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SUPREME COURT

STATE OF NEVADA

SATICOY BAY LLC SERIES 9050 W WARM SPRINGS 2079, Appellant, vs. DITECH FINANCIAL LLC; NEVADA ASSOCIATION SERVICES; and JAMES P. MARKEY, Respondent.	No. 74153

APPELLANT'S REPLY BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

Counsel for plaintiff/appellant 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. Plaintiff/respondent, Saticoy Bay LLC, Series 9050 W Warm Springs 2079 is a Nevada limited-liability company.

2. The manager for Saticoy Bay LLC, Series 9050 W Warm Springs 2079 is Bay Harbor Trust.

3. The trustee for Bay Harbor Trust is Iyad Haddad a/k/a Eddie Haddad.

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CASES:

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SUMMARY OF THE ARGUMENT

Neither Mr. Markey nor the Lender complied with the mandatory requirements in NRS 116.31166(3) by the statutory deadline on January 19, 2016.

Neither Mr. Markey nor the Lender complied with the mandatory requirements in NRS 116.31166(4) by the statutory deadline on January 19, 2016.

Plaintiff properly refused to accept the check tendered by NAS.

NRS 116.31166 does not impose any conditions on plaintiff that excused Mr. Markey or Quicken Loans Inc. from complying with the mandatory requirements of NRS 116.31166(4).

Ditech's lack of authority to redeem the Property was timely asserted before the district court.

NAS must be ordered to execute and deliver to plaintiff a deed to the Property.

ARGUMENT

1. Neither the former owner nor the Lender complied with NRS 116.31166(3) to redeem the Property by the deadline on January 19, 2016.

In paragraph 9 at page 4 of Respondent's Answering Brief, Ditech Financial, LLC (hereinafter "Ditech") states that "[t]he last day to redeem the Property was Tuesday, January 19, 2016." (emphasis by Ditech)

In paragraph 15 at page 5 of Respondent's Answering Brief, Ditech states: "January 15, 2016: NAS delivered a cashier's check to Saticoy Bay's counsel's office for the amount of $50,052.16, following Markey's 'explicit instructions' to NAS to deliver a cashier's check to Saticoy Bay as payment of the redemption price. JA vol. 1, 190, 199; JA vol. 2, 333, 356." As stated at page 6 of Appellant's Opening Brief, the record on appeal does not contain a copy of this check. None of the pages in the record cited by Ditech include a copy of this check.

None of the pages cited by Ditech support the statement made by Ditech in paragraph 15 at page 5 of Respondent's Answering Brief

Page 190 in the record is the second page of a declaration by James P. Markey (hereinafter "Mr. Markey") where Mr. Markey made the false statement that "[t]here were excess funds from the foreclosure sale which belonged to me." (JA1c, pg. 190, ¶12) Mr.Markey's statement is false because NRS 116.31164(7)(b)(4) expressly provided that any excess proceeds belonged to the holders "in order of priority of any subordinate claim of record."

Quicken Loans Inc. was identified as the Lender and MERS was identified as the beneficiary in the subordinate deed of trust. (JA1b, pg. 149) Ditech did not hold any recorded interest in the Property until the assignment of deed of trust was

recorded on April 28, 2016. (JA1b, pgs. 172-175)

Because NRS 116.31164(7) uses the word "shall," NAS did not have any discretion to let Mr. Markey use "excess proceeds" that were required to be distributed to Quicken Loans Inc. to redeem the Property for Mr. Markey.

Paragraph 15 of Mr. Markey's affidavit (JA1c, pg. 190, ¶15) states that "[a]fter the Plaintiff told me it would not accept my timely payment from NAS, and not wanting to risk losing my property, I sent a check to NAS and they in turn delivered it to Plaintiff on January 19, 2016." In paragraph 16 at page 6 of Respondent's Answering Brief, Ditech states that Mr. Markey "sent a personal check to NAS for the redemption amount, which Markey claims was NAS delivered to Saticoy B on January 19, 2016."

The record on appeal does not contain a copy of Mr. Markey's personal check, and no person with personal knowledge submitted an affidavit stating that this personal check was delivered to plaintiff prior to the expiration of the redemption period.

Page 199 in the record (JA1c, pg. 199) is a letter by Mr. Markey instructing NAS to distribute the $49,984.15 held in trust by NAS to plaintiff. As discussed above, Mr. Markey had no authority to direct NAS to distribute monies belonging

to Quicken Loans Inc. to any person.

Page 333 in the record (JA2, pg. 333) is an email from counsel for NAS to Eddie Haddad, dated January 15, 2016, stating that "[o]ur runner delivered to Mr. Bohn's office today **a cashier's check of the homeowner's funds** of James Markey, the homeowner of the property referred to above." (emphasis added) The evidence instead proves that the excess proceeds held by NAS belonged to Quicken Loans Inc.

In his email to counsel for NAS sent on January 12, 2016 (JA2, pg. 334), Mr. Haddad stated plaintiff's position that any redemption payment must come from either the unit owner or the lender and that NAS would have to "release the surplus funds, and in turn the borrower submits the redemption payment." The record on appeal does not contain any evidence proving that NAS released any excess proceeds to Mr. Markey, so that he could tender them to plaintiff.

NAS could not have paid the redemption amount on Mr. Markey's behalf because the record on appeal does not contain any evidence proving that NAS had any authority on January 15, 2016 from either Ditech (or Quicken Loans Inc.) to use monies belonging to Quicken Loans Inc. to make the $50,052.16 payment.

Page 356 in the record (JA2, pg. 356) is an email, dated January 19, 2016, from counsel for Ditech to counsel for NAS stating that "Ditech authorizes NAS to

tender any sales proceeds **in which it may have an interest** to the buyer at the HOA sale through the end of the redemption period, **provided that the buyer agrees to accept the payment as a redemption of the property for the benefit of Mr. Markey**." (emphasis added)

The record on appeal does not contain any evidence proving that Ditech had any interest in the sales proceeds. The recorded deed of trust instead identified Quicken Loans Inc. as the Lender. No recorded document identified Ditech as having any interest in the Property on January 19, 2016.

The record on appeal also does not contain any evidence proving that Mr. Markey or NAS satisfied the condition imposed by Ditech's counsel before Mr. Markey could use the sales proceeds belonging to Quicken Loans Inc. In particular, Ditech did not prove that plaintiff ever agreed to accept from NAS a payment made on behalf of Mr. Markey using monies that did not belong to Mr. Markey.

At the bottom of page 9 and top of page 10 of Respondent's Answering Brief, Ditech states that "[n]othing in the statute restricts the unit's owner from using excess proceeds from the HOA sale to redeem the property." As discussed above, NRS 116.31164(7)(b)(4) expressly required that the excess proceeds be distributed to Quicken Loans, Inc. and not for the benefit of the unit owner, Mr. Markey.

NRS 116.31164(7)(b)(5) provides that Mr. Markey was only entitled to "[r]emittance of any excess" after every "subordinate claim of record" was satisfied. The record on appeal does not contain admissible evidence proving that NAS ever held any "excess" funds belonging to Mr. Markey.

2. Neither the former owner nor the Lender complied with the mandatory requirements in NRS 116.31166(4).

At the bottom of page 10 and top of page 11 of Respondent's Answering Brief, Ditech quotes from Einhorn v. BAC Home Loans Servicing, LP, 128 Nev. 689, 696, 290 P.3d 249, 254 (2012), that "[i]n general, 'time and manner' requirements are strictly construed, whereas substantial compliance may be sufficient for 'form and content' requirements."

In Einhorn v. BAC Home Loans Servicing, LP, this Court stated:

> In NRS 107.086(4), the Legislature directed that certified copies of the note, deed of trust, and all assignments be present at the mediation to ensure that the party seeking to foreclose is the person entitled to enforce the note and to proceed with foreclosure and hence the party authorized to negotiate a modification of either or both. While Leyva properly holds that strict compliance with the statute's document mandate is required, **who brings which documents, assuming they are all present, authenticated, and accounted for, is a matter of "form."** *Leven*, 123 Nev. at 408, 168 P.3d at 718. **Only if a specified document is missing does it matter who had the burden of providing it.**
>
> **Here, Einhorn brought the missing assignment needed to**

> **complete BAC's chain of title** . . . .Furthermore, as Einhorn's attorney advised the district court, he obtained his copy of the assignment from the county recorder's office, which "is sufficient to authenticate the writing." NRS 52.085.
>
> **All documents needed** to determine BAC's entitlement to enforce the note and to foreclose **thus were authenticated and present**. (emphasis added)

128 Nev. at 696-697, 290 P.3d at 254.

In the present case, on the other hand, the evidence proves that neither Mr. Markey nor NAS provided plaintiff with any of the documents required by NRS 116.31166(4).

This Court's decision in Einhorn v. BAC Home Loans Servicing, LP quotes from Leven v. Frey, 123 Nev. 399, 168 P.3d 712 (2007), where this Court held that a judgment creditor had failed to strictly comply with the timing requirements imposed by NRS 17.214 to renew a judgment. This Court stated:

> We agree with the Supreme Court of North Dakota that **because judgment renewal proceedings are purely statutory in nature** and are a measure of rights, **a court cannot deviate from those judgment renewal conditions purposefully stated by the Legislature**.
>
> Thus, we conclude that a judgment creditor must strictly comply with the timing requirement for service under NRS 17.214(3) in order to successfully renew the judgment. As Frey failed to comply with this service requirement as well as the recordation requirement, the judgment against Leven was not properly renewed and thus, it expired. (emphasis added)

123 Nev. at 408, 168 P.3d at 719.

Because the redemption rights provided to Mr. Markey and to Quicken Loans Inc. were also "purely statutory in nature," Mr. Markey had no right to deviate from the mandatory requirements in the statute. In particular, neither NAS nor Mr. Markey produced "a certified copy of the deed to the unit" required by NRS 116.31166(4)(a).

Similarly, even though NAS used monies belonging to the holder of the recorded security interest to make the redemption, neither NAS nor Quicken Loans Inc. produced "[a]n original or certified copy of the deed of trust securing the unit" required by NRS 116.31166(4)(b)(1) or the "affidavit by the person redeeming the unit, or that person's agent, showing the amount then actually due on the lien" required by NRS 116.31166(4)(b)(3).

"Substantial compliance" is not an issue in the present case because Mr. Markey and the Lender did not even attempt to provide the documents required by NRS 116.31166(4).

3. Plaintiff properly refused to accept the check tendered by NAS.

At page 14 of Respondent's Answering Brief, Ditech cites the unpublished orders in U.S. Bank, N.A. v. SFR Investments Pool , LLC, 3:115-cv-00241-RCJ-

WGC, 2016 WL 4473427 (D. Nev. Aug. 24, 2016), and Stone Hollow Avenue Trust v. Bank of America, N.A., 391 P.3d 760 (table), 2016 WL 8613879 (Nev. Dec. 21, 2016)(unpublished disposition), but neither case involved a redemption payment made by a unit owner after a completed foreclosure sale. Each case instead involved a tender made by the holder of a subordinate deed of trust prior to an HOA foreclosure sale.

Because the foreclosure sale in U.S. Bank, N.A. v. SFR Investments Pool , LLC was held on June 6, 2013, and the foreclosure sale in Stone Hollow Avenue Trust v. Bank of America, N.A. was held on September 7, 2012, the redemption provision in NRS 116.31166 upon which Ditech relies did not even exist when each lender made its conditional tender. Neither case involved a unit owner's attempt to redeem a property after sale.

Section 7:21 in 1 Grant S. Nelson, Dale A. Whitman, Ann M. Burkhart & R. Wilson Freyermuth, *Real Estate Finance Law* (6th ed. 2014), does not discuss the effect of a redemption payment where a unit owner fails to comply with the mandatory requirements in a statute. Section 7.21 is entitled "defective power of sale foreclosure-'void-voidable'distinction" and explains that there are three types of defects which may affect the validity of foreclosure sales: void, voidable, or

inconsequential.

The treatise states:

> Most defects render the foreclosure *voidable* and not void. When a voidable error occurs, bare legal title passes to the sale purchaser, subject to the redemption rights of those injured by the defective foreclosure. Typically, a voidable error is "an irregularity in the execution of a foreclosure sale" and must be "substantial or result in a probable unfairness."
>
> . . . .
>
> If the defect only renders the sale voidable, the redemption rights can be cut off if a bona fide purchase for value acquires the land. When this occurs, an action for damages against the foreclosing mortgagee or trustee may be the only remaining remedy.

The treatise also explains who is a bona fide purchaser in a foreclosure contest:

> If the sale purchaser paid value and is unrelated to the mortgagee, he should take free of voidable defects if : (a) he has no actual knowledge of the defects; (b) he is not on reasonable notice from recorded instruments; and (c) the defects are such that a person attending the sale and exercising reasonable care would be unaware of the defects. (footnotes omitted)

In the present case, the record on appeal does not contain any evidence proving that there were any defects in the foreclosure sale that vested title to the Property in plaintiff free of the deed of trust.

At page 15 of Respondent's Answering Brief, defendant quotes from Forderer v. Schmidt, 154 F. 475, 477 (9th Cir. 1907), that a tender need not be made by a

debtor personally, but the court did not state that a tender could be made using funds belonging to a third party and not the debtor.

At the middle of page 15 of Respondent's Answering Brief, Ditech quotes from Restatement (Third) of Prop.: Mortgages, § 6.4 (e) (1997), but the quoted passage only involves the right of "one who holds an interest in the real estate subordinate to the mortgage but is not primarily responsible for performance" to pay in full "the obligation secured by a mortgage." The record on appeal does not include any evidence proving that Quicken Loans Inc. tendered any amount to redeem the Property.

At the top of page 16 of Respondent's Answering Brief, Ditech states that "Saticoy Bay's interest in the property was extinguished on January 15, 2016, when NAS delivered the cashier's check for the amount of $50,052.16 to Bohn's office." No such language appears in NRS 116.31166. Mr. Markey's failure to comply with the mandatory requirements in NRS 116.31166(4) makes the redemption invalid.

At page 16 of Respondent's Answering Brief, Ditech states that "Ditech authorized NAS to tender the excess proceeds to fund the redemption amount for the benefit of Markey. JA vol. 2, 356." The evidence proves that the email authorization by Ditech's counsel was not sent to counsel for NAS until 4:09 p.m.

on January 19, 2016 after the check tendered by NAS on January 15, 2016 had already been returned to NAS. (JA2, pg. 356) The record on appeal does not contain any evidence that any payment was tendered to plaintiff after the email was issued.

Furthermore, the position stated by counsel for Ditech in the email, dated January 19, 2016, is not consistent with the language in NRS 116.31166 because counsel states that "Mr. Markey's redemption of the property was effective on January 12, 2016" when Mr. Markey "tendered a payment to NAS on or about January 12, 2016 which was sufficient to cover the amount owed by Mr. Markey to the HOA." No language in NRS 116.31166 permits a unit owner to redeem a property from an HOA foreclosure sale by making a payment to the foreclosure agent that conducted the sale.

NRS 116.31166(3)(a) expressly requires that the unit owner make payment to "[t]he purchaser." Mr. Markey did not make any such payment to plaintiff on January 12, 2016.

Furthermore, the law of real property requires that a tender must be "unconditional" in order to "have the effect of performance. . . ." Restatement (Third) of Prop.: Mortgages, § 6.4(c) (1997). The law of real property supplements the provisions of NRS Chapter 116 pursuant to NRS 116.1108.

The third paragraph in the email by Ditech's counsel (JA2, pg. 356) imposed an express condition on Mr. Markey's use of the sales proceeds belonging to Quicken Loans Inc. and states in part:

> However, to whatever extent my client may have an interest in the sales proceeds or any express authorization from my client is necessary, Ditech authorizes NAS to tender the sales proceeds in which it may have an interest to the buyer at the HOA sale through the end of the redemption period, **provided that the buyer agrees to accept the payment as a redemption of the property for the benefit of Mr. Markey.** Should the redemption period elapse, Ditech asks NAS to retain any sales proceeds until further notice. (emphasis added)

The record on appeal does not contain any evidence proving that this condition to the use of the proceeds belonging to Quicken Loans Inc. was ever satisfied.

At page 17 of Respondent's Answering Brief, Ditech states that it "would lead to absurd results" to require that Mr. Markey come up with over $50,000.00 to redeem the Property "while the excess proceeds, which total $44,035.77, remained parked in a trust account and unavailable for use in reversing the HOA foreclosure sale. JA vol. 2, 343."

On the other hand, NRS 116.31164 does not require that the foreclosure agent hold monies in a trust account until after the redemption period has expired. NRS 116.31164(7)(a) instead required that NAS deliver and record the certificate of sale

as provided in NRS 116.31166(2), and NRS 116.31164(7)(b) required that NAS "[a]pply the proceeds of the sale for the following purposes in the following order . . . ."

No language in NRS 116.31166 authorized NAS to hold any portion of the sales proceeds in trust during the redemption period or to use those monies to help the unit owner or the holder of any recorded security interest pay the redemption amount required by NRS 116.31166(3).

The statute clearly contemplates that the person making the redemption use an independent source of funds because the distributions required by NRS 116.31164(7)(b) must be made regardless of whether or not a property is redeemed after sale.

4. The statute does not impose any conditions on plaintiff that excused the former owner or the Lender from complying with the mandatory requirements of NRS 116.31166(4).

At page 18 of Respondent's Answering Brief, Ditech states that because the statute does not specify "the form or content of the notice of redemption" required by NRS 116.31166(4), this requirement was satisfied when counsel for NAS sent an email to Eddie Haddad on December 15, 2015 stating that "I received a certified letter from the homeowner of this property of his intention to redeem the property."

(JA2, pg. 340) On the other hand, NRS 116.31166(4) expressly requires that the "[n]otice of redemption **must be served by the person redeeming** the unit on the person who conducted the sale **and on the person from whom the unit is redeemed**, together with" the documents identified in NRS 116.31166(4)(a). (emphasis added)

The record on appeal does not contain any notice served by Mr. Markey on plaintiff.

The record on appeal also does not contain any evidence proving that Mr. Markey, or any other person, served plaintiff with the documents identified in NRS 116.31166(4)(a).

At page 18 of Respondent's Answering Brief, Ditech states that plaintiff "never expressed any issue with the form and manner of Markey's notice of redemption," but it is impossible for plaintiff to have objected to the form of a notice that Mr. Markey never provided to plaintiff.

Ditech also states that plaintiff "also never expressed any issue with Ditech's notice of redemption, which was served in exactly the same manner. JA vol. 2, 339-354." Ditech, however, did not tender any amount of money or the documents required by NRS 116.31166(4)(b) with the email notice of redemption sent by Ryan

O'Malley to Chris Yergensen on December 1, 2015. (JA2, pgs. 351-352)

At page 19 of Respondent's Answering Brief, Ditech states that plaintiff "was on actual notice of Markey and Ditech's intents to redeem, and it was not prejudiced by the form of such notice." Ditech cites no authority holding that actual notice and a claimed lack of prejudice excused either Mr. Markey or Quicken Loans Inc. from complying with the mandatory requirements of NRS 116.31166(4).

At pages 19 and 20 of Respondent's Answering Brief, Ditech again cites Einhorn v. BAC Home Loans Servicing, LP, 128 Nev. 689, 696, 290 P.3d 249, 254 (2012), where this Court stated that "[i]n general, 'time and manner' requirements are strictly construed." Ditech nevertheless claims that the failure by Mr. Markey and Quicken Loans Inc. to comply with the mandatory requirements of NRS 116.31166(4) is irrelevant because "NRS Chapter 116 does not include a mandatory recommendation for sanctions where a redeemer fails to strictly comply with the provisions of the redemption statute."

On the other hand, like the judgment creditor in Einhorn who failed to strictly comply with the timing requirements imposed by NRS 17.214 to renew a judgment. the failure by Mr. Markey and Quicken Loans Inc. to comply with the mandatory requirements supports the conclusion that they did not redeem the Property within

the time limit established by NRS 116.31166.

At the bottom of page 20 of Respondent's Answering Brief, Ditech quotes from NRS 116.1114 and states that the remedies provided by NRS Chapter 116 must be "liberally administered" in order to place "the aggrieved party" in as good a position "as if the other party had fully performed." In the present case, Ditech is not an "aggrieved party," and Ditech has not identified any requirement in NRS Chapter 116 that plaintiff did not perform. Every failure in the present case was committed by Mr. Markey, Quicken Loans Inc. and/or Ditech, and NAS because they did not comply with the mandatory requirements in NRS 116.31166(3) and NRS 116.31166(4).

At page 21 of Respondent's Answering Brief, Ditech states that "there is no question or issue that Markey was the unit's owner and therefore had authority to redeem the unit under NRS 116.31166." On the other hand, the statute does not require that there be such an issue before a unit's owner is required to comply with the mandatory requirements in NRS 116.31166(4).

Ditech also states that "[d]uring the redemption period, Saticoy Bay never challenged Markey or Ditech's authority to redeem the Property, nor did it demand that Markey and Ditech produce the title documents to the Property set forth in the

redemption statute." The statute does not require that the purchaser make such a challenge before a person is required to comply with the mandatory requirements in NRS 116.31166(4).

At the bottom of page 21 and top of page 22 of Respondent's Answering Brief, Ditech states that "Saticoy Bay was not prejudiced by Markey's failure to provide the certified copies of the title documents." Again, the statute does not require that the purchaser make a showing of prejudice before a person is required to comply with the mandatory requirements in NRS 116.31166(4).

At page 22 of Respondent's Answering Brief, Ditech cites Pasillas v. HSBC Bank USA, 127 Nev. 462, 255 P.3d 1281 (2011), which involved the specific penalties imposed by NRS 107.086(6) on a beneficiary of a deed of trust that does not attend the mediation required by NRS 107.086, fails to participate in the mediation in good faith, fails to bring each document required by NRS 107.086(5), or does not have the authority required by NRS 107.086(5). None of the factors for which this Court remanded the matter in Pasillas v. HSBC Bank USA to the district court are issues in the present case.

At page 23 of Respondent's Answering Brief, Ditech states that because "Saticoy Bay negotiated with the Parties to try to finalize the redemption up until the

last day of the redemption period," this Court should find that plaintiff cannot object to the redemption "based upon sufficiency of notice and Markey's failure to serve a certified copy of the deed." Ditech, however, has not identified any evidence in the record on appeal where plaintiff waived any of the mandatory requirements in NRS 116.31166(3) or NRS 116.31166(4).

In the middle of page 23 of Respondent's Answering Brief, Ditech again quotes from NRS 116.1114, but the evidence in the record on appeal proves that plaintiff "fully performed" every obligation required of it by entering and paying the high bid at the public auction held on November 20, 2015. No language in NRS 116.1114 excuses Mr. Markey or Quicken Loans Inc. from their failure to comply with the mandatory requirements in NRS 116.31166.

5. Ditech's lack of authority to redeem the Property was timely asserted before the district court.

At page 24 of Respondent's Answering Brief, Ditech states that plaintiff never raised the issue of Ditech's authority to redeem the Property before the district court.

First, in its motion to intervene, filed on August 31, 2016 (JA1a, pgs. 35-55), Ditech did not state that it was asserting any rights or claims in its capacity as a servicer for either Quicken Loans Inc. or Fannie Mae. Ditech instead stated that "[f]ollowing the filing of the Complaint, Quicken assigned its Deed of Trust to

Ditech." (JA1a , pg. 37, ll. 7-8)

Second, in its motion for summary judgment, filed on March 7, 2017 (JA1b, pgs. 70-120), Ditech did not state that it was asserting any rights or claims in its capacity as a servicer for Quicken Loans Inc. or Fannie Mae. At page 3 of its motion (JA1b , pg. 72, ll. 8-11), Ditech only stated:

> Ditech, the beneficiary of record on the Deed of Trust intervened to defend this suit and files this Motion for Summary Judgment to address a novel issue of law: whether the HOA foreclosure redemption statutes limit which entity may redeem or where those funds may come from.

The body of the motion only addressed the attempted redemption by Mr. Markey and did not state that Ditech, acting as a servicer, made any attempt to redeem the Property for either Quicken Loans Inc. or Fannie Mae.

At page 3 of plaintiff's opposition to Ditech's motion (JA1b, pg. 137), plaintiff stated:

> The clear language in the statute provides a right of redemption only to 1) "the unit's owner whose interest in the unit was extinguished"; 2) "any holder of a recorded security interest that is subordinate to the lien on which the unit was sold; or 3) the "successor in interest" to either. Neither the HOA nor its foreclosure agent, NAS, is granted any right of redemption.
>
> By the clear terms of the statute, NAS was not authorized to make any payment to redeem the Property.

In paragraphs 3 and 4 at pages 3 and 4 of the supplemental brief in support of its motion for summary judgment, filed on June 15, 2017 (JA2, pgs. 205-206), Ditech revealed for the first time the claim that Fannie Mae purchased the loan from Quicken Loans Inc. on February 11, 2013 and that Ditech began servicing the loan on March 31, 2013.

As discussed at pages 12 and 13 of Appellant's Opening Brief, the record on appeal does not contain any admissible evidence that supports this new argument that Ditech raised only five days before the hearing held by the district court on June 20, 2017. Ditech did not prove that it had authority on January 19, 2016 to authorize NAS to allow Mr. Markey to use sales proceeds belonging to Quicken Loans Inc. to redeem the Property from foreclosure.

6. NAS must be ordered to execute and deliver to plaintiff a deed to the Property.

As discussed at pages 16 and 17 of Appellant's Opening Brief, because Mr. Markey did not properly redeem the Property within the 60 day time limit, NRS 116.31166(7) requires that NAS make, execute and deliver to plaintiff a deed to the Property.

Because NAS will not comply with the statute voluntarily, NAS must be ordered to comply with NRS 116.31166(7).

CONCLUSION

By reason of the foregoing, plaintiff respectfully requests that this Court reverse the findings of fact, conclusions of law, and judgment entered by the district court and remand this case to the district court with directions that an order be entered requiring that NAS deliver to plaintiff a properly executed foreclosure deed.

DATED this 24th day of May, 2018.

LAW OFFICES OF
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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Word Perfect X6 14 point Times New Roman.

2. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7), it is proportionately spaced and has a typeface of 14 points and contains

5,180 words.

3. 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 of the transcript or appendix where the matter relied on is to be found.

DATED this 24th day of May, 2018.

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: / s / Michael F. Bohn, Esq. /
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Attorney for plaintiff/appellant

CERTIFICATE OF SERVICE

In accordance with N.R.A.P. 25, I hereby certify that I am an employee of the Law Offices of Michael F. Bohn, Esq., Ltd., and that on the 24th day of May, 2018, a copy of the foregoing **APPELLANT'S REPLY BRIEF** was served electronically through the Court's electronic filing system to the following individuals:

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