IN THE SUPREME COURT OF THE STATE OF NEVADA

BANK OF AMERICA, N.A.; THE BANK OF NEW YORK MELLON, F/K/A, THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2005-17; AND MORTGAGE ELECTRONIC SYSTEMS, INC., Appellants, v. THOMAS JESSUP, LLC SERIES VII, FOXFIELD COMMUNITY ASSOCIATION, AND ABSOLUTE COLLECTION SERVICES, LLC. Respondents.	Case No. 73785

Electronically Filed
Mar 23 2018 04:26 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Department VII
The Honorable Linda Marie Bell, District Judge
District Court Case No. A-13-693205-C

RESPONDENTS, FOXFIELD COMMUNITY ASSOCIATION AND ABSOLUTE COLLECTION SERVICES, LLC'S ANSWERING BRIEF

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Docket 73785 Document 2018-11481

NRAP 26.1 DISCLOSURE

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed:

> Foxfield Community Association is a non-profit homeowners association, comprised of owners that own residential properties within the confined of Foxfield Community Association. Foxfield Community Association has no parent corporations and therefore no publicly held company owns 10% or more of Foxfield Community Association.
>
> Absolute Collection Services, LLC is privately owned, has no parent corporations and therefore no publicly held company owns 10% or more of Absolute Collection Services, LLC.
>
> Shane D. Cox, Esq. served as counsel for the respondents before the district court and is now serving as appellate counsel.

These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal.

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STATEMENT OF THE ISSUES

(A) As a threshold issue, whether or not Bank of America, N.A. ("BANA")'s deed of trust was extinguished as a result of the HOA Foreclosure Sale.

(B) As BANA's claims against Foxfield Community Association ("HOA") and Absolute Collection Services, LLC ("ACS") are brought in the alternative, whether or not BANA has colorable claims for Wrongful Foreclosure, Tortious Interference with Contractual Relations, Unjust Enrichment, Breach of the Duty of Good Faith against HOA and ACS.

(1) Whether or not HOA and ACS can be held liable for Wrongful Foreclosure when HOA and ACS proceeded to foreclosure following a letter given to BANA.

(2) Whether or not the HOA is paid the entirety of its lien following an HOA foreclosure sale or just receives its superpriority piece

(3) Whether or not the HOA and ACS can be held liable for Tortious Interference with Contractual Relations where there was no intent to interfere with a contract.

(4) Whether or not HOA and ACS can be held liable for Breach of the Duty of Good Faith where there is no clear duty that HOA and ACS breached.

STATEMENT OF THE CASE

This appeal follows the District Court's post-trial finding and order, following a one-day non-jury trial. The lower court's order held that the HOA lien foreclosure sale brought about by HOA was proper. HOA had hired ACS as an agent and/or trustee to bring about the HOA lien foreclosure sale. BANA contends that it legally tendered the superpriority lien amount prior to the HOA foreclosure sale, thus discharging the HOA lien's priority status over its deed of trust. BANA brought claims against the HOA and ACS in the alternative, claiming that if its deed of trust does not remain on the property, that it is the victim of tortious actions by the HOA and/or ACS.

BANA received a copy of the Notice of Default mailed to it by ACS. BANA's counsel sent a letter to ACS, asking about the status of the HOA lien sale and vaguely requested the superpriority amount. BANA contends that ACS rejected BANA's offer to pay the superpriority piece of the HOA lien. ACS believed it sent a response letter to BANA's counsel. The record indicates that BANA's counsel did not have a copy of the ACS response letter as part of its file. It is unclear whether or not BANA received ACS's response. In the ACS letter, ACS attempted to communicate a legal opinion regarding the existence of the superpriority piece in general and offered BANA a way to order a Statement of Account to obtain the information it sought. BANA took no further action to stop the HOA lien foreclosure sale.

The lower court held that BANA's deed of trust was extinguished at the HOA lien foreclosure sale as a result of its inaction to pay the superpriority piece of the HOA lien or otherwise stop the sale. The lower court found that the HOA and ACS properly conducted the HOA sale, and therefore a Cause of Action for Wrongful Foreclosure fails. The lower court found that no benefit was conferred from BANA to the HOA and/or ACS, therefore a Cause of Action for Unjust Enrichment fails. The lower court found that HOA and ACS had no intention of interfering with BANA's contract with the borrower, therefore a Cause of Action for Tortious Interference with Contractual Relations fails. The lower court found that HOA and ACS took no actions to breach any duty owed to BANA, and therefore a Cause of Action for Breach of the Duty of Good Faith and Fair Dealing fails.

STATEMENT OF FACTS

I. Factual Background

A. Actions Leading Up to the Foreclosure Sale

As mentioned in Appellants' and Respondent Jessup's Briefs, the property at the subject of this appeal is commonly known as 588 Bugle Bluff Road, Henderson, Nevada 89015 (the "Property") (A.A. 158-179). Lena Cook, a non-participating Defendant in the lower court case, was the recorded owner of the Property. Lena Cook executed a first deed of trust to purchase the Property. Id.

Commencing on April 1, 2010, Cook failed to pay her HOA assessments due to Foxfield Community Association. (A.A. 681). At no time following April 1, 2010 is there any record that Cook made any payment to the HOA or to ACS to satisfy any outstanding debt owed. Id. The HOA contracted ACS to initiate a non-judicial foreclosure process to attempt to collect past due amounts owed. (A.A. 682).

As part of its foreclosure process, ACS recorded a Notice of Delinquent Assessment Lien on April 21, 2011 (A.A. 200-201). ACS recorded a Notice of Default and Election to Sell Under Homeowners Association Lien on July 18, 2011 (A.A. 203-205). ACS obtained a Title Report/Trustee Sale Guarantee to derive to whom a copy of the Notice of Default should be mailed. (A.A. 218). ACS mailed a copy of the Notice of Default to an address for BANA. (A.A. 223, 580-582). ACS recorded a Notice of Sale on December 6, 2011 (A.A. 255-256). ACS recorded a second Notice of Sale on April 25, 2012, which set a sale date for June 12, 2012 (A.A. 258-259). ACS mailed copies of the Notices of Sale to BANA, and also to BANA's attorney, Rock Jung of Miles Bauer Bergstrom & Winters. (A.A. 645-646, 655).

On June 12, 2012, ACS held the foreclosure sale on behalf of the HOA, selling the Property to CSC Investment Group, LLC for the sum of $5,401.00, evidenced by a Deed recorded on June 13, 2012 (A.A. 261-264).

B. BANA's Communications with ACS

BANA received a copy of the Notice of Default. (A.A. 155-156). BANA caused that Mr. Rock Jung, Esq., attorney at the firm of Miles Bauer Bergstrom & Winters, LLP wrote a letter in response to its receipt of the Notice of Default. Id. Within the letter, Mr. Jung stated, "It is unclear, based upon the information known to date, what amount the nine months' [sic] of common assessment pre-dating the NOD actually are. That amount, whatever it is, is the amount BANA should be required to rightfully pay… and my client hereby offers to pay that sum upon presentation of adequate proof of the same by the HOA." Id.

ACS sent a response letter dated on September 13, 2011 (A.A. 253). ACS's file contains a copy of the letter with a Transaction Report, showing that it was faxed. (A.A. 242). However, the file produced by Miles Bauer Bergstrom & Winters, LLP does not show receipt of the ACS response letter. (A.A. 152-156, 695). ACS hired an attorney to assist it in writing the ACS response letter. (A.A. 621). ACS advised Mr. Jung that it intended "to proceed on the above-mentioned account up to and including foreclosure." (A.A. 253). Further, ACS stated, "a Statement of Account costs $50 and is not good for a sale/transfer of the property. If … you would still like a Statement of Account, please email me." Id. Further, ACS stated, "The upfront fee

for [an actual payoff demand that is good for the sale/transfer of a property] is $150 and we take all major credit cards…" Id.

After sending the ACS response letter, ACS added Mr. Jung as a recipient of future notices, as it interpreted that he was requesting additional notice of the sale. (A.A. 645-646). ACS's corporate representative testified that she sent copies of both Notices of Sale to Mr. Jung as part of the foreclosure process. Id. ACS has no record of further communication by Mr. Jung contesting the sale. (A.A. 590-591). Mr. Jung testified that he had no record of further contact, only that he monitored the foreclosure. (A.A. 696).

II. Procedural Background

The Procedural Background is set forth by Appellant and Respondent Jessup in their respective briefs. The District Court disposed of all claims against HOA and ACS via a Trial Order entered on July 14, 2017.

SUMMARY OF THE ARGUMENT

The district court's decision should be upheld as against the HOA and ACS. As a threshold issue, the HOA and ACS do not dispute any argument regarding the quality of title that was conveyed to CSC, and eventually to Jessup. As a matter of law, HOA and ACS believe that it only had rights to convey what was within its power to convey. The claims against HOA and ACS only arise if BANA is defeated

in its Quiet Title action against Jessup. If BANA's actions were enough to constitute a tender of the superpriority piece of the HOA lien, then the sale was simply made as a subpriority sale, and Jessup takes title subject to the deed of trust. Further, as far as it is relevant, HOA and ACS do not dispute that they could have elected to foreclose only on a subpriority position. HOA and ACS sent a letter to BANA, which may evidence a belief that the superpriority lien outlined in NRS 116 only created a payment priority, as argued by the bank in *SFR. SFR Investments Pool 1, LLC v. US Bank*, 334 P.3d 408, 412 (Nev. 2014). However, ACS allowed BANA to request a Statement of Account to determine exactly what they wanted to pay. (A.A. 253). ACS made no promise to BANA about how it would conduct the foreclosure sale, it only conveyed an opinion as to what the effect of the sale may be. Id. BANA decided that inaction was a better option than assurance. (A.A. 696).

HOA and ACS deny all damages claims brought against them. HOA and ACS deny the Unjust Enrichment claims as there is no privity of contract between HOA/ACS and BANA. HOA and ACS deny the Tortious Interference with Contractual Relations claim as HOA and ACS did not have the requisite intent to disrupt the contract between BANA and its borrower, and no actual disruption was shown. HOA and ACS deny the Breach of the Duty of Good Faith claim as BANA did not assertively point to some other duty during trial that HOA and ACS breached. HOA and ACS deny the Wrongful Foreclosure claim as there was an

amount owed to the HOA at the time of foreclosure sale, therefore all necessary elements of Wrongful Foreclosure are not met.

ACS and HOA argue that the funds from the foreclosure sale were properly distributed, as the statute requires satisfaction of the association's lien prior to paying off any junior lienholders.

ACS and HOA argue that they took no affirmative advanced requirement to foreclose on a subpriority position, as ACS was simply conveying an opinion given to it by a licensed attorney.

ARGUMENT

A. The Trial Court Properly Held That Claims for Unjust Enrichment Failed

BANA's Opening Brief appears to bring a new theory of Unjust Enrichment, apart from what was presented in its Counterclaims. (A.A. 106-108). BANA brings claims against HOA and ACS separately for Unjust Enrichment that are based on the same facts and similar reasoning. Id. Unjust enrichment is "`the unjust retention ... of money or property of another against the fundamental principles of justice or equity and good conscience.'" *Topaz Mutual Co. v. Marsh*, 108 Nev. 845, 856, 839 P.2d 606, 613 (1992) (quoting *Nevada Industrial Dev. v. Benedetti*, 103 Nev. 360, 363 n. 2, 741 P.2d 802, 804 n. 2 (1987)). Unjust enrichment occurs whenever a

person has and retains a benefit which in equity and good conscience belongs to another. *Unionamerica Mortg. & Equity Trust v. McDonald*, 626 P. 2d 1272, 1273-74 (Nev. 1981) (quoting *L & A Drywall, Inc. v. Whitmore Const. Co. Inc.*, 608 P.2d 626 (Utah 1980)).

BANA states in its First Amended Answer, Counter-Claims, and Cross-Claims Against ACS and HOA that ACS and HOA were unjustly enriched in "an amount at least equal to the difference between the true super-priority portion of its lien and the amount the HOA actually recovered from the foreclosure proceeds." (A.A. 107). This argument seems to state that ACS and HOA did not have the power to foreclose on its subpriority lien rights. This is untrue. The Nevada Supreme Court stated that "NRS 116.3116(1) and NRS 116.31162 provide for the nonjudicial foreclosure of the whole of an HOA's lien, not just the subpriority piece of it." *SFR Investments Pool 1 v. US Bank*, 334 P. 3d 408, 414-415 (Nev. 2014). Inherent in this monumental decision is the holding that an HOA could continue to foreclose on its subpriority piece of lien if the superpriority piece of the lien had been satisfied. Therefore, the HOA and ACS was fully within its rights to foreclose following any purported tender of the superpriority piece of the HOA lien.

NRS 116.31164(7)(b) provides the order in which the person conducting the sale shall apply the proceeds of the sale. First, the sale proceeds are applied to the reasonable expenses of sale. Second, expenses of securing possession and paying

governmental charges and insurance payments before the sale. Third, "Satisfaction of the association's lien." The lien foreclosed on by the HOA was not just the "superpriority lien." The *SFR* court instructed us that the HOA only has one lien, and the "superpriority lien" is actually just a piece of the HOA lien. *SFR Investments Pool 1, LLC v. US Bank*, 334 P.3d 408 (Nev. 2014). There is also a subpriority piece of the lien. The two pieces form to make one lien. The *SFR* Court stated that the HOA may non-judicially foreclose on the whole of its lien. *Id.* Only after satisfying the association's lien, then fourth, satisfaction in the order of priority of any subordinate claim of record.

The HOA does not have two liens, one being subordinate to the other. Instead, the HOA has one lien, which is all foreclosed on at once. The lien that is to be satisfied under NRS 116.31164(3) is the lien foreclosed on, or the whole of the HOA lien. BANA misstates the text of the statute in its analysis, attempting to persuade this Court that the HOA may only foreclose on a piece of its lien at a time.

If the HOA were to only be able to collect on its superpriority piece from foreclosure, this would lead to absurd results not intended by the legislature. *See United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989). If this were the case, the HOA would have to determine which position it would be better benefitted from foreclosing on. Additionally, this may entice the HOA to complete foreclosure when only amounts are due that are considered superpriority. This would rush the

HOA into foreclosure and is clearly not the intent of the legislature. It is a simple act for a first deed of trust holder to pay the superpriority piece and to allow the HOA to foreclose on its lien in subpriority position. In the instance case, the HOA received $643.44 as a result of the foreclosure sale. (A.A. 615). If the HOA could only collect its superpriority piece, it would have to write off more money than it received as part of its foreclosure sale. The HOA would have been placed in a better position if it declared that this sale was conducted in a subpriority position. No benefit would be brought about by being in a senior position to the first deed of trust holder.

A plainer and more sensical reading of the statute is that because the first deed of trust holder failed to act, the HOA is to collect all amounts owed to it prior to paying off any subordinate claim of interest. Any other interpretation would favor other, non-acting parties at a disproportionate rate.

Further, NRS 116.31164(6)(b) provides that an HOA "may purchase a property for sale by a credit bid up to the amount of the unpaid assessments and any permitted costs." This section does not delineate that the HOA may only bid the amount of unpaid superpriority assessments or subpriority assessments. Instead, it states that the HOA would credit bid for an amount of the unpaid assessments, meaning all of the unpaid assessments. The HOA must then allow for bidding on all past due assessments, including the superpriority piece and the subpriority piece. Allowing only payment on the superpriority piece following sale while the

Association's credit bid is set at the amount for the entire lien creates an extremely absurd result.

B. The Trial Court Properly Held That The Claim for Tortious Interference with Contractual Relations Failed

BANA asserts that ACS and HOA are liable for the tort of intentional interference with contract. In an action for intentional interference with contractual relations, a party must establish: (1) a valid and existing contract; (2) the defendant's knowledge of the contract; (3) intentional acts intended or designed to disrupt the contractual relationship; (4) actual disruption of the contract; and (5) resulting damage. *J.J. Industries, LLC, v. Bennett*, 71 P.3d 1264, 1267 (Nev. 2003).

"`At the heart of [an intentional interference] action is whether Plaintiff has proved intentional acts by Defendant intended or designed to disrupt Plaintiff's contractual relations...." *Id.* at 1268. "The United States District Court of Nevada, interpreting Nevada law, explained that the party must establish that the tortfeasor had a motive to induce breach of the contract with the third party." *Id*. Here, BANA cannot assert that HOA nor ACS had any motive as to the Contract under its Deed of trust and/or Note with the former homeowner. HOA and ACS's actions were simply made to recover assessments that were due. (A.A. 683). BANA fails to establish any motive of HOA and/or ACS to intentionally interfere with the

purported Contract. BANA still may claim a valid contract with the former homeowner and can seek repayment under the Note that was signed between the parties. Therefore, BANA has failed to prove the required element that HOA or ACS had the intent of disrupting the contract between Lena Cook and it. BANA fails to prove this Claim for Relief. BANA provided no evidence on the record that indicates that HOA or ACS had the requisite intent to interfere with the contract. Instead, BANA asks this Court to make an overly broad reading of Chief Judge Navarro's analysis of tortious interference claims. Regardless, there was no evidence that the HOA nor ACS created a design or scheme to disrupt the contractual relationship.

BANA then makes an assertion that the HOA and ACS were aware that the foreclosure would extinguish the deed of trust. This assertion goes against the record, and against arguments made by BANA. (A.A. 253). The record and the ACS Response Letter cannot lead any neutral trier of fact to a conclusion that HOA and ACS knew that the foreclosure would extinguish the deed of trust. Id. BANA's own arguments convey that HOA and ACS believed and elected to foreclose on the Property on its subpriority position, as that may possibly be an option elected by the HOA. Therefore, there is no evidence that supports that HOA and ACS intended or designed to interfere with another contract. The HOA and ACS simply had the intention of recovering amounts owed to them, as they were lawfully allowed to do under the provisions of NRS 116.

C. The Trial Court Properly Held That The Claim for Breach of Duty of Good Faith Failed

NRS 116.1113 states, "Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." Therefore, BANA must point to some other duty or contract under the chapter, NRS 116, that HOA and/or ACS violated. BANA names a few duties that HOA and ACS may have had in its brief, but only point recursively to NRS 116.1113 as imposing some other duty. The question of good faith is a question of fact. *AC Shaw Cont., Inc. v. Washoe County*, 784 P. 2d 9, 11. (Nev. 1989). The trier of fact in the district court case held that ACS and HOA did not violate the duty of good faith in any aspect. (A.A. 771).

BANA points vaguely that HOA and ACS may have had a duty to disclose the assessment rate. There is no duty in NRS 116 for an HOA to disclose specific lien component amounts to any interested party. It is appropriate to state the total amount of the lien in the notices, as the notices are sent to multiple parties of record. *SFR Investments Pool 1, LLC v. US Bank*, 334 P.3d 408, 418 (Nev. 2014).

BANA argues that the HOA and/or ACS breached its Duty of Good Faith against BANA because it was only concerned with collecting amounts owed to it at its foreclosure sale. NRS 116.31164(6)(b) provides that an HOA "may purchase a property for sale by a credit bid up to the amount of the unpaid assessments and any

permitted costs." Therefore, it follows that the HOA would start bidding at an amount equal to or less than what it is owed. If the HOA is permitted to purchase the property at the cost of its past due amounts, it would be prejudicial to start bidding at some higher amount where other parties cannot purchase it for that same price. It is not asserted by Appellant that ACS did not sell to the highest bidder, only that the starting bid was too low. "To conduct a fair foreclosure sale, the correct amount needed to pay off the foreclosing first mortgagee must be known to all potential bidders, be they outsiders … or junior lien holders … This is so each bidder can assess the situation corresponding to that bidder's individual circumstance and decide what the bidder is willing to pay to protect that bidder's interest.". *Palacios v. Fla. Funding Tr.*, 32 So. 3d 167, 169 (Fla. Dist. Ct. App. 2010). The HOA should only be concerned with the amount needed to satisfy its lien, and that is the amount to be provided to potential bidders at the HOA lien foreclosure sale.

BANA does not contend that HOA and ACS represented to it that they would conduct the sale in such a way to not offend BANA's rights. In fact, BANA proffers only the ACS Response Letter as the sole form of communication pertaining to the foreclosure, outside of the required notices. After receiving the Letter, BANA was also sent copies of the Notice of Sale. Therefore, BANA knew or should have known that a foreclosure sale was going to occur. HOA and ACS acted in good faith by advising BANA of the upcoming sale. (A.A. 253). HOA and ACS conveyed a legal

opinion, but made no promise to conduct the sale in any way that did not extinguish the Deed of Trust. HOA and ACS simply conveyed that they may have believed that the Deed of Trust was not affected or offended by the HOA foreclosure sale. This does not lead to a finding of bad faith, because it was an honest belief of ACS and/or the HOA.

HOA and ACS attempted to conduct a foreclosure in a proper way. Because the District Court found a showing of good faith, this Court should defer to the District Court. This is a highly fact-intensive study, and the District Court had the facts in its possession to determine that HOA and ACS acted in good faith. (A.A. 771).

D. The Trial Court Properly Held That The Claim for Wrongful Foreclosure Failed

BANA does not contend that sums to the HOA were not due. "An action for the tort of wrongful foreclosure will lie if the trustor or mortgagor can establish that at the time of the power of sale was exercised or the foreclosure occurred, no breach of condition or failure of performance existed on the mortgagor's or trustor's part which would have authorized the foreclosure or exercise of the power of sale." *Collins v. Union Federal Sav. & Loan Ass'n*, 99 Nev. 284, 662 P.2d 610, 623 (1983).

"The material issue of fact in a wrongful foreclosure claim is whether the trustor was in default when the power of sale was exercised." Id.

Even further, Judge Hunt of the United States District Court of Nevada has interpreted Nevada law to say a Wrongful Foreclosure claim must fail where the party does not allege that they were not in default when foreclosure proceedings were initiated. *Larson v. Homecomings Fin.*, 680 F.Supp.2d 1230, 1237 (D. Nev. 2009). Here, BANA does not contend in its Complaint that the homeowner was not in default at the time of the HOA foreclosure. (A.A. 111). Therefore, its claims for Wrongful Foreclosure must fail.

"A lender generally owes no duty of care to its borrower. *See Nymark v. Heart Fed. Sav. & Loan*, 231 Cal.App.3d 1089, 1096, 283 Cal.Rptr. 53 (1991). But this is only true in a lender's 'conventional role as a mere lender of money.' *Id*. It does not indicate that lenders (or others) have no duty of care in foreclosure proceedings. The U.S. District Court for the Northern District of California has ruled that a foreclosure trustee has a duty of care to a trustor, but that the scope of the duty is circumscribed by the statutes governing foreclosures. *Hendrickson v. Popular Mortgage Servicing, Inc.*, No. 09-00472-CW, 2009 WL 1455491, at *7 (N.D.Cal. May 21, 2009)."

BANA has failed to assert that the homeowner was not in default of its obligation to pay HOA Assessments at the time of the HOA Foreclosure. (A.A. 111). Therefore, the claim for Wrongful Foreclosure must fail.

BANA claims that a Wrongful Foreclosure claim can stand because it paid the superpriority piece of the HOA lien. BANA asserts that the HOA made a representation that the superpriority piece of the HOA lien did not exist. This is an incorrect assertion. ACS's letter simply stated, "a 9 month Statement of Account is not valid." ACS was correct in its assertion that a 9 month Statement of Account will not show all that is due to the HOA, and therefore is not a valid statement of all owing under the HOA Lien. Only after a foreclosure by a first deed of trust holder does a 9 month Statement of Account become valid as showing what is owed to the HOA, as subpriority amounts would be extinguished as an effect of that foreclosure sale.

Additionally, BANA claims an interest only as the holder of a second deed of trust. (A.A. 181-195). BANA had no right to only pay the superpriority amount to protect its deed of trust. BANA was the one who hired Miles Bauer to send a letter, while there is no evidence that the other Appellants acted to protect their Deed of Trust. (A.A. 152-156). Therefore, this cause of action fails because BANA had no right to protect its deed of trust by paying only the superpriority amount.

E. BANA Failed to Establish Damages

BANA has failed to provide for its damages. HOA and ACS argued at trial, and re-assert that BANA has failed to prove its damages. (A.A. 747-748). BANA asserted that its damages were in the amount of what was owed on the note. (A.A. 743). However, BANA provided no evidence that it had attempted to collect against Cook for amounts owed under the note.

Further, BANA cannot collect against HOA and ACS, as it has an equitable remedy at hand. If there was unfairness, oppression, or malice, the equities weigh in favor of setting aside the sale. *Nationstar Mortgage, LLC v. Saticoy Bay LLC Series 2227 Shadow Canyon*, 133 Nev. Adv. Op. 91 (2017). If BANA was treated unfairly, the sale should be set aside, and damages should not be entertained against HOA and ACS. If BANA was not treated unfairly, then it cannot assert tort claims against the HOA and ACS. The appropriate and only remedy at hand for BANA is for this Court to declare that the Deed of Trust was not extinguished, or that the sale must needs be undone.

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CONCLUSION

For all the above reasons, the district court's ruling should be affirmed, and judgment should be rendered in the Respondents', Absolute Collection Services, LLC and Foxfield Community Association, favor.

Dated this 23rd day of March, 2018.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this answering brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman and 14 points size.

I FURTHER CERTIFY that this answering brief complies with the page or type-face volume limitations of NRAP 32(a)(7) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 5,661 words.

FINALLY, I CERTIFY that I have read this RESPONDENTS ANSWERING 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 Answering 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 reference to the page of the transcript or appendix where the matter relied on is to be found. To the extent that any assertion is not support by reference, it is done in good faith and not for the purpose to confound the Court.

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 23rd day of March, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of March, 2018, I served a true and correct copy of the foregoing **RESPONDENT'S ANSWERING BRIEF** in the following manner:

(ELECTRONIC SERVICE)

The above referenced document was electronically filed on the date hereof with the Clerk of the Court for the Supreme Court of the State of Nevada by using the Court's CM/ECF system and served through the Court's Notice of Electronic Filing system automatically generated to those parties registered on the Court's Master E-Service List.

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