

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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3
4 VEGAS UNITED INVESTMENT
5 SERIES 105, INC., a Nevada
6 Domestic Corporation

7 Appellant,

8 v.

9
10 CELTIC BANK CORPORATION,
11 Successor-in-Interest to SILVER
12 STATE BANK by acquisition of assets
13 from the FDIC as Receiver for
14 SILVER STATE BANK, a Utah
15 Banking Corporation organized and in
16 good standing with the laws of the
17 State of Utah,

18 Respondent.

Electronically Filed
Supreme Court No. J74163-2019 02:28 p.m.
Elizabeth A. Brown
District Court Case No. A-72833
Clerk of Supreme Court

**RESPONSE TO OPPOSITION TO
MOTION TO DISMISS APPEAL**

19 Respondent, CELTIC BANK CORPORATION, (“Respondent”), by and
20 through its attorney, Allyson R. Noto, Esq. of the law firm of Sylvester & Polednak,
21 Ltd., respectfully submits this Response to Opposition to Motion to Dismiss Appeal
22 (“Response”).
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As clarification of Appellant's Opposition, the Property was not purchased by Appellant at an "HOA" Foreclosure Sale but rather a commercial owner's association. Vegas United's continued characterization of the sale as an "HOA" foreclosure sale throughout its Opposition is an attempt to disguise the true nature of the sale and graft the *SFR* decision and its progeny incorrectly into this matter.¹

¹*SFR Investment Pool 1, LLC v. US Bank N.A.*, 130 Nev. 742 (2014) is the landmark case related to the statutory scheme for a foreclosure by a homeowner's association for past due assessments and their super-priority status. The foreclosure sale in this matter was undertaken by a commercial owner's association, which is exempted from the statutory scheme for homeowner's associations.

1 If Appellant's position, (i.e. that the appeal is not moot and Respondent has
2 created liability for itself by selling the Property to a third party pending this
3 appeal), is accepted by this Court, such would have resulted in a *de facto* stay
4 against Respondent from enforcing the judgment rendered in its favor and a
5 reconsideration of this Court's earlier ruling denying an injunction prohibiting the
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7 reconsideration of this Court's earlier ruling denying an injunction prohibiting the
8 subsequent sale. Respondent was authorized by the trial court to conduct a judicial
9 foreclosure and this Court did not enjoin the Respondent from selling the Property
10 after the expiration of the redemption period.
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12 Appellant argues that by virtue of its Counter-claim, if it should it prevail on
13 appeal the judicial foreclosure authorized by the trial court must necessarily be
14 deemed to be void ab initio and title to the Property would be returned to Vegas
15 United. However, the property has been sold to a third-party. Given the judgment
16 at the trial level authorizing the judicial foreclosure, the subsequent denial of two
17 injunctions which requested this Court to enjoin the judicial foreclosure and then
18 the transfer or sale of the Property, the lack of a recorded lis pendens, no bond
19 posted by Appellants staying the enforcement of the judgment, and the expiration
20 of the redemption period, no bona fide purchaser could or would have any notice
21 that there was a defect or irregularity in the judgment or the case in which the
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1 judgment was entered. Accordingly, Appellant will not be able to recover title to
2 the Property which is the subject of the appeal.
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4 Appellant argues that a “void and invalid security interest cannot effect a
5 valid and effective change of title.” The cases cited by Appellant in its Opposition
6 in support of this argument are either contrary to Appellant’s position, or are easily
7 distinguishable. In *Nesbitt v. De Lamar’s Nevada Goldmin. Co.*, 24 Nev. 273 (1898)
8 the Court disagreed with the appellant’s position that quieting title in the name of a
9 party which title the appellant claimed “never existed” was contrary to the law.
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12 In *Marlenee v. Brown*, 21 Cal 2d 668, 134 P.2d 770 (1943), the Supreme
13 Court of California affirmed a trial court’s decision in favor of a bona fide purchaser
14 to quiet title even in light of the appellant’s argument that the order purporting to
15 confirm the sale to the bona fide purchaser was “void.”
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18 In *First Interstate Bank of Sheridan v. First Wyoming Bank N.A. Sheridan*,
19 762 P.2d 379 (1988), the Supreme Court of Wyoming found the deeds to be
20 voidable, rather than void, even in the context of incapacity and undue influence,
21 and quieted title in the name of the bona fide purchasers. A voidable deed can pass
22 title and be relied upon and enforced by a bona fide purchaser. Here, title to the
23 Property at issue in this appeal passed by a court authorized sale with no stay of the
24 judgment and no injunction enjoining the sale to the third-party buyer. As such, the
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1 sale to the third party could only be voidable, subject to enforcement by the third
2 party, who is not a party to this appeal.
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4 In *In re Cedano*, 470 B.R. 522 (Ninth Cir. 2012), the bankruptcy court
5 rejected the argument of appellant seeking to recover for wrongful foreclosure
6 alleging defendant did not have an interest in the note securing the debt and was not
7 authorized to undertake a non-judicial foreclosure. Because appellant's quiet title
8 claim depended on the viability of his allegations that there was no authority to
9 foreclose on the property, appellant's quiet title claim failed as well.
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12 In *LV Management LLC Series v. Green Tree Loan Service*, 134 Nev. Adv.
13 Op 33, 399 P.3d 359 (2017), a sale of real property by way of an HOA sale was
14 invalidated by virtue of a violation of the automatic stay in bankruptcy. However,
15 the procedural posture of this case is exactly the opposite. The very point of the
16 Respondent's request for dismissal of the appeal is that there was no stay in effect
17 at the time of the sale, the sale was authorized by the trial court, and thus, the subject
18 of this appeal is moot.
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22 Appellant perplexingly argues, that if Vegas United does not prevail in its
23 argument that the sale to the third party should be invalidated, "it will be entitled at
24 the very least to recover monetary damages from the Respondent". There is no
25 scenario in which that can happen.
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1 Appellant has argued on appeal that the district court erred in determining
2 that Respondent's first deed of trust was not extinguished at the owner's association
3 sale and title should be restored to Appellant. The subject of that appeal has been
4 rendered moot by the subsequent sale of the Property and this Court cannot render
5 the relief requested. What the Appellant is apparently suggesting is that this Court
6 provide an advisory opinion as to whether it has a claim for monetary damages
7 under the theoretical scenario that the third-party purchaser is found to be a bona
8 fide purchaser and it cannot recover title to the Property as requested in this appeal.
9 However, the Court's duty is not to render advisory opinions but, rather, "to resolve
10 actual controversies by an enforceable judgment." *Personhood Nevada v. Bristol*,
11 *126 Nev. 599, 245 P.3d 572 (2010)* (Citing *NCAA v. University of Nevada*, 97 Nev.
12 *56, 57, 624 P.2d 10, 10 (1981)*). This Court cannot render an enforceable judgment
13 which would restore title to Appellants.

14 Accordingly, it is respectfully requested that this Court grant Respondent's
15 Motion to Dismiss Appeal.

16 DATED this 2nd day of July, 2019.

17 **SYLVESTER & POLEDNAK, LTD.**

18 By

19 
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23 *Attorneys for Respondent*

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