IN THE SUPREME COURT OF THE STATE OF NEVADA

***

VEGAS UNITED INVESTMENT SERIES 105, INC., A NEVADA DOMESTIC CORPORATION, Appellant, vs. CELTIC BANK CORPORATION, SUCCESSOR-IN-INTEREST TO SILVER STATE BANK BY ACQUISITION OF ASSETS FROM THE FDIC AS RECEIVER FOR SILVER STATE BANK, A UTAH BANKING CORPORATION ORGANIZED AND IN GOOD STANDING WITH THE LAWS OF THE STATE OF UTAH, Respondents.	)	Supreme Court No. 74163

APPEAL

From the Eighth Judicial District Court,

The Honorable Susan H. Johnson, District Judge

District Court Case No. A-15-728233-C

JOINT APPENDIX VOLUME VIII

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

CELTIC BANK CORPORATION, Plaintiff, vs. VEGAS UNITED INVESTMENT SERIES 105, INC., Defendant.	)	CASE NO. A-15-728233-C DEPT NO. XXII **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE SUSAN JOHNSON, DISTRICT COURT JUDGE

BENCH TRIAL - DAY 3

FRIDAY, AUGUST 11, 2017

APPEARANCES:

FOR THE PLAINTIFF:	ALLYSON R. NOTO, ESQ. KELLY L. SCHMITT, ESQ.
FOR VEGAS UNITED:	ROGER P. CROTEAU, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

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LAS VEGAS, NEVADA, FRIDAY, AUGUST 11, 2017, 8:36 A.M.

*** * * * ***

THE COURT: Good morning, counsel. Please be seated. All right. We talked about doing closing arguments this morning. Are we ready to proceed?

MS. NOTO: Yes, Your Honor.

MR. CROTEAU: Yes, Your Honor.

THE COURT: Okay. Counsel.

(Closing argument for the plaintiff)

MS. NOTO: Thank you, Your Honor. Again, Allyson Noto and Kelly Schmitt on behalf of Celtic Bank.

This case is really, as the evidence has borne out, a heads we win, tails they lose under any scenario that this Court will consider. There's no dispute that Celtic Bank had a deed of trust on this property, that the deed of trust encumbers this property at issue in the case.

In 2014, you heard Mr. Zern testify that the borrower had defaulted on the note and the bank was owed over a half million dollars at that time. The loan documents allow the bank to initiate foreclosure, which it originally did by recording a notice of default and election to sell in 2014. Thereafter the bank received a letter from Mr. Croteau, who advised the bank for the first time that there was a claim that my client's first priority deed of trust had been extinguished at a foreclosure sale. That allegation to the bank is contrary

to every piece of evidence that this Court has heard during this trial.

It appears from the testimony yesterday that the defense is going to argue that the foreclosure sale was then conducted pursuant to the 1989 CC&Rs because there was somehow an incorporation of NRS 116 into the 1989 CC&Rs by virtue of the amendment in 1994. And all we need to do, Your Honor, at this juncture, then, is to look at the notices in this case to dispel that argument.

Every notice in this case from the [inaudible] of delinquent assessments to the notice of default to the notice of sale and every document that Red Rock sent out is sent out as agent for the Gibson Business Center Property Owners Association. Well, the declarant in the 1989 CC&Rs is Gibson Business Park Property Owner's Association. So facially all of the notices are defective, because Red Rock had no authority to foreclose on behalf of the declarant under the 1989 CC&Rs.

So the HOA was going to testify, but in this case there's no evidence that the HOA's -- the Owner's Association's intent was to assess pursuant to either the 1989 or the 2004 CC&Rs. There was no testimony of that. The PMK of the HOA was subpoenaed to testify for the defense, but the defendant didn't call the HOA. So argument of Counsel that the sale was conducted pursuant either to 1989 or 2004 CC&Rs is not evidence.

The evidence establishes that it was pursuant really to neither of those documents. All documents referenced a 1994 CC&Rs, sort of, with an incorrect instrument number, there's no evidence that the assessment was for common areas of either the 1989 CC&Rs or the 2004 CC&Rs, and there's no evidence that under either of those separate encumbrances.

And you heard Julie Skinner testify that there was no evidence of an amendment to the 2004 -- an amendment in the 2004's incorporating the 1989 CC&Rs. They're two separate encumbrances, two separate declarants, two separate CC&Rs. So even if Red Rock had the authority to record the delinquent lien and the notices of default and the notices of sale, then we have to determine what the declarant under those 1989 CC&Rs intended.

The fundamental goal of contract interpretation, Your Honor, is to give effect to the mutual intent of the parties when a contract was drafted. And CC&Rs are a contract. I would point this Court to Tompkins versus -- I apologize, Your Honor -- Buttress, and it's in our trial brief, that sets forth that CC&Rs are interpreted pursuant to contract. And I would also point this Court to a Ninth Circuit case Puama Bank versus State of California, which is Ninth Circuit case.

THE COURT: What was the first name of that?

MS. NOTO: Pauma. It's -- I think it's Puama, P-u-a-m-a, Bank. And that is 813 F.3d 1155. In that case it

states when dealing with a contract there's no such thing as a change in the law. Once there's a --

(Pause in the proceedings)

MS. NOTO: Thank you, Your Honor. So when dealing with a contract there's no such thing as a change in the law. Once there's a determination of the language, then that's it. And I would point the Court to page 1165 of the Puama case. Also, Your Honor, it's been held that future -- I'm sorry, that laws existing at the time a contract was made become part of the contract and govern the transactions as if they were expressly referred to. And parties are presumed a contract with reference to existing statutes.

And I would point this Court to Gilman versus Gilman, 114 Nev. 416, a 1998 case, as well as McCreary versus Bay Area Bank & Trust, which is 68 S.W.3d 727. So this idea that -- well, and let's just be clear. NRS 116 was not enacted in 1989, so the mortgage savings provision that's in the 1989 CC&Rs is very strong, and the CC&Rs are very specific as to what the declarant intended as it relates to liens on the property.

The mortgage savings provision, if you want to look at it later, Your Honor, is Section 1103 in the 1989 CC&Rs. It's clear from that contractual language that the declarant intended that no lien pursuant to those CC&Rs would affect, defeat, render invalid, or impair a deed of trust recorded on

that property. So those CC&Rs were recorded pursuant to the law as it existed at the time.

The CC&Rs incorporate 278A.170 as it existed at the time, which, of course, NRS 116 had not yet been enacted, and all of the evidence is consistent with the original declarant's intent that the first deed of trust is protected. And I hate to keep going over and over this, but these are some key pieces of evidence. The letter that my client received -- and let's just unzoomify that, if we can, so the Court can see it, and focus it --

THE COURT: And I forgot. What was the exhibit on that?

MS. NOTO: This was Exhibit 12, I believe.

MS. SCHMITT: Yes.

MS. NOTO: Exhibit 12 from Red Rock says to my client the Association's lien for delinquent assessments is junior only to the senior lender mortgage holder. You heard testimony from Julie Skinner, from my client, even from Mr. Schmidt that my client was the senior lender on this property, and each and every preliminary title report establishes that, which is also in the Court's binders. So this is what my client's affirmatively being told, that he has no problems with the sale because he is protected.

In addition -- and recall, the HOA wasn't called, but had they been I would also have pointed the Court to Exhibit

13, which is a document that was sent to the HOA itself. I really would like to make this a little bigger, if we could, so the Court could see this.

THE COURT: That's not Exhibit 13. Or wait. Oh. It is.

MS. NOTO: I'm sorry. It's the second page. I apologize. It was an email. And we'll look at the first page first. It was an email sent to Mar West, who is the property owner, you would have heard had they been called. But this document is in evidence. Sent to the community manager, and it references a brief outline of the two possible outcomes of foreclosure. That's on the second page. And if you'll look beginning here, "The Association should be aware of the two possible outcomes of foreclosure. First, the first possible outcome is when a third party steps in and purchases the property at auction. This outcome will usually only occur if there is equity and/or no mortgage. Under this outcome the Association would be made whole.

"The second possible outcome is that at auction no third party steps in, which will cause the property to revert to the Association. The Association would then be responsible for collection costs, property tax, and transfer tax. The first mortgage would remain on the property."

That's what its own agent is telling the Association. Usually a third party won't bid if there's a mortgage on the

property, and if it reverts back to you, the first mortgage stays on the property, consistent with the letter that my client got, consistent with the language of the 1989 CC&Rs.

So let's talk about the 1994 amendment. The 1994 amendment specifically states that all of the provisions of the 1989 CC&Rs were in full force and effect, which would, of course, include the mortgage savings provision. The 1994 amendment did not incorporate 278A.170 as amended in 1991, although it could have, because it had been amended. The 1994 amendment did not incorporate NRS 116 as enacted in 1991, although it could have. At best, even if it would have incorporated 278A.170 as amended, which it didn't, 278A.170 only incorporates the procedures of how a lien foreclosure is conducted and does not incorporate the super priority status conferred by NRS 116.

And this dovetails, Your Honor, into a question that you asked on the first day of trial related to the fact that this is a commercial property. In candor to the Court I told the Court that there was a case, and that is Saticoy Bay versus LNV, 215 Westlaw 948 4709.

THE COURT: 4709?

MS. NOTO: I'm sorry. 948 4709, yes.

THE COURT: Got it. Okay.

MS. NOTO: Yes. In that case, Your Honor, it was a commercial property, and the court looked at the CC&Rs in that

particular case, and in that particular case the CC&Rs exactly mirrored the language of the super priority language verbatim. So I want the Court to -- I want to be very specific as to what the court held. In LNV the court specifically held that because it was a nonresidential property, by operation of law it was not opted into NRS Chapter 116, super priority statute, but rather that SFR was persuasive based upon the contractual language in those CC&Rs that mirrored the superpriority language.

So if you'll look, Your Honor, beginning -- and I want to just reference to Court to page 1 of that case. "The main issue on appeal is whether the incorporation of super priority language from NRS Chapters 116 in a common interest community renders this court's SFR decision applicable to the foreclosure. Although NRS Chapter 116 does not by its terms apply, since this is a nonresidential community, the CC&Rs incorporate NRS 116's superpriority language verbatim. Thus our interpretation of the same language found in NRS 116.3116(2) provides meaningful guidance to interpreting the CC&Rs here and suggests that the CC&Rs create a split priority lien."

So even in Saticoy Bay versus LNV, NRS 116 was not applicable to commercial properties. Rather, because those CC&Rs had incorporated verbatim the superpriority status, that's why the court then found that the bank's lien had been

extinguished by the Association's sale. So neither the 1989 CC&Rs, nor if the Court looks to the 2004 CC&Rs, have language which mirror the superpriority language of NRS 116. So by its terms NRS 116 does not apply to this case, and SFR does not apply to this case.

But if the Court decides that the sale was conducted pursuant to 1989 CC&Rs, which do incorporate the superpriority position, then we go next to the notices given to the plaintiff and all of the other evidence in this case, which do not support that Celtic's security interest was at risk. You can look at the lien itself, which references 1994 CC&Rs. You can look at the NOD. On its face, as we've discussed, all of the documents, the agency is in question. The authority of Red Rock to foreclose is in question.

The letter from Red Rock to my client that says that your lien is protected; the email that we just looked at from Red Rock to the HOA, the notices from Clark County to Celtic, not to Vegas United, saying your borrower still owes taxes and the threat that they would lose the property, the security interest, my client's security interest in a tax sale, the letter from the borrower's counsel to Celtic that was referenced after the foreclosure sale asking Celtic Bank to initiate a nonjudicial foreclosure to mitigate its damages, this is all the information that was provided or was available to evidence that the first priority deed of trust was

protected.

But if the Court finds, despite all the evidence, and I've just summarized it, the foreclosure was still properly conducted pursuant to NRS 116, then all the deficiencies in those notices received by Celtic Bank necessitate that the Court set this sale aside. In *Nevada Land and Mortgage versus Hidden Wells* it provides that the trial court may set aside a trustee's sale upon the grounds of fraud or unfairness. Recently the Nevada Supreme Court -- and I'm sure this Court is very familiar with Shadow Wood versus New York Community Bank Corp., which confirmed that the power to grant equitable relief from the defective foreclosure sale.

The notices in this case were defective. Red Rock is an agent for declarant. There was an incorrect instrument number on each one of the notices referencing CC&Rs that don't exist. The lien for the delinquent assessments was never shown to have been served upon the bank. And so if this Court finds that there's a superpriority, the assessments, and the actual notice that was provided to my client, certainly there are grounds of unfairness, because it lulled the bank into believing that the foreclosure sale would not wipe away its security interest.

The County continued to reach out to Celtic, advising it would lose its interest in the tax sale if the taxes weren't paid, and Vegas United did nothing to redeem the property from

the County. So title continued to be held in trust for the bank's borrower. So under all of these circumstances, pursuant to Shadow Wood, equity would demand that this Court set the sale aside.

And also, Your Honor, we have to look at whether or not Vegas United is a bona fide purchaser. It's the defendants' burden to establish that he's a bona fide purchaser, because he's seeking quiet title in this matter. He can't do it, and he didn't do it during trial.

You heard Mr. Schmidt testify that he just reviewed the dates of the recorded documents. But he had to concede that he had the ability to review each and every one of those defective notices. All of the deficiencies were available to him to review. He's a sophisticated purchaser. He said that he had bought dozens of these properties and attended, I think, he said hundreds of sales. So once he was put on notice by the recorded document, he had the ability to go to the Recorder's Office to ensure what he was buying. And once he was put on notice by those recorded documents, he had either actual knowledge, constructive knowledge, or at the very least reasonable cause to know that there was some defect and that there was a competing interest in this property.

Pursuant to Shadow Wood, he's tasked as a bona fide purchaser to make a diligent inquiry, and that inquiry will be imputed to him if he fails to do it. And in this case he made

no inquiry. The diligent inquiry at the very least, Your Honor, would have been to ascertain and review what was referenced in the notices as the document that the foreclosure sale was being conducted to. And that would have been using any -- at the bare minimum reasonable diligence would have led him to the 1994 amendment to the 1989 CC&Rs, because that's referenced in every single document. He didn't look at it.

And while it's a very creative argument to say that the 1994 amendment sort of morphed these 1989 CC&Rs into incorporating 116, even a cursory review of the documents would not lead anyone to that conclusion. So let's look at another statute that -- as it relates to a bona fide purchaser, and that's NRS.325. And NRS.325 provides -- I want to make sure I quote it correctly -- okay. Oh. I've written on it. Okay. Well, hopefully we can all read my writing. So NRS 111.325 is, "An unrecorded conveyance is void against a subsequent bona fide purchaser for value when conveyance is recorded." So if you look at this statute, "Every conveyance of real property within this state hereafter made which shall not be recorded as provided in this chapter shall be void against any subsequent purchaser in good faith and for valuable consideration of the same real property where his or her own conveyance shall be first duly recorded." So let's break it down.

Who then becomes the bona fide purchaser for value and who first recorded this -- on this property? Mr. Schmidt

wants this Court to believe that the fact that he didn't redeem the property from the County is no moment, that once he recorded his foreclosure deed after the sale title was vested in Vegas United. That cannot be the case, because title was being held in trust by Clark County. So unless and until that property is redeemed, title is held by the Treasurer. And, of course, he never redeemed the property thereafter. After the foreclosure sale, the two years expires of when this certificate is being held, and Clark County deeds the property, not just holding it trust, but actually deeds the property to the Treasurer. The Treasurer holds title to the property at that juncture and can at that juncture sell the property free and clear to a third-party buyer. So never redeems the property.

Mr. Schmidt wants this Court to believe that when Celtic Bank then redeemed the property, you heard his testimony, he said, Well, the County's required just to reconvey it back to whoever the former owner was. That's just not the case and not the statute. If you look at NRS 361.585, it talks about to whom the County can reconvey the property. So we're looking at Section 4. "Property may be reconveyed pursuant to Section 3," which is talking about the certificate, "to one or more of persons specified in the following categories." So we've got the owner.

So Mr. Schmidt's testimony is at that time he was the

owner of the property because he had recorded the foreclosure deed and title had transferred to him, regardless of the fact that he had an incorrect legal description. And we'll get to that in a second. So the property could have been reconveyed to Vegas United because he's claiming he's the owner. That didn't happen. The property could have been reconveyed to the beneficiary under a note and deed of trust. Well, that's my client, right, Celtic Bank, and if you look at the reconveyance, it says "Celtic Bank on behalf of its borrower Gibson Road" -- the mortgagee under a mortgage -- that doesn't apply -- the creditor under a judgment -- that doesn't apply -- the person to whom the property was assessed.

You heard Mr. Schmitt testify that when he went to record his foreclosure deed the Assessor's Office made him pay the tax because the property had been assessed at that time and he had to pay this exorbitant amount of money he didn't think was fair. So he would be the person to whom the property was assessed, according to his testimony. County could have reconveyed it to him then even on that basis, but they didn't.

So the person holding a contract to purchase the property before its conveyance to the County Treasurer, that doesn't apply. The Director of the Department of Health, that doesn't apply. The successor in interest of any person specified in this section, well, his claim is he's the successor in interest; right? He bought the property. He's a

successor in interest even to the former owner. Clark County didn't see it that way and didn't reconvey to him. And then the municipality that holds the lien, which is inapplicable.

So we have to look at the actual legal effect of that foreclosure deed. Mr. Schmidt testified by virtue of just recording it title transferred to me. Well, if I go to the Recorder's Office and I quitclaim a property from Allyson Noto to my trust and I put the legal description of your house on that quitclaim, the Recorder's going to record it. Does that mean that legal title has transferred for your house to me? That certainly cannot be the case. And in this case the foreclosure deed had an incorrect, incomplete, or missing legal description. Title did not transfer to Vegas United when he recorded that foreclosure deed. So he did not perfect title.

The County could have and would have conveyed title to Vegas United under numerous of those scenarios had he perfected title. But it did not. To accept what Mr. Schmidt has suggested, then Clark County violated Nevada law when it reconveyed the property to Celtic Bank on behalf -- well, to Gibson Road because Celtic Bank had paid the taxes on its behalf.

And, Your Honor, even if pursuant to that statute he is not a bona fide purchaser, we have a legal theory in Nevada which also supports that Vegas United cannot take this property free and clear of my client's lien. And that's the legal

concept of equitable estoppel. Vegas United's own actions are what caused Celtic Bank to act in detrimental reliance. For two years, despite holding itself out as the owner of the property, it did nothing to redeem that property from Clark County.

So if we look at the theory of equitable estoppel, it requires the party being estopped to know the true facts. So if we take for purposes of the equitable estoppel argument that Mr. Schmidt's testimony is correct, that this was an NRS sale under 116, that he was the true owner of the property, that my client's lien had been wiped out, if we take all of those as the true facts as he knows them, then he -- Celtic was unaware of those "true facts" as demonstrated by all of the information that was provided to Celtic Bank, and Celtic then detrimentally relied on Vegas United's own mission, acts of omission by not paying the taxes to go ahead and pay the taxes to redeem the property.

So Vegas United deliberately led third parties and Celtic Bank specifically into believing that its security interest was in jeopardy because it didn't redeem the property from the County, and Celtic Bank kept getting these notices from the County saying, Your security interest is at risk, we're going to sell it at a tax sale. So Vegas United is thereby estopped based upon its own actions or inactions in this case from claiming that it obtained the property free and

clear of Celtic's security interest.

I want to look at a conclusive presumption in NRS 47.240. NRS 47.240 is the conclusive presumptions. Looking at Number 3, "Whenever a party has by his or her own declaration, act, or omission intentionally and deliberately led another to believe a particular thing true and to act upon such belief, the party cannot in any litigation arising out of such declaration, act, or omission be permitted to falsify it."

Your Honor, in this case that's exactly what happened. By omitting the fact and not redeeming the property, by its inaction, it absolutely led Celtic to believe that its security interest was in jeopardy. And if the true facts are as only Mr. Schmidt and Vegas United knew them, then they are -- there's a conclusive presumption that they can't falsify that.

But if this Court finds that the notices, defective as they are, recorded by Red Rock really meant that the sale was conducted pursuant to the 2004 CC&Rs because Red Rock is the agent of the declarant of the 2004 CC&Rs, then you have to look to that language. And the sale was absolutely conducted in violation of the contractual language of the 2004 CC&Rs. And I would point to Section 10.02.

During trial, Counsel made -- asked some questions of my client whether or not the NOD that they received in 2011 was more than 60 days before the sale, of course, drawing the

presumption that under the 2004 CC&Rs the mortgagee had notice of a pending sale more than 60 days. The NOD is not a notice of pending sale. An NOD is a notice to cure. You have 35 days under a notice of default to cure the default. There's no reference to a pending sale. Now, of course, if during those 35 days there isn't a cure, then, of course, a sale may be noticed. But the notice of sale is the pending sale.

Under the 2004 CC&Rs, although Celtic doesn't believe that they apply, if they do, then the sale was required to be conducted pursuant to its contractual terms. And the contractual terms under the 2004 CC&Rs in Section 10.02 provide that no sale can be conducted unless 60 days have lapsed between the notice of a pending sale and the actual sale, and notice of that pending sale has to be delivered to the mortgagee. In this case there is no evidence that the notice of sale was ever delivered to Celtic Bank. We'd concede that it was mailed. And if that's considered by this Court to be delivered under the language of the CC&Rs, then okay. But it's still not 60 days between the sale.

And, Your Honor, now I want to turn to commercial unreasonableness of the sale. There is no dispute that, even utilizing the defendants' own opinion of value, the sales price was approximately 8 percent of the fair market value. Now, he claims that he was required to put that number in, and he didn't really believe that that was the value, but he signed a

document declaring the value to be 358,000 and change. My client says it was worth 450,000. Either way, the sales price was less than 8 percent of the market value. Shadow Wood says that inadequacy of price alone is not enough to set a sale aside; there has to be some unfairness that's present. So I will submit that there's ample evidence of unfairness as already discussed. And the United States Supreme Court stated in Valentine versus Smith, 205 US 285, that even slight circumstances of unfairness in the conduct of the party benefited by the sale will be sufficient to set the sale aside.

In this case we've talked about Vegas United's inaction in paying the taxes. That's certainly an element of unfairness in the conduct of the party benefited by the sale, but besides that, all of the unfairness discussed, there's another element that I think is important to talk about, and that is the fact that there were 70 people at this sale, and only three people bid. Based upon the notices that were given, the only conclusion that can be drawn is that any third party who would come to the sale would believe that it was taking the property subject to my client's first deed of trust. So the chilling effect of the bidding is yet another element that this Court can look to to determine whether or not the sale should be set aside based on commercial unreasonableness.

And I would point this Court to my trial brief on page 36, but I want to reference a couple of cases. Chilled

bidding can and is a type of unfairness that's sufficient to set aside a foreclosure sale. And I will point the Court to Gelfert versus National City Bank, 313 US 221. "Misunderstanding as to the risk associated with a particular piece of real property which causally relate to chilled bidding to constitute unfairness to set a sale aside." And that's Golfland Entertainment Centers versus Peak, 119 F.3d 852, which is a Tenth Circuit case. There's also United States versus Clinger [phonetic], which is 2002 U.S. Dist. Lexis 20458, which is a District of Colorado case, and United States versus Templeman [phonetic], 202 U.S. Dist. Lexis 3111, which is a District of New Hampshire case in 2002.

So based upon all of the foregoing we ask that this Court enter judgment and a decree for judicial foreclosure which determines that the plaintiff, Celtic Bank, holds a valid and enforceable first priority interest in the property. We ask that the Court determine the order of priority of any other parties that are claiming an interest in the property. We ask that the Court order that the property be sold to satisfy the note and to direct the Sheriff of Clark County to proceed and sell the property according to the provisions of law. We also ask that the Court deny the defendants' request for quiet title and declaratory relief, and deny the defendants' request for surrender of title and anything else that the Court believes is just and proper in this case.

Thank you.

MR. CROTEAU: We only had 40 minutes yesterday.

THE COURT: Huh?

MR. CROTEAU: Just saying we only had 40 minutes to close yesterday.

THE COURT: Oh. Hey, I'm here all day.

MR. CROTEAU: No, no. That's fine.

(Closing argument for the Defense)

MR. CROTEAU: Counsel is misguided, misled, and, frankly, is citing you old law. You know, part of our problem in this whole case is they still don't want to recognize SFR as a decision and its progeny. That's part of the problem. Bank still says, hey, back in '11 I got a letter, three, almost -- well, two and a half years before the foreclosure, and I relied upon that. So you can't foreclose on me because I relied on some letter that I didn't even read. According to him, what Mr. Zern testified, didn't even read it, but he relied on it, so it was detrimental. Ridiculous.

What's occurred is this. There was a law in place under 116. 116's been there since 1991, December 31st, 1991, and it was misinterpreted. Your Honor, and I mean absolutely no disrespect in what I'm about to say, but before SFR, you were in the same camp as Ms. Noto's arguments in terms of what you thought it represented. Not bad, not indifferent, just a statement. I mean, it's the case it was. SFR broke us all up.

There were people on both sides of the fence. That didn't mean that anybody was right or wrong, but the proper interpretation had been decided in SFR, okay. That's the proper interpretation.

You know, Counsel cites the mortgage protection clause like it's some huge thing to deal with, okay, in 1103, all right, huge thing. SFR dealt with it in the first case. It said 116 abrogated it, period, end of story. You can't have a mortgage protection clause that violates a state statute. It's violation of public policy, yet they've refused to recognize that. They're telling you how you've got to defend a mortgage protection clause. These are rudimentary arguments that were being made before September of 2014. They haven't changed. Get with the program.

The program is the new law is what it is. The case law is being developed on a day-to-day basis. Even the case that she has cited to you, Saticoy Bay versus LN [sic], we're going through because it doesn't say what she says. And in fact it's a different type of case. But I think it's extraordinarily instructive for the Court in our favor. So I'm going to take some time -- and I apologize, it's going to take some time to walk through all this. But I have to deal with so many of things in detail.

Their understanding of the tax certificate sale and their representation to you is not correct. How it was

testified to yesterday by my client is correct. And I'll give you all the statutes. I'll read them to you. It's simpler, all right, and walk you through it. I've got to get rid of this BFP analysis and somehow some estoppel. Let's get rid of that right now.

What did my client do to lead anybody to do anything deliberately and otherwise or intentionally? Let's conjure up the best scenario you can find. He showed up at a foreclosure sale, had no relationship with Red Rock prior to this, no relationship with anybody else in the transaction. There's 70 people present. He shows up and he steps up and pays $30,000 of his hard-earned dollars and acquires the property. Now, what we have to determine is was there fraud, oppression, unfairness? Where? Because the Supreme Court in Shadow Wood, that Counsel likes to cite to you, says one thing clearly: Price is not an issue without finding the other elements.

What piece of evidence have they put on that there was fraud? None. What piece of -- let's talk about our witnesses, right. The only witness that was brought was Mr. Zern from Celtic Bank, who testified that basically he managed the whole thing the whole period of time. His office person received the NOD and signed for it. And by the way, the statute says -- I've got case law for you, as well. We're going to talk all about that. Case law says, I don't care if they sign for it, doesn't matter. All I care about is that

there's proof that it was sent. That's it, okay.

And the recitals in the deed pursuant to 116 are conclusive proof that it was sent absent rebuttal evidence that it was not. But we know for an absolute fact, unquestionable fact, okay, is they got numerous letters saying, hey, hey, hey, hey, we filed a NOD on. You, there's an assessment lien filed on you. Clock's running, you know. And I'm going to walk you through all these letters.

Do you need to get hit with a sledgehammer, Your Honor? Not you, but Celtic Bank. Do you need to get hit with a sledgehammer? The humor in all of this, and it just mounts, frankly, they say they have no notice, and somehow my client caused them detriment because they went out and paid the taxes. Your Honor, if you remember the date of my letter -- and I apologize, there's so many facts in this case, but I'll give it to you. It was April 30th, 2015 -- that was their bright-line, woke-em-up call. Oh, my God, the world's falling down, right.

The tax certificate had already been issued for a year and 10 months at that point, right. They got a copy of it. They were sent it. It came from the County Recorder's Office to them as a secured party. But the world was coming down because they didn't realize. Then, in detrimental reliance on my client's position, because my client, I don't know, didn't do -- we've got to figure out what they didn't do. They recorded the deed within days of the foreclosure sale,

which was 3/21 of '14. They recorded the deed within days when they got it from Red Rock, which was in April, I believe of '14. So they're record holders. They're in the chain of title that is available to you and I and everybody in this room to go look up online.

But somehow my client misrepresented what to them? Don't get it, okay. They went on their own, without contact -- I asked if they -- we questioned did he contact my client; well, no. They went and they paid the tax. Okay. I appreciate that. Now, I will concede they should get that back. I don't have any problem with that. That was an advancement they made and made it in error. My client was unjustly enriched as a result of that. That's fine. Give it back to them. Refund the money. But in terms of any kind of detrimental aspect of what my client did, absolutely none. My client's a smart businessman. My client's a smart real estate investor. And if you fault him for that, that goes against capitalism, I'm afraid, but his strategies were solid and sound.

Now, you have to really ask yourself why did Celtic Bank step up after the foreclosure deed was of record? And there's no dispute it's of record. Counsel's not arguing that it wasn't of record. She's arguing that somehow we wouldn't know who they were. But you remember what Skinner said: All I need to know is the grantor and the grantee, the APN number,

and I can record a document. And I'll cite you to the recording statutes.

NRS 111.312 says, "Requirements for Recording Certain Documents Related to Real Property." And it says, "The County Recorder shall not record with respect to real property," blah, blah, blah, blah, "a mortgage or deed of trust or any conveyance of real property or instrument in writing setting forth an agreement to convey real property unless the document being recorded contains the mailing address of the grantee. If there is no grantee, the mailing address of the person who's requesting the recording of the document," that was on there, "except as otherwise provided in Section 2, the Assessor's parcel number on the property at the top left corner of the first document," and that was on there.

"The parcel number must comply with the current system for numbering," which it did, "that's used by County Assessor's Office. The County Recorder is not required to verify that the Assessor's parcel number is correct. Any document relating exclusively to the transfer of water rights [unintelligible]," that didn't occur.

"Number 3," it says, "The County Recorder shall not record with respect to real property any deed, including, without limitation," in our particular case a trustee's deed upon sale, "unless the document being recorded contains the name and address of the person to whom a statement of the taxes

assessed on the real property be mailed." My client's name's on there, straight on there, nothing strange about it, right up in the left-hand corner. It says, you know, "When done return to." That was his address. Now, that's pretty straightforward.

So there's been no testimony at all as to whether or not any of this was rejected because it was never rejected. There's been no argument about that at all. For our record purposes, the Assessor is meaningless from a record point of view. The operative place, and we're a race-notice jurisdiction, Your Honor, the operative place is at the Recorder's office, Clark County Recorder's office.

Now, at the time of the sale, of the HOA sale -- well, strike that. At the CC&R sale, for the restrictive covenants, there was no transfer deed or anything of that effect by the county. It was simply held in trust which doesn't mean it's been divested of the ownership. It's just in trust. So the effect of the foreclosure deed is exactly what it is. It still effectively transferred ownership to my client subject to of course taxes, no argument there, but not subject to the first deed of trust.

Now, I'm going to finish one point, and then I'm going to segue back. Counsel says to you that we can't be a BFP. Well, and this is that detrimental language. Exhibit 21 -- and I'm trying to help the Court, just give you

the exhibits to kind of look at so that when you get there. Exhibit 21 is my April 30th, 2015, letter in which I tell them,

> Please be advised this office represents, Vegas Title is the title owner of the above-referenced property. We purchased the foreclosure sale on 3/21 of '14. It's come to my attention that First American Title company recently caused a notice of default to be recorded. Pursuant to this NOD, Celtic Bank appears to be threatening to foreclose on the property; however, the NOD is invalid for at least two reasons. First, the deed of trust referenced has basically been extinguished, and second, assuming for the sake of argument the deed of trust is somehow secured by the property, it's been extinguished as a result of SFR.

I mean, that's our letter. Now, they say that's the first time they received any knowledge that they were in jeopardy. That's not true if the Court recalls because they received the letter from Mr. Shapiro from Doug Gerrard's office stating different things, but they didn't interpret it to mean that they had a problem.

Then take a look at Exhibit 24. Exhibit 24 is the

Notice of Intent to Deed which means the property has not been transferred into the county's name yet; right? I mean, that's kind of what this is. Our Notice of Intent to Deed Letter was returned from the Postal Service. This is to Gibson Road LLC because that's who they're required to send it to. A copy of our letter has been forwarded to service mail. If your property mailing address has changed, please let us know.

Well, that's October 13th of 2015. My clients owned the property at this point in time for well over a year; right, 3/21 of '14.

I can't help who they send it to, Your Honor. I don't control that. You heard Ms. Skinner. She told you she doesn't care what the law is. We're not going to issue insurance on it. So I'm not even going to give that foreclosure deed more than a quotation, but if it was a real deed, if it was a real deed, this whole report would be told different, remember that? That whole line of conversation. She said, Well, if that deed was real, you know, if you actually got a first priority interest and you actually owned the property, well, yeah, you know, yeah, all this stuff would drop off, and it would be yours.

But we don't care about that. We don't insure it. So this title commitment that I wrote you really is bogus. It doesn't incorporate any of the new law. All right. And I say new law meaning the new case law, and then the interpretation

of 116. It doesn't do any of it. It specifically ignores it. All right. She told us that, and I saw Your Honor's face, the look on it.

Really, how do you do that? How do you ignore a deed? How do you ignore a foreclosure deed when this Supreme Court says it is a true lien priority, and it does transfer ownership? How do you do that? She prepares a title commitment after SFR and its progeny and completely still ignores it and stood up there and testifies that we don't care. Doesn't matter. Doesn't matter to us. We're not doing it. We're not issuing a title against it. So we don't care. So the title commitment that she read from is essentially an invalid assessment of title. It doesn't make any sense.

Now, I mean, let's just forget defects. Forget all the defects, but forget there's any defects for the sake of our conversation. Let's have that for a moment. If this sale was conducted in its perfect format and it was covered under SFR, under current case law, it's a valid sale, transfer of title. It is. So that happens, but she was unwilling -- Ms. Skinner -- unwilling to even concede that that's a possibility, and that's why the title commitment was so flawed. And I'm going to go through that in a few minutes too and just talk about it, but counsel cites it in their brief, and I think we need to eliminate some of this foolishness.

Exhibit 25, Your Honor, again is their wiring

instructions to pay the tax lien again 10/29 of '15, long after my letter, right. My letter is on April 30th of '15 telling them you don't own it. I don't expect you to pay our taxes either. I'm not asking you to. I'm telling you have no control here at all.

And then Exhibit 26 is the Trustee's Deed of Reconveyance. Despite my letter, despite my letter they're paying our taxes, despite it, not as a result of it, despite it. How can we possibly have equitable estoppel as a result of them paying tax lien.

Now, the Court needs to -- and, Your Honor, I -- NAS versus the Eighth Judicial Court, 130 Nevada Advanced Opinion 94 (2014). That's called the Voluntary Payment Doctrine. My client did pay payments of taxes. He paid the transfer tax. He had not paid these taxes yet with the county though they are the responsibility of his from the point he took over the property, no question, and obviously, you know, I'm not going to debate the law on taxes. They run with the land and so forth, but and the deed that they acquired at the foreclosure sale, he would be responsible for the taxes as well. So we're not arguing about that.

[Unintelligible] 3116 and 116.3116, they're responsible for taxes. It doesn't about wipe out taxes. It wipes out without redemption the owner, former owner, and it wipes out, if we foreclosed on superpriority, the first deed of

trust, and just so the Court's aware, if there's any junior liens, they're just unanimously gone. It's only the first that gets any protection at all under 116, right. That's all just protection.

The owner is immediately wiped out without right of redemption on a 116 sale, okay. The only question is whether or not the first deed of trust only is whether or not the first deed of trust had a superpriority portion or not. Now, one thing you need to know on this case, there was no tender. There was no testimony of tender. So this is 1000 percent -- that's kind of a misnomer. I can only have a hundred percent, but this is a hundred percent a superpriority sale. The bank said they didn't know about the sale. So they never showed up with any money. There was no tender of any sums. So we are squarely in 116. We are squarely in the land of wiping out this first.

Now, I'm going to come back to when we start talking about the tax issues, the tax certificates and the tax deed because I think it's -- in any event we'll go there. I'm going to try and follow counsel's argument so that I don't get too confused with the -- too far afield I should say.

Everything that's in the file, the letters, the communication between parties, all of this, we have to understand this is preSFR. The sale to my client is preSFR by six months. So the thinking that is bouncing around between

the associations, counsel for the associations, bank counsel, trustee counsel, frankly, and trustees was unclear. We don't disagree we've all been in this pot for a while, Your Honor included, myself, counsel. We've been arguing these cases for a long time. I sat by the video monitor and watched the arguments for SFR that day. So, I mean, these are common issues.

So when we start talking about the detrimental reliance, it's ridiculous. What we had is we had a differing of opinion as to how the statute was to function. Some thought it was purely a lien statute as opposed to a priority statute and so forth. Well, that's resolved, and there's also been case law that says, no, it's not. You're going to do it prospectively and not retroactively. The law was always been the law, and the law is going to be enacted the way it's been enacted, and that's just the way it's going to fall out.

So in light of that understanding, the Red Rock letter is fine, all right, and the Red Rock letter even is kind of silly because it's actually two and a half years before the foreclosure. So there's a whole bunch of issues here, but let's walk the walk if we can, and let's start with the analysis. Let's go through the CC&Rs. Let's talk about all the little things that we have to deal with.

All right. We don't disagree that Celtic Bank, in fact, was the assignee and had a first deed of trust on the

property. There's no argument with that. Now, what we also agree is they acquired the property or they put the -- they acquired the deed of trust, and the deed of trust was placed on the property after the 1989 CC&Rs, after the republication by a first amendment of the 1989 CC&Rs in 1994 and after the 2004 amendments. So all of that was of record before Celtic Bank showed up.

That's in the chain of title. They would've had it. I asked him about it, if you recall, Your Honor, and he said well, yeah, no, we get a title report and, yeah, yeah, yeah, you know, we do all that. Okay. I expect he did. So all of that leads us to a place where we've got to look at the CC&Rs. What are they saying?

Let's go to Exhibit 2. In Exhibit 2, counsel is very excited about 1103, protection of encumbrances. It says,

> No violation or breach of or failure to comply with any provisions of this declaration and no action to enforce, impact owners of record at least --

Hang on. I think I missed a page. I did. Sorry. 1103, it says,

> No violation or breach of or failure to comply with any provisions of this declaration and no action to enforce any such provision shall affect, defeat, render

invalid or impair the lien of any mortgage, deed of trust or other lien on any lot or part of the premises taken in good faith for value, nor shall any violation, breach, failure to comply with action or enforce, affect, defeat, render invalid or impair the title or other lien or title of any interest acquired by the purchaser upon foreclosure of any mortgage deed or trust or other lien or result in any liability, personal or otherwise, or any such holding.

And there's a whole bunch. I mean, it goes, In the event of notwithstanding the foregoing, this section, the association at the sole cost and expense may correct any violations referred above. They didn't in this case. So it goes through all of that.

The short-form version, is called a mortgage-protection clause, right. I mean, that's a shorthand for it. Well, I appreciate counsel's analysis, but unfortunately 116 doesn't agree. 116, 1104, and again, this is cited in SFR, right, SFR dealt with this issue squarely on point because the mortgage-protection clause was always an argument made by, in my case, most of the time I was plaintiff, trying to keep the house. Now I'm defendant trying to defend, but all those cases, they all cited the mortgage-protection

clause. It says you can't get in front of a first, and the statute just says that. So you can't do it. I mean, our contract said that. So you can't do it, and they're all subject to CC&Rs.

Well, SFR says, no. No. No. No. No. That's against public policy, and they cited us to 1104, 116.1104. It says.

> Provisions of chapter may not be varied by agreement, waived or evaded --

And the statute says that expressly.

> -- except as expressly provided in this chapter. Its provisions may not be varied by agreement, and rights conferred by it may not be waived except as otherwise provided in paragraph B of Subsection 2 of NRS 116.12075. A declarant may not act under a power of attorney.

That's not relevant in this, but that section 1,000 percent says that you cannot say it doesn't apply. You cannot say that the mortgage-protection clause trumps 116. It's just very clear. You can't do it, and SFR interprets that. So you can review that if you wish, and I think that'll be quite conforming.

NRS 116.1206, Your Honor -- and by the way, so the Court understands where I'm going with this, I'm going to

telegraph a little bit. I'm going to take us back to 278A .170 which cites the whole provisions of 116.3116, which is the foreclosure section and the section that provides for superpriority. These are the general provisions of interpretation that 3116 is required to look at. So these apply. So that's the connection.

NRS 116.1206 says,

> Provisions of governing documents in violation of chapter deemed to conform with chapter by operation of law procedure for certain amendments to governing documents.

Now, one -- 116.1206, Subsection 1 says.

> Any provision contained in a declaration, bylaw or other governing document of a common-interest community that violates the provisions of this chapter --

Mortgage-protection clause, right, number one.

> -- shall be deemed to conform with those provisions by operation of law.

In other words, we trump their provisions in that document and say, no, it has to conform with 116.

> And any such declaration, bylaw or other governing document is not required to be amended to conform to those provisions.

In other words, when the law changed, by operation of

law, every other CC&R in the state changed by operation of law. The mortgage protection clauses went to sleep as it relates to 116 by operation of law. In other words, you don't need to sit down, have a meeting, say do we agree, do we not agree, do we agree, do we not agree, doesn't have to. It just happened. December 31st, 1991, happened.

116.12061(b) is superseded by the provisions of this chapter regardless of whether the provisions contained in the declaration, bylaw or governing documents became effective before the enactment of the provisions of this chapter that is being violated. Is it any clearer? 1989 gets amended, just like the 1994 does, just like the -- 2004 would already be done, but before any of that was done, this 116 chapter amends those by operation of law to be consistent with this document and to conform. All right.

> Any amendment to the declaration, bylaws or plats authorized by this section to be made under this chapter must be adopted in conformity with the applicable provisions of Chapter 117 -- which is not applicable -- or 278A of NRS and except as otherwise provided in Subsection 8 of NRS 116.2117 -- which doesn't apply -- with the procedures and requirements specified by those instruments.
>
> If an amendment grants to a person the

right, power, privilege permitted by this chapter, any correlative obligation, liability or restriction from this chapter also applies to that person.

So the whole point of this is this. The 1989, the 1994 and the 2004 bylaws are all conformed by operation of law, and counsel said it best. She said CC&Rs are a contract. They are. And who are the contracted parties? The owners with a group, and they all get together, right. They form a group. They all get together. They all agree this is how we're going to live our lives. We're going to operate our laws this way. We're going to govern how we're going to do things, and anybody who comes in, they get recorded, and anybody who comes in has to be admitted and has to accept the CC&Rs, everybody. And when the bank lends, they get a copy of them, and they have to lend subject to because they run with the land.

And I know the Court's aware of this argument. In the 116 statute, the concept was, prior to its change, the concept always was the CC&Rs were recorded first. The CC&Rs were generally recorded for any -- before any sales other than the development of the land and so forth, but once they started selling units, the CC&Rs are generally on the record. The CC&Rs created the lien, right. It was in code at some point, but there was always a lien there for assessments. Sometimes they're paid; sometimes they're not.

Think of it like a revolving [unintelligible]. You know, you went to your bank, and you've got a line of credit. You pulled some money. We all [unintelligible] that day. You pay them back. You don't owe them any money that day. That's a CC&R. They had liens and assessments or always do. If they're paid, there is no lien. If they're not paid, there's a lien, but the statute says.

And SFR interpreted this, and it's throughout the SFR language that the statute said that we are going to foreclose a lien of assessment as if it were a deed of trust which made it superior to the first deed of trust to the extent that there was money due on it. If they're trying to foreclose, there's always money due on the lien because they're trying to foreclose from the lien.

So if that's the case, then we got down to the language 3 -- I'm sorry 116.3116, Subsection B that said, well, banks, we're going to give you a break. You pay nine months of assessments, and then we won't wipe you out, but we're going to still wipe out the owner with right of redemption. The owner is always gone. I want you to remember that because it's relevant in this case because they're saying somehow the owner stepped back in and took it all down, and, boy, that tax deed was just amazing. It wasn't. It wasn't sexy at all. He's still wiped out, and he was still wiped out when they did this by 116, and I'm going to cite you to that. We're going to read

in a minute.

But he has no right of redemption. We know what that means, right. He can't come back and say I want it. He is out, done and finished. Any junior liens beyond the first are out, done and finished all the time. There is no discussion. The only cases you've ever heard, Your Honor, are the first deed of trust coming in and whining about their position because the law is absolutely clear that they're out. SFR says that.

That being the case -- all right, and this is an important point I'm going to come back to, but that owner thing is really important. That being the case, this sale would have been for the superpriority payment, end of story. When we start getting there and following our chapters back -- that was 1103 we talked about, right, mortgage-protection clause. Then if you go to 809 in the '89 statute again -- I mean, I'm sorry, the '89 CC&Rs, which is tab one, it says,

> All assessments, including interest and other amounts, due with respect to unpaid assessments shall constitute and shall be secured by --

Secured is a term of art; right? Secured means we are putting an attachment on a piece of property, all right, and it's standing for the debt. I'm going to sell it or do something for it. Because when I secure it, I have to have

some rights to liquidate my security. I can't just stand there forever. I can't be just secured forever.

> -- a separately valid and existing lien on the portions of the premises to which they relate and upon all improvements at any time erected or constructed thereon. The provisions of Nevada Revised Statute Section 278A.10 are incorporated herein by reference.

There is no limiting language here. There's no language here that says we're only wanting to incorporate today's version. It's not, well, if they amend it, we don't want to do that. It doesn't say any of that. It says we're incorporating by reference. In other words, I'm pulling the entire 278A.170 into this document. That's what it says. Counsel wants to use contract law. That's contract law, pretty straightforward. I do it all the time. You know, I'm going to incorporate Exhibit A, incorporated herein by reference and make it a part hereto, done. So everything in there is part of my contract. By using it for a description or whatever I do, I'm importing it. That's all they did.

But what they did is the brilliant part is they allowed it to be fluid. Laws change. Laws develop over time. They conform with statute. They maybe make adjustments. Well, counsel would like you to believe that you can't make an

adjustment to the statute once it's done. That's ridiculous. They incorporated this for the life of this place. These CC&Rs could be in effect for a hundred years. They could be in effect for more than that. Who knows? Things change. Life changes. Rules change. That's why it's incorporated by reference, and you're allowed to allow it to do its job.

Now, this declaration is done in September 6th of 1989. Again, that's not a problem. Let's look at the definition of improvements for a minute which is one, ten, one, point, one, zero. I'm bringing that to your attention because we're going to talk in a minute about 278A, and we're going to walk our way through that because they've got some thought process that it's an open space problem. It's not. Open spaces was the old term for common communities. It's just silly, but I want to walk you through this. The definition of improvement says,

> Shall refer to all structures and appurtenances of every kind and description located on any portion of the premises, whether above or below the surface of the land, including, but not limited to the following, to the extent located outside of -- outside of or visible from the outside of any building or similar structure, buildings, outbuildings, walkways, utility

facilities, drainage facilities, garbage, garages, swimming pools, sports facilities, roads, ramps, driveways, parking areas, fences, screening walls, retaining walls, satellite and other electronic equipment in transition, water softening, heat and ventilation, conditioning similar fixtures and equipment, and any change or alteration of the exterior surface or appearance of any of the foregoing.

Notwithstanding the foregoing, however, the term improvement shall not include nonstructural components, replacements, additions, alterations to the extent such replacements and additions or alterations are located entirely within an existing enclosed building or other structure.

The point is improvements are stuff that's built and everything around it. Now, under liens to secure assessments, it says,

All assessments, including interest, shall be secured by a separately existing lien on the portions of the premises to which they relate, so -- and upon all improvements.

So they're giving a lien on the structure, okay.

That's a structure. At any time erected or constructed thereon. So you're getting a lien on structure. That's what 116 does. 116.3116 [unintelligible] gives you a lien on the property for the common area expense, very, very, very clearly. There is no question about that.

NRS 278A, which is defined in plan development, not open space, it's called Plan Development Statute, okay, and we go down to the general provisions, and that's where 278A.170 is the portion that talks about common areas. Well, 278A.170 talks about common open space, procedures for enforcing payment of assessment, and I'll note for the Court, its last amendment was 1991. Why? Specifically incorporating 116, Your Honor. It's in the annotation, and I'll read it to the Court:

> The procedures [unintelligible] payment of an assessment for the maintenance of common open space provided in NRS 116.3116 to 116.31168, inclusive, are also available to any organization for the ownership and maintenance of common open space established other than under Chapter -- under this chapter or Chapter 116.

So hang on. You don't have to incorporate 116 in your document if you refer to 278A. You get the power from 278A to enforce pursuant to the foreclosure statutes and the superpriority of 3116. It's right here. That's the whole

point of this. They're completely misguided on this. In terms of --

Let me stop for a minute. If the statute didn't -- if our document didn't incorporate 278A, I would agree with counsel that there are issues, but the incorporation of 278A in 1989 made this a fluid document that by operation of law it had to conform to, and by operation of law, it adopted, because this statute changed, it adopts by operation of law 116 for its sale procedures. And they're completely misguided on this issue, or they're misdirecting you, one or the other, but NRS [unintelligible] entitled to receive payments from the owners of property for such maintenance, and that's what we're talking about; right.

What is a CC&R, Your Honor? All it does -- as you're not going to -- you're not fixing my inside of my building. You're not doing any of that. Why do you charge me money in a -- in a community ownership? All right. They provide money and you pay money for what? Maintaining the streets, maintaining sidewalks, maintaining vegetation, paying for water, paying for lights, streetlights, maintaining the gate, maintaining the snow removal if that were the case, wrong place, but sanding, whatever. That's what you're paying for. You're paying for common area, for open space call it. That's what you're doing. This is not rocket science.

Somehow counsel says, well, that doesn't apply.

Because it's not open space. I don't even understand the thought process. How can it not be open space? So these restrictions -- I'm sorry.

> For such maintenance under a recorded declaration of restrictions, deed restrictions, restrictive covenants or equitable servitude, which provides that any reasonable and ratable assessment, thereon for the organization's cost of maintaining the common open space constitutes a lien or encumbrance upon the property.

Awfully clear. Awfully clear. Now, again counsel is somewhat lost on this too, but when you incorporate all the way from 3116 -- when you incorporate from 3116, Liens against units for assessment under 116, all the way through to 116.31168, Foreclosures of liens, you're incorporating 1,000 percent all of the things that have gone on in this case and what has occurred with regard to the sale.

Now, counsel has made a lot of hemming and hawing about whether or not the page or the instrument number was correct or incorrect. I submit to you there is no requirement that they list a page number in the notice of delinquent assessment, in the NOD or in the notice of sale. It's overkill. It was clerical error, obviously. We went through that if the Court recalls. They were missing a 1. Instead of

being 1024, they had it 024. They cited it by year. They said why they're foreclosing, but the page, the instrument number was off by one digit. Is that fatal? No.

If you read 116.3116, it says, Liens against units for assessment. And under Subsection 1, it says,

> The association has a lien on a unit for any construction penalty that is imposed against the unit owners pursuant to NRS 116.310305. Any assessment levied against that unit or any fines imposed against that unit's owners from the time the construction penalty assessment or fine becomes due, unless the declaration otherwise provides, any penalties, fees, charges, late fees, fines and interest charge pursuant to paragraph J to N, inclusive, of Subsection NRS 116.312 are enforceable as assessments under this section.

THE COURT: Okay. You're talking very fast and --

MR. CROTEAU: Sorry.

THE COURT: Okay.

MR. CROTEAU: All right. Under Subsection 2, it says, A lien under this section is prior to all other liens and encumbrances on a unit except, right, and we've been arguing about this for a long time, but let me just go through it.

Liens and encumbrances recorded before the recordation of the declaration and in cooperative liens of encumbrance which the association creates, assumes or takes subject to. In other words, 116 only applies after the CC&Rs are recorded, not before. There's no evidence that that's the case here whatsoever.

So we go from there, B, A first security interest, and here's the magic language, right. This is the superpriority language. It says,

> A first security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent or in a cooperative the first security interest encumbering only the unit owner's interest and perfected before the date on which the lien assessment sought to be enforced became delinquent, and liens for real estate taxes and other governmental assessments or charges against the unit or cooperative.

In other words, the tax is still due under Subsection C, the taxes are still due. We take subject to, right. So in 116.31162(b), the only person that's protected, okay, is the first security interest on the unit, right, recorded before the date on which the assessment sought to be enforced became

delinquent. In other words, very simple, remember the concept of foreclosing the CC&Rs or the -- as a deed of trust. There's no money due. They can't be delinquent. They have to be current on the CC&Rs. The bank puts its loan there. If they're not delinquent, it has a first position deed of trust. If they're delinquent, they'd be junior. That's the concept there. But assume that they're current because we don't have any evidence to the contrary.

Then we come down to the subsection where it starts talking about the lien is also prior, and that'll be the lien for assessments, is prior to all security interests described in paragraph B to the extent of any charges incurred by the association on a unit pursuant to NRS 116.310312. Well, 310 [unintelligible]. 310312 is the power of the executive board to enter grounds of unit to conduct certain maintenance or remove or abate public nuisances, notices, security interest and --

THE COURT: Okay. You are again talking very fast and low. My court recorder can't hear you.

MR. CROTEAU: Sorry again. Okay.

116.310312, and to the extent of the assessments for common expenses, based on periodic budget adopted by the association, and that's the case in this case. It's from their budget, and that's done pursuant to the CC&Rs in the '89, '94 and 2004, which would have become due in the absence of

acceleration during the nine months immediately preceding the institution of the action to enforce the lien. That's the nine-month superpriority. That wasn't paid in this case so that takes that.

The second aspect of this, Number 3, it says,

> The holder of the security interest described in B of Subsection 2 or the holder's authorized agent may establish an escrow account, loan trust account or other impound to pay through that.

That develops the superpriority if you will.

If we go to 116.31162, it talks about the foreclosures of liens, and in that particular section, it discusses what needs to be in the document. So that's 116.31162(1)(b). It says,

> Not less than 30 days after the mailing of notice of delinquent assessment, pursuant to paragraph A, the association or other person conducting the sale has executed and caused to be recorded with the county recorder of the county in which the common-interest community or any part of it is situated a notice of default and election to sell, the unit to satisfy the lien which must contain the same information as the

notice of delinquent assessment and which must also comply with the following: Describe the deficiency in payment --

And the deficiency in payment, Your Honor, is you haven't paid your HOA assessments or your common community interest assessments. That's all it needs to say.

The second thing it needs to say, State the name and address of the person authorized by the association to enforce the lien by sale. That's in all our notices.

And then contain in 14-point bold type the following warning: Warning, if you fail to pay the amount specified in the notice, you could lose your home even if the amount is in dispute. Okay. In all cases, that language is satisfied with the notices, in all cases.

And then it talks about they failed to pay, the 90 days and so forth, but there is no requirement for a book and page number. There's no requirement for them to list any particular CC&R in a particular document for someone to go find. It is sufficient to provide notice that we're foreclosing on CC&Rs, and it's a delinquent assessment of CC&Rs. That's all that's required by statute. There's nothing that says that I'm aware of -- and if counsel wants to cite it to me, I'd love to see it -- that says they have to be cited by book and page, nothing.

It says, The association or other person conducting

the sale shall mail within 10 days after the notice of default and election to sell. The problem with some of this, and I think and I'm not sure, but it's somewhat problematic in that counsel is making arguments somehow that we have to have actual notice.

Your Honor, I'm referring to -- and I do apologize. I don't have the cite -- may I approach?

THE COURT: Sure.

MR. CROTEAU: I apologize. I don't have the cite.

THE COURT: Has counsel seen this?

MR. CROTEAU: It's law.

MS. NOTO: It's a case, Your Honor.

MR. CROTEAU: It's a case, Your Honor.

THE COURT: Okay.

MR. CROTEAU: Yeah. It's PNC National Bank Association versus Saticoy Bay LLC Series 9320 MT Cash Avenue UT 103, and it was decided and filed on May 25th of '17, and it was Case Number 69595. I apologize. I don't have the cite with me, but the relevance of this is just some of the points that have come out here. It says, and this is on the second page,

> Appellant also argues that the sale should be set aside as commercially unreasonable. As this Court observed in Shadow Wood Homeowners Association, Inc.,

> Versus New York Community Bancorp, Inc., inadequacy of price or the gross is not in itself a sufficient ground for setting aside a trustee sale absent additional proof of some element of fraud, unfairness and oppression as accounts for bringing up the inadequacy of price.

Not only, not only in this particular case do we have to prove that there was some unfairness, but it has to, absent additional proof of some element of fraud, unfairness or oppression, as accounts for and brings about the inadequacy of price. So if there's some unfairness, and counsel seems to think that the mistake in that instrument number is unfairness, it has to account and bring around and be the cause of -- the cause of the low price. There is not one shred of evidence to that effect. Nothing has been brought into the question whatsoever.

The only thing we do know is that Mr. Zern didn't rely on any of it because he didn't think he was at risk, and he didn't care. So he didn't do any of it. He didn't check. He didn't hire counsel at that point. He did nothing. That's his testimony.

Moving on down further on this page though, it says.

> Although appellant contends the unfairness exists because its predecessor did

not receive the notice of sale -- that wasn't our case -- the pertinent statutes require only that the notice be mailed, not received.

So we've provided the fact in all the Red Rock records that are admitted in this case, all provide notice of mailings for all of the major notices. In addition to that, we actually have a signed return receipt requested for the NOD in this case.

The Court goes on to say actual notice is not necessary as long as the statutory requirements are met. Now, we have the benefit of the recitals and the deeds for our conclusive presumption too. I point that out to the Court as well.

> Because the appellant has not meaningfully disputed the respondent's proffered evidence showing the notice was indeed mailed to its predecessor, we are not persuaded that the failure to receive the notice presents a genuine issue of material fact for summary judgment purposes.

I only present that because it's relevant in what we're talking about now. And in conclusion, the Court says on page 4, In particular, we conclude that the language in the presale notices constituted prima facie evidence that the HOA was foreclosing on a lien comprised of monthly assessments.

That's all that needs to be there, okay.

You've got to tell them you're foreclosing on -- you've got to have the agent because you've got to know who to contact. You've got to tell them you're foreclosing on a CC&R monthly assessment. Short of that, that's it. There is no reason to have a book and page number. As far as notices go, they're going to the people who own the properties, right. The notices aren't intended for the public, Your Honor. The notices are intended for Celtic Bank, for Gibson Road, for the tax commissioner, so forth, to tell them that there is action on the property. It's a notice. That's all it is.

Nobody is going to go back and read the CC&Rs. I mean, if you really look at the logic, and the case is candidly quite logical, there is absolutely no reason to go into case law -- I mean to go look at the CC&Rs. They owe money. Okay. Fine. Presumptively the person that's going to contest it is the owner, right. I mean, that's the one that's in proper position to contest it. The owner never contested it in this case. So, I mean, I understand their argument, but it's really misguided, and at best it's a harmless error of no import whatsoever.

Mr. Zern testified he never looked at it. Mr. Zern testified he never went to look at it. My client never looked at it because they didn't care. It wasn't of moment to them.

Now, when you go to 116 -- when you go to 116.31166,

which again is incorporated by 278A, it says, Foreclosure of liens, effective recitals and deed, purchaser not responsible for proper application of purchase money. It says, The recitals and the deed made pursuant to NRS 116.31164 of default, default, right. All right. That's the first thing that's proved to be conclusive. It's a conclusive presumption, meaning that they are in default under those CC&Rs. It's conclusive presumption.

Counsel says I've got to come in here and prove it all. I don't. I have a deed that tells me I do, and my deed sits here. It's here somewhere. Be there in a minute.

My foreclosure deed, where it can be found, Exhibit 17. It says,

> Red Rock Financial Services, herein called the -- herein called agent for Gibson Business Center Property Owner's Association --

And understand there's no -- there's nothing there beyond that.

> -- was the duly appointed agent under that certain lien for delinquent assessments recorded on 8/23 of '11 as instrument number --

And they go for that.

> -- in Clark County. The previous owner,

as reflected on this said lien, is Gibson Road LLC. Red Rock Financial Services, as agent for Gibson Business Center Owner's Association, does hereby grant and convey, but without warranty, express or implied, to Vegas United Investment Series 105, herein called Grantee, pursuant to NRS 116.3116 through 31168 --

Which is the exact language of 278A.170.

-- all its right, title and interest in and to that certain property legally described as Gibson Business Park 3, Plat Book 56, page 36, PT Lot 1, which is commonly known as -- And there's the common address.

Now here's what the agent tells us that I get conclusive presumption to:

This conveyance is made pursuant to the powers conferred upon the agent by the Nevada Revised Statutes, the Gibson Business Center Property Owner's Association governing documents, CC&Rs and that certain lien for the delinquent assessments described herein --

THE COURT: You're going a little fast again.

MR. CROTEAU: -- default occurred as set forth in a

notice of default and election to sell, recorded on 10/14 of '11, as Instrument Number 0001581, book 20011014, which was recorded in the office of the recorder of said county.

Red Rock Financial Services has complied with all requirements of law, including, but not limited to the elapsing of the 90 days, mailing of copies of liens of delinquent assessments and notice of default and the posting and publication of the notice of sale. Said property was sold by said agent on behalf of Gibson Business Center Property Owner's Association at public sale -- public auction on 3/21 of '14, at a place indicated in the notice for sale.

Grantee being the highest bidder at such sale became the purchaser of said property and paid therefore to said agent the amount bid, $30,000 in lawful money of the United States, or by satisfaction pro tanto of the obligations then secured by the lien for delinquent assessment.

Pursuant to 116.31166, recital in a deed made pursuant to 116.31164 of default -- default is listed here. They defaulted on delinquent assessments. The mailing and the notice of delinquent assessment says they did it here. They waited the 90 days. They did the notice of default and election to sell. And 116.31166, Subsection B says the elapsing of 90 days. They say they did it here. And the giving of notice of sale, they said they did it here.

Our conclusive proof of the matter is recited.

Foreclosure deed stands as my evidence supported by 116.31166.

> Such a deed containing those recitals under Subsection 2 is conclusive against the unit's former owner, his or her heirs and assigns and all other persons. The receipt of purchase money contained in such deed is sufficient to discharge the purchaser from obligation to see the proper application of the purchase money.

In other words, I asked the Court -- I'm sorry. I asked Mr. Zern, did you get your excess proceeds? I don't know. There are excess proceeds in this case. $30,000 was paid. I believe there is about $15,000 in excess proceeds. It's not my client's responsibility, of course, but I asked him that.

The sale in this, Subsection 3 of the same section, The sale of a unit pursuant to 116.31162, 116.31163 and 116.31164, vested in the purchaser of the unit owner, my client, without equity or right of redemption. In other words, the original owner is God. He does not somehow reflourish as the owner of the property as a result of the tax sale. I'm going to get to that in a minute.

All right. But this section blows him out forever. He is done. The only argument in these 116 cases -- I mean, the owner can come in and argue that there's a defect in the

sale. That's true, but if they don't argue that and it's not been argued in this case, I don't want to go down that line of conversation, but it's not been argued in this case. So what we're left with is just the first secured lender. That's it. And that's the argument we are having. So that's predominantly the position of 116 and how 116 applies in this particular case.

I'm going to walk the Court through the rest of the declarations, and then we'll move on to our tax conversation, but '89 has been, I think, killed up pretty good here. Let's go to Exhibit 2. Exhibit 2 is the 1994 amendments. I'm not sure if counsel doesn't understand contract law or if she's trying to mislead the Court, but, Your Honor, this is called a First Amendment to the Declaration of Protective Covenants, Conditions and Restrictions. This is the purported document that they were attempting to at least cite to. Though I do not concede it's even required, I'll address the argument because it's been beat to heck here.

What document do you want to draft? What document do you want to cite to? You can cite to the '89 and say and any and all amendments thereto, or you could cite to the last document in the series that says I'm making an amendment to a prior document. Go look at it, all right. You wouldn't cite to both of the CC&Rs. You know, you wouldn't cite to '89 and cite to '94 as well. You don't need to, and you don't need to

cite to 2004 either.

As long as you cite to something that you're taking lien on, you could be doing your assessments on pretty much whatever, I mean, they could have a mutual agreement to do the enforcement on the other side. There are many communities that, if they have two associations, that's how they work it. There's no evidence even in this case that there is two associations. We questioned Ms. Skinner extensively on that, and she had no clue.

But be that as it may, as the state of the evidence stands in this case, what we know for a fact is this, is that in Subsection -- well, in A of the recitals, it says,

> Ampac is the developer, and which is known as Gibson Business Park Phase 1. On September 11th of '89, Ampac, as the declarant, and the joining parties named therein filed for record in real property records of Clark County, Nevada, a certain declaration of Protective Covenants, Conditions and Restrictions.

And they define that as the declaration, right. I want to point the Court to one other thing. Somehow counsel thinks this is a standalone document. It's not. So I submit to you draftsmanshipwise they're using a defined term as joining parties in Subsection 1. It's not defined in this

document. It's defined in 1989.

As you can see, it says, Declarant, and then it goes on to, and the joining parties. Well, the joining parties are not named. That's Ocean Spray cranberries and some of the other parties that signed before. All I'm getting at is even who created this document knew they were just doing an amendment to the '89, and they're doing it in 1994. That's all. I mean, it's not real difficult. This is very simple. Counsel, I'm afraid, has taken it some places it shouldn't be.

If you go to 436 [unintelligible] CB --

THE COURT: Okay. I'm sorry. What?

MR. CROTEAU: I know. CB 436, which is the next page.

THE COURT: 436. Okay.

MR. CROTEAU: Yeah, that's all.

THE COURT: CB 346.

MR. CROTEAU: 436.

THE COURT: 436. Excuse me.

MR. CROTEAU: No, that's fine.

It says, Ampac here amends -- hereby amends -- this is number one, right, Hereby amends the declaration by withdrawing from the premises encumbered by the declaration the land described in Exhibit A. Okay. So this document is specifically modifying '89. It says,

Effective amendment from and after the

effective date hereof, all reference to the premises in the declaration shall refer only to the premises as modified by this first amendment.

So are we wrong by citing this 1994 amendment? I don't think so. I think if we had to do it -- I don't concede we'd even do -- this is the proper document that you would cite to in all likelihood. I mean, I don't see any reason to do it any differently. It is the last prognostication of what's gone on. It is the most current version at least of these two documents as we can see them. And it says, From and after the effective date, the Protective Covenants, Conditions and Restrictions set forth in the declaration -- and let me draw you back to the defined term on the first page. The declaration is the 1989 CC&Rs -- shall touch and concern and shall run with and benefit and burden only the premises as the same or modified hereby. In other words, they shrunk the amount of space that the common space is going to be, and they shrunk it a little bit in this first amendment versus what it was in 1989. That's all.

And then it says, Number 4, Except as expressly provided in this first amendment, all of the provisions to the declaration shall continue in full force and effect unmodified hereby. In other words, this first amendment republishes the 1989 CC&Rs. They're consistent in both parts, and it says, all

but for these changes it still remains in full force and effect, which reincorporates even in this 1994 version 278A.170, which by its terms incorporates 116.3116, so pretty straightforward stuff.

Now, counsel is a little lost on the 2004 declaration. I'll deal with it because, again, it's a misstatement of facts, and it's confusing, and it doesn't need to be. Counsel says -- I must be a little bit pedantic, I guess, but counsel had originally noticed the HOA or the association if you will, and counsel had previously noticed Red Rock Financial Services. Counsel by her own doing decided not to bring them as witnesses, canceled the subpoenas. I out of an abundance of caution, I out of an abundance of caution resubpoenaed them to be here today -- yesterday just in case. I wasn't sure where the testimony was going to go or if we even needed them, but I wanted to reserve that issue. So it's not like I played ambush.

Counsel noticed them and then dropped them, and I renoticed them just in case to be here. So me not calling them was not strategy. It was not necessary, and we would've been still taking testimony today, and it would've been far afield, and it didn't matter.

Based upon the conclusive presumptions in the recitals, we don't need this. We have all their records in, and I don't need that. We have the fact there was no tender.

I don't need them to tell me whether there was a tender and it was rejected or anything else. So the necessity for much of this is not necessary at all. There is no challenge here that the assessments were improper. So, yes, I didn't bring them, and I saved the Court a half a day probably or maybe even longer of time. And counsel was more judicious than I because she assumed that the -- several days before, I guess, when she canceled hers, same depos.

But if we go to the declarations of the 2004, it was filed on 3/18 of '04, and in this particular declaration, and I'm going to bring the Court's attention and direct it quickly to it was done the 17th of March, I believe is the date, 2004. And if you go down to recital D -- now, counsel says, oh, 116 has definitely not been raised in all these other two, 1989 and 1994. Okay. Well, that's fine. Go to D. D says,

> The real property shall not be subject to the provisions of the Uniform Interest Ownership Act, codified in 116 of NRS except to the extent permitted by 278A.170.

Do we not have a common theme? 278.170 controls '89, '94, 2004. I don't care. Pick which one you want to run with, but it's covered. Every single one incorporates 116's provisions to enforce assessments, sell property, wipe out a first deed of trust if payment of the nine month superpriority is not made. Done. Done, in all cases.

But here we go. Counsel takes us to 10.2, Section 10.2, which can be found at CB 375, and that's kind of confusing too. You know, counsel says, Well, it's a notice of sale. You have to do it from the notice of sale, and clearly, clearly he had 24 days or something like that and well, they sold the property, and I can't believe they did that.

Are the drafters so stupid as to think -- and just so I'm clear, I mean, think about this for a minute. If you draft CC&Rs for a living -- and we have people in town, that's all they do -- would you put a 60-day provision that says you have to have notice of the sale, but you have to have 60 day's notice of the sale before it's actually sold? So in all cases we would have to not adhere to our foreclosure statutes under 107. Effectively we would be rewriting Chapter 107, right.

Because Chapter 107 says you send your NOD. You wait 90 days. Then you give them notice again in the notice of sale. The notice of sale actually is only a 20-day notice. Theoretically it takes about 120 days to do it all, but it's a 20-day notice from the actual notice time for sale. Under any scenario, this section would have to be interpreted to rewrite the statute because counsel has alleged that you have to give 60 day's notice from the notice of sale, not the NOD, but it doesn't say that, does it? Let's read it together.

Notwithstanding anything contained herein to the contrary, no such foreclosure

sale shall occur until a lapse of 60 days following delivery of notice of such pending sale to any mortgagee of such owner and the failure of such owner or mortgagee to fully cure such violation. If the declarant or the association does not elect to create and enforce a lien as aforesaid mentioned [unintelligible] it shall nevertheless have all the rights set forth in Section 10.3 below.

In our particular case it did, but 60 days from what? Now, what I do know is we know for an absolute fact that now it does say -- hang on. I'll quote, "Notice of such pending sale." Your Honor, by definition -- hang on. By definition at Tab 10, it says, Notice of default and election to sell pursuant to the lien for delinquent assessments. That's pretty clear to me.

Counsel says, no, that's just an invitation to cure. I don't think so because reading it more intelligently, the way it really works is, as stated above, and I'm quoting from Red Rock 60 at 10, it says, Above stated, the association has equipped Red Rock Financial Services with verification of the obligation. Right. So that's another statement, another representation that's out there.

The association has equipped Red Rock

Financial Services with verification of the obligation according to the covenants, conditions and restrictions in addition to the document provided in the debt, therefore, delivering any and all amounts secured as well as due and payable, electing the property to be sold to satisfy the obligation.

In accordance with Nevada Revised Statute 116, no sale date may be set until 91 days after the recorded date of the mailing date of the notice of default and election to sell.

As of October 10, 2011, the amount owed is 7,697.42. This amount will continue to increase until paid in full.

I cannot understand how this would not be notice, adequate notice, strong notice to a party. I will also bring you back to another vestige. I think this language comes from 107 because in 107, Your Honor, there is a section of the statute that talks about a 30-day redemption period in the 90-day notice on a typical 107 sale so that the homeowner can simply pay the delinquency at that point, and the foreclosure would cease.

After the period of 30 days, then it's the option of

the lender as to whether or not they want to accept payment. Now, that's my impression, and I would cite you to 107 for that, and I would suggest that the CC&Rs have been somewhat, you know, passed between different kind of entities in terms of how they function, but that might be a vestige from that. I don't know.

But clearly the notice of sale and election to sell -- or notice of default and election to sell is clearly sufficient to get your 60 day's notice out because it's a 90-day time period, and then you get the notice of sale or 91 days because they count the date of the mailing -- date of filing.

Again, we're still faced with a mortgage-protection clause at page 25, which is CB 380. That's again in violation of public policy, same argument as before. I don't want to belabor that, and we've already talked about it.

All right. Can we take a 5, 10-minute break?

THE COURT: Sure, in fact, I was going to suggest that fairly soon. So --

(Proceedings recessed 10:27 a.m. 10:41 a.m.)

THE COURT: All right. You all may be seated.

Okay. Counsel.

MR. CROTEAU: Thank you, Your Honor.

THE COURT: Now, you're not going to read me all these, are you?

MR. CROTEAU: No.

THE COURT: I see all these up here.

MR. CROTEAU: Oh, no. I put them out of the way.

THE COURT: Okay. In fact, I was going to suggest to make things go a little quicker, why don't you just highlight what you want me to know about with the statute or the particular point because, I mean, I can read it.

MR. CROTEAU: The only other thing I'm going to talk about extensively is going to be the tax certificate stuff, and I'm going to cite you to the sections on that, and only because we were having a lot of confusion between myself and counsel yesterday as to what it meant and how it worked.

THE COURT: Okay.

MR. CROTEAU: So I think that's relevant. I'm going to say something before we begin. Counsel and Ms. Noto was upset with me that I've been disparaging. I did not intend to do that. I apologize to the Court if that's how it was coming off.

THE COURT: You just don't gain points for it. I mean --

MR. CROTEAU: I'm not trying to. And then, frankly, I just disagree with the position. I apologize. It's not a personal attack.

So I do apologize.

MS. NOTO: Thank you.

MR. CROTEAU: But I disagree with her position obviously, not her as a person. Ms. Noto, I think, is a fantastic attorney, and she's been wonderful to work with. So I have no disrespect whatsoever. So I just want to make sure that's clear.

THE COURT: Okay.

MR. CROTEAU: I don't agree with her views, but that's a different issue.

THE COURT: I understand.

MR. CROTEAU: So I apologize.

Okay. So let's talk for a moment, if we will, about the amendment to the foreclosure deed that was made some arguing about and the --

THE COURT: Amendment to the foreclosure deed?

MR. CROTEAU: Yes, Your Honor.

THE COURT: Okay. Do you have the exhibit number?

MR. CROTEAU: I do. Foreclosure deed is found at 17.

THE COURT: Okay. That's the original?

MR. CROTEAU: It is. And that's what we have talked about.

And a couple of points I want to make is pursuant to NRS 111.3112, I want to point out that, as the Court remembers, a foreclosure deed has to have a return address for mailing for tax purposes. That comes -- mail tax statements to, and it says Vegas United Investment Series 105, 2676 Point (sic)

Vecchio Terrace, Henderson, Nevada 89052. So for tax purposes, as of 4/17 of '14, this was public record, and this is what's required under NRS 111.312 and purposefully so that he can get notices of tax assessments, tax filings, tax issues.

I submit to you part of the problem as to why the notices are improperly sent or improperly noticed is because of exactly what Ms. Skinner testified to. Nobody gives any moment, especially back in 2012 -- I'm sorry, 2014, prior to SFR, nobody gives any moment whatsoever to the common community interest foreclosure deeds, and that really was it.

So if you pulled the TSG, a trustee's guarantee on sale -- a trustee sale guarantee, I'm sorry, you wouldn't get, and I'll show it to you, you don't get the foreclosure deed. They just make a moment notice of it, and it's a problem. It's a problem from the county's perspective. It's a problem from the title community's perspective as to how they handle it, and they've chosen to handle it in a manner that is, I think, malfeasance frankly. I don't think that they are appropriately reflecting on the commitments what actually occurs in the statement of the title, and that's misleading to anybody who relies upon it from that point of view, but we have nothing to do with that. So the deed is properly performed, properly laid out, and it is recorded which is evidenced by the recording at the top right-hand side on 4/17 of 2014.

So now we also need to take a look -- if we're

looking at 17, we also need to look at 27 for a moment. 27, my client rerecorded the foreclosure deed to correct the legal description, and that was recorded on 4/4 of '16. We don't disagree with that; however, it doesn't matter. It didn't affect whether or not the deed was properly recorded. It corrected a minor description that actually just made it more precise as opposed to -- it made it a more precise statement rather than a smaller statement.

And for the Court's edification, CB 445, the changes under parcel one, it simply said and the addition was being a portion of Lot 1 of Gibson Business Park 3 on file in Book 56 of plats page 36 in the Office of County Recorder, Clark County, Nevada, and if you go on to say, "more particularly described as," that was always there, the "more particularly described as."

So what they're saying is they wanted a precatory statement that said, well, it's over here, but this is the property here. Well, this was always there. The smaller definition of the precise location was always there. They just wanted the precatory language to say in what plat it was in.

And, frankly, the point of all of that is the corrected language was also done by Silver State Bank back in 2006, and they did the same thing. What ended up happening, for lack of a better way to tell you this, what ended up happening is we got the same legal description that they had in

2006 at first, and they asked us to make the same change in 2014 that they asked them to make in 2006. We didn't draft a deed.

They just didn't include the precatory language and they made the same correction. My client cut and pasted the '06 change to this new deed and simply filed it, but it was always -- the appropriate description of the property was always there. The only thing that was missing was that precatory language, and remember yesterday we went through this kind of laboriously, check this paragraph, check this paragraph.

All of the paragraphs are there except for that precatory language where it says, More particularly described as, which means that's when you're getting down to the nuts and bolts of it all so to speak. So I would suggest and say to the Court, as Ms. Skinner testified to, that kind of change is not going to change or affect title or affect your ownership or affect notice. So I just wanted to make note of that because that was a concern or a discussion.

Exhibit 35, Your Honor, I just want to say to the Court, this was the actual notice of the mailing of the foreclosure deed to my client from Red Rock Financial Services, and it was mailed on 3/31 of '14, which you can find at Exhibit 35 at Red Rock 111 and the following pages.

Okay. All right. So and that was the letter from

the assessor's office, the Clark County Assessor's letter was in Exhibit 18, and, again, that was simply asking to correct that, and I don't want to belabor this issue either, but that's when we were making the distinction based on page CB 94. It had a file stamp N on it. The copy that my client received of 20062130002530, obviously we had nothing to do with the file in 2006. So this was provided to us by the assessor's office, as my client testified, to make it comport with that description at that time frame.

And if the Court recalls, that was on the refiling to rerecord corrected deeds. So and being noted here right on the front page of that inscription for the 2006 filing, it says, This deed is being rerecorded to correct legal description and clarify legal description shown in grant bargain and sale deed, GBSD, recorded January 19th of '06 and the page number. So it's an innocent correction. It's an innocent correction that the bank themselves, not Celtic being successors in interest, but Silver State Bank corrected, didn't affect their title. We've never made that argument, never would. It's just not important. It was just a clerical mix up. So I wanted to clear that up as well.

All right. Let's take a walk into the tax issue now. All right. Let's go to Exhibit 14. Let's call this the beginning of the saga, and I can cite you to numerous mailings, but let's start here. This is filed 12/26 of 2013. This is a

treasurer certificate for holding delinquent real property parcel and the delinquent taxes for the fiscal year '12 and '13, and it's listing the taxes of forty-five, eighty-four, seventy-one.

Now, there's been some debate as to what this means and doesn't mean, whether it actually transfers title. It doesn't transfer title, but in this particular case, what this document is is governed by 361 and its provisions, and it tells you exactly what the import of each one of these things is, and it provides for redemption throughout the entire process, Your Honor, until, and this is important, until there is an actual auction.

The procedure, and I'll go over it broad-based, and then I'm going to walk you through the sections because it matters because my client's strategy was right on point as to how he wanted to handle it, and that's his affair, to handle it in this fashion if he chooses to, okay.

He is listed as the record owner in the title. He is to get his statements pursuant to the foreclosure deed that's recorded. He is to get the tax statements. The assessor's office had the deed because they sent them a letter to correct his deed. So they certainly had the deed. They know who is the owner of the property. The only issue they had is something to do with the legal description from their mapping if you will, which was corrected, of course, but nonetheless

they had the information.

Now, if we look at this document -- and, well, never mind. I want to take you through the process.

Delinquent taxes occur. They occur. They occur. At the end of the year, if you don't get it after a certain period of time, they say if you don't pay us, we're going to assess you interest, penalties and costs, and it's all within the statute. There's no issue there. It's 10 percent per annum I believe is the number that they charge on the money that's outstanding. So in this case $458 a year they're going to charge approximately in interest, and that sits in what's called a certificate.

The certificate is an interest-bearing certificate so that the county -- in the old days, they used to sell the certificate off, and if the person bought the certificate, they could potentially get a position on the house free and clear of even the first. This wipes out every junior lien at all. All liens are junior to the tax lien, and they wipe out all liens on a real tax sale.

What happens is in the current law, the way it works today, and the way it worked at this time frame is the tax certificate goes on the property. It sits there for two years. It never divests the owner of ownership, not ever. It's held in trust, all right, meaning that they stick their name on it. In the event there's anything that happens with the property,

they get paid, and I'm going to walk you through the statute for that.

At the end of the two years, by operation of law, they get to turn it into a deed. The deed is held as trustee for the tax division, and at that point, there is a redemption period as well, and I'm going to walk you through that, and we never reached the end of that redemption period. The bank redeemed it before the redemption period expired in the statute.

Now, if, in fact, it had gone to the next and final phase, which is actually an open auction to the world to buy this property on the tax deed, okay, that's a different transaction. That did not occur here. That would divest the owner of redemption rights in its entirety, okay. So at that point, that's when the property goes up for sale to third parties.

And if you remember my client's testimony, he said I'd sit in the bleachers, and I'd buy it for whatever price I had to, but if the price was high enough, I'm going to stay there and let somebody buy it for cash, and I'll get paid out. Remember, he said that. I'm going to show you how that works.

It's in the statute, and that's exactly how it works. They basically take off the cost of sale, like any foreclosure. They take off the cost of sale. They take off the taxes due plus interest, penalties and everything that's available to

them, and then they apply the proceeds pursuant to the title, and title, at that point, again, is in flux obviously at this time frame, but title will go and the money would go to the owner of the property, obviously subject to any liens against it, and the claims against it would be Celtic Bank and so forth at that point in time if, in fact, they weren't wiped out.

So the fact that Celtic Bank steps up and pays for it is of no moment. It doesn't create any new rights, and they shouldn't have done it, frankly. They were out of the chain of title, and they were out of the chain of title after. We already went through this. I don't want to plow that ground either, but 3/21 of '14, we own it. They don't come in and pay it off until November of '15. It doesn't make any sense. So they shouldn't have done it, and that's part of our problem.

So if the Court will go to Exhibit 22 for a moment, again, this is the tax trustee's deed, and this tax trustee deed is the one that actually transfers the property back to Gibson Road LLC -- no, I'm sorry. It stays with trustee's, county recorders. So this is [unintelligible] as the tax trustee deed, all right, but again, after this there's still right of redemption, and that's part of the arguments and part of the concerns.

Exhibit 19, again, this is after the sale to my client, before they purchased the property. These are letters from Celtic Bank to Gibson Road saying, hey, you've got to pay

these taxes: June 9th, August 6th, February 6th of 2015. My client owned the property throughout this entire period of time on record with record being shown with notices to be mailed to my client for the taxes.

Exhibit 26 is the trustee's deed of reconveyance. Now, I'm going to show you in the statute -- remember yesterday I made an argument or made questioning regarding reconveyance and conveyance. There's two different things, two different concepts. At the tax sale, when the general public comes in, the county conveys title, and anything prior to that, it's always a reconveyance back to where it came from, and it's not to some third party. It's back to where it came from by statute.

THE COURT: Well, the statute says owner. It doesn't say prior owner.

MR. CROTEAU: There is this --

THE COURT: I will tell you I am troubled by that --

MR. CROTEAU: Let's do it.

THE COURT: -- with your position.

MR. CROTEAU: Then good. Give me a few minutes, and I'm going to walk you through it if I may.

Let's talk about 361.570. 361.570 is trustee's certificate, okay, and it says, Issuance to county treasurer effect contents, recordation and so on. I can't do this anyway but to talk to you about it and read some of the statutes to

you. I won't do it again after this but allow me a little latitude at this portion.

THE COURT: Okay. By the way, I've got an appointment at noon, and we've got rebuttal. So I'm going to say --

MR. CROTEAU: I'm good. I'll be done soon, okay.

THE COURT: Okay.

MR. CROTEAU: But this is a very important point, and you even brought it up. It's important to you.

THE COURT: It is.

MR. CROTEAU: So give me a minute on this.

What it says is,

> Pursuant to the notice given and the time stated in the notice that tax receivers shall make out a certificate that describes each property on which delinquent taxes, penalties, interests and costs have not been paid.

And this is, I'll represent to you, several months after the due date kind of thing. That's all it is.

> The certificate authorized the county treasurer as trustee of the state and county to hold each property described in the certificate for a period of two years after the Monday in June of the year the

certificate is dated unless sooner redeemed.

That's fine.

The certificate must specify, you know, the amount of the delinquency, the taxes due, and will be added at a rate of 10 percent.

All right. That's 361.5782, Subsection B. It says,

The [unintelligible] and the name of the owner, the taxpayer of each property if known. The certificate must state that each property described in the certificate may be redeemed within two years, that the title to each property not redeemed vests in the county for the benefit of the state and county and that the tax lien may be assigned against the parcel pursuant to the provisions of 361.703, so on.

Subsection 4 of that section says,

Until the expiration of the period of redemption, each property held pursuant to the certificate must be assessed annually to the county treasury as trustee before the owner or his or her successor.

"Before the owner or his or her successor." My client is without a doubt a successor of the original owner. There is no question, owner to owner. In line, we are its

successor in interest, and that's an important term because that's the term of art in this case. We're the owner at the time of our discussion, if you will, but what we talk about is the owner -- the statutes talk about the owner at the time they pulled the certificate. It's the owner that owed the money at that time. That's why we get confused with owner.

Counsel got up here and said former owner doesn't -- not listed in there, and owner is owner, and that's not it. That's not it at all. That's not how the statute works. So this provides owner or his or her successor redeems the property.

> He or she must also pay the county treasurer holding the certificate any additional taxes, penalties, costs assessed and accrued against the property after the date of the certificate. Together with the interest on the tax at a rate of 10 percent prior --

THE COURT: Okay. You're mumbling, and you're talking very, very fast.

MR. CROTEAU: I apologize. I'm trying to go fast. That's why.

THE COURT: Well, I understand, but --

MR. CROTEAU: I'll fix it.

So the point is they have to pay everything that's

due in order to redeem. The owner or the successor in interest to the owner can redeem, period. That is 361.570, Subsection 4.

Subsection 5 is,

> The county treasurer shall take a certificate issued to him or her pursuant to this section. The county treasurer may cause the certificate to be recorded in the office of the county recorder against each property described in the certificate.

Doesn't have to. It's provisional. It's "may." It's not a "shall." They do it as a practical matter, Your Honor, but it's not required. The certificate reflects the delinquent taxes and so on.

Now, we then come along, furtherance of that statute. Now we're clicking the two years, okay, and in our case, the two years ran after my client's ownership. It didn't run till after June of '15, I believe. Okay.

THE COURT: That's what it says.

MR. CROTEAU: Yeah. And we became owner in '14, 3/21 of '14. So NRS 361.585, it says, Execution and delivery of deeds to county treasurer as trustee after the period of redemption and reconveyance of property. Again, reconveyance is back to owner or successor in interest. So it says,

> When the time allowed under

Subsection 1, by law for the redemption of a property described in the certificate has expired and there's no redemption that has been made --

That is our case. That happened here intentionally on behalf of my client [unintelligible].

-- the tax receiver who issued the certificate or his or her successor in office, shall execute and deliver to the county treasurer a deed to the property in trust again.

It's in trust. It's not giving the property to the county.

THE COURT: Okay. I've got a question. Why didn't they identify the owner as your client as opposed to Gibson Road LLC?

MR. CROTEAU: You should ask them. I don't know. I'm not being sarcastic.

THE COURT: Well, I know, but aren't --

MR. CROTEAU: I don't know.

THE COURT: Aren't they charged with looking at the recording?

MR. CROTEAU: Yes. Yes. Absolutely. Absolutely. You are 1,000 percent right. I can't answer that. I can't tell you why they did that wrong because it's absolutely wrong.

I'm telling you, Ms. Skinner and the people she works for have created this problem because if they pull the title reports like anybody else, all right, they do not list the owner. They do not list anybody under a CC&R sale as being a rightful person in the chain of title. So I don't know.

And as a matter of fact, the notice of intent to deed shouldn't have gone to Gibson. It should have gone to my client. My client's tax certificate -- or his deed with tax mailing notification on it should have gone to my client. It didn't. So is it wrong? Yes. Okay. And you are entirely correct and your question is correct, but it's not because they did it right and we're missing something. It's because they did it wrong.

But again, we don't necessarily care, and we didn't care. My client was keeping track of it, and but given his position in the case, he would've been better off sitting here arguing about proceeds rather than the building, and that's what he told you, and I'm going to explain to you why. It's very important. It shouldn't be lost, and it's a very important issue. Subsection 2 of that section says,

> The county treasurer and his or her successor in office, upon obtaining a deed of any property in trust under the provisions of this chapter --

Again it's in trust, right. They don't own it.

-- shall hold that property in trust until it is sold or otherwise disposed of pursuant to the provisions of this chapter.

Now, here's where it goes:

> Notwithstanding the provisions of 361.95 or 361.603, at any time during the 90-day period specified in 361.603 or not later than 5:00 p.m. on the third business day before the day of the sale by a county treasurer, as specified in the notice required by 361.595 --

Which never went out.

> -- of any property held in trust by him or her by virtue of any deed made pursuant to the provisions of this chapter --

Here's the relevant section.

> -- any person, any specified in Subsection 4 --

We're going to talk about that in a minute, that's important.

> -- is entitled to have the property reconveyed upon the receipt by the county treasurer of payment by or on behalf of that person of an amount equal to the taxes accrued together with any cost, penalties and

so forth. A reconveyance may not be made after the expiration of the 90-day period.

So you get two years. You get 90 days if they're delayed in transferring it, that doesn't matter. You get 90 days after they actually make the transfer to again redeem, all right. That's why the bank redeemed within that 90 days, all right, and that's what they did. That's why they got a reconveyance.

But they didn't pay their -- they didn't pay on their personal behalf to acquire the property because you can't do that. They paid it on behalf of their borrower, pursuant to their contracts that say they can advance taxes to protect their collateral. That's why they did it, all right, but it reverts back to --

And how it went back to Gibson Road, I don't know. I mean, did the bank tell them to deed it back to Gibson Road? I'm not sure. Did they not look? I'm not sure. We don't know any of that. All we know is in this particular case, the bank paid, and I've already told you I agree that's an unjust enrichment to my client. My client should've paid the taxes, don't have an argument with that. But when they paid that, they put it back in the name of Gibson Road.

Counsel stood here and made arguments to you that they take it free and clear. Well, if they took it free and clear, it's kind of a silly argument, and I apologize because

it is. If they took it free and clear, Celtic Bank shouldn't be here. Because if they took it free and clear, Celtic Bank should be wiped out, and Gibson Road should have the property free and clear if we applied that analysis.

All this did was get the taxes paid, obviously not fair market value for the property, right. It was taxes. So they paid taxes, and it reverted back to the owner. At least what the county did, they put it back in the owner's name subject to whatever has gone on, and my client is successor in interest. So my client says, well, wait a minute. The title is me because I'm the successor in interest, and so that's mistaken.

So but if you look at the title report, it's not going to change anything. It never -- it's always in trust. It was always held in trust. It was always subject to whatever encumbrances or whatever there's done in the chain of title, and let me continue, and I'll show you why. It says, Property may be reconveyed. This is Subsection 4 of 361.585. Property may be reconveyed pursuant to Subsection 3 -- which is what we just talked about, that 90-day period -- to one or more of the person specified in the following categories or to one or more persons within a particular category, as their interests may appear of record.

That's specifically in there, As their interests may appear of record. My client appears of record, okay. Then you

go down to A is the owner, and here's where we had the argument about whether it's owner or former owner. The thing says owner, Your Honor. Well, what they left out was 4H, the successor in interest of any person specified in this section, which is my client. This is where it should've gone. It didn't go there. My client could've walked in and paid it, okay, but my client didn't for a particular reason, and I'm going to show you why.

Who paid it was the person to whom the property was assessed who could take it. The creditor under a judgment could take it. The mortgagee under a mortgage could pay as well, and that's what happened here. So the bank came in and paid under 4C. My client could have paid under 4A or 4H, but the statute particularly provides by its own express terms, As their interest may appear of record.

So if your interest appears of record, you can walk in and pay the taxes and reconvey. You can do it as the bank. You can do it as a subsequent owner. You can do it as a previous owner. Anybody can do that that's on this list. A third party on the planet cannot walk in and pay. You have to have some connection to the property to get a reconveyance. That's the difference.

Now, moving along, this is the section where I told you there are differences in how this works. [Unintelligible] interesting. 361.590 has the same presumptions basically in it

that 116 has regarding recitals and so forth. So I think that's interesting for edification anyway.

361.595 provides if the property is sold how it works in the mailing of notices and so forth, and here's where I'd like to put us, and this is the last thing I'm going to talk about about the taxes, and I think this will resolve some of your conversations or discussions or concerns. Under 361.595.

> Any property held in trust by a county treasurer by virtue of any deed made pursuant to the provisions of this chapter may be sold and conveyed --

Not reconveyed, conveyed --

> -- in the manner prescribed in this section and in NRS 361.603 or conveyed without sale as provided in 361.604 without sales going to --

The school district comes in and says I want that lot for a building or something like that. They do that without the sale provided it's already gone through the redemption period. They have that opportunity, but if they offer it to public sale, there's a procedure:

> Notice of the sale must specify the date, time and place of sale, must be posted, must be mailed certified mail, return receipt requested not less than 90 days before the

day of sale to the owner of the parcel as shown on the tax roll.

My client, right. My client's on the tax roll, should be on the tax roll. It says mail tax certificates to here.

And to any person or government entity that appears in the record of the county to have a lien or other interest in the property. If the receipt is returned unsigned, the county treasurer must make reasonable attempts to locate, notify the owner or other person or government entity before the sale.

Well, they didn't do that. I mean, we never got to the sale, but they never sent the tax certificates to my client. So that's another problem. And then it says under Section 4.

Except as otherwise provided in Subsection 5, the county treasurer shall make, execute and deliver to any purchaser on payment of the county treasurer, as trustee, of a consideration not less than is specified in the order a quitclaim deed.

Quitclaim. In order for counsel to get to where she needs to get to with her argument, this had to be a quitclaim

deed conveyed, not a trustee's deed reconveying. If you reconveyed it, you put it back in the hodgepodge of whatever the record was. If you convey it, it gets conveyed without lien. It gets conveyed as a free and clear property. She's right about that, but not in that fashion.

Now, Subsection 5, If not later than 5:00 p.m. on the third business day immediately preceding the date of the sale by the county treasurer --

THE COURT: Okay. You're talking real fast again.

MR. CROTEAU: I'm sorry. I'm sorry. Bad habit. I come from the East Coast. I can't help it.

If not later than 5:00 p.m. on the third business day immediately preceding the date of the sale by the county treasurer a municipality provides the county treasurer with an affidavit signed by the treasurer --

THE COURT: You are talking really fast.

MR. CROTEAU: Okay.

THE COURT: I'm sorry, Counsel, but I've got a court recorder.

MR. CROTEAU: No. No. It's okay. It's okay. It's okay. I apologize. I'm doing the best I -- I'm trying to slow down.

All right. Let's go to Subsection 6 then. Before delivering a deed, the county treasurer shall record the deed at the expense of the purchaser. In other words, there's been

a third-party purchaser. They record it and bill the purchaser plus the amount of money that they bid at the auction.

> All deeds issued pursuant to this section, whether issued before, on or after July 1st of 1995, are primary evidence of all of the regularity of all proceedings relating to the order of the board of county commissioners, the notice of sale and the sale of the property, and then if the real property was sold to pay taxes or the personal property, the real property belonged to the person liable to pay tax.

Number 9 to that section:

> If the deed weren't regularly issued, it is not recorded in the office of the county recorder, the deed and all proceedings related thereto is void as against any subsequent purchaser in good faith and for a valuable consideration of the same property or any portion thereof when his or her own conveyance is first recorded.

This is the quitclaim deed. This is not a deed of reconveyance, a trustee's deed reconveyance. So that didn't affect anything. There is no free and clear liens. There's no concerns about anybody coming behind it. It's simply putting

it back in the state of title as it was then. It should have gone to my client. If somebody redirected it, we don't know, but I had asked Mr. Zern. He said he didn't do it, but I'm not sure. I mean, we don't know. We just don't know.

The final point of my argument and the final point of Mr. Schmidt's understanding as to how he was going to proceed is covered in 361.610, and that's titled Dispositions of amounts received from sale price, rents or redemptions of property held in trust. And it starts out by saying, Section 1,

> Out of the sale price of rents -- sale price or rents of any property of which he or she is trustee, the county treasurer shall pay the cost due any officer for the enforcement of the tax upon the parcel or property and all taxes owing, and upon the redemption of any property from the county treasurer's trustee, he or she shall pay the redemption money over to any officer having fees due from the parcels of property.

And it goes on, but, In no case may any service rendered by an officer under this chapter become or be allowed as a charge against the county. And then it goes on to talk about the different acts, amounts that they get to charge.

Subsection 4 is the important part. The amount

remaining after the county treasurer has paid the amounts required by Subsection 3 -- which is basically all the taxes, the penalties, the interest, any costs incurred in the sale, that's what it is -- must be deposited into an interest-bearing account, maintained for the purpose of holding excess proceeds separate from other money of the county.

If no claim -- remember, my client said you got to make claim on the money and so forth.

> If no claim was made for the excess proceeds within one year after the deed given by the county treasurer is recorded, the county treasurer shall pay the money into the general fund of the county, and it must not thereafter be refunded to the former property owner or his successor in interest.

You can find that in Subsection 4 of 361.608.

Former property owner, counsel wanted to know about the name of the former property owner. It's right here. Former property owner or his successor in interest, which is my client. All interest paid on money deposited in the account required by this subsection is the property of the county.

Now, it goes on from there just briefly, but if a person who would have been entitled to receive reconveyance of the property, pursuant to 361.585 and 31 -- 361.585 is my client under 4A and 4H, makes a claim in writing for the excess

proceeds within one year after the deed is recorded, the county treasurer shall pay the claim or the proper portion of the claim over to the person if the county treasurer is satisfied that the person is entitled to it.

That's exactly what he told you on the stand is that he could have bought that property for whatever he wanted to pay because he was record title holder, successor in interest to the former owner, and anything he paid over the taxes would be refunded to him, or he could let it go to sale to some third-party, and they could come in and buy it at fair market value or whatever that value is, and all the excess proceeds would come to him, and it's this section that does that, and that's how it works.

I've been involved in these sales for years. That's how it works, and you make claim, and if there's no competing claims, you get paid. And if there is a competing claim, the county works to sort it out, and that's when they come in and make their claim that we are owed, and we say, no, your deed was wiped out. You don't own it anymore as a result of the 116 sale. Bank has no claim, and we'd fight it out. So we'd probably be doing the same thing today. We'd just be arguing about the proceeds instead of the building.

So I submit to you, when he says that he had no moment with it either way, that's why, and that was his rationale. That was his business decision and his judgment at

that time when he didn't pay it, and he felt he was protected either way, and he could have redeemed it up to the sale because even up to the sale you can redeem, as I pointed out earlier.

So their argument that somehow this tax sale put him in a different position, meaning Gibson Bank -- I mean Gibson Road or the bank, it did not. It put them exactly back in the same position, playing the same role they're playing here today. The only difference is if the Court concludes that my client is the proper owner of the house under the 116 sale, then that gives rise to an unjust enrichment claim because my client was unjustly enriched by the bank's payment, and they did so -- I'll give them the benefit of the doubt -- in innocent error [unintelligible] under their asset even though I sent them a letter April 30th of 2015, [unintelligible] didn't, they still paid after that, and they got letters from Mr. Shapiro in, I think -- hang on -- before that. It was like before the sale, and I have those in the record, but I submit to you that that's a significant issue, and that is how it all rolled out.

Counsel argues that I have the burden of proving everything. I do not. It's their case in chief. In order for them to get a judicial foreclosure, they need to prove that I, my client, is not a BFP. They need to prove that we are here and have not met the burden of proof. Yes, it's my

counterclaim, but, quite frankly, their elements of their claim mandate that they have to say the foreclosure sale was not proper. If the foreclosure sale is proper and they haven't proved that and the foreclosure sale stands, I de facto win my client title, but basically they lose their judicial foreclosure. So it's kind of a misnomer in terms of how that's working.

All right. Let me see where I'm at.

The slander of title claim that we have, we have to prove that it's false, malicious communication. It has to disparage someone's title to land, and it has to cause damage, and that's the Wilkinson [phonetic] versus Deutsche Bank case, and it's titled in counsel's brief actually too, but my client purchased it at the foreclosure sale. My client has a deed that is, we believe, it changes title to this particular property to him.

After that, the bank filed a notice of default and election to sell which is a slander of title, and as a result of that, we've got this lawsuit. So the slander of title really does make all elements. The filing of the NOD and the attempted foreclosure on property owned by my client is a slander of title. We can't sell it. We can't do anything with it because of that. So there is special damages that we've incurred, and we've incurred the cost of this litigation as well.

In order for counsel to -- well, the BFP argument, just as the elements. My client has to pay valuable consideration without notice of any prior defects, so to speak, and equity resulting therefrom. The problem is this. My client attended a standard foreclosure sale that no one has put on one shred of evidence that suggests it was bad; it wasn't fair market value of what they were selling at the time given the current conditions of the marketplace at that time.

My client paid and was the highest bidder. I can tell you that the amount owed to the association resulted in $15,000 of excess proceeds being available to the bank, and I can show that to the Court in a minute. So he certainly paid more than the opening bid amount, and he was the highest bidder. Valuable consideration has been paid, whether they like to believe 30,000 is enough or not, it is for consideration, especially in the Shadow Wood decision.

It's without notice of any liens because his position was that that sale, selling the superpriority absolutely cleared title. So there is no taking subject to. There is no notice of other liens, and therefore he can't be a BFP. Because by operation of law, he assumed even in 3/21 of '14, that his version or his understanding of the law would be borne out in future cases, which it was in SFR of September of '14. So that's without merit, and equity in this particular case dictates that my client have the property, not that he loses

the property. So again --

By the way, the case on tax is Casazza versus Allstate Abstract Company, 102 Nevada 340, a 1986 case.

THE COURT: I'm sorry?

MR. CROTEAU: 1986 case. And that talks about basically the process of the redemption and so forth, and it also says, specifically cites, It does not give the redeeming party any interest greater than the interest it previously had. And that's at 347, which means if Celtic Bank redeems on behalf of its borrower, it doesn't improve their position at all. It puts them back exactly where they were, and you can find that cited at page 347 of the Casazza case, which somewhat, frankly, in my opinion, defeats their argument also.

Let's talk about the Red Rock letter for a moment.

I'm almost done, believe it or not.

The Red Rock letter is found at 12. This is a document that somehow they relied upon [unintelligible] --

And I apologize, Your Honor. I called out the wrong document.

(Pause in the proceedings)

MR. CROTEAU: Exhibit 12, Your Honor. This letter is dated December 12th of 2011. As the Court's aware, the actual sale occurred on 3/21 of '14. So I think it's two years and three months before the actual sale occurred. Mr. Zern said he did not rely on it, did not see it at the time, but the

bank relied upon it and somebody told him.

MS. NOTO: Your Honor, I just -- I hate to interrupt, but that misstates evidence in this case. So I'm going to make the objection during his closing. I apologize.

THE COURT: I think she's right.

MR. CROTEAU: Okay. Let me rephrase it then. Mr. Zern said he did not see it at the time, and Mr. Zern said he was told that someone at the bank had relied upon it because he could not have because he did not see it according to what he said. That I do recall, very specifically. If that's mistaken, then my memory is bad.

But what the letter says, and understand this is preSFR, and this is the fluctuation of thinking in the marketplace, but that doesn't mean that they get to rely upon it because everybody was wrong -- well, not everybody, but lots of folks were wrong. Lots of attorneys were wrong. Lots of title companies were wrong. They still are wrong according to Ms. Skinner.

And this says, The association lien for delinquent assessment is junior only to the senior lender mortgage holder. And you know what, that statement is entirely correct. It's entirely correct under 116.3116. It's not correct until you look at the next sentence though. It says, The lien may affect your position. Why? If they don't pay the superpriority. You can't not read those two unless you put them together. You

have to read both of them together. You can't give import to one sentence and not import to the second because it is exactly correct.

116 says that the first deed of trust is protected. It does say that. It says that in B, but it takes it away on the paragraph just below B by saying if you don't pay the nine months; however, you may be wiped out. This lien says, This lien may affect your position. It speaks for itself. The document speaks for itself. It doesn't, and it should not get any bootstraps to being more important than it says, and it's also stale, grossly stale because it's two-plus years away from the actual -- the sale.

So 28, Your Honor. Ms. Skinner was a very nice lady. She did a report of title commitment on November 9th of 2015, for this particular property. That is, I don't know, that is 14 months after SFR and several other decisions came out, and in this title report, she has no concerns, no qualms, no issues whatsoever telling us that the foreclosure deed that's recorded here gets a dot on the Number 24 of the exceptions. A document entitled, quote, unquote, A foreclosure deed and recorded April 17th of '14, in book number and instrument number in official records. That's it.

If anybody else was looking at this, I don't know if they'd rely upon that or not. I don't know that they'd be able to make any determinations. They still list Celtic Bank as an

active lien. They still list, you know, Republic Services, same thing.

By the way, counsel asked my client if he was concerned about the Republic Services lien. Obviously for $1700 he's not concerned about it. They have to bring action in which to foreclose on the property. If they had brought action, he'll pay it, but, quite frankly, from a businessman's point of view, Your Honor, he's waiting for the outcome of this before he pays everybody. You would too. If you don't own the property or you're going to be divested from a court order, you don't want to advance cash before you have to.

He's not in fear of losing the property at all. They have to go through a process in which to foreclose. It's not administrative and at which point he could simply pay it, and elect to pay it and be done, but until they do that, he doesn't have to pay it. It just sits, and there's a lien on the house. You can't sell it anyway because of the state of the title, can't get title insurance on it because the court systems have not, oh, I don't know, we haven't developed the area of law enough that a title company will even issue us title insurance.

They still to this time frame, and according to her testimony right now as of yesterday, they're still not willing to issue a title insurance policy to us. Okay. So this is all part and parcel of the problem. It's not my client's fault, but anybody looking at this --

You know, you look at the tax records, and I told you they have to go see who is the record owner. If they pulled this, just like this, I don't know what the taxing authority would do with this either. I don't. I don't know if my client would get the notice that's required, even though he did his deed correctly pursuant to NRS 111. He still didn't get the notices. Why, I don't know, but they're just discounted. They're avoided, and I don't understand it, and it's beyond me to be able to pontificate why I can't, but I can tell you that it just wasn't done. So and again, you know, Ms. Skinner was quite honest about that, and I appreciated that, but it is what it is.

Your Honor, 29, Exhibit 30 and 31 provide affidavit of mailings for all the notices, and based upon recitals and the deeds, that's conclusive proof they were, in fact, sent. There's a certificate of sale at 32. The allocation of proceeds, excess proceeds is contained in page 34 -- I mean Exhibit 34 for Red Rock. A review of the payment allocation report with the nonpayment of fees and so forth clearly on its face, as stipulated documents have both the county ledgers. They also have the client, and they have an authorization to foreclose. Everything is set forth herein and the bills. So there was absolutely no question as to whether or not there was ever a payment made. There was not.

36 is the same. It's just a continuation of that.

Exhibit 37 is my client's payments for the property.

The exhibits that are remaining are all of the proof, if you will, for all of the notices that went out. If the Court will take two seconds and look at 42, there were several notices sent, both certified and regular mail, to the treasurer, care of Gibson Road, and these were letters that were not official letters of any kind. They're not notices of [unintelligible] assessment. They're not NODs. They were simply letters saying, hey, pay this will you. We're letting you know. Geez. These are all cautionary letters, and this is December 21st of '11.

There's a series of these letters, and these are the ones that counsel talked about where their lien position may be affected. Everybody got one. Silver State Bank got one, and the list goes on and on here of all the people they sent notices to along with the mailing of envelopes. And again these were not required. They're just additional preponderance of notices, again to protect people's interests, and still nothing was done. Again, mailing affidavits.

Mr. Shapiro, if we go back to Exhibit 50, counsel -- I apologize, not counsel. Mr. Zern stated that his first knowledge that the lien in this property was in jeopardy is when I wrote him a letter. That's not true. Gerrard Cox wrote him a letter August 1st of 2014. Now, mind you the property had already been lost because we took it over 3/21 of '14, but

Gerrard and Cox wrote Celtic Bank a letter stating that, As you and I have discussed -- and it was not to Mr. Zern. It was to Jeff Orgill -- I have discussed in the past, through an unfortunate set of events, the borrower lost title to the secured property identified above. Upon learning that the property has been lost, the borrower ceased making payments on its loan to Celtic Bank.

Well, I think that's pretty clear. So why would my letter be the first thing he's ever seen? It is my understanding that --

And by the way, this has the corrected address. This is the 268 South State Street, Suite 300. Now, a two second comment about that. The NOD was received by the bank at its former location 340 blank blank 400. It was received there by Ms. Merryman, and she's the person that is supposed to get notice in the TSG if you look at that. So that's accurate notice. The bank never updated the notices when they moved. They never sent anything to the county recorder's office. They never updated anybody on the deeds they were getting noticed on.

And Ms. Skinner testified the notices go to wherever they tell them to send it on either the deed, the deed of trust, the assignment of rents, whatever it is. Whatever that address is, that's where they get notice. There's no obligation to do additional research. So when they sent the

subsequent notice of sale, they're saying they didn't receive it, not our requirement pursuant to the case I cited to you earlier, but they could have, and they should have known it's coming, and they were put on notice about it, and additionally, they were getting letters to pay things and didn't do it.

So and then Mr. Cox -- I'm sorry. It was Mr. Shapiro sends a letter to Celtic Bank again, long before they ever paid the taxes and long before my letter telling them that they lost the property, and then obviously had been talking about it, and again this is preSFR, right. This is August of '14. SFR comes out in September. So Jim Shapiro sends them a letter. It says.

> My understanding the current fair market value of the property is equal to or a little higher than the current outstanding balance due and owing on the loan.

Meaning they're setting it up for the fact that, look, you lost the property. We're not going to pay the loan anymore because you didn't keep the property for us, and that's what they're setting it up for.

> And due to the fact that the borrower no longer owns the property, we are requesting the bank to mitigate its damages by immediately initiating foreclosure proceedings against the property.

Counsel cited to you that that's saying, see, even the other attorney is saying that. Well, I'll represent to you Mr. Gerrard and Mr. Shapiro represented the other side of my table for most of this stuff before 2014. So they always had the view that the bank never got wiped out. SFR changed that, but that was just their position at the time. So that doesn't mean anything. It's just legal maneuvering and legal opinions.

Anyway, I will not waste your time, but there are notices for all of the notices that were sent in tab 52 by Red Rock. There's a letter from Mr. Shapiro to Red Rock demanding all the notices that were sent and to verify the accuracy of all of them. That's a very big package of things. All of it was responded to, and from that there came no litigation because they were satisfied with -- with at least what was done because they asked for evidence of notice of delinquent assessment, notice of default, election to sell, proof of service, exact date of sale, a copy of the deed conveying title to the property to the buyer and all of that was, in fact, provided to Gerrard Cox & Larsen.

Again, Exhibit 54 is again more notices. Page 55 is preaudits. Page 56 is a update on the sale process and the process for moving forward.

Counsel made mention to you that the board, okay, that she says has no power, the board actually reached out to the HOA and said -- not the HOA but Red Rock and said, well,

tell us what's going to happen here? You know, what's going to happen with the proceeds? How is this going to work? Again, that has nothing to do with the sale as to what they thought. That had to do with what they thought the state of the law was at the time, what they were doing at the time, but their opinion didn't affect it, and they went forward with the sale either way. So I think that's of no moment whatsoever.

And, finally, the last couple pages here are just the more notices. Would the Court take a moment and look at 58. This is an older TSG, Trustee Sale Guarantee, that was pulled by Red Rock, but it's old -- it was October 21st of '11 -- most of them are, and there's newer ones that have been updated, but really nothing changed during that period of time. But the TSG listed here basically the exceptions, which are the taxes and the various liens.

The second page, page 3 of that, which is CBC 385, under Number 7, lists the 1989 covenants and conditions. It lists the Number 8, the 2004 covenants and conditions. Under note 1 it talks about modifications there, recorded in May 14, May 26th and July 14th. It talks about the deed of trust in Number 9 in favor of -- well, in favor of Silver State Bank at that point and then assigned to Celtic through the FDIC. That's all covered through there. So you have '89. They don't make specific reference to the 1994, but they do discuss that it's an amendment thereto.

But in any event, so, I mean, for the most part everything is here, and they noticed and who they notice occurs, 389. So it's the trustee Clark County Treasurer, Laura Fitzpatrick, Silver State Bank, Celtic Bank care of Roberta Merryman, and that was effective even back in '11, and that's what they did. They followed that, and it was never updated, and they sent it to the 340 East 400 South address. And then Gibson Business Park property Owner's Association is the other one, which is who is the foreclosing agent.

So I think with that, Your Honor, if the Court will give me one minute. I think I'm done.

May I approach?

THE COURT: Sure. Okay.

MR. CROTEAU: This is Saticoy Bay LLC Series 2301 Haren, as appellant, versus LNV Corporation, Case Number 65151. This was filed a bit ago, but in this -- this is the language that counsel talked to you about, and this is the case where it's a common-interest community, but in this particular case, this was a nonresidential common-interest community. And then the argument was, as a result of that, you know, how did we get here? And counsel brought this up, that this particular case the Court found that a nonresidential common-interest community can still enact and bring into terms the language of 116 even though it didn't cite 116. It simply allowed some of the language in it to mirror 116, okay.

There was no citation in this case, the 278A.170, but they did incorporate by reference, and not by reference by actual language on page 3, for example, of a super-type lien that would be available to this particular community association. So this was sort of a hybrid, and I submit to you that it's not our case. Our case is better, okay, because our case specifically cites 278A.170, and whatever it cites to, and it specifically brings in 116.3116, specifically brings it in. This case did not. This was squirrely on the CC&Rs and not off on 278A and dealt with these matters and still found, still found that the language of 116 was mirrored enough that it would apply.

And I submit to you you can read that, and I'm not trying to paraphrase it at all but it basically says,

> Though LNV is correct that it's a nonresidential CIC, and the CC&Rs do not explicitly reference NRS 116.3116, the CC&Rs incorporate NRS 3116 superpriority language verbatim rather than just citation.

And then it goes in to talk about that. So they actually laid the language within their CC&Rs though they did not cite 116, and the Court said, no, that'll be enough to create a superpriority, and I think that's instructive because 278A actually incorporates that language, and 278A incorporates it, and the CC&Rs from 1989 that were amended in 1994 and the

2004 all list 278A.170 as being incorporated by reference. You can't find, there's no other way to find that it's not included.

Your Honor, I submit to you that based upon the evidence presented, and quite frankly it was their case to prove, not mine -- I'm defense -- the sale occurred. It occurred --

THE COURT: Okay. Counsel, I'm going to cut you off right there.

MR. CROTEAU: Okay.

THE COURT: We're going to come back at about what, 1:15. Is that good?

MS. NOTO: That's fine, Your Honor. Thank you.

THE COURT: Okay. We'll come back at 1:15.

I'm sorry, but I've got a luncheon engagement.

(Proceedings recessed 11:54 p.m. to 1:14 p.m.)

THE COURT: All right. You all may be seated.

Mr. Croteau, did you want to finish?

MR. CROTEAU: Just I want them to get nothing and us to get the property.

THE COURT: Okay. Okay.

MR. CROTEAU: Obviously just formally, we think they should take nothing by way of their judicial foreclosure sale. We don't think they met the burdens necessary to do that. We believe that we are in priority possession as a result of

116.3116 and 278A.170 and the CC&Rs and all the evidence that's in the case at this point.

We believe we have proved all the elements for a slander of title case, being the damages associated with this case and the fact that we can't sell the property, and we can't sell the property currently because the mortgage appears to be in the record title because entities that are operated by Ms. Skinner won't clear the title. So that's another issue.

But with all due respect, that's the extent of it, and it's in our moving papers obviously and in our complaint.

Thank you very much, Your Honor.

THE COURT: Okay.

MR. CROTEAU: I appreciate you listening to my long arguments.

And, again, my apologies to counsel.

MS. NOTO: Thank you, Mr. Croteau.

Well, I'm going to be less than 30 minutes, guaranteed.

(Rebuttal argument for the Plaintiff)

MS. NOTO: First of all, just to address his final point, there's been no evidence of damage for slander of title. They put no evidence on of any attorney's fees. They put no evidence on of any special damages, actually, no evidence of damage whatsoever.

But I'm going to start back, Your Honor, with my

original argument which was that Mr. Croteau did not address in any manner the defect in the notices related to whether or not Red Rock had the authority to record any of the liens. He didn't address that at all.

What he did say was there's no evidence that there were two associations. Well, Ms. Skinner testified that she believed that there were two. Ms. Schmitt than on recross showed her the 2004 CC&Rs, which in the general declaration states that,

> Declarant hereby declares that all of the project, including the real property, is hereby made subject to this declaration and shall be conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part subject to this declaration.

And this is in the 2004 declaration, Your Honor -- I'm sorry -- Exhibit 3 and the master declaration, and the master declaration is defined as a defined term to the CC&Rs that were recorded previously on the property. So the idea that there was no evidence that there were two associations on the authority argument was somehow just not supported certainly is contrary to Ms. Skinner's testimony and the language of the 2004 CC&Rs as well.

So one of the other arguments that Mr. Croteau made

was about this stale letter that my client received in 2011. Well, nobody knew what was going on in 2011. It was two years before the sale. There's no way that they could have assumed or relied upon that letter, and, besides, it was really stale.

So let's look at the other evidence that my client did receive. They received the letter in 2011, and not necessarily what they received, but the evidence in this case. In 2013, August 12th, 2013, Red Rock, the same entity that sent the letter to my client --

THE COURT: And what exhibit is that?

MS. NOTO: I'm sorry. This is Exhibit 13 I believe, Your Honor.

THE COURT: Okay.

MS. NOTO: Second page of Exhibit 13. Red Rock, the same entity in 2013 sends the HOA information and says that the two propositions is on page 2, and that's the first page. And the second page, which, of course, I didn't grab and need.

THE COURT: I've got it.

MS. NOTO: Do you have it there, Your Honor?

THE COURT: Yeah.

MS. NOTO: That says that the first mortgage --

THE COURT: The first mortgage would remain on the property?

MS. NOTO: Yes, Your Honor. The first mortgage will remain on the property. Then in 2014, the bank gets the letter

from the borrower's lawyer saying, hey, you've got to foreclose on your first priority deed of trust because the borrower has lost its interest in the property.

Now, honestly, and this is just pure argument, Your Honor, but it doesn't say it lost the secured property by virtue of the foreclosure sale. It could have been because of the taxes. At this juncture, on August 1st, 2014, there is still a certificate of taxes. We assume that it was because of the foreclosure sale, but that's not what the letter says. It says the borrower lost title to secured property.

Okay. Well, whether or not that was a foreclosure sale, there was no testimony about that, but what we do know is that in August of 2014, borrower's counsel is again affirmatively representing that the bank should foreclose on its interest. So really what Mr. Croteau is saying is that the bank should have had constructive notice that a statute that had not yet been interpreted trumps the actual notice that the client received, and that -- that just doesn't make any sense.

The bank was entitled to rely on the notices that it received from Red Rock. It was entitled to rely on the actual information that it was provided. Constructive notice of a statute that may or may not apply and had not been interpreted doesn't trump actual notice.

Now, Mr. Croteau also argued and actually quite a bit of argument about the fact that the borrower has no right of

redemption under NRS 116, and I don't quarrel with that. If this was in NRS 116 sale, the borrower may not have had a right of redemption. Our argument is to the contrary. This was not a sale that was conducted pursuant to NRS 116, and because of that, that's not applicable.

So Mr. Croteau said to you that the sale would have been for superpriority liens. There is no evidence before this Court what the sale was for. He didn't put on the association to say the notice of lien related to superpriority assessments under that -- the 2004 association. He didn't put on the declarant or the association -- the 1989 association to say the lien was for superpriority assessments. This Court only has the argument of counsel that the lien itself reflected a lien for superpriority assessments. There's no evidence of that before this Court.

So he stood up to tell you that that lien was under the 1989 CC&Rs, but there is no evidence as to whether or not the lien is for common areas under the master declaration or under the 2004 declaration. And the evidence to this Court suggests -- what evidence does this Court have to suggest that it was for superpriority assessments? And that is none.

And now we have to address the Saticoy versus LNV matter. I'm not going to read anymore of the case into the record. I know this Court can read the case. You've got the citing for the case, but Mr. Croteau told you that in that case

it had not incorporated any of NRS 116. That's just not true, and the language of the case will show you that actually in the Saticoy Bay versus LNV, the CC&Rs in that case did actually reference some of the NRS 116 statutes, but that wasn't the basis of the case.

The Court said, and I've already read into the record what the Court said in Saticoy Bay, but the issue was the reason why it applied to a commercial property was because those CC&Rs had incorporated the superpriority language. Now, Mr. Croteau wants to suggest that because 278A is referenced in the 1989 CC&Rs that engrafts then NRS 116 into the document, but that's just not the case, and it's contrary to the holding in the Saticoy Bay matter.

THE COURT: Does it change with the enactment of NRS Chapter 116 on December 31st, 1991?

MS. NOTO: No. Because -- well, Saticoy Bay was obviously decided after that. His argument is then on that date all of NRS 116 was then automatically engrafted into all CC&Rs. That's not what Saticoy Bay says. It says we're deciding that this is applicable to a commercial property because the commercial property mirrored the language in 116, which is a residential statute.

So because LNV had taken out the language from the residential statute and put it into their CC&Rs, then we're going to say you intended for the superpriority language to be

included in your contractual requirements, and so, and I think when you read the case, Your Honor, you'll see that. It's very easy to understand why the Court utilized the reasoning in SFR, a residential case, and used that as persuasive in applying it to these CC&Rs because they had pulled out the residential language of superpriority liens and actually mirrored it in the commercial CC&Rs. So that's something that I think this Court needs to look at.

But again LNV -- in the LNV case, it had actually incorporated the power of sale, for instance, NRS power of sale statute, and so Mr. Croteau's argument that it was just automatically engrafted into a commercial property is just incorrect under Saticoy Bay.

And then, finally, Your Honor, and I do mean finally, the tax issue. He says he has no burden before this Court to establish anything basically, but he is asking for quiet title, and because he is asking for quiet title, he has to establish to this Court that Vegas United is the owner of the property. That's fundamental in a quiet title action.

And he cites the Court to the statutes that govern the taxing authority, and he references 361.590, and it's really very fascinating that he brought this to the Court's attention because this of course -- these are the statutes that govern the taxing authority, and in 361.5906C, Any other -- oops, [unintelligible] --

> Any other irregularity, informality, omission, mistake or want of any matter or form or substance in any proceeding which the legislator might have dispensed with in the first place if had seen fit to so do, and that does not affect the substantial property rights of property as taxed, all such proceedings in assessing and levying taxes and in the sale and conveyance thereof -- therefore, I'm sorry, must be presumed by all the courts of this state to be legal until the contrary is shown in the affirmative.

So let's look at what that means in the context of this case. There is a deed of reconveyance that the county recorded, and that deed of reconveyance says what? This is governed by 310. Whereas pursuant to NRS 361.585, Gibson Road LLC, paid by Celtic Bank, is entitled to reconveyance, having paid on ten, twenty-nine, ten, fifteen. We looked at the statute that says to whom can they reconvey. This recital is presumed to be true.

Now, Mr. Croteau says I don't know why they sent it to Gibson Road. I don't know. They should have sent it to my guy. Well, under 361.590, this is conclusive evidence that the recitals are true. Mr. Croteau could've brought the county in. He could have had the county testify that, you know what, that

was just a mistake, or we don't know why we did that, or, oops, our bad, but he didn't. So the evidence before this Court is that Gibson Road is either the owner of the property or at least fits in any of those categories that we discussed under 361.510 I believe is what it was. So that's conclusively presumed to be true.

All the evidence in this case, Your Honor, supports that Celtic Bank is entitled to a judicial foreclosure and for this Court to determine the priority and to deny quiet title, declaratory relief and slander of title, and that's all I have, Your Honor.

THE COURT: All right. Thank you.

Okay. I'm going to get you a written decision as soon as I can.

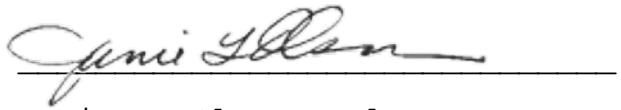
MS. NOTO: Thank you, Your Honor.

THE COURT: Okay. Thank you.

(Proceedings recessed 1:29 p.m.)

-oOo-

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case.



Janie L. Olsen & Florence Hoyt
Transcribers

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