

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; DOE
individuals I through XX; and ROE
CORPORATIONS I through XX,

Respondents.

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SUPREME COURT NO. 71875

DISTRICT COURT NO.
A-15-715532-C

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JERRY A. WIESE II PRESIDING

**RESPONDENTS JAMES R. BLAHA AND NOBLE HOME LOANS, INC.'S
(FORMERLY KNOWN AS FCH FUNDING, INC.) ANSWERING BRIEF**

Aaron R. Maurice, Esq.

Nevada Bar No. 006412

Brittany Wood, Esq.

Nevada Bar No. 007562

KOLESAR & LEATHAM

400 South Rampart Boulevard, 400

Las Vegas, Nevada 89145

Telephone: (702) 362-7800

Facsimile: (702) 362-9472

amaurice@klnevada.com

bwood@klnevada.com

NRAP 26.1 DISCLOSURE

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

1. James R. Blaha is the record title holder of the real property that is the subject of this appeal. James R. Blaha's lender, Noble Home Loans, Inc., is a Utah corporation. Noble Home Loans Inc. was formerly known as FCH Funding, Inc. and was identified in the Complaint by its former name. A Certificate of Name Change was issued by the Utah Department of Commerce on December 23, 2011. There are no parent companies for Noble Home Loans, Inc.

2. Publicly held companies that own ten percent or more of Noble Home Loans, Inc.: None.

3. All law firms whose partners or associates have appeared or are expected to appear in this Court on behalf of James R. Blaha and Noble Home Loans, Inc.: Kolesar & Leatham.

Dated this 14th day of June, 2017.

KOLESAR & LEATHAM
/s/ Aaron R. Maurice
Aaron R. Maurice, Esq.
Nevada Bar No. 006412
400 South Rampart Boulevard, 400
Las Vegas, Nevada 89145

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INTRODUCTION

The facts in this case are undisputed. After learning of the NRS Chapter 107 foreclosure sale at issue in this case, Appellant Las Vegas Development Group, LLC (“LVDG”) waited 1,298 days to initiate litigation to have the sale set aside. Unfortunately for LVDG, NRS 107.080(5)-(6) imposes either a 90 or 120 day statute of limitations for challenging an NRS Chapter 107 foreclosure sale, depending on when the challenging party received notice of the sale. This Court has expressly held that the limitation periods in NRS 107.080(5)-(6) apply to all claims challenging NRS Chapter 107 foreclosure sales. See Bldg. Energetix Corp. v. EHE, LP, 129 Nev. Adv. Op. 6, 294 P.3d 1228, 1234 (Nev. 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). Thus, because LVDG failed to file its action within 120 days of receiving notice of the NRS Chapter 107 foreclosure sale at issue, its claims are barred by NRS 107.080(6).

LVDG makes several arguments as to why NRS 107.080(6) should not apply in this case. As will be explained in detail below, however, most of the arguments have already been expressly rejected by this Court; others have absolutely nothing to do with application of the statute of limitations. Simply put, while LVDG had every right to challenge the NRS Chapter 107 foreclosure sale as “void” based on the previous HOA foreclosure sale, LVDG was required by NRS

107.080(6) to bring that challenge within 120 days of receiving actual notice of the sale. LVDG failed to do so (missing the deadline by more than three years). For this reason, the District Court correctly dismissed LVDG's Complaint.

ISSUES ON APPEAL

1. Whether the limitation periods in NRS 107.080(5)-(6) apply to all actions challenging NRS Chapter 107 foreclosure sales?
2. Whether LVDG's claims are barred by the statute of limitations in NRS 107.080(6) when LVDG's claims were brought 1,298 days **after** LVDG received actual notice of the NRS Chapter 107 foreclosure sale at issue?
3. Whether the district court committed legal error by issuing detailed factual findings in support of its order granting the Blaha Defendants' Motion for Summary Judgment?

STATEMENT OF FACTS

I. LVDG purchases the Property at an HOA foreclosure sale.

On March 28, 2007, a deed of trust ("Perez Deed of Trust") was recorded to secure a home loan in the amount of \$456,000 on property commonly described 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 JA 98-99.

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. 2 JA 124-25. The Notice of Delinquent Assessment Lien failed to identify the amount, if any, of an alleged super-priority lien. Id.

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. 2 JA 127-29. The Notice of Default failed to identify the amount, if any, of an alleged super-priority lien. Id.

On September 16, 2010, counsel for BAC Home Loans Servicing sent correspondence to Absolute Collection Services, LLC in response to the Notice of Default and Election to Sell Under Notice of Delinquent Assessment Lien. 2 JA 131-32. 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 resolved 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.

2 JA 132.

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 recognize 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.

2 JA 134. (emphasis added).

On October 27, 2010, Perez filed a Chapter 7 Bankruptcy in Case Number 10-30260-lbr. 2 JA 136-37. 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. 2 JA 139-140. The Notice of Trustee's Sale failed to identify the amount, if any, of an alleged super-priority lien. Id.

On February 18, 2011, Nevada Trails recorded a second Notice of Trustee's Sale, asserting a delinquency in the amount of \$4,246. 2 JA 142-43. The Notice

of Trustee's Sale failed to identify the amount, if any, of an alleged super-priority lien. Id. The Notice of Trustee's Sale also failed to account for any discharge of the debt pursuant to the Perez bankruptcy. Id.

On April 12, 2011, LVDG purchased the Property at an HOA foreclosure sale for \$5,200.01 ("HOA Foreclosure Sale"). 2 JA 145-48.

II. The Property is sold approximately five months later at a bank foreclosure sale conducted pursuant to NRS Chapter 107.

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. 2 JA 150.

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. 2 JA 152-53.

On August 9, 2011, a Notice of Trustee's Sale was recorded, noticing a sale of the Property for August 29, 2011. 2 JA 159-60.

On August 29, 2011, the trustee of the Perez Deed of Trust sold the Property at a public auction pursuant to NRS Chapter 107 ("Bank Foreclosure Sale"). 2 JA 163. 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 Bank Foreclosure Sale for \$151,300. 2 JA 162-66.

On September 30, 2011, James R. Blaha purchased the Property from EZ for

\$208,000. 2 JA 168-171. Three months later, Blaha obtained a loan in the amount of \$162,000 from FCH Funding, Inc. (now known as Noble Home Loans Inc.) which was secured by the Property. 3 JA 173-96. Blaha has been the record title holder of the Property since September 30, 2011. 3 JA 198.

III. LVDG was on title to the Property for five months.

During the five months in which title to the Property was vested in the name of LVDG, LVDG spent no money improving the Property. See 3 JA 207-08, 231, 235. In fact, LVDG only spent \$257 maintaining the Property – paying one power bill and four HOA assessments – during the five-month period. Id. 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.

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.

3 JA 232-33.

LVDG never even purchased homeowner's insurance for the Property. 3 JA 234.

IV. LVDG waits 1,289 days to challenge the NRS Chapter 107 Bank Foreclosure Sale.

It is undisputed that LVDG had actual notice of the NRS Chapter 107 Bank Foreclosure Sale shortly after the sale took place. See generally AOB. Following the Bank Foreclosure Sale, LVDG stopped paying the HOA fees assessed on the Property. 3 JA 226-27. When asked why LVDG stopped paying association fees, LVDG testified that it was because the Property's record title holder changed following the Bank Foreclosure Sale:

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.

3 JA 228 (emphasis added).

Not only did LVDG have actual notice of the NRS Chapter 107 Bank Foreclosure Sale, LVDG had the legal resources necessary to immediately challenge the Bank Foreclosure Sale. In 2010 and 2011, LVDG purchased approximately 200 properties at HOA foreclosure sales. 3 JA 206, 209. By 2011, LVDG was aware that there was a dispute with respect to whether an HOA foreclosure sale could extinguish a prior recorded deed of trust. 3 JA 217. For this reason, LVDG retained legal counsel to send correspondence to beneficiaries of deeds of trust secured by real property purchased by LVDG at HOA foreclosure sales. Id. By 2012, LVDG had retained legal counsel in Nevada to actively defend LVDG's title to properties purchased at HOA foreclosure sales. 3 JA 217-18.

Despite having legal counsel in Nevada for the specific purpose of defending title to properties purchased at HOA foreclosure sales, LVDG failed to take any steps to enjoin Bank of America from foreclosing on the Perez Deed of Trust. 3 JA 212-13, 219. In fact, prior to filing this action, LVDG took no action to attempt to set aside the NRS Chapter 107 Bank Foreclosure Sale. 3 JA 214-16, 220. LVDG also took no steps to prevent EZ from encumbering or selling the Property following its purchase at the NRS Chapter 107 Bank Foreclosure Sale. 3 JA 221-22. LVDG also took no action to prevent Blaha from taking title to the Property. 3 JA 223-24. LVDG also took no action to prevent Blaha from obtaining financing secured by the Property. 3 JA 225.

Instead, LVDG waited until March 19, 2015 – 1,298 days after the NRS Chapter 107 Foreclosure Sale – to file its Complaint seeking to have the Bank Foreclosure Sale set aside.¹ 1 JA 1-20. When asked to explain why LVDG waited more than three years to take any action to challenge the NRS Chapter 107 Bank 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 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.²

3 JA 229-30.

¹ The following day, LVDG recorded a Lis Pendens. 3 JA 250-52.

² LVDG testified that it often abandoned properties purchased at the HOA foreclosure sales because the litigation costs associated with establishing free and clear title would be too high. 3 JA 210. (“I mean, at some point litigation costs got so expensive that we, at that stage, walked away from it.”).

In its Complaint, LVDG claims that the NRS Chapter 107 Bank Foreclosure Sale was void because the HOA Foreclosure Sale extinguished the Perez Deed of Trust. 1 JA 1-20. LVDG’s Complaint offers no explanation as to why LVDG took no steps to stop the NRS Chapter 107 Bank Foreclosure Sale or why, immediately thereafter, LVDG did not take steps to have the Bank Foreclosure Sale set aside within the 120 day period provided by NRS 107.080(6). See id.

V. The district court grants summary judgment in favor of the Defendants because LVDG’s claims are barred by the statute of limitations imposed by NRS 107.080(6).

On August 9, 2016, Blaha and Noble Home Loans, Inc. (collectively the “Blaha Defendants”) moved for summary judgment (“Motion for Summary Judgment”). 2 JA 73-95. The Blaha Defendants’ Motion for Summary Judgment argued, in part, that LVDG’s claims were barred by the statute of limitations in NRS 107.080(6) because LVDG failed to bring its action within 120 days of receiving actual notice of the Bank Foreclosure Sale.³ 2 JA 83-89. The Blaha Defendants’ Motion for Summary Judgment was joined by the other Defendants in

³ The Blaha Defendants’ Motion for Summary Judgment also raised arguments regarding the doctrine of laches, equitable estoppel and the fact that LVDG’s equitable mortgage claim fails as a matter of law. 2 JA 89-94. However, the district court did not reach these arguments because the district court concluded that LVDG’s claims were barred by the statute of limitations in NRS 107.080(6). 6 JA 543.

this case. 5 JA 420, 426. Ultimately, the district court granted the Blaha Defendants' Motion for Summary Judgment, concluding that LVDG's claims were barred by NRS 107.080(5)-(6). 6 JA 543-56.

On October 11, 2016, LVDG filed a Motion to Alter or Amend Judgment; For Reconsideration; and for Clarification ("Motion for Reconsideration"). 6 JA 574. LVDG's Motion for Reconsideration argued, among other things, that the district court's written order granting the Blaha Defendants' Motion for Summary Judgment included factual findings that went beyond the scope of the factual findings discussed at the hearing on the matter. 6 JA 580-84. The district court rejected the assertion and denied LVDG's Motion for Reconsideration. See 6 JA 635-36.

On December 1, 2016, LVDG filed its Notice of Appeal. 6 JA 642-43.

SUMMARY OF ARGUMENT

I. LVDG's claims are barred by the statute of limitations imposed by NRS 107.080(6).

The facts in this case are undisputed. LVDG waited 1,298 days to bring an action to set aside an NRS Chapter 107 foreclosure sale. NRS 107.080(5)-(6), however, imposes either a 90 or 120 day statute of limitations for challenging an NRS Chapter 107 foreclosure sale, depending on when the challenging party received notice. This Court has expressly held that the limitation periods in NRS

107.080(5)-(6) apply to **all** claims challenging an NRS Chapter 107 foreclosure sale. 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). Thus, because LVDG failed to file its action within 120 days of receiving actual notice of the NRS Chapter 107 Bank Foreclosure Sale, its claims are barred by NRS 107.080(6).

LVDG makes several arguments as to why the limitations period in NRS 107.080(6) does not apply in this case, all of which lack merit. First, LVDG argues that NRS 107.080(6) only applies to procedural claims challenging how the sale was conducted, not substantive claims challenging the validity of the sale itself. AOB 15. This argument, however, has already been expressly rejected by this Court. See Michniak, 2012 WL 6588912 (Nev. Dec. 14, 2012) (unpublished) (holding that the limitation periods in NRS 107.080(5)-(6) are not limited to actions challenging “minor errors of form or execution [of a foreclosure sale]”). Instead, NRS 107.080(5)-(6) applies to **all** claims challenging an NRS Chapter 107 foreclosure sale. Id.; see also Bldg. Energetix, 129 Nev. Adv. Op. 6, 294 P.3d at 1234.

Next, LVDG argues that NRS 107.080(6) does not apply because the Bank Foreclosure Sale was “void” due to the previous HOA Foreclosure Sale. AOB 12-

18. This argument is misplaced, however, because it goes to the merits of LVDG's underlying claims – not the timeliness of LVDG's assertion of those claims. Again, this Court has expressly held that **all** claims challenging an NRS Chapter 107 foreclosure sale as “void” must be brought within the limitation periods imposed by NRS 107.080(5)-(6). See Bldg. Energetix Corp., 129 Nev. Adv. Op. 6, 294 P.3d at 1234 (“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.”). While LVDG had the right to challenge the NRS Chapter 107 Bank Foreclosure Sale as “void” as a result of the previous HOA Foreclosure Sale, LVDG was required by NRS 107.080(6) to bring that challenge within 120 days of receiving actual notice of the Bank Foreclosure Sale. It is undisputed that LVDG failed to do so (missing the deadline by no less than 1,178 days).

Finally, LVDG argues that this Court should apply the more general five-year statute of limitations provided in NRS 11.080, rather than the more specific statute of limitations imposed by NRS 107.080(6). AOB 20-21. This 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). Moreover, this Court has already expressly rejected the application of the limitation periods in NRS Chapter 11 in the context of an action seeking to set aside an NRS Chapter

107 foreclosure sale. See Michniak, 2012 WL 6588912 (Nev. Dec. 14, 2012) (unpublished) (holding that the limitation periods imposed by NRS 107.080(5)-(6) – not the limitation periods in NRS Chapter 11 – apply to actions challenging non-judicial foreclosure sales.). Because LVDG failed to bring its claims within 120 days of receiving actual notice of the NRS Chapter 107 Bank Foreclosure Sale, the district court properly concluded that LVDG’s claims are barred by NRS 107.080(6).

II. The district court did not err by issuing detailed factual findings in support of its order granting the Blaha Defendants’ Motion for Summary Judgment.

LVDG argues that the district court committed legal error by including factual findings in its written order granting the Blaha Defendants’ Motion for Summary Judgment that were not discussed during the hearing on the Motion. Even if true, however, this allegation is irrelevant because only the district court’s final written order is of any legal consequence. See Rust v. Clark Cty. Sch. Dist., 103 Nev. 686, 689, 747 P.2d 1380, 1382 (Nev. 1987) (“The district court’s oral pronouncement from the bench, the clerk’s minute order, and even an unfiled written order are ineffective for any purpose....”). As such, the district court was free to modify its factual findings following the hearing on the Blaha Defendants’ Motion for Summary Judgment.

Moreover, LVDG fails to cite any legal authority in support of its contention

that it was legal error for the district court to include detailed factual findings in support of its order granting the Blaha Defendants' Motion for Summary Judgment. This lack of legal authority, standing alone, is fatal to LVDG's argument. See Kroll v. Incline Vill. Gen. Improvement Dist., 2014 WL 5840049, at *2 (Nev. Nov. 10, 2014) (unpublished) ("If an appellant fails to provide this court with sufficient citations to authority to support its contentions, that argument cannot prevail").

STANDARD OF REVIEW

This Court reviews a district court's order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (Nev. 2005). 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. Id. at 731, 121 P.3d at 1031.

The material facts in this case are undisputed. This appeal turns on a question of statutory interpretation, which "presents a question of law and is subject to de novo review." Mendoza-Lobos v. State, 125 Nev. 634, 642, 218 P.3d 501, 506 (Nev. 2009).

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ARGUMENT

I. LVDG’s claims are barred by the statute of limitations imposed by NRS 107.080(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). 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 (Nev. Dec. 14, 2012) (unpublished).

NRS 107.080(5)-(6) sets forth the limitation periods for challenging an NRS Chapter 107 foreclosure sale. NRS 107.080(5)-(6) has been amended several times in recent years. At the time of the NRS Chapter 107 foreclosure sale at issue in this case, NRS 107.080(5) 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**⁴ be declared void by any court of

⁴ 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.” 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

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**⁵ 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**⁶ after commencement of the action.

(Emphasis added to highlight statutory changes). Similarly, at the time of the NRS Chapter 107 foreclosure sale at issue in this case, NRS 107.080(6) stated:

If proper notice is not provided pursuant to subsection 3 or paragraph (a) of subsection 4 to the grantor, to the person who holds the title of record on the date the notice of default and election to sell is recorded, to each trustor or to any other person entitled to such notice, the person who did not receive such proper notice may commence

JA 152-53.

⁵ 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.

⁶ 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.

an action pursuant to subsection 5 within **120 days**⁷ after the date on which the person received actual notice of the sale.

Thus, pursuant to NRS 107.080(6), if the challenging party did not have notice prior to the NRS Chapter 107 foreclosure sale, that party must challenge the NRS Chapter 107 foreclosure sale “within 120 days after the date on which the person received actual notice of the sale.”⁸

This Court has repeatedly acknowledged the public policy considerations that form the basis for any statute of limitations, including those found in NRS 107.080(5)-(6). See Winn v. Sunrise Hosp. & Medical Center, 128 Nev. Adv. Op. 23, ___, 277 P.3d 458, 465 (Nev. 2012). Specifically, this 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.

⁷ NRS 107.080(6) was amended to change the 120 days to 60 days, effective October 1, 2013. 2013 Nev. Stat., ch. 403, SB 321, § 6 at 2197.

⁸ It is unclear from the record whether LVDG was provided with notice before the Bank Foreclosure Sale. As such, it is assumed that NRS 107.080(6) applies in this case. Accordingly, LVDG was required to challenge the Bank Foreclosure Sale

LVDG does not dispute that it failed to commence its action within 120 days of receiving actual notice of the NRS Chapter 107 Bank Foreclosure Sale. See AOB 2-8. Instead, LVDG argues that NRS 107.080(6) does not apply in this case because the NRS Chapter 107 Bank Foreclosure Sale was “void.” AOB 12-17. LVDG further argues that because the NRS Chapter 107 Bank Foreclosure Sale was “void,” the general 5-year statute of limitations in NRS 11.080 should apply to LVDG’s claims. AOB 20-21. LVDG’s arguments fail because: (1) this Court has expressly held that the limitation periods in NRS 107.080(5)-(6) apply to **all** claims challenging an NRS Chapter 107 foreclosure sale; and (2) this Court has expressly rejected the application of the general statutes of limitation in NRS Chapter 11 to claims challenging NRS Chapter 107 foreclosure sales.

a) This Court has expressly held that the limitation periods in NRS 107.080(5)-(6) apply to all claims challenging NRS Chapter 107 foreclosure sales.

This Court has held that the limitation periods imposed by NRS 107.080(5)-(6) are not limited to actions challenging “minor errors of form or execution [of a non-judicial foreclosure sale].” Michniak v. Argent Mortg. Co., LLC, 2012 WL 6588912 (Nev. December 14, 2012) (unpublished). Instead, the limitation periods in NRS 107.080(5)-(6) apply to **all** actions challenging NRS Chapter 107 foreclosure sales. See Bldg. Energetix Corp. v. EHE, LP, 129 Nev. Adv. Op. 6,

within 120 days of receiving actual notice of the sale.

294 P.3d 1228, 1234 (Nev. 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, 2012 WL 6588912 (“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”). This Court’s rule – that the limitation periods in NRS 107.080(5)-(6) apply to **all** claims challenging NRS Chapter 107 foreclosure sales – has also been adopted by the federal district courts in Nevada and the Ninth Circuit Court of Appeals. See 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); Chattem v. BAC Home Loan Servicing LP, 2012 WL 4795663 (D. Nev. Oct. 9, 2012) (dismissing an action to set aside a foreclosure sale where the action was commenced 109 days after the foreclosure sale in violation of NRS 107.080(5)); Guertin v. OneWest Bank, FSB, 2012 WL 3133736 (D. Nev. July 31, 2012) (dismissing claims for statutorily defective foreclosure and quiet title where the 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) (holding that, to the extent the plaintiffs sought to assert a claim for wrongful foreclosure, the district court properly determined that the 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)).

This Court's broad application of NRS 107.080(5)-(6) to **all** claims challenging an NRS Chapter 107 foreclosure sale is consistent with the legislative intent behind the statute. When NRS 107.080 was originally passed, it did not include a limitations period for challenging a foreclosure sale. Participants in the Nevada real estate market quickly discovered that this omission seriously undermined the transferability of homes acquired through non-judicial foreclosure sales because an action could be brought at any time – even years later – to challenge the validity of the foreclosure sale. David Evans of the Nevada Land Title Association described the issue as follows when addressing the Nevada Senate Committee on Judiciary:

Two years ago the law was changed and allowed the trustee and any other person who was conducting a foreclosure sale to declare the sale void, at no force or effect, for an indefinite period of time. That made it very difficult for the title insurance industry to insure those foreclosed properties. If the sale is hindered because the person bidding cannot get the property insured to either refinance or sell it – because the trustee or other person can turn the sale around indefinitely – it damages the purchaser and the lender. Moreover, the person losing

their property may not get fair market value due to purchaser's inability to negotiate the property and could be sued for deficiency judgment.

See Nevada Senate Committee on Judiciary Minutes, 74th Sess., S.B. 217, May 2, 2007, p.24 (statement of David Evans).

To address this issue, the Nevada Legislature adopted NRS 107.080(5)-(6), which imposed strict limitation periods for challenging an NRS Chapter 107 foreclosure sale. See 2007 Nevada Laws Ch. 456 (S.B. 483). As predicted by Mr. Evan's, "[this] change in the statute [brought] clarity and closure for the parties involved in [non-judicial foreclosure] sales. From the title companies' perspective, **a party cannot commence an action many years after the sale has taken place.**" Nevada Senate Committee on Judiciary Minutes, 74th Sess., S.B. 217, March 21, 2007, p.12 (statement of David Evans) (emphasis added). In other words, the Nevada Legislature made a public policy determination when it enacted NRS 107.080(5)-(6) to encourage new homeowners, investors and lenders to invest in our State's economic recovery without the threat of someone challenging the NRS Chapter 107 non-judicial foreclosure sale years later.

Here, LVDG makes multiple arguments as to why NRS 107.080(6) does not apply in this case, all of which lack merit. First, LVDG argues that NRS 107.080(6) only applies to procedural claims challenging how the foreclosure sale was conducted, not substantive claims challenging the validity of the foreclosure

sale itself. AOB 15. However, this argument has already been expressly rejected by this Court. See Michniak, 2012 WL 6588912 (Nev. Dec. 14, 2012) (unpublished) (holding that the limitation periods in NRS 107.080 are not limited to actions challenging “minor errors of form or execution [of a foreclosure sale].”) Instead, NRS 107.080(5)-(6) applies to **all** claims challenging NRS Chapter 107 foreclosure sales. See id.; see also Bldg. Energetix Corp., 129 Nev. Adv. Op. 6, 294 P.3d at 1234 (“**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).

LVDG further argues that NRS 107.080(5)-(6) does not apply because the Bank Foreclosure Sale was “void” due to the previous HOA Foreclosure Sale. AOB 12-18. This argument is misplaced, however, because it goes to the merits of LVDG’s underlying claims – not the timeliness of LVDG’s assertion of the claims.⁹ Again, this Court has expressly held that **all** claims challenging an NRS

⁹ In arguing the merits of its underlying claims, many of LVDG’s citations are brashly misleading. For example, LVDG cites Nesbitt v. De Lamar's Nevada Gold-Min. Co., 24 Nev. 273, 52 P. 609, 609 (Nev. 1898), in an attempt to support the proposition that “the Statute of Limitations will not run in favor of a person under a [void deed].” AOB 14. However, LVDG’s citation to Nesbitt is wildly inappropriate because: (1) the case has **nothing** to do with statutes of limitation; (2) the case was decided 109 years before the Nevada Legislature enacted NRS 107.080(5)-(6); and (3) the only mention of “void” deeds in Nesbitt is the Court’s explanation of the **Appellant’s** argument, which the Court ultimately rejected in affirming the district court’s decision. See id.

Chapter 107 foreclosure sale as “void” must be brought within the limitation periods imposed by NRS 107.080(5)-(6). See Bldg. Energetix Corp., 129 Nev. Adv. Op. 6, 294 P.3d at 1234 (“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.”). As such, while LVDG had every right to challenge the NRS Chapter 107 Bank Foreclosure Sale as “void” due to the previous HOA Foreclosure sale, LVDG was required to bring that challenge within 120 days of receiving actual notice of the Chapter 107 Bank Foreclosure Sale.¹⁰

Similarly, LVDG quotes Secret Valley Land Co. v. Perry, 187 Cal. 420, 202 P.449 (Cal. 1921), in an attempt to support the proposition that foreclosure sales are void if the deed of trust is void. AOB 18-19. However, Secret Valley was an **adverse possession** case that had nothing to do with foreclosure sales or the issues presented in this case. In Secret Valley, the California Supreme Court refused to apply the statute of limitations 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 by LVDG, 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” (AOB 18); 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. In any event, these arguments, as inaccurate as they are, go to the **merits** of LVDG’s underlying claims – not the applicable statute of limitations. Again, pursuant to NRS 107.080(6), LVDG was required to raise its “void sale” arguments within 120 days of receiving actual notice of the Chapter 107 Bank Foreclosure Sale.

¹⁰ LVDG either confuses or ignores the fact that even the strongest claims must be brought within the applicable statute of limitations. Thus, even if LVDG had a strong claim to void the NRS Chapter 107 Bank Foreclosure Sale based on the

Indeed, LVDG has no excuse for failing to challenge the NRS Chapter 107 Bank Foreclosure Sale within 120 days. At deposition, LVDG admitted that, by 2011, it was aware there was a dispute with respect to whether an HOA foreclosure sale could extinguish a prior recorded deed of trust. 3 JA 217. As a result, LVDG retained legal counsel to send correspondence to beneficiaries of deeds of trust secured by properties that LVDG had purchased at HOA foreclosure sales. Id. By 2012, LVDG had retained legal counsel in Nevada to defend LVDG's title to properties purchased at HOA foreclosure sales. 3 JA 217-18. 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 elected to walk away from some of its investments rather than litigate with secured lenders because the litigation costs were too high. Id.

LVDG does not dispute that it was aware of the NRS Chapter 107 Bank Foreclosure Sale in this case. Yet, despite having legal counsel in Nevada for this precise issue, LVDG chose to take no steps to enjoin Bank of America from foreclosing on the Perez Deed of Trust. 3 JA 212-13, 219. Similarly, LVDG chose to take no action to attempt to set aside the NRS Chapter 107 Bank

previous HOA Foreclosure Sale (something the Blaha Defendants adamantly dispute), LVDG was still required to bring that claim within the limitations period applicable to challenges of NRS Chapter 107 foreclosure sales (i.e., NRS 107.080(5)-(6)).

Foreclosure Sale. 3 JA 214-16, 220. Moreover, LVDG chose to take no steps to prevent EZ Properties from encumbering or selling the Property following its purchase at the NRS Chapter 107 Bank Foreclosure Sale. 3 JA 221-22. Finally, LVDG chose to take no action to prevent Blaha from taking title to the Property (3 JA 223-24) or to prevent Blaha from obtaining financing secured by the Property. 3 JA 225.

During the nearly four-year period in which LVDG took no action to protect its interest in the Property, **the Property was sold twice**. LVGD – a sophisticated investor who had purchased other properties through HOA foreclosure sales – had both the knowledge and ability to take the legal action necessary to protect its investment within 120 days of the NRS Chapter 107 Bank Foreclosure Sale. 3 JA 206, 209. 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 inaction (i.e., its failure to take any action to protect its interest in the Property for a period of 1,298 days – **1,178 days beyond the statute of limitation imposed by NRS 107.080(6)**). Because it is undisputed that LVDG consciously elected to wait 1,298 days to file its Complaint seeking to set aside the NRS Chapter 107 Bank Foreclosure Sale,

LVDG's claims are barred by the statute of limitations imposed by NRS 107.080(6). Accordingly, the district court properly entered summary judgment in favor of the Defendants and against LVDG.

b) This Court has expressly rejected the application of the general limitation periods in NRS Chapter 11 to claims challenging NRS Chapter 107 foreclosure sales.

LVDG argues that this Court should apply the general five-year statute of limitation in NRS 11.080 to LVDG's claims rather than the more specific statute of limitations imposed by NRS 107.080(6). See AOB 20.

LVDG's argument, however, 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). Moreover, this Court has already expressly rejected the application of NRS Chapter 11 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 (Nev. December 14, 2012) (unpublished) (holding that the limitation periods imposed by NRS 107.080(5)-(6) – not the limitation periods in NRS Chapter 11 – apply to actions challenging non-judicial foreclosure sales.). Accordingly, the specific limitations period imposed by NRS 107.080(6) applies to LVDG's claims to set aside the NRS Chapter 107 Bank Foreclosure Sale at issue in this litigation – not the general limitation periods in NRS Chapter 11.

II. The district court did not err by issuing detailed factual findings in support of its order granting the Blaha Defendants' Motion for Summary Judgment.

LVDG argues that the district court's order granting the Blaha Defendants' Motion for Summary Judgment includes factual findings that were not discussed during the hearing on the Motion. AOB 21-22. Even if true, however, this allegation is irrelevant because only the district court's final written order is of any legal consequence. See Rust v. Clark Cty. Sch. Dist., 103 Nev. 686, 689, 747 P.2d 1380, 1382 (Nev. 1987) ("The district court's oral pronouncement from the bench, the clerk's minute order, and even an unfiled written order are ineffective for any purpose...."). As such, following the hearing on the Blaha Defendants' Motion for Summary Judgment, the district court was free to expand or clarify its factual findings as it saw necessary.¹¹ And despite LVDG's contention to the contrary, the district court's conclusions of law are limited to the statute of limitations issue. See 6 JA 555, ¶17 ("Based on the above findings, the Court need not address the other legal arguments raised in the Blaha Defendants' Motion for Summary Judgment.").

¹¹ Following entry of the district court's order granting the Blaha Defendants' Motion for Summary Judgment, LVDG moved for reconsideration and complained that the factual findings in the order exceeded the scope of the district court's factual findings at the hearing. 6 JA 580-84. The district court denied LVDG's motion for reconsideration, reaffirming the factual findings in the order granting the Motion for Summary Judgment. See 6 JA 635-36.

It is also worth noting that LVDG failed to cite **any** legal authority supporting its assertion that it was legal error for the district court to include detailed factual findings in its order granting the Blaha Defendants' Motion for Summary Judgment. This lack of legal authority is fatal to LVDG's argument. See NRAP 28(a)(10)(A) (requiring that appellate briefs contain "appellant's contentions and the reasons for them, with **citations to the authorities** and parts of the record on which the appellant relies") (emphasis added). "If an appellant fails to provide this court with sufficient citations to authority to support its contentions, that argument cannot prevail." Kroll v. Incline Vill. Gen. Improvement Dist., 2014 WL 5840049, at *2 (Nev. Nov. 10, 2014) (unpublished) (citing Smith v. Timm, 96 Nev. 197, 201-02, 606 P.2d 530, 532 (Nev. 1980)).

CONCLUSION

This Court has expressly held that the limitation periods in NRS 107.080(5)-(6) apply to **all** claims challenging an NRS Chapter 107 foreclosure sale. As such, because LVDG failed to bring its claims within 120 days of receiving actual notice of the NRS Chapter 107 Bank Foreclosure Sale at issue in this litigation, its claims are barred by NRS 107.080(6). Moreover, because only the district court's final written order is of any legal consequence, the district court was free to include more factual findings in its written order granting the Blaha Defendants' Motion for Summary Judgment than those discussed at the hearing on the Motion. For

these reasons, the district court's order granting the Blaha Defendants' Motion for Summary Judgment should be affirmed.

NRAP 28.2 ATTORNEY CERTIFICATE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 97-2003 14 font size Times New Roman type;

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 7,422 words;

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 14th day of June, 2017.

KOLESAR & LEATHAM

/s/ Aaron R. Maurice
Aaron R. Maurice, Esq.
Nevada Bar No. 006412
Brittany Wood, Esq.
Nevada Bar No. 007562
400 South Rampart Boulevard
Suite 400
Las Vegas, Nevada 89145

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1)(B), I certify that I am an employee of Kolesar & Leatham and that on June 14, 2017, I submitted **RESPONDENTS' ANSWERING BRIEF ON APPEAL** to the Supreme Court of Nevada's electronic docket for filing and service upon the following:

Roger P. Croteau, Esq.
Timothy E. Rhoda, Esq.
Kevin R. Hansen, Esq.
Amy M. Wilson, Esq.
Darren T. Brenner, Esq.
William S. Habdas, Esq.

/s/ Susan A. Owens

An Employee of KOLESAR & LEATHAM