

VEGAS UNITED INVESTMENT SERIES
105, INC., a Nevada Domestic Corporation

V.

Respondent.

Electronically Filed
June 20, 2019 09:53 a.m.
Supreme Court No. 14403
Elizabeth A. Brown
Clerk of Supreme Court
District Court Case No. A-28233

Respondent, CELTIC BANK CORPORATION, (“Respondent”), by and through its attorney, Allyson R. Noto, Esq. of the law firm of Sylvester & Polednak, Ltd., respectfully submits this Motion to Dismiss Appeal (“Motion”).

This appeal follows a bench trial in which the district court found in favor of the Respondent on its claim for judicial foreclosure allowing Respondent to proceed with a judicial foreclosure sale and against Appellant on its claims for quiet title/declaratory relief and slander of title. After trial and reviewing all the evidence, the trial court held that the Respondent was entitled to judicially

1 foreclose given its first-security interest recorded against the property.

2 Appellant did not post a bond to obtain a stay pending appeal. In addition,
3 Appellant filed two separate requests for an injunction; one to enjoin the judicial
4 foreclosure itself and one to enjoin the Respondent from selling the property
5 following the expiration of the redemption period. This Court denied both
6 injunction requests. The judicial foreclosure took place and the redemption period
7 expired on November 21, 2018.
8

9 Respondent obtained the property with its credit bid at the judicial
10 foreclosure sale. The property was not redeemed during the one-year redemption
11 period by any person or entity entitled to redeem during the statutory redemption
12 period. Approximately six months after the statutory redemption period expired,
13 Respondent sold the property to a third party.
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15 Because the property at issue in the litigation below was sold to a third
16 party and is no longer owned by the Respondent, this appeal has become moot.
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18 II.

19 FACTUAL ALLEGATIONS

20 1. On or about October 9, 2017, Appellant filed its Notice of Appeal in
21 the instant matter.
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23 2. On or about November 8, 2017, Appellant filed its Motion for
24 Injunction Pending Appeal on Order Shortening Time in the State Court action.
25 The trial court denied Appellant's Motion for Injunction Pending Appeal.
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1 3. On or about November 14, 2017, Appellant filed its Emergency
2 NRAP 8 Motion for Injunction Pending Appeal requesting that this Court enjoin
3 Respondents from moving forward with the judicial foreclosure.
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5 4. On or about November 16, 2017, Respondent filed its Response to
6 Appellant's Emergency NRAP 8 Motion for Injunction Pending Appeal.
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8 5. On or about November 17, 2017, the Court denied Appellant's
9 Emergency NRAP 8 Motion for Injunction Pending Appeal and allowed the
10 judicial foreclosure to move forward, noting that this case may be impacted by the
11 redemption statutes.
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13 6. On or about November 21, 2017, the judicial foreclosure took place.
14 Respondent obtained the property by way of credit bid in the amount of Six
15 Hundred Thousand Dollars (\$600,000.00). The property was subject to
16 redemption within one year of the date of sale.
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19 7. A year passed and on or about November 19, 2018, a few days prior
20 to the expiration of the redemption period, Appellant filed another Emergency
21 Motion, Under NRAP 27(e) – NRAP 8 Motion for Injunction Pending Appeal
22 arguing that since the redemption period was about to expire, the bank should be
23 enjoined from selling the property. Appellant advised the court that the
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1 Emergency Motion needed to be decided prior to the expiration of the redemption
2 period.
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4 8. On or about November 20, 2018, the Court denied Appellant's
5 Emergency Motion Under NRAP 27(e) – NRAP 8 Motion for Injunction Pending
6 Appeal stating:
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8 We have considered appellant's emergency motion for an
9 injunction pending appeal and respondent's response thereto in
10 light of the factors listed in NRAP 8(c); *see also Fritz Hansen*
11 *A/S v Eighth Judicial Dist. Court*, 116 Nev. 650, 6 P.3d 983
(2000). Accordingly, we deny appellant's motion.

12 9. Following the denial of this Court for an injunction to enjoin the sale
13 after the expiration of the redemption period, on or about June 7, 2019,
14 Respondent sold the property to a third party. A true and correct copy of the
15 Grant, Bargain, Sale Deed is attached hereto as ***Exhibit "1."***
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18 10. The subject matter of this appeal is Appellant's request that this
19 Court reverse the district court's decision and remand with instructions that the
20 Respondent's deed of trust was extinguished and that Appellant is the owner of
21 the property free and clear of any interest of the Respondent. As the property has
22 now been sold by Respondent, the subject matter of the appeal is now moot and
23 there is no "case or controversy" for this Court to decide.
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III.

LEGAL ARGUMENT

The question of mootness is one of justiciability. As explained by this Court, the Court's duty is not to render advisory opinions but, rather, "to resolve actual controversies by an enforceable judgment." *Personhood Nevada v. Bristol*, 126 Nev. 599, 245 P.3d 572 (2010). (Citing *NCAA v. University of Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). Thus, "a controversy must be present through all stages of the proceedings." *Id.* (Citing *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67, 117 S. Ct. 1055, 137 L.Ed.2d 170 (1997); *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 476-78, 110 S. Ct 1249, 108 L.Ed.2d 400 (1990)) and "even though a case may present a live controversy at its beginning, subsequent events may render the case moot." *Id.* (Citing *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004); *Wedekind v. Bell*, 26 Nev. 395, 413-15, 69 P. 612, 613-14 (1902).

The controversy that existed at the beginning of this litigation is no longer at issue because Appellant's claims on appeal do not exist as a matter of law. Appellant did not post a bond to stay the judicial foreclosure and was unsuccessful in two requests for injunctive relief. Accordingly, Respondent was free to sell the property to a third party and Appellant's request to this court to remand with

1 instructions that the Respondent's deed of trust was extinguished and that
2 Appellant is the owner of the property free and clear of any interest of the
3 Respondent cannot be carried into effect.
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5 This case is similar to *Majuba Mining v. Pumpkin Copper*, 129 Nev. 191,
6 299 P.3d 363, 129 Nev. Adv. Op. 19. (2013) which also involved property rights.
7 In *Pumpkin Copper*, the dispute involved superior title to mining claims which
8 were lost by virtue of the Appellant's inaction in protecting its rights by delivering
9 a maintenance fee to the BLM for each of its claims. The BLM declared the
10 asserted property claims forfeited and void as a matter of law. The court in
11 *Pumpkin Copper* held that since the Appellant no longer had claims to protect in
12 its quiet title action, the appeal was dismissed. *Id.* at 193 (Citing *Cf Daly v.*
13 *Lahontan Mines Co.*, 39 Nev. 14, 23, 151 P. 514, 516 (1915) (a plaintiff must
14 have rights to real property and must redeem those rights within the time period
15 proscribed by statute in order to maintain a claim for quiet title)). *See also; All*
16 *Minerals Corp. v. Kunkle*, 105 Nev. 835, 838, 784 P.2d 2 5 (1989); *Pac. L. Co. v.*
17 *Mason Val M. Co.*, 39 Nev. 105, 113-14, 153 P. 431, 433-34 (1915). In this case,
18 Appellant did not attempt in any manner to redeem its rights or otherwise protect
19 the subject matter of the appeal...to wit, the property.
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1 It has further been explained that “the duty of every judicial tribunal is to
2 decide actual controversies by a judgment which can be carried into effect, and
3 not to give opinions upon moot questions or abstract propositions, or to declare
4 principles of law which cannot affect the matter in issue before it”. *National*
5 *Collegiate Athletic Ass’n v. University of Nevada, Reno.*, 97 Nev. 56 (1981) 624
6 P.2d 10. (Citing *Miller v. West*, 88 Nev. 105, 110, 493 P.2d 1332 (1972); *Morrow*
7 *v. Morrow*, 62 Nev. 492, 497, 156 P.2d 827 (1945); *City of Reno v. District Court*,
8 58 Nev. 325, 328, 78 P.2d 101 (1938)). A moot case “is one which seeks to
9 determine an abstract question which does not rest upon existing facts or rights.”
10 *Id.* There are no existing facts or rights that remain in this matter as all claims
11 have been extinguished as a result of the sale of the property to a third-party.
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16 This case is also analogous to bankruptcy cases in which the appeal is held
17 to be moot, when the order appealed from is an order authorizing the sale of the
18 property, and the appellant failed to obtain a stay pending appeal. *See; e.g.*
19 *Southwest Products, Inc. v. Durkin*, 144 B/R/ 100 (9th Cir 1992); *In re Onouli-*
20 *Kona Land Company*, 846 F.2d 1170 (9th Cir. 1988).
21
22

23 In *Onouli-Kona Land Company* the debtor/appellant defaulted on a
24 promissory note secured by a mortgage. A foreclosure sale was concluded. The
25 debtor then filed a petition in bankruptcy and subsequently the trial court
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1 confirmed the foreclosure sale. The bankruptcy court set aside the sale and
2 ordered a new auction under its own supervision. A second auction was
3
4 concluded under the bankruptcy court supervision and again, the same third party
5 purchased the property at the second auction. The debtor appealed the bankruptcy
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7 court's confirmation order of the sale. The purchaser moved to dismiss the appeal
8 as moot because debtor had failed to obtain a stay of the sale pending appeal.

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10 The Ninth Circuit explained that "the bankruptcy mootness rule developed
11 from the general rule that the occurrence of events which prevent appellate court
12 from granting effective relief renders an appeal moot, and the particular need for
13
14 finality in orders regarding stays in bankruptcy".

15 The case at hand has very similar facts as those found in *Onouli-Kona Land*
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17 *Company*. As in *Onouli-Kona Land Company*, the order appealed from in this
18 case is the order of the district court authorizing the sale of the property. As in
19 *Onouli-Kona Land Company*, Appellant failed to obtain a stay pending appeal
20 rendering the appeal moot. While the holding *Onouli-Kona Land Company* is not
21 binding on this Court, Nevada law, as cited above, follows the general rule that
22 occurrence of events which prevent this Court from resolving actual controversies
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24 by an enforceable judgment, renders this appeal moot.

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V.

CONCLUSION

Based upon the foregoing, Respondent respectfully requests this Court to
dismiss the pending appeal.

DATED this 20th day of June, 2019.

SYLVESTER & POLEDNAK, LTD.

By: 

Allyson R. Noto, Esq.
1731 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Respondent

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of SYLVESTER & POLEDNAK,
3 LTD. and that on this 30th day of June, 2019, I caused to be served a copy of the
4 above-entitled document on the parties set forth below via electronic service with
5 the Nevada Supreme Court as follows:
6
7

8 Roger P. Croteau, Esq.
9 Timothy E. Rhoda, Esq.
10 ROGER P. CROTEAU & ASSOCIATES, LTD.
11 2810 W. Charleston Blvd., Suite 75
12 Las Vegas, Nevada 89102

13 
14 _____
15 An employee of SYLVESTER & POLEDNAK, LTD.
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