IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 73286

ESTATE OF THELMA AILENE SARGE

and ESTATE OF EDWIN JOHN SARGE,

JILL SARGE

Plaintiff and Appellant

V.

QUALITY LOAN SERVICE CORPORATON and ROSEHILL, LLC

Defendant and Respondent

Appeal from a Judgment

Of the First Judicial District Court, County of Carson City Nevada

Hon. James T. Russell, Presiding

District Court Case No.
16 RP 00009 1B
Consolidated with 16 PBT 00107 1B And 16 PBT 00108 1B

RESPONDENT'S BRIEF

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are person and entities as describes in *NRAP 26.1(a)* and must be disclosed. These presentations are made in order that the judges of this court may evaluate possible disqualification or recusal. Quality Loan Service Corporation is a private corporate entity based in California. To date McCarthy Holthus, LLP has appeared in this action on behalf of Quality Loan Service Corporation.

DATED this 3rd Day of June, 2019

McCarthy & Holthus, LLP

/s/ Kristin A. Schuler-Hintz
Kristin A. Schuler-Hintz, Esq., SBN: 7171

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

Treatises

JURISDICTIONAL STATEMENT

As outlined below, jurisdiction before the Honorable Supreme Court of Nevada is proper.

NRS §2.090 states in pertinent part that

> "The Supreme Court has jurisdiction to review upon appeal:
>
> A judgment in an action or proceeding commenced in a district court when the matter in dispute is embraced in the general jurisdiction of the Supreme Court, and to review upon appeal from such judgment any inter mediate or decision involving the merits and necessarily affecting the judgment and in a criminal action, any order changing or refusing to change the place of trial of the action or proceeding."

Nev. R. App. Pro 4 further states that

> "In a civil case in which an appeal is permitted by law from a district court to the Supreme Court, the notice appeal required by Rule shall be filed with the district court clerk. Except as provide in Rule 4(a)(4), a notice of appeal must be filed after entry of a written judgment or order, and no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served."

In this instant case, the judgment being appealed is the Order Granting Motion to Dismiss, [Appellants Excerpts of Record ("AER") Vol. 1 @ 0001 - 0005] which is a traditional State Law Claim and as such it is "embraced in the general jurisdiction of the Supreme Court." As such jurisdiction properly lies with the Honorable Supreme Court of Nevada.

ROUTING STATEMENT

This matter should be retained by the Nevada Supreme Court pursuant to *NRAP 17* for several reasons. Pursuant to *NRAP 17*, the Nevada Supreme Court has exclusive jurisdiction over all matters in its jurisdiction which are not presumptively assigned to the Court of Appeals. *NRS § 2.090* states that the Nevada Supreme Court has jurisdiction over a judgment from the District Court and any matter which effects the merits of the judgment. This instant case is an appeal from a Motion to Dismiss a Complaint for Reentry and therefore is not presumptively assigned to the Court of Appeals. *NRAP 17(b).* As such jurisdiction lies with the Supreme Court.

STATEMENT OF THE ISSUES PRESENTED

The issue before this Honorable Court is as follows:

Whether the District Court properly dismissed the Complaint for Re-entry after finding that all the foreclosure notices were provided in accordance with Nevada Law which requires substantial compliance.

STATEMENT OF THE CASE

Eighteen days after a statutorily noticed foreclosure sale of the subject real property and over 5 years after the death of the first borrower and a year and half after the death of the second borrower, one of the three parties entitled to claim the subject property pursuant to a deed upon death recorded on May 8, 2008, took action with respect to protecting an interest in the subject property by filling two petitions to set aside each estate through summary administration. Simultaneously,

with finally filing the two estates, a Complaint for ReEntry was filed by proposed executrix. (AER VOL. 1 @ 0019 – 0033). On October 31, 2019, the Death Certificate of Edwin John Sarge was lodged with the Court (AER VOL. 2 @ end [presumptively 303 – 305].

On or about November 2, 2016, Rosehill, filed a Motion to Expunge Lis Pendens (AER VOL. 2 @ 0250 – 0263) with a Supplement to the Motion being filed on or about November 3, 2016 (AER VOL. 2 @ 0264 – 0272). Said Motion to Expunge was opposed by Appellant on November 21, 2016 (AER VOL. 2 @ 0272 – 0289). On or about December 1, 2016, Rosehill filed its Reply to the Opposition to Motion to Expunge Lis Pendens. (AER VOL. 2 @ 0290 – 0302 [missing exhibits]. On December 6, 2016, the Court consolidated the Estates of Edwin John Sarge and Thelma Ailene Sarge with the Case against QLS. (Not part of the record on appeal; also missing from the record is the Ex Parte App for Doe II, III and IV amendments to the Complaint; the Rule 11 motion for sanctions and opposition the Jill Sarge Motion to Intervene and opposition to same. However, those do not appear necessary to determination of this matter)

On November 28, 2016, Respondent herein filed a Motion to Dismiss the Complaint for ReEntry (AER VOL. 1 @ 0033 – 0120). Appellant opposed the Motion To Dismiss on December 30, 2016 (AER VOL. 1 @ 0120 – 0152); and filed a Supplement to Opposition to Motion to Dismiss on January 6, 2017 (AER VOL.

1 @ 0153 – 0169). QLS filed its opposition to the motion to dismiss on or about January 6, 2017 (AER VOL. 2 @ 0170 – AER 0181).

On December 2, 2016, Appellant filed its Order on DOE 1 AMENDMENT, bringing the entity that purchased the property on October 13, 2016, into the Case (AER VOL. 2 @ 0248 – 0249); thereafter the newly added Defendant, on or about February 21, 2017, filed its Motion to Dismiss (AER VOL 2 @ 0210 – 0247).

On March 10, 2017, the Court heard QLS's Motion to Dismiss and granted it along with the Motion to Dismiss filed by Rosehill which was based on the same operative facts (AER VOL. 2 @ 0182 – 0209).

STATEMENT OF UNDISPUTED FACTS

On or about April 26, 2006, Edwin J. Sarge and Thelma A. Sarge, (both individually and as Trustees of the Sarge Trust dated March 28, 1998) (hereinafter the "Decedents") executed an Adjustable Rate Home Equity Conversion Deed of Trust (hereinafter "Reverse Mortgage") on Real Property commonly known as 1636 Sonoma Street, Carson City, NV 89701 ("Subject Property") payable to Seattle Mortgage Company. (AER VOL. 1 @ 0045 - 0055) The Deed of Trust lists the address to mail tax statements to as the Subject Property, 1636 Sonoma Street, Caron City, NV 89701 and includes the real property address (AER VOL. 1 @ 0045, AER VOL. 1 @ 0046). No other address is given for the Decedents.

The Reverse Mortgage was subsequently assigned to Bank of America N.A. on August 8, 2007. (AER VOL. 1 @ 0057 – 0058)

On May 5, 2008 (recorded May 8, 2008 as file number 379180); the Sarge Trust executed a grant deed conveying their interest back to Edwin J and Thelma A. Sarge individually. (AER VOL. 1 @ 0060 – 0063) Again the address for the Decedents, as the Seller/Buyer is 1636 Sonoma St. Carson City, NV 89701 (AER VOL. 1 @ 0060) and to mail tax statement to is 1636 Sonoma St. Carson City, NV 89701 (AER VOL. 1 @ 0061). The grant deed further provided that the recorded document should be mailed to CARE Law Program, P.O. Box 628, Carson City, NV 89702. (AER VOL. 1 @ 0061)

Also on May 8, 2008 (recorded May 8, 2008 as file number 379181) the Decedents executed a "Deed Upon Death" (AER VOL. 1 @ 0063 – 0066). Again the address for the Decedents, as the Seller/Buyer is 1636 Sonoma St. Carson City, NV 89701 (AER VOL. 1 @ 0063) and to mail tax statement to is 1636 Sonoma St. Carson City, NV 89701 (AER VOL. 1 @ 0065). The grant deed further provided that the recorded document should be mailed to CARE Law Program, P.O. Box 628, Carson City, NV 89702. (AER VOL. 1 @ 0063) The Deed Upon Death lists Jill A. Sarge, Jack C. Sarge, and Sharon R. Hesla as beneficiary upon Death. (AER VOL. 1 @ 0065). No other addresses are contained within the Deed Upon Death. (AER VOL. 1 @ 0063 – 0066).

On March 13, 2012; a second assignment was recorded, again assigning the Deed of Trust to Bank of America N.A. (AER VOL. 1 @ 0068 – 0069). Thereafter, Bank of America N.A. assigned the Deed of Trust to Champion Mortgage Company, recorded November 19, 2012. (AER VOL. 1 @ 0071) On August 18, 2015; Nationstar Mortgage dba Champion Mortgage substituted in Quality Loan Service Corporation ("QLS") as Trustee under the Deed of Trust, recorded August 18, 2015. (AER VOL. 1 @ 0074 - 0075).

Edwin J. Sarge died on August 13, 2011 (AER VOL. 2 @ 305); Thelma A. Sarge died on April 28, 2015 (AER VOL. 1 @ 0154, line 4); no action was taken to open a probate until October 31, 2016, when the Petition to set aside each of their estates was filed. No executor or administrator of the estate was ever appointed and no action has been take to probate the estate other than the initial petition filing.

On September 2, 2015, QLS recorded a Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust in the official records of Carson City (the "NOD"). (AER VOL. 1 0077 – 0083)

The NOD was mailed on September 10, 2015. (AER VOL. 1 @ 0085). The mailing was first class and certified and included 24 regular mailings to the subject property and 24 certified mailings to the subject property. (AER VOL. 1 @ 85 – 88). The mailing also included 5 regular mailings and 5 certified mailings to the Care Law Address. (AER VOL. 1 @ 0085 – 0088)

On December 3, 2015, the Certificate from the Nevada Foreclosure Mediation was recorded in the Carson City Recorder stating that the property was not subject to the Foreclosure Mediation Program. (AER VOL. 1 @ 0090)

On August 29, 2016; the Notice of Trustee's Sale was recorded in the Carson City property records (file No. 467446) and provided for a sale date of October 6, 2016. (AER VOL. 1 0092 – 0094) The Notice of Trustee's Sale was mailed to the subject property regular mail 11 times and certified mail 11 times. (AER VOL. 1 @ 0096 – 0098) It was sent to the CARE Law address regular mail 5 times and certified mail 5 times. (AER VOL. 1 @ 0096 – 0098).

The Notice of Sale was posted on the Subject Property (along with the Notice to Tenants) on August 31, 2016. (AER VOL. 1 @ 0100) The Notice of Sale was also posted at the Carson City Courthouse on August 25, 2016. (AER VOL. 1 @ 0102)

On October 13, 2016 the duly noticed foreclosure sale was conducted where in the property sold to Rosehill, LLC for the sum of $255,100, less than the unpaid debt of $316,960.37. (AER VOL. 1 @ 0105 – 0107)

On October 31, 2016, the Complaint for ReEntry was filed in District Court for Carson City as Case number On October 31, 2016, Jack Harman, Relator recorded the Notice of Pendency of Action in the official records of Carson City as file 469390 as part of the Petition to Set Aside Estate of Edwin John Sarge. (AER

VOL. 1 @ 0100) On October 31, 2016, Jack Harman, Broker, further recorded a Complaint for ReEntry in the official Records of Carson City as File 469424. (AER VOL. 1 @ 0114 – 0119).

SUMMARY OF ARGUMENT

NRS § 107.080 et. seq. as effective in 2015 – 2016 specifically sets forth the parties the Trustee is required to supply with the statuorily required notices of foreclosure and lays out the steps to complete a non-judicial foreclosure. Further, *NRS § 107.080* requires substantial compliance. As set forth herein QLS complied with the requirements of the statute by providing notice via certified mail and regular mail to all parties found in the land records where the property is located.

STANDARD OF REVIEW

An order on a motion to dismiss is reviewed de novo. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227–28, 181 P.3d 670, 672 (2008). Questions of statutory interpretation are reviewed de novo. *MEI-GSR Holdings, LLC v. Peppermill Casinos, Inc.*, 134 Nev. Adv. Op. 31, 416 P.3d 249, 253 (2018); *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 125 Nev. 449, 456, 215 P.3d 697, 702 (2009). When interpreting a statute, if the statutory language is "facially clear," this court must give that language its plain meaning. Id. An order on a motion for summary judgment is reviewed de novo. *Pressler v. City of Reno*, 118 Nev. 506, 509, 50 P.3d 1096, 1098 (2002). The district court properly converted the motion to dismiss to a motion for summary judgment as the court considered evidence outside of the pleadings. See *NRCP 12(b)* (providing that if the court considers matters outside of the pleadings in reviewing an *NRCP 12(b)(5)* motion, "the motion shall be treated as one for summary judgment"). The district court also properly granted respondents summary judgment on appellant's breach of contract, unjust

enrichment, and punitive damages causes of action. See *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (explaining that this court reviews a district court's order granting summary judgment de novo).

LAW AND ARGUMENT

A. The Deed Upon Death Transferred Title to the Property to the Intended Beneficiaries and the Intended Beneficiaries Cannot Avoid the Effect of the Deed Upon Death by Filing A Probate Action Instead of Complying with the Statutory Requirements.

In order to avoid probate and effectuate a transfer of the real property, the Sarges' utilized a very simple non-probate mechanism to transfer title to the property, the Deed Upon Death.

NRS § 111.671 provides:

> "The owner of an interest in property may create a deed which conveys his or her interest in property to a beneficiary or multiple beneficiaries and which becomes effective upon the death of the owner."

The Real Property Transfer on Death Act was adopted by Nevada in *NRS § 111.655* et. seq. In interpreting uniform acts the Nevada Supreme Court has stated that "an official comment written by the drafters of a statute and available to a legislature before the statute is enacted has considerable weight as an aid to statutory construction." *SFR Invs. Pool 1, LLC v. U.S. Bank N.A.* 334 P.3d 408 (Nev. 2014). In summarizing the Uniform Real Property Transfer on Death Act (hereinafter "URPTODA") the Uniform Law Commission has expressly stated that "URPTODA

enables an owner to pass real property to a beneficiary at the owner's death simply, directly, and without probate by executing and recording a TOD deed. Just as importantly, URPTODA permits the owner to retain all ownership rights in the property while living, including the right to sell the property, revoke the deed, or name a different beneficiary." Expressly a Deed Upon Death "is not subject to the statute of wills and passes title directly to the named beneficiary without probate." Id.

Once the Deed Upon Death is recorded, the asset becomes a "non-probate" asset. "Nonprobate assets are interest in property that pass outside of the decedent's probate estate to a designated beneficiary upon the decedent's death." *In re Estate of Myers* 825 N.W.2d 1 (Iw 2012). Generally because they pass pursuant to a contingent contract, Nonprobate assets do not become part of a probate estate. *Karsenty v. Schoukroun*, 406 Md. 469, 959 A.2d 1147, 1158 (Md. 2008) (holding that a TOD account was not part of the decedent's testate estate because the decedent's interest in the property did not survive his death, which is when the TOD account "transferred to [the beneficiary] . . . 'by reason of the contract' between him and [the administrator of the account]"); *Restatement (Third) of Property: Wills and Other Donative Transfers* § 1.1 cmt. b, illus. 12, at 10 (1999) ("Because [the grantor's] ownership interest in the account and in the securities expired on her death, no part of the balance in the account at her death or of the securities is included in [the grantor's] probate estate.")

Nevada defines "Nonprobate transfer" as:

> "[The] transfer of any property or interest in property from a decedent to one or more other persons by operation of law or by

contract that is effective upon the death of the decedent and includes, without limitation:

(a) A transfer by right of survivorship, including a transfer pursuant to subsection 1 of NRS § 115.060;
(b) A transfer by deed upon death pursuant to NRS § 111.655 to 111.699, inclusive; and
(c) A security registered as transferable on the death of a person.

Accordingly, pursuant to the Deed Upon Death title transferred upon the death of the last remaining Grantor to the intended beneficiaries, to wit, the Sarges' children. All that was required to complete the transfer of the property was the recording of the required notice. Pursuant to *NRS § 111.683*, a deed upon death is effective without: 1. Notice or delivery to or acceptance by the beneficiary or beneficiaries; or 2. Consideration. While title to the beneficiaries of the Deed Upon Death may not have been perfected due to failure to record the required notice document, title still transferred without an unnecessary probate action, accordingly the "Estate of Sarge" (which has never been established) had no standing to bring an action relative to the subject real property as the subject real property is not, and has not been part of the Sarge probate estate.

B. The Foreclosure Trustee Complied with the Statutes and Provided all Required Notices of Foreclosure.

1. The Notice of Default was Mailed as Required by NRS § 107.080(3) to the Person Holding Title of Record as on the Date the NOD was Recorded

NRS § 107.080(3) specifically requires the Notice of Default be:

> "mailed by registered or certified mail, return receipt requested and with postage prepaid to the grantor or to the person who holds **the title of record** on the date the notice of default and election to sell is recorded." (Emphasis supplied)

On September 2, 2015, the Notice of Breach and Default and of Election to Cause Sale of Real Property under Deed of Trust was recorded in the official records of Carson City (AER VOL. 1 0077) – on September 2, 2015, the title holder of record was either the original borrower, Thelma Sarge, or the beneficiaries of the Deed Upon Death, Jill A. Sarge, Jack C. Sarge, and Sharon R. Hesla. (AER VOL. 1 @ 0063 – 0066)

NRS § 107.080(3) does not require the Trustee to go further than the property records to determine who is entitled to notice of impending foreclosure. *Turner v. Dewco Servs.* 87 Nev. 14 (1971). In Nevada, an interest in property must be recorded in order to entitle an individual to notice under the Nevada non-judicial foreclosure statute. *Title Ins. Co v. Chicago Title Ins. Co.* 97 Nev. 523 (1981) Taking into account the policy considerations involved, we are of the view that when a contract for the sale of real property is ***duly recorded***, the vendee under such a contract is entitled to notice pursuant to *NRS § 107.080(3)*. Actual notice is not necessary as

long as the statutory requirements are met. *Hankins v. Administrator of Veterans Affairs* 92 Nev. 578 (1976). Further, substantial compliance is all that is required under this statutory scheme. *Thomas v. Fannie Mae* 408 Fed. Appx. 122 (9th Cir. 2011) Nevada law requires only that a trustee send [foreclosure] notices by certified mail, not that a trustee personally serve a plaintiff or that a plaintiff receives actual notice. *Riehm v. Countrywide Home Loan Inc* 2012 U.S. Dist. LEXIS 121114 (D. Nev. 2012).

In New Jersey, foreclosure sales continue to be proper, even if there is an unrecorded interest, of whom the party is actually aware, whom was not noticed. *PNC Bank v. Axelsson* 373 N.J. Super 186 (2004). In Texas, it is actually codified by statute that "a conveyance of an interest in real property…is void as to a subsequent purchaser if the interest was not recorded at the time of the subsequent purchase. *Realty Portfolio v. Hamilton* 125 F.3d 292 (5th Cir. 1997).

All parties to the Deed Upon Death were required by statute to insert a current mailing address. *NRS § 111.312*, thereby providing recorded information that could be relied upon by third parties regarding the subject real property. QLS utilized the information contained in the Deed Upon Death and sent the required notices of Default there.

It is undisputed that the Notice of Default were mailed to the record title holder, at the recorded address, whether the record title holder was the original

borrowers or the beneficiaries of the Deed Upon Death. The NOD was mailed on September 10, 2015. (AER VOL. 1 @ 0085). The mailing was first class and certified and included 24 regular mailings to the subject property and 24 certified mailings to the subject property. (AER VOL. 1 @ 85 – 88). The mailing also included 5 regular mailings and 5 certified mailings to the Care Law Address. (AER VOL. 1 @ 0085 – 0088)

2. The Notice of Sale was Mailed as Required by NRS § 107.080(4) to the Trustor of the Deed of Trust, and each Person entitled to Notice by Statute

NRS § 107.080(4) governs the noticing of the foreclosure sale

> The trustee, or other person authorized to make the sale under the terms of the trust deed or transfer in trust, shall, after expiration of the applicable period specified in paragraph (d) of subsection 2 following the recording of the notice of breach and election to sell, and before the making of the sale, give notice of the time and place thereof by recording the notice of sale and by:
>
> (a) Providing the notice to each trustor, any other person entitled to notice pursuant to this section and, if the property is operated as a facility licensed under chapter 449 of NRS § , the State Board of Health, by personal service or by mailing the notice by registered or certified mail to the last known address of the trustor and any other person entitled to such notice to this section;

The last known mailing address of the trustor, was the property address; the last known address for the beneficiaries of the Deed Upon Death was the Care Law Address. The property address was the only address available to the foreclosure trustee because no new address for the Trustor had been recorded. The Trustee

complied with the statutory requirement to give notice. It is undisputed that the Notice of Sale was mailed certified mail and regular mail to the record title holder (be it the decedents or the beneficiaries of the Deed Upon Death) at the recorded addresses multiple times.

NRS § 107.090(1) defines a "person with an interest", which an individual required to receive notice, as:

> "any person who has or claims any right, title or interest in, or lien or charge upon, the real property described in the deed of trust, as evidenced by any document or instrument recorded in the office of the county recorder of the county in which any part of the real property is situated."(Emphasis Added)

Nevada law requires the notices to be sent to the address in the property records, and proof of receipt of the notices is not required to validate a foreclosure sale in Nevada. *Turner v. Dewco Servs*. 87 Nev. 14 (1971) (finding "no breach of the statutory duty to send the notice by certified at the address known by the grantor. The statute does not require proof that the notice be received.").

The only court to interpret the noticing requirement concerning unknown entities found that successor entities have a duty to forward their mail and take affirmative steps to receive notice when their contact information has changed and furthermore that a foreclosure trustee is not required to search out people with interests. *Madrid v. Del Mar Commerce Co.*1 0 B.R. 795 (Bankr. Nev. 1981). On August 29, 2016; the Notice of Trustee's Sale was recorded in the Carson City

property records (file No. 467446) and provided for a sale date of October 6, 2016. (AER VOL. 1 0092 – 0094) The Notice of Trustee's Sale was mailed to the subject property regular mail 11 times and certified mail 11 times. (AER VOL. 1 @ 0096 – 0098) It was sent to the CARE Law address regular mail 5 times and certified mail 5 times. (AER VOL. 1 @ 0096 – 0098).

3. The Trustee Substantially (If Not Strictly Complied With The Notice Provisions of NRS § 107.080 by Providing Notice to All Record Notice Holders.

Finally, *NRS § 107.080* (2015 – 2016) version is a substantial compliance statute, *NRS § 107.080* (5) provides:

> 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. Except as otherwise provided in subsection 7, a sale made pursuant to this section must 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;

In, *Bayview Loan Servicing, LLC v. Holm Int'l Props., LLC*, No. 71715 (Nev. Feb. 15, 2018), Bayview contended that the foreclosure sale should be deemed void because its predecessor was not mailed the notice of sale, however, this Court determined that the equities weighed in favor the HOA purchaser, because Bayview had record notice of the notice of sale for over four months before the foreclosure sale took place. Citing to *SFR Invs. Pool 1, LLC v. First Horizon Home Loans*, 134

Nev., Adv. Op. 4 at 6, ___ P.3d ___ (2018) (observing that the purpose of Nevada's recording statutes is to "impart notice to all persons of the contents thereof" (quoting NRS § 11.320). Here, the beneficiary of the deed upon death, by its own records knew the loan had been referred to foreclosure (see AER @ 0160).

Here, the evidence is that the Trustee did substantially comply with *NRS § 107.080* by sending the notice to the Trustor at the subject real property and by sending notice to the Beneficiaries of the Deed Upon Death at the address delineated in the Deed Upon Death. The Court should not reward the Appellants inaction.

4. NRS § 107.080(3) Was Amended in 1989 To Remove any Requirement to Mail to a "Successor in Interest".

The District Court correctly held that *Rose v. First Federal Sav. & Loan Ass'n*, 777 P.2d 1318 (Nev. 1989), was inapplicable to the instant matter as the legislature in 1989 (*1989 Statutes of Nevada, Page 1771 (CHAPTER 750, SB 479)*) removed the words [or to his successor in interest at the address of the grantor or his successor in interest] and replaced those words with "to the grantor, and to the person who holds the title of record on the date the notice of default and election to sell is recorded, at their respective addresses, if known, otherwise to the address of the trust property." The decision in *Rose (id.)* rest squarely on language of the statute, "contrary to the apparent intent of the legislature as evidenced in *NRS § 107.080(3)* that the grantor/debtor's successor in interest should receive any notice that the

grantor/debtor had the right to receive." Once the language requiring notice to a successor in interest (potentially indefinable parties) was removed and replaced with readily identifiable parties "to the grantor, and to the person who holds the title of record on the date the notice of default and election to sell is recorded" the need to attempt to identify successors or interest was removed.

All questions of statutory construction must start with the language of the statute itself. See *2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction* § 47:1, at 274–75 (7th ed. 2007) ("The starting point in statutory construction is to read and examine the text of the act and draw inferences concerning the meaning from its composition and structure." (footnote omitted)) – as quoted by *In re Nevada State Eng'r Ruling No. 5823*, 277 P.3d 449 (2012). In other words, the Court must begin its inquiry with the statute's plain language. *Arguello v. Sunset Station, Inc.*, 252 P.3d 206, 209 (2011). The Court may not look beyond the statute's language if it is clear and unambiguous on its face. See *Washoe Med. Ctr. v. Second Jud. Dist. Ct.*, 122 Nev. 1298, 1302, 148 P.3d 790, 792-793 (2006). See also *Valdez v. Emp'rs Ins. Co. of Nev.*, 123 Nev. 170, 162 P.3d 148 (2007); *Hobbs v. Nev.*, 127 Nev. Adv. Op. 18, 251 P.3d 177, 179 (2011); *Pro-Max Corp. v. Feenstra*, 117 Nev. 90, 95, 16 P.3d 1074, 1078 (2001). Stated another way, in circumstances where the statute's language is plain, there is no room for

constructive gymnastics, and the court is not permitted to search for meaning beyond the statute itself. See Id.

Here, the language of the statute requires no further inquiry, "Grantor" and "title holder of record" are easily identifiable parties. In this the Grantor was Mr. and Mrs. Sarge, the titleholder of record is either Mr. and Mrs. Sarge, or the beneficiaries of the Deed Upon Death. Easily ascertainable parties who were mailed the requisite notices as required by the statute. Courts must not render any part of the statute meaningless, and must not read the statute's language so as to produce absurd or unreasonable results. *Leven v. Frye*, 123 Nev. 399, 405, 168 P.3d 712, 716 (2007). It would be absurd or unreasonable to invalidate a sale where all the notices were sent to the parties with recorded interest, because that party failed to record a notice related to the Deed Upon Death, failed to record a notice to ensure notices were received, failed to pay attention to statements stating the property was in foreclosure (AER @ 0180 – 0181) and failed to inspect the property from September 2015 onward [AER @ 0191 line 25 to AER @ 0192 line 8).

C. The Complaint for Rentry Fails to State a Valid Claim for Relief and was Accordingly Subject to Dismissal.

First, the Complaint was filed by an Estate that did not exist. Next, the subject real property was not, nor should it have been part of any Estate due to Dead Upon Death. Finally, by the time the Estate was filed the Real Property (which had been

sitting vacant and uncared for since at least September 2015 (AER @ 0191 line 25 to AER @ 0192 line 8) had been sold at a foreclosure sale that Appellant had actual notice of (AER @ 0180 – 0181). In addition to recording, posting, and mailing, the mortgage statement that Appellant relies on to show the beneficiary of the deed of trust was aware of Jill Sarge's address states in the upper right hand corner "Current Loan Status: Refer for Foreclosure Death." (AER @ 0208). Appellant has failed to show that the Trustee was aware of, or required to mail to, any address other than those provided in the official records.

The flaws continue in that the Complaint is fails to allege or state any requisite claim for wrongful foreclosure. In order to maintain a claim for wrongful foreclosure, Appellant would need to show there was no default on the payment obligation at the time of the foreclosure. *Collins v. Union Fed. Sav. & Loan Ass'n*, 662 P.2d 610, 623, 99 Nev. 284 (1983); *Hughes v. Wells Fargo Bank,NA.*, No. CV-09-2496-PHX-MHM, 2009 WL 5174987, at *2 (D. Ariz. Dec. 18, 2009) (plaintiffs unlikely to succeed on merits of wrongful foreclosure claim because they "freely admit that their loan is in default"); *Contreras v. US Bank as Trustee for CSMC Mortgage Backed Pass-Through Certificates, Series 2006-5*, No. CV-09-0137-PI-IX-NVW, 2009 WL 4827016, at *6 (D. Ariz. Dec. 15, 2009); (dismissing claim where "Plaintiffs admit they were in default") Compare *Herring v. Countrywide Home Loans, Inc., No.* CV 06-2622-PHX-PGR, 2007 WL 051394, at *5 (D. Ariz.

July 13, 2007) (plaintiff could maintain claim because she "cured any defaults" by entering into modification plan). Appellant's Complaint also fails allege tender, a prerequisite to a claim of wrongful foreclosure. Since the action attacking the foreclosure sale sounds in equity, a trustor seeking to set aside the sale is required to due equity before the court will exercise any equity powers. Therefore, precedent to an action by the trustor to set aside the Trustee's sale as voidable, the trustor must pay or offer to pay the secured debt, or at least all delinquencies and costs due for redemption, if there be one. See, *Miller & Starr California Real Estate 4th Ed.* § 13:256, *Abdallah v. United Savings Bank*, 51 Cal. Rptr. 2d. 286 (1st. Dist. 1996), and *FBCI RE-HAB 01 v. E & G Investments, Ltd.*, 207 Cal. App. 3d. 1018,255 Cal. Rptr. 157 (1989).

As the Complaint was brought by a non-existent entity that had no interest in the subject property at the time the complaint was filed and request "Re-Entry" in an artful avoidance the deficiencies in a wrongful foreclosure cause of action, dismissal of the action was appropriate.

CONCLUSION

For the foregoing reasons, the Dismissal by the District Court (either as a Motion to Dismiss or as Summary Judgment) should be affirmed.

Dated this 3rd Day of June, 2019

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 Point Font Times New Roman.
2. I further certify that this Petition complies with the page-or type-volume limitations of NRAP 32(a)(7) because the brief contains 6902 words and is 28 pages long.
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. Further I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which requires every assertion in the brief regarding matters of the record to 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. I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 3rd Day of June, 2019

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