsel – and rejected by the Nevada Supreme Court – was the holding of the case.

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makes no attempt to address the precedent cited in the Blaha Defendants' Motion for Summary Judgment (and above) in which the Nevada Supreme Court and the Ninth Circuit expressly rejected LVDG's argument in the context of an action seeking to set aside an NRS Chapter 107 foreclosure sale.

Moreover, LVDG's argument ignores basic rules of statutory construction which hold that specific statutes take precedence over statutes that apply only generally. See Nevada Power Co. v. Haggerty, 115 Nev. 353, 364, 989 P.2d 870, 877 (Nev. 1999). It was for precisely this reason that the Nevada Supreme Court rejected the very argument advanced by LVDG in the context of an action seeking to set aside an NRS Chapter 107 foreclosure sale. See Michniak v. Argent Mortg. Co., LLC, 2012 WL 6588912 (unpublished) (Nev. December 14, 2012) (rejecting appellant's contention that the limitations periods imposed by NRS Chapter 11 apply to quiet title claims pursuant to NRS 40.010 because the appellant was seeking to set aside a trustee's sale governed by NRS Chapter 107. The Nevada Supreme Court held that the shortened limitations period imposed by NRS 107.080(5) applied to appellant's quiet title claim).

LVDG's Opposition also fails to address the fact that its argument would thwart the legislative intent behind NRS 107.080(5). As set forth in the Blaha Defendants' Motion for Summary Judgment, the Nevada Legislature amended NRS Chapter 107 in 2007 to set strict time limits for any action seeking to invalidate an NRS Chapter 107 foreclosure sale in order to facilitate the timely transferability of title following deed of trust foreclosure sales. See Legislative History for S.B. 217 (2007) and S.B. 483 (2007) (incorporating the revision to NRS Chapter 107 proposed by S.B. 217). The very purpose of the 2007 amendment to NRS Chapter 107 was to address a problem that had been created in transferring title to real property following the 2005 amendments to NRS Chapter 107. See Senate Committee on Judiciary Minutes dated March 21, 2007, p.11-12. To address this problem, the Nevada Land Title Association proposed the 2007 amendment to NRS Chapter 107 to bring clarity to the statute's provision with respect to actions brought to set aside foreclosure sales to once again encourage the free transferability of title to real property following an NRS Chapter 107 foreclosure sale. Id. The Ninth Circuit and the Nevada Supreme Court's broad interpretation of NRS 107.080(5) furthers the legislative

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intent behind NRS 107.080(5). In contrast, LVDG's argument would require this Court to completely disregard the legislative intent behind S.B. 483 (2007).

At deposition, LVDG admitted that, by 2011, LVDG was aware there was a dispute with respect to the issue of whether an HOA foreclosure sale could extinguish a prior recorded deed of trust and, as a result of the same, LVDG retained legal counsel to send correspondence to beneficiaries of deeds of trust secured by real property that LVDG purchased at HOA foreclosure sales. See Motion for Summary Judgment, Exhibit 19, p.134, ll.9-17.

By 2012, LVDG had retained legal counsel in Nevada to defend LVDG's title to real property purchased at HOA foreclosure sales. See Motion to Summary Judgment, Exhibit 19, p.134-35, ll.22-1. With respect to some of the properties LVDG had purchased at HOA foreclosure sales, LVDG elected to initiate quiet title actions by 2012. Id.

However, during this same 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. See Motion for Summary Judgment, Exhibit 19, p.57, ll.7-16; see also p.59, ll.15-25. For this reason, LVDG elected to walk away from some of its investments rather than litigate with secured lenders. Id.

Here, LVDG did not take any steps to try to enjoin Bank of America from foreclosing on the Perez Deed of Trust. See Exhibit 19, p.63, ll.7-14; p.64, ll.8-13; p.140, ll.4-13. Similarly, LVDG took no action to attempt to set aside the Deed of Trust Foreclosure Sale. See Exhibit 19, p.68, ll.9-18; p.69-70, ll.10-5; p.144, ll.2-19. Moreover, LVDG took no steps to prevent EZ Properties from encumbering or selling the Property following its purchase at the Deed of Trust Foreclosure Sale. See Exhibit 19, p.147-48, ll.21-1. Finally, LVDG took no action to prevent Blaha from taking title to the Property (see Exhibit 19, p.149-50, ll.25-3) or to prevent Blaha from obtaining financing secured by the Property. See Exhibit 19, p.153, ll.9-17.

During the nearly four-year period in which LVDG failed to take any action to protect its interest in the Property, **the Property was sold twice**. LVGD – a sophisticated investor who had purchased other properties through foreclosure sales – had both the knowledge and ability to take the legal action necessary to protect its investment (LVDG purchased approximately 200

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properties at HOA foreclosure sales). See Motion for Summary Judgment Exhibit 19, p. 26, ll.2-12; p.55, ll.5-11.

Instead of complying with NRS 107.080(5) – 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**. The public policy considerations that formed the basis for the Legislature's enactment of NRS 107.080(5)-(6) do not allow LVDG to be rewarded for its failure to take any action to protect its interest in the Property for a period of 1,298 days – **1,208 days beyond the statute of limitation imposed by NRS 107.080(5)**. By enacting NRS 107.080(5)-(6), the Nevada Legislature expressed its intent to promote the transferability of title following foreclosure sales to "provide a concrete time frame within which a plaintiff must file a lawsuit and after which a defendant is afforded a level of security." See Winn v. Sunrise Hosp. & Medical Center, 128 Nev. Adv. Op. 23, __, 277 P.3d 458, 465 (Nev. 2012)(citing Peterson v. Bruen, 106 Nev. 271, 274, 792 P.2d 18, 19 (Nev. 1990)). This public policy expression by the Nevada Legislature was designed to promote the recovery of Nevada's failing real estate market following the devastating foreclosure crisis by allowing new market participants (such as the Blaha Defendants) to purchase properties which other property owners had either willingly abandoned or, out of the extreme distress caused by our country's financial crisis, were no longer able to afford. The Nevada Legislature made a public policy determination when it enacted the legislation to encourage new homeowners, investors and lenders to invest in our State's economic recovery. This Court, like the Nevada Supreme Court and the Ninth Circuit Court of Appeals, must apply the statute as the Nevada Legislature intended. Because it is undisputed that LVDG consciously elected to wait 1,298 days to file its Complaint to set aside the Deed of Trust Foreclosure Sale, LVDG's claims against the Blaha Defendants are barred by the statute of limitation imposed by NRS 107.080(5)-(6). Accordingly, this Court should enter summary judgment in favor of the Blaha Defendants and against LVDG.

B. The Nevada Supreme Court has expressly rejected LVDG's deed recital argument.

Immediately after the Nevada Supreme Court issued its decision in SFR Investments Pool I, LLC v. U.S. Bank, N.A., 130 Nev. Adv. Op. 75, 334 P.3d 408 (Nev. 2014) ("SFR"), investors

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such LVDG took the position that the "conclusive proof" language of NRS 116.31166 (2013) renders "such deeds unassailable" and, therefore, any person who obtained title to real property through an NRS 116.31166 HOA foreclosure deed, purchased the property free and clear of any previously recorded encumbrance.

On January 28, 2016, the Nevada Supreme Court issued its decision in Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. Adv. Op. 5, 366 P.3d 1105 (Nev. 2016), confirming that the "conclusive proof" language of NRS 116.31166 (2013) does not render "such deeds unassailable". Despite the Nevada Supreme Court's unequivocal holding, LVDG's Opposition advances the same argument that was expressly rejected by the Nevada Supreme Court in Shadow Wood. Compare LVDG's Opposition, p.3, ll.9-14; p.7-8, with Shadow Wood, 132 Nev. Adv. Op. 5, at pp.2, 8-14, 366 P.3d at 1110-12.

LVDG's Opposition acknowledges that there is "little, if any, dispute regarding the facts at hand." See LVDG's Opposition, p.7, ll.9-10. After making this acknowledgement, LVDG's Opposition fails to present any evidence that would raise a genuine issue of fact with respect to any of the facts set forth in the Blaha Defendants' Statement of Undisputed Facts.

Although the Blaha Defendant's Motion for Summary Judgment was limited to the untimeliness of LVDG's Complaint, the Motion for Summary Judgment is replete with undisputed facts that would defeat LVDG's Complaint. See Motion for Summary Judgment, p.4, n.2. The multiple defects in the HOA Sale will be addressed, in detail, in a future Motion for Summary Judgment if this Court denies the Blaha Defendants' pending Motion for Summary Judgment. However, because LVDG has raised the "deed recital" argument in its Opposition, it should be noted that the following bases exist for setting aside the HOA Sale, including:

- NRS 116.3116's "opt-in" notice scheme facially violated mortgage lenders' constitutional due process rights. Bourne Valley Court Trust vs. Wells Fargo Bank, N.A., __ F.3d __, 2016 WL 4254983 (9th Cir. 2016);
- Not only was the price grossly inadequate pursuant to the Restatement (Third) of Property: Mortgages, §8.3, the HOA's agent refused to provide BANA's counsel with a statement identifying the alleged priority amount; instead, acknowledging that

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BANA's lien was "senior" to the HOA's lien. Accordingly, the HOA's sale could not extinguish BANA's deed of trust. See Shadow Wood Homeowners Ass'n, Inc. v. New York Cmty. Bancorp, Inc., 132 Nev. Adv. Op. 5, 366 P.3d 1105 (Nev. 2016); ZYZZX2 v. Dizon, 2016 WL 1181666, 2:13-cv-1307-JCM-PAL (D. Nev. 2016) (setting aside an HOA sale where the price was grossly inadequate and the association represented to the lender that the sale would not extinguish the first deed of trust);

- The HOA's rejection of BANA's attempted tender was unjustified; therefore, BANA's attempted tender was effective to discharge the lien. See Stone Hollow vs. Bank of America, N.A., No. 64955, 2016 WL 4543202 (Nev. Aug. 11, 2016);
- The Notice of Delinquent Assessment Lien, the Notice of Default and the Notice of Trustee's Sale all failed to identify the amount, if any, of an alleged super-priority lien; and
- The Notice of Trustee's Sale failed to account for any discharge of the debt pursuant to the Perez bankruptcy.

LVDG's "deed recital" argument, which was expressly rejected by the Nevada Supreme Court in Shadow Wood, finds no basis in Nevada law and has no application to the pending Motion before this Court.

C. LVDG's assertion that the doctrine of laches and equitable estoppel have no application to this case is in direct conflict with binding Nevada Supreme Court precedent.

"Laches is an equitable doctrine which may be invoked when delay by one party works to the disadvantage of the other, causing a change of circumstances which would make the grant of relief to the delaying party inequitable." Bldg. & Const. Trades Council of N. Nevada v. State ex rel. Pub. Works Bd., 108 Nev. 605, 610-11, 836 P.2d 633, 636-37 (Nev. 1992). Similarly, equitable estoppel "functions to prevent the assertion of legal rights that in equity and good conscience should not be available due to a party's conduct." In re Harrison Living Trust, 121 Nev. 217, 223, 112 P.3d 1058, 1061-62 (Nev. 2005)(internal quotations omitted). Silence can raise an estoppel quite as effectively as words. Id.

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Once again relying on an inapplicable California case, LVDG's Opposition argues that a quiet title action is "considered to be one in law, not equity, and hence the doctrine of laches cannot apply." See LVDG's Opposition, p.14, ll.17-19 (citing Connolly v. Trabue, 204 Cal. App. 4th 1154 (certified for partial publication) (Cal.App.1st Dst. 2012)). The Nevada Supreme Court's decision in Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. Adv. Op. 5, 366 P.3d 1105 (Nev. 2016), rejects LVDG's position.

In Shadow Wood, the Nevada Supreme Court noted that a quiet title action is an equitable action, stating: "When sitting in equity . . . courts must consider the entirety of the circumstances that bear upon the equities." Shadow Wood, 132 Nev. Adv. Op. 5, 366 P.3d at 1114. "This includes considering the status and actions involved, including whether an innocent third party may be harmed by granting the desired relief." Id. at 1115.

Without addressing the equities that weigh in favor of finding that LVDG's claims are barred by the doctrine of laches or equitable estoppel, LVDG's Opposition asserts that a shortened statute of limitations cannot be applied because the Deed of Trust Foreclosure was "void" and a "void sale and void deed are ineffective for any purpose." In support of this argument, LVDG's Opposition asserts that the Nevada Supreme Court's decision in Nesbitt v. De Lamar's Nev. Gold Mining Co., 24 Nev. 273, 52 P. 609 (Nev. 1898), held that a void deed does not constitute color of title such that the statute of limitations and the equitable doctrine of laches cannot be applied to a person who claims title under a void deed. The Nevada Supreme Court's decision in Nesbitt has no application to this case and, contrary to LVDG's claim, makes no findings with regard to statutes of limitations or laches in general. Moreover, LVDG's Opposition misrepresents that an argument advanced by the appellant's counsel in Nesbitt was the holding of the case. The Nevada Supreme Court rejected the appellant's argument by affirming the District Court's decision. In this regard, LVDG's position finds no support in Nevada law and is in direct conflict with the Shadow Wood decision issued by the Nevada Supreme Court earlier this year.

Because a quiet title action in Nevada is an equitable action, this Court "must consider the entirety of the circumstances that bear upon the equities." Shadow Wood, 132 Nev. Adv.

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Op. 5, 366 P.3d at 1114. Those "equities" include all equitable defenses, including the doctrine of laches and equitable estoppel.

Here, LVDG's Opposition fails to meet its burden to present any evidence as to why this Court should not find that LVDG's claims are barred by the doctrine of laches or equitable estoppel. Shadow Wood, 132 Nev. Adv. Op. 5, 366 P.3d at 1109 (quoting 10B Charles Alan Wright et al., Federal Practice & Procedure: Civil, § 2731 (3d ed. 2014)("if there are no triable fact issues and the court believes equitable relief is warranted, it is fully empowered to grant it on a Rule 56 motion")). It is undisputed that LVDG waited nearly **four years** to challenge the Deed of Trust Foreclosure Sale. Moreover, LVDG cannot provide a legitimate excuse for its delay. Rather, LVDG confirmed in deposition that LVDG consciously elected to prioritize the manner in which it proceeded with its quiet title litigation based on the anticipated costs of the litigation. See Motion for Summary Judgment, Exhibit 19, p.158-59, ll.13-3; p.57, ll.7-16; p.59, ll.15-25.

There is also no question that LVDG's delay caused "a change of circumstances which would make the grant of relief to [LVDG] inequitable." Bldg. & Const., 108 Nev. at 610-11, 836 P.2d at 636-37. Nor is there any question that LVDG's requested relief "in equity and good conscience should not be available" due to LVDG's conscious decision to do nothing to protect its purported claim to the Property. In re Harrison, 121 Nev. at 223, 112 P.3d at 1061-62.

EZ – who purchased the Property at the Deed of Trust Foreclosure Sale – certainly had "a change of circumstances" while LVDG delayed bringing this lawsuit. Under the belief that it had purchased the Property at a valid foreclosure sale, EZ sold the property to Blaha using a Grant, Bargain and Sale Deed. See Exhibit 16. Pursuant to NRS 111.170, the use of a Grant, Bargain and Sale Deed included statutorily provided warranties of title. See also, Hanneman v. Downer, 110 Nev. 167, 176-77, 871 P.2d 279, 285 (Nev.1994) (recognizing that a grant, bargain and sale deed contains two express warranties – a covenant that the property has not been conveyed to another and a covenant that the property is free from encumbrances).[4]

[4] Thus, as a matter of Nevada statute, the very use of a grant, bargain and sale deed defeats LVDG's argument with respect to the Blaha Defendants' status as bona fide purchasers based on the purported constructive notice imparted by the recorded title documents.

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Similarly, Blaha had a substantial "change of circumstances" while LVDG delayed bringing this lawsuit. Based upon the belief that EZ purchased the Property at a valid foreclosure sale, as confirmed by the record title to the Property at the time of the sale and as warranted by the Grant, Bargain Sale Deed, Blaha purchased the property from EZ for $208,000 (forty times the amount LVDG bid at the HOA Foreclosure Sale). Id. Blaha then exercised exclusive dominion and control over the Property for nearly four years before LVDG filed its Complaint. See Complaint, p.14, ll.2-3. Since acquiring the Property, Blaha has paid all property taxes, HOA association fees and other costs to maintain and improve the property. See Motion for Summary Judgment, Exhibits 22 and Exhibit 23.

However, the most compelling reason why LVDG's delay in bringing its action caused a change of circumstances which would make the grant of relief to LVDG inequitable is the fact that LVDG has taken the position in this litigation that any action to challenge the HOA Foreclosure Sale is now barred by the statute of limitations. See, e.g., LVDG's Opposition to Motion to Add Affirmative Defenses and to Add Parties and Assert Claims (asserting that because "well over five years have passed since the HOA Foreclosure Sale took place" the "statutes of limitations related to each of [BANA's] proposed causes of action against the HOA and HOA Trustee have expired" and "the proposed counterclaim for quiet title against [LVDG] is time-barred.").

Essentially, LDVG has taken the position in this litigation that it could lay in wait and **do nothing to challenge the record title to the Property for nearly four years**, only then, to come out of the shadows and seek equitable relief from this Court to invalidate the current record title to the Property by asserting that any party wishing to challenge LVDG's prior extinguished title is now time-barred from doing so. The application of the equitable doctrine of laches and equitable estoppel are both designed to prevent this precise type of scenario. It is a well-settled equitable maxim that, in seeking equity, a party is required to do equity. See Overhead Door Co. of Reno, Inc. v. Overhead Door Corp, 103 Nev. 126, 734 P.2d 1233 (Nev. 1987). Here, while LVDG's Complaint seeks equitable relief from this Court, LDVG asks this Court to apply its

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equitable powers in favor of LVDG while ignoring the equitable rights of the Blaha Defendants. Nevada law does not permit such an absurd result.

This Court should find that because LVDG took no action to challenge the record title to the Property for nearly four years, during which time: (1) the Property was **sold twice** for purchase prices that were equivalent to the Property's fair market value at the time of the sales; (2) Blaha exercised exclusive dominion and control over the Property; and (3) Blaha paid all property taxes, HOA association fees and other costs to maintain and improve the property, it would be inequitable to allow LVDG to now challenge the Deed of Trust Foreclosure Sale under the doctrine of laches and equitable estoppel. Because LVDG's claims are barred by the doctrine of laches and equitable estoppel, summary judgment should be entered in favor of the Blaha Defendants and against LVDG.

D. LVDG's Equitable Mortgage claim fails as a matter of law.

As set forth in the Blaha Defendants' Motion for Summary Judgment, even if this Court determines that NRS 107.080(5)-(6) does not bar LVDG's claim for Equitable Mortgage, LVDG's Equitable Mortgage claim against the Blaha Defendants fails as a matter of law as it is undisputed that the parties never intended for LVDG to maintain a security interest in the Property. Such is the case as an equitable mortgage may only be imposed when the parties intended to create a mortgage. See Las Vegas Development Group, LLC vs. Yfantis, __ F. Supp.3d __ (D. Nev. 2016)(citing Topaz v. Marsh, 108 Nev. 845, 839 P.2d 606, 612 (Nev. 1992)(granting Wells Fargo Bank's Motion to Dismiss Las Vegas Development Group, LLC's claim for equitable mortgage in a similar case)).

Ignoring the published decision entered by a federal district court against LVDG in a similar case, LVDG's Opposition asserts that if LVDG is not awarded "free and clear title to the Property, any damages that are awarded to it should be secured by the Property under equitable grounds." See LVDG's Opposition, p.19, ll.18-20. However, LVDG's Opposition fails to cite a single case, statute or rule that would support such a proposition. Nor does LDVG's Opposition make any attempt to challenge the authority cited in the Blaha Defendants' Motion for Summary Judgment, including the federal district court decision entered against LVDG in a nearly

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identical case. See Las Vegas Development Group, LLC vs. Yfantis, __ F. Supp.3d __ (D. Nev. 2016).

LVDG's Complaint does not allege that the Blaha Defendants agreed or intended to impose a mortgage on the property in favor of LVDG. Moreover, LVDG's Opposition does not present any evidence to suggest that the Blaha Defendants agreed or intended to impose a mortgage on the property in favor of LVDG. As acknowledged by LVDG's Opposition (which concedes there is "little, if any, dispute regarding the facts at hand"), LVDG did not loan or advance money to the Blaha Defendants and the Blaha Defendants did not agree that the Property would serve as collateral for a loan. Accordingly, as a matter of Nevada law, there is no basis to impose an equitable mortgage against the Property. As such, LVDG's claim for Equitable Mortgage fails as a matter of law.

III.

CONCLUSION

Summary judgment should be entered in favor of the Blaha Defendants and against LVDG. As set forth in the Blaha Defendants' Motion for Summary Judgment and above, LVDG's 1,298-day delay in bringing this action is fatal to LVDG's claims against the Blaha Defendants. First, LVDG's claims are barred by the statute of limitation imposed by NRS 107.080(5). Next, LVDG's claims are barred by the doctrines of laches and equitable estoppel. Finally, LVDG's claim for Equitable Mortgage against the Blaha Defendants fails as a matter of law as the parties never intended for LVDG to maintain a security interest in the Property.

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Granting summary judgment with respect to LVDG's time-barred Complaint will allow Blaha to once again enjoy the rights and privileges that accompany home-ownership. Allowing LVDG to continue placing a cloud on Blaha's record title to the Property in light of its inexcusable delay in bringing this action would be neither just nor equitable. For each of the aforementioned reasons, this Court should grant summary judgment in favor of the Blaha Defendants and against LVDG.

DATED this 6th day of September, 2016.

KOLESAR & LEATHAM

By _____

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 6th day of September, 2016, I caused to be served a true and correct copy of foregoing JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT 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 the Court's facilities to those parties listed on the Court's Master Service List.

Cindy Kushi

An Employee of KOLESAR & LEATHAM

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

JAMES R. BLAHA, an individual; BANK OF AMERICA, N.A., a National Banking Association, as successor by merger to BAC HOME LOANS SERVICING, LP; RECONTRUST COMPANY, N.A., 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

DEFENDANT BANK OF AMERICA, N.A.'S REPLY IN SUPPORT OF ITS MOTION TO ADD AFFIRMATIVE DEFENSES AND TO ADD PARTIES AND ASSERT CLAIMS

Defendant Bank of America, N.A. (**Bank of America**), by and through its attorneys at the law firm AKERMAN LLP, hereby files this reply in support of its Motion to Add Affirmative Defenses and to Add Parties and Assert Claims.

…

…

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Bank of America's claims are not time-barred because the damages supporting these claims have not yet accrued. Plaintiff challenges the validity of Bank of America's Deed of Trust foreclosure that occurred on August 29, 2011, an action that itself was time-barred 1208 days before it was filed. If Plaintiff's untimely claims succeed, however, Bank of America could incur damages from the unwinding of its Deed of Trust foreclosure sale. These damages would flow from misrepresentations to Bank of America by Nevada Trails II Community Association (**HOA**) and its agent, Absolute Collection Services, LLC's (**HOA Trustee**) regarding what portion of the HOA's lien was being foreclosed, and the HOA Trustee's wrongful rejection of Bank of America's super-priority tender. These damages did not occur on the date of the HOA foreclosure sale, but could occur only if this Court declares that Bank of America's Deed of Trust was extinguished by the HOA's foreclosure sale. Because these damages have not been incurred, the statute of limitations on these claims has not begun to run. As such, these claims are timely, and it is in the interest of judicial economy to allow these claims to proceed in this action, as they pertain to the same transaction or occurrence as Plaintiff's quiet title claims—the HOA's foreclosure sale. Accordingly, Bank of America's motion to add the HOA and HOA Trustee as parties should be granted.

II. ARGUMENT

This Court should grant Bank of America leave to add the HOA and HOA Trustee as parties, as Bank of America timely asserted its claims against those parties based on their wrongful rejection of Bank of America's super-priority tender and misrepresentations as to what portion of the HOA's lien was being foreclosed. Statutes of limitations begin to run on "the day the cause of action accrues." *Clark v. Robison*, 113 Nev. 949, 951, 944 P.2d 788, 789 (Nev. 1997). "A cause of action accrues when a suit may be maintained thereon." *Id.* A tort cause of action does not accrue until damages occur, as "compensable damages" are an "essential element of a negligent tort." *Szekeres by Szekeres v. Robinson*, 102 Nev. 93, 95, 715 P.2d 1076, 1077 (Nev. 1986); *see also City of Pomona v. SQM North America Corp.*, 750 F.3d 1036, 1051 (explaining that limitations period

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begins running when the last element of a cause of action occurs, and "[w]hen the last element to occur is damage, the limitations period starts upon the occurrence of appreciable and actual harm").

Here, Bank of America did not suffer any damages on the date of the foreclosure sale, as the HOA Trustee foreclosed on only the sub-priority portion of the HOA's lien. Before the HOA's foreclosure sale, Bank of America, through counsel at Miles, Bauer, Bergstrom, & Winters LLP (**Miles Bauer**), contacted the HOA Trustee, requesting that it identify the super-priority amount of the HOA's lien and offering to pay the super-priority amount "upon presentation of adequate proof of the same by the HOA." Bank's Mot., at **Exhibit G**. The HOA Trustee informed Bank of America that the HOA was not foreclosing on the super-priority portion of its lien, telling Bank of America that it "recognize[d] [Bank of America]'s position as the first mortgage company as the senior lien holder." *Id.*, at **Exhibit H**. By the HOA's own admission, it did not foreclose on the super-priority portion of its lien, meaning the interest in the Property it provided to Plaintiff through the HOA Foreclosure Deed was subject to Bank of America's Deed of Trust.

Plaintiff's junior interest in the Property was then extinguished when Bank of America foreclosed on its Deed of Trust on August 29, 2011. Plaintiff did nothing to challenge the validity of Bank of America's valid foreclosure sale until it filed the instant suit almost four years later, on March 20, 2015. Further, Plaintiff has done nothing to maintain the Property since Bank of America's foreclosure, refusing to pay property taxes, sewer fees, or HOA dues for the Property. *See* Blaha's MSJ, at **Exhibit 19**, at 156:1-8, 180:11-14. Indeed, Plaintiff's claims challenging the validity of Bank of America's foreclosure themselves are time-barred, as EZ Properties, LLC argued in its motion for summary judgment, which is now pending.

Bank of America's damages, if any, will flow from its valid Deed of Trust foreclosure being unwound if the HOA's foreclosure of its sub-priority lien is held to have wiped out Bank of America's Deed of Trust. If the HOA's foreclosure sale is held to have extinguished Bank of America's Deed of Trust, despite the HOA Trustee informing Bank of America that its Deed of Trust would not be affected the HOA's foreclosure, the HOA and HOA Trustee will then be liable to Bank of America for damages from their misrepresentation to Bank of America that the HOA was not foreclosing on its super-priority lien, and their wrongful rejection of Bank of America's super-

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priority tender. But if this Court holds that Bank of America's Deed of Trust survived the HOA foreclosure sale, Bank of America will have suffered no damage from the HOA foreclosure sale. Bank of America's damages claims against the HOA and HOA Trustee are thus derivative of Plaintiff's untimely quiet title action.

As such, Bank of America's tort claims against the HOA and HOA Trustee are analogous in many respects to indemnity claims, for which the statute of limitations begins to run on the date the judgment is entered that triggers the indemnity right. *See Saylor v. Arcotta*, 126 Nev. 92, 225 P.3d 1276 (Nev. 2010). Like an indemnity claim, here Bank of America's damages did not accrue when the underlying wrong occurred, but rather accrue if and when a judgment is entered which triggers the claim. That no damages accrued on the date of the HOA foreclosure sale is evidenced by the fact that (1) Bank of America foreclosed on its Deed of Trust just four months after the HOA foreclosure sale, (2) EZ Properties was willing to purchase the Property four months after the HOA foreclosure sale, (3) Flagstar Bank, FSB used the Property to secure a mortgage loan to James Blaha, EZ Properties' predecessor-in-interest, and (4) Plaintiff did nothing to challenge the validity of Bank of America's Deed of Trust foreclosure sale until almost four years after it occurred. In fact, Plaintiff has not paid HOA dues on the Property or maintained the Property since Bank of America's Deed of Trust foreclosure in August of 2011, seemingly admitting through this inaction that Bank of America's Deed of Trust foreclosure sale was valid, and divested Plaintiff of any interest in the Property it acquired through the HOA's foreclosure sale. *See* Blaha's MSJ, at **Exhibit 19**, at 156, 179. All of these expenses have fallen on Blaha, whose title to the Property derives from Bank of America's valid foreclosure sale.

Every party to this action has correctly proceeded as if Bank of America's Deed of Trust survived the HOA foreclosure sale. Now, more than four years later, Plaintiff files an action contending that it owns the Property free and clear, and further contends that Bank of America cannot argue that the HOA foreclosure sale was valid "because of its dilatory conduct." Pltf's Opp., at 6. It is Plaintiff's dilatory conduct that is fatal to its quiet title claims. However, to the extent this Court disagrees, Bank of America's motion for leave to join the HOA and HOA Trustee should be granted to allow it to assert damages claims against those parties based on their misrepresentations

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as to the effect of their foreclosure sale and their wrongful rejection of Bank of America's super-priority tender.

III. CONCLUSION

For the foregoing reasons, Bank of America's motion for leave to add as parties Nevada Trails II Community Association and Absolute Collection Services, LLC and to assert additional affirmative defenses should be granted.

DATED: September 6, 2016

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/s/ William S. Habdas

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 6, 2016 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing, **DEFENDANT BANK OF AMERICA, N.A.'S REPLY IN SUPPORT OF ITS MOTION TO ADD AFFIRMATIVE DEFENSES AND TO ADD PARTIES AND ASSERT CLAIMS**, postage prepaid and addressed to:

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TRAN

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.: XXX

REPORTER'S TRANSCRIPT OF MOTIONS

BEFORE THE HONORABLE JUDGE JERRY WIESE

DEPARTMENT XXX

TUESDAY, SEPTEMBER 13, 2016

9:49 A.M.

Reported by: Amber M. McClane, NV CCR No. 914

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LAS VEGAS, NEVADA; TUESDAY, SEPTEMBER 13, 2016
9:49 A.M.
*** * * * ***
P R O C E E D I N G S
*** * * * * * ***

THE COURT: How about Las Vegas Development Group versus Blaha?

That's a fun name, "Blaha."

MR. HABDAS: Good morning, Your Honor. William Habdas here for Bank of America.

THE COURT: Good morning.

MR. MAURICE: Good morning, Your Honor. Aaron Maurice on behalf of Mr. Blaha and Noble Home Loans, Inc.

MR. CROTEAU: Roger Croteau on behalf of Las Vegas Development Group.

THE COURT: So it's on today for -- let's see -- B of A's motion to add affirmative defenses and parties to assert claims, and a bunch of joinders.

There's a motion for summary judgment. Right?

MR. MAURICE: There is, Your Honor.

THE COURT: Blaha and Noble Home's motion for summary judgment, and then B of A's motion to assert all these different things.

MR. MAURICE: The motion for summary judgment

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would be dispositive of the entire action. It would seem that that would make sense to handle before you --

THE COURT: Okay.

MR. MAURICE: -- consider a motion for leave to amend.

THE COURT: Go for it.

MR. MAURICE: Your Honor, Aaron Maurice, again, on behalf of Mr. Blaha and Noble Home Loans. We are -- just to be -- put this kind of big picture in place for Your Honor, my client is the record owner of the property, Mr. Blaha. Noble Home Loans is the lender that made a loan to Mr. Blaha which is secured by the property. Mr. Blaha purchased the property in an arm's length transaction from a company called EZ Properties. EZ Properties -- and that transaction occurred back in 2011, summer of 2011. EZ Properties acquired the property at an NRS Chapter 107 foreclosure sale. It was a foreclosure on a deed of trust. That foreclosure was conducted by Bank of America. That actually also occurred back in the summer of 2011. That was specifically August 29th of 2011.

This litigation, which has been brought by Las Vegas Development Group, seeks to divest my client, Mr. Blaha, of his record ownership in the property and to invalidate the loan made by my other client, Noble

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Home Loans, which is secured by the property, and to basically unwind the transaction from EZ Properties to my client, Mr. Blaha, all based upon an allegation by Las Vegas Development Group that the foreclosure sale conducted pursuant to NRS Chapter 107 by Bank of America back on August 29th of 2011 was invalid. The basis for that alleged invalidity stemming from the plaintiff's claim that plaintiff purchased the property free and clear of the Bank of America deed of trust at an HOA foreclosure sale conducted pursuant to Chapter NRS 116 in April of 2011.

So that kind of gives you the whole picture. We have a plaintiff who wants to unwind three transactions, if you count the loan, based on the allege invalidity of an NRS Chapter 107 foreclosure sale which occurred in 2011. And as we have pointed out in the motion, this cause of action or essentially all of the causes of action that have been asserted by the plaintiff are barred by the statute of limitations, which is imposed by Chapter NRS 107.080(5) and (6). And to make sure we're all clear -- and I'm happy that I got to sit through some of the earlier arguments -- I understand the Court's preference for the language of a statute. NRS 107.080(5) and (6) could not be clearer. Begins by stating, "Every sale made under the

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provisions of this section," which is, again, in NRS 107, "and other sections of this Chapter," 107, "vest the purchaser -- vest in the purchaser the title of the guarantor and any successors in interest without equity or right of redemption," and then it proceeds to provide abbreviated statutes of limitations for trying to unwind these transactions.

And I have to go back and give you a little background for this. I'm going to take you back to kind of an unpleasant period in Nevada history; take you back to 2007. In 2006, we have the economic crash. Nationwide, essentially there's a freeze on lending. The areas that were impacted the hardest was the construction industry and residential housing. Particularly -- particularly hard hit was Nevada.

In the 2007 legislative session, one of the issues that was raised with the Legislature was the fact that these banks, who had started foreclosing on their purchase-money loans were having a problem. They could not return the houses that they were foreclosing to the market. They were not being able to put those back into the market because they couldn't get title insurance policies.

As I think Your Honor's aware, almost every real estate transaction that has a -- that involves a

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conveyance where there is a loan, you end up with two insurance policies issued by a title insurer. One is an owner's policy, which ensures the person who was acquiring title of that property, that they own the property subject to specific encumbrances that are identified in the title policy. Everybody knows about that one because most people who buy a house get one of those policies. What most people don't know is that there's a second policy that's also issued in connection with a conveyance of real property where there's a loan, and then there's the lender's policy. The lender who makes the loan gets a very similar policy which ensures the priority of that lender's deed of trust.

The problem that was existing back in late 2006 when the market tanks is that you have title insurance companies that are saying, Hey, we will not insure a title policy for an owner or for a lender on a property that has been subject to a deed of trust foreclosure until the statute of limitations expires to contest that foreclosure. Because if we don't take that position, by issuing the subsequent policy we essentially become the insurer of that foreclosure. We are basically -- if the title insurer agrees to issue that policy after a deed of trust foreclosure but

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within the five-year statute of limitations, which going into 2007 existed under NRS 11.080, the title insurer is taking the position that anybody who comes out of the woodwork and wants to say, I didn't get notice of the foreclosure or the sale price wasn't commercially reasonable or there are any other kind of defects in the sale process, basically those would all result in a title claim to the title insurance companies. So the title insurance companies said, We will not insure either the transactions conveying these properties or the loans related to those properties.

And this was a problem. It was a problem because remember the phrase "shadow inventory"? That's how you get a shadow inventory. You have banks that are taking properties back through credit bids at these foreclosure sales, but they can't return them to the market.

The Legislature also recognized that at this time the Nevada residential housing market -- or housing construction industry was dead. Nobody was building new homes. So the Legislature looked at this and said, We have a problem. Like, this is a problem that we can fix, and by fixing it we will actually spur economic activity by returning this shadow inventory to the market. People will fix these properties.

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Remember the stories you used to see on the news about the condition? In the first couple of years, the condition people would leave their properties in when they would leave, they'd take a sledgehammer to everything? Well, the banks didn't want to fix that. The banks just wanted to sell it as is. The people who would buy it would then need construction.

And so the Legislature looked at this and said, This makes sense. And so NRS 107.080 was enacted which provided for an abbreviated statute of limitations to contest a nonjudicial foreclosure sale conducted under NRS 107. This statute of limitations does not apply to situations where, you know, some crazy nephew just records a fugitive deed of -- you know, a fugitive document on the property, and engages in a fraudulent transaction. Those issues continue to be governed by the five-year statute of limitations. This was the Nevada Legislature using a scalpel to carve out a very specific exception, an abbreviated statute of limitations which would apply only to actions seeking to contest NRS 107 foreclosures on deeds of trusts.

And in 2007, the time period that was applied was they used a -- there are three real steps. One is,

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if you were one of the parties who received notice of the foreclosure sale, you had 90 days. Ninety days from the date you got -- from the date of the foreclosure sale you had to instigate litigation to set it aside. If you were one of the parties who did not receive notice, in other words, you weren't on the mailing list by the foreclosure trustees, you had 120 days from the date that you learned of the foreclosure. So those were the two time periods that were set aside. There was a third time period which said, Once you initiate litigation, you have 30 days to record a lis pendens. But, really, for the purposes of our discussion today, the two time periods that mattered were the 90-day statute of limitations if you were on the mailing list and the 120-day statute of limitations if you were not on the mailing list.

The legislation had the desired effects. The homes were returned to the inventory. Insurance policies were issue after the expiration of the statute of limitations, both to the lender and to the purchaser. And it worked so well that in 2013 the Legislature actually reduced the time periods further, reducing the time period from 120 days if you didn't receive notice to 60 days and the time period if you were on the mailing list from 90 days to 45 days and

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the lis pendens went from 30 days to 15 days. It's not really -- it's not relevant to this case because the statutes of limitations, which are applicable in this case, are the 120 day and 90-day periods. I only raise that because the issue about when you apply a statute of limitations often depends upon the public policy behind the enactment of that statute of limitations. And I wanted to point out to this Court that not only did the public policy from 2007 serve its purpose but it served its purpose so well that the Legislature doubled down and cut the deadlines even further to further encourage the properties to return to the market.

Your Honor, no matter how you look at this case, the simple fact is the plaintiff seeks to invalidate a foreclosure sale that was conducted pursuant to NRS 107. That means that the plaintiff must comply with the statute of limitations imposed by NRS 107. In this case, it's not a close call. In this case, the plaintiff missed that deadline by almost 1,200 days.

The plaintiff -- and this came out in discovery, and we've laid it out in the motion. The plaintiff purchased about 200 properties at HOA foreclosure sales. In 2011, the plaintiff had counsel

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actively negotiating with purchase-money lenders, and according to his testimony, when a purchase-money lender would notice up a foreclosure, his counsel would have discussions with the purchase-money lender. If the purchase-money lender was willing to basically double the amount they had paid for the property, they would release their interests. That was the analysis he went through, and he said some lenders, they were easy to work with. Other lenders were impossible to work with. I kind of joked, Was Bank of America one of the lenders that was impossible to work with?

Yes.

I said, Okay, so what happens to the lenders that were impossible to work with?

Well, had to make a decision.

And this was -- this is in the 2012 time frame. Because in the 2012 time frame they were already litigating against some lenders but they had chosen not to litigate against others. And the question was: Why would you make that decision? He had a great answer. His answer was: Why would I spend $10,000 in legal fees to try to fight over one property when, for that same $10,000, I could go out and buy two more properties? I mean he bought this property -- his interest in this property was acquired for about

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$5,000. He made a decision. He made a straightforward, cost benefit decision. Did I want to pay -- did he want to pay his attorneys $10,000 a month to go litigate with the likes of Bank of America and Noble Home Loans and Wells Fargo and all the other lenders out there that were raining down on him with his 200 properties, or did he want to buy more properties? He made that decision. He chose certain -- certain actions were being contested. I confronted him in the deposition I said, I can look at the court docket and it shows you had counsel in Nevada, you were actively litigating these cases in 2012, why didn't you sue to stop the Bank of America foreclosure? Why, after the Bank of America foreclosure occurred, did you not within the 120-day period instigate litigation to unwind that transaction? Why, after Bank of America sold the property to EZ Properties, did you not initiate litigation to unwind that transaction? Why, after EZ Properties sold the property to Blaha, my client, did you not instigate litigation and unwind that transaction? Why, after Mr. Blaha acquired title to the property, did you not initiate litigation to stop Mr. Blaha from encumbering the property with the loan from Noble Home Loans? The analysis was the same. It just financially for him, at

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that time period, it didn't make sense. The same $10,000 he'd have to pay a law firm to do those things, he could buy two more properties.

Your Honor, he played the numbers game. The time line is undisputed. The litigation in this case was instigated in 2015. I think we put it repeatedly in our motion, that's 1,298 days after the Bank of America foreclosure. So you're dealing with an abbreviated statute of limitations to begin with, which was 120 days at the most. He admits in his deposition that he knew about the foreclosure by the time -- by 2012. And the way we were able to get that out of him is we said, Hey, look, you stopped paying the HOA fees on the property in 2012. Why did you do that?

Well, there was obviously issues with -- with the fact that there had been a foreclosure and the other owner and the fact that the bank would own the property. He said, I don't even know if I could have made the HOA fees at that payment because usually the HOA will only deal with the record owner of the property.

So it's undisputed that Las Vegas Development Group knew of the foreclosure in 2012. It's undisputed that they waited a full three years to file litigation, and it's undisputed that the statute of limitations for

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this type of a foreclosure action is only 120 days from the date that you learn the foreclosure.

This issue has been looked at by two -- in two cases that are particularly poignant. One was a Federal Court case that went all the way to the Ninth Circuit. I represented the lender in that case. I think Mr. Croteau was on the other -- well, no, actually, it wasn't Mr. Croteau. The *Kim versus Kearney* case, and the -- at the District Court level, the District Court had said -- because the issue there was you had a creative filing that had sought to basically unwind the transaction. It didn't call it a wrongful foreclosure claim. That's what they said. They would not use the word "wrongful foreclosure." And the court, they said, No, no, it's a quiet title. This is a quiet title action under NRS 11, I have a five-year statute of limitations, it's not governed by NRS 107.080. The Federal Court rejected it and said absolutely not, any claim that seeks to set aside a foreclosure that was conducted under NRS 107 is by definition a wrongful foreclosure claim, and no matter how you plead it, whether you call it quiet title, whether you call it wrongful foreclosure, it doesn't matter; abbreviated statute of limitations. That was affirmed by the Ninth Circuit Court of Appeals.

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And then right around the same time, thankfully, we had the Nevada Supreme Court in an unpublished decision, the *Michniak* decision came back and said the same thing; said after the statutory period expires that's provided in NRS 107.080(5) and (6), the interest that has been conveyed subject to that nonjudicial foreclosure sale conducted pursuant to NRS 107 cannot be contested for any reason.

Your Honor, all we're asking you to do is apply the law as written based on the authority that's provided. For that reason, all of the claims should -- summary judgment should be granted with respect to all of plaintiff's claims.

THE COURT: Thanks.

Mr. Croteau.

MR. CROTEAU: I'd like to know how counsel thinks that, if they don't own the property at all -- I walk up to your house, Your Honor, and Bank of America decides to do a foreclosure sale on your particular house -- they don't own it. They don't have a deed of trust on it anymore -- but let's have one anyway. And if I foreclose on it and you don't come after me in 120 days, my sale is righteous. That's their argument. Okay?

Because if you take *SFR* and you take 116, all

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right, 3116, and you say that a proper foreclosure sale happened and it happened -- see, he started you off by saying it's a 107 sale. It's a 107 sale. It's a 107 sale. It's not. It's a 116 sale. Okay?

116 cites 107.080 for terminology as to how to conduct the sale, but it's an HOA sale that occurs in this case. The HOA sale, in fact, happened as of April 12, 2011. And if you read *SFR*, like we have all read *SFR*, it says that it, in fact, extinguishes all junior liens, which would, in fact, be a super priority lien held in a first deed of trust. I think that's very clear. We can argue about all the other stuff. We can argue about whether there's commercial reasonableness. We can argue about all those things, okay, but that's not the basis of this motion. Their motion is statute of limitations, essentially.

So if we take that premise, and then B of A, being the bull in the China shop, the big guy on campus, right, the gorilla, comes in and says, I don't care what you have. I don't care that this deed of -- the deed of trust is extinguished. I don't care that the record owner is not Blaha anymore, it's Las Vegas Development Group. I don't care. I'm going to come in and I'm going to do my sale. I'm going to conduct the sale, and I'm going to divest you people of what your

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interest is, even though that's not the state of the law eventually. It was the flux in the law amongst the jurisdictions of the District Court, though. You know, we were arguing these cases ongoing, and that's factually correct. You know, in terms of, you know, can the bank foreclose, can't they foreclose, let's get the stay on, let's see if -- if not, let's go to the Supreme Court.

So there was all of that going on at this time frame, but does that change the outcome of the analysis? Does that change the act? Okay. I will concede that if 107.080 is being conducted as a legitimate sale, that statute would apply. It's not a legitimate sale.

Look, counsel wants to cite you to the statute. I think you should look at it, too. Okay? 107 -- bear with me one second -- 107.080(4) begins with, begins with, "The trustee or other person authorized to make the sale under the terms of the deed of trust or transfer in trust" -- Your Honor, the simple premise is, the predicate, the presumption, the condition precedent is you have to have a valid deed of trust secured by the property. If you don't have it, you don't have anything to foreclose.

What is a security instrument? It is a

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promissory note signed by the buyer. Right? I mean, who owns this property, who's going to secure it with the property. They gave you a promissory note. Right? That's just a contract between the borrower and the bank. Then they get another piece of paper that says, I'm securing the promissory note by this deed of trust. The deed of trust is your instrument that ties that promissory note to the building. They lost their deed of trust at the HOA foreclosure sale. They still have their promissory note. I don't have a problem with that. That's their claim against who? The original borrower, Mr. Blaha. That's their business. That's their choice.

They have effectively done a whole lot of things to my client, and they've done a great deal of things in terms of doing what they did. Now, I think this is amazing, actually, because they say that because, again, they are who they are, they're Bank of America, they've had the statute -- the Legislature come in and give us this particular statute so we can clean up shadow inventory. I know Your Honor has done enough of these cases. How many times have you heard that the HOA sales have not been able to get a title policy? How many times have you heard that? Because the HOA foreclosed properties owned by my clients, and

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everybody else that I know has not been able to get a title policy issued. Yet, the title insurers went with B of A and the banks and said, Yeah, we'll give you title policies. That's why they're sitting on the other side of the table now, because they were on the wrong side of the "V" in the analysis on whether *SFR* was going to go for the banks or for the purchasers. They made a decision. They decided to issue title policies in favor of the banks at that point in time so that they could sell their inventory. That was a deal they made with the banks, not with us. They wouldn't give us title policies, and to this date we haven't gotten a title policy yet. Why? Because of the flux in litigation. Because of all the cases that are still pending. Okay?

So if they've issued title policies, they're independent corporations. They are not government entities. That is their decision. Okay? So that analysis, frankly, has absolutely no weight in this courtroom as to whether or not they get a title policy issued. But what it does tell me is they have no remedy. They got a lender's policy, they got a remedy.

So what's the harm, what's the foul here? The case should fall and go the way it should, which is *SFR* has stated that it extinguishes first deeds of

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trust if there's a super priority interest. That's your first issue. I haven't heard that, but that's your first issue. And in this particular case, there's no evidence to suggest that my client was not.

My client was the record holder. Okay? And he talks about his people being the record holder. The only reason they're the record holder is they're the subsequent record holder because they've inappropriately, in violation of law, attempted to divest my client's ownership. Period. No other reason. So if I look at the chain of title, Your Honor, I have LVDG, Las Vegas Development Group, being the record holder of title. I have Bank of America coming along and filing their NODs and doing their own sale and then going in and physically taking control of the property, even though my client's the record holder. Is there a word for that? I mean, I think we'd call that something else if it wasn't Bank of America. We might call it fraud if it wasn't Bank of America. Okay? I mean if somebody had went and did that.

So the objective here is what? Let's look at the analysis of law. Okay? How do you apply 107 --

THE COURT: Let me ask you this, Mr. Croteau. How do you deal with the -- let's assume that you're

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right about all that.

MR. CROTEAU: Mm-hmm.

THE COURT: How do you deal with the 107 language that says that your client then has a certain amount of time to contest it once he knows about it?

MR. CROTEAU: How do you apply a statute that doesn't apply to them and put a statute of limitations that doesn't apply? The *Amber Hills* decision addressed this issue, and I know it's not a Nevada District Court case, Federal. All right? But it clearly says it's not three years, it's five years. It's an adverse possession case. All right. So, I mean, it falls within that adverse possession.

How do you apply, Your Honor -- and a very simple question. I mean, it's more rhetorical than anything else. 107 only speaks of a rightful owner being divested of its ownership and there being an improper foreclosure proceeding. The only improper foreclosure proceeding that can be asserted by my client is against the HOA because that's the only one we took it from. Whether somebody subsequent comes in and clouds my title and does a -- an act that is tortious at best, okay, is not what 107 talks about. It is not even directed to that party.

I mean, are you saying -- and, again, that's

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why I started off my comments by saying let's say that LVDG, for the sake of our discussion, sells you the property initially. Well, Bank of America forecloses it just like anybody else and throws you out of the house. Who is your claim against? You don't owe Bank of America. Your claim is against the person that sold it to you upstream. I have no issue with these folks downstream except they've clouded our title. In this particular case, though, they banged through the door, took the people out, and took over the premises. All right? And then took the money from that sale that actually belongs to my client. Right? Because I'm either going to get one thing or the other. I either get my house, or I get the proceeds, but I get something. And presumably, if it's specific performance, I get the house in this particular case because I would have kept it and it would be worth more today. And my client has kept all the properties, frankly.

So, again, the confusion, the charlatan show here is that 107 applies to someone who's not even a party to 107. It's not by right. They don't have standing just because they're a bank. Let's forget they're the bank. Let's say that they're Joe Consumer, Joe Jones. Do they still have the same rights to come

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in and do a foreclosure even if they don't have deed of trust? Will they be treated the same way? Well, 107 is very clear. You can only foreclose a valid deed of trust. That is the principle tenet to 107. If you don't have a valid deed of trust, you cannot use 107. There is no such thing as a nonjudicial foreclosure sale of an extinguished deed. Let's get with that premise to begin with. Let's put that in the four corners of our discussion, and tell me how we get beyond that. It's a nonstarter. That's the problem.

And I appreciate the way counsel and -- counsel and I have litigated many years so -- and I appreciate the way he started on "Once upon a time" at the ending and worked backwards. Okay? The problem is you have to start with "Once upon a time" on day one. If you do that, you don't get to day two. He doesn't get to start his argument because he's gone. The deed of trust is extinguished. They have no rights except to go talk to Mr. Blaha. That's it. And that, unfortunately, is the premise of their argument, and that's why it must fail.

Now, *Amber Hills* does a fair analysis, and I just submitted it. It's obviously not binding on this court. It's a federal decision on our state law but it's instructive. It speaks to the very issue.

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If 107 is not the operative standard, okay, because there is no deed of trust to foreclose, no valid deed of trust. Right? That's the contention. Right? We don't disagree there was a deed of trust at one point in time. We simply assert that it was -- it's been extinguished as a result of the foreclosure sale, the HOA foreclosure sale, and that occurred in April. Their sale's in August. You know, race notice, sale's first, there's nothing to extinguish at that point, and that's just the end of it. That's truly the end of the analysis.

So now you're left in standard common law as a quiet title action from our perspective. What's the quiet title? They have clouded our title, all right, by their subsequent deed and their recording of the loan. That's the clouded title. Very simple. It's adverse possession. It's five years. The Legislature gave us five years in those cases. There is no laches argument that makes it less than five years. It's five years.

There is also no bona fide purchaser argument. Your Honor, how many professionals are involved in these transactions? We have the title company, counsel just got done telling you you've got a lenders policy, you got a title policy. Do you think

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possibly they missed the HOA foreclosure sale and the deed encumbering the property in the name of a third party? Do you think maybe they missed it? I don't think so. And I think that the title holder, record holder would be noticed to all parties, and certainly Mr. Blaha would be imputed with the knowledge of having a superior prior in time deed in the name of a third party that's not part of the transaction. And that's why he's got title insurance. Right? For the sole and very purpose, Your Honor.

So where's the harm, where's the foul? Everybody just, as we put it back in the day, people stuffed their chips on one side of the table or the other. And then, when *SFR* came down, that parts the seas. This is no different. Just another way to come back and try to bite the apple again, but it's not the argument. The argument is simple. It's very, very simple. It really is painless and simple. You know, there is no deed of trust to foreclose.

And the lender's policy stands to defend or pay, and the owner's policy of title insurance stands to pay in the event there's a problem with title. And that's all true. And I'm left with the common law statute -- not common law, actually. The statutory five years for adverse possession. They took control

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against our title that was obvious --

THE COURT: Okay. Sit down. You're saying the same thing about the fourth time.

MR. CROTEAU: I apologize, but that's just simple.

MR. MAURICE: Let me just address the misstatements, and I'll address them in the order they were raised.

First of all, the original borrower was not Mr. Blaha. It was Mr. Perez.

MR. CROTEAU: Sorry about that.

MR. MAURICE: He was the original borrower on the Bank of America deed of trust. Second of all, I don't represent Bank of America. I represent, as Mr. Croteau eloquently said, Joe Consumer. I represent the guy who down the line purchased the property in an arm's length sale from EZ Properties. EZ Properties had purchased the property at an NRS Chapter 107 foreclosure sale conducted by Bank of America. But I want to make that clear. The big, bad Bank of America in the room is not represented by me. I have Mr. Blaha.

The comment was made about title insurance companies and they issue these policies. In other words, that they won't issue these policies to

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Mr. Croteau's clients because they purchase at an NRS Chapter 116 sale, but they will issue the policies in transactions that are subsequent to an NRS Chapter 107 sale. The caveat to that is only after 2007 and the passage of NRS 107.080(5) and (6). The title insurance companies would not insure the title to these properties back when the statute of limitations could have been interpreted under NRS Chapter 11 -- or 11.080 to have been a five-year statutory period. They would not do so. The Legislature, to address that issue, established an abbreviated limitations period, and only after that would the title insurance companies agree to insure the title coming out of those foreclosure sales.

Let's be -- Mr. Croteau made the statement we are not dealing with an NRS Chapter 107 sale, we're dealing with an NRS Chapter 116 sale. That was the reason I started my whole discussion with this. Let's be clear. It is undisputed in this case that the plaintiff acquired its interest, whatever that is, out of an NRS 116 sale. Nobody disputes that. But the sale that is under attack in this case is an NRS Chapter 107 sale. Bank of America did not foreclose on a homeowners association lien governed by NRS Chapter 116. Bank of America foreclosed on a deed

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of trust governed by NRS Chapter 107. That's why we're talking about the specific statute of limitations adopted in Chapter 107 that, by its own terms, only applies to that section. "Every sale made under the provisions of this section and other sections of this chapter vest in the purchaser the title of the guarantor, and any successors in interest without equity or right of redemption. A sale made pursuant to this section may be declared void by any court of competent jurisdiction in the country where the sale took place if" -- and then it provides the statutory periods. If the litigation is instigated within 120 days, if it's instigated within 90 days, if a lis pendens is recorded within 30 days, we have a statute of limitations dead on point. This is not an NRS Chapter 116 -- if this litigation -- if we switched is sides and Bank of America moved over to the plaintiff's side and Bank of America had sued Mr. Croteau claiming that the foreclosure sale conducted by the HOA was somehow invalid, we'd be talking about NRS Chapter 116. That's not the situation.

We have Mr. Croteau trying to quiet title in favor of his clients seeking to set aside multiple conveyances that occurred because Mr. Croteau claims a

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sale conducted pursuant to NRS Chapter 107 was invalid. That's why the statute of limitations, which applies only to NRS 107, is what we're talking about here today. And this issue Mr. Croteau -- this issue Mr. Croteau raises when he says they didn't own it, they had nothing to foreclose on, therefore, they have no right, they have no right to purchase, and even puts Your Honor right in the center of it saying let's use a hypothetical where Bank of America comes in and conducts a foreclosure sale on your property, even though you have no relationship with Bank of America whatsoever, and then he said your claims would be against whoever purchased it downstream. Absolutely untrue.

Your claims would be governed by NRS 107.080(5) and (6). Within 120 days of learning of that sale, you would have an obligation to bring litigation not against whoever purchased it down the line but most importantly against Bank of America, under that hypothetical, to set aside that foreclosure sale as improper. The Legislature gave people for that exact scenario, gave those people 120 days from learning of that foreclosure sale to run to court and to get that thing set aside. Now, the Legislature in 2013 abbreviated that 60 days, but that's not what

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we're dealing with here. We're dealing with 120 days. But the reality is there was a time period that was available that, had Las Vegas Development Group wanted to contest the sale when they learned of it in August of 2012 when they stopped paying their HOA fees, they could have run to court to stop it.

And the last thing I want to say is the fatal flaw in that whole premise by Mr. Croteau is what he is trying to say is that the application of the statute of limitations somehow depends upon the strength of a party's claim, and that is absolutely untrue. Think about it. If we put it in a simpler context, in a personal injury action, that's like a person coming to court and saying, I've sued this person for negligence, but I waited three years to sue them. I didn't satisfy the two-year statute of limitations. And the other person files a motion to dismiss and says it's barred because it's untimely and the response you get is, But I have a slam dunk claim, I have injuries, I've got video of the accident, they were clearly negligent, negligence per se, look at the strength of my claim as somehow that being the basis to ignore the statute of limitations. That is not how the statute of limitations is applied. The Nevada Supreme Court has made it absolutely clear that when it comes to the

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application of the statute of limitations, the issue that the Court should be looking at is the public policy behind that statute of limitations. That is the *Winn versus Sunrise Hospital* case where they -- and also -- and that provides multiple statements, including the fact that the limitations period imposed by the legislatures are meant to, quote, "Provide a concrete time frame within which a plaintiff must file a lawsuit and after which a defendant is afforded a level of security," end quote. And then it went on to say with regard to the statute of limitations that the purpose of the statute of limitations are to, quote, "Stimulate activity, punish negligence, promote repose by giving security and stability to human affairs."

Your Honor, that's exactly what NRS 107.080 was enacted to provide, which was a level of stability. It had a public purpose that the Legislature made clear. We've cited all the legislative intent. The purpose was to return this shadow inventory to the market to cause stimulation in the construction industry and to get these houses back into the inventory so that people wanted to buy them either as investments or as homes could do so. It worked wonderfully. The Legislature's further reduced the time period in 2013.

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What we know in this case is, it's undisputed, the plaintiff missed the statute of limitations by just under 1,200 days in this case, Your Honor. Summary judgment should be granted with respect to all of plaintiff's claims

THE COURT: All right, guys.

MR. MAURICE: Oh. Can I say one more thing?

Exhibit 21 we did provide for Your Honor the -- we filed the exact same motion in front of Judge Sturman; the findings of facts, conclusion of law. The motion was granted. We made the exact same arguments. We went statute of limitations, laches, equitable estoppel. She basically said, I don't even need to get to laches or equitable estoppel. I'm granting it just on statute of limitations. I just wanted to make sure it was clear that we advised the Court that we provided the Court with that.

THE COURT: I'm doing the same thing as Judge Sturman did. I don't think I got to get to those other things either. I think 107's pretty clear, and whether there was a 116 sale before or not, I think once there's a 107 sale, I think that statute of limitations applies.

So I'm going to go ahead and grant summary judgment at this point. I think that there's -- based

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on the discovery that you've done, I don't think there's any dispute that Las Vegas Development Group had notice years before filing the suit. You only have a couple months to do it.

MR. MAURICE: And, Your Honor, just so we can be clear on the record -- we pointed this out on the footnote -- there is a slander of title cause of action by the plaintiff. That's actually governed by a two-year statute of limitations, which is also violated in this case based on the acknowledged point of notification in 2012. I just wanted to make sure that it was okay that we included that in the order as well so we weren't back here in 45 days on a motion for reconsideration trying to save the slander of title claim.

THE COURT: If it's 1,200 days, then I think it's not an issue.

MR. CROTEAU: May I just raise one point so I don't have to bring a motion for reconsideration?

THE COURT: Sure.

MR. CROTEAU: All right. 107.080(5) says, "Every sale made under the provision of this section and other sections of this chapter vest in the purchaser the title of the guarantor." In this particular case, there was none. I don't know how you

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deal with that either, but there is nothing to deal with. So there is no title of the guarantor. It didn't exist. So, I mean, it's a -- I don't know. It just seems to me that it's -- to allege that you have to act within 60 days to keep a property that you own that they have no claim to seems illogical. It's a shortened statute of limitations that is absolutely against public policy. It violates the five-year statute of limitations that's specifically on point. It violates the three-year statute of limitations that could be on point. And it only speaks to errors in the foreclosure process. It doesn't speak to the fact that you had no interest in the deed.

So I make that point. And if you read 107 and I -- Your Honor, I know you're a very pensive man. I know you go through these things. But 107.050 -- I'm sorry, '080(5) and (6), if you read them, they only deal with issues with a -- where the deed of trust is valid and only issues of where they're granting and only can give what they had to give. If they have nothing to give, they can't give anything. They can't transfer anything, and they can't sell anything.

THE COURT: I understand that. But I think, based on the 116 sales and *SFR* and the other cases that have come out --

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MR. CROTEAU: Mm-hmm.

THE COURT: -- and I guess we have to end up looking at the Ninth Circuit case as well. But, I mean, if you look at all of that stuff, I think that there's -- there was always a question about what somebody had after a 116 sale.

MR. CROTEAU: No. That was the issue that *SFR* decided. So when you say there's a question, yes, there was, up until 2014. And then that resolved that question.

You know, we can argue about what it means today, and we can -- we're going to go through that. We're still doing that as a judicial body, if you will. Okay? But what we decided in 2014 in *SFR* was that, in fact, it's not a lien sale. In fact, it's not a priority sale. It is, in fact, an actual sale of property, and it does -- it does terminate a senior deed -- a first deed of trust in the event the super priority. Those are things that it established. Okay?

So if you take that premise -- and all I'm saying is, with the understanding that that is the type of sale that occurred in this case, there is nothing that 107 can control or do after that. There is no such thing as a nonjudicial foreclosure process on a non-deed of trust. How you assert a statute of

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limitations on bringing that claim when there is no claim to bring, I do not understand.

THE COURT: Well --

MR. CROTEAU: That's all.

THE COURT: -- if your client never had notice of it --

MR. CROTEAU: Notice shouldn't be the issue.

THE COURT: I think it is.

MR. CROTEAU: They brought notice within the period of time of the statute. They brought notice within the five years, and that's what they're entitled to do.

What you're saying is they needed to have notice within 60 -- call it 120 days, because that's what the statute was then. Well, at 120 days, *SFR* hadn't been decided and --

THE COURT: So your client really didn't know what he had or what the bank had or anybody else had in that property?

MR. CROTEAU: Well, we knew we had the deed of trust. We knew we had the deed of trust. I mean, I'm sorry, deed. I apologize. We knew he had a deed, and our reading of the statute as we had been litigating the cases said we owned the property. They said we didn't and, you know, we said -- pardon me,

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sir -- Mr. Blaha, Mr. Perez, all of them said we don't. I understand that, but that was the issue with *SFR*.

THE COURT: But then when there's a 107 sale, it imposes on your client an obligation to do something just like --

MR. CROTEAU: But, Your Honor --

THE COURT: -- just like *SFR* said that the Chapter 116 sale imposed on the banks an obligation to do something.

MR. CROTEAU: Your Honor, it's highly illogical. What we're saying is highly illogical, and here's why. If 107 is inapplicable to the sale, inapplicable because I don't have a valid deed of trust, I don't have anything to grant because I own nothing, how can you impose that -- that statutory time limit -- statute of limitations, if you will, to do something when they have no authority under the statute to act? It is illogical.

Because you're saying to me you have to go do this statute regardless of the fact that they have no rights under the statute, and if you don't, you're going to lose your property even though they had no right to take it in the first place. It is a wholly illogical analysis, I apologize, in my opinion, anyway, when you look at the statute. And it's sort of like

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the chicken or the egg. At what point did they have authority? What point don't they? At the point they foreclosed, they have no authority at all under 107. They had no rights under 107. Nothing. They're the ones that should have filed, okay, if that's the case. Because they should have said the HOA foreclosure was improper and took away their rights. Theoretically. That's really the argument.

THE COURT: Yeah, I'm keeping it the way it is for now.

MR. CROTEAU: That's fine, Your Honor.

THE COURT: Take it up.

MR. CROTEAU: I just wanted the record to be clear.

THE COURT: Take it up. They'll tell me I'm wrong.

The other motions are now moot.

MR. MAURICE: I'll prepare the order, Your Honor.

THE COURT: Thank you.

(Whereupon, the proceedings concluded at 10:35 a.m.)

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ATTEST: FULL, TRUE, AND ACCURATE TRANSCRIPT OF

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PROCEEDINGS.

/S/ Amber M. McClane, NV CCR No. 914

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MR. CROTEAU: [18] 3/13 16/15 22/1 22/5 27/3 27/10 34/17 34/20 35/25 36/6 37/3 37/6 37/8 37/19 38/5 38/9 39/10 39/12
MR. HABDAS: [1] 3/7
MR. MAURICE: [10] 3/10 3/20 3/24 4/3 4/6 27/5 27/11 33/6 34/4 39/17
THE COURT: [26] 3/2 3/9 3/15 3/21 4/2 4/5 16/13 21/23 22/2 27/1 33/5 33/17 34/15 34/19 35/22 36/1 37/2 37/4 37/7 37/16 38/2 38/6 39/8 39/11 39/14 39/19

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JAMES R. BLAHA and NOBLE HOME LOANS, INC. formerly known as FCH FUNDING, INC.

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. 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

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

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I.

UNDISPUTED MATERIAL FACTS

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

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

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

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

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

6. On September 16, 2010, counsel for BAC Home Loans Servicing ("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.

7. The correspondence acknowledged:

> [A] portion of your HOA lien is arguably senior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated July 21, 2010. . . . It is unclear, based on the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.
>
> Please let me know what the status of any HOA lien foreclosure sale is, if any. My client does not want these issues to be further exacerbated by the wrongful HOA sale that and it is my client's goal and intent to have the issues revolved as soon as possible. Please refrain from taking any further action to enforce the HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

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

> I am making you aware that it is our view that without the action of 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.

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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.

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

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

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

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

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

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

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

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

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

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

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

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:

> Q. It looks like there's one entry for NV Energy and that was on June 3rd, 2011. Do you see that?
>
> A. Okay.
>
> Q For $32?
>
> A. Right.
>
> Q. Any understanding as to why there are no entries for water, sewer, any of the other normal and customary expenses that would go with property ownership?
>
> A. No, not for sure. The – typically the electric was the first thing you needed to get in there if you were going to look at a property and keep the air conditioner on or whatever. I mean, that's the first bill we turned on is Nevada Energy, and then maybe water if we 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.
>
> Q. Right.
>
> A. I don't know.

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> Q. But you don't see anything here reflecting that any property taxes were paid or sewer fees or garbage. Correct?
>
> A. No.
>
> Q. According to my math, it looks like $257 total was spent by Las Vegas Development Group, other than legal fees, in connection with this property. Do you agree with that?
>
> A. Yep. That looks right.

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:

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

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. 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.

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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:

> Q. Do you know why the Las Vegas Development Group stopped paying association fees in August of 2011 with respect to the property?
>
> A. I assume because there is a disputed owner and the HOA takes the dues from the recorded owner, and the recorder showed the recorded owner to be somebody different. I don't know if they even would have accepted it.

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:

> Q. The question is: Why did Las Vegas Development Group wait 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?
>
> A. I don't know what to say. He's telling me not to answer, so...
>
> Q. I don't think he's telling you not to answer this question.
>
> MR. CROTEAU: Whatever. Answer it. It doesn't matter. None of this matters. Answer it.
>
> A. We dealt with properties that we were in the process of buying or being foreclosed on. That's stuff that had already happened

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

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

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

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

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).

II.

STANDARD OF REVIEW

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

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

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

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

III.

CONCLUSIONS OF LAW

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

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

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

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

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

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

> Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the 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:
>
> (a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section or any applicable provision of NRS 107.086 and 107.087;
>
> (b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within **90 days**[2] after the date of the sale; and
>
> (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 commencement of the action.

(Emphasis added to highlight statutory changes).

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

---

[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 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.

[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.

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

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

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

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

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

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

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

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

13. LVDG – who had purchased approximately 200 other properties through foreclosure sales – had both the knowledge and ability to take the legal action 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.

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

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

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

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

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

NOW THEREFORE:

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

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

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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
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/s/ Amy Wilson
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Attorneys for Defendants,
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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. XXX **NOTICE OF ENTRY OF ORDER**

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NOTICE OF ENTRY OF ORDER

Please take notice that an Order was entered with the above court on the 5th day of October, 2016, a copy of which is attached hereto.

DATED this 5th day of October, 2016.

KOLESAR & LEATHAM

By _____
AARON R. MAURICE, ESQ.
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BRITTANY WOOD, ESQ.
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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

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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. 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

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

I.

UNDISPUTED MATERIAL FACTS

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

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

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

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

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

6. On September 16, 2010, counsel for BAC Home Loans Servicing ("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.

7. The correspondence acknowledged:

> [A] portion of your HOA lien is arguably senior to BAC's first deed of trust, specifically the nine months of assessments for common expenses incurred before the date of your notice of delinquent assessment dated July 21, 2010. . . . It is unclear, based on the information known to date, what amount the nine months' of common assessments pre-dating the NOD actually are. That amount, whatever it is, is the amount BAC should be required to rightfully pay to fully discharge its obligations to the HOA per NRS 116.3102 and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA.
>
> Please let me know what the status of any HOA lien foreclosure sale is, if any. My client does not want these issues to be further exacerbated by the wrongful HOA sale that and it is my client's goal and intent to have the issues revolved as soon as possible. Please refrain from taking any further action to enforce the HOA lien until my client and the HOA have had an opportunity to speak to attempt to fully resolve all issues.

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

> I am making you aware that it is our view that without the action of 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.

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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.

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

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

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

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

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

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

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

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

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

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

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

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:

> Q. It looks like there's one entry for NV Energy and that was on June 3rd, 2011. Do you see that?
>
> A. Okay.
>
> Q For $32?
>
> A. Right.
>
> Q. Any understanding as to why there are no entries for water, sewer, any of the other normal and customary expenses that would go with property ownership?
>
> A. No, not for sure. The – typically the electric was the first thing you needed to get in there if you were going to look at a property and keep the air conditioner on or whatever. I mean, that's the first bill we turned on is Nevada Energy, and then maybe water if we 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.
>
> Q. Right.
>
> A. I don't know.

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

A. No.

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

A. Yep. That looks right.

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:

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

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. 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.

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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:

> Q. Do you know why the Las Vegas Development Group stopped paying association fees in August of 2011 with respect to the property?
>
> A. I assume because there is a disputed owner and the HOA takes the dues from the recorded owner, and the recorder showed the recorded owner to be somebody different. I don't know if they even would have accepted it.

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:

> Q. The question is: Why did Las Vegas Development Group wait 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?
>
> A. I don't know what to say. He's telling me not to answer, so...
>
> Q. I don't think he's telling you not to answer this question.
>
> MR. CROTEAU: Whatever. Answer it. It doesn't matter. None of this matters. Answer it.
>
> A. We dealt with properties that we were in the process of buying or being foreclosed on. That's stuff that had already happened

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

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

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

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

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).

II.

STANDARD OF REVIEW

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

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

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

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

III.

CONCLUSIONS OF LAW

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

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

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

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

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

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

> Every sale made under the provisions of this section and other sections of this chapter vests in the purchaser the title of the 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:
>
> (a) The trustee or other person authorized to make the sale does not substantially comply with the provisions of this section or any applicable provision of NRS 107.086 and 107.087;
>
> (b) Except as otherwise provided in subsection 6, an action is commenced in the county where the sale took place within **90 days**[2] after the date of the sale; and
>
> (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 commencement of the action.

(Emphasis added to highlight statutory changes).

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

---

[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 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.

[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.

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

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

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

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

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

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

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

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

13. LVDG – who had purchased approximately 200 other properties through foreclosure sales – had both the knowledge and ability to take the legal action 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.

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

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

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

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

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

NOW THEREFORE:

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

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

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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
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Approved as to form:
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/s/ Amy Wilson
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BANK OF AMERICA, N.A. and RECONTRUST COMPANY, N.A.

Submitted over the objection of:
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CLERK OF THE COURT

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

7639 Turquoise Stone

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

DATED this 11th day of October, 2016.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda
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MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF THE FACTS

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

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

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

> To limit this Court's burden in considering the legal arguments advanced in this 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.

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

> Although the Defendants recite certain factual allegations and attach certain exhibits that appear to be directed towards such arguments, they expressly state 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.

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

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

At the hearing dated September 6, 2016, this Court determined 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, that it was unnecessary to reach any other arguments contained in the Blaha MSJ.

Subsequent to the hearing, on September 14, 2016, Defendant's counsel, Brittany Wood,

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emailed a proposed Order to Plaintiff's counsel. See Exhibit 1, attached hereto and incorporated herein by reference. On September 20, 2016, Plaintiff's counsel 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.

See Exhibit 1. 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.

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

LEGAL ARGUMENT

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

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

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

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

> (a) No motions once heard and disposed of may be renewed in the same cause, nor 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.
>
> (b) A party seeking reconsideration of a ruling of the court, other than any order 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 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 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.
>
> (c) If a motion for rehearing is granted, the court may make a final disposition of 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.

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

> **(e) Motion to Alter or Amend a Judgment.** A motion to alter or amend the 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.]

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

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

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B. STATEMENT OF THE LAW REGARDING SUMMARY JUDGMENT

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

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

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

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

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

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

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

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

> 3. The Notice of Delinquent Assessment Lien failed to identify the amount, if any, of an alleged super-priority lien.
>
> 5. The Notice of Default failed to identify the amount, if any, of an alleged super-priority lien.
>
> 6. On September 16, 2010, counsel for BAC Home Loans Servicing ("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.
>
> 7. The correspondence acknowledged . . .
>
> 8. Absolute Collection Services, LLC responded to the September 16, 2010 correspondence, rejecting BAC's assertion that it was entitled to tender a nine-month priority payment before foreclosure by BAC, stating, in relevant part: . . .

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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

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

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

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

> 11. Here, the NRS Chapter 107 Deed of Trust Foreclosure Sale that LVDG seeks to set aside was conducted on August 29, 2011. LVDG admitted that it stopped paying HOA assessments on the Property in August of 2011, because of the NRS Chapter 107 Foreclosure Sale. However, LVDG failed to take any action to set aside the sale until March 19, 2015 – 1,298 days after the NRS Chapter 107 Deed of Trust Foreclosure Sale.
>
> 12. Instead of taking action to protect any interest LVDG may have had in the Property, LVDG elected to do nothing for years. During the three-and-a-half-year period in which LVDG failed to take any action to protect its interest in the Property, the Property was sold twice – once at the NRS Chapter 107 Deed of Trust Foreclosure Sale and then again on September 30, 2011, to Blaha.
>
> 13. LVDG – who had purchased approximately 200 other properties through foreclosure sales – had both the knowledge and ability to take legal action 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. The public policy considerations that formed the basis for the Legislature's enactment of NRS 107.080(5)-(6) simply do not allow LVDG to be rewarded for its failure to take any action to protect its interest in the Property.

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

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

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

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

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

CONCLUSION

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

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

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

DATED this 11th day of October, 2016.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ *Timothy E. Rhoda*
ROGER P. CROTEAU, ESQ.
Nevada Bar No. 4958
TIMOTHY E. RHODA, ESQ.
Nevada Bar No. 7878
9120 West Post Road, Suite 100
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Attorney for Plaintiff
LAS VEGAS DEVELOPMENT GROUP, LLC

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7639 Turquoise Stone
585

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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	Email
Akerman Las Vegas Office	akermanlas@akerman.com
Darren T. Brenner, Esq.	darren.brenner@akerman.com
William S. Habdas, Esq.	William.Habdas@akerman.com

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The Law Offices of Kevin R Hansen

Contact	Email
Gabriela Mercado, Paralegal	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
KOLESAR & LEATHAM
ATTORNEYS AT LAW

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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@klnevada.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
KOLESAR & LEATHAM
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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@klnevada.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
KOLESAR & LEATHAM
ATTORNEYS AT LAW

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EXHIBIT 2

EXHIBIT 2

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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.

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)
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September 30, 2016

VIA FACSIMILE (702) 366-1409
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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

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Attorneys for Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP, and Recontrust Company, N.A.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

JAMES R. BLAHA, an individual; BANK OF AMERICA, N.A., a National Banking Association, as successor by merger to BAC HOME LOANS SERVICING, LP; RECONTRUST COMPANY, N.A., 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

DEFENDANT BANK OF AMERICA, N.A.'S OPPOSITION TO LAS VEGAS DEVELOPMENT GROUP, LLC'S MOTION TO ALTER OR AMEND JUDGMENT, FOR RECONSIDERATION, OR FOR CLARIFICATION

Defendant Bank of America, N.A. (**Bank of America**), by and through its attorneys at the law firm AKERMAN LLP, hereby files this opposition to Plaintiff Las Vegas Development Group, LLC's (**Plaintiff**) motion to alter or amend judgment, for reconsideration, or for clarification. This opposition is based upon the Memorandum of Points and Authorities attached hereto, all exhibits attached hereto, and such oral argument as may be entertained by the Court at the hearing of this

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matter.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff's motion to amend this Court's summary judgment order should be denied because the motion contains the exact same erroneous arguments and authority Plaintiff presented in its opposition to Defendants' motion for summary judgment. The grounds for a Rule 59(e) motion include "correcting manifest errors of law or fact, newly discovered or previously unavailable evidence, the need to prevent manifest injustice, or a change in controlling law." *AA Primo Builders, LLC v. Washington*, 245 P.3d 1190, 1193 (Nev. 2010). Plaintiff's motion contains no new evidence, there has been no change in controlling law, and this Court made no errors in law or fact, as this Court correctly held that Plaintiff's claims are time-barred. Plaintiff's argument that this Court "misunderstood the law and facts in the record" regarding the validity of Bank of America's Deed of Trust after the HOA's foreclosure sale is simply incorrect, as Bank of America's super-priority tender protected its Deed of Trust from extinguishment, and the HOA specifically stated that it was foreclosing on only the portion of its lien that was subordinate to Bank of America's Deed of Trust. Accordingly, this Court should deny Plaintiff's motion to amend this Court's summary judgment order.

A. Summary judgment was proper because Plaintiff's claims were untimely under NRS 107.080(5).

Plaintiff's motion to amend should be denied because this Court properly held that Plaintiff's claims are time-barred under NRS 107.080(5). That statute provides a 90-day limitations period for any challenge to the validity of a deed of trust foreclosure sale. *See* NRS 107.080(5).[1] The Nevada Supreme Court has confirmed that this 90-day statute of limitations applies to **any** claim based on the invalidity of a deed of trust foreclosure sale. *See Building Energetix Corp. v. EHE, LP*, 294 P.3d 1228, 1234 (Nev. 2013).

[1] As Defendants explained in their motion for summary judgment, NRS 107.080(b) was amended to change the limitations period from 90 days to 45 days on October 1, 2013. Defendants' Mot., at 13 n.5.

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Plaintiff contends that this 90-day statute of limitations does not apply to it because Bank of America's Deed of Trust foreclosure was "void ab initio," just as it did in its motion for summary judgment, citing to the same authority in support of this false proposition. *Compare* Pltf's MSJ Opp'n, at 15-16, *with* Pltf's Mot. to Am., at 6. Plaintiff cites to cases from foreign jurisdictions (where NRS 107.080(5) obviously does not apply), a Nevada case from 1898 (which predates NRS 107.080(5) by over 100 years), and various treatises for the proposition that "[a] void deed cannot be the foundation of good title and a bona fide purchaser for value acquires no rights under it." Pltf's Mot. to Am., at 6 (quoting *Marlenee v. Brown*, 21 Cal. 2d 668, 677 (Cal. 1943). Even if Bank of America's Deed of Trust was void when it was foreclosed (it was not), Plaintiff fails to grasp that it still had to make that allegation within the 90-day limitation period prescribed by NRS 107.080(5). As the Nevada Supreme Court has unequivocally held, "[u]nder the plain language of [NRS 107.080(5)], **unless a challenge is timely filed, the trustee's sale conclusively vests title in the purchaser**." *Michniak v. Argent Mortg. Co., LLC*, 128 Nev. 918, 918 (Nev. 2012) (emphasis added). "The title set forth in [a] trustee's deed upon sale [is] **conclusive and beyond challenge once the time period set forth in NRS 107.080 ha[s] lapsed**." *Id.* (emphasis added).

Failing to confront this unambiguous statutory language and clear precedent, Plaintiff states the following with regard to this Court's summary judgment order: "If [a] property owner does not complain of [a] invalid and fraudulent foreclosure, this Court has found that the foreclosure sale based upon the fraudulent security interest shall nevertheless be valid and binding against [the property owner]." Pltf's Mot. to Am., at 7. This Court is exactly right—that is how a statute of limitations works. *See Winn v. Sunrise Hosp. & Medical Center*, 277 P.3d 458, 465 (Nev. 2012) (explaining that statutes of limitations "provide a concrete time frame **within which a plaintiff must file a lawsuit and after which a defendant is afforded a level of security**.") (emphasis added). While Plaintiff's hypothetical is incorrect to the extent it implies Bank of America's Deed of Trust was void when it was foreclosed, whether the Deed of Trust was void at that time is irrelevant in this case, as the "title set forth in the trustee's deed upon sale" that resulted from that foreclosure "was conclusive and beyond challenge once the time period set forth in NRS 107.080 had lapsed." *See Michniak*, 128 Nev. at 918. Plaintiff missed this time period by almost **three and half years**. As

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such, the title obtained by Blaha's predecessor-in-interest was beyond challenge well before Plaintiff brought its challenge in this case, as this Court correctly held in its summary judgment order. Plaintiff's motion to amend that order should be denied.

B. Plaintiff offers no support for its mistaken allegation that the Deed of Trust was voided by the HOA sale.

Even if Plaintiff's claims were not time-barred, the claims still fail because the Deed of Trust was not extinguished by the HOA's foreclosure of its sub-priority lien. Plaintiff's argument that NRS 107.080(5)'s statute of limitations does not apply to it rests on its mistaken contention that "no valid deed of trust existed at the time of the Bank foreclosure sale and such sale was thus void ab initio." Pltf's MSJ Opp'n, at 11. Even if Plaintiff were correct that NRS 107.080(5) somehow does not apply to the foreclosure of a "void" Deed of Trust, Plaintiff's motion to amend the summary judgment order should still be denied because Plaintiff produced no evidence to show that the HOA's foreclosure sale extinguished Bank of America's Deed of Trust.

In its opposition to Defendants' summary judgment motion, Plaintiff's contention that Bank of America's Deed of Trust was extinguished by the HOA's foreclosure sale rested solely on the now-debunked proposition that "the recitals made in the HOA Foreclosure Deed are conclusive proof of the matters recited, e.g., that the process complied with the applicable law for foreclosure of HOA liens." Pltf's MSJ Opp'n, at 8. Well before the summary judgment briefing in this case, the Nevada Supreme Court made clear that the deed recitals outlined in NRS 116.3116 only concern "default, notice, and publication of the" notice of sale, and thus do not provide any presumption regarding other aspects of the foreclosure, such as tender or the commercial reasonableness of the sale. *Shadow Wood Homeowners Ass'n v. N.Y. Cmty. Bancorp, Inc.*, 366 P.3d 1105, 1110 (Nev. 2016). Further, the Nevada Supreme Court recently held that a mortgagee's super-priority tender extinguishes the super-priority portion of an HOA's lien, even if the HOA rejects the tender. *Stone Hollow Ave. Trust v. Bank of America, N.A.*, 2016 WL 4543202 at *1 (Nev. Aug. 11, 2016).[2]

[2] Although the *Stone Hollow* decision was not published and is therefore not technically binding on this Court, it has tremendous persuasive value and should be followed. *See* NEV. R. APP. P. 36(c)(3). The three justices in the *Stone Hollow* panel were also members of the majority of the Court in the *SFR Investments*

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Here, Bank of America tendered the super-priority amount of the HOA's lien before the foreclosure sale in this case. Defendants' MSJ, at **Ex. 4**. The HOA unjustifiably rejected Bank of America's super-priority tender based on its mistaken belief that the HOA's super-priority lien did not come into existence until after the senior deed of trust on a property was foreclosed. Defendants' MSJ, at **Ex. 5**. The HOA's agent further explained that Bank of America's super-priority tender was unnecessary because the HOA "recognized [Bank of America]'s position as the first mortgage company as the senior lien holder." *Id.*

These exhibits were attached to Defendants' summary judgment motion, yet Plaintiff failed to address the effect Bank of America's super-priority had on the title Plaintiff purchased at the HOA's foreclosure sale in its opposition, instead choosing to rely solely on the foreclosure deed recitals to contend Bank of America's Deed of Trust was "voided" by the HOA's foreclosure sale. *See* Pltf's MSJ Opp'n, at 7-10. Now, Plaintiff contends that this Court's summary judgment order was incorrect, stating that this Court "overlooked important arguments and/or misunderstood the law and facts in the record. Specifically, the Court ignored the fact that the entirety of BANA's foreclosure proceedings were based upon a void security interest." Pltf's Mot. to Am., at 5.

This Court overlooked nothing. Rather, Plaintiff overlooks the fact that Bank of America tendered the super-priority amount before the foreclosure sale, thereby extinguishing the super-priority lien, and the fact that the HOA specifically stated that it was not foreclosing on the super-priority portion of its lien. Defendants' MSJ, at **Exs. 4 & 5**. Plaintiff now refuses to accept that it "purchased" something the HOA simply was not selling[3]—title to the Property free and clear—even though Plaintiff did nothing to challenge the validity of Bank of America's Deed of Trust foreclosure sale until almost four years after it occurred. In fact, Plaintiff has not paid HOA dues on the Property or maintained the Property since Bank of America's Deed of Trust foreclosure in August of 2011, seemingly admitting through this inaction that Bank of America's Deed of Trust

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Pool 1, LLC v. U.S. Bank, N.A., 334 P.3d 408 (Nev. 2014). It is thus very likely that the Nevada Supreme Court will continue to follow the reasoning and rule it followed in *Stone Hollow*, and announce that rule in a binding, published decision in one of the many super-priority tender cases pending before it in the near future.

[3] It is also notable that the Trustee's Deed that Plaintiff received at the HOA's foreclosure sale was "without warranty, express or implied." Defendants' MSJ, at **Ex. 9**.

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foreclosure sale was valid, and divested Plaintiff of any interest in the Property it acquired through the HOA's foreclosure sale. *See* Defendants' MSJ, at **Exhibit 19**, at 156, 179.

Plaintiff's case depends on NRS 107.080(5)'s 90-day limitations period not applying to its claims, and Plaintiff contends that limitations period does not apply because Bank of America's Deed of Trust was voided by the HOA's foreclosure sale. Plaintiff's failure to provide any evidence that the HOA's foreclosure sale could void Bank of America's Deed of Trust when (1) Bank of America tendered the super-priority amount before the sale, and (2) the HOA specifically stated it was not foreclosing on its super-priority lien was fatal to its claims on summary judgment. *Allstate Property & Cas. Ins. Co. v. Mirkia*, 2014 WL 2801310, at *9 (D. Nev. June 19, 2014) ("summary judgment is the 'put up or shut up' moment in a lawsuit, when a party must show what evidence it has that would convince a trier of fact to accept its version of events.") (quoting *Schacht v. Wisconsin Dep't of Corr.*, 175 F.3d 497, 504 (7th Cir. 1999)). Nor can Plaintiff now use its Rule 59(e) motion to raise arguments it ignored before this Court issued a final judgment in this case, as Rule 59(e) motions "cannot be used to raise arguments which could have been raised prior to the issuance of the judgment" or "to introduce new evidence that could have been adduced during the pendency of the summary judgment motion." *Preston v. City of Pleasant Hill*, 642 F.3d 646, 652 (8th Cir. 2011); *see also AA Primo Builders*, 245 P.3d at 1193 ("NRCP 59(e) … echo[s] Fed. R. Civ. P. 59(e) … and we may consult federal law in interpreting" it.).

Plaintiff's Rule 59(e) motion simply rehashes arguments this Court already rejected, citing the same inapplicable authority as it did in its summary judgment opposition for the proposition that Bank of America's Deed of Trust was void, and that a statute of limitations does not run against a void deed. It does, and regardless, Bank of America's Deed of Trust was not voided by the HOA's foreclosure of a lien that was subordinate to the Deed of Trust. Plaintiff's motion should be denied.

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CONCLUSION

For the foregoing reasons, this Court should deny Plaintiff's motion to alter or amend judgment, for reconsideration, and for clarification.

DATED: October 31, 2016

AKERMAN LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 31, 2016 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing, **DEFENDANT BANK OF AMERICA, N.A.'S OPPOSITION TO LAS VEGAS DEVELOPMENT GROUP, LLC'S MOTION TO ALTER OR AMEND JUDGMENT, FOR RECONSIDERATION, OR FOR CLARIFICATION**, postage prepaid and addressed to:

Kolesar and Leatham

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Attorneys for Defendants
JAMES R. BLAHA and NOBLE HOME LOANS, INC. formerly known as FCH FUNDING, INC.

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. XXX **JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; FOR RECONSIDERATION; AND FOR CLARIFICATION**

COME NOW, Defendants JAMES R. BLAHA and NOBLE HOME LOANS, INC. formerly known as FCH FUNDING, INC. (collectively "the Blaha Defendants"), by and through their attorneys of record, the law firm of Kolesar & Leatham, and hereby file their Opposition to Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification.

This Opposition is made and based on the Points and Authorities herein, any pleadings on file with the Court and any oral arguments presented at the time of the hearing on this matter.

DATED this 31st day of October, 2016.

KOLESAR & LEATHAM

By _____
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POINTS AND AUTHORITIES

I.

INTRODUCTION

Las Vegas Development Group, LLC's ("LVDG") Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification ("Motion for Reconsideration") simply regurgitates LVDG's prior misstatements of Nevada law. LVDG's misstatements of Nevada law were previously advanced in LVDG's Opposition to the Blaha Defendant's Motion for Summary Judgment and were correctly rejected by this Court in granting the Blaha Defendants' Motion for Summary Judgment.

In granting the Blaha Defendant's Motion for Summary Judgment, this Court correctly applied the statute of limitations imposed by NRS 107.080: (1) as it was intended by the Nevada Legislature; (2) as the statute was interpreted by the Nevada Supreme Court in Michniak v. Argent Mortg. Co., LLC, 2012 WL 6588912 (Nev. December 14, 2012)(unpublished); (3) as the statute has been interpreted by multiple federal district court judges; (4) as the statute has been interpreted by the Ninth Circuit Court of Appeals; and (5) as the statute has been interpreted by other district court judges within this Judicial District. In doing so, this Court correctly

determined that LVDG's 1,298-day delay in bringing this action is fatal to LVDG's claims against the Blaha Defendants. The Blaha Defendants are entitled to the protections and security that the Nevada Legislature sought to provide by imposing strict time limits on those seeking to set aside NRS Chapter 107 foreclosure sales. Reconsideration of this Court's Order is not warranted. If LVDG elects to appeal this Court's thoughtful decision, the decision will be affirmed by the Nevada Supreme Court, consistent with the Nevada Supreme Court's unpublished decision in Michniak. LVDG's Motion for Reconsideration should be denied.

II.

STATEMENT OF FACTS

On March 19, 2015 – 1,298 days after LVDG lost its record interest in the Property as a result of an NRS Chapter 107 foreclosure – LVDG filed its Complaint in this action seeking to invalidate James R. Blaha's ("Blaha") record title to the Property. LVDG's Complaint was not only remarkable in its timing (having been filed after LVDG sat back and allowed the Blaha Defendants to expend significant sums purchasing the Property and then maintaining the Property for more than three years), but also in its requested relief. Such is the case as LVDG's Complaint asked this Court to apply its equitable powers to set aside the NRS Chapter 107 foreclosure that took place on August 29, 2011, and all subsequent transfers of the Property – including Blaha's September 30, 2011 purchase of the Property for $208,000 – based on LVDG's claim to have purchased the Property for $5,200.01 at an HOA Foreclosure Sale conducted on April 12, 2011.

It is undisputed that LVDG acquired its interest in the Property knowing that its interest would be the subject of litigation and that its interest could potentially be wiped-out by a foreclosure on the Deed of Trust. Despite this knowledge, LVDG took no steps to stop the NRS Chapter 107 Deed of Trust Foreclosure or to protect its interest in the Property. Moreover, after learning that the Property had been sold to a third-party purchaser at the NRS Chapter 107 Deed of Trust Foreclosure Sale, LVDG consciously chose do nothing to protect its interest in the Property – waiting for nearly four years before filing this action. Because of LVDG's inexcusable failure to take any action to protect its interest in the Property, the Property was **sold**

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twice, for purchase prices that were equivalent to the Property's fair market value at the time of the sales.

On August 9, 2016, the Blaha Defendants filed their Motion to Summary Judgment, demonstrating that LVDG's Complaint fails as a matter of law because: (1) LVDG's claims are barred by the statute of limitation imposed by NRS 107.080(5); (2) LVDG's claims are barred by the doctrine of laches; (3) LVDG's claims are barred by the doctrine of equitable estoppel; and (4) LVDG's Equitable Mortgage claim is unsupported by the factual record in this case.

On August 26, 2016, LVDG filed its Opposition to the Blaha Defendants' Motion for Summary Judgment ("LVDG's Opposition"). LVDG's Opposition did not dispute the Blaha Defendants' Statement of Undisputed Facts. Rather, LVDG's Opposition conceded: "**There is little, if any, dispute regarding the facts at hand**." See Opposition p.7, ll.9-10 (emphasis added). Without disputing the factual basis for the Blaha Defendants' Motion, LVDG's Opposition asserted that this Court should ignore the more specific statute of limitation imposed by NRS 107.080(5) and instead apply the general statute of limitation imposed by NRS 11.080 based on the "conclusive presumption contained in NRS 116.31166". See LVDG's Opposition, p.8, ll.15. Unfortunately for LVDG, such arguments are contrary to the Nevada Supreme Court's decision in Michniak v. Argent Mortg. Co., LLC, 2012 WL 6588912 (Nev. December 14, 2012)(unpublished) – not to mention multiple federal district court decisions and Ninth Circuit precedent – and Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. Adv. Op. 5, __ P.3d __ (Nev. 2016)(confirming that the "conclusive proof" language of NRS 116.31166 (2013) does not render "such deeds unassailable").

On September 13, 2016, this Court heard oral argument on the Blaha Defendants' Motion for Summary Judgment. This Court agreed that LVDG's Complaint was barred by the statute of limitation imposed by NRS 107.080 and that Plaintiff's slander of title claim was likewise barred by the two-year statute of limitations imposed by NRS 11.190(4)(c). Based on this Court's finding that LVDG's Complaint was barred by the statute of limitations, this Court stated that it need not reach the other legal arguments advanced in the Blaha Defendants' Motion. This Court also determined that because the Blaha Defendants' Motion was dispositive of the entire case, all

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other pending motions were moot.

On October 5, 2016, this Court's entered its Order Granting James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and all Joinders Thereto ("Order"). The Order included this Court's findings of facts and conclusions of law with respect to the Blaha Defendants' Motion for Summary Judgment. Consistent with this Court's statements in open Court, Conclusion of Law No. 17 provides:

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

See Order, p.13, ll.19-20. In addition, because the Order entered judgment quieting title in favor of the Blaha Defendants (i.e., the record title holder and his lender) and against LVDG, the Order also included an express order expunging the lis pendens that had been recorded by LVDG to cloud Blaha's title to the Property pending the final judgment of this Court in accordance with NRS 14.010.

On October 11, 2016, LVDG filed its Motion for Reconsideration. LVDG's Motion for Reconsideration argues that this court "overlooked arguments and/or misunderstood the law and facts in the record." In support of this position, LVDG's Opposition reasserts LVDG's prior misstatements of Nevada law with regard to the issue of whether the statute of limitation imposed by NRS 107.080 applies to this case. In addition, LVDG argues that this Court should reconsider its Order because the Order "includes numerous findings of fact and conclusions of law that were not addressed at the hearing of the Motion and were therefore not adjudicated." See LVDG's Motion for Reconsideration, p.5, ll.24-26.

As will be demonstrated below, LVDG's assertion that this Court should reconsider its Order because the Order includes findings that were not specifically stated by the Court on the record during the hearing and "therefore were not adjudicated," finds no support in Nevada law. In addition, this Court did not overlook arguments or misunderstand the law. Rather, this Court correctly refused to adopt LVDG's position advanced in this case because it misstates Nevada law.

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This Court correctly found that LVDG's 1,298-day delay in bringing this action is fatal to LVDG's claims against the Blaha Defendants. By granting summary judgment with respect to LVDG's time-barred Complaint, this Court ensured that Blaha will once again be able to enjoy the rights and privileges that accompany home-ownership as intended by the Nevada Legislature when it enacted NRS 107.080. LVDG's Motion for Reconsideration should be denied.

III.

ARGUMENT

A. Nevada law does not require judges to make a specific statement on the record at the time of the hearing with respect to each finding of fact and each conclusion of law that supports the Court's decision.

LVDG's Motion for Reconsideration argues that the Court should reconsider its Order because the Order "includes numerous findings of fact and conclusions of law that were not addressed at the hearing of the Motion and were therefore not adjudicated." It is interesting to note that LVDG's Motion for Reconsideration **fails to identify a single finding of fact that LVDG asserts is in dispute** such that reconsideration would be warranted pursuant to the heightened standard for reconsideration required by EDCR 2.24 or NRCP 59. Instead, LVDG's Opposition merely argues that twenty-eight of the Court's factual findings are not "relevant to this Court's limited determination that the Plaintiff's Complaint was barred by the time limitation of N.R.S. 107.080." See LVDG's Motion for Reconsideration, p.9, ll.15-16. LVDG argues that because these facts "are directed towards [the Blaha Defendants'] claims related to laches or equitable estoppel", the Court's Order should not have included these findings. See LVDG's Motion for Reconsideration, p.9, ll.18.

However, Nevada law does not require a Court to identify every finding of fact and every conclusion of law that supports the Court's decision at the time of a hearing on a motion.[1] If LVDG's position were adopted by all the judges in the Eighth Judicial District Court, motion hearing days would consume the entire Eighth Judicial District Court's calendar. While it is

[1] NRCP 52 **permits** a court to orally state and record its findings following the close of evidence where the court is acting as the trier of fact without a jury; however, NRCP 52 does not **require** the Court to do so. Rather, the Court may also choose to comply with NRCP 52's requirements through written findings of fact and conclusions of law.

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understandable that LVDG would oppose this Court's Order because it includes findings that will ensure the Nevada Supreme Court upholds this Court's ruling, LVDG's Motion for Reconsideration – much like LVDG's Opposition to the Blaha Defendants' Motion for Summary Judgment – fails to provide any admissible evidence (or even so much as an argument) to refute any of the Court's findings of fact.

As conceded by LVDG in its Opposition, there really is no dispute with regard to the Statement of Undisputed Facts that supported the Blaha Defendants' Motion. Nor is there any admissible evidence that would refute any of the findings of fact that were entered by this Court. LVDG's Motion for Reconsideration fails to meet the standards required by EDCR 2.24 or NRCP 59. As such, LVDG's Motion for Reconsideration should be denied.

B. This Court correctly found that LVDG's claims are barred by the statute of limitations imposed by NRS 107.080(5).

LVDG's Motion for Reconsideration argues that this Court "overlooked arguments and/or misunderstood the law and facts in the record." See LVDG's Motion for Reconsideration, p.5, ll.20-22. Specifically, LVDG's Motion for Reconsideration argues that this Court "ignored the fact that the First Deed of Trust was voided by the HOA Foreclosure Sale." See LVDG's Motion for Reconsideration, p.6, ll.22-23. In support of this position, LVDG's Motion for Reconsideration once again relies on its misstatement of the Nevada Supreme Court's holding in Nesbitt v. De Lamar's Nev. Gold Mining Co., 24 Nev. 273, 52 P. 609 (Nev. 1898) – **a decision that was rendered by the Nevada Supreme Court 109 years before the Nevada Legislature enacted the statute of limitation at issue in this case.** See S.B. 482 (2007)(revising NRS 107.080 to include the 90-day statute of limitation applicable to this case).

Disregarding the fact that the Nesbitt decision was decided more than a century before the Nevada Legislature enacted NRS 107.080(5) – such that it has no application to this case – LVDG has now misrepresented the Nevada Supreme Court's holding in Nesbitt in two separate filings with this Court. In both its Opposition to the Blaha Defendants' Motion for Summary Judgment and in its Motion for Reconsideration, LVDG represented to this Court that Nesbitt held that "an absolute nullity such as a void deed will not constitute color of title, and the Statute

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of Limitations will not run in favor of a person under it. *Nesbitt v. De Lamar's Nev. Gold Mining Co.*, 24 Nev. 273, [sic] (Nev. 1898)(Citations [sic] omitted.)." See LVDG's Motion for Reconsideration, p.6, ll.9-10; see also LVDG's Opposition to Blaha Defendants' Motion for Summary Judgment, p.15, ll.14-16.

However, as previously pointed out in the Blaha Defendants' Reply to LVDG's Opposition to the Blaha Defendants' Motion for Summary Judgment, the Nevada Supreme Court's decision in Nesbitt **makes no findings with regard to statutes of limitations in general**. Of even greater concern, however, LVDG has once again misrepresented to this Court that an argument advanced by the appellant's counsel – an argument that was rejected by the Nevada Supreme Court – was the holding of the case.[2] See Blaha Defendants' Reply to Opposition to Motion for Summary Judgment, n.3 (noting that LVDG's Opposition misrepresented the Nevada Supreme Court's holding in Nesbitt); n.2 (noting that LVDG's Opposition misrepresented the California Supreme Court's holding in Secret Valley Land Co. v. Perry, 187 Cal. 420, 202 P.449 (Cal. 1921); p.8-10 (noting that LVDG's "deed recital" argument was rejected by the Nevada Supreme Court in Shadow Wood Homeowners Association, Inc. v. New York Community Bancorp, Inc., 132 Nev. Adv. Op. 5, 366 P.3d 1105 (Nev. 2016) (confirming that the "conclusive proof" language of NRS 116.31166 (2013) does not render "such deeds unassailable")).

Thus, contrary to LVDG's assertion, this Court's Order did not "overlook[] arguments and/or misunderst[and] the law and facts in the record." See LVDG's Motion for Reconsideration, p.5, ll.20-22. Rather, in granting the Blaha Defendants' Motion for Summary

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[2] Because counsel for LVDG has elected to file a Motion for Reconsideration premised on LVDG's **continued misrepresentations** regarding the Nevada Supreme Court's holding in Nesbitt and of the holdings of other courts, the Blaha Defendants reserve the right to file a Motion for Attorney's Fees with respect to all fees incurred opposing the Motion for Reconsideration pursuant to NRS 7.085 and Watson Rounds v. Eight Jud. Dist. Ct., 113 Nev. Adv. Op. 79, 358 P.3d 228 (Nev. 2015)(NRS 7.085 allows district courts to make an attorney personally liable for the attorney fees and costs an opponent incurs when the attorney files, maintains or defends a civil action that is not well-grounded in fact or is not warranted by existing law or by a good faith argument for changing existing law). The need for vigorous advocacy on behalf of one's client does not override an attorney's ethical duty of candor toward the tribunal.

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Judgment, this Court correctly refused to adopt LVDG's position because it finds no basis in Nevada law.

The Order entered by this Court included findings of fact which are supported in the record and which were not disputed by LVDG in its Opposition to the Motion for Summary Judgment as required by NRCP 56. In addition, this Court's conclusions of law correctly applied the statute of limitations imposed by NRS 107.080: (1) as it was intended by the Nevada Legislature; (2) as the statute was interpreted by the Nevada Supreme Court in Michniak v. Argent Mortg. Co., LLC, 2012 WL 6588912 (Nev. December 14, 2012) (unpublished); (3) as the statute has been interpreted by multiple federal district court judges; (4) as the statute has been interpreted by the Ninth Circuit Court of Appeals; and (5) as the statute has been interpreted by other district court judges within this Judicial District. In doing so, this Court correctly determined that LVDG's 1,298-day delay in bringing this action is fatal to LVDG's claims against the Blaha Defendants.

In addition, by entering judgment quieting title in favor of the Blaha Defendants (i.e., the record title holder and his lender) and against LVDG, the Order also included an express finding expunging the lis pendens which had been recorded by LVDG to cloud Blaha's record title to the Property pending the final judgment of this Court. This Court's Order resolved all adverse claims to title and, therefore, the Order correctly acknowledged that the recording of the Order should be deemed to expunge the lis pendens in accordance with NRS 14.017.

If LVDG believes a stay is warranted (which it is not), NRCP 62 governs the proceedings and requires the Court to set an appropriate bond amount (which, in this case, should be no less than the current fair market value of the property, estimated to be $332,000). Reconsideration of this Court's Order is not warranted.

IV.

CONCLUSION

As set forth above, LVDG's Motion for Reconsideration must be denied. LVDG's argument that certain factual findings included in this Court's order should be removed because they are not "relevant" and because this Court did not expressly make such a finding at the time

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of the hearing on the Motion does not support reconsideration of the Order pursuant to EDCR 2.24 or NRCP 59. In addition, LVDG's Motion for Reconsideration relies on LVDG's continued misrepresentations of the Nevada Supreme Court's holding in Nesbitt – a decision that has no application to this case. By granting the Blaha Defendants' Motion for Summary Judgment, this Court correctly applied the statute of limitations imposed by NRS 107.080. Reconsideration of this Court's Order is not warranted. LVDG's Motion for Reconsideration should be denied.

DATED this 31st day of October, 2016.

KOLESAR & LEATHAM

By _____
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 31st day of October, 2016, I caused to be served a true and correct copy of foregoing JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; FOR RECONSIDERATION; AND FOR CLARIFICATION 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 the Court's facilities to those parties listed on the Court's Master Service List.

An Employee of KOLESAR & LEATHAM

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Attorneys for Defendants
JAMES R. BLAHA and NOBLE HOME LOANS, INC. formerly known as FCH FUNDING, INC.

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. XXX **JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S JOINDER TO BANK OF AMERICA, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; FOR RECONSIDERATION; AND FOR CLARIFICATION**

Defendants JAMES R. BLAHA and NOBLE HOME LOANS, INC. formerly known as FCH FUNDING, INC. (collectively "the Blaha Defendants"), by and through their attorneys of record, the law firm of Kolesar & Leatham, hereby file their Joinder to Bank of America, N.A.'s Opposition to Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for

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Clarification ("BANA's Opposition"). For the reasons set for in BANA's Opposition, this Court should deny Plaintiff's Motion to Alter or Amend Judgment.

DATED this 1st day of November, 2016.

KOLESAR & LEATHAM

By _____

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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 November, 2016, I caused to be served a true and correct copy of foregoing JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S JOINDER TO BANK OF AMERICA, N.A.'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; FOR RECONSIDERATION; AND FOR CLARIFICATION 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 the Court's facilities to those parties listed on the Court's Master Service List.

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Attorneys for Defendants
EZ Properties, LLC & K&L Baxter Family Limited Partnership

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 Successor by merger to BAC HOME LOANS SERVICING, LP; RECONSTRUCT 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.: XXX

DEFENDANTS EZ PROPERTIES, LLC. AND K&L BAXTER FAMILY LIMITED PARTNERSHIP JOINDER TO DEFENDANTS JAMES R. BLAHA AND NOBLE HOME LOANS, INC'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; FOR RECONSIDERATION; AND FOR CLARIFICATION.

COMES NOW the Defendants, EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP by and through their attorneys KEVIN R. HANSEN, ESQ., and AMY

LAW OFFICES OF KEVIN R. HANSEN
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M. WILSON, ESQ. of the LAW OFFICES OF KEVIN R. HANSEN to file this Joinder to Defendants JAMES R. BLAHA AND NOBLE HOME LOANS, INC's (BLAHA DEFENDANTS) Opposition to Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification.

For the reasons set forth in BLAHA DEFENDANT'S Opposition, this Court should deny Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification.

Said Joinder expressly adopts and incorporates the Memorandum of Points and Authorities set forth by BLAHA DEFENDANTS, and Defendants EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP file this Joinder upon such grounds.

Defendants EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP join in each argument of the BLAHA DEFENDANTS and when Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification is denied, the Motion should be likewise denied as to EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP as well.

WHEREFORE, Defendants EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP respectfully request that this Honorable Court deny Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification.

Dated this 2nd day of November, 2016.

LAW OFFICES OF KEVIN R. HANSEN

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AMY M. WILSON, ESQ.
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The Law Offices of Kevin R. Hansen and that on the 2nd day of November, 2016 I caused to be served a true and correct copy of the foregoing **DEFENDANTS' EZ PROPERTIES, LLC, AND K&L BAXTER FAMILY LIMITED PARTNERSHIP JOINDER TO BLAHA DEFENDANTS OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; FOR RECONSIDERATION; AND FOR CLARIFICATION** via electronic filing and/or service with the Eighth Judicial District Court to those parties listed on the Court's Master Service List.

An employee of The Law Offices of Kevin R. Hansen

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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 Successor by merger to BAC HOME LOANS SERVICING, LP; RECONSTRUCT 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.: XXX

DEFENDANTS EZ PROPERTIES, LLC. AND K&L BAXTER FAMILY LIMITED PARTNERSHIP JOINDER TO DEFENDANT BANK OF AMERICA, N.A'S OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; FOR RECONSIDERATION; AND FOR CLARIFICATION.

COMES NOW the Defendants, EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP by and through their attorneys KEVIN R. HANSEN, ESQ., and AMY

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M. WILSON, ESQ. of the LAW OFFICES OF KEVIN R. HANSEN to file this Joinder to Defendant BANK OF AMERICA N.A.'s Opposition to Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification.

For the reasons set forth in BANK OF AMERICA N.A.'s Opposition, this Court should deny Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification.

Said Joinder expressly adopts and incorporates the Memorandum of Points and Authorities set forth by Defendant BANK OF AMERICA N.A., and Defendants EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP file this Joinder upon such grounds.

Defendants EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP join in each argument of the opposing Defendant as said Defendants are in the same chain of title and when Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification is denied, the Motion should be likewise denied as to EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP as well.

WHEREFORE, Defendants EZ PROPERTIES, LLC and K&L BAXTER FAMILY LIMITED PARTNERSHIP respectfully request that this Honorable Court deny Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification.

Dated this 2nd day of November, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The Law Offices of Kevin R. Hansen and that on the 2nd day of November, 2016 I caused to be served a true and correct copy of the foregoing **DEFENDANTS' EZ PROPERTIES, LLC, AND K&L BAXTER FAMILY LIMITED PARTNERSHIP JOINDER TO BANK OF AMERICA N.A's OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; FOR RECONSIDERATION; AND FOR CLARIFICATION** via electronic filing and/or service with the Eighth Judicial District Court to those parties listed on the Court's Master Service List.

An employee of The Law Offices of Kevin R. Hansen

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CLERK OF THE COURT

CASE NO. A-15-715532-C

DEPT. NO. 30

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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

LAS VEGAS DEVELOPMENT GROUP, LLC, a Nevada limited liability company, Appellant, vs. JAMES R. BLAHA, an individual; BANK OF AMERICA, N.A., a National Banking Association, as successor by merger to BAC HOME LOANS SERVICING, LP; RECONTRUST COMPANY NA, a Texas corporation; 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, Respondents.	REPORTER'S TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE JERRY A. WIESE, II DEPARTMENT XXX

DATED TUESDAY, NOVEMBER 15, 2016

REPORTED BY: KRISTY L. CLARK, RPR, NV CCR #708,
CA CSR #13529

APPEARANCES:

For the Appellant:

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For the Respondents James R. Blaha and BAC Home Loans Servicing:

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For the Respondent EZ Properties, LLC:

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LAS VEGAS, NEVADA, TUESDAY, NOVEMBER 15, 2016;

9:20 A.M.

P R O C E E D I N G S

* * * * * * *

THE COURT: Anybody else here on something quick? Nobody came in on something quick? How about Las Vegas Development Group versus James Blaha?

MR. CROTEAU: Good morning, Your Honor. Roger Croteau for Las Vegas Development.

MR. MAURICE: Good morning, Your Honor. Aaron Maurice on behalf of James Blaha and BAC Home Loans.

MS. WILSON: Good morning, Your Honor, Amy Wilson on behalf of EZ Properties.

THE COURT: Good morning. So we get Mr. Albregts and Mr. Croteau in the same day, Kristy. Lucky.

MR. CROTEAU: But Mr. Albregts was very, very polite and very short, Your Honor.

THE COURT: You guys both pose a challenge for the court reporters.

MR. CROTEAU: All right. Oh, fair enough, Your Honor. I'm not going to waste your time, but if

you recall at all -- and you probably don't, that's okay -- I had you summarize your ruling, and I said I won't back on the motion for reconsideration because we planned to lay it out. So the only reason I'm here is one reason and one reason only.

All right? Your ruling from the bench when I was here -- and we argued about all kinds of issues. But your ruling was very succinct. You said, Pursuant to the statute of limitations on 107, okay, where we had to file a -- to file a complaint within 90 days, that that is the reason you were basing your entire rulings on all of the things that were occurring in this case, 107.0805, okay, subsection 5.

However, I get the order back, you know, counsel drafted, and all due respect to counsel, he drafted a very nice order. But it makes all kinds of legal findings, Your Honor, that I don't believe you ever reached. And you specifically said I'm not getting anywhere because I don't need to get there. What the legislative history was, what the thoughts were, all of that dicta that encompasses, I think, like 14 pages of an order, you succinctly got rid of in one swoop by saying, I find that 107.080, subsection 5 requires that the complaint be filed within 90 days, and it wasn't. And it wasn't filed within any other

day other than within the five-year rule under 11.

So, again, I find that every other ruling in there that you rendered and signed off on was really not what you intended to do. Now, if it is, I will go home now, and I will be done, but that's my objection. And that's what I'm asking you to reconsider. And at least keep the -- the issues on appeal, because obviously we're taking it up on appeal, succinct and on point. Because I don't think we had a factual determination even to get to all of the conclusions that are considered in that order. And with that, I will leave it.

THE COURT: There's specific findings that I know you talked about in your -- in your pleadings. I'm just looking at the order now.

MR. CROTEAU: Sure, sure. And, again, I'm not challenging. I understand the Court's position. I am not sitting here saying you made the wrong determination. Obviously, I reserve the right to appeal it, but that is not why I'm here. I understood your decision. I understood what you intended. I made it clear on the record that, you know, I asked you specifically, and you responded specifically as to why you were ruling the way you were ruling. I did that so I had a clear record. Then I got this order that talks

about everything under the sun, and they threw in the kitchen sink. I objected to it. I sent over a letter to counsel. I sent over a letter to the Court, and Your Honor signed the other order.

THE COURT: We waited for about three weeks for a competing order and there was no competing order that came.

MR. CROTEAU: I apologize, Your Honor. I didn't send a competing order. I told them why we were objecting and just asked you to look at the order. If it was a competing order, I would have said that you find in favor of, you know, 107.080, subsection 5, and on that basis you denied or you grant it, so...

THE COURT: All right. Thanks.

MR. MAURICE: Your Honor, I handle enough appeals to know that more is better when it comes to findings of fact and conclusions of law. As the Court's aware, we moved for summary judgment on multiple grounds. There was no factual dispute with respect to anything of pertinence. In fact, in the opposition that was filed to the motion for summary judgment on page 7, lines 9 to 10, the plaintiffs actually acknowledge, quote, "There is little, if any, dispute regarding the facts at hand." So we did not have a factual dispute that the Court had to address.

It was purely a legal analysis. There were three separate arguments that were advanced as to why summary judgment was appropriate. This Court found that the first basis for summary judgment was the basis upon which it was going to grant the motion; and, therefore, it was not going to get to any of the -- get to the second or third arguments. And that is clearly stated in the order. Paragraph 17 of the conclusions of law says, Based on the above findings, the Court need not address the other legal arguments raised in the Blaha defendant's motion for summary judgment.

So it's very clear. When the Nevada Supreme Court receives this, they will see that there was no factual dispute with respect to the motion for summary judgment. Summary judgment was sought on multiple grounds and the Court granted it on the first ground that was raised and chose not to get to the second or third ground. That does not mean that the Nevada Supreme Court might not choose to rule on the second or third ground. That's why you need to supply this additional detail for the Court. That's why we provided that information. I happen to believe that the Nevada Supreme Court is going to follow Michniak, and it's going to follow Kim versus Kirney. So we're just going to see an affirmance based on the ground

that this Court chose to grant summary judgment on. But if for some reason the Nevada Supreme Court choose to get into the issue of latches or the issue of equitable estoppel, these findings are important in the order. That's why we included them, Your Honor.

MR. CROTEAU: And, Your Honor, I don't believe you made findings of fact. There are certainly issues in dispute. If the Court is aware, the issue here is, and succinctly stated, my clients owned the house and were title holders of the house. And you have suggested that 107.080, subsection 5 requires an owner of a house who owns the house to defend against a false and improper foreclosure proceeding. And if they don't, they lose their house because even if someone who doesn't have standing, who doesn't have the right to foreclose because their deed has been extinguished does foreclose and we don't respond, then we do lose our right. I don't agree with it obviously. But that is the only issue that you raised the issue on. The facts that we don't dispute are, we own the house at all times, and that they eventually foreclosed on a house that they didn't have a deed of trust that was valid against. That we agree upon. And that's the only thing we agree upon.

As far as all of the -- the dicta and all of

the other issues in this appeal, the answer's no. And what it should be -- what it should say is it was denied on the remaining or -- 'cause it wasn't granted. So when we start adding all this superfluous findings of fact that are truly superfluous and things that you did not say, I find that problematic because when it goes to the supreme court, they can take from that that the Court made these findings of fact and then extrapolate that into some sort of potential resolution, I don't know, other than a remand.

I think it should be simple. I think it should be clear. You -- and again, I'm not fighting your position. I don't agree with it, of course, but I'm not fighting your position. Okay? You made the ruling on 107.080, subsection 5. I have no problem with that. It should be granted on that basis, denied on the remainder, and that's it. Then there's no findings whatsoever other than -- and all those superfluous findings really aren't relevant. It's the statute. And the statute says we -- the only thing that's relevant allegation is the complaint wasn't filed within 90 or 120 days. That's the only relevant allegation. We owned it. It wasn't filed. They filed their pleadings. That's the end of it. All of this other stuff that goes on for pages and pages and pages

is simply not a finding of fact that's appropriate. And frankly I would object to a lot of that stuff. I don't even agree to the factual circumstances of when the notice of liens were filed, when the defaults were filed, when the foreclosures occurred. Those are the things I don't disagree with. I disagree with everything else, and I did so in my moving papers.

THE COURT: I understand. And I understand also that I didn't verbally enter all of this --

MR. CROTEAU: Correct.

THE COURT: -- findings of fact and conclusions of law. But in reading the order, there's nothing in there that I disagreed with.

MR. CROTEAU: Okay.

THE COURT: So I think I'm going to leave it the way it is for now. I think that it's an accurate reflection of what the order was based on the facts, the allegations, the pleadings that were submitted to me. So leave it the way it is.

MR. CROTEAU: All right.

THE COURT: Motion denied. Sorry, Mr. Croteau.

MR. MAURICE: We'll submit an order, Your Honor.

THE COURT: Thanks.

(Thereupon, the proceedings
concluded at 9:28 a.m.)

CERTIFICATE OF REPORTER

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Kristy L. Clark, a duly commissioned Notary Public, Clark County, State of Nevada, do hereby certify: That I reported the proceedings commencing on Tuesday, November 15, 2016, at 9:20 o'clock a.m.

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true and accurate transcription of my said shorthand notes.

I further certify that I am not a relative or employee of counsel of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my office in the County of Clark, State of Nevada, this 20th day of January, 2017.

Kristy Clark

KRISTY L. CLARK, CCR #708

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CLERK OF THE COURT

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Attorneys for Defendants,
JAMES R. BLAHA and NOBLE HOME LOANS, INC. formerly known as FCH FUNDING, INC.

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

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

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

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

DATED this 28 day of November, 2016.

DISTRICT COURT JUDGE

EB

Submitted by:

KOLESAR & LEATHAM

By _____
AARON R. MAURICE, ESQ.
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RYAN T. GORMLEY, ESQ.
Nevada Bar No. 013494
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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. XXX **NOTICE OF ENTRY OF ORDER**

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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 _____
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Attorneys for Defendants,
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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

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CLERK OF THE COURT

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Attorneys for Defendants,
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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. XXX **ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT; FOR RECONSIDERATION; AND FOR CLARIFICATION**

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

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

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

DATED this 18 day of November, 2016.

DISTRICT COURT JUDGE

EB

Submitted by:

KOLESAR & LEATHAM

By _____
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CLERK OF THE COURT

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

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that the Plaintiff, LAS VEGAS DEVELOPMENT GROUP, LLC, by and through its attorneys, ROGER P. CROTEAU & ASSOCIATES, LTD., hereby appeals to the Supreme Court of the State of Nevada from (1) the Order Granting James R. Blaha and Noble Home Loans, Inc.'s Motion for Summary Judgment and All Joinders

Thereto, entered on or about October 5, 2016; and (2) the Order Denying Plaintiff's Motion to Alter or Amend Judgment; for Reconsideration; and for Clarification, entered on or about November 30, 2016.

DATED this 1st day of December, 2016.

ROGER P. CROTEAU & ASSOCIATES, LTD.

/s/ Timothy E. Rhoda
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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 1st 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 Eighth Judicial District Court's Odyssey e-file and serve system.

Akerman LLP

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Contact	Email
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Amy M. Wilson, Esq	amy@kevinrhansen.com
Kevin R. Hansen, Esq	kevin@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.